

NOTICE OF ORDINARY MEETING

24 MAY 2022



The Mayor and Councillors attendance is respectfully requested:

Mayor: R Palmer (Chair).

Councillors: L Anderson, G Arnott, M Bailey, C Doohan, G Dunkley, P Francis, P Kafer, S Tucker, J Wells.

SCHEDULE OF MEETINGS

TIME	ITEM	VENUE
5:30pm:	Public Access (if applied for)	Council Chambers
Followed by:	Ordinary Meeting	Council Chambers

Please Note:

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

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

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

Food and beverages are not permitted in the Council Chamber.

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BUSINESS

- 1) Opening meeting.
- 2) Acknowledgement of Country - Today, we are meeting on Worimi Country, we acknowledge the past, we are working towards a better tomorrow.
- 3) Prayer - We recognise the rich cultural and religious diversity in Port Stephens and pay respect to the beliefs of all members of our community, regardless of creed or faith.
- 4) Apologies and applications for a leave of absence by Councillors.
- 5) Disclosures of interests.
- 6) Confirmation of minutes Ordinary Meeting of 10 May 2022.
- 7) Mayoral minute(s) – if submitted
- 8) Motions to close meeting to the public – if submitted.
- 9) Reports to Council.
- 10) General Manager's reports – if submitted.
- 11) Questions with Notice – if submitted
- 12) Questions on Notice.
- 13) Notices of Motion – if submitted.
- 14) Rescission motions – if submitted.
- 15) Confidential matters – if submitted.
- 16) Conclusion of the meeting.

PRINCIPLES FOR LOCAL GOVERNMENT

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

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

Guiding principles for Council

1) Exercise of functions generally

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

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

2) Decision-making

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

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

3) Community participation

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

Principles of sound financial management

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

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

Integrated planning and reporting principles that apply to Council

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

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

PORT STEPHENS COMMUNITY STRATEGIC PLAN

The Local Government Act requires Council to adopt a Community Strategic Plan (10+ years). The Plan includes a Delivery Program (4 years), Annual Operational Plan and a Resource Strategy, it also includes the Council's budget.

The Community Strategic Plan is organised into 4 focus areas:

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

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

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

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

BUSINESS EXCELLENCE

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

These outcomes align with the following Business Excellence principles:

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

MEETING PROCEDURES SUMMARY

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

Quorum – A quorum at Port Stephens Council is 6.

Declarations of Interest

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

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

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

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

Motions and Amendments

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

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

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

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

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

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

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

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

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

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

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

A Point of Order can be raised where:

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

Declarations of Conflict of Interest – Definitions

Pecuniary interest is an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person or another person with whom the person is associated as provided in Clause 7 of the Code of Conduct.

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

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

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



Form of Special Disclosure of Pecuniary Interest

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

Important information

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

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

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

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

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

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

ORDINARY COUNCIL - 24 MAY 2022

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

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

which is to be considered at a meeting of the PORT STEPHENS COUNCIL

to be held on the _____ day of _____ 20__

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

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

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

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

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

Mayor/Councillor's signature _____

Date _____

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



Declaration of Interest form

Agenda item No. _____

Report title _____

Mayor/Councillor _____ declared a

Tick the relevant response:

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

in this item. The nature of the interest is _____

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

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

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

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

Mayor/Councillor left the Council meeting at _____ pm.

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

COUNCIL REPORTS

ITEM NO. 1**FILE NO: 22/110239
EDRMS NO: 16-2018-386-2****DEVELOPMENT APPLICATION - 16-2018-386-2 - MODIFICATION TO MIXED USE
DEVELOPMENT- 35, 37 & 39 DONALD STREET, NELSON BAY & 1 YACAABA
STREET, NELSON BAY**

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Approve Development Application DA No.16-2018-386-2 - Modification to Mixed Use Development subject to the conditions contained in **(ATTACHMENT 3)**.

BACKGROUND

The purpose of this report is to present Section 4.55(2) modification application DA16-2018-386-2 to Council for determination. The modification relates to building design changes to the approved mixed use development.

A summary of the application and property is provided below.

Subject Land	1 Yacaaba Street, 35 Donald Street, 37 Donald Street and 39 Donald Street NELSON BAY (LOT: 24 SEC: 5 DP: 17805, LOT: 25 SEC: 5 DP: 17805, LOT: 23 SEC: 5 DP: 17805, LOT: 22 SEC: 5 DP: 17805)
Zoning	B2 Local Centre
Submissions	2
Key Issues	Increase in building height and building design changes
Development Plans	Provided to Councillors separately due to privacy and copyright legislation

The original Development Application (DA) was approved by Council at the Ordinary Meeting of 11 July 2019. In accordance with the Planning Matters to be Reported to Council Policy, this Section 4.55(2) modification application must be reported to Council being the determining authority for the original DA. A locality plan is provided at **(ATTACHMENT 1)**.

Proposal

The application seeks approval for a modified building design and amendments to conditions of consent. The main changes proposed are:

- The swimming pool at the first floor is to be removed and replaced with communal amenities including fitness equipment, seating and further landscaping
- Units 106, 208, 308, 408, 508 and 608 have been amended to be 3 bedroom units rather than 2 bedroom units resulting in a minor increase in Gross Floor Area (GFA) of 111.8sqm
- Vertical frames for on building plantings on the southern façade are to be removed and replaced with decorative screen panels
- Increase building height by 420mm to allow sufficient space for servicing of each floor and 510mm for the lift/stairwell overrun
- Inclusion of 6 adaptable units in accordance with development consent conditions
- Modification to the car parking layout for Ground Level, Basement Level 1 and Level 2, including the provision of additional parking spaces
- Minor modification to the bathrooms and ensuite layouts for certain units
- Minor modification to the kitchen and pantry layout for certain units
- Unit 705 and 805 external eastern bedroom 1 wall has been extended out for 320mm, and unit 805 GFA has been increased by 2sqm.

A detailed summary of all the proposed design changes and the conditions sought for amendment are included within the Planners Assessment Report (**ATTACHMENT 2**).

Site Description and History

The subject site is identified as 1 Yacaaba Street, Nelson Bay and 35 to 39 Donald Street, Nelson Bay (Lot: 24 Sec: 5 DP: 17805, Lot: 25 Sec: 5 DP: 17805, Lot: 23 Sec: 5 DP: 17805, Lot: 22 Sec: 5 DP: 17805). The site is located within Nelson Bay Town Centre.

The site currently contains an open air bitumen carpark. The site is located within the Nelson Bay Town Centre and is approximately 300 metres to the south of the Nelson Bay Foreshore and Marina.

The adjoining land to the north of the site comprises commercial and business premises and a multi-storey car park. The land to the east of the site comprises a mix of residential accommodation including single storey dwellings and multi-dwelling housing. To the west of the site, there is a mix of commercial and retail premises, including cafes and restaurants. To the south is a mixed used development containing residential apartments and ground floor retail.

Key Issues

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

Building Height

The proposed modification seeks to vary the approved building height by a maximum of 420mm as measured to the roof level and 510mm for the lift/stairwell overrun. The proposed increase in building height has been justified as being necessary to allow for the servicing required between floors and to maintain compliance with the Apartment Design Guide.

The applicable building height control for the site is 28m. At the time the original DA was lodged, the applicable building height was 15m. In 2018, Council adopted the 'Nelson Bay Town Centre & Foreshore Strategy', which endorsed a 28 metre building height for the subject site.

The proposed increase in height, above that originally approved by Council, is minor in nature and will not be materially perceived from the public domain or adjoining properties. The design proposes an upper level setback resulting in limited external impacts on the adjoining and surrounding properties, in terms of solar access, views of visual privacy. Notwithstanding the numerical non-compliance, the proposed development achieves the objectives of the height of buildings development standard and the objectives of the B2 Local Centre zone. The proposal remains compatible with the existing and desired built context and does not result in significant external amenity impact on adjoining properties.

Accordingly, the minor height increase is negligible considering the existing height of the approved building and is recommended to be supported.

Design

There were several changes to the buildings internal layout and external appearance, which were considered by staff and the Urban Design Panel (UDP). The UDP requested minor design amendments that were adopted by the applicant. On these grounds, the UDP provided endorsement for the proposed building design being presented to Council. This assessment has been outlined in detail within the Planners Assessment Report (**ATTACHMENT 2**).

Conclusion

Council staff consider that the application as proposed to be modified should be supported as outlined in the Planners Assessment Report (**ATTACHMENT 2**).

COMMUNITY STRATEGIC PLAN

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

FINANCIAL/RESOURCE IMPLICATIONS

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

LEGAL, POLICY AND RISK IMPLICATIONS

The development application is consistent with Council's Policy.

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
If the modification 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

The proposed modification will not likely result in any impacts additional to those social or economic factors that were assessed as part of the original application. It is considered that the proposed modification results in the orderly and economic development of the site and will provide additional housing stock in the Nelson Bay area.

Built Environment

The proposed physical works are within the same building footprint and are not considered to negatively impact the surrounding developments. The proposed changes to the building design were supported by Councils Urban Design Panel.

Natural Environment

There will be no adverse impacts to the natural environment as a result of the proposed modification.

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 process.

Public exhibition

The application was notified in accordance with Councils Community Participation Plan from 25 January 2022 to 8 February 2022. There were 2 submissions received during this period.

An assessment and response to the submissions has been outlined within the Planners Assessment Report (**ATTACHMENT 2**).

Internal

Development Engineer – Supported with conditions
Development Contributions – Supported with conditions
Building Surveyor – Supported with no additional conditions.

External

Ausgrid advised the developer must submit a NECF-01 - 'Preliminary Enquiry' form for a response from Ausgrid must be received before a Construction Certificate is issued. This has been added in to the Advisory Note section of the amended consent.

No other external referrals were required for the original application or the proposed modification.

OPTIONS

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

ATTACHMENTS

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

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.

1 Yacaaba Street NELSON BAY, 35 Donald Street NELSON BAY,
37 Donald Street NELSON BAY, 39 Donald Street NELSON BAY
LOT: 25 SEC: 5 DP: 17805, LOT: 24 SEC: 5 DP: 17805,
LOT: 23 SEC: 5 DP: 17805, LOT: 22 SEC: 5 DP: 17805



PORT STEPHENS
COUNCIL



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



PORT STEPHENS
COUNCIL

S4.55(2) MODIFICATION APPLICATION ASSESSMENT REPORT

APPLICATION DETAILS

Modification application no.	16-2018-386-2
Development description	Mixed use development – Residential flat building (56 residential units comprising a mix of one, two and three bedrooms), commercial premises (three units), basement car parking (109 spaces) and associated works including demolition of existing carpark
Modification description	S4.55(2) Modification to mixed use development – building design changes
Applicant	DESIGN CUBICLE
Date of lodgement	13/01/2022

PLANNERS PRE-ASSESSMENT CHECKLIST

OWNERS CONSENT	YES / N/A
Check if S.4.55 to be reported to Council (original DA determined by Council)	YES
Check whether consent is still valid (check lapse date).	YES
NOTIFICATION	
S.4.55 application only - notify previous objectors.	YES
REFERRALS	
S.4.55 Application only - Integrated referral bodies notified.	N/A

Modification Proposal

The application proposes to modify the existing approved development on site, primarily consisting of changes to the building design. The main changes to the building are outlined in Table 1 below.

Table 1: Comparison of main controls

Control	Approved DA	Modified DA
Building Height	30.6m Roof RL = 42.20 Lift/Stairwell overrun RL = 43.16	31.02m Roof RL = 42.62 Lift/Stairwell overrun RL = 43.67
Number of Storeys	9	9
Number of Apartments	56	56
Parking	109	116
Gross Floor Area (GFA)	5,761sqm	5,874.8sqm
Floor Space Ratio (FSR)	2.84:1	2.91:1
Mix of Apartments	5 x 1 bedroom 27 x 2 bedroom 24 x 3 bedroom	5 x 1 bedroom 21 x 2 bedroom 30 x 3 bedroom

As noted in the table above, the application seeks a minor increase to the overall height and gross floor area of the development as originally approved. The modification application seeks to vary the approved building height by a maximum of 420mm as measured to the roof level and 510mm for the lift/stairwell overrun. The proposed modifications to the building result largely from the coordination of services for each level resulting in the requirement to increase the floor to ceiling height by between 80mm–130mm and to retain compliance with the Apartment Design Guide floor to ceiling heights. Six (6) of the approved units have been modified to be 3 bedroom units (previously 2 bedroom units) resulting in a minor increase in gross floor area (GFA).

16-2018-386-2



Image 1: Photomontage as viewed from the corner of Yacaaba Street and Donald Street.

The following Table 2 outlines the detailed changes to the existing approved building. The conditions of consent proposed to be modified to reflect the below changes have been discussed in further detail in this report.

Table 2: Detailed changes to existing approved building

Reference	Proposed Modification
A	<ul style="list-style-type: none"> Swimming pool in first floor level has been removed. Replaced with fitness equipment, pergola, shade sail, chess table and seating. Reconfiguration of the communal open space.
B	<ul style="list-style-type: none"> Vertical frames for plants and landscape on the southern elevation have been removed. These are replaced with decorative screen panels to address the articulation and visual interest of the southern façade in a manner which will be more sustainable for building maintenance and will minimise the risk of adverse visual impact on the streetscape in the event that landscaping does not thrive, noting that it is located on the southern side of the building with less than optimal growing conditions.

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Reference	Proposed Modification
C	<ul style="list-style-type: none"> The first floor and seventh floor ceiling heights have been increased by 80mm per floor, second floor to sixth floor ceiling heights have been increased by 130mm per floor. The eighth floor, floor to ceiling height has been reduced from 3690mm to 3300mm. Overall, the total the building height has been increased by 420mm as measured to the roof level and 510mm for the lift/stairwell overrun. This increase in height is required to accommodate the required services for each storey and retain a compliant floor to ceiling height as per the Apartment Design Guide.
D	<ul style="list-style-type: none"> Curved balconies have been revised across all floor levels. Curved balustrades are solid upturns and straight balustrades are to be constructed from glass.
E	<ul style="list-style-type: none"> Full height windows in all floors have been decreased in height Units 201, 301, 401, 501, 601 (typical) and units 207, 307, 407, 507, 607 (typical) kitchen windows height have been reduced and replaced with render and painted materials. This is required to achieve the required BCA vertical spandrel gap between the opening and floor slab.
F	<ul style="list-style-type: none"> Slab edges protruding every second level on continuous façade walls for 150mm. Achieves fire rating as per BCA requirements.
G	<ul style="list-style-type: none"> First floor level planter boxes in common areas have been revised and redesigned with solid balustrades and compliant wall height. A gap has also been provided between the external walls of units and planter boxes short walls.
H	<ul style="list-style-type: none"> Windows have been added and amended in some bedrooms, ensuites, bathrooms and lobbies. Unit 101 bedroom 2 sliding door has been replaced with windows. Units no. 202, 302, 402, 502 and 602 bedroom 2 sliding doors have been replaced with windows. These modifications are required to achieve compliant natural light and ventilation.
I	<ul style="list-style-type: none"> Unit condensers and gas bayonet have been provided to all balconies.
J	<ul style="list-style-type: none"> Six adaptable units have been provided to achieve compliance with condition 34 of the development consent.
K	<ul style="list-style-type: none"> Ventilation grills have been provided for all units.
L	<ul style="list-style-type: none"> Unit 701 balcony and planter box layout has been amended.

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Reference	Proposed Modification
M	<ul style="list-style-type: none"> Basement level 1 and level 2 carpark layout has been amended and cavity walls have been provided for all stairs and plant rooms. 2 additional tandem spaces and 1 standard car parking space have been provided 3 additional accessible parking spaces have been provided Required to achieve compliant number of spaces for adaptable units.
N	<ul style="list-style-type: none"> All units' internal layout, storages, bathrooms and ensuites layout have been amended.
O	<ul style="list-style-type: none"> Unit 705 and 805 external eastern bedroom 1 wall has been extended out for 320mm, and level 8 GFA has been increased by 2sqm. Required to achieve the required min. ADG 75sqm area for a 2 bedroom unit.
P	<ul style="list-style-type: none"> Additional plant room has been provided at ground floor level. Fire exit stairs and plant room sizes have been revised in basement levels 1 & 2 1 additional tandem parking space and 1 additional car parking space has been provided, some of the required bicycle parking has been amended and provided within basement level 2. Storage layout and accessibility within basement level 1 and 2 have been amended.
Q	<ul style="list-style-type: none"> The accessible toilet has been amended and 3 additional carparking spaces benefitting the commercial tenancies have been provided including 2 accessible parking spaces. Minor amendments to the commercial bin room, residential bin room and lobby area from lift 2 to outside level and accessibility has been revised.
R	<ul style="list-style-type: none"> Updated BASIX and NatHERS certificate have been provided.
S	<ul style="list-style-type: none"> External finishes and materials have been provided.
T	<ul style="list-style-type: none"> Planter Boxes in Level 7 and Level 8 have been removed. Units 106, 208, 308, 408, 508 and 608 have been amended to be 3 bedrooms units and extended to be aligned with units 705 and 805 external walls. The external wall of each additional third bedroom and staircase adjacent to the lift 1 have as angled walls to increase the distance for direct light.
U	<ul style="list-style-type: none"> Lift 2 at ground level has been revised to be 2 sided. Lift 1 and 2 shaft sizes and headroom have been revised consistent with lift specification. Furthermore lifts 1 & 2 have their overrun increased by 510mm.
V	<ul style="list-style-type: none"> Skylights have been provided for all units on Level 8
W	<ul style="list-style-type: none"> The kitchens for units no.102, 103, 203, 204, 303, 304, 403, 404, 503, 504, 604 and 604 have been pushed towards the pantries and the pantry length has been reduced. Units 702, 703, 802 and 803 have had their kitchens relocated. Unit 703 modifications to the laundry and bathroom.

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Reference	Proposed Modification
X	<ul style="list-style-type: none"> Service shafts have been provided and amended in all levels. Staircase adjacent to the lift 1 has been amended. The garden storeroom at the ground floor level has been relocated.
Y	<ul style="list-style-type: none"> The party wall between units 704 & 705, 804 & 805 have been shifted west to achieve the minimum required area for units 705 & 805 as per the Apartment Design Guide.
Z	<ul style="list-style-type: none"> G03 commercial unit entry has been amended and handrail has been provided for on top of the associated retaining wall.
AA	<ul style="list-style-type: none"> Columns have been provided in all levels internally and in first floor level some of the columns located at common open area.
BB	<ul style="list-style-type: none"> Some parts of the external walls for units 101, 102, 103, 203, 303, 403, 503, 603, 204, 304, 404, 504, and 604 have been extended out due to the added columns.

PROPERTY DETAILS

Property Address	35 Donald Street NELSON BAY, 1 Yacaaba Street NELSON BAY, 37 Donald Street NELSON BAY, 39 Donald Street NELSON BAY
Lot and DP	LOT: 24 SEC: 5 DP: 17805, LOT: 25 SEC: 5 DP: 17805, LOT: 23 SEC: 5 DP: 17805, LOT: 22 SEC: 5 DP: 17805
Zoning	B2 LOCAL CENTRE

ASSESSMENT SUMMARY

Designated Development	The application is not designated development
Integrated Development	The application does not require additional approvals listed under s4.46 of the EP&A Act
Concurrence	The application does not require the concurrence of another body

Internal Referrals

The proposed modification was referred to the following internal specialist staff. The comments of the listed staff have been used to carry out the assessment against the S4.15 Matters for Consideration below.

Development Engineer – Supported with conditions.

Development Contributions – Supported with conditions.

Building Surveyor – Supported with no conditions.

External Referrals

Ausgrid – Ausgrid advised the developer must submit a NECF-01 - 'Preliminary Enquiry' form for a response from Ausgrid must be received before a Construction Certificate is issued. This will be added in to the Advisory Note section of the amended consent.

Urban Design Panel (UDP) – Councils UDP reviewed the proposal on 10 February 2022. Based on design changes made by the applicant, the UDP provided endorsement for the design proposed under this modification.

No other external referrals were required for the original application or the proposed modification.

OTHER MODIFICATIONS – S4.55**S4.55(2)(a) – Substantially The Same Development**

The development as modified is substantially the same as the approved development for the following reasons:

- a) The overall built form and external appearance remains relatively the same as approved.
- b) The internal design and apartment mix remains generally the same.
- c) The land uses proposed remain the same.
- d) The demand on essential services is consistent to as approved.

On this basis, the application is considered substantially the same.

S4.55(2)(b) – Concurrence and Integrated Development

The application did not require concurrence or integrated referrals.

S4.55(2)(c) – Notification

The application was exhibited from 25 January 2022 to 8 February 2022 in accordance with the Port Stephens Council Community Participation Plan.

S4.55(2)(d) – Submissions

Two (2) submissions were received during the notification period. These submissions have been detailed under the S4.15(1)(d) assessment below.

S4.55(3) – S4.15(1) Assessment**S4.15(1)(a)(i) – The provisions of any EPI**

The application is consistent with the provision of the PSLEP2103 and all relevant SEPPs applicable to the proposal as outlined below.

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State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development

This policy applies to the development as it proposes the erection of a new building that is more than 3 storey's in height and contains more than 4 dwellings. In accordance with Clause 29 of the SEPP, the application was sent to the UDP for comment.

The UDP reviewed the proposal on 10 February 2022. The following concerns were raised at the meeting:

1. The removal of the curved balconies and replacement with angled balconies.
2. Increase in size of bedroom 2 in units 705 and 805.
3. Removal of the planter box on levels 7 and 8.
4. Structural feasibility of the development and the likelihood of the need for columns and other structure and the need for a further Section 4.55 in the future.
5. The southern balcony bedroom 1 of Units 207 – 607 which forms part of the approved design and overlooks the adjoining development.
6. The scale and height planter boxes and beds. Nature of the exercise space

The applicant submitted an amended design to address several of the items raised by the UDP. This included re-introducing the curved balconies, redesigning the landscaping to be enhanced and better configured, additional information on the structural feasibility and screening to the southern balconies to reduce overlooking.

Based on the amended design and changes, the UDP provided endorsement for the design.

Port Stephens Local Environmental Plan 2013

Clause	Comment
2.3 Zone objectives and Land Use Table	<p>The site is zoned B2 Local Centre.</p> <p>The proposed modification does not change the use of the development, which is for a Mixed Use Residential Flat Building and Commercial Premises, which are both permissible in the zone.</p>
4.3 Height of Buildings	<p>The applicable building height for the site is 28m. At the time the original DA was lodged the applicable building height was 15m. In 2018, Council adopted the Nelson Bay Town Centre & Foreshore Strategy, which endorsed a 28 metre building height for the subject site through a subsequent planning proposal.</p> <p>The proposed modification seeks to vary the approved building height by a maximum of 420mm as measured to the roof level and 510mm for the lift/stairwell overrun. It is noted that S4.55 is a 'free-standing provision', meaning that a modification application may be approved notwithstanding the development would be in breach of an applicable</p>

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Clause	Comment
	<p>development standard were it the subject of an original development application. As this is a modification, the variation can be considered without the need for a clause 4.6 variation to development standards.</p> <p>The proposed increase in height, above that originally approved by Council, is minor in nature and will not be materially perceived from the public domain or adjoining properties. The design proposes an upper level setback resulting in limited external impacts on the adjoining and surrounding properties, in terms of solar access, views of visual privacy. Notwithstanding the numerical non-compliance, the proposed development achieves the objectives of the height of buildings development standard and the objectives of the B2 Local Centre zone. The proposal remains compatible with the existing and desired built context, does not result in significant external amenity impact on adjoining properties and therefore demonstrates that there is no public benefit to be achieved in maintaining the development standard.</p> <p>Accordingly, the minor height increase is negligible considering the existing height of the approved building and is recommended to be supported.</p>
4.4 Floor Space Ratio	The applicable FSR is 3:1. The proposed FSR has increased from the approved development, but remains under the maximum FSR at 2.91:1.
4.6 Exceptions to development standards	Due to the application being a modification, the increase to the height (which is above the maximum height limit) does not need to be considered under clause 4.6.
7.1 Acid Sulfate Soils	No works proposed are expected to entail excavations which would impact upon the Class 4 and 5 acid sulfate soils mapped on site.
7.6 Essential Services	Access to essential services remains unchanged for the site and development.
7.22 Active Street Frontages	<p>The site is identified on the Active Street Frontages Map. On this basis, the development is required to have an active street frontage with both Yacaaba Street to the west and Donald Street to the north.</p> <p>The building retains the commercial premises on the ground floor to activate both street frontages. The design retains the large expanse of glass on this level along with landscaping at a human scale. This promotes good public surveillance, security, and encouragement of pedestrian activity in this</p>

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Clause	Comment
	area of the locality. Accordingly, the proposal satisfies the objectives of this clause.
7.23 Minimum building street frontages for development in Zones R3 and B2	The consolidated lot size remains the same, with each frontage more than 15m wide.

S4.15(1)(a)(ii) – Any Draft EPI

	Notes (what draft EPI if needed and comments where not compliant)
<input checked="" type="checkbox"/> There are no draft EPI's that are relevant to the proposed development	Nil relevant.
<input type="checkbox"/> A draft EPI is relevant to the proposed development however the application is consistent with the aims and objectives of the document.	

S4.15(1)(a)(iii) – Port Stephens Development Control Plan 2014

Chapter	Compliant	Notes (where needed or if not compliant)
B	<input type="checkbox"/> General Controls	The modified design provides more car parking, which provides for the change in unit mix (increase in 3 bedroom units) and will result in a negligible impact upon the approved traffic generated.
C	<input type="checkbox"/> Development Types	There are no controls in the DCP relating to Residential Flat Buildings.
D	<input type="checkbox"/> Specific Areas	The site is located D5 Nelson Bay Centre, specifically the Precinct – Town Living and Commercial. The development, as modified, remains consistent with the objectives and desired character of this area. The proposal is compatible with the existing and future desired character of the area and will positively contribute to the Nelson Bay Centre.

S4.15(1)(a)(iiia) – Any planning agreement or draft planning agreement entered into under section 7.4

	Notes (where needed)
<input checked="" type="checkbox"/> There are no planning agreements that have been entered into under section 93F relevant to the proposed development.	

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S4.15(1)(a)(iv) – The regulations

	Notes (where needed)
<input type="checkbox"/> There are no matters within the regulations that are relevant to the determination of the application.	<p><u>Environmental Planning and Assessment Regulation 2021</u></p> <p>Section 102(1-3) requires any modification under s4.55(2) for a SEPP 65 development, to be accompanied by a design statement by a qualified designer and an updated BASIX certificate, both of which were provided.</p> <p>Section 102(4) requires a Design Review Panel to review the application where the original application was by a different qualified designer to that of the modification. This is applicable in this instance as the qualified designers are not the same. The application was reviewed by the Councils UDP with endorsement provided.</p> <p>As required by Section 107, the application was notified for 14 days, which is consistent with the notification for the original application. As part of notification, as required by Section 111, documents outlining the amendments were published to clearly demonstrate the changes to the public.</p>

S4.15(1)(b) – The likely impacts of the development

	Notes (where needed)
X Social and Economic Environment: There would be beneficial impacts as a result of the development.	It is considered that the proposed modification results in the orderly and economic development of the site and will provide additional housing stock in the Nelson Bay area.
X Built Environment: The proposed development would not cause harm to the existing character.	The changes to the building design do not result in a negative impact to the existing character of the area or surrounding developments.
X Natural Environment: There are no adverse impacts expected as a result of the proposed development and appropriate conditions have been added.	The application is for infill development, accordingly there will be no adverse impacts to the natural environment.

S4.15(1)(c) – The suitability of the site

The subject site remains suitable for the development in its modified form.

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S4.15(1)(d) – Any submissions

The application was exhibited from 25 January 2022 to 8 February 2022 in accordance with the provisions of the Port Stephens Council Community Engagement Strategy. Two (2) submissions were received during the notification period.

Submission	Objection	Council response
Submission 1	1. Objected to the scale of the development.	1. The objection primarily related to the building approved under 16-2018-386-1 and its size. Council can only assess the changes proposed in the modification and cannot retrospectively require large design changes to an approved building.
Submission 2	1. Dissatisfied the original application was approved over the height limit. 2. Concerns the changes to the exterior design and landscaping treatments will create a less attractive building.	1. Same as above. 2. The UDP required that the curves remain in the balconies and that the landscaping treatment remain sustainable and designed to enhance the development internally and externally. The modified architectural plans to be approved reflect this.

S4.15(1)(e) – The public interest

The proposed modification to the development does not raise any concerns in regard to public interest. The proposal remains compatible with the existing and future desired character of the Nelson Bay Centre, with a mix of commercial and residential uses that will contribute towards its orderly and economic development. The proposal is consistent with the objectives of the relevant planning controls and has no adverse impacts upon the environment or amenity of the surrounding area.

MODIFIED CONDITIONS**Existing condition****Condition 1**

Plan Reference/ Drawing No.	Name of Plan	Prepared by	Date
Project No. 17060, DA06 – DA012 (Rev H)	Floor plans	ADG Architects	15/05/19
Project No. 17060, DA13 (Rev H)	Roof Top Plan	ADG Architects	15/05/19
Project No. 17060, DA14 – DA17 (Rev H)	Elevations	ADG Architects	15/05/19
Project No. 17060, DA18 – DA21 (Rev H)	Sections	ADG Architects	15/05/19
L/00 – L/04 (Rev A)	Preliminary Landscape plans	ATC – A total concept landscape architects and swimming pool designs	30/04/19

Modified Condition**Condition 1A**

Plan Reference/ Drawing No.	Page/s	Name of Plan	Prepared by	Date
Job No.211034, S4.55:200 – S4.55:207, Issue G	S4.55: 200 – S4.55:2 07	Floor Plans	Design Cubicle	20.04.22
Job No.211034, S4.55:208, Issue G	S4.55:2 08	Roof Plan	Design Cubicle	20.04.22
Job No.211034, S4.55:300 – S4.55:303, Issue FG	S4.55:3 00 – S4.55:3 03	Elevations	Design Cubicle	20.04.22
Job No.211034, S4.55:400 – S4.55:402, Issue G	S4.55:4 00 – S4.55:4 02	Sections	Design Cubicle	20.04.22
21177 S4.55 Rev C	1-3 to 3- 3	Landscape Concept Plan	Vision Dynamics	14-04- 2022

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Existing Condition	Modified Condition
<p><u>Condition 4</u></p> <p>BASIX certificate - The applicant must undertake the development strictly in accordance with the commitments listed in the approved BASIX certificate(s) No. 890638M_03 for the development to which this consent applies.</p>	<p><u>Condition 4A</u></p> <p>BASIX certificate - The applicant must undertake the development strictly in accordance with the commitments listed in the approved BASIX certificate(s) No. 890638M_08 for the development to which this consent applies.</p>
<p><u>Condition 19</u></p> <p>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.</p> <p>a) 1 Yacaaba Street, Nelson Bay, and b) 33 Donald Street, Nelson Bay.</p> <p>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.</p>	<p><u>Condition 19A</u></p> <p>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.</p> <p>a) 3 Yacaaba Street, Nelson Bay, and b) 33 Donald Street, Nelson Bay.</p> <p>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.</p>

Condition 38

Section 7.11 Development Contributions - A monetary contribution is to be paid to Council for the provision of 55 residential dwellings (as a four lot credit has been applied), pursuant to Section 7.11 of the Environmental Planning & Assessment Act 1979 and the Port Stephens Council Development Contributions Plan towards the provision of the following public facilities:

Facility	Per lot/dwelling	Total
Civic Administration, plan management	\$748.00	\$38,896.00
Civic Administration, works depot	\$457.00	\$23,764.00
Public Open Space, Parks and Reserves	\$2,640.00	\$137,280.00
Sports and Leisure Facilities	\$7,129.00	\$370,708.00
Cultural and Community Facilities	\$2,543.00	\$132,236.00
Road Works	\$1,679.00	\$87,308.00
Fire & Emergency Services	\$232.00	\$12,064.00
Total		\$802,256.00

In addition to the above, a monetary contribution is to be paid to Council in lieu of commercial parking and pursuant to section 4.17(1) of the *Environmental Planning and Assessment Act 1979*, section 7.11 of the *Environmental Planning and Assessment Act 1979*, and the Port Stephens Council Development Contributions Plan. The contribution is calculated as follows:

Per Carpark Space	Total
\$15,235.00	\$45,705.00

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

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

Note: The amount of contribution payable under this condition has been calculated at the date of consent. In accordance with the provisions of the Contributions Plan, this amount must be

Condition 38A

Section 7.11 Development Contributions - A monetary contribution is to be paid to Council for the provision of 52 residential dwellings (as a four lot credit has been applied), pursuant to Section 7.11 of the Environmental Planning & Assessment Act 1979 and the Port Stephens Council Development Contributions Plan towards the provision of the following public facilities:

Facility	Per lot/dwelling	Total
Civic Administration, plan management	\$748.00	\$38,896.00
Civic Administration, works depot	\$457.00	\$23,764.00
Public Open Space, Parks and Reserves	\$2,640.00	\$137,280.00
Sports and Leisure Facilities	\$7,129.00	\$370,708.00
Cultural and Community Facilities	\$2,543.00	\$132,236.00
Road Works	\$1,679.00	\$87,308.00
Fire & Emergency Services	\$232.00	\$12,064.00
Total		\$802,256.00

~~In addition to the above, a monetary contribution is to be paid to Council in lieu of commercial parking and pursuant to section 4.17(1) of the *Environmental Planning and Assessment Act 1979*, section 7.11 of the *Environmental Planning and Assessment Act 1979*, and the Port Stephens Council Development Contributions Plan. The contribution is calculated as follows:~~

Per Carpark Space	Total
\$15,235.00	\$45,705.00

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

- ~~b) Building work only - prior to issue of the Construction Certificate.~~

~~Note: The amount of contribution payable under this condition has been calculated at the date of consent. In accordance with the provisions of the Contributions Plan, this amount must be~~

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indexed at the time of actual payment in accordance with the applicable Index.	indexed at the time of actual payment in accordance with the applicable Index.
<p><u>Condition 77</u></p> <p>Car parking requirements - A minimum of 109 car parking spaces including; 83 resident spaces including 4 disabled car parking spaces (numbered B1.18, B1.19, B2.27, and B2.28), 19 residential visitor spaces, 8 commercial spaces, and 7 motor bike spaces, are to be provided in accordance with AS2890 and the approved plans. Parking must be permanently marked on the pavement surface.</p> <p>The 19 parking spaces marked B1.04-B1.07, B1.31-B1.36 and B1.38-B1.45, required for visitors, must be signposted as "visitor parking".</p>	<p><u>Condition 77A</u></p> <p>Car parking requirements - A minimum of 116 car parking spaces including; 86 resident spaces including 6 disabled car parking spaces (numbered 2.32, 2.49, 2.50, B1.17, B1.18, and B1.20), 19 residential visitor spaces including 2 disabled car parking space (B1.37 & B1.38), 11 commercial spaces, and 6 motor bike spaces, are to be provided in accordance with AS2890 and the approved plans. Parking must be permanently marked on the pavement surface.</p> <p>The 19 parking spaces marked B1.03-B1.07, B1.31-B1.35 & B1.37-B1.45, required for visitors, must be signposted as "visitor parking".</p>
<p><u>Condition 83</u></p> <p>Swimming pools and spas - The swimming pool/spa must comply with:</p> <ul style="list-style-type: none"> a) the Swimming Pools Act 1992; b) the Swimming Pools Regulation 2008; c) AS 1926.1 'Swimming Pool Safety' Part 1: Safety barriers for swimming pools; d) AS 3500.2 'Plumbing and Drainage' – Sanitary plumbing and drainage'; e) AS1926.3 'Water Recirculation Systems'; and f) the BCA. 	<p><u>Condition 83</u></p> <p>Deleted in full</p>
	<p><u>New Advisory Note – H</u></p> <p>The developer must submit a NECF-01 - 'Preliminary Enquiry' form for a response from Ausgrid must be received before a Construction Certificate is issued.</p>

DETERMINATION

The modification application is recommended to be approved under delegated authority, subject to amended conditions as shown above.

EMILY ALLEN
Senior Development Planner



Notice of Determination

Under Section 4.16, 4.17, 4.18(1)(a) and Schedule 1, Clause 20(2) of the Environmental Planning and Assessment Act 1979 (NSW).

SCHEDULE 1 – CONDITIONS OF CONSENT

1.0 - General Conditions of Consent

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

- 1A. 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.	Page/s	Name of Plan	Prepared by	Date
Job No.211034, Issue G	S4.55: 200 – S4.55:207	Floor Plans	Design Cubicle	20.04.22
Job No.211034, S4.55:208, Issue G	S4.55:208	Roof Plan	Design Cubicle	20.04.22
Job No.211034, Issue G	S4.55:300 – S4.55:303	Elevations	Design Cubicle	20.04.22
Job No.211034, Issue G	S4.55:400 – S4.55:402	Sections	Design Cubicle	20.04.22
21177 S4.55 Rev C	1-3 to 3-3	Landscape Concept Plan	Vision Dynamics	14.04.22

Document Title	Prepared by	Date
Civil Engineering Report Development Application Project No. NE180080	Acor	18 February 2019
Dewatering Management Strategy Job ref 17/0571	Monteath and Powys	Undated
Geotechnical Report No. RGS01745.1-AB	Regional Geotechnical Solutions	18 April 2018
Letter P1084 MP- 35-39 Donald Street Nelson Bay,	Seca	23 April 2018
Letter P1084 ADG Donald Street Nelson Bay Response to Council RFI	Seca	27 September 2018

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



Notice of Determination

Under Section 4.16, 4.17, 4.18(1)(a) and Schedule 1, Clause 20(2) of the Environmental Planning and Assessment Act 1979 (NSW).

2. **Approved report recommendations (CPTED)** - Construction of the development must comply with the recommendations of the Crime Prevention Through Environmental Design Report, prepared by Monteath & Powys Pty Ltd dated 19 December 2017, detailed as follows:

- a) Provide well-appointed entry statements and changing surfaces to create a sense of delineation between public and private spaces,
- b) Access to the car park to be via a control system and secure lobbies to be controlled by an intercom system,
- c) Door furniture to the services rooms to have self-closing hinges and locks that comply with relevant Australian Standards,
- d) Mailboxes to be accessible to residents in an internal location,
- e) Security camera system (CCTV) to be installed (and be clearly sign posted) and used to monitor the external area at ground level, internal lobbies, communal areas, and car park entrance / exit.
- f) Internal lighting and way finding maps to be provided to communal areas, internal lobbies and car parking areas.
- g) Street lighting to be vandal resistant and lighting to satisfy the relevant Australian Standard,
- h) Minimise and prevent the loss of clear sightlines to/from isolate areas, and
- i) Maintain public domain reserves including removal of any graffiti or vandalism.

3. **Amendments to Documents and Plans (Landscape Plans)** - The development must be amended as follows:

- a) 7 x *Zelkova serrata* street trees are to be provided along the Donald Street and Yacaaba Street frontages,
- b) Public Realm Paving will consistent with the following 'Paving Type 1' as specified in the Nelson Bay Public Domain Strategy, and
- c) Public realm ground cover and low growing amenity - Planting to be species to match those currently used in Nelson Bay Town Centre street-side gardens.
- d) Drip lines are to be provided to horizontal edges and planter boxes are to be designed to avoid leaching.

Amended plans or documentation demonstrating compliance must be provided to the Certifying Authority and Council prior to the issue of a Construction Certificate.

- 4A. **BASIX certificate** - The applicant must undertake the development strictly in accordance with the commitments listed in the approved BASIX certificate(s) No. 890638M_08 for the development to which this consent applies.
5. **Building Code of Australia** - All building work must be carried out in accordance with the BCA. In this clause, a reference to the BCA is a reference to that Code as in force on the date the application for the relevant Construction Certificate is made.



Notice of Determination

Under Section 4.16, 4.17, 4.18(1)(a) and Schedule 1, Clause 20(2) of the Environmental Planning and Assessment Act 1979 (NSW).

6. **Home Building Act** - Pursuant to Section 4.16(11) of the Environmental Planning & Assessment Act 1979, residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the PCA for the development to which the work relates:

- a) in the case of work for which a principal contractor has been appointed:
 - i) has been informed in writing of the name and licence number of the principal contractor; and
 - ii) where required has provided an insurance certificate with the name of the insurer by which the work is insured under Part 6 of that Act.
- b) in the case of work to be carried out by an owner-builder:
 - i) has been informed in writing of the name of the owner-builder; and
 - ii) if the owner-builder is required to hold an owner-builder permit under that Act; has provided a copy of the owner-builder permit.

7. **Home Building Act - Insurance** - Building work that involves residential building work within the meaning of the Home Building Act 1989, must not commence until such time as a contract of insurance is in force in accordance with Part 6 of that Act.

This clause does not apply:

- a) to the extent to which an exemption is in force under Clause 187 or 188 of the Environmental Planning & Assessment Regulation 2000 (EP&A Regulation 2000), subject to the terms of any condition or requirement referred to in Clause 187(6) or 188(4) of the EP&A Regulation 2000; or
- b) to the erection of a temporary building, other than a temporary structure to which subclause (1A) of Clause 98 of the EP&A Regulation 2000 applies.

8. **Excavation for residential building works** - If the approved development involves an excavation that extends below the level of the base of the footings of a building on 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 to that condition not applying, and a copy of that written consent is provided to the PCA prior to the excavation commencing.

9. **Sign on building** - Except in the case of work only carried out to the interior of a building or Crown building work, a sign must be erected in a prominent position on the site showing the name, address and telephone number of the Principal Certifying Authority for the work, the name of any principal contractor and their



Notice of Determination

Under Section 4.16, 4.17, 4.18(1)(a) and Schedule 1, Clause 20(2) of the Environmental Planning and Assessment Act 1979 (NSW).

after-hours contact number, and must contain a statement that unauthorised entry to the site is prohibited.

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

10. **Shoring of adjoining buildings** - Where any excavation required for the development extends below the level of the base of a footing of a building, structure or work on adjoining land (including within a road or rail corridor), the person having the benefit of the consent must protect and support that building, structure or work from possible damage from the excavation, and where necessary underpin the building, structure or work to prevent any such damage.
11. **Outdoor lighting** - All lighting must comply with AS 1158 'Lighting for Roads and Public Spaces' and AS 4282 'Control of Obtrusive Effects of Outdoor Lighting'.
12. **Reflectivity** - The reflectivity of glass externally must not exceed 20%. Details demonstrating compliance must be provided to the Certifying Authority.
13. **Services and equipment** - All equipment such as air conditioning units, service pipes and vents etc., required to be installed must be concealed within the external walls of the development or adequately screened so as not to be visible from a public place. This includes any equipment required to service individual units.
14. **Design quality of development** - The approved design (including an element or detail of that design) or materials finish or colours of the building must not be changed so as to affect the internal layout or external appearance of the building without the approval of Council.
15. **Separate approval for signs** - A separate development application for any proposed signage, must be provided to, and approved by, the Consent Authority or under the provisions of the State Environmental Planning Policy (Exempt and Complying Codes) 2008 if applicable prior to the erection or display of any such signs.
16. **Signage** - No consent is given or implied for any form of illumination or floodlighting to any sign.
17. **Installation of graphics and artwork on temporary site structures (graphic displays)** - A graphic display must be installed on temporary site structures in accordance with the approved plans and the following requirements:
 - a) At least 75% of the surface area (including end panels, large access gates / doors, and fascia) of the temporary site structures must be covered by the graphic display. The remaining surface must be finished and painted flat black or a colour complementary to the graphic display,



Notice of Determination

Under Section 4.16, 4.17, 4.18(1)(a) and Schedule 1, Clause 20(2) of the Environmental Planning and Assessment Act 1979 (NSW).

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

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.

18. **Construction Certificate** - The following information must be provided to the Certifying Authority with the Construction Certificate application:

- a. All downpipes, gutters and OSD tank sized to convey and adequately attenuate ground surface, ground floor and basement parking level 1 and 2, building podium and roof collected stormwater for all storms up to and including the 1% Annual Exceedance Probability (AEP) event.
- b. Basement level 2 holding tank sized to detain the 1% Annual Exceedance Probability (AEP) event for emergency storage if pump fails or power is disrupted.
- c. Water quality infrastructure consisting of five (5) 690m Stormfilter Cartridges by Ocean Protect (Stormwater 360) must be positioned in the OSD tank so that stormwater treatment occurs prior to water entering the OSD tank. The inspection and maintenance program should follow the manufacturer's recommended time frame plus after any significant rain event.

- 19A. **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



Notice of Determination

Under Section 4.16, 4.17, 4.18(1)(a) and Schedule 1, Clause 20(2) of the Environmental Planning and Assessment Act 1979 (NSW).

those properties, both internally and externally, including walls, ceilings, roof, structural members and other similar items.

- a. 3 Yacaaba Street, Nelson Bay, and
- b. 33 Donald Street, Nelson Bay.

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.

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

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

21. **Civil engineering plans** - Civil engineering plans prepared by a qualified Engineer, indicating drainage, roads, accessways, earthworks, pavement design, street lighting, details of line-marking, traffic management, water quality and quantity facilities including stormwater detention and disposal, must be prepared in accordance with the approved plans and Council's Infrastructure Specifications.

Details demonstrating compliance must be provided to the Certifying Authority.

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

22. **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.

23. **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 program for pollution control devices, covering inspection, cleaning and waste disposal.

Details demonstrating compliance must be provided to the Certifying Authority.



Notice of Determination

Under Section 4.16, 4.17, 4.18(1)(a) and Schedule 1, Clause 20(2) of the Environmental Planning and Assessment Act 1979 (NSW).

- 24. Dewatering plan** – A Site Dewatering Plan must be prepared and submitted with the application to ensure that stormwater runoff and the disposal of groundwater from the excavation is drained in an appropriate manner and without detrimental impacts to neighbouring properties and downstream water systems.

The Site Dewatering Plan is to comprise of detailed plans, documentation and certification of the system, prepared by a suitably qualified engineer and must comply with the following:

- a) Be in accordance with the recommendations of approved documents which concern the treatment and monitoring of groundwater; and
- b) Any details, approval or conditions concerning dewatering (e.g. Dewatering License) as required by the Water Act 1912 and any other relevant NSW legislation.

Details demonstrating compliance must be provided to the Certifying Authority.

- 25. Certification of subsurface structures and geotechnical monitoring** - The proposed development involves the construction of subsurface structures and excavation that has potential to adversely impact neighbouring property if undertaken in an inappropriate manner. To ensure there are no adverse impacts arising from such works, the applicant must engage a suitably qualified and practicing Engineer having experience in the geotechnical and hydrogeological fields, to design, certify and oversee the construction of all subsurface structures associated with the development. This engineer is to prepare the following documentation:

- a) Certification that the civil and structural details of all subsurface structures are designed to:
 - i. provide appropriate support and retention to neighbouring property,
 - ii. ensure there will be no ground settlement or movement during excavation or after construction (whether by the act of excavation or dewatering of the excavation) sufficient to cause an adverse impact to adjoining property or public infrastructure, and,
 - iii. ensure that the treatment and drainage of groundwater will be undertaken in a manner which maintains the pre-developed groundwater regime, so as to avoid constant or ongoing seepage to the public drainage network and structural impacts that may arise from alteration of the pre-developed groundwater table.
- b) A Geotechnical Monitoring Program is to be prepared for implementation during construction that:
 - i. is based on a geotechnical investigation of the site and subsurface conditions, including groundwater,
 - ii. details the location and type of monitoring systems to be utilised, including those that will detect the deflection of all shoring structures, settlement and excavation induced ground vibrations to the relevant Australian Standard;



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Under Section 4.16, 4.17, 4.18(1)(a) and Schedule 1, Clause 20(2) of the Environmental Planning and Assessment Act 1979 (NSW).

- iii. details recommended hold points and trigger levels of any monitoring systems, to allow for the inspection and certification of geotechnical and hydro-geological measures by the professional engineer; and;
- iv. details action plan and contingency for the principal building contractor in the event these trigger levels are exceeded.

The Certification of subsurface structures and the Geotechnical Monitoring Program are to be submitted to the the Certifying Authority.

26. **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.

27. **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.

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

29. **Roads Act application** - The following information must be provided to Council as Roads Authority with the Roads Act application:

- c) Details of any required regulatory signage approved by the Local Traffic Committee and consistent with this condition.
- d) Any associated works to ensure satisfactory transitions to existing infrastructure.
- e) Discharge pipes from the OSD systems to Donald Street are to be located on the eastern side of the Donald Street driveway.
- f) Construction of a new kerb inlet pit and lintel over an existing stormwater line in Donald Street and east of the new concrete access driveway.
- g) Pit modification of the existing kerb inlet pit and lintel in Donald Street to 'grate only'.

30. **Construction Noise Management Plan** - A Construction Noise Management Plan must be provided to the Certifying Authority and include the following:

- h) Noise mitigation measures.
- i) Noise and/or vibration monitoring.
- j) Use of respite periods.
- k) Complaints handling.
- l) Community liaison and consultation.



Notice of Determination

Under Section 4.16, 4.17, 4.18(1)(a) and Schedule 1, Clause 20(2) of the Environmental Planning and Assessment Act 1979 (NSW).

31. Construction Traffic Management Plan - A Construction Traffic Management Plan shall be prepared by an accredited practitioner in accordance with Roads and Maritime Services – Traffic Control at Worksites Manual to the written satisfaction of Council. The Construction Traffic Management Plan must include:

- a) specific timeframes for the undertaking of works,
- b) traffic control measures to limit impact on adjacent sites and Nelson Bay Town Centre,
- c) traffic control plans,
- d) vehicle movement plans,
- e) start of work notification, and
- f) provision for construction vehicle parking.

The Construction Traffic Management Plan and written documentation from Council shall be provided to the Certifying Authority.

32. Street tree and public realm planting plan - The following tree species must be planted at no cost to Council along the nature strip adjoining the sites Donald Street and Yacaaba Street frontages

- m) 7 x *Zelkova serrata* of a minimum pot size of 75 litres and a minimum height of 2.0m at the time of planting. These trees will be established using a vaulted system to provide a minimum of 12m³ of growing media per tree, and
- n) Public realm ground cover and low growing amenity - Planting to be species to match those currently used in Nelson Bay Town Centre street-side gardens. Plants to be min 20cm pots with min 4 plants per m².

Details demonstrating compliance must be provided to the Certifying Authority.

33. Design verification – SEPP No.65 - A design verification statement from a qualified NSW Registered Architect must be submitted to the Certifying Authority confirming the Construction Certificate plans and specifications are consistent with the Development Application approval.

34. SEPP No.65 – Universal design – A minimum of 10% of the total apartments must be adaptable as required under the Apartment Design Guide. Details demonstrating compliance are to be provided to the Certifying Authority.

35. 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.



Notice of Determination

Under Section 4.16, 4.17, 4.18(1)(a) and Schedule 1, Clause 20(2) of the Environmental Planning and Assessment Act 1979 (NSW).

Details demonstrating compliance must be provided to the Certifying Authority.

36. **Parking areas and loading bays** - Loading bays are to be provided in accordance with AS2890 Part 2 'Parking Facilities'. Details demonstrating compliance must be provided to the Certifying Authority.

37. **Privacy – screening** - Permanently fixed 1.8m high privacy screen(s) must be provided to the eastern elevation of the bedroom balcony to unit No.52 as follows:

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

Details demonstrating compliance must be provided to the Certifying Authority.

38A. **Section 7.11 Development Contributions** - A monetary contribution is to be paid to Council for the provision of 52 additional residential units (a four lot credit has been applied), pursuant to section 4.17(1) of the *Environmental Planning and Assessment Act 1979*, section 7.11 of the *Environmental Planning and Assessment Act 1979*, and the Port Stephens Council Development Contributions Plan towards the provision of the following public facilities:

Facility	Per lot/dwelling	Total
Civic Administration, plan management	\$748.00	\$38,896.00
Civic Administration, works depot	\$457.00	\$23,764.00
Public Open Space, Parks and Reserves	\$2,640.00	\$137,280.00
Sports and Leisure Facilities	\$7,129.00	\$370,708.00
Cultural and Community Facilities	\$2,543.00	\$132,236.00
Road Works	\$1,679.00	\$87,308.00
Fire & Emergency Services	\$232.00	\$12,064.00
	Total	\$802,256.00

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, or Subdivision Certificate, whichever occurs first.

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



Notice of Determination

Under Section 4.16, 4.17, 4.18(1)(a) and Schedule 1, Clause 20(2) of the Environmental Planning and Assessment Act 1979 (NSW).

amount must be indexed at the time of actual payment in accordance with the applicable Index.

39. **Long Service Levy** - In accordance with Section 34 of the Building and Construction Industry Long Service Payments Act 1986, the applicant must pay a long service levy at the prescribed rate to either the Long Service Payments Corporation or Council for any works that cost \$25,000 or more.

3.0 - Prior to Commencement of Works

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

40. **Construction Certificate required** - In accordance with the provisions of Section 6.7 of the Environmental Planning & Assessment Act 1979 (EP&A Act 1979), construction 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.

41. **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.

42. **Notice of Principal Certifying Authority (PCA) 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:

- d) a description of the work to be carried out;
- e) the address of the land on which the work is to be carried out;
- f) the Registered number and date of issue of the relevant development consent;
- g) the name and address of the Principal Certifying Authority (PCA), and of the person by whom the PCA was appointed;
- h) if the PCA is an accredited certifier, his, her or its accreditation number, and a statement signed by the accredited certifier consenting to being appointed as PCA; and



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Under Section 4.16, 4.17, 4.18(1)(a) and Schedule 1, Clause 20(2) of the Environmental Planning and Assessment Act 1979 (NSW).

- i) a telephone number on which the PCA may be contacted for business purposes.

43. Notice of 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:

- j) the name and address of the person by whom the notice is being given;
- k) a description of the work to be carried out;
- l) the address of the land on which the work is to be carried out;
- m) the Registered number and date of issue of the relevant development consent and construction certificate;
- n) 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
- o) the date on which the work is intended to commence.

44. Sign of PCA and contact details - A sign must be erected in a prominent position on the site stating the following:

- p) that unauthorised entry to the work site is prohibited;
- q) 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;
- r) the name, address and telephone number of the Principal Certifying Authority.

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

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

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

46. 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.



Notice of Determination

Under Section 4.16, 4.17, 4.18(1)(a) and Schedule 1, Clause 20(2) of the Environmental Planning and Assessment Act 1979 (NSW).

Evidence is to be provided to the Certifying Authority demonstrating that asbestos waste has been disposed of in accordance with this condition.

- 47. 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).

- 48. 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.

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

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

- 50. Consolidation of lots** – Lots: 22-25 Sec: 5 DP: 17805 are to be consolidated. A copy of the Registered Plan of consolidation must be provided to the Principal Certifying Authority.

4.0 - During Works

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

- 51. 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.

52. 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.



Notice of Determination

Under Section 4.16, 4.17, 4.18(1)(a) and Schedule 1, Clause 20(2) of the Environmental Planning and Assessment Act 1979 (NSW).

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.

53. Compliance with BCA - All building work must be carried out in accordance with the requirements of the Building Code of Australia.

54. Excavations and backfilling - All excavations and backfilling associated with this development consent must be executed safely, and be properly guarded and protected to prevent them from being dangerous to life or property, and in accordance with the design of a suitably qualified Structural Engineer.

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

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

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

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

55. 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.

56. 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.

57. Construction Traffic Management Plan Implementation - All construction traffic management procedures and systems identified in the approved Construction Traffic Management Plan (required by condition No. 31 of this consent) must be introduced during construction of the development to ensure safety and to minimise the effect on adjoining pedestrian and traffic systems.

58. Stormwater disposal - Following the installation of any roof, collected stormwater runoff from the structure must:



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Under Section 4.16, 4.17, 4.18(1)(a) and Schedule 1, Clause 20(2) of the Environmental Planning and Assessment Act 1979 (NSW).

a) Connected an existing stormwater drainage easement/system/street.

59. **Site dewatering** - Site dewatering must be constructed in accordance with the Site Dewatering Plan (prepared in accordance with condition No.24 of this consent), the requirements of Council in regards to disposal of water to the public drainage infrastructure and the requirements of any Dewatering License issued under NSW Water Act 1912 in association with the works. A copy of the Site Dewatering Plan is to be kept on site at all times whilst dewatering operations are carried out.

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

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

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

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

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

62. **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.

63. **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.

64. **Construction Noise Management Plan** - All operations must be carried out in accordance with the recommendations contained in the Construction Noise Management Plan, prepared in accordance with condition No. 30 of this consent, including:

a) Noise mitigation measures.



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Under Section 4.16, 4.17, 4.18(1)(a) and Schedule 1, Clause 20(2) of the Environmental Planning and Assessment Act 1979 (NSW).

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

5.0 - Prior to Issue of an Occupation Certificate

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

65. **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.

66. **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.

67. **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.

68. **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.

69. **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.



Notice of Determination

Under Section 4.16, 4.17, 4.18(1)(a) and Schedule 1, Clause 20(2) of the Environmental Planning and Assessment Act 1979 (NSW).

70. **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.
71. **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.
72. **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.
73. **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.
74. **Geotechnical Monitoring Program** - A Compliance of Certificate prepared by a qualified Geotechnical Engineer must be provided to the Principal Certifying Authority stating that the works detailed in the Geotechnical Monitoring Program (prepared in accordance with condition No. 25) have been implemented throughout the course of construction and that all structures supporting neighbouring property have been designed and constructed to provide appropriate support of the neighbouring property and with consideration to any temporary loading conditions that may occur on that site, in accordance with the relevant Australian Standard and building codes. This certificate must accompany the Works as Executed plans.
75. **Street tree planting** - All street trees must be planted in accordance with the approved Street Tree Planting plan prepared in accordance with condition No.32 of this consent. Written documentation from Council that the street trees and vaulted system have been installed to Council's satisfaction is to be provided to the satisfaction of the Principal Certifying Authority.
76. **Completion of landscape works** - All landscape works are to be undertaken in accordance with the approved landscape plan and conditions of this Development Consent.
- 77A. **Car parking requirements** - A minimum of 116 car parking spaces including; 86 resident spaces including 6 disabled car parking spaces (numbered 2.32, 2.49, 2.50, B1.17, B1.18, and B1.20), 19 residential visitor spaces including 2 disabled car parking space (B1.37 & B1.38), 11 commercial spaces, and 6 motor bike spaces, are to be provided in accordance with AS2890 and the approved plans. Parking must be permanently marked on the pavement surface.



Notice of Determination

Under Section 4.16, 4.17, 4.18(1)(a) and Schedule 1, Clause 20(2) of the Environmental Planning and Assessment Act 1979 (NSW).

The 19 parking spaces marked B1.03-B1.07, B1.31-B1.35 & B1.37-B1.45, required for visitors, must be signposted as "visitor parking".

78. Car park – signage and line marking – Signage and line marking is to be installed within the car park, including to the entry / exit points of the approved car park, nominating a maximum speed limit and identifying the car park as a 'shared zone'. Pedestrian way finding should be clearly defined. Signage to the entry / exist must notify vehicles to 'watch for pedestrians'.

79. Car park – Electric vehicle charging points – A reserved parking bay with electric vehicle charging point is to be installed within the car park. The electric vehicle parking station shall replace one of the approved resident car parking spaces and shall be clearly signposted that it is only for use of electric vehicles when charging.

80. Bicycle requirements - Bicycle parking racks to accommodate bicycles must be installed in accordance with the approved plans.

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

82. Clothes drying areas – Outdoor clothes drying areas are to be provided to each unit. Clothes drying areas are to be installed so as not to be visible from the street or public spaces, this may include the use of screening structures.

83. CONDITION DELETED UNDER DA 16-2018-386-2

84. SEPP No.65 – Design Verification - A design verification statement from a Registered and qualified architect must be submitted to the Principal Certifying Authority demonstrating the development has been constructed in accordance with the approved plans and the requirements of State Environmental Planning Policy No.65 – Design Quality of Residential Flat Development (unless superseded by this DA Consent).

6.0 – Ongoing Use

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

85. Manoeuvring of vehicles - All vehicles must enter and exit the site in a forward direction.

86. 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.



Notice of Determination

Under Section 4.16, 4.17, 4.18(1)(a) and Schedule 1, Clause 20(2) of the Environmental Planning and Assessment Act 1979 (NSW).

- 87. 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.
- 88. 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.
- 89. Fire safety schedule** - At all times, a copy of the Fire Safety Schedule and Fire Safety Certificate must be prominently displayed in the building and a copy forwarded to the Commissioner of New South Wales Fire Brigades in accordance with the Environmental Planning & Assessment Regulations 2000.
- 90. 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.
- 91. 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 collection and must ensure the return of the bins to the garbage room as soon as practicable after collection. Twice weekly collection will occur for standard waste bins and once weekly collection for recycling bins.
- 92. Amenity** - The business must be conducted, and customers controlled at all times so that no interference occurs to the amenity of the area, the footpath, adjoining occupations and residential or business premises.

ADVISORY NOTES

- A. **'Dial before you dig'** - Before any excavation work starts, contractors and others should phone the "Dial Before You Dig" service to access plans/information for underground pipes and cables.



Notice of Determination

Under Section 4.16, 4.17, 4.18(1)(a) and Schedule 1, Clause 20(2) of the Environmental Planning and Assessment Act 1979 (NSW).

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

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

- C. **Premise standard** - It is the Applicants responsibility to ensure compliance with the requirements of the Disability Discrimination Act 1992 (DDA). Note: Compliance with the Building Code of Australia does not necessarily meet the requirements of the DDA.
- D. **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.
- E. **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 Office of Environment and Heritage (OEH) shall be informed of the discovery. Work must not recommence until the material has been inspected and permission has been given by OEH to proceed.
- F. **Responsibility for damage for tree removal** - The applicant is responsible for any damage caused to existing public utilities, footpaths or public roads during the cutting down, grinding, removal and disposal of the timber and roots. Care must also be taken by the applicant and the applicant's agents to prevent any damage to adjoining properties. The applicant or the applicants' agent may be liable to pay compensation to any adjoining owner if, due to tree works, damage is caused to such adjoining property.
- G. **Addressing** - Prior to occupying the development Council's Spatial Services Team should be contacted via email at: addressing@portstephens.nsw.gov.au to obtain correct property addressing details. Please state your Development 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.
- H. The developer must submit a NECF-01 - 'Preliminary Enquiry' form for a response from Ausgrid must be received before a Construction Certificate is issued.



Notice of Determination

Under Section 4.16, 4.17, 4.18(1)(a) and Schedule 1, Clause 20(2) of the Environmental Planning and Assessment Act 1979 (NSW).

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:

- Council has considered and accepted the applicant's clause 4.6 development standard variation request to clause 4.3 (building height) of the Port Stephens Local Environmental Plan 2013 (PSLEP). The request is considered to be justified in the circumstances as it adequately addresses the matters prescribed by clause 4.6(3) of LEP2013, and the development is found to be in the public interest because it is consistent with the objectives of clause 4.3 'building height' of LEP2013 and the objectives for development within the B2 Local Centre in which the development is proposed to be carried out.
- 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 (SEPP) (Building Sustainability Index: BASIX) 2004, SEPP (Vegetation in Non- Rural Areas) 2017, SEPP (Infrastructure) 2007, SEPP (Coastal Management) 2018, SEPP No. 55 – Remediation of Land, and SEPP No. 65 – Design Quality of Residential Apartment Development.
- The proposed development is, subject to the recommended conditions, consistent with the objectives of the Port Stephens Council Development Control Plan 2014 (PSDCP) and the Apartment Design Guidelines. The proposed car parking variation to the PSDCP is considered to be acceptable in the particular circumstances of this case as developer contributions have been levied to address this shortfall. 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.
- 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:

- Confirm and clarify the terms of Council's Approval;
- Identify modifications and additional requirements that will result in improved



Notice of Determination

Under Section 4.16, 4.17, 4.18(1)(a) and Schedule 1, Clause 20(2) of the Environmental Planning and Assessment Act 1979 (NSW).

- compliance, development and environmental outcomes;
- Prevent, minimise, and/or offset adverse environmental impacts including economic and social impacts;
- Set standards and performance measures for acceptable environmental performance; and
- Provide for the ongoing management of the development.

SCHEDULE 3 – RIGHT OF APPEAL AND REVIEW

RIGHT OF APPEAL

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

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

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

RIGHT OF REVIEW

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

HOW TO READ MODIFIED CONDITIONS

The following conventions are used within this modified condition set:

- New conditions will generally be added to the end of the existing condition set and will be subsequently numbered. If a condition is added within the existing condition set, it will be suffixed with the appendage .1. For example if a new condition is to be



Notice of Determination

Under Section 4.16, 4.17, 4.18(1)(a) and Schedule 1, Clause 20(2) of the Environmental Planning and Assessment Act 1979 (NSW).

added after existing condition 12, the new condition will be condition 12.1. If a second condition is to be added, it will be condition 12.2 and so on;

- The condition number of an amended condition is suffixed with the letter A. For example if condition 4 is amended, it becomes condition 4A. If the condition is amended a second time, it will become condition 4B and so on; and
- If a condition is deleted, the condition number will remain within the condition set with only the text 'CONDITION DELETED UNDER (DA REFERENCE NUMBER)' shown.

Should you have any questions about how to interpret this modified condition set, please contact Council.

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

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

ITEM NO. 2**FILE NO: 22/94348
EDRMS NO: 16-2021-781-1****DEVELOPMENT APPLICATION 16-2021-781-1 CONSTRUCTION OF RESIDENTIAL FLAT BUILDING, COMMERCIAL TENANCY AND STRATA SUBDIVISION AT 17 AND 19 YACAABA STREET, NELSON BAY (LOT 34 AND 35 DP 17805)**

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Support the Clause 4.6 variation request to the building height for the reasons outlined within this report.
- 2) Approve Development Application DA No. 16-2021-781-1 for the construction of a 9 storey residential flat building comprising 24 apartments, commercial tenancy, strata subdivision, basement parking, landscaping, business identification sign and associated civil works at 17 and 19 Yacaaba Street, Nelson Bay subject to the conditions contained in **(ATTACHMENT 3)**.

BACKGROUND

The purpose of this report is to present Development Application (DA) 16-2021-781-1 for the construction of a 9 storey residential flat building comprising 24 apartments, commercial tenancy, strata subdivision, basement parking, landscaping, business identification signage and associated civil works to Council for determination.

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

Subject Land:	17 and 19 Yacaaba Street NELSON BAY (Lot 34 & 35 DP 17805)
Total Area:	986m ²
Zoning:	B2 Local Centre
Submissions:	49 submissions
Key Issues:	The key issues identified throughout the assessment of the DA relate to building height, view loss, compatibility with local character, overshadowing and privacy
Development Plans	Provided to Councillors separately due to privacy and copyright legislation

The DA has been reported to Council in accordance with 'Council's Planning Matters to be Reported to Council Policy' as the DA includes a request to vary a development standard by greater than 10%. The development standard is Clause 4.3 – Height of

Buildings and the extent of the variation is 11.4%. A locality plan is provided at **(ATTACHMENT 1)**.

Proposal

The DA proposes the construction of a 9 storey residential flat building comprising 24 apartments, commercial tenancy, strata subdivision, basement parking, landscaping, business identification signage and associated civil works.

The key elements of the proposal include the following:

- Construction of a 9 storey building with basement car parking
- 24 apartments incorporating 1 x 1 bedroom apartment, 22 x 2 bedroom apartments and 1 x 3 bedroom apartment
- Commercial tenancy with a floor area of 36m²
- Basement car parking and grade parking, comprising 27 car spaces, apartment storage and garbage bin storage
- 25 lot strata subdivision
- Landscaping including street tree plantings, perimeter screen plantings and amenity plantings
- Stormwater management plan.

Site Description and History

The site comprises 2 lots and is rectangular in shape, with a total area of 986m². The dimensions of the site are approximately 25m wide and 39.5m deep. The site slopes approximately 1.8m from south to north. The site has recently been cleared of all vegetation as part of an existing DA approved for a tourist facility comprising 32 apartments (approved in 2005).

The site is located on the fringe of the Nelson Bay Town Centre (Zoned B2 – Local Centre). The site is subject to a maximum LEP building height of 28m, with this height limit extending along Yacaaba Street to the north. The maximum LEP height limit on sites to the east, west and south is 17.5m.

Adjoining the subject site to the north is a small 2 storey commercial building that supports a St Vincent de Paul store. To the west, is a single storey commercial building and several detached single storey dwellings. To the south, across Tomaree Street is a mix of 2 storey dwellings and multi-dwelling housing. To the east of the site is the Mantra Apartments Nelson Bay, which consists of 6 tourist and visitor accommodation buildings ranging from 3 to 5 storeys.

Key Issues

The key issues identified throughout the assessment of the DA relate to the proposed exceedance of the building height development standard, compatibility with local character, overshadowing, and privacy.

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

Building Height

The proposal exceeds the maximum allowable building height for the site prescribed under Clause 4.3 of the Port Stephens LEP 2013 (PSLEP). The DA proposes a maximum building height of 31.2m, which exceeds the 28m height limit and represents an 11.4% variation to the development standard.

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

- The height exceedance would involve a negligible change to impacts relating to overshadowing, privacy or view loss and the DA is consistent with the requirements of the Apartment Design Guide (ADG) relating to these impacts
- The DA is in keeping with the future desired character of the area as set out in Council's Nelson Bay Strategy, PSLEP and the Port Stephens Development Control Plan (PSDCP) 2014 planning controls, despite the variation
- The height exceedance does not disrupt the hierarchy of centres or local land-use structure, established by the height and density controls in Nelson Bay
- The DA would not obstruct any of the important view corridors identified in Section D5 of the PSDCP
- The DA would not protrude above the ridgeline of the hill to the south, respecting an important visual feature of the surrounding landscape
- The DA is 4 storeys taller than the adjoining Mantra Nelson Bay Apartments, however, due to its slender design, typically comprising 3 apartments per floor and effective use of colours and materials to improve articulation, the proposal appears of a lesser bulk and scale
- The DA is of a similar height to the approved 9 storey development to the north at the corner of Donald Street and Yacaaba Street
- Council's Urban Design Panel (UDP) advised that the proposed exceedance is acceptable, taking into consideration visual impacts and the 9 principles of the Apartment Design Guide (ADG).

Based on the above, the zone objectives and objectives of Clause 4.3 are achieved despite the non-compliance. There are sufficient planning grounds to justify contravening the height of buildings standard and compliance with the standard is unnecessary in the circumstances of this application. On this basis, the building height variation is supported.

A detailed assessment against Clause 4.6 is contained within the Planners Assessment Report (**ATTACHMENT 2**).

Local Character

The compatibility of a DA with the character of an area is a requirement of the ADG and has been raised in a number of submissions lodged against the DA.

With regard to the context and character of the area, it is noted that the Nelson Bay Town Centre is expected to undergo a period of revitalisation guided by Council's 'Nelson Bay Town Centre and Foreshore Strategy' and 'Progressing the Nelson Bay Town Centre and Foreshore Strategy: A Revised Implementation and Delivery Program'. Following the implementation of these strategies, various changes occurred in 2021 to amend the height and density limits of the PSLEP and PSDCP within the Nelson Bay Town Centre.

For this reason, it is appropriate to consider the future desired character of the Nelson Bay Town Centre, as established in Council's development controls and strategies as well as the existing context and built character of the area.

Despite the DA being in contrast to existing 1 and 2 storey buildings in the surrounding area, the DA is generally consistent with the provisions of the PSLEP, noting that the development complies with the Floor to Space Ratio (FSR) and despite the non-compliance with building height, the variation has been found to be acceptable on environmental planning grounds. The DA is also consistent with the character statements within Section D5 of the PSDCP, which specifically apply to the Nelson Bay town centre.

The DA is of a similar height to an approved 9 storey residential flat building development to the north at the corner of Donald Street and Yacaaba Street. Despite being taller than the neighbouring 5 storey Mantra apartments, the DA is of a lesser overall bulk and scale due to its slender design and effective use of colours and materials to improve articulation and reduce visual impact.

Additionally, Council's UDP concluded that the DA was of a high design standard, which is expected to contribute positively to the built character of Nelson Bay.

Overshadowing

Due to the orientation of the lot, some overshadowing will occur to the dwellings on the opposite side of Tomaree Street to the south. Despite the overshadowing, the shadow diagrams submitted with the DA demonstrate that the private open space and living areas of the neighbouring dwellings to the east, south and west maintain at least 3 hours of sunlight during mid-winter, in accordance with the requirements of the ADG.

Privacy

The ADG includes provisions for managing privacy between buildings in the form of building separation distances, acknowledging that some overlooking of properties is inevitable as a result of high density residential development in an urban centre.

The primary privacy concerns relate to overlooking of the balconies of the Mantra Apartments to the east and dwellings to the south on the opposite side of Tomaree Road. Commercial development is located to the north and west which do not raise any privacy concerns.

The closest point of the DA to the balconies of the Mantra apartments are from the private balconies on the north eastern side of the building. At this point, the separation distance is 13.7m, which exceeds the 12m requirement in the ADG and therefore is considered satisfactory.

The southern side of the DA includes a small communal balcony on each level, which measures 13m², and there is a large top floor communal terrace on level 9 which may impact privacy to the south. However, there are no habitable rooms with windows on the southern elevation of the building that would create privacy impacts.

To mitigate any impacts, the top floor terrace features a large landscape planter box on its southern side which prevents residents from overlooking the edge of the building to the dwellings to the south. Therefore, the only opportunity for overlooking is from the small communal balconies on each level. However, given the DA includes north, east and west facing private balconies, some of which will offer views toward the ocean, the use of the communal balconies is expected to be limited. It is also noted that the private open space (POS) of dwellings on the southern side of Tomaree Street are primarily located in the rear setback areas, away from view.

Overall, the building separation distances comply with the requirements and objectives of the ADG as outlined in the Planners Assessment Report **(ATTACHMENT 2)**. Council's UDP also concluded that the privacy impacts and building separation distances were acceptable. Conditions of consent are recommended requiring the maintenance of landscape screening in perpetuity, including the installation of a timed watering system.

As the proposal complies with the requirements and objectives of the ADG, the privacy related issues are considered to be satisfactorily addressed.

View Loss

Some view loss is expected to occur as a result of the development. View loss has been assessed based on site inspections and the information included in the applicants Visual Impact Assessment (VIA).

View loss will primarily occur from the balconies of some units within the Mantra development to the east, 1 and 2 storey residences to the south on Tomaree Road and from the Landmark Resort at 61 Dowling Street Nelson Bay. Visual site inspections were conducted at each of these locations.

Tenacity Consulting v Warringah Council (2004) NSWLEC 140 ('Tenacity'), establishes the general principles for assessing view loss. Assessment against the 4 step process concluded:

- 1) The type of views from the affected sites is varied depending on location. The most valued views are the water views of Port Stephens and distant hills beyond. Less valued views include the views over the Nelson Bay town centre.
- 2) Views are generally obtained from balcony areas or living rooms. In the case of some affected locations, views are captured as a result of the site being cleared in its current state.
- 3) The extent of views lost range from negligible to severe depending on location.
- 4) The proposal is generally compliant with the applicable environmental planning instruments with the exception of building height. Despite this, a design with a compliant building height would result in a negligible change, as the view loss is primarily caused by the lower levels of the building. Taking into account the design is generally compliant with the applicable environmental planning instruments and given the relatively small site area, there is considered to be little or no opportunity to reduce view loss through a redesign of the building, without a reduction in building height, significantly below the maximum limit.

Having regard to the Tenacity principles, whilst the view loss of some sites would be significant, the impact is reasonable given a compliant building height would result in the same or similar impact. Further, there is no opportunity for an alternate design to prevent view loss from some of the adjoining sites.

The proposed development would not obstruct any of the significant vistas identified in the PSDCP 2014, including those obtained from the Nelson Bay foreshore area and those obtained from Yacaaba Street.

Overall, the VIA concludes that the proposal will have a moderate accumulative visual impact on the surrounding area with proposed design measures and finishes improving the visual effect of the development that is consistent with buildings in the area. Council staff and the UDP supported the findings of the VIA in relation to impacts to designated view corridors and view loss for adjoining properties.

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 despite the variation to the building height development standard will not result in significant overshadowing, privacy or adverse visual impacts.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program
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 (\$7.11)	Yes		
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, PSDCP 2014 and associated State Environmental Planning Policies. 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.	Low	Accept the recommendation.	Yes
If the DA is refused, there is a risk that the determination of the DA may be challenged by the applicant in the Land and Environment Court.	Low	Accept the recommendation.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Social and Economic Impacts

The development will result in additional residential housing in the LGA through the provision of a range of accommodation units. The increased number of permanent residents in the locality will provide ongoing economic input through daily living activities to support the Nelson Bay economy all year round, including during the off-peak tourist period.

The construction of the development will provide employment opportunities in the locality and support the local building and development industries. This will have direct monetary input to the local economy.

The development would also provide additional housing opportunities that can rely upon existing social and recreational infrastructure existing within the Nelson Bay Town Centre.

Impacts on the Built Environment

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

The proposed height variation has been found to be acceptable as the zone objectives and objectives of Clause 4.3 are achieved despite the non-compliance. There are sufficient environmental planning grounds to justify contravening the height of buildings standard and compliance with the standard is unnecessary in the circumstances of this application.

In addition, Council's Urban Design Panel considers the development to be of a high design standard, which is expected to positively contribute to the built environment of Nelson Bay.

Impacts on the Natural Environment

The development includes water quantity and quality control devices to reduce the impact of the development on the natural environment. The existing site has previously been cleared of any natural habitat or native vegetation and there are no anticipated adverse impacts on the natural environment.

CONSULTATION

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

Internal

Consultation was undertaken with Council's Building Certification, Development Engineering, Waste Management, Infrastructure Contributions, Vegetation Management 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 the recommended conditions of consent (**ATTACHMENT 3**).

External

Consultation was undertaken with Ausgrid due to the DA's proximity to overhead power lines. In response, no objection to the DA was made. The comments provided by the external agencies were considered during the detailed assessment and are discussed within the Planners Assessment Report (**ATTACHMENT 2**).

Public exhibition

The application was exhibited on 2 occasions. The first notification period was for a period of 14 days from 5 October 2021 to 19 October 2021. Following the submission of amended plans, a second notification period commenced from 22 December 2021 to 24 January 2022. Due to the Christmas exclusion period, the notification period extended beyond 14 days, in accordance with the Port Stephens Council Community Engagement Strategy.

During the first notification period 31 submissions were received from 42 individuals, community groups or organisations. During the second notification period 18 submissions from 22 individuals, community groups or organisations were received. Of the new signatories, 8 had not made a submission during the previous notification period.

During the combined notification period a total of 49 submissions were received from 64 individuals, community groups or organisations.

A detailed response to the issues raised in the submissions is contained within the Planners Assessment Report (**ATTACHMENT 2**).

OPTIONS

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

ATTACHMENTS

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

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



DEVELOPMENT ASSESSMENT REPORT

APPLICATION REFERENCES

Application Number	16-2021-781-1
Development Description	Residential flat building (9 storeys) comprising 24 apartments and 1 commercial tenancy, strata subdivision, basement parking, landscaping, business identification sign and associated civil works
Applicant	MARK LAWLER ARCHITECTS
Land owner	KINALA PTY LTD
Date of Lodgement	20/09/2021
Value of Works	\$8,400,200.00
Submissions	49

PROPERTY DETAILS

Property Address	19 Yacaaba Street NELSON BAY, 17 Yacaaba Street NELSON BAY
Lot and DP	LOT: 35 SEC: 5 DP: 17805, LOT: 34 SEC: 5 DP: 17805
88B Restrictions on Title	Nil.
Current Use	Vacant
Zoning	B2 LOCAL CENTRE
Site Constraints	FSR - 3:1 Maximum Building Height – 28m Acid Sulfate Soils – Class 5 Stormwater Drainage Requirement Area
State Environmental Planning Policies	State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 State Environmental Planning Policy (Biodiversity and Conservation) 2021 – Chapter 2 Vegetation in Non-Rural Areas State Environmental Planning Policy (Resilience and Hazards) 2021 – Chapter 2 Coastal Management

State Environmental Planning Policy No 65 - Design of Residential Flat Buildings

State Environmental Planning Policy (Resilience and Hazards) 2021 – Chapter 4 Remediation of Land

State Environmental Planning Policy (Biodiversity and Conservation) 2021 – Chapter 4 Koala Habitat Protection 2021

State Environmental Planning Policy (Transport and Infrastructure) 2021 – Chapter 2 Infrastructure

PROPOSAL

The proposed development is for the construction of a nine storey residential flat building comprising 24 apartments, commercial tenancy, strata subdivision, basement parking, landscaping and associated civil works, as illustrated in **Figure 1** and **2** below.

The key elements of the proposal include the following:

- Construction of a nine storey building with basement car parking;
- 24 apartments incorporating 1 x 1 bedroom apartment, 22 x 2 bedroom apartments and 1 x 3 bedroom apartment;
- Commercial tenancy with a floor area of 36m²;
- Basement car parking and grade parking, comprising 27 car spaces, apartment storage and garbage bin storage;
- 25 Lot strata subdivision;
- Landscaping including street tree plantings, perimeter screen and amenity plantings; and
- Stormwater management.

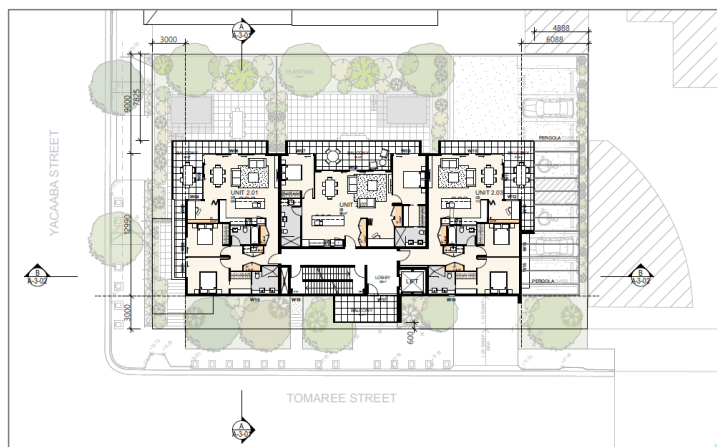


Figure 1: Floor Plan Levels 2-8



Figure 2: Perspective Drawing from Yacaaba Street

LOCALITY DESCRIPTION

The site is located on the fringe of the Nelson Bay Town Centre (Zoned B2 – Local Centre), as shown in **Figure 3** below. The Nelson Bay Town Centre provides for retail, business, tourism, entertainment and community uses within a highly accessible distance from the subject site. The site is subject to a maximum LEP building height of 28m, which extends along Yacaaba Street to the north. The height limit on sites to the east, west and south is 17.5m.

The site is a prominent corner location bound by Yacaaba Street (primary frontage) to the west and Tomaree Street to the South (secondary frontage). Adjoining the subject site to the north is a small two storey commercial building. To the west, is a single storey commercial building and several detached single storey dwellings. To the south, across Tomaree Street is a mix of two storey dwellings and multi-dwelling housing. To the east the site adjoins the Mantra Nelson Bay, which consists of six tourist and visitor accommodation buildings ranging from 3 to 5 storeys.

Recent development approvals of a similar height and scale in the locality include the 9 storey mixed used development comprising 56 units and 3 commercial units at the corner of Donald and Yaccaba, Street (16-2018-386-1). This development is located 140m north of the subject site.

An 11 story mixed use development comprising 80 units at 11-15 Church Street is currently under assessment by Council (DA 16-2021-703-1). This development includes the amalgamation of a site which has an approved 8 storey apartment building, comprising 56 units, approved in 2017 (DA 16-2016-631-1). This development is approximately 350m to the west of the site.



Figure 3 – Aerial photo of locality with Building Height Map

SITE DESCRIPTION

The site consist of two lots, including LOT: 35 SEC: 5 DP: 17805 and LOT: 34 SEC: 5 DP: 17805 (See **Figure 4**). The site is rectangular in shape, with a total area of 986m². The dimensions of the site are approximately 25m wide and 39.5m deep. The site slopes from 16.5m AHD in the south to

14.7m AHD to the north. The site has recently been cleared of all vegetation as part of an existing development consent.



Figure 4 – Aerial Image of subject site

SITE HISTORY

The site is currently vacant and cleared of vegetation. A tourist facility comprising 32 apartments was approved on the site in 2005 under DA 16-2003-835-1. The application was physically commenced and therefore remains an active consent. The works under this approval however were never progressed past initial site preparation and earthworks. Prior to this the site was utilised as a temporary community building, which was approved in 1991.

SITE INSPECTION

A site inspection was carried out on 25 of October 2021 and again on 3 January 2022. During the first inspection, the site was occupied by several large trees, weeds and regrowth vegetation. The second site visit in January revealed that the vegetation previously seen had been cleared. It is understood that the vegetation removal occurred in accordance with the approved 2003 consent, which remains active.

The site visits involved a broader inspection of the surrounding locality, to establish the local precinct character and identify important vistas and view corridors.

The subject site can be seen in images 1-6 below.



Image 1: View of Site from Tomaree Street Looking North West



Image 2: View from Corner of Tomaree and Yacaaba Street Looking North East



Image 3: View of adjoining development on Yacaaba Street and Mantra development in background



Image 4: View of the adjoining 5 storey Mantra Development and lower scale multi-dwelling housing to the right of picture



Image 5: View of Yacaaba Street to the South of the Site (**note:** existing 5 storey development and location of approved 9 storey development where car park is currently situated)



Image 6: Updated Image from January 2022 showing the Site has been Cleared of Vegetation

PLANNING ASSESSMENT

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

Internal

Development Engineer – No objection, subject to conditions.

Building Compliance and Certification – No objection.

Waste Management – No objection.

Spatial Services – No objection.

Development Contributions – No objection, subject to conditions.

Vegetation Management – Additional information was requested, however, following additional correspondence, it was concluded that the outstanding information could be satisfactorily addressed through conditions of consent.

External

Ausgrid - The application was referred to Ausgrid in accordance with clause 2.45 of SEPP (Transport and Infrastructure) 2021 – Chapter 2 Infrastructure. In response, Ausgrid made no objection to the application, subject to standard conditions relating to maintaining safe separation distances from Ausgrid assets during construction. A condition has been included on the consent requiring compliance with the Ausgrid conditions.

Environmental Planning and Assessment Act 1979***Section 4.46 - Integrated development***

Section 4.46 EP&A Act provides that development is integrated development if in order to be carried out, the development requires development consent and one or more other approvals. The proposed development is not integrated as it does not require any of the approvals listed under Section 4.46.

Section 4.15 - Matters for consideration

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

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

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

State Environmental Planning Policy (Planning Systems) 2021

The proposal does not exceed any of the relevant thresholds within the SEPP for state significant or regional development. Accordingly, the consent authority is Port Stephens Council.

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

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

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

State Environmental Planning Policy (Transport and Infrastructure) 2021 – Chapter 2 Infrastructure

The aim of this Chapter is to facilitate the effective delivery of infrastructure across the State. The application was referred to Ausgrid in accordance with clause 2.45 of this SEPP due to the proposals proximity to overhead electrical assets owned by Ausgrid. In response, Ausgrid made no objection to the application, subject to standard conditions relating to maintain separation distances from Ausgrid assets during construction. A condition has been included on the consent requiring compliance with the Ausgrid conditions.

State Environmental Planning Policy (Biodiversity and Conservation) 2021 – Chapter 2 Vegetation in Non-Rural Areas

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

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

The development application does not seek the consent for the removal of any trees. The site was cleared during assessment of the DA, in accordance with a previously approved and active development consent.

State Environmental Planning Policy (Resilience and Hazards) 2021 – Chapter 4 Remediation of Land

Section 4.6 of Chapter 4 of the Resilience and Hazards SEPP requires the consent authority to consider whether land is contaminated, is in a suitable state despite contamination, or requires remediation to be made suitable for the proposed development.

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

The site was previously occupied by a temporary demountable building, which was removed in the early 2000's and would not likely have required demolition, therefore asbestos contamination is considered unlikely. Subject to conditions relating to hazardous building material management, the proposed development satisfies the requirements of this SEPP.

State Environmental Planning Policy (Biodiversity and Conservation) 2021 – Chapter 4 Koala Habitat Protection 2021

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

The site has been cleared of vegetation, as part of a previous development consent. As a result, the proposal does not include the removal of any tree or koala habitat removal and therefore is consistent with the Port Stephens Comprehensive Koala Plan of Management and the requirements of this SEPP.

State Environmental Planning Policy (Resilience and Hazards) 2021 – Chapter 2 Coastal Management

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

Section 2.10 of Chapter 2

As per Section 2.10 of Chapter 2 of the SEPP, development consent must not be granted for development within the coastal environment area unless the consent authority has considered whether the development will cause impact to the integrity of the biophysical and ecological environment, the values and natural coastal processes, marine vegetation, native vegetation and fauna and existing public open space and access to and along the foreshore.

The proposed development incorporates appropriate stormwater management and water sensitive design measures and is sufficiently setback from the Nelson Bay waterbody that it will not result in any adverse impacts to the coastal environment.

Section 2.11 of Chapter 2

As per Section 2.11 of Chapter 2 of the SEPP, development consent must not be granted for development unless the consent authority has considered existing and safe access to and along the foreshore, overshadowing and loss of views, visual amenity and scenic qualities and heritage values. The consent authority must also be satisfied that the development is designed and sited to avoid adverse impacts and to ensure the development has taken into account the surrounding built environment in its design.

The proposed development is an appropriate type and design for the coastal location. The proposed use of the site for increased residential density in conjunction with a sustainable built form will ensure that the visual amenity of the coast is protected. The building envelope and size of the development is also compatible with the natural setting and will not unreasonably impact important view corridors to and from the coast. View loss and impact to view corridors is addressed in further detail in this report. The selection of light tone materials and finishes is compatible with the coastal setting.

Section 2.12 of Chapter 2

Section 2.12 of Chapter 2 of the SEPP requires consideration to whether the development would increase the risk of coastal hazards. The site is not located in close proximity to the foreshore, accordingly the coastal hazard risk is low.

Therefore as addressed above, the application would generally comply with the aims of the SEPP and the other matters for consideration stipulated under Clause 2.10, 2.11, and 2.12, and can therefore be supported.

State Environmental Planning Policy No. 65 – Quality Design of Residential Apartment Development

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

SEPP No. 65 requires the consideration of any development application for residential accommodation meeting the application criteria, which includes residential flat buildings, against: nine design quality principles, the advice obtained from a design review panel and the Apartment Design Guide (ADG). In addition, clause 6A of SEPP 65 states that any of the following ADG provision supersedes DCP controls in respect of the following matters:

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- a) visual privacy;
- b) solar and daylight access;
- c) common circulation and spaces;
- d) apartment size and layout;
- e) ceiling heights;
- f) private open space and balconies;
- g) natural ventilation; and
- h) storage.

The proposed development is for a 9 storey residential flat building. Accordingly, the provisions of SEPP 65 apply to the development.

The proposed development was considered by Council's Urban Design Panel (UDP) across two separate design review meetings. The first meeting was held on 15 October 2021, where the UDP provided in-principal support for the development subject to the resolution of the following matters:

- **Visual Impact Assessment** – A Visual Impact Assessment (VIA) to demonstrate that the moderate height exceedance does not create unacceptable impacts to elevated properties to the south of the site.
- **Street Activation** – An Active street frontage was requested for the Yacaaba Street frontage of the site.
- **Level 1 Car Parking** – A pergola over the open level 1 car parking was suggested for shading. Larger landscaping beds combined with a trellis structure on the pergola for climbing plant species was also suggested to form a screen of the car park which would be partially visible from Tomaree Street and the balconies of apartments above. Electric Vehicle charging stations were also encouraged.
- **Rooftop Terrace** – The rooftop terrace area is a large, paved terrace area with a relatively narrow, perimeter garden bed on its southern and part of the western sides. Moderately increasing the area for soft landscape treatment at this level will help to visually soften space.
- **Communal Balconies** – Communal balconies on each level would benefit from the provision of fixed seating.
- **Yacaaba Street Facade** - The interface of the basement parking wall and podium with the pedestrian path on Yacaaba Street in the north-west corner of the proposal represents a visual impact to the Streetscape. It was recommended that consideration be given to either articulating this corner, so that it does not present as a tall blank wall to the street or, introducing public artwork to the building façade.
- **Tomaree Street Landscaping** - Additional landscaping in the form of tall species should be provided for the Tomaree Street Frontage.
- **Infrastructure Screening** - All infrastructure, including meters, fire booster pumps, and air conditioning plant should be detailed on the DA documents, and should be designed and located to minimise visual impact. Signage locations should be included in the architectural design.

The applicant amended their design in order to respond to the matters raised by the UDP and the application was referred for a second time to the UDP for comment. During the second UDP review, it was noted that the amendments satisfactorily addressed the recommendations made by the UDP, subject to further minor design refinements to the Yacaaba Street façade, landscaping, balustrade treatments and disabled access.

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The applicant submitted amended plans in response to the final minor recommendations made by the UDP, and following review from Council, were considered to adequately address the UDP recommendations.

The proposed development has been assessed against the nine design quality principles and the ADG as outlined below.

Apartment Design Guide	
Quality design principles	
Principle	Assessment
Principle 1: Context and neighbourhood character	<p>Principle 1 identifies that good design responds and contributes to its context, with context being established by the key natural and built features of an area. Responding to context involves identifying the desirable element of an area's existing or future character.</p> <p>The site is located on the fringe of the Nelson Bay Town Centre (Zoned B2 – Local Centre). The Nelson Bay Town Centre provides for retail, business, tourism, entertainment and community uses within a highly accessible distance from the subject site. The site is subject to a maximum LEP building height of 28m. The height limit on sites to the east, west and south is 17.5m.</p> <p>The immediate surrounds typically consist of free standing two and single storey commercial buildings and single storey dwellings, with the exception of the Mantra apartments adjoining the site to the east. Buildings in this area are primarily older build, pre dating the 1990s.</p> <p>Adjoining the subject site to the north is a small two storey commercial building. To the west, is a single storey commercial building and several single storey dwellings. To the south, across Tomaree Street is a mix of two storey dwellings and multi-dwelling housing. To the east, the site adjoins the Mantra apartments, which consists of six buildings ranging from 3 to 5 storeys.</p> <p>Recent development approvals of note in the locality include a 9 storey mixed used development comprising 59 units at 35-39 Donald Street and 1 Yacaaba Street Nelson Bay. This development is approximately 140m north of the site. This approval and recent increases to height limits signify a desired shift towards high density residential and commercial development in the Nelson Bay Town Centre, in line with Council's 'Progressing the Nelson Bay Town Centre and Foreshore Strategy' (The Strategy). The Strategy seeks to attract public and private investment to the Nelson Bay town centre to enable its revitalisation and make it more attractive to tourists, the business community and residents.</p> <p>The proposed development, comprising a 9 storey mixed use development appropriately responds to the future desired</p>

	<p>neighbourhood character set out by the recently adopted height and floor space ratio controls, as outlined throughout this report. Moreover, the inclusion of a commercial tenancy provides an activated and revitalised Yacaaba Street frontage.</p> <p>The proposal would not result in any unacceptable overshadowing or privacy impacts to nearby lower scaled residences. Similarly, the proposal includes appropriate separation distances to enable future high density development to occur on neighbouring sites, in the event they are redeveloped in the future.</p> <p>In order to achieve the goals set out in the Nelson Bay Public Domain Plan (NBPDP), conditions of consent are recommended, requiring public domain upgrades be carried out in the road reserve adjacent the site, in accordance with the Nelson Bay Public Domain Plan. The upgrades include street tree plantings and footpath upgrades.</p> <p>Overall, the proposal is considered to be appropriate with regard to the context and character of the area.</p>
Principle 2: Built form and scale	<p>Principle 2 identifies that good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.</p> <p>The proposed development has a maximum height of 31.95m above existing ground level, which is above the maximum permissible building height of 28m metres specified on the LEP Height of Buildings Map. The extent of the variation is 3.2m or 11.4% of the standard. Despite the variation, the proposed building height has been found to be acceptable for the following key reasons:</p> <ul style="list-style-type: none"> • The proposed height exceedance would involve a negligible change to impacts by way of overshadowing, privacy or view loss and overall the proposal has been found to not result in any unacceptable impacts of this nature that would be inconsistent with the Apartment Design Guide or any other relevant Environmental Planning Instruments, as discussed throughout this report; • The proposal is in keeping with the future desired character of the area as set out in Council's Nelson Bay Strategy and LEP and DCP planning controls, despite the variation; • The proposal does not disrupt the hierarchy of centres or local land-use structure, established by the height and density controls in Nelson Bay; • The proposal would not obstruct any of the important view corridors identified in Section D5 of the PSDCP; • When viewed from the Nelson Bay marina precinct and the water on Port Stephens, the proposal would not protrude above the ridgeline of the hill to the south,

	<p>respecting a key visual feature of the surrounding landscape;</p> <ul style="list-style-type: none"> • The proposed development is 4 storeys taller than the adjoining mantra development, however, due to its slender design, typically comprising 3 apartments per floor and effective use of colours and materials to improve articulation, the proposal is of a lesser bulk and scale; and • The proposal is of a similar height to the approved 9 storey development to the north at the corner of Donald Street and Yacaaba Street. <p>Overall the proposal is considered to achieve a scale, bulk and height appropriate for the area, as confirmed by Council's Urban Design Panel. The proposal is of a similar height to the approved 9 storey development to the north at the corner of Donald Street and Yacaaba Street.</p> <p>A Visual Impact Analysis (VIA) prepared by the applicant examines the visual impact of the development from key view points on Tomaree and Yacaaba Street, the Landmark and Mantra developments and from the Nelson Bay foreshore area. The VIA suitably demonstrates that the building will appear to be visually acceptable in the context of the surrounding built form.</p>
Principle 3: Density	<p>Principle 3 stipulates that good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.</p> <p>The proposed development has a Floor to Space Ratio (FSR) of 2.83:1, which complies with the sites maximum FSR of 3:1.</p> <p>The proposed apartments are generously sized, with open plan dining, living and kitchen. Each apartment has access to appropriate levels of sunlight and natural ventilation. Appropriate levels of storage are allocated internally to each apartment, both at ground level and within the apartments.</p> <p>Generous sized balconies provide private open space and screened clothes drying areas. Ground level communal open space is provided to the rear of the site.</p> <p>The proposed density of the development is reflective of other approved developments in both the immediate locality and broader Nelson Bay area.</p>
Principle 4: Sustainability	<p>Principle 4 identifies that good design combines positive environmental, social and economic outcomes. Further, that good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents.</p>

	<p>A valid BASIX certificate has been submitted with the development. Each unit achieves sufficient solar access and ventilation to reduce powered heating and cooling demand. The landscaped areas consist of a mix of native and drought tolerant plantings which reduce water usage.</p> <p>Social cohesion is promoted through the provision of quality communal open space, both on the rooftop level, circulation areas and the small communal balconies located on each level.</p>
Principle 5: Landscape	<p>Principle 5 specifies that good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity.</p> <p>The landscaped areas consist of street trees, perimeter screen and amenity plantings and a small rooftop garden. Species include a mixture of native and drought tolerant plantings which reduce water usage.</p> <p>Overall, the landscape presented in the visualisations provides a positive contribution to the Nelson Bay streetscape and appropriate amenity for the development.</p> <p>Maintenance and access to the planter beds are appropriate as endorsed by the Urban Design Panel. Automated watering of all landscaped areas will be required as a condition of consent.</p>
Principle 6: Amenity	<p>Principle 6 provides that good design positively influences internal and external amenity for residents and neighbours. Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas, and ease of access for all age groups and degrees of mobility.</p> <p>The proposed apartments are generously sized, with open plan dining, living and kitchen. Each apartment has access to appropriate levels of sunlight and natural ventilation. Sufficient areas for storage are allocated internally to each apartment, both at the parking level and within the apartments.</p> <p>Generous sized balconies provide private open space and screened clothes drying areas. Ground level communal open space is provided to the rear of the site.</p> <p>The dwellings provide a high level of amenity for future residents. The proposed orientation of the building facilitates adequate cross ventilation and solar access for each apartment. In addition, the UDP confirmed the layout of the proposed residential apartments is considered appropriate</p>

	and generally compliant with the criteria specified by the ADG as outlined further below.
Principle 7: Safety	<p>Principle 7 identifies that good design optimises safety and security within the development and public domain.</p> <p>The residents will have security controlled access to the Entry, carpark and lift lobby. A security card will be used to secure doors and lift activation. Access for the public to the resident communal areas will be restricted.</p> <p>As an apartment building with only three units per floor, the security is greatly enhanced by virtue of the restricted access with the smaller number of occupants.</p> <p>The public access is located on the south side of the building at a single entry point. Access into the building will be controlled via intercom control from each apartment.</p> <p>After hours security lighting will be provided to the external areas and Entry. This lighting will operate on a timing mechanism together with movement sensors where appropriate.</p> <p>Moreover, the proposed balconies provide passive surveillance to Tomaree and Yacaaba Street, promoting crime deterrence. The proposal includes a lobby area fronting Yacaaba street, promoting further passive surveillance.</p> <p>Overall, the development provides an adequate level of security and safety, provided through a combination of design strategies and electronic security mechanisms.</p>
Principle 8: Housing diversity and social interaction	<p>Principle 8 specifies that good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.</p> <p>The proposed development includes an appropriate apartment mix that will be suitable to cater for a cross-section of future residents.</p> <p>As discussed under the previous principles, the proposal has good provision for interior communal spaces, and external landscaped spaces and sitting areas accessible by an elevated landscape pathway.</p>
Principle 9: Aesthetics	<p>Principle 9 provides that good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design also uses a variety of materials, colours and textures.</p> <p>The proposal includes an articulated façade facing Tomaree and Yacaaba Street, which is well proportioned and includes an appropriate mix of material finishes and colour choice.</p>

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	The bulk of the wall interfacing the property to the north is partially visible from Yacaaba Street, however is effectively broken up through changes in colour that provide articulation, as supported by Council's UDP.	
Assessment Criteria		
Control / Requirement	Proposed	Compliance / Comment
<p><i>3A-1 – Site analysis</i></p> <p>Site analysis illustrates that design decisions have been based on opportunities and constraints of the site conditions and their relationship to the surrounding context.</p>	Site analysis plan submitted.	Yes – provided.
<p><i>3B-1 Orientation</i></p> <p>Building types and layouts respond to the streetscape and site while optimising solar access within the development.</p>	<p>Each apartment has a northerly aspect, providing for good solar access to internal living spaces and balconies.</p> <p>Tomaree Street is located to the south of the site, providing large separation distances between the proposed development and existing low rise housing to the south and thereby reducing overshadowing impacts.</p> <p>The site is a corner block which holds frontage to both Tomaree Street and Yacaaba Street. An activated street front is provided to Yacaaba Street, through a small ground floor commercial tenancy, while the main lobby is accessed from Tomaree Street. As such, both street frontages are appropriately activated.</p>	Yes – complies.
<p><i>3B-2 Orientation</i></p> <p>Overshadowing of neighbouring properties is minimised during mid-winter.</p>	<p>A shadow diagram analysis has been submitted with the application.</p> <p>The shadow diagrams demonstrate that at least 50% of the POS and living areas of the neighbouring dwellings to the east, south and west are overshadowed during mid winter for no more than 3</p>	Yes – complies.

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	hours, in accordance with the requirements of this section.	
<p><i>3C-1 Public Domain Interface</i></p> <p>Transition between private and public domain is achieved without compromising safety and security.</p>	The development provides a ground level commercial tenancy fronting Yacaaba Street and a lobby fronting Tomaree Street which provides passive surveillance to the street. The upper storey balconies also provide for further passive surveillance.	Yes – complies.
<p><i>3C-2 Public Domain Interface</i></p> <p>Amenity of the public domain is retained and enhanced.</p>	The amenity of the public domain will be enhanced through the development of the currently vacant site. Key improvements include the ground floor commercial tenancy, providing street level activation and the provision of landscaping both within the development and the public domain in the form of street trees.	Yes – complies.
<p><i>3D-1 Communal and Public Open Space</i></p> <p>An adequate area of communal open space is provided to enhance residential amenity and to provide opportunities for landscaping.</p> <p>Numerical design criteria:</p> <ul style="list-style-type: none"> Communal open space has a minimum area equal to 25% of the site area. Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9am and 3pm on 21 June (midwinter). 	<p>The proposal includes a rooftop communal space measuring an area of 106m².</p> <p>An additional 13m² balcony is provided on levels 2-9, equating to 104m².</p> <p>The combined communal space area is therefore 210m², which equates to 21.3% of the total site area, representing a variation to the 25% minimum area design criteria. Despite this, the variation is considered acceptable as the quality of the spaces and amenities provided, including the rooftop dining and garden area with water views adequately offset the minor reduction in allocated floor area.</p> <p>The northerly aspect of the communal space ensures the minimum 50% solar access for a minimum of 2 hours during mid-winter requirement is exceeded.</p>	Minor non-compliance supported.

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<p><i>3D-2 Communal and Public Open Space</i></p> <p>Communal open space is designed to allow for a range of activities, respond to site conditions and be attractive and inviting</p>	<p>The rooftop communal space includes a shade structure over communal dining and seating areas. The space provides an outlook over Port Stephens and is suitably sized to support a range of activities. Two small landscape beds are located on the perimeter of the rooftop to improve the amenity of the space.</p> <p>In addition, a small communal balcony is provided on each level.</p>	<p>Yes – complies.</p>
<p><i>3D-3 Communal and Public Open Space</i></p> <p>Communal open space is designed to maximise safety.</p>	<p>All communal areas are proposed to be available to residents only, via secure access.</p> <p>After hours security lighting is also proposed to be provided to the external areas and Entry. This lighting is to operate on a timing mechanism together with movement sensors.</p> <p>A condition of consent is recommended for each of these safety requirements are met.</p>	<p>Yes – complies, subject to conditions.</p>
<p><i>3D-4 Communal and Public Open Space</i></p> <p>Public open space, where provided, is responsive to the existing pattern and uses of the neighbourhood.</p>	<p>A condition of consent is recommended requiring the upgrade of the adjacent road reserve in accordance with the Nelson Bay Public Domain Plan. The works would include new pavement and street tree plantings.</p>	<p>Yes – complies, subject to conditions.</p>
<p><i>3E-1 Deep Soil Zones</i></p> <p>Deep soil zones provide areas on the site that allow for and support healthy plant and tree growth. They improve residential amenity and promote management of water and air quality.</p> <p>Numerical design criteria:</p> <ul style="list-style-type: none"> Site area greater than 1,500 m² – minimum dimension 6m and 7% of site area. 	<p>The proposal provides 7.68% deep soil area in accordance with the requirements of this section. The deep soil area includes a row of tall narrow trees plantings within the front setback of Tomaree Street and a row of small feature trees within the northern setback area.</p> <p>The tree plantings act to reduce the visual bulk of the building when viewed at ground level and enhance the</p>	<p>Yes – Complies.</p>

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<p>However, the design criteria may not be possible on some sites including:</p> <ul style="list-style-type: none"> • Central business district. • Constrained sites. • High density areas. • Commercial centres. • Where there is 100% site coverage or non-residential uses at ground floor. 	<p>overall appearance of the development.</p> <p>In addition, 5 deciduous street trees are proposed within the road reserve adjacent the site, in accordance with species selection that match the Nelson Bay Public Domain Plan.</p>	
<p><i>3F-1 Visual Privacy</i></p> <p>Adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy.</p> <p>Numerical design criteria:</p> <p>Building height up to 12m (4storeys):</p> <ul style="list-style-type: none"> • Habitable rooms and balconies - 6m. • Non habitable rooms – 3m. <p>Building height up to 25 metres (5-8 storeys):</p> <ul style="list-style-type: none"> • Habitable rooms and balconies - 9m. • Non habitable rooms – 4.5m. <p>Building height over 25m (9+ storeys):</p> <ul style="list-style-type: none"> • Habitable rooms and balconies - 12m. • Non habitable rooms – 6m. • No separation is required between blank walls. • An additional 3m separation is required when adjacent to a different zone which permits lower density residential development to provide a transition in scale and increased landscaping. 	<p><u>Northern Setback</u></p> <p>Due to the fall of the site, the basement parking level is exposed on the northern boundary and is proposed to be built to the boundary, adjoining the neighbouring commercial development (Vinnies). The ground level interface to the basement from the north includes a block wall with cascading landscape plantings above while the first floor consists residential balconies. It is anticipated future development on the adjoining Vinnies site would include parking areas and servicing at this level, and therefore no amenity impacts likely to occur.</p> <p>The balcony spaces at Level 1 are located 3.4m from the northern boundary and approximately 6.8m from the adjoining Vinnies building. This does not comply with the minimum 6m boundary setback criteria, however the balconies include appropriate landscape screening which would eliminate any privacy issues should the Neighbouring Vinnies site be developed in the future.</p> <p>The northern side setback of the building for Levels 2-9 is 8m from the boundary and approximately 11m to the</p>	<p>Yes – Complies.</p>

	<p>neighbouring commercial building that supports a Vinnies store. This complies with the minimum 6m boundary setback criteria for levels (5-8).</p> <p>The boundary setback criteria applicable to Level 9 of the building is 12m for habitable rooms and balconies and 6m for non-habitable rooms. The 8m setback does not comply with the minimum 12m boundary setback criteria. This is acceptable given the neighbouring Vinnies site is currently occupied by a two storey commercial building. In the future, if the Vinnies site is redeveloped to 9 storeys or more, the UDP concluded that the separation distance would be acceptable, noting that future development would likely have its living spaces oriented north for the water views.</p> <p><u>Eastern Setback</u></p> <p>The parking area for Level 1 is built to the eastern boundary, while the level 1 apartments setback 12.5m. The minimum eastern setback for levels 2-9 of the building are 4.9m from the boundary.</p> <p>There is a single storey building built to the boundary located at the entrance of the Mantra development on the eastern interface, however this building is non-habitable therefore creating no privacy or amenity issues.</p> <p>To the north east, levels 1-9 are setback 13.7m from a four storey building on the Mantra site containing tourist accommodation. Whilst the level 9 setback does not meet the minimum 24m building separation, this is acceptable as the Mantra development is only 4 storeys and therefore</p>	
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	<p>does not interface level 9 of the building.</p> <p><u>West and south setback</u></p> <p>The western and southern setbacks to the nearest buildings, including both residential and commercial range between approximately 20m and 30m and exceed the minimum design requirements.</p>	
<p><i>3F-2 Visual Privacy</i></p> <p>Site and building design elements increase privacy without compromising access to light and air and balance outlook and views from habitable rooms and private open space.</p>	<p>The proposed development exceeds all minimum separation distance criteria between adjoining sites and therefore the inclusion of privacy screens is not required to achieve adequate privacy.</p> <p>In the event the site to the north is redeveloped, it is expected that balcony and living areas will be concentrated on the northern façade to capture water views, thereby further mitigating privacy concerns emanating from the proposed developments northern façade.</p> <p>The development has been amended to include solid or obscure glazed balcony rails to provide for screened clothes drying on balconies.</p>	Yes – Complies.
<p><i>3G-1 Pedestrian Access and Entries</i></p> <p>Building entries and pedestrian access connects to and addresses the public domain.</p>	<p>The development provides a ground level commercial tenancy fronting Yacaaba Street and a lobby fronting Tomaree Street. Both entry points are clearly identifiable through the use of building articulation, signage and framed landscaping.</p> <p>Pedestrian entry points are both accessed from Tomaree Street.</p>	Yes – Complies.
<p><i>3G-2 Pedestrian Access and Entries</i></p> <p>Access, entries and pathways are accessible and easy to identify.</p>	<p>As stated above, entries and pathways are accessible and easy to identify.</p>	Yes – Complies.

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<p><i>3G-3 Pedestrian Access and Entries</i></p> <p>Large sites provide pedestrian links for access to streets and connection to destinations.</p>	<p>The development has pedestrian footpaths on each street frontage that will be upgraded in accordance with the Nelson Bay Public Domain Plan, subject to conditions. The footpath upgrades are considered adequate given there are no desired pedestrian links in connection with the site.</p>	<p>Yes – Complies.</p>
<p><i>3H-1 Vehicle Access</i></p> <p>Vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes.</p>	<p>A single vehicle access point is provided to each street frontage. Each vehicle access point includes is appropriately located and includes adequate site distances to ensure pedestrian safety.</p>	<p>Yes – Complies.</p>
<p><i>3J-1 Bicycle and Car Parking</i></p> <p>Car parking is provided based on proximity to public transport in metropolitan Sydney and centres in regional areas.</p> <p>Numerical design criteria:</p> <ul style="list-style-type: none"> on sites that are within 800m of a railway station or light rail stop in the Sydney Metropolitan Area; or on land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre <p>The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever less.</p> <p>The car parking need for a development must be provided off-street.</p>	<p>The proposal, comprising 1 x 1 bedroom apartment, 22 x 2 bedroom apartments and 1 x 3 bedroom apartment generates a demand of 25 resident spaces and 8 visitor spaces in accordance with Port Stephens Development Control Plan (PSDCP).</p> <p>The proposal includes 34 spaces which satisfies the requirements of the PSDCP.</p>	<p>Yes – Complies.</p>
<p><i>3J-2 Bicycle and Car Parking</i></p> <p>Parking and facilities are provided for other modes of transport.</p>	<p>Bicycle parking is available within the storage area allocated to each apartment in the ground floor car park. The PSDCP does not prescribe provision for bicycle racks.</p>	<p>Yes – complies.</p>

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<p><i>3J-3 Bicycle and Car Parking</i></p> <p>Car park design and access is safe and secure</p>	<p>The underground car parking area is access via a locked door.</p>	<p>Yes – complies.</p>
<p><i>3J-4 Bicycle and Car Parking</i></p> <p>Visual and environmental impacts of underground car parking are minimised.</p>	<p>The application includes cut into the sloped site to create the basement level car park, which aids in concealing much of the visual bulk associated with the car parking level.</p>	<p>Yes – complies.</p>
<p><i>3J-5 Bicycle and Car Parking</i></p> <p>Visual and environmental impacts of on-grade car parking are minimised.</p>	<p>Above ground parking is enclosed and therefore this guideline is not relevant.</p>	<p>N/A.</p>
<p><i>3J-6 Bicycle and Car Parking</i></p> <p>Visual and environmental impacts of above ground enclosed car parking area minimised.</p>	<p>Some above ground parking is partially visible from Tomaree Street. Appropriate screening landscape species have been included to mitigate any adverse visual impacts emanating from the car park.</p>	<p>Yes – complies.</p>
<p><i>4A-1 Solar and Daylight Access</i></p> <p>To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space.</p> <p>Numerical design criteria:</p> <ul style="list-style-type: none"> • In all other areas (i.e. areas outside Sydney metropolitan area, Newcastle and Wollongong local government areas), living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 3 hours direct sunlight between 9 am and 3 pm at mid-winter • A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter. 	<p>The northerly aspect of apartments ensures that apartments receive three or more hours of direct sunlight to living rooms and private open spaces.</p>	<p>Yes – complies.</p>

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<p><i>4A-2 Solar and Daylight Access</i></p> <p>Daylight access is maximised where sunlight is limited.</p>	<p>The development suitably captures solar access opportunities through siting of balconies, windows and living areas. Non-habitable rooms are generally situated where sunlight is limited.</p>	<p>Yes – complies.</p>
<p><i>4A-3 Solar and Daylight Access</i></p> <p>Design incorporates shading and glare control, particularly for warmer months.</p>	<p>A number of design features have been incorporated including; balconies that extend far enough to shade summer sun but still enable winter sun to penetrate living areas, shading devices such as eaves, awnings, balconies, plantings and screens.</p>	<p>Yes – complies.</p>
<p><i>4B-1 Natural Ventilation</i></p> <p>All habitable rooms are naturally ventilated.</p>	<p>Each habitable room can be naturally ventilated.</p>	<p>Yes – complies.</p>
<p><i>4B-2 Natural Ventilation</i></p> <p>The layout and design of single aspect apartments maximises natural ventilation.</p>	<p>Openings are maximised in single aspect apartments. The façade of each single aspect apartment has 50% openable glass screens.</p>	<p>Yes – complies.</p>
<p><i>4B-3 Natural Ventilation</i></p> <p>The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents.</p> <p>Numerical design criteria:</p> <ul style="list-style-type: none"> At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line. 	<p>66.7% of apartments in the building are dual aspect, thereby maximising natural ventilation. No cross-through apartments exceed 18m from window to window.</p>	<p>Yes – complies.</p>
<p><i>4C-1 Ceiling Heights</i></p> <p>Ceiling height achieves sufficient natural ventilation and daylight access.</p>	<p>Ceiling heights are proposed at 2.7m for all habitable rooms, thereby maximising natural ventilation.</p>	<p>Yes – complies.</p>

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<p>Numerical design criteria: Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <ul style="list-style-type: none"> • Habitable rooms – 2.7m. • Non-habitable rooms – 2.4m, • Two storey apartments – 2.7m for main living area floor and 2.4 m for second floor where it does not exceed 50% of the apartment area. • Attic spaces – 1.8m at the edge of the room with a 30 degree minimum ceiling slope. • If located in mixed use areas – 3.3m for ground floor and first floor to promote future flexibility of use. 		
<p><i>4C-2 Ceiling Heights</i></p> <p>Ceiling height increases the sense of space in apartments and provides for well-proportioned rooms.</p>	<p>The proposed ceiling heights are a uniform 2.7m high, which combined with the open plan dining/living provides an adequate sense of space.</p>	<p>Yes – complies.</p>
<p><i>4C-3 Ceiling Heights</i></p> <p>Ceiling heights contribute to the flexibility of building use over the life of the building.</p>	<p>The ground floor commercial space has a 2.7m ceiling height which is considered suitable given the size of the small space and future likely uses.</p>	<p>Yes – complies.</p>
<p><i>4D-1 Apartment Size and Layout</i></p> <p>The layout of rooms within an apartment is functional, well organised and provides a high standard of amenity.</p> <p>Numerical design criteria: Apartments are required to have the following minimum internal areas:</p> <ul style="list-style-type: none"> • Studio – 35 m² • One bedroom – 50 m² • Two bedroom – 70m² • Three bedroom – 90m² 	<p>The following minimum internal areas have been proposed:</p> <ul style="list-style-type: none"> • One bedroom – 56 m², • Two bedroom – 97 -102 m², and • Three bedroom – 182 m². <p>All of the proposed apartments comply with the minimum areas required by the design criteria. All habitable rooms will have a window in an external wall.</p>	<p>Yes – complies.</p>

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<ul style="list-style-type: none"> An additional 5m² is required for apartments with more than one bathroom. An additional 12m² is required for a fourth, and further additional bedrooms. Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms. 		
<p><i>4D-2 Apartment Size and Layout</i></p> <p>Environmental performance of the apartment is maximised.</p> <p>Numerical design criteria:</p> <ul style="list-style-type: none"> Habitable room depths are limited to a maximum of 2.5 x the ceiling height. In open plan layout (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window. 	<p>Each habitable room includes the appropriate depth dimensions. Adequate lighting is afforded to each habitable room.</p>	<p>Yes – complies.</p>
<p><i>4D-3 Apartment Size and Layout</i></p> <p>Apartment layouts are designed to accommodate a variety of household activities and needs.</p> <p>Numerical design criteria:</p> <ul style="list-style-type: none"> Master bedrooms have a minimum area of 10m² and other bedrooms 9m² (excluding wardrobe space). Bedrooms have a minimum dimension of 3m (excluding wardrobe space). Living rooms or combined living/dining rooms have a minimum width of: <p>- One bedroom apartments - 3.6m.</p> <p>- Two or three bedroom apartments – 4m.</p> <ul style="list-style-type: none"> The width of cross-over or cross-through apartments are at least 4m 	<p>Each room contains the following dimensions:</p> <ul style="list-style-type: none"> Master bedrooms – 10-20m² Other bedrooms - minimum 10m² Each bedroom exceeds the minimum dimension of 3m. Combined living/dining exceeds the minimum width requirement of m. All cross-over typology apartments are at-least 4m in width. 	<p>Yes – complies.</p>

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internally to avoid deep narrow apartment layouts.		
<p><i>4E-1 Private Open Space and Balconies</i></p> <p>Apartments provide appropriately sized private open space and balconies to enhance residential amenity.</p> <p>Numerical design criteria – all apartments are required to have primary balconies as follows:</p> <ul style="list-style-type: none"> • Studio apartments – 4m². • One bedroom apartments – 8m² with a depth of 2m. • Two bedroom apartments – 10m² with a depth of 2m. • Three + bedroom apartments – 12m² with a depth of 2.4m. • For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m² and a minimum depth of 3m 	<p>Each apartment includes a minimum 24m² deck.</p> <p>The minimum depth of the balcony is 2.7m.</p>	Yes – complies.
<p><i>4E-2 Private Open Space and Balconies</i></p> <p>Primary private open space and balconies are appropriately located to enhance liveability for residents.</p>	<p>Each apartment includes a deck that is accessible via stacked sliding doors from the open plan living/dining area.</p>	Yes – complies.
<p><i>4E-3 Private Open Space and Balconies</i></p> <p>Private open space and balcony design is integrated into and contributes to the overall architectural form and detail of the building.</p>	<p>Balconies comprise a mix of varied materials, including glass and solid balustrades and colours which provide articulation of the front façade.</p>	Yes – complies.

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<p><i>4E-4 Private Open Space and Balconies</i></p> <p>Private open space and balcony design maximises safety.</p>	<p>BCA compliant balustrades are provided to balcony areas. The balconies also provide for passive surveillance to the street.</p>	<p>Yes – complies.</p>
<p><i>4F-1 Common Circulation and Spaces</i></p> <p>Common circulation spaces achieve good amenity and properly service the number of apartments.</p> <p>Numerical design criteria:</p> <ul style="list-style-type: none"> For buildings less than ten storeys in height the maximum number of apartments off a circulation core on a single level is eight. 	<p>Each level includes a circulation core that services no more than 3 apartments.</p>	<p>Yes – complies.</p>
<p><i>4F-2 Common Circulation and Spaces</i></p> <p>Common circulation spaces promote safety and provide for social interaction between residents.</p>	<p>Common circulation spaces on each level include motion activated lighting for safety and an accessible communal balcony to encourage social interaction of residents.</p>	<p>Yes – complies.</p>
<p><i>4G-1 Common Circulation and Spaces</i></p> <p>Adequate, well designed storage is provided in each apartment.</p> <p>Numerical design criteria –in addition to storage in kitchens, bathrooms and bedrooms the following storage is provided:</p> <ul style="list-style-type: none"> Studio apartments – 4m². One bedroom apartments – 6m². Two bedroom apartments – 8m². Three + bedroom apartments – 10m². At least 50% of the required storage is to be located within the apartment. 	<p>Storage has been provided within the proposed units, supplemented with storage within the basement levels.</p> <p>Storage provided to all units exceeds the minimum requirements.</p>	<p>Yes – complies.</p>

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<p><i>4G-2 Common Circulation and Spaces</i></p> <p>Additional storage is conveniently located, accessible and nominated for individual apartments.</p>	<p>Secure and accessible resident storage will be located in the proposed basements via storage rooms.</p>	<p>Yes – complies.</p>
<p><i>4H-1 Acoustic Privacy</i></p> <p>Noise transfer is minimised through the siting of buildings and building layout.</p>	<p>Noise transfer will be minimised through apartment design and separation together with the location of service areas in the proposed basements.</p>	<p>Yes – complies.</p>
<p><i>4H-2 Acoustic Privacy</i></p> <p>Noise impacts are mitigated within apartments through layouts and acoustic treatments.</p>	<p>The proposed layouts will adequately mitigate any potential noise impacts within apartments.</p>	<p>Yes – complies.</p>
<p><i>4J-1 Noise and Pollution</i></p> <p>In noisy or hostile environments the impacts of external noise and pollution are minimised through the careful siting and layout of buildings.</p>	<p>The proposed development is not located in a noisy or hostile environment, such as near a major road, rail line or beneath a flight path.</p>	<p>N/A.</p>
<p><i>4J-2 Noise and Pollution</i></p> <p>Appropriate noise shielding or attenuation techniques for the building design, construction and choice of materials are used to mitigate noise transmission.</p>	<p>The proposed development is not located in a noisy or hostile environment, such as near a major road, rail line or beneath a flight path.</p>	<p>N/A</p>
<p><i>4K-1 Apartment Mix</i></p> <p>A range of apartment types and sizes is provided to cater for different household types now and into the future.</p>	<p>A range of apartment types and sizes have been provided, from one bedroom to three bedroom units, which adequately caters for different household types.</p>	<p>Yes – complies.</p>
<p><i>4K-2 Apartment Mix</i></p>	<p>The apartment mix is suitably distributed throughout the development.</p>	<p>Yes – complies.</p>

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The apartment mix is distributed to suitable locations within the building.		
<p><i>4L-1 Ground Floor Apartments</i></p> <p>Street frontage is maximised where ground floor apartments are located.</p>	One of the two ground floor apartments front the street. A commercial tenancy also fronts the street to maximise street level activation and passive surveillance.	Yes – complies.
<p><i>4L-2 Ground Floor Apartments</i></p> <p>Design of ground floor apartments delivers amenity and safety for residents.</p>	Ground floor apartments include generously sized alfresco areas and perimeter landscape areas ensuring adequate privacy and amenity. The design of the ground floor balconies incorporate CPTED principles which ensures the safety of residents.	Yes – complies.
<p><i>4M-1 Facades</i></p> <p>Building facades provide visual interest along the street while respecting the character of the local area.</p>	The proposed building facades will provide visual interest along the adjoining public streets through the use of additional upper floor building setbacks, projecting balconies and a use of a range of finishes and materials.	Yes – complies.
<p><i>4M-2 Facades</i></p> <p>Building functions are expressed by the façade.</p>	Building entries will be clearly defined.	Yes – complies.
<p><i>4N-1 Roof Design</i></p> <p>Roof treatments are integrated into the building designed and positive respond to the streets.</p>	<p>The development adopts a skillion roof design which is proportionate to the overall building size, scale and form.</p> <p>Mechanical ventilation, master antenna and other services can be sufficiently screened.</p> <p>A condition of consent has been recommended to ensure that all roof mounted equipment is concealed within the external walls of the development or adequately</p>	Yes – subject to conditions.

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	screened so as not to be visible from a public place.	
<p><i>4N-2 Roof Design</i></p> <p>Opportunities to use roof space for residential accommodation and open space are maximised.</p>	The proposal includes a generous rooftop communal space with garden.	Yes – subject to conditions.
<p><i>4N-3 Roof Design</i></p> <p><i>Roof design incorporates sustainability features.</i></p>	PV solar panels are proposed at roof level. Roof overhangs will assist in shading lower level apartments and roof insulation will maximise the passive thermal comfort of the ninth floor apartment.	Yes – complies.
<p><i>4O-1 Landscape Design</i></p> <p>Landscape design is viable and sustainable.</p>	<p>The development incorporates street tree plantings and landscaping to the podium level.</p> <p>Council staff along with the UDP have assessed the proposed landscaping design and consider it appropriate for the site and area.</p> <p>A condition of consent is recommended requiring public domain upgrades be carried out in the road reserve adjacent the site, in accordance with the Nelson Bay Public Domain Plan. The upgrades include street tree plantings and footpath upgrades.</p>	Yes – complies subject to conditions.
<p><i>4O-2 Landscape Design</i></p> <p>Landscape design contributes to the streetscape and amenity.</p>	Subject to the recommended conditions of consent the proposed landscape design is considered to contribute to the streetscape.	Yes – subject to conditions.
<p><i>4P-1 Planting on Structures</i></p> <p>Appropriate soil profiles are provided.</p>	The applicant has provided landscape plans which subject to the recommended conditions would provide appropriate soil profiles for landscaping.	Yes – subject to conditions.

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<p><i>4P-2 Planting on Structures</i></p> <p>Plant growth is optimized with appropriate selection and maintenance.</p>	<p>The applicant has provided landscape plans which subject to the recommended conditions the proposed landscaping is capable of reaching maturity and would be appropriately maintained.</p>	<p>Yes – subject to conditions.</p>
<p><i>4P-3 Planting on Structures</i></p> <p>Planting on structures contributes to the quality and amenity of communal and public open spaces.</p>	<p>Subject to conditions of consent, the proposed landscape design is considered to include appropriate planting on structures in communal open space areas.</p>	<p>Yes - complies.</p>
<p><i>4Q-1 Universal Design</i></p> <p>Universal design features are included in apartment design to promote flexible housing for all community members.</p> <p>Numerical design criteria:</p> <ul style="list-style-type: none"> A benchmark of 20% of the total apartments incorporate the Liveable Housing Guidelines silver level universal design features. 	<p>A condition of consent is recommended to ensure that at least 10% of the total apartments will be adaptable</p>	<p>Yes – subject to conditions of consent</p>
<p><i>4Q-2 Universal Design</i></p> <p>A variety of apartments with adaptable designed are provided.</p>	<p>Accessible car parking spaces have been provided.</p> <p>A condition of consent is recommended to ensure that at least 10% of the total apartments will be adaptable.</p>	<p>Yes – subject to conditions of consent.</p>
<p><i>4Q-3 Universal Design</i></p> <p>Apartment layouts are flexible and accommodate a range of lifestyle needs.</p>	<p>The proposed development includes a variety of apartment types and sizes.</p>	<p>Yes – complies.</p>
<p><i>4R-1 Adaptive Reuse</i></p> <p>New additions to existing buildings are contemporary and complementary and</p>	<p>The proposed development does not involve any additions to existing buildings.</p>	<p>N/A</p>

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enhance an area's identity and sense of place.		
<p><i>4R-2 Adaptive Reuse</i></p> <p>Adapted buildings provide residential amenity while not precluding future adaptive reuse.</p>	The proposed development does not involve any additions to existing buildings.	N/A
<p><i>4S-1 Mixed Use</i></p> <p>Mixed use developments are provided in appropriate locations and provide active street frontages that encourage pedestrian movement.</p>	The proposal is a mixed use development and is located within the Nelson Bay Town Centre. Active street frontages are provided through the form of ground level commercial tenancies and the development has been designed and sited to front the street.	Yes – complies.
<p><i>4S-2 Mixed Use</i></p> <p>Residential levels of the building are integrated within the development, and safety and amenity is maximised for residents.</p>	The residential elements of the building have been integrated within the overall design. Subject to inclusion of CPTED recommendations the proposal is satisfactory.	Yes – subject to conditions of consent
<p><i>4T-1 Awnings and Signage</i></p> <p>Awnings are well located and complement and integrate with the building design.</p>	Covered building entries are appropriately integrated with building design, as an alternative to over footpath awnings, which allows for tree plantings in their place.	Yes – complies.
<p><i>4T-2 Awnings and Signage</i></p> <p>Signage responds to the context and desired streetscape character.</p>	A single business identification sign is provided for the commercial tenancy, which is appropriately located to not obstruct any views or detract from streetscape character.	Yes – complies.
<p><i>4U-1 Energy Efficiency</i></p> <p>Development incorporates passive environmental design.</p>	A valid BASIX certificate has been submitted. Adequate natural light will be provided to habitable rooms.	Yes – complies.

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<p><i>4U-2 Energy Efficiency</i></p> <p>Development incorporates passive solar design to optimise heat storage in winter and reduce heat transfer in summer.</p>	<p>A valid BASIX certificate has been provided. The development is considered to incorporate sufficient passive solar design to optimise heat storage in winter and reduce heat transfer in summer.</p>	<p>Yes – complies.</p>
<p><i>4U-3 Energy Efficiency</i></p> <p>Adequate natural ventilation minimises the need for mechanical ventilation.</p>	<p>The proposed development is generally compliant with the ADG's design criteria for 4B-3 Natural Ventilation.</p>	<p>Yes – complies.</p>
<p><i>4V-1 Water Management and Conservation</i></p> <p>Potable water use is minimised.</p>	<p>A valid BASIX certificate has been provided which provides minimum water commitments.</p>	<p>Yes – complies.</p>
<p><i>4V-2 Water Management and Conservation</i></p> <p>Urban stormwater is treated on site before being discharged to receiving waters.</p>	<p>The proposed development includes a stormwater treatment system to ensure that stormwater is appropriately treated prior to discharge.</p>	<p>Yes – complies.</p>
<p><i>4V-3 Water Management and Conservation</i></p> <p>Flood management systems are integrated into the site design.</p>	<p>A stormwater infiltration tank is proposed at basement level. The infiltration tanks have been appropriately integrated into the design.</p>	<p>Yes – complies.</p>
<p><i>4W-1 Waste Management</i></p> <p>Waste storage facilities are designed to minimise impacts on the streetscape, building entry and amenity of residents.</p>	<p>Adequate residential and commercial bin storage areas have been provided within the ground floor car park area. A waste management plan has been submitted with the application. The development can be serviced by Council.</p>	<p>Yes – complies.</p>
<p><i>4W-2 Waste Management</i></p> <p>Domestic waste is minimised by providing safe and convenient source separation and recycling.</p>	<p>Adequate residential and commercial bin storage areas have been provided within the ground floor car park area.</p>	<p>Yes – complies.</p>

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<p><i>4X-1 Building Maintenance</i></p> <p>Building design detail provides protection from weathering.</p>	<p>Robust materials have been proposed and design solutions such as use of roof overhangs to protect walls have been incorporated.</p> <p>A condition of consent is recommended requiring drip lines to be detailed on horizontal edges to avoid staining and that planter boxes be designed to avoid leaching should be imposed.</p>	<p>Yes – complies, subject to conditions of consent.</p>
<p><i>4X-2 Building Maintenance</i></p> <p>Systems and access enable ease of maintenance.</p>	<p>Accessible service areas have been proposed.</p>	<p>Yes – subject to conditions.</p>
<p><i>4X-3 Building Maintenance</i></p> <p>Material selection reduces ongoing maintenance costs.</p>	<p>Robust materials that will weather well have been proposed.</p> <p>A condition of consent is recommended requiring sensors to control artificial lighting in common spaces, graffiti removal and robust and durable materials in common circulation areas and lift interiors should be imposed.</p>	<p>Yes – complies, subject to conditions of consent.</p>

Port Stephens Local Environmental Plan 2013 (LEP)**Clause 2.3 – Zone Objectives and Land Use Table**

The proposal is for a mixed use development comprising a commercial tenancy and residential flat building, both of which are permissible with consent in the B2 Local Centre zone.

- The objectives of the B2 Local Centre zone are as follows:
- To provide a range of retail, business, entertainment and community uses that service the needs of people who live in, work in and visit the local area,
- To encourage employment opportunities in accessible locations, and
- To maximise public transport patronage and encourage walking and cycling.

The proposed development is considered to be compatible the zone objectives relating to employment and services through the provision of a commercial tenancy comprising a total of 36m² GFA in an accessible location. The residential flat building component of the proposal is compatible with the zone objectives, noting that it would support patronage of local retail, business and community uses which are highly accessible from the proposed location of the development.

Due to the development being located in the Nelson Bay Town Centre, there are numerous public transport, walking and cycling opportunities afforded to future residents of the proposed building.

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

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

Clause 4.1B does not apply to land zoned B2 Local Centre and therefore does not apply. Notwithstanding, the subject site has an total area of approximately 986m² which provides sufficient area to facilitate the proposed development.

Clause 4.3 – Height of Buildings

The proposed development has a maximum height of 31.2 metres, which is above the maximum permissible building height of 28 metres specified on the Height of Buildings Map. As the proposal does not comply with the maximum height of building standard, the variation is considered against Clause 4.6 below.

Clause 4.4 – Floor to Space Ratio

The site is subject to a 3:1 Floor to Space Ration (FSR). The proposed development has an FSR of 2.83:1, which is compliant and does not exceed the maximum permitted FSR.

Clause 4.6 – Exceptions to development standards

The proposal exceeds the maximum allowable building height for the site prescribed under Clause 4.3 of the Port Stephens LEP 2013 (PSLEP). The DA has a maximum building height of 31.2m, which exceeds the 28m height limit and represents an 11.4% variation to the development standard. A perspective drawing of the proposed height variation is provided at **Figure 5** below.



Figure 5: Perspective drawing of height variation

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

- The proposed height exceedance would involve a negligible change to impacts by way of overshadowing, privacy or view loss and overall the proposal has been found to not result in any unacceptable impacts of this nature that would be inconsistent with the Apartment Design Guide or any other relevant Environmental Planning Instruments, as discussed throughout this report;
- The proposal is in keeping with the future desired character of the area as set out in Council's Nelson Bay Strategy and LEP and DCP planning controls, despite the variation;
- The proposal does not disrupt the hierarchy of centres or local land-use structure, established by the height and density controls in Nelson Bay;
- The proposal would not obstruct any of the important view corridors identified in Section D5 of the PSDCP;
- The proposal would not protrude above the ridgeline of the hill to the south, respecting a key visual feature of the surrounding landscape;
- The proposed development is 4 storeys taller than the adjoining Mantra apartments, however, due to its slender design, typically comprising 3 apartments per floor and effective use of colours and materials to improve articulation, the proposal appears of a lesser bulk and scale.
- The proposal is of a similar height to the approved 9 storey development to the north at the corner of Donald Street and Yacaaba Street; and
- Council's Urban Design Panel recommended that the proposed exceedance is acceptable, taking into consideration visual impacts and the 9 principles of the Apartment Design Guide.

Based on the above, the zone objectives and objectives of Clause 4.3 are achieved despite the non-compliance. There are sufficient environmental planning grounds to justify contravening the height of buildings standard and compliance with the standard is unnecessary in the circumstances of this application.

On this basis, the building height variation is supported. A detailed assessment against Clause 4.6 is contained within **Attachment 1 - Clause 4.6 Assessment Report**.

Clause 5.10 – Heritage conservation

The proposal is not located on or in proximity to any local or state listed heritage items. An AHIMS search did not reveal any previously recorded Aboriginal sites. Due to the extent of existing disturbance to the site it is unlikely that the proposed development will impact upon unknown Aboriginal.

Notwithstanding, should Council resolve to approve the development a condition of consent should be imposed providing that works should cease and that Heritage NSW be notified in the event that any Aboriginal relics are encountered during works.

Clause 7.1 – Acid Sulfate Soils

The site is mapped as containing potential Class 5 Acid Sulfate Soils (ASS). The application includes a geotechnical report which confirmed no presence of ASS in the samples collected.

Clause 7.2 – Earthworks

Clause 7.2 aims to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

The application proposes earthworks on the site to excavate the basement level and construct stormwater infrastructure to a depth of 1 to 3m below natural ground level. A geotechnical report was submitted with the application which assessed ground conditions within the site. The report adequately demonstrates the proposal can be carried out without any detrimental effect on drainage patterns and soil stability in the locality of the development. The geotechnical report also includes specific recommendations to limit vibration during pile construction, including pile driving methods, vibration monitoring and the carrying out of dilapidation reports for neighbouring properties, prior to works commencing.

Subject to the recommended conditions of consent, requiring the adherence to the recommendations of the geotechnical report and the implementation of a construction management plan, earthworks occurring during construction of the development would not result in any unacceptable amenity impacts to adjoining properties.

Due to the extent of existing disturbance to the site it is unlikely that the proposed earthworks will impact upon Aboriginal relics. Notwithstanding, should Council resolve to approve the development, a condition of consent should be imposed providing that works should cease and that Heritage NSW be notified in the event that any Aboriginal relics are encountered during works.

Clause 7.6 – Essential Services

The subject site is serviced by reticulated water, electricity and sewer. In addition, the application has demonstrated that stormwater drainage resulting from roof and hard stand areas can be catered for in accordance with Council's requirements. The subject land also maintains direct access to

Yacaaba/Tomaree Street, meeting the requirements of this clause. A condition is recommended that requires the provision of evidence that all essential services are available, prior to the issue of an occupation certificate.

Clause 7.22 – Active Street frontages

The objective of this clause is to promote uses that attract pedestrian traffic along certain ground floor street frontages. Yacaaba Street is identified as an Active Street Frontage in the PSLEP under Clause 7.22. Accordingly, all premises that face the street on the ground floor of the building, facing Yacaaba Street must be used for the purposes of business premises or retail premises, and those premises will have active street frontages.

The application initially did not include an active street front when originally lodged with Council. Following, a request for information amended plans were submitted including a 36m² commercial tenancy located on the south west corner of development, providing an activated frontage to Yacaaba Street.

The remainder of the Yacaaba Street façade includes vehicle access and car parking and therefore an active street front at this location is not required, in accordance with the requirements of Clause 7.22.

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

Nil relevant.

Section 4.15(a)(iii) – any development control plan

Port Stephens Development Control Plan 2014

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

Chapter B1 – Tree Management

The site has been cleared of vegetation, as part of a previous development consent.

Chapter B2 – Natural Resources

The site is clear of any existing vegetation. The proposed development is not considered likely to impact upon any area of environmental significance. Due to the nature, scale and location of the proposed development within the existing Nelson Bay CBD the proposed development, subject to conditions of consent, is not considered likely to have any adverse impacts upon the natural environment.

Chapter B3 – Environmental Management

Acid Sulfate Soils

The objective of this DCP Chapter is to ensure that developments do not disturb, expose or drain Acid Sulfate Soils (ASS) and cause environmental damage. As detailed within clause 7.1 discussion above, the proposed development could be undertaken, subject to conditions of consent, without resulting in adverse impact to ASS. In this regard the development is consistent with the objective and requirements of the DCP.

Noise

The separation distances incorporated into the development will limit any significant impacts on the adjoining development. The impacts of the development during construction could be limited through

conditions of consent which limit construction work hours and mitigate noise derived from ventilation and air conditioning systems. Subject to conditions, the application is satisfactory in regards to noise management.

Earthworks

As discussed at clause 7.2 above, the proposed development involves extensive earthworks in order to facilitate the proposed basement level car parking. The impacts of the proposed earthworks can be mitigated through conditions of consent. The proposal is therefore consistent with requirements outlined in Councils DCP relating to earthworks.

Chapter B4 – Drainage and Water Quality

The proposed stormwater management plan comprises an infiltration tank at basement level with discharge/overflow to the street. The infiltration tank is proposed to detain and discharge flows from all hardstand areas. The stormwater management plan includes adequate quality and quantity controls as required by Councils policy. The stormwater drainage plan has been assessed as being consistent with the Infrastructure Specification and a condition of consent has been included in the consent requiring the provision of detailed engineering plans, prior to the issue of a construction certificate.

Chapter B7 – Heritage

As discussed above, the proposal is not located on or in proximity to any local or state listed heritage items. An AHIMS search did not reveal any previously recorded Aboriginal sites.

Chapter B9 – Road Network and Parking

Access

The proposal includes a single vehicle access point on each street frontage. Each vehicle access point is appropriately located and includes adequate site distances to ensure pedestrian safety, in accordance with the requirements of B8.12-13 of the PSDCP and relevant Australian Standards, as confirmed by Council's traffic engineer. Directional signage will be required to remind drivers of the one-way traffic flow and would be required as part of any future Roads Act approval.

Traffic

The application was reviewed by Council's traffic engineer who found that the existing road network is suitable to cater for the additional demand generated by the development, indicating that the nearby intersections including Yacaaba/Tomaree St will continue to operate at a satisfactory level of service.

Section B8.2 of the PSDCP requires the preparation of a Traffic Impact Assessment for 20 or more dwellings. The application includes 24 residential units, however, given the minimal traffic related impacts expected to occur as a result of the proposal, as confirmed by Council's Traffic Engineer, a traffic assessment from the applicant is not deemed necessary and the variation is therefore considered acceptable. In addition, it is noted that the existing approval for the site is for 32 units which would generate more traffic than the current proposal.

Car Parking

The residential component of the proposal, comprising 1 x 1 bedroom apartment, 22 x three 2 bedroom apartments and 1 x 3 bedroom apartment generates a demand of 25 resident spaces and 8 visitor spaces in accordance with the PSDCP 2014. The proposal includes 34 spaces, comprising 25 residential and 8 visitor spaces which satisfies the requirements of this clause.

The commercial tenancy generates demand for one car parking and bicycle space. One car space is proposed for the commercial tenancy, which complies with the minimum requirements, however, no bicycle space has been proposed. Accordingly, a condition of consent has been recommended requiring the installation of a bicycle parking space in a suitable location adjacent the commercial tenancy.

Chapter C – Development Types

The proposed development is that of a residential flat building and commercial tenancy. As such, refers to SEPP 65 Design Quality of Residential Flat Development as discussed elsewhere within this report. Whilst, Chapter C2 – Commercial of the PSDCP is applicable to commercial development, due to the commercial tenancy being only minor and forming part of a larger mixed use residential flat building development SEPP 65 is the applicable design standard.

Chapter D5 – Nelson Bay Centre

D5.A General Precinct Divisions

Significant Vistas – D5.1

A visual impact assessment (VIA) was requested by Council and the Urban Design Panel following initial assessment of the application. The VIA concluded the proposed development would not obstruct any of the significant vistas identified in Figure DJ, including those obtained from the Nelson Bay foreshore area and those obtained from Yacaaba Street. All other vistas identified in Figure DJ are not relevant due to their distance or orientation with relation to the site. Overall, the VIA concludes that the proposal will have a moderate accumulative visual impact on the surrounding area with proposed works improving the visual effect of the development consistent with buildings in the area. Council and the UDP supported the findings of the VIA in relation to impacts to designated view corridors.

Street Layout - D5.2

The proposed development does not alter the existing road layout.

Roof Design - D5.3

As outlined within the SEPP 65 and ADG assessment, the roof design is considered to have architectural merit and will not have significant impact on the public domain.

NSW Coastal Planning Guidelines – D5.4

The proposed colour palette of the building includes neutral tones of white, grey and charcoal and natural timber panelling that are not intrusive to the landscape setting back drop of the ridgeline to the south and coastal setting. The building materials are reflective of existing buildings in the town centre.

Design Excellence – D5.5

The development is in keeping with the character statement for the Town Living and Commercial Precinct, as outlined in the assessment against Section D5.C below.

As discussed within the ADG assessment of this report, the proposal would not result in any unacceptable impacts to the public domain, by way of view obstruction, overshadowing and streetscape character. This is further supported in the Visual Impact Assessment. Overshadowing of adjoining properties complies with the requirements of the ADG and primarily occurs over Tomaree Street to the south, which does not form a key component of the Nelson Bay Public Domain Plan. The proposal incorporates an activated street frontage including a commercial space to the Yacaaba Street frontage, with the tower setback a further 3m to provide for human scale proportions at the ground level, reflective of the surrounding lower density commercial streetscape.

D5.C Town Living and Commercial Precinct

The proposal complies with the desired character of the area by providing a wide range of housing options and incorporates appropriate landscaping including permitter screen plantings and street trees, which would enhance the Nelson Bay public domain.

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

The *Environmental Planning and Assessment Regulations 2021* (EP&A Regs) requires the consent authority to consider the provisions of the National Construction Code – Building Code of Australia (BCA). Should the application be approved, recommended conditions of consent have been provided requiring compliance with the BCA.

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

Social and Economic Impacts

The development will result in additional residential housing in the LGA through the provision of a range of accommodation units. The increased number of permanent residents in the locality will provide ongoing economic input through daily living activities to support the Nelson Bay economy all year round, including during the off-peak tourist period.

The construction of the development will provide employment opportunities in the locality and support the local building and development industries. This will have direct monetary input to the local economy.

The development would also provide additional housing opportunities that can rely upon existing social and recreational infrastructure existing within the Nelson Bay Town Centre.

Impacts on the Built Environment

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

The proposed height variation has been found to be acceptable as the zone objectives and objectives of Clause 4.3 are achieved despite the non-compliance. There are sufficient environmental planning grounds to justify contravening the height of buildings standard and compliance with the standard is unnecessary in the circumstances of this application.

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Moreover, Council's Urban Design Panel considers the proposal to be of a high design standard, which is expected to positively contribute to the built environment of Nelson Bay.

Impacts on the Natural Environment

The development includes water quantity and quality control devices to reduce the impact of the development on the natural environment. The existing site is devoid of any natural habitat or native vegetation and there are no anticipated adverse impacts on the natural environment.

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

The proposed development has been designed in line with the applicable planning controls including SEPP No.65 and the ADG. The proposed development is a permitted use in the zone and the commercial tenancy incorporated into the design presents an active street frontage to Yacaaba Street. There are no site constraints that would prohibit the proposed development.

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

Public Submissions

The application was exhibited on two occasions. The first notification period was for a period of 14 days from 5 October 2021 to 19 October 2021. Following the submission of amended plans, a second notification period commenced from 22 December 2021 – 24 January 2022. Due to the Christmas exclusion period, the notification period extended beyond 14 days, in accordance with the Port Stephens Council Community Engagement Strategy.

During the first notification period 31 submissions were received from 42 individuals, community groups and organisations. During the second notification period 18 submissions from 22 individuals, community groups and organisations were received. Of the new signatories, only 8 had not already made a submission during the previous notification period.

During the combined notification period a total of 49 submissions were received from 50 individuals, community groups or organisations.

The matters raised during the exhibition period have been detailed in the table below.

Comment	Council response
Overdevelopment <ul style="list-style-type: none"> - The proposal is an over development. - The development equates to 96 dwellings per hectare. 	<p>The proposed development is less than the maximum Floor to Space Ratio requirement under the PSLEP 2014 and is generally compliant with building separation requirements of the ADG. Moreover, the proposal is consistent with all other relevant environmental planning instruments, confirming that the development is not of a density that would indicate overdevelopment of the site.</p>
Building Height <ul style="list-style-type: none"> - The development should be 3 or 4 stories, in keeping with the Mantra development. - The height of the development should be reduced by 1 storey. - The building height should be strictly enforced as it was introduced only 1 year ago. 	<p>Clause 4.6 provides a mechanism to vary development standards, such as building height, prescribed within PSLEP2013</p> <p>A Clause 4.6 variation request has been submitted by the applicant in accordance with Clause 4.6 of the PSLEP 2014. The DA has a maximum building height of 31.2m, which exceeds the 28m height limit and represents a</p>

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<ul style="list-style-type: none"> - Due to the sites location at the edge of the Local Centre zone, the impacts of the height exceedance are greater. - The height breach on the northern elevation is more pronounced due to the fall of the land. - The resulting built form, scale and mass of the building with the extra height does not suit the current and desired future character of the neighbourhood. - The proposed height exceedance, if approved would set a precedent for future developments to do the same. - The 28m height limit is a non-negotiable requirement. - A large majority of residents oppose tall buildings in Nelson Bay, even at the compliant height of 28m. 	<p>11.4% variation to the development standard. The variation request initially received, was deemed inadequate by Council and subsequently a revised variation request was submitted. The following is noted with regard to the revised variation request:</p> <ul style="list-style-type: none"> • The proposed height exceedance would involve a negligible change to impacts by way of overshadowing, privacy or view loss and overall the proposal has been found to not result in any unacceptable impacts of this nature that would be inconsistent with the Apartment Design Guide or any other relevant Environmental Planning Instruments, as discussed throughout this report; • The proposal is in keeping with the future desired character of the area as set out in Council's Nelson Bay Strategy and LEP and DCP planning controls, despite the variation; • The proposed variation does not disrupt the hierarchy of centres or local land-use structure, established by the height and density controls in Nelson Bay; • The proposal would not obstruct any of the important view corridors identified in Section D5 of the PSDCP; • The proposal would not protrude above the ridgeline of the hill to the south, respecting a key visual feature of the surrounding landscape; • The proposed development is 4 storeys taller than the adjoining Mantra development, however, due to its slender design, typically comprising 3 apartments per floor and effective use of colours and materials to improve articulation, the proposal is of a lesser bulk and scale. • The proposal is of a similar height to the approved 9 storey development to the north at the corner of Donald Street and Yacaaba Street; and • Council's Urban Design Panel advised that the proposed exceedance is acceptable, taking into consideration the 9 principles of the Apartment Design Guide. <p>Approval of a single building above the height limit would not represent a pattern of abandonment, such that this could be used as justification for a clause 4.6 variation in accordance with the legal precedent established in <i>Wehbe v Pittwater Council</i> (2007) LEC 827. Future height exceedances would be assessed on individual merit.</p>
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	<p>The proposal is not of a scale expected to noticeably influence weather patterns.</p>
<p>Clause 4.6 Request</p> <ul style="list-style-type: none"> - The Clause 4.6 is inadequate and does not demonstrate that compliance with the height control is unreasonable or unnecessary. - The Department of Planning is changing the requirements of Clause 4.6 and that a proposed development with a breach has to show that there is a better outcome as a result of that breach. - The stated height variation is inaccurate and the encroachment is actually up to 2.91m. - It is unreasonable to suggest the only way to reduce the height of the building is to reduce ceiling heights. - Parts 2-4 of the Whebe test have been ignored. 	<p>Following initial notification of the application, Council requested a revised Clause 4.6 variation request, prepared by a suitably qualified Town Planner as the initial variation request did not accurately measure the height exceedance and did not address the relevant case law. The revised variation request is consistent with the requirements of Clause 4.6 and relevant case law, for the reasons outlined throughout this report and within attachment 1.</p> <p>The Department of Planning and Environment is currently reviewing clause 4.6 of the standard instrument. However, the proposed changes have not yet been legislated and are not a relevant matter for consideration.</p> <p>The height variation is greater than that stated in the original clause 4.6 request and following a request for information from Council, both the clause 4.6 request and the proposed plans have been updated to reflect this.</p> <p>Parts 2-4 of the Wehbe test are not relevant to the proposal and there is no requirement for all parts of the test to be satisfied.</p>
<p>Bulk and Scale</p> <ul style="list-style-type: none"> - Bulk and scale viewed from 1 Tomaree Street. - The height of the development should be reduced by 1 storey to improve bulk and scale. - The dimensions of the building will overly dominate the area. 	<p>The proposed development is 4 storeys taller than the adjoining Mantra apartments, however, due to its slender design, typically comprising 3 apartments per floor and effective use of colours and materials to improve articulation, the proposal is of a lesser bulk and scale.</p> <p>Overall the proposal is considered to achieve a scale, bulk and height appropriate for the area, as confirmed by Council's Urban Design Panel.</p>
<p>View Loss</p> <ul style="list-style-type: none"> - View loss to 1 Tomaree Street - View loss would be experienced by a number of the neighbouring Mantra development units. - The proposal may impact existing vistas down Yacaaba Street. - A full visual impact assessment should be required. - View loss impacting the Landmark, Nelson Bay Bowling Club should be considered in a Visual Impact Assessment. - The approved development at 1 Yacaaba Street should be considered in Council's assessment of view and visual impacts. - The visual impact assessment should consider view impacts of the exceedance from more elevated locations to the south. 	<p>Some view loss is expected to occur as a result of the proposal. View loss has been assessed based on site inspections and the information included in the applicants Visual Impact Assessment.</p> <p>View loss will primarily occur from the balconies of some units within the Mantra development to the east, 1 and 2 storey residences to the south on Tomaree Road and from the Landmark Resort at 61 Dowling Street Nelson Bay. Visual site inspections were conducted at each of these locations.</p> <p>Tenacity Consulting v Warringah Council (2004) NSWLEC 140 ('Tenacity'), establishes the general principles for assessing view loss.</p>

	<p>Assessment against the four step process concluded:</p> <ol style="list-style-type: none"> 1. The type of views from the affected sites is varied depending on location. The most valued views are the water views of Port Stephens and distant hills beyond. Less valued views include the views over the Nelson Bay town centre. 2. Views are generally obtained from balcony areas or living rooms. In the case of some affected locations, views are captured as a result of the site being cleared in its current state. 3. The extent of views lost range from negligible to severe depending on location. 4. The proposal is generally compliant with the applicable environmental planning instruments with the exception of building height. Despite this, a design with a compliant building height would result in a negligible change, as the view loss is primarily caused by the lower levels of the building. Taking into account the design is generally compliant with the applicable environmental planning instruments and given the relatively small site area, there is considered to be little or no opportunity to reduce view loss through a redesign of the building, without a reduction in building height, significantly below the maximum limit. <p>Having regard to the Tenacity principles, whilst the view loss of some sites would be severe, the impact is reasonable given a compliant building height would result in the same or similar impact. Further, there is no or minimal opportunity for an alternate design to prevent view loss from some of the adjoining sites.</p> <p>A Visual Impact Assessment (VIA) was requested by Council and the Urban Design Panel following initial assessment of the application. The proposed development would not obstruct any of the significant vistas identified in the PSDCP 2014, including those obtained from the Nelson Bay foreshore area and those obtained from Yacaaba Street.</p> <p>Overall, the VIA concludes that the proposal will have a moderate accumulative visual impact on the surrounding area with proposed design measures and finishes improving the visual effect of the development that is consistent with buildings in the area.</p>
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	<p>The VIA includes an assessment of two elevated positions to the south, including from the 'Landmark' development and at the intersection of Stockton Street and Dowling Street. A VIA cannot reasonably include images from every impacted view point, and therefore a series of locations, representing key views have been chosen.</p>
<p>Overshadowing</p> <ul style="list-style-type: none"> - Overshadowing of 1 Tomaree Street would be improved by reducing the height of the building. - Overshadowing to 3 Tomaree Street will occur. - Overshadowing of the Mantra development. - There is no information about overshadowing. - Impacts to solar panels on buildings to the south. 	<p>The application included shadow diagrams that were made available to the public during the notification and advertising period.</p> <p>The shadow diagrams submitted demonstrate that at least 50% of the POS and living areas of the neighbouring dwellings to the east, south and west are overshadowed during mid-winter for no more than 2 hours, in accordance with the requirements of the ADG. The proposed height exceedance would involve a negligible change to impacts by way of overshadowing.</p> <p>The ADG provides that a minimum of 4 hours of solar access should be retained to solar collectors on neighbouring buildings. It is acknowledged that some overshadowing of solar panels would occur as a result of the proposal, however, each dwelling to the south would maintain more than 4 hours of solar access to their roof areas.</p>
<p>Inconsistent with Character of the Area</p> <ul style="list-style-type: none"> - The development is only consistent with the future character of the area and not consistent with the current character of the area. - The proposal is out of character with the smaller buildings in the area. - The ADG provides that development will have regard for adjacent precincts that provide a change in scale. This is not displayed in the proposal. This is also present in Section D5.C of the PSDCP. 	<p>In order to achieve the aims and objectives of Council's planning controls, primary consideration is given to future desired character, rather than existing character.</p>
<p>Privacy</p> <ul style="list-style-type: none"> - The rooftop terrace and balconies on the southern elevation will overlook residences to the south and the Mantra which does not comply with the PSDCP or ADG. - The rooftop space will be overlooked by the Landmark development site if redeveloped. 	<p>The proposed development complies with the privacy criteria of the ADG (Section 3F-1), which relate to building separation distances. Building separation distances are the most appropriate means of addressing privacy concerns for high density residential development in urban centres, acknowledging that some overlooking of properties is inevitable as a result of this development type.</p> <p>The privacy provisions of the PSDCP are not applicable to residential flat buildings. It is also noted that these are communal balconies and are not attached to units, and so their duration of</p>

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	<p>use would be limited, given residents are afforded north, east and west facing balconies, some of which will offer views toward the ocean.</p> <p>It is inevitable that the rooftop space could be overlooked if a future building in proximity were constructed with a larger height. Privacy issues resulting from a future proposal would be considered if, and when an application of that nature is lodged, impacts would be addressed through the building separation criteria under the ADG.</p>
<p>Façade</p> <ul style="list-style-type: none"> - The balconies on the southern elevation may be removed in the future to save costs and may result in an undesirable view and adverse streetscape impacts. If it is changed, residents should be notified. - The basement parking wall and the podium in the north-west corner of the site may have an adverse impact to the Yacaaba Streetscape, as identified by the UDP. 	<p>The balconies on the southern elevation are not proposed to be removed. Removing these balconies would require a S.4.55 Modification application which would be assessed by Council. If a S4.55 modification is lodged for this purpose, Council will choose whether to notify the application in accordance with the Community Consultation Plan.</p> <p>The building interface with Yacaaba Street on the buildings NW corner has been redesigned to include a change in materials which articulates this section of the building and eliminates any adverse impacts to the Yacaaba streetscape, as confirmed by the UDP in their final review of the proposal.</p>
<p>Stormwater</p> <ul style="list-style-type: none"> - The effects of climate change resulting in increased frequency and severity of high precipitation events could render the proposed system inadequate, noting existing issues experienced on Tomaree Street. 	<p>Hydraulic calculations for the stormwater design must be undertaken in accordance with the Australian Rainfall and Runoff Guideline, which includes methods that account for climate change.</p>
<p>Noise</p> <ul style="list-style-type: none"> - The proposal will create road noise. - Noise will be generated by the rooftop terrace. 	<p>The proposed development utilises the existing road network, without the need for any widening or significant upgrade that would result in vehicle movements and (and associated noise) in closer proximity to existing residences. Therefore, noise impacts relating to vehicle movements are not expected cause adverse effect to neighbouring residents.</p> <p>Access to the rooftop areas will be restricted between the hours of 11pm and 7am, as per the recommended conditions of consent.</p>
<p>Ventilation</p> <ul style="list-style-type: none"> - Impact to ventilation of the mantra development. 	<p>The building separation distances proposed are adequate to ensure that ventilation of adjoining properties is not impacted.</p>
<p>Access</p> <ul style="list-style-type: none"> - The basement access may present a safety risk. - The proximity of the driveway to the corner of Yacaaba and Tomaree Streets may be hazardous. 	<p>The application was reviewed by Council's traffic engineer who found that the proposed access arrangements met the minimum site distances of the relevant Australian standards and the PSDCP 2014, ensuring adequate safety for pedestrians. Council's traffic engineer also noted</p>

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<ul style="list-style-type: none"> - Pedestrian activity could be impacted by additional traffic. 	<p>that there will be a requirement for directional signage for vehicles exiting to Yacaaba Street, to remind drivers of the one-way traffic flow, which would be required as part of any future Roads Act approval.</p>
<p>Traffic</p> <ul style="list-style-type: none"> - The proposal will cause additional traffic. - Traffic has already increased since the Yacaaba Street was made a one way road. - Basement access may interrupt the circulation of traffic around the new one-way road. - There is no separate traffic report provided with the application, contrary to the PSDCP 2014 requirements. - Deliveries will cause traffic. - Traffic will increase on Tomaree Street, particularly during construction. - The application should be reviewed by Council's traffic engineer, the local traffic committee and the urban design panel. - The applicant has relied on an old Traffic assessment which was done before the road was turned into a one way street. 	<p>The application was reviewed by Council's traffic engineer who found that the existing road network is suitable to cater for the additional demand generated by the development. Given the minimal traffic related impacts expected to occur as a result of the proposal, a traffic assessment from the applicant was not deemed necessary by Council's traffic engineer. In addition, it is noted that the existing approval for the site is for 32 units which would generate more traffic than the current proposal.</p> <p>Due to Yacaaba Street being a one way street, egress from the development on this street will be left only, which is a safer manoeuvre than a right hand turn across the previously two-way street.</p> <p>There are no specific requirements for a delivery bay for residential development under the PSDCP 2014. Deliveries associated with the commercial space are expected to be minimal due to the small size of the tenancy (36m²).</p>
<p>Parking</p> <ul style="list-style-type: none"> - Visitor parking on Tomaree Street will occur. - Existing parking shortages are already an issue. - Parking issues will occur during construction. - Parking should be provided in excess of DCP requirements as the units could be used for holiday letting. - Bicycle parking should be provided. - Electric vehicle charging should be provided. 	<p>The residential component of the proposal, comprising 1 x 1 bedroom apartment, 2 x three 2 bedroom apartments and 1 x 3 bedroom apartment generates a demand of 25 resident spaces and 8 visitor spaces in accordance with the PSDCP 2014. The proposal includes 34 spaces, comprising 25 residential and 8 visitor spaces which satisfies the requirements of this clause.</p> <p>The commercial tenancy generates demand for one car parking and bicycle space. One car space is proposed for the commercial tenancy which complies with the minimum requirements, however, no bicycle space has been proposed. Accordingly, a condition of consent has been recommended requiring the installation of a bicycle parking space in a suitable location adjacent the commercial tenancy.</p> <p>A condition of consent is recommended requiring the preparation of a construction management plan which must include details of managing traffic and car parking during construction to minimise impact to the surrounding road network.</p>

	<p>A condition is recommended for the provision of a bicycle rack to meet the PSDCP 2014 requirements for the commercial component of the development. Resident bicycles can be stored in their dedicated storage space, although there is no requirement for this in the PSDCP 2014.</p> <p>There is no specific requirement for electric vehicle/bike charging in the PSDCP 2014.</p>
<p>Statement of Environmental Effect (SEE)</p> <ul style="list-style-type: none"> - The development application mentions approximately 60 apartments at Mantra. There are in fact 110 apartments so there is a much larger number of neighbours affected. - The Mantra building is 5 storeys and only across three buildings, contrary to the SEE. - The developer should submit a schedule showing where their development is not in compliance with Council regulations. - The statement that there is little or no foot traffic in this area is incorrect. 	<p>Assessment of impacts, to adjoining sites, in accordance with S4.15 of the EP&A Act 1979, is not formed on the basis of number of residences impacted, rather, the assessment considers the extent of impacts to each residence and whether they are acceptable. Impacts to nearby residences have been considered throughout this report and found to be acceptable.</p> <p>The composition of the Mantra development has been reviewed based on information other than that included in the SEE, including satellite imagery, Council records and a visual site inspection.</p> <p>The SEE includes information regarding the extent to which the development does or does not comply with the relevant planning controls.</p> <p>Council staff are aware that there is more foot traffic in this area than suggested in the SEE, however this is not a critical consideration for the purpose of this assessment.</p>
<p>Setbacks</p> <ul style="list-style-type: none"> - The proposal should provide an increased setback from Tomaree Street to improve compatibility with the character of the area. 	<p>This is not considered necessary as the proposal complies with the building separation criteria within the Apartment Design Guide. The Tomaree Street façade includes an attractive entry lobby and articulated design elements that reduce the perceived bulk and scale of the building from this location. Combined with tall tree plantings along the Tomaree Street frontage, the proposal is considered to be compatible with the character of the area.</p>
<p>Landscaping</p> <ul style="list-style-type: none"> - Additional landscaped space should be provided within the setback area between the proposal and Tomaree Street. - Footpaths should be proposed for the building. 	<p>The landscaped areas along Tomaree Street frontage consist of 7 trees with mature heights of 10m and robust ground cover species below.</p> <p>Overall, the landscape presented in the visualisations provides a positive contribution to the Nelson Bay streetscape and appropriate amenity for the development, consistent with the requirements of the ADG.</p> <p>Footpaths are proposed in the landscape plan. In addition, a condition of consent has been</p>

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	recommended requiring public domain upgrades be carried out in accordance with the Nelson Bay Public Domain Plan.
Urban Design Panel - The proposal should be reviewed by Council's Urban Design Panel.	The application was reviewed by Council's Urban Design Panel on two occasions, who provided support for the application following the second review.
Construction Impacts - Construction works will disrupt on the business and income of all owners at Mantra Nelson Bay. - There are no details of how the construction of the development will occur. - Building times should include later starts and earlier finish times. No work should be permitted on weekends. - Construction will shake nearby houses.	<p>A condition has been recommended for a Construction Management Plan which will include details relating to management of noise, traffic and parking during and the like, during construction. Neighbours may contact the certifier of the development to request a copy of the plan.</p> <p>Standard construction hours across the state of NSW are 7.00am to 5.00pm on Monday to Saturday. This is part of the Department of Planning and Environment's standard conditions of consent. In addition, these have been temporarily extended by the state government as part of a temporary Covid-19 Construction Works Order. This overrides any hours on a development consent issued by Council.</p> <p>A condition requiring the preparation of a dilapidation report has been recommended to monitor any damages that may occur to adjoining properties during construction. However, this condition only extends to properties directly adjacent the development, as the construction of the development is not expected to impact properties further away.</p>
Asbestos - The adjoining mantra site was affected by significant asbestos contamination which may also extend across the development site.	<p>The submission references the adjoining Mantra site, which contained two structures that were demolished prior to the construction of the mantra development. Given the structures were not located on the site subject to the current development proposal, the risk of asbestos contamination is considered unlikely.</p> <p>No. 17 and 19 Yacaaba Street were previously occupied by a temporary demountable building, which was removed in the early 2000's and would not likely have required demolition as it was a demountable structure, therefore asbestos contamination is considered unlikely.</p> <p>Standard conditions relating to hazardous building material management, including asbestos are recommended to cover the unlikely event that asbestos is present on the site.</p>
Housing Supply - Has the council undertaken any recent studies to quantify the supply and demand of housing and	Impacts to property prices are not a relevant matter for consideration under S.4.15 of the EP&A Act 1979. However, it is acknowledged in

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<p>short term accommodation in the LGA? Overdevelopment may cause property prices to plummet.</p>	<p>Council's Local Housing Strategy 'Live Port Stephens' that there is a lack of housing supply across the state. The proposal is an infill housing typology which is identified within the Local Housing Strategy as an important type of housing to contribute to housing supply in Port Stephens.</p>
<p>Notification</p> <ul style="list-style-type: none"> - Some members of the Mantra development did not receive direct notification from Council of the development. 	<p>A notification letter was sent to the Mantra Strata body.</p>
<p>Zoning</p> <ul style="list-style-type: none"> - The development does not satisfy the zone objectives as it does not provide any retail, business, entertainment or community. - The site is zoned business and therefore cannot be used for residential purposes. 	<p>During assessment of the application, Council requested a commercial tenancy be provided, fronting Yacaaba Street. In response, the applicant amended the plans to include a 36m² commercial space, consistent with Council's request.</p> <p>The proposed uses are permissible with consent in the B2 Local Centre zone, which the site is situated in.</p>
<p>Street Level Activation</p> <ul style="list-style-type: none"> - The development does not include an active street frontage, as required by Clause 7.22 of the PSLEP 2013. - The commercial tenancy should be provided in the North-west corner. 	<p>Following a request for information, an active street frontage has been provided by the applicant in the form of a commercial space, access at ground level. The commercial space is considered to satisfy the requirements of Clause 7.22.</p> <p>The UDP originally recommended placing a commercial space in the NW corner of the building at the same level as the car park. The amended plans included the commercial space in the south west corner instead, which has been supported by the UDP.</p>
<p>Mantra Development</p> <ul style="list-style-type: none"> - Guests of the Mantra often generate noise and disrupt traffic when walking to and from the town centre. 	<p>Existing noise and traffic issues relating to the mantra development are not relevant matter for consideration under S.4.15 of the EP&A Act 1979.</p>
<p>Short Term Rental Accommodation</p> <ul style="list-style-type: none"> - The proposed apartments are small and will likely not be attractive to permanent residents. Instead they will likely be used as holiday rentals. 	<p>The floor area of each proposed apartment exceeds the minimum requirement of the ADG. Short term rental accommodation is permitted without consent, subject to the requirements of the PSLEP 2013.</p>
<p>Urban Design Panel</p> <ul style="list-style-type: none"> - The Urban Design Panel prematurely provided support for the application without considering objections from the community. - The Urban Design Panel have not appropriately considered the height variation. - The urban design panel, only had two Council members which is not adequate for a \$95 million development. - Urban Design Panel members clearly have not visited the site. 	<p>The Urban Design Panel (UDP) provides independent design related advice and does not review community submissions. Community submissions are reviewed by Council staff in accordance with Section 4.15(1)(d) of the EP&A Act 1979. Similarly, the Urban Design Panel does not approve a height variation, rather a recommendation is provided for Council staff to consider among other requirements under S.4.6 of the PSLEP 2013.</p>

	<p>Council officers are not a member of the UDP. Council officers attend the meeting to brief the UDP and provide advice relating to specific details of the proposal.</p> <p>The estimated cost of works is not \$95 million. The capital investment value of the proposal is estimated to be \$8,660,000 as per the quantity surveyors report submitted with the application.</p> <p>The chair of the UDP conducted a site visit in 2021, taking a number of photos which were shared with the other panel members.</p>
<p>Other</p> <ul style="list-style-type: none"> - The site should be used as a park to allow the birds to sing freely and the resident rabbits and other creatures to live. - There is a risk of Yacaaba Street becoming a canyon and wind tunnel in very strong southerly winds due to limited setbacks. - The height of the building will be a major wind/weather influencer. 	<p>The site is in private ownership and zoned B2 Local Centre. There are no legislative obligations for this land to be used as a park and Council cannot reasonably request the applicant to use the land for this purpose as part of the assessment of this DA.</p> <p>The site is located in an area zoned B2 Local centre which is primarily for commercial land-uses. Council's Development Control Plan includes 0m side setback and front setback controls for commercial development. This development pattern can be seen throughout much of the Nelson Bay town centre. The proposed front (Yacaaba St) and side setback is 0m at ground level, in keeping with the established character of the area. The front setback for the podium level of the building is 3m and the northern setback is 9m. The proposed setbacks are considered unlikely to significantly or adversely affect wind patterns beyond those effects typically expected in any urban centre.</p>

Section 4.15(1)(e) the public interest

The proposed development does not raise any significant general public interest considerations beyond the matters already discussed in this report. The development is consistent with the relevant environmental planning instruments, including SEPP No. 65. The proposed height variation has been found to be acceptable

Council's Urban Design Panel considers the proposal to be of a high design standard, which is expected to positively contribute to the built environment of Nelson Bay.

The proposed development would also provide additional housing opportunities that can rely upon existing social and recreational infrastructure existing within the Nelson Bay Town Centre.

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

Council's Local Infrastructure Contributions Plan applies to the subject development. Should the development be approved a monetary contribution would be payable to Council for the provision of 24 additional units.

DETERMINATION

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

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ASSESSMENT REPORT**Clause 4.6 – Exceptions to Development Standards****CLAUSE OBJECTIVES AND EXCLUSIONS****Clause 4.6(1) – Clause Objectives**

Clause 4.6 provides a mechanism to vary the development standards, such as building height, prescribed within PSLEP2013. The objectives of the clause are to provide an appropriate degree of flexibility in applying certain development standards to particular development, and to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

Clause 4.6(2) – Exclusions to the operation of clause 4.6

The development standard(s) is not excluded from the operation of clause 4.6 (Refer clauses 4.6(2); 4.6(6); and 4.6(8) of PSLEP).

PROPOSED REQUEST**Clause 4.6(3) – Request to vary development standards**

The development application includes a written request to vary development standard(s) in the *Port Stephens Local Environmental Plan 2013* (PSLEP).

The relevant development standard(s) and the extent of the proposed variation(s) is:

Development Standard	Proposed Variation	Extent of Variation (%)
Clause 4.3 of the PSLEP	3.2m	11.4%

As the proposed variation is greater than 10%, the development application will be determined by the full council.

Clause 4.6(3)(a) – Compliance is unreasonable or unnecessary

Clause 4.6(3)(a) requires the application to justify the contravention of the development standard(s) by demonstrating that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

In *Wehbe v Pittwater Council* (2007) LEC 827 (*Wehbe*), the Land and Environment Court identified five ways in which request to vary a development standard may be determined to be well founded. The clause 4.6 request makes reference to the following reason identified in the *Wehbe v Pittwater Council* case:

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard because.

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The applicant submits that parts 2, 3, 4 and 5 of the five-part test are not considered relevant to the proposal. Having regard to part 1 of the five-part test, the applicant's clause 4.6 variation request provides that compliance with clause 4.3 (building heights) is unreasonable or unnecessary. The key reasons provided by the applicant have been summarised below:

- The development provides a high quality apartment building (diverse residential accommodation) to support the Nelson Bay Precinct;
- With reference to the character statements in the site specific chapter for the Nelson Bay Centre under Section D5 of the Port Stephens Development Control Plan (PSDCP) 2014, the applicant considers that the proposal reflects the desired character of the precinct;
- The site has a height limit (28m) and FSR (3:1) significantly higher than adjoining land to the east, south, and west, which has a maximum height limit of 17.5m and maximum FSR of 2.5:1. Therefore, any building proposed on the subject site would be 10.5m (in the order of 3-4 storeys) taller and therefore possibly impact on possible views and overshadowing;
- The development is located on a corner site with two street frontages that provide a distinct break to the R3 zoned land to the south, which provides reduced overshadowing; and
- The height limit applying to the site indicates that Council clearly wanted a higher building than the adjoining land and considered it acceptable to have a transition from 5 storeys to 9 storeys at this zone interface.

Clause 4.6(3)(b) – Sufficient environmental planning grounds

Clause 4.6(3)(b) requires an application to justify the contravention of the development standard(s) by demonstrating that there are sufficient environmental planning grounds to justify contravening the development standard.

The applicant notes that sufficient environmental planning grounds are met for the following reasons:

- With reference to the character statements in the site-specific chapter for the Nelson Bay Centre under Section D5 of the PSDCP 2014, the applicant considers that the proposal reflects the desired character of the precinct.
- A Visual Impact Assessment prepared for the application determines that the visual effect of the proposed development, even with the additional height above the height limit, is low as the proposed works 'blends with the existing built form and landscape beyond'.
- The additional height will not result in any unacceptable privacy, overshadowing, or view loss impacts on surrounding developments.

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- Only the lift overrun is above 10% in height exceedance. This is a very small area on the rooftop and is not visible from street level or surrounding sites to the north, east or west. It is scarcely visible from the south and the visual impact is minimal.

ASSESSMENT

Clause 4.6(4) – Assessment of request to vary development standards*Clause 4.6(4)(a)(i) - Adequacy of the applicant's request*

Clause 4.6(4)(a)(i) requires the consent authority to be satisfied the Clause 4.6 Application has adequately addressed the matters set out in clause 4.6(3) of the PSLEP 2013 listed above.

The applicant's Clause 4.6 variation request relies on one of the five ways in which a request to vary a development standard may be determined to be well founded outlined in *Wehbe*.

Having regard to the first test set down in *Wehbe*, it is noted that the objectives of Clause 4.3 is to ensure that the height of buildings is appropriate for the context and character of the area. Clause 4.3 also seeks to ensure that building heights reflect the hierarchy of centres and land use structure.

With regard to the context and character of the area, it is noted that the Nelson Bay Town Centre is expected to undergo a period of revitalisation guided by Council's "Nelson Bay Town Centre and Foreshore Strategy" and "Progressing the Nelson Bay Town Centre and Foreshore Strategy: A Revised Implementation and Delivery Program". Subsequent to these strategies, various changes occurred in 2021 to amend the built form provisions within the PSLEP 2013 and PSDCP 2014 that apply to land within the Nelson Bay Town Centre. As such, it is appropriate to consider the future desired character of the Nelson Bay Town Centre, as established in Council's development controls and strategies as well as the existing context and built character of the area.

On this basis, consideration is given to the character statements in the site-specific chapter for the Nelson Bay Town Living and Commercial Precinct under Section D5 of the PSDCP 2014, which include the following:

- A wide range of uses including residential, retail and business development will occur in the precinct. This will attract a range of housing types including residential flat buildings, multi dwelling housing and shop top housing;
- The precinct is appropriate for larger scale developments, with large footprints, that may not be suitable for the adjacent Village Precinct;
- The mix of uses may encourage residential living with live-work opportunities and boutique commercial office space;



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- Development will have regard for adjacent precincts that provide a change in scale; and
- Mature street plantings are to assist in enclosing the street for pedestrians and reducing the scale of large style buildings located in this area.

It is considered that the proposed development, inclusive of the height exceedance is consistent with the PSDCP 2014 character statements noting that it is for a larger scale mixed use building comprising a residential flat building and commercial tenancy that presents live-work opportunities and commercial office space. Moreover, the proposal is of a similar height to the approved 9 storey development to the north at the corner of Donald Street and Yacaaba Street.

Taking into account that the adjacent precincts have lesser height and density controls, it is recognised that development on this site would possibly impact on views and overshadowing. However, the proposed height exceedance would involve a negligible change to impacts by way of overshadowing, privacy or view loss and overall the proposal has been found to not result in any unacceptable impacts of this nature that would be inconsistent with the Apartment Design Guide or any other relevant Environmental Planning Instruments, as discussed in detail within the Planners Assessment Report.

With regard to the existing built environment it is noted that there a varied range of building types and sizes, including old build single detached dwellings, two storey commercial buildings and more recently built high density residential and tourist accommodation, including the 5 storey mantra development to the east of the site. The proposed development is 4 storeys taller than the Mantra Apartments, however, due to its slender design, typically comprising 3 apartments per floor and effective use of colours and materials to improve articulation, the proposal is of a lesser bulk and scale.

With regard to natural character features, the Visual Impact Assessment submitted with the application suitably demonstrates that the proposal would not obstruct any of the important view corridors identified in Section D5 of the PSDCP and would not protrude above the ridgeline of the hill to the south, respecting a key visual feature of the surrounding landscape.

The site is sloped, falling from 16.5m AHD in the south to 14.7m AHD to the north. As a result, the extent of the exceedance changes with the slope of the land. The smallest extent of exceedance is 4.6% (1.3m) at the southern extent of the building and the largest extent of exceedance is 11.4% (3.2m) at the top of the lift overrun. The top of the lift overrun represents only a small area on the rooftop that would not be visible from street level or surrounding sites to the north, east or west. It is partially visible from the south at street level, representing minimal visual impact. The most prominent view point of the height exceedance is on the northern elevation, where the extent of the variation is 10.4% (2.9m) corresponding with the low point of the site. Despite the visibility of the variation at this point, the proposal would not protrude above the ridgeline of the hill to the south,

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thereby minimising perceived bulk and scale and is in keeping with character statements already discussed. Moreover, Council's Urban Design Panel recommended that the proposed exceedance is acceptable, taking into consideration the 9 principles of the Apartment Design Guide, which includes context and neighbourhood character.

With regard to the latter clause objectives relating to hierarchy of centres and land-use structure the proposal would be in keeping with the hierarchy of centres, established by the PSLEP and DCP height and density controls for the site which are the equal highest in the Nelson Bay Town Centre. Given the height and density controls at this location are equal to the highest available in the town centre, the hierarchy and land-use structure of the locality would not be disrupted by the proposed height exceedance.

On this basis, the objectives of Clause 4.3 are achieved, despite the numerical non-compliance. Subsequently, compliance with the standard is considered unnecessary in this instance.

Sufficient environmental planning grounds are noted to have been achieved on the basis that the proposal is consistent with the character of the area and that the additional height will not result in any unacceptable privacy, overshadowing, or view loss impacts on surrounding developments. A Visual Impact Assessment prepared for the application determines that the visual effect of the proposed development, even with the additional height above the height limit, is low as the proposed works 'blends with the existing built form and landscape beyond'.

Clause 4.6(4)(a)(ii) - Public interest – consistency with objectives of the standard and objectives of the zone

Clause 4.6(4)(a)(ii) requires the consent authority to be satisfied the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

As outlined above, notwithstanding the non-compliance with the standard, the objectives of clause 4.3 are achieved noting that the proposal is in keeping with the context and character of the area and is reflective of the hierarchy of centres.

Furthermore, the proposal is compatible with the zone objectives, relating to employment and services through the provision of a commercial tenancy in an accessible location. The residential flat building component of the proposal is compatible with the zone objectives, noting that it would support patronage of local retail, business and community uses which are highly accessible from the proposed location of the development. Due to the development being located in the Nelson Bay town centre, there are numerous public transport, walking and cycling opportunities afforded to future residents of the proposed building.



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The proposed variation, if replicated in future approvals would cause no undue cumulative impacts by way of undermining the objective of the development standard.

Clause 4.6(4)(b) - Concurrence of the Secretary

In accordance with the assumed concurrence, notified in [Planning Circular PS 08-003](#), the concurrence of the Secretary has been obtained (Clause 4.6(4)(b) of PSLEP).

CONCLUSION

The proposed development is considered to be consistent with the objectives of Clause 4.6 as in these particular circumstances, the objectives of the development standard are achieved notwithstanding non-compliance.



RECOMMENDED CONDITIONS OF CONSENT

1.0 - General Conditions of Consent

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

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

The Requirements are:

1. Ausgrid, Reference no. 1900110170 and dated 15/10/2021

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

- (2) **Approved plans and supporting documentation** – Development must be carried out in accordance with the following approved plans and supporting documentation (stamped by Council), except where the conditions of this consent expressly require otherwise.

Plan No.	Revision No.	Plan Title.	Drawn By.	Dated.
1708-A-1-01	F	Level B – Basement Carpark	Mark Lawler Architects	24/03/2022
1708-A-1-02	E	Level 01- Site Plan	Mark Lawler Architects	21/02/2022
1708-A-1-03	E	Level -02-08	Mark Lawler Architects	21/02/2022
1708-A-1-04	E	Level 09 – Communal Area/Penthouse	Mark Lawler Architects	21/02/2022
1708-A-1-05	E	Roof	Mark Lawler Architects	21/02/2022
1708-A-2-01 to 04	E	Elevations	Mark Lawler Architects	21/02/2022
1708-A-3-01 to 02	E	Sections	Mark Lawler Architects	21/02/2022
1708-A-7-04	E	Materials Board	Mark Lawler Architects	21/02/2022
1708-A-8-04	B	BASIX Requirements	Mark Lawler Architects	6/09/2021
37332 Sheets 1 – 7 of 7	B	Plan of Proposed Subdivision of Lots 34 & 35 Sec. 5 DP 17805	North Point Surveys	2/05/2022

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ITEM 2 - ATTACHMENT 3 RECOMMENDED CONDITIONS OF CONSENT.



210844 CIV01 & CIV02	E	Stormwater Management Plan - Sheet 1 & 2	DRB Consulting Engineers	24/03/2022
13717.5 L100	D	Level B – Landscape Plan	Terras Landscape Architects	29/08/2021
13717.5 L101	D	Level 1 – Landscape Plan	Terras Landscape Architects	29/08/2021
13717.5 L102	D	Level 9 – Landscape Plan	Terras Landscape Architects	29/08/2021
13717.5 L201	D	Planting Palette	Terras Landscape Architects	29/08/2021

Document Title.	Reference No.	Prepared By.	Dated.
Geotechnical Investigation	754- NTLGE289545- AB	Tetra Tech Coffey	12 July 2021

In the event of any inconsistency between the approved plans and the supporting documentation, the approved plans prevail. In the event of any inconsistency between the approved plans and a condition of this consent, the condition prevails.

Note: an inconsistency occurs between an approved plan and supporting documentation or between an approved plan and a condition when it is not possible to comply with both at the relevant time.

- (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) **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:
- protect and support the adjoining premises from possible damage from the excavation; and
 - 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.



- (5) **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.
- (6) **Outdoor lighting** - All lighting must comply with AS 1158 'Lighting for Roads and Public Spaces' and AS 4282 'Control of Obtrusive Effects of Outdoor Lighting'.
- (7) **Roof mounted equipment** – All roof mounted equipment such as air conditioning units, service pipes and vents etc., required to be installed must be concealed within the external walls of the development or adequately screened so as not to be visible from a public place.
- (8) **Design quality of development** - The approved design (including an element or detail of that design) or materials finish or colours of the building must not be changed so as to affect the internal layout or external appearance of the building without the approval of Council.

2.0 – Prior to Issue of a Construction Certificate

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

- (1) **Construction Certificate** - The following information must be provided to the Certifying Authority with the Construction Certificate application:
 - a) Structural and hydraulic engineering specifications demonstrating that the weight of the plantings and associated soil/drainage media and drainage penetrations in the podium and upper balconies/terrace area can be adequately supported.
 - b) Structural Certification for underground stormwater system(s) and foundations adjacent to infiltration tanks.
 - c) Directional signage for vehicles exiting to Yacaaba Street approved by the local traffic committee, directing one-way traffic flow.
 - d) The approved Stormwater Management Plan, Reference: 210844 CIV01, Revision E, prepared by DRB Consulting Engineers is to be amended as follows:
 - (i) The two 200 x 100 GALV RHS pipes that connect to the back of kerb on Yacaaba Street are to be amended to include a non-return backflow valve to prevent road water flow through the emergency overflow pipe to the infiltration system.
- (2) **Amended Landscape Plans** – The approved landscape plans must be amended to



incorporate the following amendments and be submitted to and prepared to the satisfaction of Council:

- a) Details of a tree vault or structural soil system for the *Zelkova serrata* street tree plantings providing a minimum of 12m³ soil must be provided for each planting to ensure the trees reach maturity.
- b) Remove *Bougainvillea glabra* species from Mass Planting Type B.
- c) Replace *Agathis robusta* (Kauri pine) and *Acmena smithii* (Lilli Pilli) plantings within the Tomaree Street front setback with alternate native feature tree species.

Details of a tree vault or structural soil system is to be provided for all trees at this location to ensure appropriate soil volumes are available for the trees to reach maturity.

- d) Drip lines are to be provided to horizontal edges and planter boxes are to be designed to avoid leaching

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

Details demonstrating compliance must be provided to the Certifying Authority.

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

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

- a) The stormwater system is to be designed to infiltrate all stormwater up to and including the 1%AEP storm event.

Details demonstrating compliance must be provided to the Certifying Authority.

- (5) **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.

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

Details demonstrating compliance must be provided to the Certifying Authority.



- (7) **Erosion and sediment control plan**– Before the issue of a construction certificate, the applicant is to ensure that an erosion and sediment control plan is prepared in accordance with the following documents before it is provided to and approved by the certifier:

- the guidelines set out in the NSW Department of Housing manual 'Managing Urban Stormwater: Soils and Construction Certificate' (the BlueBook), and
- the 'Do it Right On-Site, Soil and Water Management for the Construction Industry' (Southern Sydney Regional Organisation of Councils and the Natural Heritage Trust).

The applicant must ensure the erosion and sediment control plan is kept on-site at all times during site works and construction.

- (8) **Roads Act Approval** – For construction/reconstruction of Council infrastructure, including vehicular crossings. Footpath, kerb and gutter, stormwater drainage, an application must be made for a Roadworks Permit under Section 138B of the Roads Act 1993.

The following information must be provided to Council as Roads Authority with the Roads Act application:

- a) The driveway(s) accessing the development are to be designed to prevent any road water discharging onto the development site.
- b) 2.5m pedestrian connection to be constructed for the full frontage of the development site within Tomaree Street.
- c) Detailed plans for public domain upgrades within the road reserve adjacent the development in accordance with the Nelson Bay Public Domain Plan: Streetscape Design Guidelines.

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

- (10) **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.

- (11) **Car parking details** – Before the issue of any construction certificate, a suitably qualified engineer must review the plans, which relate to parking facilities and provide



written evidence, to the certifier's satisfaction, that it complies with the relevant parts of AS 2890 Parking Facilities- Off- Street Carparking and Council's development control plan.

- (12) **Construction Traffic Management Plan** - A Construction Traffic Management Plan shall be prepared by an accredited practitioner in accordance with Roads and Maritime Services – Traffic Control at Worksites Manual. The Construction Traffic Management Plan must include:

- a) specific timeframes for the undertaking of works,
- b) traffic control measures to limit impact on adjacent sites and Nelson Bay Town Centre,
- c) traffic control plans,
- d) vehicle movement plans,
- e) start of work notification, and
- f) provision for construction vehicle parking.

The Construction Traffic Management Plan must be provided to the Certifying Authority.

- (13) **Construction Noise Management Plan** - A Construction Noise Management Plan must be provided to the Certifying Authority and include the following:

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

- (14) **Construction site management plan** - Before the issue of a construction certificate, the applicant must ensure a construction site management plan is prepared before it is provided to and approved by the certifier. The plan must include the following matters:

- a) location and materials for protective fencing and hoardings to the perimeter on the site
- b) provisions for public safety
- c) pedestrian and vehicular site access points and construction activity zones
- d) details of construction traffic management identified under condition 2(12) above.
- e) protective measures for on-site tree preservation (including in accordance with AS 4970-2009 Protection of trees on development sites and Council'sDCP, if applicable) and trees in adjoining public domain (if applicable)
- f) details of any bulk earthworks to be carried out

ITEM 2 - ATTACHMENT 3 RECOMMENDED CONDITIONS OF CONSENT.



- g) location of site storage areas and sheds
- h) equipment used to carry out all works
- i) a garbage container with a tight-fitting lid
- j) dust, noise and vibration control measures as identified under condition 2(13) above.
- k) location of temporary toilets.

The applicant must ensure a copy of the approved construction site management plan is kept on-site at all times during construction.

- (15) **Section 7.11 Development contributions** – A monetary contribution is to be paid to Council for the provision of 22 additional dwellings, pursuant to Section 7.11 of the *Environmental Planning & Assessment Act 1979* and the Port Stephens Local Infrastructure Contributions Plan 2020 towards the provision of the following public facilities:

Facility	Per Lot/Dwelling	Total \$
Civic Administration – Plan Management	\$472	\$10,384
Civic Administration – Works Depot	\$1,231	\$27,082
Town Centre Upgrades	\$3,316	\$72,952
Public Open Space, Parks and Reserves	\$2,012	\$44,264
Sports & Leisure Facilities	\$1,914	\$42,108
Cultural & Community Facilities	\$1,296	\$28,512
Road Works	\$3,489	\$76,758
Shared Paths	\$3,196	\$70,312
Bus Facilities	\$12	\$264
Fire & Emergency Services	\$240	\$5,280
Flood & Drainage	\$1,846	\$40,612
Kings Hill Urban Release Area	\$293	\$6,446
TOTAL		\$424,974

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

- a) 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.

- (16) **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.



- (17) **Dilapidation Report** - Before the issue of a construction certificate, a suitably qualified engineer must prepare a dilapidation report detailing the structural condition of adjoining buildings, structures or works, and public land, to the satisfaction of the certifier. If the engineer is denied access to any adjoining properties to prepare the dilapidation report, the report must be based on a survey of what can be observed externally and demonstrate, in writing, to the certifier's satisfaction that all reasonable steps were taken to obtain access to the adjoining properties.
- (18) **SEPP No.65 – Universal design** – A minimum of 10% of the total apartments must be adaptable as required under the Apartment Design Guide. Details demonstrating compliance are to be provided to the Certifying Authority.

3.0 - Prior to Commencement of Works

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

- (1) **Home Building Act requirements** - Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the principal certifier for the development to which the work relates (not being the council) has given the council written notice of the following information —
- a) In the case of work for which a principal contractor is required to be appointed—
 - (i) the name and licence number of the principal contractor, and
 - (ii) the name of the insurer by which the work is insured under Part 6 of that Act,
 - b) In the case of work to be done by an owner-builder—
 - (iii) the name of the owner-builder, and
 - (iv) if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified becomes out of date, further work must not be carried out unless the principal certifier for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

- (2) **Payment of development contributions**- In the case of residential building work for which the *Home Building Act 1989* requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.
- (3) **Notice of Principal Certifying Authority appointment** – The Principal Certifier for this development must give notice must be given to the consent authority and Council, where the Council is not the consent authority, at least two days prior to subdivision and/or building works commencing in accordance with Section 6.6 (2) (a)



of the Environmental Planning and Assessment Act 1979 and Section 57 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021. 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 Certifier and the person who appointed the principal certifier;
- e) if the principal certifier is a registered certifier
 - i) the certifier's registration number, and
 - ii) a statement signed by the registered certifier to the effect that the certifier consents to being appointed as principal certifier, and
 - iii) a telephone number on which the certifier may be contacted for business purposes.

The notice must be lodged on the NSW planning portal.

- (4) **Notice of commencement of work** – Notice must be given to Council and the Principal Certifier, if not the Council, of the person's intention to commence the erection of the building or undertake subdivision work at least two days prior to subdivision and/or building works commencing in accordance with Sections 6.6 (2) and 6.12 (2) (c) of the Environmental Planning and Assessment Act 1979 and Section 59 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021. The notice must include:

- a) the name and address of the person;
- 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 numbers and date of issue of the development consent and construction certificate;
- e) a statement signed by or on behalf of the principal certifier that all conditions of the consent that must be satisfied before the work commences have been satisfied; and
- f) the date on which the work is intended to commence.

The notice must be lodged on the NSW planning portal.

- (5) **Signs on site** – A sign must be erected in a prominent position on any site on which building work or demolition work is being carried out:

- a) showing the name, address and telephone number of the principal certifier for the work, and
- b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and



- c) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work or demolition work is being carried out, but must be removed when the work has been completed.

Note: This does not apply in relation to building work or demolition work that is carried out inside an existing building that does not affect the external walls of the building.

- (6) **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.

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

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

- (8) **Erosion and sediment controls in place** – Before the commencement of any site or building work, the principal certifier must be satisfied the erosion and sediment controls in the erosion and sediment control plan, (as approved by the principal certifier) are in place until the site is rectified (at least 70% ground cover achieved over any bare ground on site).

- (9) **All weather access** – A 3m wide all-weather vehicle access is to be provided from the kerb and gutter to the building under construction for the delivery of materials and use by trades people.

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

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

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



- (11) **Hazardous Building Materials Assessment** – The site must be inspected for the presence of hazardous building materials by a suitably qualified occupational hygienist and in accordance with the National environment protection (Assessment of site contamination) measure 1999 (April 2013).

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

- (12) **Removal of hazardous building materials** – Any asbestos containing material encountered during earthworks, 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.

- (13) **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.

- (14) **Dilapidation Report** - Prior to the commencement of works, the applicant is required to notify Council in writing of any existing damage to public infrastructure (including landscaping) within the vicinity of the development, the absence of such notification signifies that no damage exists.

- (15) **Notice Regarding Dilapidation Report** - Before the commencement of any site or building work, the principal certifier must ensure the adjoining building owner(s) is provided with a copy of the dilapidation report for their property(ies) no less than 14 days before the commencement of any site or building works and provide a copy of the report to Council at the same time.

4.0 - During Works

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

- (1) **Implementation of BASIX commitments** - While building work is being carried out, the applicant must undertake the development strictly in accordance with the commitments listed in the BASIX certificate(s) approved by this consent, for the development to which the consent applies.



- (2) **Shoring and adequacy of adjoining property (if applicable)**- If the development involves an excavation that extends below the level of the base of the footings of a building, structure or work on adjoining land (including any structure or work within a road or rail corridor), the person having the benefit of the development consent must, at the person's own expense —

- a) Protect and support the building, structure or work from possible damage from the excavation, and
- b) Where necessary, underpin the building, structure or work to prevent any such damage.

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.

- (3) **Hours of work** – The principal certifier must ensure that building work, demolition or vegetation removal is only carried out between:

7.00am to 5.00pm on Monday to Saturday

The principal certifier must ensure building work, demolition or vegetation removal is not carried out on Sundays and public holidays, except where there is an emergency.

Unless otherwise approved within a construction site management plan, construction vehicles, machinery, goods or materials must not be delivered to the site outside the approved hours of site works.

Note: Any variation to the hours of work requires Council's approval.

- (4) **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.

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

- (6) **Excavations and backfilling** – All excavations and backfilling associated with this development consent must be executed safely, and be properly guarded and protected to prevent them from being dangerous to life or property, and in accordance with the design of a suitably qualified Structural Engineer.

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

- a) preserve and protect the building from damage; and



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

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

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

- (7) **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.
- (8) **Surveys by a registered surveyor** – While building work is being carried out, a registered surveyor is to measure and mark the positions of the following and provide them to the principal certifier —
 - a) All footings/ foundations
 - b) At other stages of construction – any marks that are required by the principal certifier.
- (9) **Construction Site Management Plan implementation** - All construction management procedures and systems identified in the approved Site Management Plans must be introduced during construction of the development to ensure safety and to minimise the effect on adjoining pedestrian and traffic systems.
- (10) **Stormwater disposal** – Following the installation of any roof, collected stormwater runoff from the structure must be connected to the approved stormwater management system.
- (11) **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.
- (12) **Unexpected finds contingency (general)** – Should any suspect materials (identified by unusual staining, odour, discolouration or inclusions such as building rubble, asbestos, ash material, etc.) be encountered during any stage of works (including earthworks, site preparation or construction works, etc.), such works must cease immediately until a qualified environmental specialist has been contacted and conducted a thorough assessment.



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

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

- (13) **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.
- (14) **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.
- (15) **Construction noise** – While building work is being carried out and where no noise and vibration management plan is approved under this consent, the applicant is to ensure that any noise caused by demolition, vegetation removal or construction does not exceed an LAeq (15 min) of 5dB(A) above background noise, when measured at any lot boundary of the property where the construction is being carried out.
- (16) **Delivery register** - The applicant must maintain a register of fill material deliveries which includes date, time, truck registration number, quantity of fill, origin of fill and type of fill delivered.

This register must be made available to Council officers on request and be provided to the Council at the completion of the development.
- (17) **Cut and fill (if applicable)** – While building work is being carried out, the principal certifier must be satisfied all soil removed from or imported to the site is managed in accordance with the following requirements:
 - (a) All excavated material removed from the site must be classified in accordance with the EPA's Waste Classification Guidelines before it is disposed of at an approved waste management facility and the classification and the volume of material removed must be reported to the principal certifier.

All fill material imported to the site must be Virgin Excavated Natural Material as defined in Schedule 1 of the *Protection of the Environment Operations Act 1997* or a material identified as being subject to a resource recovery exemption by the NSW EPA.
- (18) **Uncovering relics or Aboriginal objects** - While demolition or building work is being carried out, all such works must cease immediately if a relic or Aboriginal object is unexpectedly discovered. The applicant must notify the Heritage Council of NSW in respect of a relic and notify the Secretary of the Department of Planning, Industry and Environment and the Heritage Council of NSW in respect of an Aboriginal object. Building work may recommence at a time confirmed by either the



Heritage Council of NSW or the Secretary of the Department of Planning, Industry and Environment.

In this condition:

- “relic” means any deposit, artefact, object or material evidence that:
 - (a) relates to the settlement of the area that comprises New South Wales, not being Aboriginal settlement, and
 - (b) is of State or local heritage significance; and
- “Aboriginal object” means any deposit, object or material evidence (not being a handicraft made for sale) relating to the Aboriginal habitation of the area that comprises New South Wales, being habitation before or concurrent with (or both) the occupation of that area by persons of non-Aboriginal extraction and includes Aboriginal remains.

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.

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 DA 16-2021-781-1, 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 DA 16-2021-781-1.

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.

- (7) **Section 88B Instrument** – The applicant must prepare a Section 88B Instrument which incorporates easements, positive covenants and restrictions to user where necessary.

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) **Repair of infrastructure** – Before the issue of an occupation certificate, the applicant must ensure any public infrastructure damaged as a result of the carrying out of building works (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub-contractors, concreting vehicles) is fully repaired to the written satisfaction of Council, and at no cost to Council.

Note: If the council is not satisfied, the whole or part of the bond submitted will be used to cover the rectification work.

- (7) **Completion of Roads Act Approval works** - All approved road, public domain works, footpath and/or drainage works, including vehicle crossings, must be 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 any other documentary evidence** - Before the issue of the relevant occupation certificate, the applicant must submit, to the satisfaction of the principal certifier, works-as-executed plans, any compliance certificates and any other evidence confirming the following completed works:

- (a) All stormwater drainage systems and storage systems

The principal certifier must provide a copy of the plans to Council with the occupation certificate.

- (9) **Geotechnical Compliance Certificate** – A Certificate of Compliance prepared by a qualified Geotechnical Engineer must be provided to the Principal Certifying Authority stating that the works detailed in the Geotechnical Report have been undertaken under the Engineer's supervision and to the Engineer's satisfaction, and that the assumptions relating to site conditions made in preparation of the report were validated during construction.

This certificate must accompany the Works as Executed plans.



- (10) **Street tree planting** - Street tree plantings must be planted at no cost to Council and in the location(s) specified on the approved Landscape Plan, as amended by condition 2.2 of this consent. The plantings must have a minimum pot size of 75 litres and a minimum height of 2.0m.

Details demonstrating compliance must be provided to the Certifying Authority.

- (11) **Completion of landscape and tree works** – Before the issue of an occupation certificate, the principal certifier must be satisfied that all landscape and tree-works, including pruning in accordance with *AS 4373-2007 Pruning of amenity trees* and the removal of all noxious weed species, have been completed in accordance with the approved plans and any relevant conditions of this consent. An irrigation system is to be installed for the full extent of the landscape areas and is to remain operational for the life of the development.
- (12) **Car parking requirements** – A minimum of 34 car parking spaces are to be provided in accordance with AS2890 and the approved plans. Parking must be permanently marked on the pavement surface.
- The parking spaces marked as visitor spaces on the approved plans, must be signposted as “visitor parking”.
- (13) **Bicycle requirements** – A bicycle parking rack must be installed in a location conveniently accessible to the commercial tenancy.
- (14) **SEPP 65 – Design verification** – A design verification statement from a Registered and qualified architect must be submitted to the Principal Certifying Authority demonstrating the development has been constructed in accordance with the approved plans and the requirements of State Environmental Planning Policy No.65 – Design Quality of Residential Flat Development (unless superseded by this DA Consent).
- (15) **Hunter Water Corporation approval** - A Section 50 Application under the Hunter Water Act 1991 must be lodged with Hunter Water Corporation (HWC) and details of the Notice of Compliance from HWC must be provided to the Certifying Authority.
- (16) **Post-construction dilapidation report** - Before the issue of an occupation certificate, a suitably qualified engineer must prepare a post-construction dilapidation report, to the satisfaction of the principal certifier, detailing whether:
- (a) after comparing the pre-construction dilapidation report to the post-construction dilapidation report required under this condition, there has been any structural damage to any adjoining buildings; and
 - (b) where there has been structural damage to any adjoining buildings, that it is a result of the building work approved under this development consent.

Before the issue of an occupation certificate, the principal certifier is to provide a



copy of the post-construction dilapidation report to Council (where Council is not the principal certifier) and to the relevant adjoining property owner(s).

- (17) **Fire Safety Certificate** - A Fire Safety Certificate must be provided to the PCA in accordance with the requirements of the Environmental Planning & Assessment Regulation 2000.
- (18) **Safety and Security** – The following safety and security measures must be installed prior to the issue of an occupation certificate:
- a) Secure access system that excludes the public from building entries, communal spaces, car park and lift lobby.
 - b) Intercom access control for each apartment.
 - c) After hours security lighting for external areas and entry, operated by a timing mechanism and movement sensors, where appropriate.
- Details demonstrating compliance must be provided to the certifying authority.

8.0 – 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** – During occupation and ongoing use of the building, the applicant must ensure all subsequently installed noise generating mechanical ventilation system(s) or other plant and equipment that generates noise are in an appropriate location on the site (including a soundproofed area where necessary) to ensure the noise generated does not exceed 5dBa at the boundary adjacent to any habitable room of an adjoining residential premises.
- (5) **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.



- (6) **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.
- (7) **Fire Safety Schedule** - At all times, a copy of the Fire Safety Schedule and Fire Safety Certificate must be prominently displayed in the building and a copy forwarded to the Commissioner of New South Wales Fire Brigades in accordance with the Environmental Planning & Assessment Regulations 2000.

Advice Note(s):

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

Council has no regulatory authority in this area and does not adjudicate civil disputes relating to the provision of, or payment for, the erection of dividing fences. If there is a neighbour dispute about the boundary fence and you are seeking mediation, you may contact the Community Justice Centre, or if legal advice or action is required, you may contact the Chamber Magistrate.
- (3) **Disability Discrimination Act** – The Commonwealth Disability Discrimination Act makes it an offence to discriminate against people on the grounds of disability, in the provision of access to premises, accommodation, or services. It is the owner/applicants responsibility to ensure compliance with the requirements of this Act.
- (4) **Works near/adjoining electricity network assets** – There are underground electricity network assets adjacent to the proposed development in Tomaree and Yacaaba Street. Any works undertaken adjacent to Ausgrid assets must be undertaken with care in accordance with Ausgrid Network Standard Document NS 156 – Work Near or Around Underground Cables
- (5) **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.



- (6) **Unit Numbering** - Prior to occupying the development or release of subdivision certificate (whichever occurs first) 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.

**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 (Resilience and Hazards) 2021, State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004, State Environmental Planning Policy (Biodiversity and Conservation) 2021, State Environmental Planning Policy No 65 - Design of Residential Flat Buildings and State Environmental Planning Policy (Transport and Infrastructure) 2021.
- The proposed development is, subject to the recommended conditions, consistent with the objectives of the Port Stephens Council Development Control Plan 2014 (PSDCP).
- Subject to the recommended conditions the proposed development will be provided with adequate essential services required under the PSLEP.
- The proposed development is considered to be of an appropriate scale and form for the site and the character of the locality.
- The proposed development, subject to the recommended conditions, will not result in unacceptable adverse impacts upon the natural or built environments.
- The proposed development is a suitable and planned use of the site and its approval is within the public interest.
- Any submission issues raised have been taken into account in the assessment report and where appropriate conditions of consent have been included in the determination. Council has given due consideration to community views when making the decision to determine the application.

REASONS WHY THE CONDITIONS HAVE BEEN IMPOSED

The following conditions are applied to:

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

ITEM NO. 3

**FILE NO: 22/107842
EDRMS NO: PSC2019-03541-002**

POLICY REVIEW: REZONING REQUEST POLICY

REPORT OF: BROCK LAMONT - STRATEGY & ENVIRONMENT SECTION
MANAGER
GROUP: DEVELOPMENT SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Receive and note submissions received during the public exhibition period **(ATTACHMENT 2)**.
- 2) Revoke the Rezoning Request policy dated 25 February 2020 (Minute No. 034) **(ATTACHMENT 3)**.
- 3) Adopt the revised Rezoning Request policy **(ATTACHMENT 1)**.

BACKGROUND

The purpose of this report is to seek Council's endorsement of the revised Rezoning Request Policy (the policy) shown at **(ATTACHMENT 1)**.

Please note that yellow highlighting in the attached policy indicates an amendment has been made and strikethrough text is to be deleted. Text highlighted in blue shows amendments that have been made following public exhibition.

The policy aims to reduce processing timeframes by permitting rezoning requests that are consistent with adopted Council strategies to be forwarded to the Department of Planning and Environment (DPE) for a Gateway determination under delegated authority. Elected Members will be notified of all rezoning requests that are lodged via the PS Newsletter.

The policy is consistent with the NSW Local Environmental Plan Making Guideline (DPE, 2021) which provides a detailed explanation of the steps of the NSW Local Environmental Plan making process to assist and guide councils, communities, State agencies, proponents, and practitioners. A copy of this Guideline is available in the Councillors Room.

The review of the policy results in no fundamental changes to the policy adopted in February 2020. There have been no major legislative changes that require a revised position of Council and all changes made are administrative corrections.

During public exhibition 1 submission was received **(ATTACHMENT 2)**. Minor changes were made to clause 5.5 of the policy as a result of the submission. Another amendment made after public exhibition is the incorporation of a name change of the

Department of Planning and Environment (DPE) which was previously Department of Planning, Industry and Environment (DPIE).

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 direct financial/resource implications, as the policy will continue to be implemented as part of ongoing operations.

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

LEGAL, POLICY AND RISK IMPLICATIONS

There are positive legal, policy, and risk implications in reviewing and updating existing policies to assist in facilitating more accurate and robust decision making.

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
There is a risk that rezoning requests are lodged that are inconsistent with DPE guidelines and contain inadequate information for assessment.	Medium	Adopt the recommendations.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The policy enables efficient assessment and processing of rezoning requests in accordance with the relevant planning legislation and relevant State guidelines. No

changes are proposed that impact notification and public exhibition requirements under planning legislation and overall social impacts are considered to be positive.

CONSULTATION

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

Internal

Consultation has been undertaken with the Development Planning unit. The Executive Team has been consulted to seek management endorsement for the revised policy.

No issues were raised with the exhibited policy.

External

In accordance with local government legislation, the revised policy was placed on public exhibition from 3 March 2022 to 1 April 2022.

During public exhibition 1 submission was received. Specific matters raised in the submission have been addressed in the response to submissions provided at **(ATTACHMENT 2)**.

Based on the responses to the matters raised in the submission, no further amendments to the exhibited policy are recommended.

OPTIONS

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

ATTACHMENTS

- 1) Rezoning Request Policy 2022. [↓](#)
- 2) Submissions Table. [↓](#)

COUNCILLORS ROOM

- 1) Copy of Submissions.
- 2) Copy of the Local Environmental Plan Making Guideline (DPE, 2021).

TABLED DOCUMENTS

Nil.

Policy



FILE NO: 21/345716

TITLE: REZONING REQUEST POLICY

OWNER: STRATEGY AND ENVIRONMENT SECTION MANAGER

1. PURPOSE:

- 1.1 The purpose of this Policy is to provide a framework for the process and assessment of requests to amend the Port Stephens Local Environmental Plan 2013 (LEP 2013) (~~Rezoning Requests~~).

2. CONTEXT/BACKGROUND:

- 2.1 Part 3 of the Environmental Planning and Assessment Act 1979 (the Act) enables Council to prepare and make amendments to the LEP 2013. Generally, amendments consist of changes to zoning, but may also include changes to development standards, or other matters in the LEP 2013 that regulate the use of land.
- 2.2 When Council is initially requested to amend the LEP 2013 (a Rezoning Request), the Act enables Council to require the provision of studies or other information in order to assess the request. This Policy sets out the process and minimum requirements for Rezoning Requests.
- 2.3 Before the LEP 2013 can be amended, a Planning Proposal is required to be prepared, setting out the justification for the proposed change and an explanation of the intended effect (Planning Proposal). The NSW Department of Planning, Industry & Environment (DPIE) requires Planning Proposals to be prepared in accordance with their published guidelines (~~Planning Proposals – a guide to preparing Planning Proposals~~) (Local Environmental Plan Making Guideline). This Policy is consistent with DPIE requirements.
- 2.4 The use of delegated authority provides an opportunity for effective and timely decision making in relation to Rezoning Requests, however, it is appropriate that Council is informed of the exercise of delegated authority. In all circumstances, Council may request staff delegation be withdrawn and a Rezoning Request be reported to Council.
- 2.5 In all circumstances, a final amendment to the LEP 2013 will be reported to Council for adoption prior to being made.

3. SCOPE:

- 3.1 This Policy applies to all Rezoning Requests.

Policy

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Policy



- 3.2 This Policy applies to the administration and exercise of Council's functions under Division 3.4 of Part 3 of the Act.

4. DEFINITIONS:

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

Lodgement	Lodgement of a Rezoning Request occurs on the date the relevant fee is paid, or if no fee is charged, on the date the Rezoning Request is submitted in accordance with the Port Stephens Rezoning Request Guide.
Planning Proposal	A report prepared in accordance with the DPIE's Planning Proposals – a guide to preparing Planning Proposals Local Environmental Plan Making Guideline and the Port Stephens Rezoning Request Guide setting out the justification for the proposed change to the LEP 2013 and an explanation of the intended effect.
Rezoning Request	A formal request for Council to amend the LEP 2013, received from a third party (eg landowner or consultant) and prepared in accordance with the Port Stephens Rezoning Request Guide.

5. STATEMENT:

- 5.1 This Policy aims to ensure Rezoning Requests are processed in a consistent, timely and efficient manner.
- 5.2 A Rezoning Request must be lodged in accordance with the Port Stephens Rezoning Request Guide. Requests that are not lodged in accordance with the Guide will not be accepted for lodgement.
- 5.3 Council is notified of all lodged Rezoning Requests via PS Newsletter to the Mayor/Councillors.
- 5.4 Proponents will be notified following a preliminary assessment of the Planning Proposal against the criteria and requirements set out in the DPIE's ~~(Planning Proposals – a guide to preparing Planning Proposals)~~ Local Environmental Plan Making Guideline and a Strategic Planning Assessment Report will be prepared.
- 5.5 Rezoning Requests that are consistent with adopted Council policies and strategies (including place plans) will be forwarded to the DPIE for a Gateway Determination under delegated authority. All other Rezoning Requests in accordance with clause 5.2 of this Policy, will be reported to Council. The Group Manager Development Services and/or Strategy and Environment Section Manager, at their discretion, may also report any Rezoning Requests to Council.

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Policy



- 5.6 Council will be notified of all Rezoning Requests prior to being forwarded to DP~~I~~E under delegated authority via PS Newsletter to the Mayor/Councillors.
 - 5.7 All final amendments to the LEP 2013 will be reported to Council for adoption prior to being made.
 - 5.8 The community can access all Rezoning Requests via a link on Council's website to the DP~~I~~E 'LEPs Online System'
<http://leptracking.planning.nsw.gov.au/>
 NSW Planning Portal <https://www.planningportal.nsw.gov.au/ppr>
 - 5.9 Rezoning Requests for minor matters will be consolidated and progressed as a single Planning Proposal forwarded to the DP~~I~~E under delegated authority periodically. Minor matters likely to be considered appropriate for inclusion are set out in the Port Stephens Rezoning Request Guide and include administrative amendments such as zone boundary adjustments and mapping updates to correct errors.
- 6. RESPONSIBILITIES:**
- 6.1 The Strategy and Environment Section is responsible for implementing, complying with, monitoring, evaluating, reviewing and providing advice on the Policy.
- 7. RELATED DOCUMENTS:**
- 7.1 Environmental Planning and Assessment Act 1979.
 - 7.2 Port Stephens Local Environmental Plan 2013.
 - 7.3 NSW Department of Planning, Industry & Environment's ~~Planning Proposals – a guide to preparing Planning Proposals~~ **Local Environmental Plan Making Guideline**.
 - 7.4 ~~NSW Department of Planning, Industry & Environment's Local Environmental Plans – a guide to preparing local environmental plans~~
 - ~~7.5~~ **7.4** Port Stephens Rezoning Request Guide.

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EDRMS container No.	PSC2019-03541	EDRMS record No.	TBA
Audience	Council, Development Services Group and public		
Process owner	Strategy and Environment Section Manager		
Author	Strategic Planning Coordinator		
Review timeframe	3 years	Next review date	TBD
Adoption date	25 February 2020		

VERSION HISTORY:

Version	Date	Author	Details	Minute No.
1	25 February 2020	Strategic Planning Coordinator.	New Policy. First draft.	034
2	Council meeting Date	Strategic Planning Coordinator	<p>Reformatted the policy into the new policy template.</p> <p>Updated link to NSW Department of Planning, Infrastructure & and Environment website.</p> <p>Minor corrections in spelling and grammar.</p> <p>Updated 5.5 by including a reference to place plans.</p> <p>Updated reference to the new NSW Department of Planning, Infrastructure & and Environment's Local Environmental Plan Making Guideline.</p> <p>Update the name of the Department of Planning and Environment (DPE)</p>	TBD

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Policy



			<p>from the previous name Department of Planning, Infrastructure & Environment (DPIE).</p> <p>Clarified clause 5.5 regarding rezoning requests being reported to Council.</p>	
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Policy

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ITEM 3 - ATTACHMENT 2 SUBMISSIONS TABLE.

Draft Rezoning Request Policy (2022) – response to submissions

No.	Author of submission	Comment	Council response
1	Tomaree Ratepayers & Residents Association (TRRA)	Misleading Title The Rezoning Request Policy (the Policy) should be renamed to more accurately represent its application to requests for changes to the Local Environmental Plan (LEP).	Colloquially the general public understands LEP changes as 'rezonings'. It is acknowledged that changes to the LEP can include matters beyond rezoning, however, a majority of the planning proposals processed, and all proposals initiated by private proponents are in effect 'rezonings'. The title of the Policy has also been chosen to be consistent with the Port Stephens 'Rezoning Request Guide' prepared for proponents. Using the same terminology reduces confusion.
		Importance of this Policy It is essential that policies and processes relating to re-zoning and other LEP changes ensure that changes only occur when there is a significant <i>public</i> interest, in addition to private interest of the landowner.	As outlined in the Local Environmental Plan Making Guideline (the LEP Guideline) published by the Department of Planning and Environment (DPE), justification of strategic and site-specific merit is the most important section of a planning proposal. The LEP Guideline requires that the proposal has: <ol style="list-style-type: none"> 1. Strategic merit – it should include reasonable justification explaining how and why strategic merit is achieved and needs to address all relevant principles, objectives, and actions in the relevant State and local strategic plans. 2. Site-specific merit – it needs to identify the potential environmental, social, and economic impacts of the proposal and outline proposed mitigation measures and justification. In this way, the planning proposal is to demonstrate that the proposal is suitable for the site and the site is (or can be made) suitable for the resultant development.

ITEM 3 - ATTACHMENT 2 SUBMISSIONS TABLE.

			<p>These requirements ensure that the public interest is at the forefront of the assessment. The significance of any private interest is not a consideration in the merit assessment of a planning proposal.</p> <p>The Policy does not change the above merit assessment requirements, but provides a framework for the internal Port Stephens Council process for rezoning requests.</p> <p>The LEP Guideline contains further detail about the various considerations regarding the merit assessment of planning proposals:</p> <p>https://www.planning.nsw.gov.au/Plans-for-your-area/Local-Planning-and-Zoning</p>
		<p>Process</p> <p>A request for rezoning or other LEP changes will not necessarily proceed to become a formal planning proposal, which will only occur if Council assesses it as deserving of a referral to the State Department of Planning for a Gateway determination to allow further preparation of the proposal.</p>	Noted.
		<p>Criteria for exercising delegated authority.</p> <p>Rezoning requests that are consistent with adopted Council policies and strategies (including place plans) will be forwarded to DPE for a Gateway</p>	<p>Council has established a framework of documents to guide planning and to ensure consistency of decisions.</p> <p>Primarily this relates to the Port Stephens Local Strategic Planning Statement and Live Port Stephens, Council's housing strategy as well as more recent Place Plans (ie Karuah).</p> <p>Within these documents, there are clear</p>

ITEM 3 - ATTACHMENT 2 SUBMISSIONS TABLE.

	<p>Determination under delegated authority.</p> <p>The Policy provides inadequate safeguards because:</p> <p>(1) 'consistent' is an unavoidable subjective judgement, and</p> <p>(2) even if everyone would agree that a change is broadly consistent, a requested change in relation to a specific location may still be highly controversial.</p>	<p>priorities, assessment criteria and/or identified development areas to allow Council staff to assess all proposals in a consistent objective manner.</p> <p>All of these strategies and policies have already been subject to community input /feedback and have been adopted by Council.</p> <p>It should be noted that adopted Council strategies and policies are published on Council's website and are available in other locations for the community to view at any time.</p> <p>Only a rezoning request that is consistent with adopted Council policies and strategies (including place plans) and can be forwarded to DPE for a Gateway determination under delegated authority under CI 5.5.</p> <p>As set out in the Policy, Councillors are notified of all rezoning requests on lodgement, including whether or not the request is consistent with an adopted strategy, and if delegations will be exercised.</p> <p>In accordance with Council's 'Planning Matters to be reported to Council' Policy, prior to Gateway determination, the Mayor or any Councillor may request that an application be reported to Council for determination by completing a Call to Council Form with 2 other supporting Councillor signatures.</p> <p>Council retains the ultimate decision making function in regard to whether or not a rezoning should be made. In all circumstances, a final amendment to the LEP is reported to Council for consideration.</p>
	<p>Role of Council vs staff</p> <p>Clause 5.5 suggests that <i>any</i> rezoning</p>	<p>Any rezoning request that is considered "patently inadequate" will not be accepted for lodgement as set out in clause 5.2 of the Policy.</p>

ITEM 3 - ATTACHMENT 2 SUBMISSIONS TABLE.

		<p>request that staff assess as not deserving to proceed will be reported to Council.</p> <p>We question whether this is necessary for even patently inadequate proposals.</p> <p>It seems perverse that they would be notified while 'favoured' requests would not necessarily reach Council until a Planning Proposal had been finalised many months later.</p>	<p>Should an adequate/complete proposal be lodged that is inconsistent with Council policies and strategies, the matter is reported to Council as outlined in clause 5.5 of the Policy.</p> <p>This will include a merit assessment and recommendation for Council to consider as to whether the proposal should proceed.</p> <p>This ensures that any complete rezoning request that is lodged but inconsistent with existing policies is considered/ determined by Council.</p> <p>Finally, the Local Government Act 1993 includes the power to delegate the Council's functions and decision making, including the function of referring a rezoning request to DPE for a Gateway determination under the planning legislation.</p> <p>Clause 5.5 of the Policy has been amended to better clarify which planning proposals are to be reported to Council.</p>
		<p>Minor Changes</p> <p>Bundling of minor changes to the LEP into a general administrative planning proposal seems a sensible efficiency measure.</p> <p>It should apply to all requests that fall below the threshold of 'significance' which we submit should be included in the Policy.</p>	<p>Noted.</p> <p>The Policy does not introduce any changes to this matter and reinforces the Environmental Planning and Assessment Act (EP&A Act).</p> <p>Where the proposal is minor in nature or consequence, an expedited amendment process under section 3.22 of the EP&A Act to an LEP may be adopted if the purpose of the amendment is to:</p> <ul style="list-style-type: none"> • correct an obvious error in the principal LEP • address matters that are minor in nature • deal with matters that the Minister considers do not warrant compliance LEP making process because they will not have any significant adverse impact on the environment or adjoining land.

ITEM 3 - ATTACHMENT 2 SUBMISSIONS TABLE.

			<p>The LEP Guideline provides more direction on this matter.</p> <p>There is no need to include a 'threshold of significance' as this will unnecessarily deviate from an existing process and criteria outlined in the EP&A Act.</p>
		<p>Public Notice</p> <p>We note from clause 5.8 that all rezoning requests are now made public through the DPE Planning Portal.</p> <p>While this level of transparency is welcome, to be meaningful it requires constant monitoring of the website by all community groups and concerned individuals – an unreasonable burden.</p> <p>It is no substitute for Council <i>pro-actively</i> informing the community of all significant Planning Proposals.</p>	<p>Community participation and public exhibition are integral to the LEP making process and undertaken after, and in accordance, with the Gateway determination.</p> <p>Notification of the planning proposal at the public exhibition stage should occur:</p> <ul style="list-style-type: none"> • on the relevant council's website • on the Planning Portal • in writing to affected and adjoining landowners unless this is impractical and therefore not required as part of the Gateway determination. <p>In addition, Port Stephens Council also makes hard copies of the planning proposal available to the public in all libraries and the Council administration building.</p> <p>In 2020, Council also amended its rezoning request process to proactively notify adjoining and adjacent neighbours when a new planning proposal is lodged with Council. This ensures that those who may be directly affected by a planning proposal are made aware at the earliest possible opportunity. This notification is above and beyond the requirements of the LEP Guideline.</p>
		<p>Conclusion</p> <p>We submit that all requests for significant Planning Proposals should be publicly notified before any significant staff time and effort are devoted</p>	<p>The concept of creating criteria of 'significance' fails to acknowledge the requirements of the State LEP Guideline and Council's existing strategic framework through the LSPS and strategic plans like the Local Housing Strategy and Karuah place plan.</p>

ITEM 3 - ATTACHMENT 2 SUBMISSIONS TABLE.

		<p>to them. This would ensure that any controversial proposals can be debated before significant costs are incurred and momentum built.</p> <p>If Council accepts the change we are proposing, it should be relatively easy to draw up some sensible criteria of 'significance' to be used as thresholds for implementation in practice.</p>	<p>This framework already establishes a high bar for what is considered to meet Council's requirements. Critically this does not refer to any subjective measure. It refers only to whether a planning proposal is consistent with Council adopted Plans.</p> <p>As noted above, Port Stephens Council provides significant opportunities for potentially affected landowners and Councillors to be aware of planning proposals being prepared.</p> <p>The idea of early notification/exhibition of potentially incomplete planning proposals will not lead to well-informed and constructive discussion about these proposals. It has the potential to create uncertainty, and controversy, as well as increase timeframes and costs.</p> <p>After Gateway determination, <i>all</i> comprehensive planning proposals and associated technical studies are publicly exhibited in accordance with their specific Gateway conditions and the LEP Guideline. This gives the community the opportunity to provide well-informed comments at that time.</p> <p>It should be noted that the LEP Guideline does not differentiate between planning proposals and the process to be followed, apart for minor rezoning requests as explained in the above.</p> <p>It is therefore unclear why a distinction between significant and non-significant planning proposals would be required or how non-subjective criteria for 'significance' can be defined.</p>
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ITEM NO. 4

**FILE NO: 22/108725
EDRMS NO: PSC2019-04770-005**

REVIEW OF DOG OFF LEAD AREAS - BOAT HARBOUR BEACH

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

RECOMMENDATION IS THAT COUNCIL:

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

BACKGROUND

The purpose of this report is to seek Council's endorsement of the proposed changes to the prohibited dog area at Boat Harbour Beach. This report is in response to the recommendations endorsed at the Council meeting on 22 June 2021 and shown at **(ATTACHMENT 3)**.

Commencing on Wednesday 4 August 2021, a trial was conducted permitting dogs off lead on Boat Harbour Beach. A three month extension to the trial was endorsed at the Council meeting on 26 October 2021 and shown at **(ATTACHMENT 4)**. The trial and survey both concluded 4 February 2022.

The trial period has provided useful insight into the suitability and impact of dogs on Boat Harbour Beach. Boat Harbour Beach is small in size, a popular beach used by families and a designated informal boat launching facility. An existing off lead dog exercise area is provided adjacent to the beach on Boat Harbour South Headland (Iluka Reserve).

Recognising the characteristics of Boat Harbour Beach and the outcome of consultation, it is recommended for this site to be made a dog exercise area with the following restrictions:

- Permit dogs on and off lead at all times during off peak season (May – September).
- Permit dogs on lead between 5pm and 9am during peak season (October – April).
Dogs are prohibited outside of these hours.

An amended map illustrating the provisions are shown in **(ATTACHMENT 2)**.

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 installation of new signage and dog faeces dispensers at Boat Harbour Beach. These costs will be accommodated within the existing operational budgets.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes		Cost associated with upgrading of signage and the supply of new dog bag dispensers.
Reserve Funds	No		
Developer Contributions (\$7.11)	No		
External Grants	No		
Other	No		

LEGAL, POLICY AND RISK IMPLICATIONS

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

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

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
There is a risk that increased usage of Boat Harbour beach as a dog off lead exercise area may have adverse impacts on other users' experience and the environment.	Low	Time restrictions during peak usage periods will reduce the adverse impact of dogs on users and the environment.	Yes

There is a risk that providing inadequate designated dog off lead areas could result in increased non-compliant use of dogs in public reserves.	Low	Adopt the recommendations and amend the signage to be clear and concise.	Yes
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SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

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

Dog off lead areas provide a public recreational space for pets and their owners to safely interact with other animals and members of the community. They provide people with the opportunity for social contact and improving social cohesion within a community. It is the intention that allowing provision to an off lead beach will reduce the likelihood of dog owners letting their dogs off lead in regulated areas which impedes on the recreational enjoyment of residents and park users. The time restrictions and on lead access during peak usage periods will maintain Boat Harbour beach as a valuable recreational space that can be enjoyed by all.

CONSULTATION

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

Internal

- Environmental Health and Compliance – Rangers reviewed the recommendations for the proposed changes and agreed upon the suitability and appropriateness of controls for Boat Harbour Beach.
- Community Services – Waste reviewed the budget allocation and agreed upon the expenditure required for the new dog bag dispensers.
- Councillor Briefing was conducted on 19 April 2022.

External

An online survey was opened on Council's Have Your Say platform and a community education event conducted at Robinson Reserve, Anna Bay. The consultation period was open from 4 August 2021 through to Friday 4 February 2022.

542 survey responses were received during the trial period. 345 (64%) respondents' were residents of Boat Harbour, 132 (24%) within Tomaree Peninsula, 42 (8%) in other areas in Port Stephens and 28 (4%) outside the LGA. Overall feedback was evenly split, with a decrease in support during the peak period (October – February).

Additionally, 372 survey comments were received during the consultation period. The most common concerns raised by the community related to safety, hygiene, limited space and user experience.

Council also received 8 complaints outside of the survey relating to concerns around safety and loss of amenity.

A comprehensive report of survey results are included in **(ATTACHMENT 1)**.

OPTIONS

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

ATTACHMENTS

- 1) Engagement Report - March 2022. [↓](#)
- 2) Boat Harbour Dog Exercise Area Mapping. [↓](#)
- 3) Council Report - Review of Dog Off Lead Areas - Anna Bay/Birubi Point Fisherman's Bay and Boat Harbour - 22 June 2021. [↓](#)
- 4) Council Report - Review of Dog Off Lead Areas - Boat Harbour - 26 October 2021. [↓](#)

COUNCILLORS ROOM

- 1) Unredacted survey responses.

TABLED DOCUMENTS

Nil.



Engagement Report – March 2022

Boat Harbour Beach dog off lead trial

4 August 2021- 4 February 2022

Summary

On 22 June 2021 the review of dog off lead areas for Anna Bay/Birubi Point, Fisherman's Bay and Boat Harbour was reported to Council.

From this Council report a trial of off lead for three months at Boat Harbour Beach was decided. A further Council decision on 26 October 2022 extending the trial for an additional three months to conclude on 4 February 2022 was made.

The reasons for the extension of the trial were

- COVID lockdowns impact on initial trial period
- To allow further feedback over the summer period
- Conduct community education/awareness event during trial period (clear of COVID restrictions)

Project Description

This specific trial builds on a body of engagement work undertaken during 2020 and 2021. The first engagement phase during November – December 2020 sought community input around what people valued about the existing off lead areas and what people would like to see in the future. The second engagement phase during May – June 2021 focused on gathering the levels of support (or otherwise) of proposed changes to the dog off lead areas. This information helped to inform the Council decision on 22 June 2021.

The current engagement phase during August 2021 – February 2022 has focused on gathering levels of support of the trial on Boat Harbour Beach. The following report focuses on the results gained during the trial period.

Engagement Approach

COMMUNICATIONS METHODS		
ACTIVITY	DESCRIPTION	REACH
Site signage	Trial information on site sign	3 signs printed
Project webpages	Dedicated Have your say page to host engagement tools and project detail see https://haveyoursay.portstephens.nsw.gov.au/dog-off-lead-review	1.36k visits between 3 Aug 2021 to 4 Feb 2022
Direct email	Direct emails to previous survey participants	270 x 2
Social media	Facebook Posts 4 Aug 2021 – 516 likes/reacts; 257 comments 30 Sep 2021 – 34 likes; 29 comments 9-16 Dec 2021 – Event – 123 responded attending or interested; 6100 saw the event 3 Feb 2022 – end of trial post seen by 3867, 5 likes, no comments	4 posts

ENGAGEMENT METHODS		
ACTIVITY	METHOD / DATE	REACH
Online survey	Individual responses Open 3 August 2021 – 4 February 2022	542 surveys completed
Doggy day out event	Community education/awareness event Held 11 Dec 2021	~100 attended

Key findings

Engagement Activity

Summary of activity

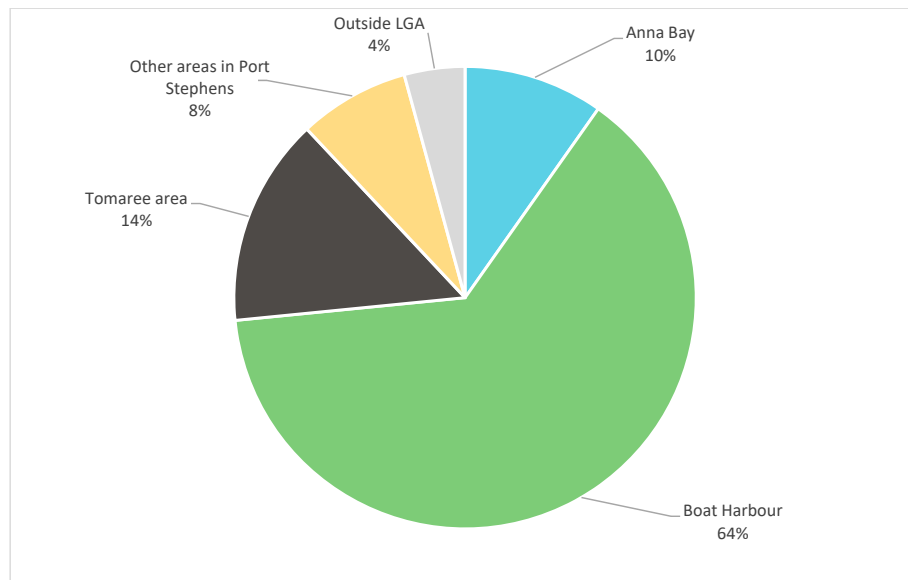
- A total of 542 surveys were completed regarding the ~5 month trial. This is considered a particularly good response rate for a single, site specific issue.
- The doggy day out event held on 11 December 2021 at Robinson Reserve, Anna Bay and was designed to provide an opportunity for local people to ask questions about the recent and proposed dog off lead rule changes from Council's Rangers.



Engagement Report March 2022
Boat Harbour Beach dog off lead trial
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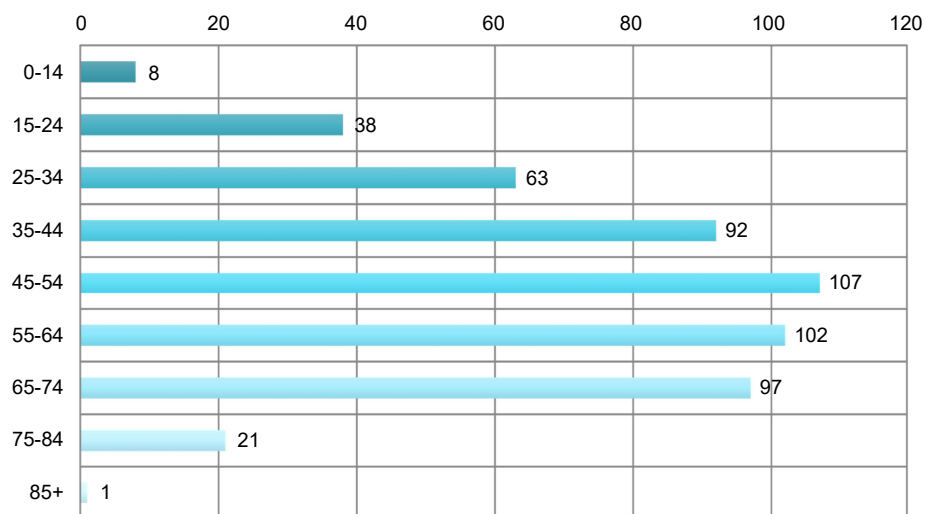
Survey Results

Question 1: Select your suburb

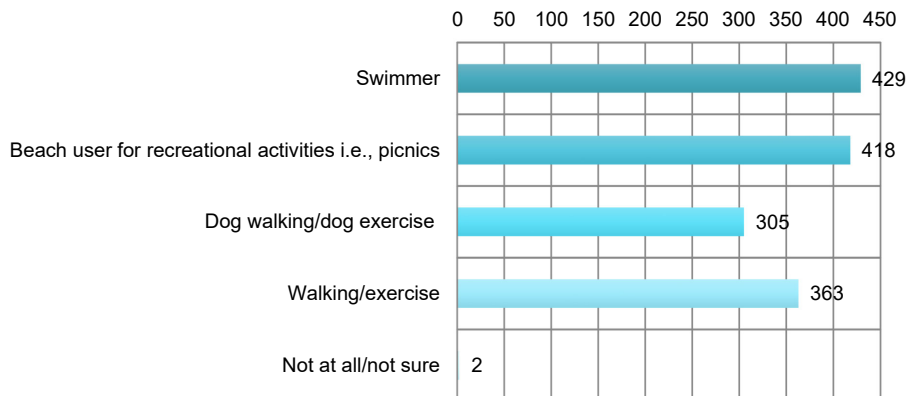


Select your suburb (n=542)

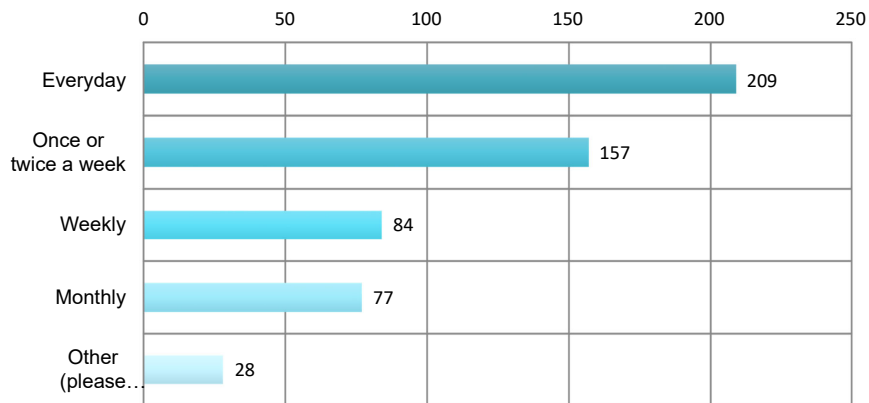
Suburb	# of responses	%
Anna Bay	53	10
Boat Harbour	345	64
Tomaree area (for example Nelson Bay, Salamander Bay, Fingal Bay)	79	14
Other areas in Port Stephens (for example Raymond Terrace, Lemon Tree Passage)	42	8
Outside LGA (for example visitor from outside of local government area)	28	4

Question 2: Please choose your age bracket (n=529)

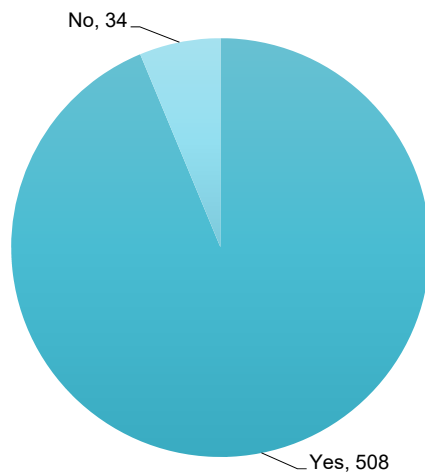
This question was not compulsory and approximately 13 people opted to skip this question.

Question 3: How do you use Boat Harbour Beach Tick all that apply (n=1517)

Question 4: How frequently do you use Boat Harbour Beach (n=555)

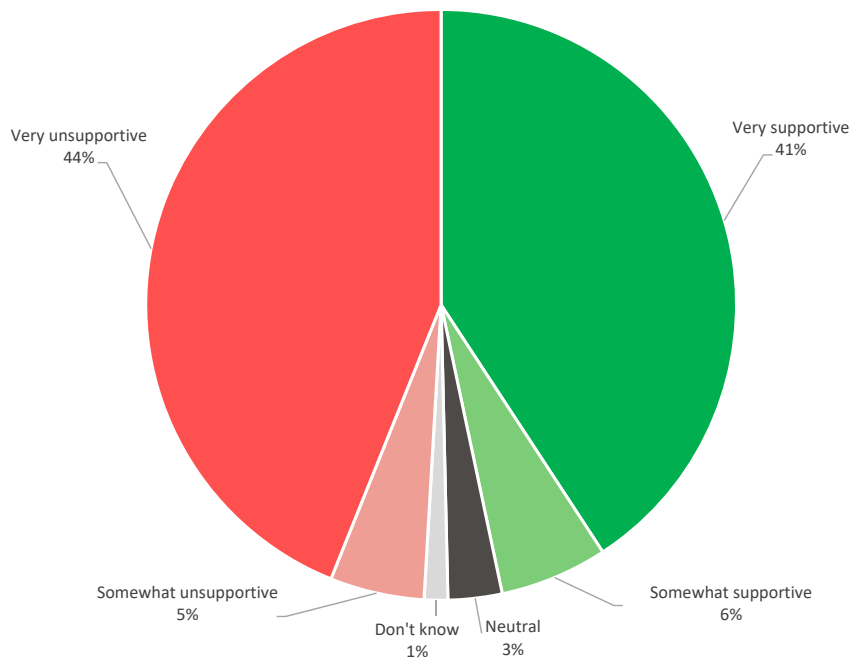


Question 5: Have you used Boat Harbour Beach during the trial period? (n=542)



Question 6: Tell us your thoughts on the dog on lead and off lead rules currently being trialed at Boat Harbour Beach:

Statement 1 – Dogs are permitted off and on lead at all times [August and September 2021 or Winter period]

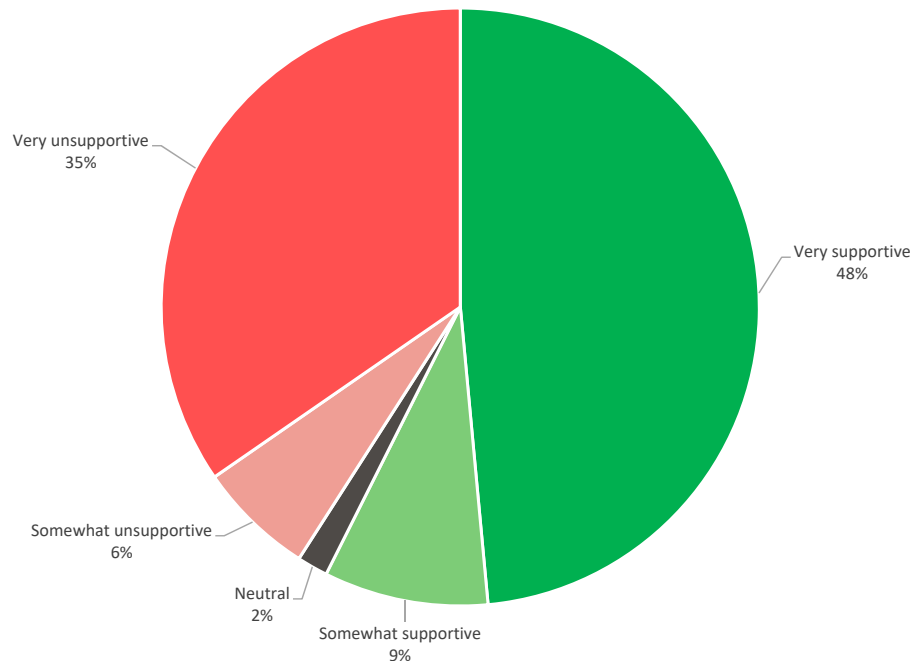


Data table: Statement 1 - Dogs are permitted off and on lead at all times [winter period] data (n=542)

Level of support	# of responses	%
Very supportive	221	41
Somewhat supportive	32	6
Neutral - neither supportive or unsupportive	16	3
Don't know or not applicable	7	1
Somewhat unsupportive	28	5
Very unsupportive	238	44

Question 6 continued: Tell us your thoughts on the dog on lead and off lead rules currently being trialed at Boat Harbour Beach:

Statement 2 – Dogs are permitted off lead between 5pm and 9am [October 2021 to February 2022 or Summer period]



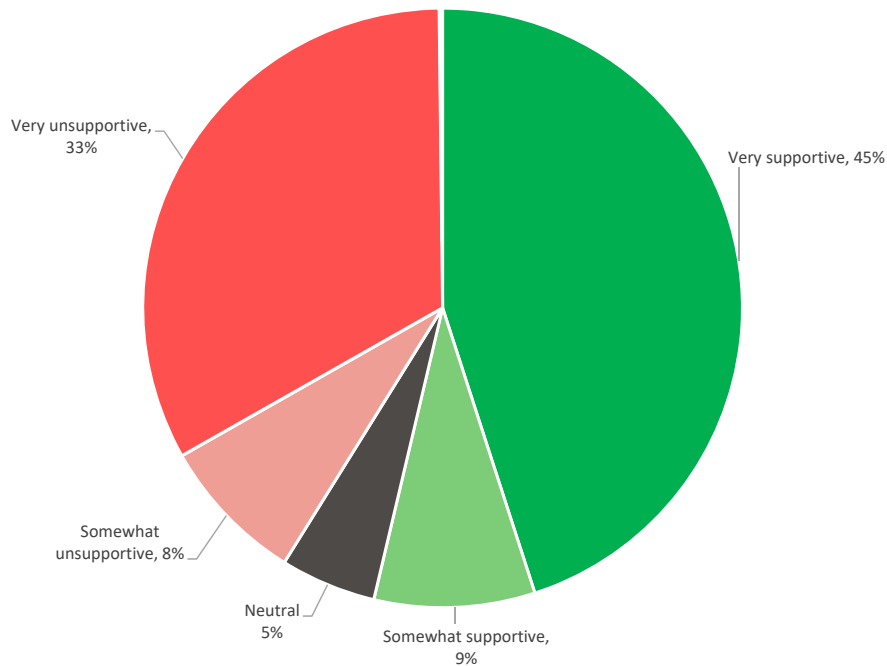
Data table: Statement 2 - Dogs are permitted off lead between 5pm and 9am [summer period] data (n=542)

Level of support	# of responses	%
Very supportive	262	48
Somewhat supportive	48	9
Neutral - neither supportive or unsupportive	9	2
Somewhat unsupportive	34	6
Very unsupportive	187	35
Don't know or not applicable*	2	0

* Don't know or not applicable 0% not graphed

Question 6 continued: Tell us your thoughts on the dog on lead and off lead rules currently being trialed at Boat Harbour Beach:

Statement 3 – Dogs are permitted on lead at all times



Data table: Statement 3 - Dogs are permitted on lead at all times data (n=542)

Level of support	# of responses	%
Very supportive	244	45
Somewhat supportive	47	9
Neutral - neither supportive or unsupportive	28	5
Somewhat unsupportive	43	8
Very unsupportive	179	33
Don't know or not applicable*	1	0

* Don't know or not applicable as 0% not graphed

Summary and key insights

PARTICIPATION

The level of participation in the trial period is extremely high as indicated under Question 1. These numbers are high for a number of reasons including:

- **multiple entries** by the same person/family (based on both IP addresses and email address entered)
- the **length of the trial** and associated survey (six months) and
- the **subject** of the survey tends to encourage responses

Multiple entries

Based solely on IP addresses the number of multiple entries is high with 118 people doing the survey at least twice. This number of multiple entries is further compounded by the fact that a further 109 respondents completed the survey at least twice on multiple devices, ie., different IP address, as evidenced by the number of duplicate email addresses provided by the respondents.

Length of trial

The number of multiple entries is reflective of the length of the trial as well. Generally, most Council surveys occur for a small window 2-3 weeks on average but due to the length of the trial it was anticipated that multiple entries would be expected and encouraged as the trial progressed.

Many of these multiple entries were completed at different stages of the trial period and produced different survey results as a result over the length of the trial. For example, a respondent completed the survey on 3 August 2021 and again on 3 February 2022 and the February response indicated a more supportive result of winter hours at this time.

However, there were still some bulk survey responses which were entered on the same day entries using the same IP address with different family names and emails.

Controversial subject

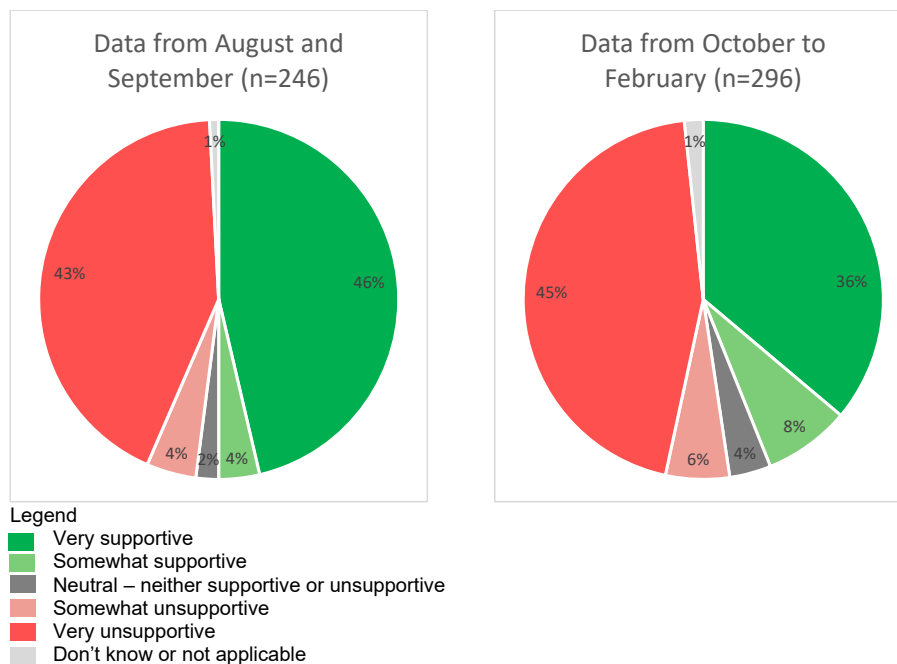
Dogs and in particular dog off lead areas have in general proven to be a highly emotive and motivating issue for our community and people are interested to be involved in the engagement process.

DETAILED REVIEW OF LEVELS OF SUPPORT DATA

The results shown under Question 6 indicate no particularly clear cut outcome.

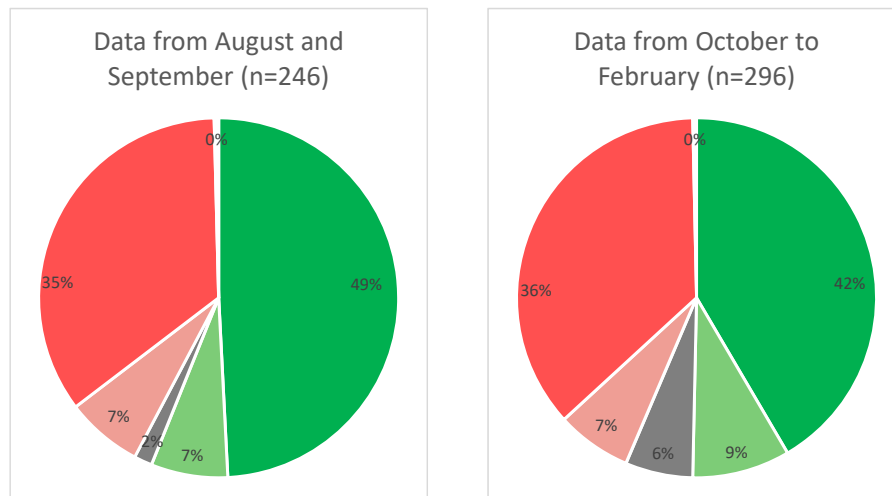
The following review of the levels of support data from Question 6 is designed to provide further insight into these results to better help inform decision making. The following information looks at the changes or trends in the level of support over the course of the trial period.

The following comparison graphs for each proposal statement have used the data points from two distinct time periods (August – September 2021) and (October 2021 to February 2022) to represent Winter vs Summer experiences of trial respondents.

Statement 1: Dogs are permitted off and on lead at all times**Analysis**

Over the course of the trial the level of 'Very supportive' responses has dropped by 10% and 'Very unsupportive' has grown by 2%. This remaining 8% went to the less certain options which indicates that support for the proposal had a growing amount of reservations attached to them.

Using a tally of both 'Very supportive' and 'Somewhat supportive' responses over the course of the trial, a trend of falling levels of support is seen (50% down to 44%).

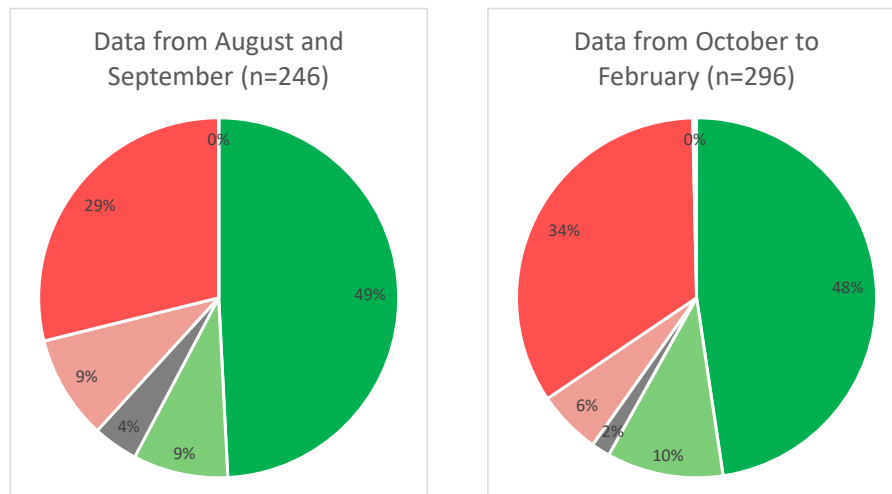
Statement 2: Dogs are permitted off lead between 5pm and 9am**Legend**

- Very supportive
- Somewhat supportive
- Neutral – neither supportive or unsupportive
- Somewhat unsupportive
- Very unsupportive
- Don't know or not applicable (0%)

Analysis

Again, over the course of the trial the level of 'very supportive' has dropped (down by 7%) and 'very unsupportive' has also grown (only by 1%). This remaining 6% went to the less certain options which indicates that support for the proposal had a growing amount of reservations attached to them.

Using a tally of both 'Very supportive' and 'Somewhat supportive' responses over the course of the trial, a trend of falling levels of support is seen (56% to 51%).

Statement 3: Dogs are permitted on lead at all times**Legend**

- Very supportive
- Somewhat supportive
- Neutral – neither supportive or unsupportive
- Somewhat unsupportive
- Very unsupportive
- Don't know or not applicable (0%)

Analysis

Again, over the course of the trial the level of 'very supportive' has dropped (only by 1%) and 'very unsupportive' has also grown (by 5%). This remaining 6% went to the less certain options which indicates that support for the proposal had a growing amount of reservations attached to them.

Using a tally of both 'Very supportive' and 'Somewhat supportive' responses over the course of the trial, a small trend of rising levels of support is seen (57% to 58%).

The results for this question were not as clear cut as staff had thought they might be considering that allowing dogs on lead primarily to cross the beach was part of an original recommendation based on feedback received from the previous stages of engagement.

The primary reason for the level of support being lower than expected is that people were unsupportive of dogs on Boat Harbour beach in general and therefore a distinction between whether dogs were on lead or off lead was a moot point. The main reasons provided for this include:

- Size of beach is too small to accommodate dogs
- Boat Harbour beach is a kid friendly beach and the two user groups didn't always mix well
- Poor animal (and owner) behaviour and hygiene

Some other more specific reasons to the lower than anticipated levels of support for dogs being permitted on lead on Boat Harbour Beach include:

1. Dogs on lead rules not being followed and corresponding lack of trust in Council to see such specific rules applied

Example comments:

- *Unless rangers are going to be stationed at the beach, people will ignore the on lead only rule. I have seen dogs off lead during October despite the signage.*
- *The problem with allowing dogs to be on lead all the time is that people don't follow the rules and allow their dog to be off lead. This was a common occurrence during the day at boat harbour. Off lead at off peak times is preferred.*
- *Dog owners don't comply to restrictions. Other beaches where they are allowed on a lead, owners let them run free and my children now have an unhealthy fear of dogs because they run up and jump all over them. The owners just smile.*

2. Dogs on lead being allowed but with time restrictions

Example comments:

- *On lead to walk across to dog park before 9am and after 5pm.*
- *Maybe on a lead only in the winter.*
- *Free range dogs have absolutely ruined this beach. There's dog poo everywhere and up to 20 dogs at a time. My kids are terrified. It's ok if on lead sunrise and sun set but during daylight dogs should not be allowed.*

3. Dogs to traverse only

Example comments

- *Suggest that dogs are only allowed on the beach on lead and for the specific purpose of traversing the beach. The trial period on/off lead rules were poorly observed. We observed multiple instances where off lead dogs almost collided with young children.*
- *I feel that dog owners could walk their dogs across the beach to get to the park but not to swim or run around. I was sitting in the beach last week when a dog came rushing up to me and peed on my beach bag! It's too small a beach for dogs.*

4. People who are particularly supportive of dogs being off lead didn't want to include an on lead option

Example comments

- *I think this should be an off-lead beach indefinitely.*
- *It's good to have more beaches where animals can enjoy freedom too.*

Appendix 1

Question 13 Any further suggestions regarding the trial on Boat Harbour beach? (Think timing restrictions, off lead and on lead access options)

Date and time	Any further suggestions regarding the trial on Boat Harbour beach? (Think timing restrictions, off lead and on lead access options) (n=372)
Aug 03 21 12:52:00 pm	We have young children, bit harbour beach is the safest beach for young children in the area, dogs have proved time and time again that they are unpredictable, I shouldn't have to restrict my children, so someone elses dog can enjoy the beach.
Aug 03 21 01:16:49 pm	Dog bags and disposable bins - excellent directive. Thanks again
Aug 03 21 01:36:47 pm	Dog faeces not being picked up by owners is a huge problem. Frequently dodging or stepping in dog faeces. Grandkids are terrified of dogs [REDACTED] Often go down after 5pm for a quick swim.
Aug 03 21 03:56:48 pm	This is not the right beach for this it is too small and is extremely busy during the summer months it will soon be overrun with dogs and sadly many irresponsible owners who will not clean up or control their dogs the headland provides a generous area
Aug 03 21 04:30:06 pm	Not everybody is a dog lover. There should be a space where you can go without the fear of dogs been there. Boat Harbour Beach should be a family friendly space
Aug 03 21 05:47:23 pm	Should be off lead only after 7 pm and before 7 am
Aug 03 21 07:13:24 pm	Allow dogs on Boat Harbour Beach the same as Birubi Beach plus allow trial 4pm to 10 am off lead.
Aug 04 21 01:41:33 pm	will not be walking our dog on boat harbour beach at any time. beach is for families not dogs!!
Aug 04 21 05:34:49 pm	Not boat harbour beach please. A lot of families with small kids use it. There are too many dog beaches as it is.
Aug 05 21 04:22:42 pm	[REDACTED] I can't believe PSC could finally make a commonsense decision. Maybe you can also credit those with outstanding fines from overzealous rangers in recent mths
Aug 05 21 04:31:22 pm	Beach too small to have this as not all of us are dog lovers or poo left on the sand lovers. I think if doing this trial, very large and in your face signage needed.ed
Aug 05 21 05:31:24 pm	beach access south side
Aug 05 21 08:38:40 pm	Boat Harbour is a very small family beach.Check on number of dogs in this area! There are MANY! I can see trouble here being unleashed dogs would spell chaos.
Aug 06 21 03:25:07 pm	Fantastic, well done and if the dogs owners prove responsible then keep it going,, the reason people live here is to escape the cities and all the shit councils

ITEM 4 - ATTACHMENT 1 ENGAGEMENT REPORT - MARCH 2022.

Date and time	Any further suggestions regarding the trial on Boat Harbour beach? (Think timing restrictions, off lead and on lead access options) (n=372)
Aug 06 21 03:29:42 pm	Dogs should not be off the lead while children are on the beach at anytime people do not do the right thing with there dogs
Aug 06 21 03:43:13 pm	In favour of the changes. A bag station at the North end would be great.
Aug 06 21 03:48:56 pm	very small beach with plenty of room for dogs in nearby park. irresponsible owners do not clean up dog mess and those that do drop plastic bags not necessarily in provided bins. don't think beach is big enough to cater for dogs as well as humans
Aug 06 21 08:20:35 pm	This is fantastic! The dogs LOVE it!! Great for families to bring their dogs too.
Aug 06 21 08:37:38 pm	[REDACTED] young kids [REDACTED] show no insight into appropriate behaviours around dogs. There needs to be a safety consideration here. I don't take my kids to the offleash parks because I respect this. I don't want to have to avoid the beach
Aug 07 21 08:39:26 am	Great idea. Fingal would be good too.
Aug 07 21 09:48:44 am	I think this is a fantastic idea and comment council on making it happen. Thank you.
Aug 07 21 05:17:18 pm	Boat Harbour beach is far too small for the number of dogs on it
Aug 07 21 06:36:26 pm	Make the start of dog exercise earlier its nearly dark and cold at 5pm for old people.
Aug 10 21 09:49:32 pm	Who is going to be responsible when a dog jumps up on kids and elderly people not all dogs are well behaved and not all owners are responsible
Aug 11 21 12:00:09 pm	I think dogs should be allowed off lead during the winter months only .Dogs on lead only ,at other times so older people can cross the beach to use the exercise area.
Aug 12 21 05:22:41 pm	3 months is hardly going to provide a good level of use and feedback, especially in the October / summer period. Suggest the trial go for 12 months.
Aug 13 21 11:38:42 am	Having been harassed by off lead dogs and their owners, dogs should be banned permanently from the beach. They are a danger to older walkers and small children . [REDACTED]
Aug 14 21 09:38:38 am	Should be on lead at all times, as some people do not control their dogs appropriately. This is a huge issue for other adults&children&dgs. Dogs have an off lead space to run near the beach, keep the beach an on lead space for everyone to enjoy please.
Aug 14 21 10:48:33 am	Going forward, I think we need to consider beach users and dog owners. Restricted times for off leash seems fair, say 4pm to 10am and on lead at other times. Council needs to provide dog litter bags and bins.
Aug 14 21 10:52:32 am	There's very few beaches where this is possible close by
Aug 14 21 11:15:37 am	Dogs on beaches- not appropriate
Aug 14 21 11:52:44 am	Would love to have a dog friendly beach at all times

ITEM 4 - ATTACHMENT 1 ENGAGEMENT REPORT - MARCH 2022.

Date and time	Any further suggestions regarding the trial on Boat Harbour beach? (Think timing restrictions, off lead and on lead access options) (n=372)
Aug 14 21 04:10:47 pm	I agree to the original proposal of dogs on The beach itself is not suited to dogs off lead. It is a family beach, I have just witness an off lead dog nearly bowl over a toddler, the owner was oblivious & took no steps to control their dog.
Aug 15 21 12:47:32 pm	Happy with what is currently allowed based on trial
Aug 15 21 12:49:23 pm	Should not be allowed at all
Aug 15 21 12:50:16 pm	Should not be allowed, people do not pick up the dog poo, my kids end up stepping in it. Not happy at all and I am a raye payer!
Aug 15 21 12:51:03 pm	So far the trial has been great!
Aug 15 21 01:01:03 pm	Great to be able to have a path from the existing grassed off lead area to access southern section of Boat Harbour beach; totally support timed access during busy summer periods.
Aug 16 21 04:03:07 pm	As long as dog owners do the right thing I see it as a great thing for our area
Aug 16 21 04:46:40 pm	limited time off leads
Aug 16 21 08:07:55 pm	Would love to access other nation park areas. Bush tracks etc
Aug 18 21 10:49:11 am	The trial of untimed and unleashed dogs is a total disaster. I no longer use the beach as I have seen young families distressed when unleashed dogs run right across the beach at full speed, or run into the water when small children are playing on the beach
Aug 18 21 11:10:41 am	Add to previous comments. Unrestrained dogs (not dogs), I've countered 7 on the beach at one time almost knocking over small children. The dogs are on the beach at all hours, early morning, days and evenings. Owners just don't care!!
Aug 19 21 04:52:35 pm	Boat Harbour beach already had a boat ramp and is a very small beach. Popular with locals and families. Dogs already have the southern headland for off lead exercise as well as Biribi and Corlette
Aug 21 21 04:39:26 pm	The off-lead trial has been going for 17 days so far and there have been several instances where dogs have run over towels covering them with sand and 3 cases where dogs have frightened tiny children. In summer there are people on the beach until after 6
Aug 22 21 05:35:18 pm	Beach is too small to accommodate dogs on or off lead. Great beach for young children and families. Should be able to relax on beach without dogs sniffing around your food and doing their business. Too many irresponsible dog owners that don't pick up dog do
Aug 22 21 05:55:55 pm	Since the inception of the trial, the dog poo has increased on the beach. Also the number of dogs off lead has increased on the beach & on the streets. Boat Harbour beach is suited to be used by very small children & should be safe from dogs.
Aug 22 21 06:05:26 pm	Too smaller beach, predominantly used by parents with young children. Dog use of the beach is totally incompatible with this.

ITEM 4 - ATTACHMENT 1 ENGAGEMENT REPORT - MARCH 2022.

Date and time	Any further suggestions regarding the trial on Boat Harbour beach? (Think timing restrictions, off lead and on lead access options) (n=372)
Aug 22 21 06:54:24 pm	[REDACTED] could not sit there for more the 10 minutes, dogs kept running up knocked baby over and had my toddler screaming we have a dog . But it's no place for dogs off leash a child will be hurt
Aug 22 21 06:54:54 pm	[REDACTED] There was a lot of dog poo on the beach this past week. Not happy about it.
Aug 22 21 06:58:39 pm	Too much dog poo down the beach. Kids getting mailed by dogs. The beach is too small to have dogs on it.
Aug 22 21 06:59:40 pm	Since the inception of the trial, the dog poo has increased on the beach. Also the number of dogs off lead has increased on the beach & on the streets. Boat Harbour beach is suited to be used by very small children & should be safe from dogs.
Aug 22 21 07:07:58 pm	Too smaller beach, predominantly used by parents with young children. Dog use of the beach is totally incompatible with this
Aug 22 21 07:16:26 pm	What a way to destroy a family friendly beach
Aug 22 21 07:16:45 pm	This is the calmest beach in the area, so it is popular with young families. My preschoolers are leery of dogs, I don't like them getting scared by dogs running up on them
Aug 22 21 07:17:31 pm	The beach is too small.. when it gets busier, it will be hard to control with lots of young children and dogs. It feels dangerous.
Aug 22 21 07:18:27 pm	After peak ours on leash only , was approached by a few off leash dogs and was frightened
Aug 22 21 07:27:04 pm	Definitely no dogs on the beach at all . The beach is for families to enjoy instead of worrying about dogs running at you or standing in dog poo. The headland is great for dogs off their lead.
Aug 22 21 07:52:31 pm	Not happy can't walk on the beach its packed with dogs off leashes running a muck, children are getting knocked over from dogs ff leashes. Dog poo in the sand. It's not a good place for picnics anymore
Aug 22 21 07:56:02 pm	Absurd idea, the beach is too small. Families frequently use it with little kids. [REDACTED] There are already numerous beaches that allow off lead options.
Aug 22 21 07:57:35 pm	Dog should not be on this beach at anytime off the lead
Aug 22 21 08:02:47 pm	It's a family beach will not work being both so sad to see this happen
Aug 22 21 08:08:20 pm	No off lead for dogs please at all. This is not suitable on a small beach and was not what the community proposed. Leave south headland as it is please as this proposal to change was what caused this poor outcome for the beach.
Aug 22 21 08:15:02 pm	On lead to walk across to dog park before 9:00am and after 5.00pm
Aug 22 21 08:19:32 pm	Finish it now. Dog mess is everywhere and people are allowing their dogs off lead beyond the assigned perimeter and without control. It is dangerous.

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Date and time	Any further suggestions regarding the trial on Boat Harbour beach? (Think timing restrictions, off lead and on lead access options) (n=372)
Aug 22 21 09:06:44 pm	I don't support it as an off lead area. I've seen dogs run close too close to children and have seen dog poo not picked up. I feel there are enough other areas more suitable.
Aug 22 21 09:10:22 pm	I think people should be able to walk their dogs across the beach on lead. But that's all!
Aug 22 21 09:20:07 pm	Since the trial began there is dog crap all over the beach and [REDACTED] small girl get knocked over by an unleashed dog. This beach is only about 90m long. It's too tiny to have heaps of dogs (and a lot of them are unleashed) regardless of the rules.
Aug 22 21 10:26:11 pm	I suggest dogs kept on a lead at all times whilst on boat harbour beach especially during peak summer months when there is more families around. Off leash area should be kept at the southern end when the open grassed area is.
Aug 22 21 10:41:31 pm	Stop the trial now. Most people have little or no control of their dogs with no recall skills. It's a very kid-friendly beach. Kids and dogs running, playing on the beach won't work. Dog owners don't clean up their dog poo on the headland. Beach is next!
Aug 23 21 12:43:12 am	No dogs on beach
Aug 23 21 07:46:53 am	Beach too small for dogs. Cannot enjoy a relaxing time on beach with dogs running around. This beach is good for young kids and no room for dogs to play safely.
Aug 23 21 08:00:35 am	Dog poo not being picked up by owners. Beach is not big enough for dogs and trample over kids playing in sand. I am a dog owner but don't think it's a beach for dogs. People can take dogs to birubi instead.
Aug 23 21 02:23:27 pm	This beach does not suit dogs AT ALL, It is a family recreational beach and too small to be both. For little children it is totally inappropriate to have dogs there as well.
Aug 25 21 06:38:48 pm	No access for dogs, the beach is too small. I've been knocked down several times by large dogs out of control. Owners have never apologised and just say "they're not going to hurt me". Many do not pick up the faeces either.
Aug 26 21 08:37:30 am	Dogs off lead are dangerous and unpredictable. Boat Harbour beach is a child-friendly safe beach and totally unsuitable to have dogs on the beach. The dog lobby has already commandeered the headland, and the adjoining park which should surely be enough?
Aug 26 21 08:55:46 pm	I take my children to this beach. I teach my children not to approach or try to pat other people's dogs. [REDACTED] I don't think the combo of dogs + kids is safe.
Aug 27 21 10:34:53 am	9 am is very early for me in summertime. Not many beachgoers are there before 10. which would be easier for me. I'm so happy to be able to take her on the actual beach for a play. We will come more often
Aug 27 21 01:57:26 pm	Should be no off lead access - many people refuse to control their dog/s
Aug 27 21 04:45:03 pm	Dog should not be on this beach at anytime it is a safe kids beach
Aug 28 21 01:45:22 pm	Off lead at rocky end allowed with no time restrictions
Aug 30 21 08:29:49 am	Really Enjoying it. Wish there was an off lead beach in Soldiers Point after 5pm

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Date and time	Any further suggestions regarding the trial on Boat Harbour beach? (Think timing restrictions, off lead and on lead access options) (n=372)
Aug 30 21 12:47:18 pm	Unfortunately not everyone is smart with their dog off lead and I have already seen lots of instances of dogs scaring children. The beach is too small for a bunch of dogs off leash and for kids to also enjoy beach.
Aug 30 21 03:42:47 pm	Beach is too small for overly active uncontrolled dogs. They can harass people unexpectedly.
Aug 31 21 12:08:02 pm	Dog owners must be responsible for dogs off lead, including by picking up poo and ensuring dogs don't annoy other users
Aug 31 21 06:21:05 pm	It's a great option for responsible dog owners to be able to exercise their dogs on the beach. Unfortunately there are a few people who don't supervise their dogs adequately. Dogs on leads should be allowed on Boat Harbour beach at all times.
Aug 31 21 11:30:34 pm	It is a small beach and I am not too fussed as to having dogs on beach during daytime in busy holiday periods. As long as we can exercise together in early am or late pm that would be very reasonable. The initiative has been very popular
Sep 01 21 12:50:10 pm	Dogs are part of families. All family members should be allowed on beaches at all times but should always clean up after themselves, eg human rubbish as well as dog poo on the beach
Sep 01 21 09:48:08 pm	There is going to be a serious incident as a result of this trial. Dogs are out of control attacking each other. Bystanders are caught in the middle of dogs running across the beach to get to another dog. Crap everywhere. Send an inspector, stop asap.
Sep 06 21 09:03:01 am	I do not believe any dog should be off lead on Boat Harbour beach at any time. We use the beach daily and all of us have had wet, sandy dogs jump on us. On lead anytime is fine as they are observed and under control and poops should be collected.
Sep 08 21 07:08:10 am	The beach is a favourite for families with small children. They now have to put up with uncontrolled dogs jumping all over them and digging up nuggets with their bucket and spade. Please leave Boat Harbour Beach dog free.
Sep 08 21 02:17:07 pm	Clear signage for other non- dog beach users that it is a dog friendly beach
Sep 08 21 02:41:45 pm	As a dog owner I would prefer to allow dogs on lead to walk along the beach to access the headlands between 5pm and 9am. Dogs prohibited at all other times. The beach is popular with young families and too small to safely accommodate both at the same time
Sep 08 21 03:48:34 pm	This beach is a kid friendly beach or is too small to have dogs running around as children play on the sand and in the water
Sep 08 21 03:53:56 pm	Maybe on a lead only in the winter
Sep 08 21 04:02:55 pm	We are in a pristine tourist region and dog owners do not clean up after their pets, dogs on beaches make public feel uncomfortable plus make the locations smell and unhygienic. If dogs are allowed at certain times only this is unclear & people take advan

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Sep 08 21 04:04:42 pm	Think of daylight savings and non daylight savings if you are going to use 5pm and 9am you may wish to rethink times for winter
Sep 08 21 04:30:41 pm	Timing should be consistent with Birubi beach - standardises access times in the area and reduces confusion about when I off or on-lead
Sep 08 21 05:58:33 pm	Dogs off the lead on a family beach is not practical. My observations are that people do not have their dogs controlled when off the beach. I'm concerned about the mix of young children and dogs on a fairly small beach.
Sep 09 21 06:17:26 am	Support off lead during Winter months when Beach is not used for swimming or picnics by groups of people. On lead in months when Beach has higher numbers of swimmers & picnickers etc.
Sep 09 21 02:43:23 pm	Boat Harbour is a family, child orientated beach. Dogs are prohibited in children's play areas, but yet are allowed to roam freely where children swim. I have observing uncontrolled dogs approach my child who is terrified. Dogs on leads, or not at all!
Sep 09 21 07:56:15 pm	on lead across the sand September to March
Sep 09 21 08:18:48 pm	Great to keep dogs off leash to enjoy with the family!
Sep 09 21 08:24:25 pm	On lead anytime, offlead outside 9am-5pm would be preferable.... small beach full of kids and cars.
Sep 09 21 08:27:43 pm	Dogs should be allowed off lead at all times
Sep 09 21 08:30:28 pm	I would be happy to just keep on Leash during certain hours only
Sep 09 21 08:48:14 pm	I don't think they need to be off lead all day, after 5pm is enough. During the day they can go to Bagnalls beach or Anna bay.
Sep 09 21 10:39:30 pm	Please don't allow dogs off lead. Owners don't control them. Council rangers don't supervise the beach and as like Birubi Beach the uncontrolled dogs are becoming a major Pr.
Sep 10 21 06:45:32 am	Times to mirror Birubi Beach would be less confusing for all beach goers
Sep 10 21 07:21:04 am	I support dogs being on the beach on lead at any times. I am a dog owner and walk across the beach each day with my dogs to access both headlands.
Sep 10 21 07:34:45 am	As a dog owner, it is great to take my dog on a leash onto Boat Harbour beach. I don't think dogs should be off leash on the beach. It is a small beach, it is the safest beach in Boatie so attracts the most families.
Sep 10 21 10:01:37 am	Increased off lead daylight hours refugees all year
Sep 10 21 10:33:54 am	being able to walk my dog in this beautiful area is an integral part of my day We are all time poor so my recreation and exercise time is merged with my dog's exercise time so offlead is life changing
Sep 10 21 11:29:35 am	Please allow dogs off leash at all times
Sep 10 21 11:54:35 am	I would like people who are against this to understand that including this beach it is 1 of 3 dog beaches out of 26. Do you really need to find a reason to take it away from people who will use it everyday with their dogs.

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Sep 10 21 12:00:36 pm	We appreciate the beach access for our dogs very much.
Sep 10 21 12:06:09 pm	We would love to continue to access the beach with our dogs following all the rules expected.
Sep 10 21 12:16:27 pm	I do buy my own poo bags plus use the ones provided by Council. Could Council provide a bag stand either end of beach? I would gladly keep the bags at home and refill when required.
Sep 10 21 12:27:18 pm	Great initiative
Sep 10 21 01:11:30 pm	Both dogs and owners seem very happy. Have not seen anything negative yet.
Sep 10 21 03:20:42 pm	I believe late afternoon and early mornings all year round to allow for both people with dogs to enjoy the beach and also people without dogs or prefer not to be on the beach with dogs can also enjoy beach during main part of the day.
Sep 10 21 05:29:10 pm	There are enough off lead beaches
Sep 10 21 06:18:06 pm	Keep the same times and rules for all locations so we have options continuity and not overcrowding a particular location
Sep 10 21 09:42:28 pm	Love being able to walk with my dogs on the beach and give them a swim
Sep 11 21 09:50:27 am	People are not controlling their dogs when off lead. Interaction between people young and old, boats, cars and dogs is a considerable risk also takes away from the amenity of the beach while dogs are running loose. People don't abide by the off lead times
Sep 11 21 04:54:42 pm	The Boat Harbour Beach is a small beach next to a very large off leash area. There should be no need to diminish the enjoyment of this beach with unleashed dogs running around everywhere. It doesn't make any sense at all.
Sep 12 21 01:29:10 pm	Not good with young kids around and owners not picking up after their dogs.
Sep 12 21 01:33:28 pm	Dog poo everywhere not picked up by owners. Absolute chaos for families with large dogs sprinting between children and not to mention a Sunday afternoon with all the boats coming and going. It's a massive hazard. There is a dedicated dog park next door.
Sep 12 21 01:52:42 pm	I love to see dogs running free. But sadly we can't foresee the potentially large number of dogs that would be brought to this little beach if fully opened up. I would like the headland to be off and on lead at ALL times. No one inconvenienced here.
Sep 12 21 03:11:43 pm	It is AMAZING to have another beach where dogs are permitted off lead at all times. Please make this permanent.
Sep 12 21 04:12:29 pm	
Sep 12 21 04:24:08 pm	Dogs on Boat Harbour Beach are often uncontrolled and are scaring people who are getting out for some exercise. While walking along Boat Harbour Beach, local residents have the right to feel safe and enjoy our local area and beaches in a peaceful manner.
Sep 12 21 07:42:42 pm	I was there today with my 3 small children. Owners were paying no attention to their dogs. They were racing up and down the beach nearly knocking children over. And then they were marking their territory on people's belongings.
Sep 14 21 03:10:07 pm	Do NOT want to share this space with dog poo or dogs in general including One Mile Beach

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Sep 14 21 04:04:42 pm	My grandson was knocked over by a dog who was let off the lead by its owner! There is a lot more dog poo around now!
Sep 19 21 04:03:28 pm	More time off lead would be great. But myself and my dogs are really enjoying the trial!
Sep 19 21 04:53:01 pm	Council to install doggy bags in various locations for convenience
Sep 20 21 07:32:26 am	Personally saw a large number of staffy dogs continually going up to young toddlers and children who were trying to enjoy the beach/water (some were obviously scared and crying). Great beach for young kids but very concerned about dogs in day hours.
Sep 21 21 10:17:30 am	Thanks we really need this
Sep 21 21 01:19:10 pm	Restrict on and off lead times to between 5pm and 9am. Dogs not permitted outside of this.
Sep 23 21 05:23:55 pm	This beach is perfect for families with young children to enjoy the beach and swimming in a somewhat safer environment . Children and dogs do not go well. Both can be unpredictable and this could pose to be a very dangerous.
Sep 24 21 09:46:41 am	Thank you. Being allowed to have our dog on the beach has been great.
Sep 26 21 08:27:41 am	Like the idea of dogs on or off lead between 5pm - 9am
Sep 26 21 08:36:36 am	Boat Harbour beach is small , the need for people to have dogs on a beach of this size is unfair to the majority of uses who don't have their pets with them. There's plenty of off lead area close by to satisfy the need for the dogs run free.
Sep 27 21 11:57:08 am	██████████ dog attacked by a supposedly on-lead dog today. It is NOT safe and unfair for families to have to watch out for out of control dogs in a public kid-safe swimming beach. Port Stephens council- please make a sensible decision.
Sep 27 21 12:21:49 pm	There can easily be a shared usage of tge beach- certain times for dogs to be on leash on the beach like middle of day in summer times, off lead permitted outside of 9am and 4pm. During winter off leash allowed all times or outside of 10 -3pm perhaps...
Sep 27 21 01:05:05 pm	Dog access at any time is not appropriate on what has been a family friendly beach. No all dog owners are responsible. Dog not under control of owner. Faeces left on sand or covered up. Dange to small children & older people.
Sep 27 21 07:17:44 pm	Please refer to the ██████████ facebook page. ██████████ ██████████ That has now occurred. Shut-down the trial.
Sep 29 21 11:30:33 am	Dogs on lead between 5:00pm and 9:00am non day light saving and 6:00 pm and 9:00am during day light saving period.
Sep 29 21 04:13:58 pm	Trial not appropriate during school holidays when extra children are in the water

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Sep 30 21 12:34:56 pm	We have used the beach several times during the trial with our dog. Shared the beach with other people and dogs without issue. It would probably be more of an issue when the beach is crowded so the 5pm to 9am option would be good during the warmer months.
Sep 30 21 12:50:57 pm	The beach is to small share unfortunately. Over the last month I've witnessed extra bad dog behavior and more dog poo left behind then before.
Sep 30 21 01:19:44 pm	██████████ Dogs pose a direct health risk to swimmers - they often vomit in the water after drinking it, urine cannot be picked up and loose poo is also impossible to pick up. This beach is no place for dogs on or off lead!
Sep 30 21 01:36:09 pm	I like the idea of on lead, so as to access the south headland without walking up to blanch st, however having been jumped on server all time by wet, sandy, friendly canines. I just don't like the though of dogs will I'm relaxing. Birubi is not far...
Sep 30 21 01:50:06 pm	Maybe consider using the south side near dog walking area headland has a small area the far side of rock to be dog friendly.
Sep 30 21 02:18:01 pm	During the off lead trial I have witnessed dogs chasing threatened shorebirds (Sooty oystercatchers) and large dogs running fast close to elderly people walking. Boat Harbour Beach is too small to have off lead dogs.
Sep 30 21 03:01:59 pm	It's ruining a family beach. People refuse to control their dogs. My children have been bailed up and the owner was useless. Someone will be bitten. Dogs have plenty of other places why take the family beach? Big mistake PS Council. Not to mention the poo
Sep 30 21 03:40:46 pm	I do believe that there needs to be restricted hours during peak holiday times as the beach can get quite crowded. My observation has been the dogs on the beach during the trial were well behaved and their owners were responsible
Sep 30 21 05:41:02 pm	Owners that let their dogs off leads know that they are friendly
Sep 30 21 06:13:13 pm	Please return the most peaceful and child friendly beach to us. We miss it so. It was our favourite beach but now my children are too scared to go there, even too scared to use the nearby playground. Each time we try again it ends in tears. Please....
Sep 30 21 10:25:17 pm	I truely feel allowing dog on the beach to be a huge mistake. Ownwes of dogs 8n this area already don't clears up after their dogs and often don't take notice of the no dog rules
Oct 01 21 06:21:21 am	Signage to let me know where the off lead area ends, especially in the headland. I want to follow the rules but am never sure.
Oct 01 21 07:22:36 am	I think every dog owner needs to understand that some humans with families do not want to be around off lead dogs while they are swimming or playing at the beach. I've made the choice to walk my dogs when the beach is quiet and if busy go elsewhere.
Oct 01 21 07:29:20 am	I'd like the off lead hours extended eg start at 3pm not 5

Date and time	Any further suggestions regarding the trial on Boat Harbour beach? (Think timing restrictions, off lead and on lead access options) (n=372)
Oct 01 21 08:50:27 am	Boat Harbour beach is too small for the number of dogs that go onto it. People do not control their dogs which often jump up on people. The restricted times are ignored by some owners
Oct 01 21 10:38:15 am	The beach is too small and gets packed out through summer to have every man, woman and dog off lead down there. I support off lead 7pm to 9am through summer and 5pm to 9am in winter but the potential for harm to other dogs&beachgoers is too great otherwise
Oct 01 21 12:51:02 pm	Happy with off lead times and on lead times. Allows, as I do, to walk my dogs across the beach without having to take the road.
Oct 01 21 03:03:27 pm	Please make the large rockpool area on the headland a no dogs area.
Oct 04 21 10:39:46 am	BH is a very small family beach and to have dogs around kids & family's on the beach is very unsafe. Many dog owners think that their dog is 'friendly' but to someone who is afraid or nervous of dogs they are not. Please some beaches with out dogs!
Oct 06 21 05:14:44 pm	During this first week of October dogs have been at BH beach off the leash at all times of the day. Dogs must be totally banned 9am to 5pm to prevent this happening.
Oct 07 21 06:44:04 am	██████████ is scared of dogs and now doesn't like to go to boat Harbour Beach because of the dogs off their lead. Have also seen a lot more poop in the area. Some dog owners are lazy and don't pick up the mess.
Oct 07 21 01:04:31 pm	I am supportive of off-lead times for the beach, however I also believe there should still be times where dogs are required to be on-lead. Some dog owners are not in control of their dogs when they're off-lead.
Oct 07 21 04:02:25 pm	I am against dogs on beaches because people are irresponsible and will not pick up dog poo. Also it is very intimidating when a dog runs at you. There are plenty of other places for people to walk their dogs. Quite frankly I am sick and tired of dog poo.
Oct 09 21 06:34:57 am	It's a great place to exercise dogs and humans! Just need to ensure the dog bags are replenished more often. I take my own but have noticed the public bag station empty very often. I think dogs can be off lead anytime so long as the dogs are controlled
Oct 09 21 07:49:09 am	Time at Boatie Aug to Sept not enjoyable. Small space to have dogs running around especially when many were untrained. Dogs approached our family, daughter was scratched. No to off lead times during the day! It ruined a family beach
Oct 13 21 12:14:56 pm	Having dogs allowed will also be great when holidays start! Would be better to have off lead all times, or at least let dogs on the beach on lead earlier (like when most families get home and walk the dogs around 3:30-4pm)
Oct 13 21 12:15:11 pm	Perhaps times could be from 4pm to 9am for those with young children.
Oct 13 21 07:36:25 pm	The trial worked well. many more dogs and owners enjoyed the freedom.
Oct 13 21 08:29:36 pm	Unless rangers are going to be stationed at the beach, people will ignore the on lead only rule. I have seen dogs off lead during October despite the signage.

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Oct 14 21 12:24:27 pm	The beach is not big enough to have dogs off lead and people don't control their dog. I like that dogs can be on the beach but they must be a on lead only
Oct 14 21 01:20:13 pm	Dog poo is out of control on beach. Health hazard. Dog fights and children knocked over by dogs. Sufficient off leash area on headland for my dog. PSC has a duty of care for health and safety of beach goers. Do not allow dogs on beach. Unclean and not saf
Oct 15 21 06:55:52 pm	It's great to be able to walk our dog and we appreciate the opportunity. However, none residents are using the beach throughout the day and are not taking the care that they should, which could ultimately spoil it for everyone. Dog hours should be 5pm-9am
Oct 16 21 10:35:38 am	Time restrictions are a must! This is a beautiful safe spot for young children to enjoy. Dogs being off leash in this public space with so many young children is unsafe and really disappointing. Dogs are unpredictable as are young children.
Oct 23 21 02:29:22 pm	I think this should be an off-lead beach indefinitely.
Oct 23 21 08:46:42 pm	off lead times should be between 6pm and 8am so that late and early swimmers do not have to be confronted by running dogs... on lead times should have an exclusion period from 9-12 & 3-6 busiest usage time, size of beach is small cant be compared to Burubi
Nov 01 21 08:18:37 am	This has been a great initiative. Being able to walk the dogs in the beach each day without having to drive out of the area has been fantastic.
Nov 01 21 04:41:13 pm	It's a small family beach opposed to this being implemented. Owners with dogs walk down and back without leads. As result I end up with branches dropped in the yard and dog excrement that is not picked up by owners.
Nov 01 21 04:53:21 pm	Dogs should never be allowed onto beach areas. It is a family beach (little surf) and dogs can be unpredictable. Also sadly there are uncaring dog owners who allow their pets to foul the beach and surrounding streets including the headland.
Nov 01 21 05:20:21 pm	The boat harbour beach has always been a family friendly beach but recently I have been finding far more instances where dog owners have neglected the responsibility of picking up after their dogs.
Nov 01 21 05:38:45 pm	It's a small beach used by families, dogs can be unpredictable, owners do not clean up after their dogs, foiling the headland
Nov 01 21 07:39:53 pm	More hours for off lead but it would be nice to have time for on lead only for any unsocial dogs
Nov 01 21 10:06:29 pm	Whilst we generally feel that the beach is too small for vigorous off lead activities - creating an intimidating environment for those of us who are not comfortable with dogs. We now regularly encounter dogs entirely unsupervised.
Nov 04 21 07:38:51 am	I think over the years we have come to realise what mental health benefits animals have on people. I believe that people having more access to exercise with their dog helps promote a better wellbeing. Dog owners must be responsible and respectful of other

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Nov 05 21 07:17:49 am	I think dogs should be allowed to be off lead at all times except the busy Summer holiday period. I notice that many visitors ignore the on lead rules blatantly and it's the locals who use the facility regularly who are penalised by the timing restrictio
Nov 05 21 07:35:23 am	Adjust off lead hours 4pm to 10am
Nov 05 21 07:48:34 am	Keep the restrictions during the summer months ,
Nov 05 21 07:49:51 am	Please extend off lead time
Nov 05 21 08:27:44 am	Beach too small for dogs. People unable to relax on beach without being annoyed by dogs. Also dogs behave differently on small area as not much space to avoid other dogs and play. Birubi is so close for dogs to enjoy.
Nov 05 21 08:32:39 am	Kid friendly beach. Not suitable for dogs as well.
Nov 05 21 08:36:12 am	Cant imagine what it will be like in summer holidays. Tourists and locals fill the small beach. Dogs will not be welcome.
Nov 05 21 08:44:42 am	In winter when not many people on beach it would be better. Not in warmer months.
Nov 05 21 09:23:44 am	Dogs should not be on this beach as it is a kid freindly beach and not big enough for dogs to run around
Nov 05 21 09:27:23 am	I don't think dogs should be on this beach at all it is to small and it is a family beach with lots of children playing in the sand they shouldnt have to play in dog poo.
Nov 05 21 09:52:47 am	There are already many areas in port Stephens where people can take their dogs. Boat Harbour is such a small quiet beach and I don't think it's appropriate.
Nov 05 21 10:23:08 am	The new off and on lead rules trial has been excellent for the community of Boat Harbour and aligning rules to the ones at Birubi is sensible, equitable and easy to follow.
Nov 06 21 06:15:20 am	On lead during peak times is probably the preferred so that families can easily continue to enjoy with out dogs running around in their space.
Nov 06 21 07:34:01 am	Nothing except possibly more pop bags and bins.
Nov 06 21 10:09:44 am	Too many people with off lead dogs during the day floting the rules. Have witnessed dogs fighting on the beach around small children and owners who don't care and/or can't control their dogs. An accident waiting to happen. Have never seen a ranger there.
Nov 06 21 11:24:36 am	I think the times need to be consistent all year round to avoid confusion. I think off lead between 5pm - 9am all year round is a good compromise if people object to the old off leach times (which I loved and used often)
Nov 08 21 10:05:41 am	Just got out of my car , walked down to the beach , found many dog droppings. Wont return !
Nov 09 21 02:28:09 pm	At 5.00pm last Saturday there were 27 adults and 13 Children still on the beach. There will be more when we hit Summer. It should be 7.00 pm not 5.00 pm.
Nov 09 21 02:50:52 pm	Keep the conditions simple and easy to remember.

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Nov 09 21 04:28:24 pm	We are a massive dog owning area - we need more access to beaches like Boat H and Birubi as most of them are not accessible as they are national parks
Nov 10 21 05:30:33 am	Please continue access to beach for dogs.
Nov 10 21 09:21:56 am	Dog "access" should be the same as Birubi - avoids confusion, is consistent etc.
Nov 10 21 11:11:55 am	Dogs should have more rights
Nov 12 21 08:18:12 am	This child friendly beach is totally unsuitable as a dog zone.
Nov 17 21 06:20:20 pm	Observed young children threatened by dogs. Also observed abandoned bags with dog litter on beach. Beach is small and not appropriate for dogs and humans to enjoy at same time. Surely we don't have to share our amenity with dogs and dangerous to young.
Nov 17 21 07:28:23 pm	I believe dogs should be on leads at all times when on the beaches
Dec 01 21 09:20:03 am	There is no need for dogs to be off lead. Some people do not like dogs
Dec 23 21 03:34:58 pm	Dogs are fine on beach during July and September on lease when not busy
Dec 24 21 10:13:38 pm	Suggest that dogs are only allowed on the beach on lead and for the specific purpose of traversing the beach. The trial period on/off lead rules were poorly observed. We observed multiple instances where off lead dogs almost collided with young children.
Dec 29 21 06:57:59 pm	On lead at all times, never off lead
Dec 29 21 07:10:13 pm	Free range dogs have absolutely ruined this beach. There's dog poo everywhere and up to 20 dogs at a time. My kids are terrified. It's ok if on lead sunrise and sun set but during daylight dogs should not be allowed.
Dec 30 21 12:36:55 am	the beach was full of young families and children, like it always is at a safe beach at Christmas. But there were also at least 15 dogs running around off leads all day. You cannot have toddlers and strange dogs off leads on a beach!!
Dec 31 21 09:58:55 am	A significant number of dog owners do not comply with the current trial regulations and it will be difficult to control. Additionally, I do not like swimming with dogs. I have seen dog feaces left at the small park area on the southern side of the beach.
Dec 31 21 11:31:57 am	I have witnessed a number of owners that do not comply with the dog on/off lead, and I am not the type of person to help them to understand the rules, therefore I'm hopeful this survey will get my point across
Jan 02 22 04:44:05 pm	Boat Harbour is a small area and close to National Park and sensitive native animals and plants. My experience so far is that dog owners have not been willing to share the beach with others. There were over 20 dogs on the beach at one time, too many.
Jan 02 22 04:47:47 pm	Boat Harbour beach should have remained a dog free zone. The other afternoon there were 14 large dogs running around on the beach, jumping on people. This is while there were still many swimmers and children. Also led to dogs off lead on Nth headland.

ITEM 4 - ATTACHMENT 1 ENGAGEMENT REPORT - MARCH 2022.

Date and time	Any further suggestions regarding the trial on Boat Harbour beach? (Think timing restrictions, off lead and on lead access options) (n=372)
Jan 05 22 08:31:09 am	It is very important that we have more ocean facing beautiful dog friendly beaches.. currently in NSW dog owners seem to be left to all the internal ugliest boring beaches, and that's unfair. I hope this motion passes and I'll be there often for sure!
Jan 05 22 08:53:18 am	N/A
Jan 05 22 12:11:36 pm	Since completion of the trial it has been a free for all as far as dogs being unrestrained on the beach. Council needs to install signs to clearly state the new rules. At present there are no signs at Boat Harbour Beach stating the rules.
Jan 05 22 03:51:53 pm	I would be somewhat supportive if all dog owners picked up their dogs poop & if the beach was not used by so many families with small children.
Jan 05 22 09:01:11 pm	I have seen people knocked over by off leash and uncontrolled dogs during the trialled off leash times after 5pm.
Jan 06 22 05:54:40 pm	Clear signage regarding off leash times etc needed as a lot of people seem to not know the rules - I walk both my small dogs both off and on leash depending upon the time of day but have noticed some abusing this privilege we have in Boat Harbour
Jan 07 22 02:00:35 pm	Dogs should only be allowed after 5pm and before 9am. People are taking advantage of taking their dogs during the day and going to ruin it for the people doing the right thing and times.
Jan 07 22 09:04:33 pm	Off lead at all times please. And more dog friendly beaches.
Jan 08 22 05:06:24 pm	Please Continue these arrangements, it has been absolutely marvellous to see dogs running and playing on the beach. Thank you for running this trial, and PLEASE make it permanent .I, and all dog owners I have spoken to think it is fantastic.
Jan 09 22 04:07:34 pm	Many times have seen dogs off lead not obeying owner commands and owners not picking up dog feces. As this is a smaller beach we come to visit with smaller children we would be in support of a no dog beach.
Jan 10 22 11:15:19 am	Too many dogs were running around even when they should have been on leads and disturbing beach goes. It's a wonder more children aren't hurt by being knocked over by dogs. It's a beautiful safe beach for families and now destroyed by barking & out contro
Jan 10 22 11:16:06 am	No dogs on the beach at boat harbour. To small a beach for dogs is a family beach for kids. [REDACTED] [REDACTED] Dogs were on the no lead.
Jan 10 22 11:22:15 am	Safe beach for kids- keep dogs away
Jan 10 22 11:31:15 am	5pm - 9am off lead is good but it's the people who don't care about that rule it either needs larger signs closer to the beach or to be more regularly policed by council. This new year had at one stag 7 dogs all offlead around lunch running into kids

ITEM 4 - ATTACHMENT 1 ENGAGEMENT REPORT - MARCH 2022.

Date and time	Any further suggestions regarding the trial on Boat Harbour beach? (Think timing restrictions, off lead and on lead access options) (n=372)
Jan 10 22 11:32:04 am	Dogs are to be kept on a leash, I have witnessed many dogs off leash causing problems for other beach users such as rushing at other dogs on leash, running through groups of people picnicking on the beach, running at small children knocking them down.
Jan 10 22 02:02:42 pm	Boat Harbour beach is small compared to other locations in Port Stephens, boat laughing and parking is allowed on the beach which further reduces the useable area. To have dogs allowed on the beach further reduces the useable area for non dog interested
Jan 11 22 07:35:39 am	It doesn't work. People don't follow the rules. Dogs are off the lead all the time. previously I was more supportive of the proposal but it is clear that many dog owners feel they can bring their dog on the beach off lead at any time. Faeces not picked up.
Jan 11 22 08:56:23 am	Dog should be not aloud on beach at all times or only on lead, never off lead this is a family beach
Jan 12 22 07:33:30 am	Over the Xmas break there have been more dogs then people more dog fights. Has to stop before someone is seriously hurt. Kids are fearful.
Jan 14 22 02:36:04 pm	This is a family friendly beach which has now turned into chaos with lots of dogs off lead at all times even though the trial us for certain times. The only way to turn it back into a family friendly beach is to ban dogs altogether on it.
Jan 14 22 02:44:55 pm	Beach is to small for dogs to run freely without annoying people trying to have a relaxing day at the beach. Birubi is a great dog beach and is only a 5 minute drive. No need for Boat Harbour beach to be dog friendly. It is chaos at the moment.
Jan 14 22 02:52:38 pm	Since the trial dogs are off leash throughout the day. It doesnt matter if there are times for off and on leash as once its a dog beach dog owners dont care and have off leash at all times.
Jan 16 22 03:22:08 pm	Very enjoyable to be able to have a beach picnic and take the dogs too.
Jan 16 22 03:27:14 pm	Would prefer day time on lead dogs for other dog goers and people who are visiting but are not dog people. Enjoy taking my dogs here on lead for recreational purposes.
Jan 19 22 11:28:13 am	I will not go to this beach anymore, [REDACTED] due to the number of off lead dogs running around on the beach at all times of the day. This was the one beach you could come to and not be harassed by dogs. I am a dog owner myself
Jan 24 22 02:02:02 pm	I have waited to see the Christmas crowd. Up to eight unleashed dogs on the beach at any time, some in water other racing on the beach and knock over two children, many close calls. The sign at the south end disappeared, the other on ground. BAN DOGS BH.
Jan 24 22 08:17:03 pm	Dog walkers and those seeking to exercise animals can already use the head land as per current rules, having dogs permitted on the beach (on lead or otherwise) results in people losing the only place they can currently go to recreate without dogs.
Jan 24 22 08:30:41 pm	Maybe make it 5:30pm in summer

ITEM 4 - ATTACHMENT 1 ENGAGEMENT REPORT - MARCH 2022.

Date and time	Any further suggestions regarding the trial on Boat Harbour beach? (Think timing restrictions, off lead and on lead access options) (n=372)
Jan 24 22 08:35:29 pm	I am a [REDACTED] local and frequent beach user. [REDACTED] and have found that the dogs completely ruin my experience of the beach and location.
Jan 25 22 02:20:52 pm	Boat Harbour beach was and always should be a family friendly beach. I recently saw an angry dog bark and threaten to attack a small child who was scared out of her wits. Dog owners already have dutchies beach. Boat Harbour is not the right beach for dogs
Jan 26 22 09:08:27 am	It is dangerous for children and people on the beach to have dogs running around not on leash. It is a family friendly beach and it is not fair to everyone else to be dealing with dogs running on them
Jan 27 22 08:18:43 pm	Boat Harbour has been a family beach for the past. [REDACTED] years I have been visiting it [REDACTED] [REDACTED] Parents come home from work and relax on the beach with their children after work where they relax while the children play on the
Jan 28 22 01:34:26 pm	I have 2 dogs who are always walked on lead. If dogs are walked on lead the owner has control of their dog, which in my view is very important, particularly on a beach, which is used by others, including small children.
Jan 30 22 11:35:25 am	I really hope that this trial is ending soon, I am terrified and I can not walk anymore. Free running dogs are a hassle for everybody who is afraid of dogs, so but it seems, there, dogs are dogs and we have already the Bagnal Beach and several other Parks
Jan 30 22 07:49:54 pm	Please keep dogs off the beach at all times
Jan 30 22 07:56:20 pm	Allowing dogs on Boat Harbour beach spoils it. The owners cannot be trusted to pick up the poo or keep them on a lead. Dog owners can become very aggressive when approached
Jan 31 22 09:23:34 am	Please make this a permanent arrangement. As a resident it is very healthy to be able to walk your dog safely across the beach
Jan 31 22 07:16:11 pm	Allow dogs on the beach
Feb 01 22 08:09:34 pm	I believe the beach should be a dog prohibited beach. The beach is a small area and the inclusion of dogs has had an impact on families attending the beach.
Feb 01 22 08:22:18 pm	Dogs on lead at any time during summer ruined the place! The beach is only small. There were yapping dogs, dogs strolling close to families. Not all children are comfortable around dogs even on a lead. Keep the beach family friendly & peaceful!
Feb 01 22 08:23:25 pm	Seasonal like Birubi, so in winter off lead at all times, in summer only 5pm-9am
Feb 01 22 08:33:11 pm	No dogs please, there are other beaches for dogs. Please return this beach to families with kids
Feb 01 22 08:53:52 pm	Absolutely ludicrous at the idea of having dogs off the lead at any time! Matter of time before a young child gets hurt!!!
Feb 01 22 08:54:00 pm	Increase compliance to ensure people with dogs stay within time restrictions.
Feb 01 22 08:55:17 pm	Trial times appropriate and very successful. Should become a standard practice.
Feb 01 22 08:59:17 pm	If this is to be ongoing, the time should be changed to between 7pm and 9am during daylight saving time.

ITEM 4 - ATTACHMENT 1 ENGAGEMENT REPORT - MARCH 2022.

Date and time	Any further suggestions regarding the trial on Boat Harbour beach? (Think timing restrictions, off lead and on lead access options) (n=372)
Feb 01 22 09:13:32 pm	Suggest to extend the Time restrictions especially after the summer holidays
Feb 01 22 09:17:00 pm	Would love to see the park end (opposite to boat ramp, off lead 24/7. Clear signage at both ends of the beach re: on/off lead times
Feb 01 22 10:01:20 pm	Off lead times now are great
Feb 01 22 10:12:27 pm	I own a dog so I am not anti dog BUT I have a grandchild who is very scared of dogs and I usually have to research dog beaches before I take him to any beach. I think Birubi and B vacc agnalls beach is enough for dog owners.
Feb 02 22 12:24:00 am	I think timed restrictions are good for people without dogs or otherwise dogs must be on a lead!!
Feb 02 22 06:28:32 am	Would be great to get from 4pm to 10am on weekends
Feb 02 22 07:12:31 am	It's appropriate for off lead on the southern headland - plenty of space. On lead on beach at all times - this will allow us to traverse across the beach, and swim with our dogs while they are under control.
Feb 02 22 07:12:55 am	Southern headland should be off lead. Dogs should be allowed on Boaty beach, but on lead only.
Feb 02 22 07:18:54 am	It's been great to have dogs off lead between 5pm-9am
Feb 02 22 07:25:08 am	Off lead Between 5 and 9 seems to work very well as it keeps everyone happy
Feb 02 22 12:01:06 pm	I found this survey to be quite confusing. I am supportive of dogs being allowed off leash for extended times (or no time limits) during the cooler months. I have answered very supportive to each option. Dogs should be allowed on the beach at all times.
Feb 02 22 12:45:13 pm	Off lead at all times
Feb 02 22 02:32:39 pm	Off lead at all times
Feb 02 22 02:39:31 pm	Off lead all times
Feb 02 22 02:54:06 pm	I'm a dog person myself , but I'm there are some very not so responsible dog owners who don't care what there dog does on the beach , I for one don't want the drama of someone else's running around my space while trying to relax on the beach & dog poo
Feb 02 22 02:59:49 pm	As dpgs are permitted at the northern end of Birubi which is often a sheltered spot for children to swim that attracts families, I don't think it is appropriate to convert Boat Harbour, the only other sheltered beach nearby, to a dog beach as well.
Feb 02 22 03:15:51 pm	I believe 5pm-9am works well for all, as many people don't use the beach before 9am
Feb 02 22 04:06:17 pm	As a parent of young kids needing quiet ocean beaches during the cooler parts of the day (morning and late afternoon) dogs make these beaches unsafe for small kids due to unrestrained boisterous dogs with few alternative beaches now available
Feb 02 22 04:23:44 pm	Hi love dogs but do not like being charged by excitable animals when walking. Owners should be more in control if their pets, all animals are unpredictable when running riot, especially around other dogs and young children, my

ITEM 4 - ATTACHMENT 1 ENGAGEMENT REPORT - MARCH 2022.

Date and time	Any further suggestions regarding the trial on Boat Harbour beach? (Think timing restrictions, off lead and on lead access options) (n=372)
Feb 02 22 04:49:28 pm	The beach used to be a nice family beach for picnics and beach cricket. Now with dogs on beach cricket can't be played on beach after 5pm, as dogs run after the ball. Grew up on boat harbour beach, but this is just ruining my beach days
Feb 02 22 05:06:06 pm	I've had many dogs come up to our picnics and try and get food, lick my kids etc. It's been a disgusting experience and sad to see happen to a beautiful area.
Feb 02 22 07:12:11 pm	The problem with allowing dogs to be on lead all the time is that people don't follow the rules and allow their dog to be off lead. This was a common occurrence during the day at boat harbour. Off lead at off peak times is preferred.
Feb 02 22 08:17:26 pm	Please consider how this will be enforced. I have personally witnessed many people not following the restrictions. I do not like the dogs on the beach. I have witnessed aggression, inability of owners to control and people leaving their dog faeces.
Feb 02 22 08:27:27 pm	Too many dogs off lead during the day....approaching children etc with owners not in control.
Feb 02 22 08:27:37 pm	These times should work for everyone.
Feb 02 22 09:00:23 pm	I'm in favour of dogs on the beach. I think the trial has been successful.
Feb 03 22 07:44:14 am	I think dogs should be on lead and use the beach as a walk through only. It is too small for off leash. I walk my dog across everyday but do not take him off leash at all.
Feb 03 22 08:03:44 am	We came up for a day trip and brought our dog which was great. We bought lunch, fuel and will consider holidaying in this area if we can bring our dog on our beach adventures.
Feb 03 22 09:21:38 am	I believe dogs should be aloud off lead at all times.
Feb 03 22 09:45:00 am	Enjoying dinner on the beach (daylight saving) and had off leash dog wanted to join us. Also dogs in the water with our young grandchildren. Beautiful beach should be clean. We have a dog and plenty of places to take a dog off leash.
Feb 03 22 10:24:55 am	It's good to have more beaches where animals can enjoy freedom. too.
Feb 03 22 10:32:34 am	Should only be for daylight hours only
Feb 03 22 11:59:25 am	Dog poo bag dispenser needed at Northern end of beach
Feb 03 22 01:49:34 pm	Have a designated area that can remain off leash all the time that is clearly marked and user friendly
Feb 03 22 02:57:50 pm	Off lead at all times
Feb 03 22 05:34:25 pm	December holidays dog were off leashes and running up and down beach without supervision, it is not fair on little kids or people that are frightened of dogs, so many off leashes all day. Some people with dogs abide by the rules but others do not!
Feb 03 22 06:00:29 pm	It was so good to be able to take my dog swimming at the beach in the morning and afternoon and I really support the same conditions as during the trial. This made my decision to book an [REDACTED]
Feb 03 22 06:03:18 pm	Most dog owners are responding cleverer than a lot of non dog owners. They are part of my weekend outings. We need more places that are animal friendly please
Feb 03 22 06:08:20 pm	Absolutely no dogs on this small beach. There have been many dogs off lead and in the water and out of control.

ITEM 4 - ATTACHMENT 1 ENGAGEMENT REPORT - MARCH 2022.

Date and time	Any further suggestions regarding the trial on Boat Harbour beach? (Think timing restrictions, off lead and on lead access options) (n=372)
Feb 03 22 06:08:34 pm	Unfortunately people don't listen to the restrictions. I have pictures of times throughout the day where people leave their dogs off lead. My two small kids are petrified of dogs, not that half the dog owners care.
Feb 03 22 06:11:12 pm	Continue with the timing restrictions until I have lived at Boat Harbour [REDACTED] and being able to enjoy "our beach" with our family dog or neighbours dog without being scared of a Ranger fining us (as happened in the past) has been absolutely wonderful.
Feb 03 22 06:17:51 pm	I believe a time for residents with dogs should be available however I also believe it should also cater to those at times of the day without dogs especially during the peak period. As a dog owner I don't take my dogs down during peak times.
Feb 03 22 06:36:33 pm	Best to keep off lead to be on headland only where dogs can roam without annoying people.
Feb 03 22 06:37:05 pm	No dogs at all
Feb 03 22 06:41:57 pm	I support the off lead 5pm-9am but I don't believe they should be on the beach on or off lead after 9am
Feb 03 22 06:46:37 pm	I would prefer for the off lead time in Summer to commence earlier in the afternoon
Feb 03 22 06:49:59 pm	Too many people not following the before 9am and after 5pm rules. People not picking up after their dogs. And dogs scaring children and up in your face etc
Feb 03 22 06:51:41 pm	Adding poo bags to either side of the beach just in case people run out or forget them!
Feb 03 22 07:07:08 pm	Difficult with the amount of children that use the beach.
Feb 03 22 07:20:46 pm	I have a dog but I don't want dogs on Boat Harbour beach at all, the beach should be for people only. Dogs can use Illuka headland for exercising.
Feb 03 22 07:41:34 pm	Glad the trial is over. Sick of being terrified of the dog fights and seeing kids not able to play on the fear of a dog attack.
Feb 03 22 07:44:25 pm	Trial conditions have been excellent
Feb 03 22 07:50:58 pm	Preferably no dogs on the beach at all, or maybe on lead to cross the beach to get to the headland
Feb 03 22 07:58:21 pm	Let the dogs be in the south Park away from the grand kids and people wanting to share the beach [REDACTED] [REDACTED] we walk and swim at the beach. Since the dogs allowed it's not a good time anymore. Dogs are for parks not the beach.
Feb 03 22 08:30:36 pm	This beach is a kids beach it is too small for dogs and families don't think dogs should be on the beach at anytime
Feb 03 22 08:34:35 pm	Sure to many dogs running around the beach before 5pm running between kids sitting on the beach every day this is not going to work as people don't do the right thing
Feb 03 22 09:13:59 pm	I have seen people not picking up dog poop. I have seen dogs off lead well out of hours. It's nothing new, it's a beach where people feel they can let the dogs wander as it's not patrolled eg like One Mile

ITEM 4 - ATTACHMENT 1 ENGAGEMENT REPORT - MARCH 2022.

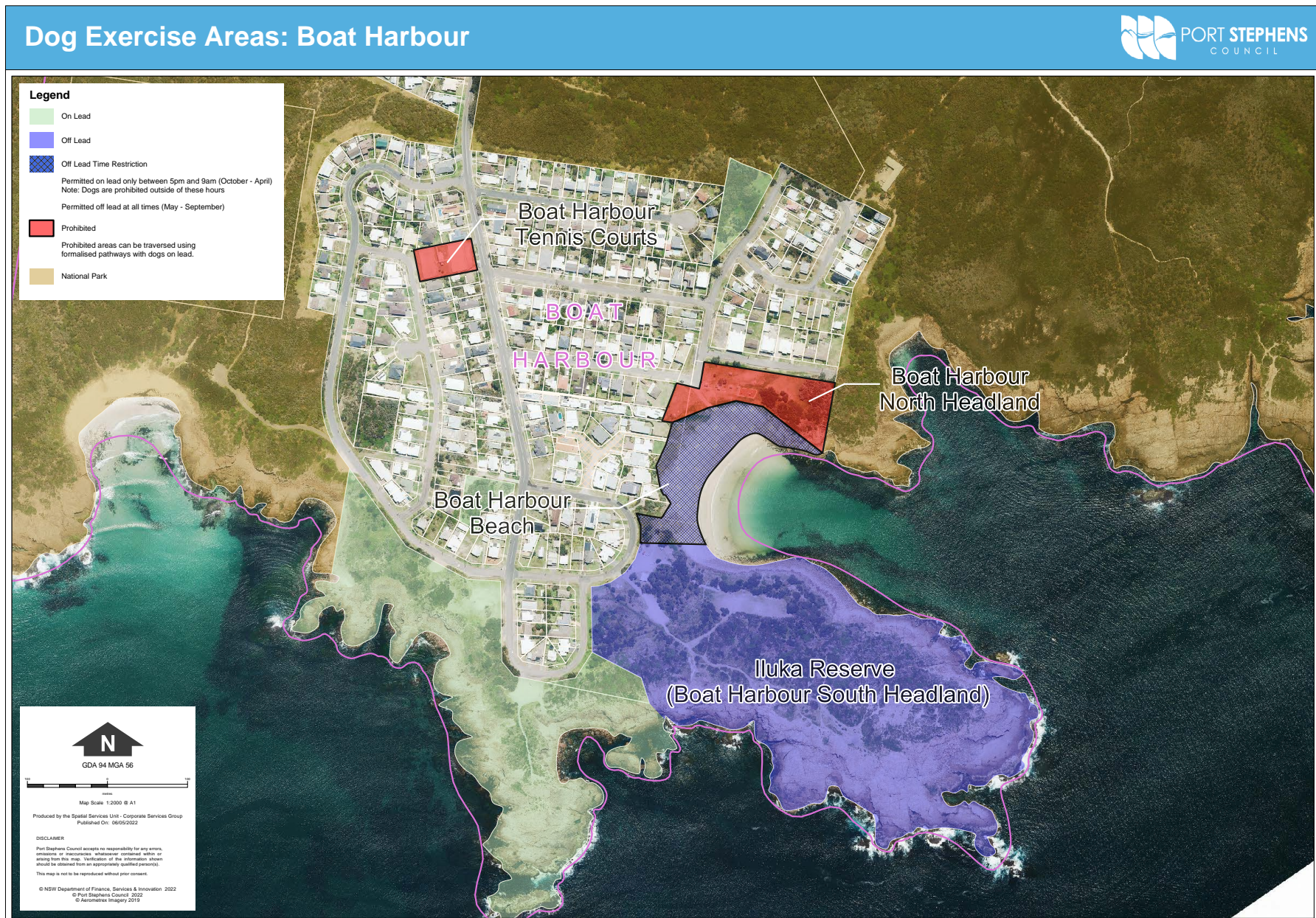
Date and time	Any further suggestions regarding the trial on Boat Harbour beach? (Think timing restrictions, off lead and on lead access options) (n=372)
Feb 03 22 09:14:01 pm	A major source of issues was no enforcement of the on lead requirement during the day was evident. Many dog owners (many visitors) simply ignored this requirement. We walk our two dogs on lead at all times and they love having a swim on lead.
Feb 03 22 09:33:15 pm	Maintain certain areas for non dog families
Feb 03 22 09:52:16 pm	Dogs should be allowed on beach on or off lead if controlled
Feb 03 22 09:57:44 pm	A great trial. I think dogs should be allowed off lead on beach between 6pm and 9am (5pm in winter months). Dogs should not be permitted at other times
Feb 03 22 11:18:11 pm	My [REDACTED] enjoys a different scene instead of the everyday dog park. Especially when is adults are kicking a soccer ball near shoreline..
Feb 03 22 11:39:20 pm	Each visit saw off lead/uncontrolled, no regard for obviously disabled & others scared of dogs. Did not see any policing/enforcing of restrictions. Boat H was a very safe beach for small ones and those with disabilities. Bad owners greatly disadvantaged
Feb 04 22 04:22:55 am	Loved it, perfect beach, kids enjoyed it, pup enjoyed it, as long as owners are responsible i think its great. We loved not being restricted to times.
Feb 04 22 06:14:22 am	Definitely shouldn't be off lead all day. Too many families etc. 5pm to 9am off lead is perfect. I regularly clean the beach of trash while walking dog. Christmas holidays showed families etc don't start using beach until closer to 9am.
Feb 04 22 06:21:08 am	We always walk our [REDACTED] dogs before [REDACTED] and I think the timing really works well. Families with smaller children tend to not use the beach until after 9. I think it's a really nice compromise to keep everyone happy to keep the time restrictions in place
Feb 04 22 07:00:55 am	Running dogs have knocked over many children. There have been dog waste left on the beach . The area is far too small for swimmers and dogs . Off-lead areas should be where very few people swim
Feb 04 22 07:28:35 am	Continue having the poo bags available and bins and people should do the right thing. Having time restrictions could be useful with adequate signage for visitors.
Feb 04 22 07:30:01 am	Love the opportunity to walk dogs across the beach off lead but only after 5pm and prior to 9am. This allows beach goers to use the beach during the day as intended. Would be happy to be allowed to cross Boat Harbour beach with dogs on lead at any time.
Feb 04 22 08:06:27 am	It has been great to see so many people out exercising and socialising
Feb 04 22 08:12:15 am	Unfortunately every time I have been to Boat Harbour beach this summer there have been lots of dogs off lead, no one picking up after their dogs and letting them run wild!
Feb 04 22 08:12:31 am	Dogs on lead should be allowed to walk through the beach

ITEM 4 - ATTACHMENT 1 ENGAGEMENT REPORT - MARCH 2022.

Date and time	Any further suggestions regarding the trial on Boat Harbour beach? (Think timing restrictions, off lead and on lead access options) (n=372)
Feb 04 22 09:00:30 am	We could not use our own beach this Summer because [REDACTED] Because the dogs are so excited and owners are busy chatting the dogs run up to people and swim near everyone. It put our family in a high risk [REDACTED]
Feb 04 22 09:14:58 am	Off leach dogs are sometimes aggressive and are scaring the children
Feb 04 22 09:50:12 am	Allowing off lead between 5pm and 9am is a great thing with minimal impact for all. Please leave south headland as off lead as this perfect situation.
Feb 04 22 09:50:36 am	I think 5pm to 9pm for off lead should be increased to 4pm to 10am ie allows more time for dog owners and is fair to beach users
Feb 04 22 12:00:08 pm	Please have on lead only times as some dogs are reactive to others rushing up, and not all are well controlled off lead. Also some people do not pick up after their dog when off lead..perhaps they don't see it..or not..
Feb 04 22 02:27:20 pm	Ranger patrols
Feb 04 22 02:54:33 pm	How about going back to the proposal that the community took 9 months to nut out and was put up for Council approval last year. Dogs limited to 5pm to 9 am is a compromise most can live with. Owners have not kept dogs on leash or picked up poop in trial.
Feb 04 22 09:47:39 pm	Please keep Boaty beach open for pups to enjoy.
Feb 04 22 09:52:25 pm	Same times as Birubi.
Feb 05 22 06:34:41 am	I feel that dog owners could walk their dogs across the beach to get the the park but not to swim or run around. I was sitting in the beach [REDACTED] It's too small a beach for dogs.
Feb 05 22 07:05:44 am	I am comfortable with dogs on the beach between 5pm - 9am, but not during the day when there are kids swimming and playing on the beach. Dog owners ignore the rules, and dogs run off lead and jump on kids & wee on towels. Owners have not follow the rules
Feb 05 22 07:09:36 am	There has been dog poo left on the beach all summer. It's disgusting
Feb 05 22 07:11:34 am	My friends and I had 2 dogs running and jumping on us when we were trying to sun back. The owners didn't even care, or put them on a lead.
Feb 05 22 07:13:52 am	Dogs should only be allowed on from 5pm - 9am. There are too many young kids during the day. It's the only kids beach around here. Dogs & kids are not safe together
Feb 05 22 07:32:02 am	Off lead between 8pm and 7am
Feb 05 22 08:25:34 am	Timing restrictions move to 6pm to 8am
Feb 05 22 10:16:40 am	I have witnessed numerous dog owners not picking up their dogs poop. Many doggy bags are left lying around, or thrown amongst the rocks at the beach. It makes it unpleasant for families. It will end up being another bagnalls beach, smelly and dirty.

ITEM 4 - ATTACHMENT 1 ENGAGEMENT REPORT - MARCH 2022.

Date and time	Any further suggestions regarding the trial on Boat Harbour beach? (Think timing restrictions, off lead and on lead access options) (n=372)
Feb 05 22 10:18:39 am	This needs to stop. My grandson is terrified of dog and he had one run at him now we can't get him near the beach at all. Dog poop everywhere. Owners of dogs don't care if the dogs mess on the beach they just leave it there. It's disgusting to tread in
Feb 05 22 11:55:39 am	Trial showed owners are disregarding rules re on a d offlead times. Children and dogs do not mix well on beach. Owners are not picking up dog poo and allowing dogs to run wild. Keep headland off leash to allow dogs to play. Offlead on beach is havoc.
Feb 06 22 07:22:48 am	Dog owners don't comply to restrictions. Other beaches where they are allowed on a lead, owners let them run free and my children now have an unhealthy fear of dogs because they run up and jump all over them. The owners just smile.
Feb 06 22 01:35:54 pm	Make permanent off lead between 5pm and 9am
Feb 06 22 04:16:21 pm	What's the point its not policed
Feb 06 22 04:54:31 pm	I liked the dogs being allowed on the beach on lead and off lead after 5pm and before 9am
Feb 06 22 05:13:56 pm	Trial was great! It was so good to see so many more people using the beach and all the dogs bouncing around made me feel happy. It was cute seeing all the happy animals and it is a great social opportunity. I spoke to several people on the beach!
Feb 07 22 09:21:27 am	would like to return to NO dogs on beach - over trial period it was chaos! no respect by many who often had more than one dog
Feb 08 22 08:32:07 am	For the majority of times I visit Boat Harbour Beach, there are out-of-control dogs running all over the place with owners either not caring or not in control at all. Locals deserve to be able to walk on their own beaches safely and peacefully.



ITEM 4 - ATTACHMENT 3 COUNCIL REPORT - REVIEW OF DOG OFF LEAD AREAS - ANNA BAY/BIRUBI POINT FISHERMAN'S BAY AND BOAT HARBOUR - 22 JUNE 2021.**MINUTES ORDINARY COUNCIL - 22 JUNE 2021**

Councillor Chris Doohan returned to the meeting at 7.40pm.

ITEM NO. 5

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

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

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

RECOMMENDATION IS THAT COUNCIL:

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

**ORDINARY COUNCIL MEETING - 22 JUNE 2021
MOTION**

	Councillor Paul Le Mottee Councillor Ken Jordan That Council place the proposals on public exhibition for 28 days.
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**ORDINARY COUNCIL MEETING - 22 JUNE 2021
AMENDMENT**

152	Councillor Giacomo Arnott Councillor John Nell It was resolved that Council: <ol style="list-style-type: none">1) Receive and note the Engagement Report shown at (ATTACHMENT 1).2) Endorse the proposals shown at (ATTACHMENT 2), subject to the following:<ol style="list-style-type: none">a) Revert the Fisherman's Bay Park area to remain at its status quo boundaries.b) Revert the Iluka Reserve Boat Harbour off-lead area to remain at its status quo boundaries.c) Change Boat Harbour beach to be fully off-leash on the same terms as Birubi Beach, on a three month trial and be reported back to Council.
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The amendment on being put became the motion, which was put and carried.

ITEM 4 - ATTACHMENT 3 COUNCIL REPORT - REVIEW OF DOG OFF LEAD AREAS - ANNA BAY/BIRUBI POINT FISHERMAN'S BAY AND BOAT HARBOUR - 22 JUNE 2021.**MINUTES ORDINARY COUNCIL - 22 JUNE 2021****BACKGROUND**

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

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

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

The proposals based on the analysis and the outcome of consultation undertaken between 21 May and 6 June, 2021 for the off lead areas of Anna Bay/Birubi Point, Fisherman's Bay and Boat Harbour are shown in **(ATTACHMENT 2)**. Amended maps based on the recommendations of the analysis are included in **(ATTACHMENT 2)**. The following amendments were made to the maps:

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

ITEM 4 - ATTACHMENT 3 COUNCIL REPORT - REVIEW OF DOG OFF LEAD AREAS - ANNA BAY/BIRUBI POINT FISHERMAN'S BAY AND BOAT HARBOUR - 22 JUNE 2021.**MINUTES ORDINARY COUNCIL - 22 JUNE 2021****COMMUNITY STRATEGIC PLAN**

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

FINANCIAL/RESOURCE IMPLICATIONS

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

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

LEGAL, POLICY AND RISK IMPLICATIONS

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

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

ITEM 4 - ATTACHMENT 3 COUNCIL REPORT - REVIEW OF DOG OFF LEAD AREAS - ANNA BAY/BIRUBI POINT FISHERMAN'S BAY AND BOAT HARBOUR - 22 JUNE 2021.

MINUTES ORDINARY COUNCIL - 22 JUNE 2021

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

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

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

Dog off lead areas provide a public, recreational space for pets and their owners to safely interact with other animals and members of the community. They provide people with the opportunity for social contact, improving social cohesion within a community. It is the intention that allowing further provision to an off lead beach will reduce the likelihood of dog owners letting their dogs off lead in regulated areas which impedes on the recreational enjoyment of residents and park users. The extension to provision times for the existing dog off lead area will be cost-free, enabling it as an affordable recreational activity.

CONSULTATION

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

ITEM 4 - ATTACHMENT 3 COUNCIL REPORT - REVIEW OF DOG OFF LEAD AREAS - ANNA BAY/BIRUBI POINT FISHERMAN'S BAY AND BOAT HARBOUR - 22 JUNE 2021.**MINUTES ORDINARY COUNCIL - 22 JUNE 2021**Internal

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

External

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

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

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

OPTIONS

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

ATTACHMENTS

- 1) Engagement Report - June 2021. (Provided under separate cover)
- 2) Proposal for off lead areas at Anna Bay/Birubi Point, Fisherman's Bay and Boat Harbour.
- 3) Notice of Motion - Off Leash Dog Review - 14 July 2020.
- 4) Review of off lead areas at Anna Bay, Fisherman's Bay and Boat Harbour Analysis Report.

COUNCILLORS ROOM

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

**ITEM 4 - ATTACHMENT 3 COUNCIL REPORT - REVIEW OF DOG OFF LEAD
AREAS - ANNA BAY/BIRUBI POINT FISHERMAN'S BAY AND BOAT HARBOUR -
22 JUNE 2021.**

MINUTES ORDINARY COUNCIL - 22 JUNE 2021

TABLED DOCUMENTS

Nil.

ITEM 4 - ATTACHMENT 4 COUNCIL REPORT - REVIEW OF DOG OFF LEAD AREAS - BOAT HARBOUR - 26 OCTOBER 2021.**MINUTES ORDINARY COUNCIL - 26 OCTOBER 2021****ITEM NO. 20****FILE NO: 21/268533
EDRMS NO: PSC2019-04770-004****REVIEW OF DOG OFF LEAD AREAS - BOAT HARBOUR****REPORT OF: JOHN MARETICH - ASSET SECTION MANAGER
GROUP: FACILITIES & SERVICES****RECOMMENDATION IS THAT COUNCIL:**

- 1) Endorse the extension of the Boat Harbour beach dog off lead area trial for an additional 3 months beyond the current trial before being reported back to Council.

**ORDINARY COUNCIL MEETING - 26 OCTOBER 2021
MOTION**

297	Councillor Chris Doohan Councillor John Nell It was resolved that Council endorse the extension of the Boat Harbour beach dog off lead area trial for an additional 3 months beyond the current trial before being reported back to Council.
------------	--

The motion was carried.

BACKGROUND

The purpose of this report is to seek Council's endorsement to extend the trial period for the temporary dog off lead provisions on Boat Harbour beach for an additional 3 months to conclude on Friday 4 February 2022.

The trial commenced on Wednesday 4 August 2021 and was communicated to the community via a media release, site signage and social media. An online survey was also launched at the commencement of the trial to capture feedback from the community. The trial and survey are both scheduled to conclude Thursday 4 November 2021.

Community survey results to date have been provided within (**ATTACHMENT 1**) for consideration.

Whilst the trial period has provided useful insight into the suitability of Boat Harbour beach as a dog off lead area, there are a number of limiting factors that prevent

ITEM 4 - ATTACHMENT 4 COUNCIL REPORT - REVIEW OF DOG OFF LEAD AREAS - BOAT HARBOUR - 26 OCTOBER 2021.**MINUTES ORDINARY COUNCIL - 26 OCTOBER 2021**

Council from comprehensively understanding the impact of dogs on Boat Harbour beach. These limiting factors are:

- Recent COVID lock downs throughout the trial period have prevented people from accessing public spaces for recreation purposes. Therefore anyone who usually visits Boat Harbour from outside of Port Stephens may not have had an opportunity to visit during the trial.
- The current trial period does not extend over the peak tourist holiday period being the Christmas School holidays. Extending the trial over the Christmas holidays will increase engagement and provide a more comprehensive understanding of issues that may arise from dogs on Boat Harbour beach.
- The current trial period will conclude prior to a Council dog awareness event planned to be held on-site in December (clear of COVID restrictions). Council staff along with community volunteers will be engaging with the community to raise awareness of how to enjoy public spaces with your dogs in a safe and enjoyable way. This event would provide a great opportunity to engage on the Boat Harbour trial.

To overcome the above limitations, it is recommended that Council extends the off lead trial for a further 3 months to conclude on Friday 4 February 2022 before being reported back to Council.

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 additional social media, signage and staff resources to support the extended trial. These costs will be accommodated within the existing operational budgets.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes	\$300	Estimated costs incurred from signage modifications and online media campaign.
Reserve Funds	No		
Developer Contributions (\$7.11)	No		
External Grants	No		
Other	No		

ITEM 4 - ATTACHMENT 4 COUNCIL REPORT - REVIEW OF DOG OFF LEAD AREAS - BOAT HARBOUR - 26 OCTOBER 2021.**MINUTES ORDINARY COUNCIL - 26 OCTOBER 2021****LEGAL, POLICY AND RISK IMPLICATIONS**

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

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

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
There is a risk that increased usage of Boat Harbour beach as a dog off lead exercise area may have adverse impacts on other users experience and the environment.	Low	Time restrictions during peak usage periods will reduce the adverse impact of dogs on users and the environment.	Yes
There is a risk that if the trial period is not extended, Council will be making a decision based on limited information and not adequately address community needs.	Low	Endorse the recommendations of the Report.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

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

Dog off lead areas provide a public recreational space for pets and their owners to safely interact with other animals and members of the community. They provide people with the opportunity for social contact and improving social cohesion within a community. It is the intention that trialling Boat Harbour beach as an off lead area will provide useful insight into the suitability of the beach to be utilised as an off lead area over the longer term.

**ITEM 4 - ATTACHMENT 4 COUNCIL REPORT - REVIEW OF DOG OFF LEAD
AREAS - BOAT HARBOUR - 26 OCTOBER 2021.****MINUTES ORDINARY COUNCIL - 26 OCTOBER 2021****CONSULTATION**

Consultation with key stakeholders has been undertaken by the Assets Section. The objective of the consultation was to understand how the recommendations of the report would impact the affected stakeholders.

Internal

Community Development and Engagement – to note survey responses received to date and to understand the impact of extending the trial period on staff resources.

OPTIONS

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

ATTACHMENTS

- 1) Trial Survey Results.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ITEM NO. 5

**FILE NO: 22/106445
EDRMS NO: PSC2005-3664**

POLICY REVIEW - PROVISION AND MANAGEMENT OF CEMETERIES POLICY

REPORT OF: TAMMY GUTSCHE - COMMUNITY SERVICES SECTION
MANAGER
GROUP: FACILITIES & SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Receive and note submissions **(ATTACHMENT 1)**.
 - 2) Revoke the Provision and Management of Cemeteries policy dated 19 September 2019 (Minute No.187).
 - 3) Adopt the revised Provision and Management of Cemeteries policy shown at **(ATTACHMENT 2)**.
-

BACKGROUND

The purpose of this report is seek Council's endorsement of the revised Provision and Management of Cemeteries Policy (policy) **(ATTACHMENT 2)**.

Council is required to ensure the sufficient provision of cemetery facilities meet the needs of the community.

The draft Provision and Management of Cemeteries Policy was placed on public exhibition for a period of 28 days. During the public exhibition, 1 submission was received which has been summarised in **(ATTACHMENT 1)**. As a result of the submission, no changes have been made to policy.

Please note that yellow highlighting in the attached policy indicates an amendment has been made and strikethrough text is to be deleted.

COMMUNITY STRATEGIC PLAN

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

FINANCIAL/RESOURCE IMPLICATIONS

There are no financial or resource implications from adopting the recommendations. All revenue from cemetery fees and charges is used to offset the cost of maintaining all cemeteries to a high standard.

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 adopting the recommendations.

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
There is a risk that Council's reputation could be damaged if it is using a policy that is not up to date.	Low	Adopt the recommendations.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

There are no sustainability implications created by this strategy.

CONSULTATION

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

The objective of the consultation is to ensure all stakeholders are included in the review of the policy to provide initial feedback to ensure the accuracy of the information documented within the revised policy.

Internal

- Executive Team.
- Facilities and Services Group.
- Community Services Section.

External

The draft Provision and Management of Cemeteries Policy was placed on Public Exhibition for a period of 28 days from 23 March 2022 to 19 April 2022.

During the public exhibition period, 1 submission was received and is summarised in **(ATTACHMENT 1)**.

OPTIONS

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

ATTACHMENTS

- 1) Submission - Provision and Management of Cemeteries Policy. [↓](#)
- 2) Revised Provision and Management of Cemeteries Policy. [↓](#)

COUNCILLORS ROOM

- 1) Public Exhibition – Full Submission.

TABLED DOCUMENTS

Nil.

ITEM 5 - ATTACHMENT 1
OF CEMETERIES POLICY.

SUBMISSION - PROVISION AND MANAGEMENT

Submission - Provision and Management of Cemeteries Policy.

No.	Author of submission	Comment	Council response
1	Tomaree Ratepayers and Residents Association Inc. (TRRA).	<p>The following clause should be included in the Section 5.2 Management of Cemeteries after 5.2.1 and labelled 5.2.2.</p> <p>New clause "5.2.2 Council will ensure that the objective of providing for the 'quiet and respectful commemoration of the dead' both during ceremonies and at other times is taken into account in any planning decisions relating to adjacent properties and nearby land that could threaten the existing amenity".</p>	<p>The Provision and Management of Cemeteries Policy is not a relevant planning document, accordingly there should be no reference to land use planning matters or considerations by Council staff.</p> <p>In accordance with the statutory planning framework, Council planners assess land use conflicts. This includes the surrounding land uses, including sensitive operations such as a cemetery.</p> <p>Any specific planning clauses under the Provision and Management of Cemeteries Policy would not carry any legislative weight when assessing development applications.</p>

ITEM 5 - ATTACHMENT 2 REVISED PROVISION AND MANAGEMENT OF CEMETERIES POLICY.

Policy



FILE NO: PSC2005-3664

TITLE: PROVISION AND MANAGEMENT OF CEMETERIES

OWNER: COMMUNITY SERVICES SECTION MANAGER

1. PURPOSE:

- 1.1 To ensure the management and maintenance of cemeteries are undertaken in a lawful and respectful manner.
- 1.2 To ensure the sufficient provision of cemetery facilities to meet the needs of the community.

2. CONTEXT/BACKGROUND:

- 2.1 Council manages cemeteries at Anna Bay, Karuah, Nelson Bay, Seaham and Raymond Terrace. These cemeteries offer interments in plots, columbarium walls and memorial gardens. Council also maintains the grounds of historic cemeteries at Hinton, Raymond Terrace and Birubi Point.
- 2.2 Cemetery management requires a focus on compassion with the customer, accuracy in the management of records and safety in the issuing of permits to undertake work. This policy sets the parameters by which cemeteries will be managed in Port Stephens Council and ensures that the corporate knowledge that underpins the management of cemeteries is held in one place.

3. SCOPE:

- 3.1 This policy applies to all cemeteries that are on land that is owned or managed by Port Stephens Council.
- 3.2 This policy does not relate to cemeteries, columbarium walls or memorial gardens on land that is not owned or managed by Port Stephens Council.

4. DEFINITIONS:

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

Cemetery	A place for burials, not being a church yard.
Columbarium Wall	A structure with tiers of niches for reception of cinerary urns.
Memorial Garden	A place for reception of cinerary urns.

Policy

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ITEM 5 - ATTACHMENT 2
CEMETERIES POLICY.

REVISED PROVISION AND MANAGEMENT OF

Policy



Exhumation	To dig out, unearth.
Interment	Burial in the earth or placement of cinerary urns in a columbarium wall or memorial garden.
Interment Site	A place of burial in the earth or placement of ashes in a columbarium wall or memorial garden.
Interment Right	An exclusive right granted for use of an interment site. There is no entitlement to any real estate. The holder of an interment right has the sole authority to determine who can be buried or placed in the interment site and to permit headstones, inscriptions and memorials on the site.

5. STATEMENT:**5.1 Provision of cemeteries**

- 5.1.1 Council will plan for the provision of cemeteries including burial plots, columbarium walls and memorial gardens through the Strategic Asset Management Plan process.

5.2 Management of cemeteries

- 5.2.1 Council does not permit any person to undertake an activity within a cemetery unless:

- a) the activity is an approved activity such as:
 - i. the quiet and respectful commemoration of the dead or undertaking of historical research
 - ii. the use of roadways and pathways to gain access to interment sites or amenities.
- b) the person holds an interment right, exhumation permit, works permit or monument permit issued by Council to undertake that activity.

~~5.3 Council may delegate some aspects of the maintenance of cemeteries to a 355c Committee or Volunteer Group of Council.~~

- 5.2.2 Council shall maintain cemeteries to agreed service levels detailed in the maintenance service contract specification.
- 5.2.3 Council shall create and maintain general terms and conditions relating to interment rights and monumental permits.

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ITEM 5 - ATTACHMENT 2 REVISED PROVISION AND MANAGEMENT OF CEMETERIES POLICY.

Policy



5.3 Keeping of records

- 5.3.1 Council shall maintain a register of all interments, exhumations and interment rights in respect of each cemetery.

5.4 Interment sites and Interment rights

- 5.4.1 Human remains of a deceased person may only be interred at interment sites with the written permission of Council who shall issue an interment right.
 5.4.2 Interment rights may not be sold or transferred except with the express written consent of Council.
 5.4.3 The owner of an interment right may relinquish an interment right to Council.
 5.4.4 A person may not hold more than two interment rights.

5.5 Monuments

- 5.5.1 Council approval is required for the installation of a monument.
 5.5.2 A monument must be in keeping with the scale and character of the interment area.
 5.5.3 A monument permit shall only be granted in respect of an interment site with the consent of the holder of the interment right.
 5.5.4 The holder of a monument permit is responsible for the maintenance and repair of the monument.
 5.5.5 If Council is required to undertake any work relating to monuments, to ensure public or employee safety, Council may recover the costs associated with such works from the holder.

5.6 Exhumation

- 5.6.1 An exhumation may only take place when an order by a Coroner or a Court permitting such exhumation is issued; or
 a) a person has obtained prior to commencing exhumation:
 i. Approval for exhumation by NSW Department of Health in accordance with the provisions of the Public Health Act.
 ii. Approval from Council.

6. RESPONSIBILITIES:

- 6.1 Overall implementation of this policy lies with the Community Services Section Manager. Key policy areas are delegated to the following sections and teams:
 a) Provision of cemeteries – Civil Assets Section.
 b) Management of cemeteries – Community Services Section / ~~Contracts and Services~~ **Emergency Management** team.

Policy

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ITEM 5 - ATTACHMENT 2 REVISED PROVISION AND MANAGEMENT OF CEMETERIES POLICY.

Policy



- c) Keeping of Records – Facilities and Services Group Manager's Office / Business Systems and Administration team.
- d) Interment sites and Interment rights – Facilities and Services Group Manager's Office / Business Systems and Administration team.
- e) Monuments - Facilities and Services Group Manager's Office / Business Systems and Administration team.
- f) Exhumation - Facilities and Services Group Manager's Office / Business Systems and Administration team.

7. RELATED DOCUMENTS:

- 7.1 Setting of Fees and Charges Management Directive (PSC).
- 7.2 Code of Conduct (PSC).
- 7.3 Procedure – Requirements for works within Council cemeteries by external agents (PSC).
- 7.4 Application Form – Permit to carry out monumental work in Port Stephens Cemeteries (PSC).
- 7.5 Application Form – Cemetery Burial Application (PSC).
- 7.6 Application Form – Columbarium Wall/ Memorial Garden Application (PSC).
- 7.7 Application Form – Annual Permit to undertake work in Port Stephens Council Cemeteries (PSC).
- 7.8 Application Form – Confirmation of Cemetery Information (PSC).
- 7.9 Application Form – Request to Transfer Right of Interment (PSC).
- 7.10 Form – Template for Memorial Niche Plaques (PSC).
- 7.11 Form – Template for Terrazzo Oval Plaques (PSC).
- 7.12 Form – Template for Raymond Terrace Granite Columbarium Wall (PSC).
- 7.13 Port Stephens Cemeteries information brochure (PSC).
- 7.14 Port Stephens Columbarium Walls and Memorial Gardens brochure (PSC).
- 7.15 Cemeteries and Crematoria Act 2013 (NSW).
- 7.16 Local Government Act 1993 (NSW).
- 7.17 Crown Lands **Management** Act 2016 (NSW).
- 7.18 Public Health Act 2010 (NSW).
- 7.19 Coroners Act 2009 (NSW).
- 7.20 Anti-Discrimination Act 1977 (NSW).
- 7.21 Births Deaths and Marriages Registration Act 1995 (NSW).
- 7.22 Fair Trading Act 1987 (NSW).
- 7.23 Government Information (Public Access) Act 2009 (NSW).
- 7.24 Heritage Act 1977 (NSW).
- 7.25 Human Tissues Act 1983 (NSW).
- 7.26 State Records Act 1998 (NSW).
- 7.27 Work Health and Safety Act 2011 (NSW).

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ITEM 5 - ATTACHMENT 2 REVISED PROVISION AND MANAGEMENT OF CEMETERIES POLICY.

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EDRMS container No.	PSC2005-3664	EDRMS record No.	TBA
Audience	Funeral Directors, Grave Diggers, Monumental Masons, West Ward Cemetery Group, 355c Cemetery Committees , Volunteer Groups, Historical Societies, general community.		
Process owner	Contracts and Services Emergency Management Coordinator		
Author	Community Services Section Manager		
Review timeframe	2 3 years	Next review date	TBA
Adoption date	14/07/2015		

VERSION HISTORY:

Version	Date	Author	Details	Minute No.
0.1	27/05/2015	Community Services Section Manager	Draft version for review by Executive Leadership Team	n/a
0.2	07/07/2015	Community Services Section Manager	Draft version for Public Exhibition.	n/a
1.	14/07/2015	Community Services Section Manager	The Public Exhibition period ended 20 August 2015 and no submissions were received. This policy is now adopted and replaces the Port Stephens Cemeteries Policy (dated 290102 – Min No. 016)	194
2.	19/09/2019	Community Services	Reviewed and updated in new Policy Template.	187

Policy

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ITEM 5 - ATTACHMENT 2
CEMETERIES POLICY.

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Version	Date	Author	Details	Minute No.
		Section Manager	<p>4.1 Definitions updated to include 'Memorial Garden' and under Interment Site the words 'of ashes' and 'wall' were added.</p> <p>5.2.6 the addition of "or Volunteer Group".</p> <p>7.16 the addition of "Local Government Act 1993 (NSW)".</p> <p>Controlled Document Information the addition of the word "cemetery" and "Volunteer Group".</p> <p>The public exhibition period ended 18 September 2019 and no submissions were received.</p> <p>This policy is now adopted and replaces the Provision and Management of Cemeteries Policy dated 14/07/2015 – Min No. 194.</p>	
3.	TBA	Community Services Section Manager	<p>Updated policy into the latest format.</p> <p>2.2 – Removed "Council".</p> <p>5.3 – Removed 'Council may delegate some aspects of the maintenance of cemeteries to a 355c Committee or Volunteer Group of Council' to reflect that all maintenance is either carried out by contractors or internal Council staff.</p> <p>5.6.1 (a) – Updated 'NSW Department of Health' to 'NSW Health' to reflect correct title.</p> <p>6.1 (b) – Updated 'Contracts and Services team' to 'Emergency Management team' to reflect current responsibilities.</p>	

Policy

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ITEM 5 - ATTACHMENT 2
CEMETERIES POLICY.

REVISED PROVISION AND MANAGEMENT OF

Policy



Version	Date	Author	Details	Minute No.
			<p>7.17 Added "Management" to the Crown Lands Act 2016 (NSW).</p> <p>Audience: Removed '355c Cemetery Committees' to reflect that there are no 355c Cemetery Committees.</p> <p>Process owner: updated 'Contracts and Services Coordinator' to 'Emergency Management Coordinator' to reflect current responsibilities.</p> <p>Controlled document information: amended review timeframe to 3 years in accordance with Council's policy review process.</p>	

Policy

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ITEM NO. 6**FILE NO: 22/106712
EDRMS NO: PSC2015-01399****POLICY REVIEW - FLOODPLAIN RISK MANAGEMENT POLICY****REPORT OF: JOHN MARETICH - ASSET SECTION MANAGER
GROUP: FACILITIES & SERVICES**

RECOMMENDATION IS THAT COUNCIL:

- 1) Receive and note submissions. **(ATTACHMENT 1)**.
 - 2) Revoke the Floodplain Risk Management policy dated 10 April 2018 (Minute No. 080).
 - 3) Adopt the revised Floodplain Risk Management policy shown at **(ATTACHMENT 2)**.
-

BACKGROUND

The purpose of this report is seek Council's endorsement of the revised Floodplain Risk Management Policy (policy) shown as **(ATTACHMENT 2)**.

In January 2019, Council resolved to form a Committee comprising of Councillors and Council staff to rewrite the Floodplain Risk Management Policy. The Committee met on numerous occasions between mid-2019 and late 2020 to review the policy and other flood related documentation. The Committee determined that the policy was appropriate and consistent with the State Government's Floodplain Development Manual 2005. The Committee was dissolved in late 2020 after completing its resolution.

The draft Floodplain Risk Management Policy was placed on public exhibition for a period of 28 days following Council resolution 22 March 2022. During the public exhibition, 1 submission was received which has been summarised in **(ATTACHMENT 1)**. As a result of the submission, no changes have been made to the policy.

Please note that yellow highlighting in the attached policy indicates an amendment has been made and strikethrough text is to be deleted.

COMMUNITY STRATEGIC PLAN

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

FINANCIAL/RESOURCE IMPLICATIONS

The cost of implementing the policy will be carried out within existing budgets.

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

LEGAL, POLICY AND RISK IMPLICATIONS

The Local Government Act 1993 (Section 733) provides Council with a general exemption from liability with respect to flood liable land if decisions are made or advice given in accordance with the State Government's Floodplain Development Manual 2005.

The State Government has issued a direction regarding the advice to be provided on Section 10.7 Planning Certificates where land is subject to flood related development controls. The direction promotes the appropriate use of flood prone land and designates the land into areas dependent upon:

- Whether the land, or part of the land, is located within the flood planning area, and is subject to flood related development controls.
- Whether the land, or part of the land, is located between the flood planning area and probable maximum flood, and is subject to flood related development controls.

The Insurance Council of Australia has indicated that while insurance companies use a variety of flood data sources to make their own assessment of risk, it is likely that they will take a conservative view of risk. A conservative view without up to date data will result in an increase in insurance premiums for residents. Hence having up-to-date flood studies in accordance with the latest State Government guidelines and the Floodplain Development Manual will benefit residents and potentially reduce insurance premiums.

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
There is a risk that not following the State Government's Floodplain Development Manual 2005 will lead to Council not meeting legislative obligations exposing Council to financial and legal risk.	High	Adopt recommendations and endorse the revised Floodplain Risk Management Policy.	Yes
There is a risk that not following the State Government's Floodplain Development Manual 2005 will allow the insurance companies to continue to take a conservative view of flood risk which results in increased insurance premiums for residents.	High	Adopt recommendations and endorse the revised Floodplain Risk Management Policy.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The policy aims to systematically reduce the impact of flooding and flood liability on individual owners and reduce the private and public losses resulting from floods. It also recognises that flood prone land is a valued resource to the community, landholders and the economy and these lands should not be sterilised by unnecessarily restricting appropriate development.

The policy takes an integrated risk management approach using the best available information that classifies land in terms of flood risk so that decisions take into account flood risk while recognising the social, economic and environmental values of flood prone land.

The policy ensures that the State Emergency Service and the Port Stephens Local Emergency Management Committee are provided with the most up-to-date flood information so they can include it in their emergency response and recovery planning.

CONSULTATION

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

Internal

Consultation with key internal stakeholders was undertaken during the timeframe of the review by the Committee.

External

The Committee formed by Council reviewed the policy and determined it was appropriate and consistent with the State Government's Floodplain Development Manual 2005.

The draft Floodplain Risk Management Policy was placed on public exhibition for a period of 28 days from 23 March 2022 to 19 April 2022.

During the public exhibition period, 1 submission was received and is summarised in **(ATTACHMENT 1)**.

OPTIONS

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

ATTACHMENTS

- 1) Submission - Floodplain Risk Management Policy. [↓](#)
- 2) Revised Floodplain Risk Management Policy. [↓](#)

COUNCILLORS ROOM

- 1) Public Exhibition – Full Submission.

TABLED DOCUMENTS

Nil.

ITEM 6 - ATTACHMENT 1
POLICY.

SUBMISSION - FLOODPLAIN RISK MANAGEMENT

Policy Review: Floodplain Risk Management Submission.

No.	Author of submission	Comment	Council response
1	Voices of Woodville and Wallalong	Concern over approval of infrastructure on flood prone land.	Council assesses development applications in line with the Environmental Planning and Assessment Act 1979 and Councils Local Environmental Plan and Development Control Plan along with any other relevant legislation applicable at the time of assessment. Development applications received on flood prone land are referred to other state government authorities (e.g. DPI, SES, etc) and flooding specialists for assessment as required.
		Concern over use of the most up-to-date information.	Council utilises the most up-to-date information which come from the latest Flood Studies.
		Concerns over age of NSW Floodplain Development Manual and recent rain / flood events.	The Floodplain Development Manual guides Councils in the development of flood studies and the implementation of floodplain risk management plans. The Manual outlines the process to follow – it does not contain the rainfall data used to undertake flood estimation. Professionals undertaking flood estimation utilise contemporary rainfall data from the Bureau of Meteorology website.
		Further details required regarding assessment of adverse impacts of flood prone land by Emergency response bodies.	Development applications received on flood prone land are referred to other state government authorities (e.g. DPI, SES, etc) and flooding specialists for assessment as required.
		Further details required regarding how and when community engagement is undertaken during the floodplain risk management process.	The Floodplain Development Manual outlines the process of community engagement when undertaking flood studies. Additionally Council has a Floodplain Advisory Panel which consists of community members, DPI, HWC, SES, Councillors and Council staff. The panel provides advice to

ITEM 6 - ATTACHMENT 1
POLICY.

SUBMISSION - FLOODPLAIN RISK MANAGEMENT

			Council to assist the floodplain risk management process.
		Clarification required regarding review timeframes.	Council reviews policies on a 3 yearly basis. When a draft Policy is brought to Council for consideration its date is noted as TBA. When the updated Policy is endorsed by Council the correct date gets noted in the Version History.

ITEM 6 - ATTACHMENT 2 REVISED FLOODPLAIN RISK MANAGEMENT POLICY.

Policy



FILE NO: PSC2015-01399

TITLE: FLOODPLAIN RISK MANAGEMENT

OWNER: ASSET SECTION MANAGER

1. PURPOSE:

- 1.1 Port Stephens Council is committed to managing flooding across the Local Government Area using an integrated risk management approach, in order to:
- a) Systematically reduce the impact of flooding and flood liability on individual owners and occupiers of flood prone property, hence reduce the losses resulting from floods.
 - b) Recognise that appropriately developed flood prone land is a valuable resource to the community, land holders and the economy and these lands should not be sterilised by unnecessarily restricting its development.
 - c) Consider floodplain risk as early as possible in the planning and development process using the best available flood information.
 - d) Classify land in terms of floodplain risk so that decisions take into account the risk while recognising the social, economic and environmental values of flood prone land.
 - e) Provide the framework to manage floodplain risk through cost-effective measures that address existing, future and continuing risks in a hierarchy of avoidance, minimisation and mitigation as identified in local floodplain risk management studies and plans.
 - f) Remain consistent with the floodplain risk management principles outlined in the State Government's Flood Prone Land Policy and Floodplain Development Manual 2005.
 - g) Facilitate the systematic collection of flood information and floodplain risk data, and the provision of such information in a timely way so that residents can understand the severity of floodplain risk and plan their affairs accordingly.
 - h) Promote the integration between Council's floodplain risk management activities and flood-related emergency management undertaken by the State Emergency Service and the Port Stephens Local Emergency Management Committee.
- 1.2 The measurement of success for this policy is the implementation of the integrated risk management approach.

2. CONTEXT/BACKGROUND:

- 2.1 Port Stephens covers a diverse number of catchments, generally flowing to the Hunter Estuary or the Port Stephens Estuary. The area has a number of

Policy

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ITEM 6 - ATTACHMENT 2 REVISED FLOODPLAIN RISK MANAGEMENT POLICY.

Policy



creeks, rivers, estuaries, foreshore areas, stormwater channels and drains which are impacted by flooding or coastal inundation, sometimes with little or no warning.

- 2.2 Flooding is a significant issue affecting existing and future development throughout Port Stephens and may involve significant risk, including risks to life and property. While it is not usually cost-effective to entirely eliminate all floodplain risks, the risks can be managed.
- 2.3 Council has been undertaking the necessary flood studies in accordance with the State Government's Floodplain Development Manual 2005. Where the catchments cross local government boundaries, Council has been working in collaboration with neighbouring councils.
- 2.4 The Local Government Act (section 733) provides Council with a general exemption from liability with respect to flood liable land if the necessary studies and works are carried out in accordance with the principles contained in the NSW Floodplain Development Manual 2005.

3. SCOPE:

- 3.1 While local government in NSW has the primary responsibility for controlling the development within flood-prone land, both the State Government (for example, Crown developments and state significant developments) and the Federal Government (for example, development on Commonwealth land) consider development on the floodplain. Both local government and the State Government (principally through the State Emergency Service) are responsible for managing floodplain risk.

4. DEFINITIONS:

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

Flood prone land (flood liable land)	Land that is likely to be inundated by the probable maximum flood (PMF is the largest flood that could conceivably occur in a particular catchment) and defines the "floodplain" for that catchment.
Flood Planning Level	The level of the 1% AEP (annual exceedance probability) flood event in the year 2100 plus 0.5 metre freeboard, except for overland flooding areas where a freeboard of 0.3 metre is applied. The area of land below the Flood Planning Level (i.e. the Flood Planning Area) is subject to flood-related development controls.

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Floodway area	Land that is a pathway taken by major discharges of floodwaters, the partial obstruction of which would cause a significant redistribution of floodwaters, or a significant increase in flood levels. Floodways are often aligned with natural channels, are usually characterised by deep and relatively fast flowing water, and have major damage potential.
Flood Storage area	Those parts of the floodplain that are important for the temporary storage of flood waters. The loss of storage areas may increase the severity of flood impacts by reducing natural flood attenuation.
Flood Fringe area	The remaining land in the Flood Planning Area after the Floodway area and Flood Storage area have been defined.
Overland flow path	Areas of inundation by local runoff rather than inundation created by overbank flows discharging from a watercourse.
High Hazard flood area	The area of flood which poses a possible danger to personal safety, where the evacuation of trucks would be difficult, where able-bodied adults would have difficulty wading to safety or where there is a potential for significant damage to buildings.
Low Hazard flood area	The area of flood where, should it be necessary, a truck could evacuate people and their possessions or an able-bodied adult would have little difficulty in wading to safety.

5. STATEMENT:

- 5.1 Council will manage the risk of flooding on lands in accordance with State Government's Flood Prone Land Policy and Floodplain Development Manual 2005. This can be summarised as:
- Formation of a Floodplain Risk Management Committee, including members from council, community and state government agencies.
 - Collection of social, economic, flooding, ecological, land use, cultural and emergency management data.
 - Undertaking a flood study, in accordance with "Australian Rainfall & Runoff" published by the Commonwealth of Australia (Geoscience Australia) Engineers, Australia, to define floodplain risk throughout the catchment, including hydrologic and hydraulic aspects of floods of varying severity.
 - Identifying, assessing and comparing various risk management options through a Floodplain Risk Management Study.

Policy

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ITEM 6 - ATTACHMENT 2 REVISED FLOODPLAIN RISK MANAGEMENT POLICY.



Policy

- e) Developing a Floodplain Risk Management Plan outlining the implementation of acceptable flood response and property modification measures, and is formally approved by Council after public exhibition.
- 5.2 Categorising floodplain risk in terms of the hazard (low hazard and high hazard), the location (floodway area, flood storage area and flood fringe area) and the chance of the flood occurring in any one year (the annual exceedance probability (AEP)), namely:
 - a) Minimal risk flood prone land (above the Flood Planning Level and below the Flood prone land extent).
 - b) Low hazard – flood fringe area.
 - c) Low hazard – flood storage area.
 - d) Low hazard – floodway area.
 - e) Low hazard – overland flow path.
 - f) High hazard – flood fringe area.
 - g) High hazard – flood storage area.
 - h) High hazard – floodway area.
 - i) High hazard – overland flow path.
- 5.3 Keeping the Flood Hazard Maps up-to-date by incorporating relevant information from Council adopted Flood Studies, Floodplain Risk Management Plans, flood modification measures and approved filling within the floodplain which may change the categorisation of floodplain risk.
- 5.4 Undertaking a comprehensive benefit-cost analysis of proposed flood modification measures (for example, levees, retarding basins, flood gates) in each catchment using a standard approach and include those measures with a benefit: cost ratio greater than 1 into Council's Strategic Asset Management Plan (where possible Council will seek State and Federal government funding for such measures).
- 5.5 Considering property modification measures including voluntary purchase or house-raising and Development Control Plan (DCP) changes based on the floodplain risk categories.
- 5.6 Utilising a site-specific risk management approach for the finished floor level for non-residential developments, focussed on reducing risk-to-life and risk-to-property, based on the floodplain risk categories and specified in Council's DCP.
- 5.7 Ensuring that the State Emergency Service and the Port Stephens Local Emergency Management Committee are provided with the most up-to-date flood information so they can include it in their emergency response and recovery planning.

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ITEM 6 - ATTACHMENT 2 REVISED FLOODPLAIN RISK MANAGEMENT POLICY.



Policy

- 5.8 Ensuring that decisions relating to flood prone land do not have adverse consequences for emergency management or cause adverse impacts on flooding in other locations.
- 5.9 Ensuring that new Council assets have an appropriate floodplain risk category, so that future generations of residents and ratepayers are not inordinately burdened.
- 5.10 Developing a system for the timely provision of up-to-date flood information, to facilitate the assessment of development applications, to achieve a merit-based outcome for each floodplain risk category for an individual site.

6. RESPONSIBILITIES:

- 6.1 Assets Section Manager has overall responsibility for this policy.
- 6.2 Engineering Services Manager and Principal Flooding & Drainage Engineer is responsible for the implementation of the engineering aspects of this policy, including management of the Floodplain Risk Management process.
- 6.3 Strategy and Environment Section Manager is responsible for the implementation of the strategic planning aspects of this policy, including consideration of floodplain risk as early as possible in the planning process and the provision of the most up-to-date flood information through the issuing of Section 10.7 449 certificates.
- 6.4 Development Assessment and Compliance Section Manager is responsible for the implementation of the development assessment aspects of this policy, including a merit-based consideration of the floodplain risk categories for an individual site, focussed on reducing risk-to-life and risk-to-property, based on advice provided by Assets Section Manager, Engineering Services Manager and Principal Flooding & Drainage Engineer whose expert knowledge would need to be provided in making such decisions.
- 6.5 Communications and Customer Experience Section Manager is responsible for the implementation of the communications aspects of this policy, including assisting in the coordination of community engagement through the Floodplain Risk Management process.
- 6.6 Facilities and Services Group Manager is responsible for the integration between Council's floodplain risk management activities and flood-related emergency management undertaken by the State Emergency Service and the Port Stephens Local Emergency Management Committee.

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ITEM 6 - ATTACHMENT 2 REVISED FLOODPLAIN RISK MANAGEMENT POLICY.

Policy



7. RELATED DOCUMENTS:

- 7.1 Local Government Act 1993.
- 7.2 Environmental Planning and Assessment Act 1979.
- 7.3 Water Management Act 2000.
- 7.4 Hunter Water Act 1991.
- 7.5 State Emergency and Rescue Management Act 1989.
- 7.6 The State Government's Flood Prone Land Policy 2005.
- 7.7 The State Government's Floodplain Development Manual 2005.
- 7.8 Port Stephens Local Environment Plan 2013.
- 7.9 Port Stephens Development Control Plan 2014.

CONTROLLED DOCUMENT INFORMATION:

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EDRMS container No.	PSC2015-01399	EDRMS record No.	TBA
Audience	Councillors, staff and community		
Process owner	Manager, Assets Section		
Author	Manager, Assets Section		
Review timeframe	2 3 years	Next review date	TBA
Adoption date	12 December 2017		

VERSION HISTORY:

Version	Date	Author	Details	Minute No.
1	16 Dec 2008	Integrated Planning Manager	Areas affected by flooding and/or inundation.	384
2	27 Oct 2015	Asset Section Manager	Draft Floodplain Risk Management Policy for Public Exhibition	323
2.1	8 Mar 2016	Asset Section Manager	Floodplain Risk Management Policy	054

Policy

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ITEM 6 - ATTACHMENT 2 REVISED FLOODPLAIN RISK MANAGEMENT POLICY.

Policy



Version	Date	Author	Details	Minute No.
3	12 Dec 2017	Asset Section Manager	Updated to new template, overland flooding areas, definitions, and policy responsibility.	322
3.1	10 April 2018	Asset Section Manager	Reconciled definitions against other Council documentations and modified as required. Modified Council officer titles to reflect current role title. Modified Policy responsibilities as required.	080
4	TBA	Asset Section Manager	Updated into the new policy template 5.1c by Replace "Engineers, Australia" with "the Commonwealth of Australia (Geoscience Australia)" 6.1 Remove "149" and replace with "10.7" and include "Customer Relations" to the Section Manager title.	TBA

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ITEM NO. 7

**FILE NO: 22/69306
EDRMS NO: VF21/39**

LOCAL STRENGTHENING GRANTS

REPORT OF: BROCK LAMONT - STRATEGY & ENVIRONMENT SECTION
MANAGER
GROUP: DEVELOPMENT SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Approves the provision of financial assistance from applications received for the Local Strengthening Fund 2021 to 2022 (round 2) under Section 356 of the Local Government Act 1993:
 - a) \$6,000 to Warlga Ngurra Family and Community Hub – After school cooking program
 - b) \$4,530 to Fern Bay Public School – Yarning for the Future
 - c) \$6,000 to Karuah Landcare – Karuah Foreshore Community Planting
 - d) \$3,000 to Port Stephens Suicide Prevention Network – Port Stephens Labyrinth
 - e) \$6,000 to Rivergum Grandparents As Carers Support Network Inc. – Grandparent and children respite day out
 - f) \$3,000 to Tomaree Museum – Cabinets and diorama for museum.

BACKGROUND

The purpose of this report is to seek Council's endorsement of Round 2 recipients of the Local Strengthening Fund 2021 to 2022.

The Local Strengthening Fund aims to build sustainable local communities and environments, and enhance the wellbeing and development of the Port Stephens community. This grant welcomes applications from community groups and not for profit organisations seeking support for projects, activities and events that address community and environmental needs.

Round 2 of the Local Strengthening Fund program opened on 1 March 2022 and closed 29 March 2022, and received 9 applications.

The assessment panel for the Local Strengthening Fund includes assessment by a panel of Councillors, the Mayor and one Council staff member. The assessment process was carried out in accordance with the fund guidelines.

ORDINARY COUNCIL - 24 MAY 2022

The panel recommends \$28,530.00 of grant support be provided to applicants. Any residual funds from round 1 and 2 of the 2021/22 grant program will be returned to the 2021/22 budget.

Table 1: Local Strengthening Fund recommended projects			
Organisation	Project Title	Amount	Brief Description
Warlga Ngurra Family and Community Hub	After school cooking program	\$6,000	After school kids club for children aged 5-13 years
Fern Bay Public School	Yarning for the Future	\$4,530	Create a Yarning Circle in the grounds of Fern Bay Public school with seating and native plants
Karuah Landcare	Karuah Foreshore Community Planting	\$6,000	Revegetate a section of Karuah Foreshore in partnership with school, community groups and residents
Port Stephens Suicide Prevention Network	Port Stephens Labyrinth	\$3,000	A labyrinth is a cross-cultural, non-denominational place of reflection.
Rivergum Grandparents as Carers Support Group Inc.	Grandparents and carers respite day out	\$6,000	Day outing by bus to Australian Reptile Park with lunch
Tomaree Museum	Cabinets and diorama for Museum	\$3,000	Display cabinets and diorama of Zenith Beach landing at Salamander Bay

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	\$28,530.00	
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 in adopting the recommendations. Council provides financial assistance in accordance with Section 356(1) of the Local Government Act 1993. Council manages the Local Strengthening Fund in accordance with the Grants and Donations policy.

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
There is a risk that funds to successful applicants may not be expended or projects uncompleted and/or not acquitted.	Low	Manage grant administration process as per the grants procedure	Yes
There is a risk that unsuccessful applicants are displeased with Council decision-making	Low	Provide feedback and grant writing support to unsuccessful applicants	Yes
There is a risk that 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

Adopting the recommendation will result in improved social and environmental outcomes for the Port Stephens community by enabling community groups and not-for-profit organisations to facilitate projects activities and events that generate social connections, and improvements for community wellbeing and to local environments.

CONSULTATION

Consultation with relevant sections of Council has been undertaken by the Vibrant Places unit.

OPTIONS

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

ATTACHMENTS

Nil.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ITEM NO. 8**FILE NO: 22/123678
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 24 May 2022.

No:	Report Title	Page:
1	Quarterly Grants Report	252
2	Local Strengthening Fund - change of bank details	256
3	Petition for Kerb and Guttering Wychewood Avenue, Mallabula	263
4	Election survey	265
5	Annual Disclosure of Interest Returns for 2022 to 2023	272
6	Designated Persons' Return	275
7	Questions on Notice/Questions with Notice	277
8	Council Resolutions	277

INFORMATION PAPERS

ITEM NO. 1

**FILE NO: 22/115422
EDRMS NO: PSC2017-00180**

QUARTERLY GRANTS REPORT TO 31 MARCH 2022

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

BACKGROUND

The purpose of this report is to provide Council with a quarterly update on its Grants status.

ATTACHMENTS

1) Quarterly Grants Report to 31 March 2022. [↓](#)

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.



Quarterly Grants Statement
For the period 1 January 2022 – 31 March 2022

Successful Grant Applications				
Grant	Section / Department	Project Title	Project Summary	Value
Cultural Tourism Accelerator Program	Strategy and Environment – Economic Development and Tourism	It's On! Love Seafood	A series of cultural and creative precinct activations across two strategic town centres in the Port Stephens LGA that further support Love Seafood Port Stephens, a month long program.	\$10,000
Stronger Communities Programme Round 7	Assets - Community and Recreation	Redevelopment of Anzac Park, Raymond Terrace	Upgrades will include the construction of a new commemorative wall, relocation of existing memorial structures, installation of park furniture and access improvements.	\$15,000
Youth Week 2022	Communications – Community Development and Engagement	'It's up to YOU'th'	NSW Youth Week 2022 will run from 4 - 14 April 2022. The theme for 2022 is 'It's up to YOU'th'.	\$4,068
Regional Roads REPAIR Program 2021-22	Assets – Civil Projects	Repair Port Stephens MR301 Warren St 2022	Repair Port Stephens MR301 Warren St 2022	\$107,000
Local Government Recovery Grants program	Community Services – Emergency Management	Disaster Recovery	Local Government Recovery Grant to assist councils impacted by flooding March 2022	\$1,000,000
Targeted Road Safety Program	Assets – Civil Projects	Newline Road, East Seaham - Fatal Crashes Response	Segment 300 reconstruction- incl. signage and ATLM line marking on East Seaham Rd HW bridge area	\$813,500

ITEM 1 - ATTACHMENT 1 QUARTERLY GRANTS REPORT TO 31 MARCH 2022.

Be Connected - Building Digital Skills	Communications – Community Development and Engagement	Raymond Terrace Library	Includes a series of workshops, facilitated by Youngster.Co at Raymond Terrace Library, Tilligerry Library, Tomaree Library, Karuah Community Hall and Medowie Community Centre to support older Australians 50+ to develop their digital skills and confidence.	\$20,000
Hunter Regional Chinese Violet Strategy Support 2022-24	Strategy and Environment - Natural Resources	Hunter Regional Chinese Violet Strategy Support 2022-24	Funding to fulfil the endorsed Hunter Regional Chinese Violet Management Strategy 2019-2029.	\$45,000
Crown Reserves Improvement Fund 2021-22	Assets - Community and Recreation	Longworth Park BBQ	Replacement of Longworth Park BBQ.	\$12,500
Crown Reserves Improvement Fund 2021-22	Assets - Community and Recreation	Tanilba Foreshore Park Furniture	Replacement of park furniture along Tanilba Foreshore	\$35,000
Crown Reserves Improvement Fund 2021-22	Strategy and Environment - Natural Resources	Fox Control in Anna Bay Koala Hub	To protect the Koala population within the Anna Bay Koala Hub.	\$18,000
Crown Reserves Improvement Fund 2021-22	Strategy and Environment - Natural Resources	Spiny Bur Grass and Mossman River Grass Control	Funding will be used to engage a contractor to treat Spiny Burr Grass and Mossman River Grass.	\$14,301
Crown Reserves Improvement Fund 2021-22	Strategy and Environment - Natural Resources	One Mile Beach Weed Control and Revegetation	Funding will be used to engage a contractor to undertake restoration & planting works on Crown Land that has significant environmental values.	\$39,487
Crown Reserves Improvement Fund 2021-22	Strategy and Environment - Natural Resources	Ludwigia	Funding will be used to engage a contractor to undertake restoration works on Crown Land that has significant environmental values.	\$27,596
Crown Reserves Improvement Fund 2021-22	Strategy and Environment - Natural Resources	Lemon Tree Foreshore	Funding will be used to engage a contractor to control Ludwigia on Crown Land.	\$20,253
Crown Reserves Improvement Fund 2021-22	Strategy and Environment - Natural Resources	Chinese Violet	Funding will be used to engage a contractor to control Chinese violet on Crown Land.	\$25,759
Crown Reserves Improvement Fund 2021-22	Strategy and Environment - Natural Resources	Bitou Bush	Funding will be used to engage a contractor to control Bitou bush on Crown Land.	\$17,739
Crown Reserves Improvement Fund 2021-22	Strategy and Environment - Natural Resources	Aquatic Weed Control	Through this program PSC and Crown lands work together to maintain waterways free from aquatic weeds, facilitating environmental social and economic outcomes.	\$35,344

ITEM 1 - ATTACHMENT 1 QUARTERLY GRANTS REPORT TO 31 MARCH 2022.

Regional Tourism Activation Fund	Assets – Community and Recreation	Creating an accessible destination - Tourism Pathways in Nelson Bay	Works will involve creating and upgrading footway infrastructure to improve accessibility and facilitate inclusion and visitor experience at destinations for people with disabilities.	\$396,467
Regional Sport Facility Fund 2021-22 - Round 2	Assets – Community and Recreation	Revitalising Brandon Park, Seaham	Upgrade amenities, car park and floodlighting as well as conversion of tennis court into multisport and provision of supporting infrastructure.	\$693,100
Regional Sport Facility Fund 2021-22 - Round 2	Assets – Community and Recreation	Yulong Oval Amenities Upgrade	This project will involve the replacement of existing amenities with a new contemporary, inclusive and multipurpose facility.	\$999,980
Total				\$4,350,094

There were 5 unsuccessful grant applications during the period 1 January 2022 – 31 March 2022.

There have been 31 successful grant applications for the financial year 2021 – 2022 to date.

ITEM NO. 2

**FILE NO: 22/104158
EDRMS NO: VF21/39**

LOCAL STRENGTHENING FUND - CHANGE OF BANK DETAILS

REPORT OF: BROCK LAMONT - STRATEGY & ENVIRONMENT SECTION
MANAGER
GROUP: DEVELOPMENT SERVICES

BACKGROUND

The purpose of this report is to change the bank details for the deposit of funds from the Local Strengthening Fund for the Footy4All project.

At the Council meeting 26 October 2021, (Minute No. 296), **(ATTACHMENT 1)** it noted the funding amount of \$6,000 would be deposited into the bank account of the Nelson Bay Junior Australian Football Club. This Club has since changed committee with the new members of the Committee inexperienced in managing funding. Their partner Club, the Medowie and Districts Rugby Union Club, has offered to be the auspice for the Footy4All project.

The funding for the Footy4All project from the Local Strengthening Fund therefore needs to be deposited into the bank account of the Medowie and Districts Rugby Union Club.

ATTACHMENTS

1) Council meeting 26 October 2021, Minute No. 296. [↓](#)

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

MINUTES ORDINARY COUNCIL - 26 OCTOBER 2021**ITEM NO. 18****FILE NO: 21/268439
EDRMS NO: PSC2021-02594****LOCAL STRENGTHENING FUNDS/GRANTS FUNDING**

REPORT OF: STEVEN BERNASCONI - COMMUNICATIONS SECTION
MANAGER
GROUP: DEVELOPMENT SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Approves the provision of financial assistance from applications received for the Local Strengthening Fund 2021 to 2022 (round 1) under Section 356 of the Local Government Act 1993.
- a) \$6000 to Caring for Our Port Stephens Youth (COPSY) - Early Intervention Complete Coverage
 - b) \$6,000 to Nelson Bay Junior Australian Football Club - Footy for All
 - c) \$6,000 to Thou-Walla Family Centre - Starting School
 - d) \$6,000 to The MindStorm Foundation (The Cooper Storm Memorial Foundation Ltd) - Entrepreneurs Pitch & Innovation Challenge
 - e) \$6,000 to Rotary Club of Raymond Terrace - BBQ trailer refurbishment
 - f) \$2,800 to Anna Bay All Abilities Recreational Play Park Inc - Bird Habitat Landscaping
 - g) \$4,186.51 to Birubi point Surf Life Saving Club – Surf sport training equipment.

**ORDINARY COUNCIL MEETING - 26 OCTOBER 2021
MOTION**

296	Councillor Chris Doohan Councillor Glen Dunkley It was resolved that Council approves the provision of financial assistance from applications received for the Local Strengthening Fund 2021 to 2022 (round 1) under Section 356 of the Local Government Act 1993. <ul style="list-style-type: none">a) \$6000 to Caring for Our Port Stephens Youth (COPSY) - Early Intervention Complete Coverageb) \$6,000 to Nelson Bay Junior Australian Football Club - Footy for Allc) \$6,000 to Thou-Walla Family Centre - Starting Schoold) \$6,000 to The MindStorm Foundation (The Cooper Storm Memorial Foundation Ltd) - Entrepreneurs Pitch & Innovation Challenge
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MINUTES ORDINARY COUNCIL - 26 OCTOBER 2021

	e) \$6,000 to Rotary Club of Raymond Terrace - BBQ trailer refurbishment
	f) \$2,800 to Anna Bay All Abilities Recreational Play Park Inc - Bird Habitat Landscaping
	g) \$4,186.51 to Birubi point Surf Life Saving Club – Surf sport training equipment.

The motion was carried.

BACKGROUND

The purpose of this report is to seek Council's endorsement of the Round 1 recipients of the Local Strengthening Fund 2021 to 2022.

The Local Strengthening Fund is a new funding stream which replaces the previous COVID-targeted response grant stream, the Community Support Fund.

The Local Strengthening Fund aims to build sustainable local communities and environments, and enhance the wellbeing and development of the Port Stephens community. This grant welcomes applications from community groups and not-for-profit organisations seeking support for projects, activities and events that address community and environmental needs.

Round 1 of the Local Strengthening Fund program opened on 1 September 2021 and closed 5 October 2021, in conjunction with several other grant streams including the:

- Vibrant Spaces Fund
- The Community Event Development Fund
- My Incredible Place Micro Fund

The overall response rate for the funding program included 27 applicants across the all streams.

The assessment panel for the Local Strengthening Fund includes assessment by a panel of Councillors, the Mayor and two Council staff. The assessment process was carried out in accordance with the fund guidelines.

Table 1 details the recipients recommended for Round 1 of the Local Strengthening Fund program 2021 to 2022. A total of \$36,986.51 is recommended for funding.

Table 1: Local Strengthening Fund recommended projects			
Organisation	Project Title	Amount	Brief Description
Caring for Our Port Stephens Youth (COPSY) Inc	Early Intervention Complete Coverage	\$6,000	Establish new youth counselling service in Raymond Terrace

MINUTES ORDINARY COUNCIL - 26 OCTOBER 2021

Table 1: Local Strengthening Fund recommended projects			
Organisation	Project Title	Amount	Brief Description
Nelson Bay Junior Australian Football Club	Footy for All	\$6,000	Program to increase local women and girls' participation in AFL, Rugby Union and Soccer
Thou-Walla Family Centre	Starting School	\$6,000	School resource bags for new kindergarten students
The MindStorm Foundation (The Cooper Storm Memorial Foundation Ltd)	Entrepreneurs Pitch & Innovation Challenge	\$6,000	Youth entrepreneurship and local projects program
Rotary Club of Raymond Terrace	BBQ Trailer refurbishment	\$6,000	Refurbishment of existing BBQ trailer
Anna Bay All Abilities Recreational Play Park Inc.	Bird Habitat Landscaping	\$2,800	Native tree planting and building local bird nesting boxes
Birubi Point Surf Life Saving Club Incorporated	Surf sport training equipment	\$4,186.51	Surf sport training equipment for little nippers

Table 2 below outlines the successful applications for the Vibrant Spaces fund following the recent assessment process. A total of \$21,000 will be allocated for funding in round 1. Table 2 is for information only.

Table 2: Vibrant Spaces approved projects		
Applicant	Project Title	Amount
Homegrown Markets	Homegrown Port Stephens, Summer in the Bay	\$6,000
Raymond Terrace Rotary Club	King St Heritage Festival	\$6,000
UP & UP Inspirations	Medowie Mural	\$3,500
Tilligerry Habitat Association	Visitors Centre Wall Mural	\$2,500
Ortenburg Interior Design	Magnus St Gallery, Façade Beautification	\$3,000

Table 3 below outlines the successful applications for the Community Event Development Fund following the recent assessment process. A total of \$9,000 will be allocated for funding in round 1. Table 3 is for information only.

MINUTES ORDINARY COUNCIL - 26 OCTOBER 2021

Table 3: Community Event Development Fund approved projects		
Applicant	Project Title	Amount
Krystal Grzelak	Eat & Greet Pop Up Market, Riverside Park	\$3,000
UP & UP Inspirations	Snak n Rap Youth Event	\$3,000
Hunter Region Botanic Gardens(moved from Vibrant Places)	Welcome Back, High Tea Workshop	\$3,000

Table 4 below outlines the successful applications for the My Incredible Place Micro Grant following the recent assessment process. A total of \$500 will be allocated for funding in round 1. Table 4 is for information only.

Table 4: My Incredible Place Micro Grant approved project		
Applicant	Project Title	Amount
Tilligerry Tennis Club	Clubhouse Wall Mural	\$500

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2018-2022
Community Partnerships	Support local community events that highlight and foster the creative and diverse nature of our community.

FINANCIAL/RESOURCE IMPLICATIONS

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes	\$36,986.51	From overall budget of \$70000
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 in adopting the recommendations. Council provides financial assistance in accordance with Section 356(1) of the Local Government Act 1993. Council manages the Local Strengthening Fund in accordance with the Grants and Donations policy.

MINUTES ORDINARY COUNCIL - 26 OCTOBER 2021

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
There is a risk that funds to successful applicants may not be expended or projects uncompleted and/or not acquitted.	Low	Manage grant administration process as per the grants procedure	Yes
There is a risk that unsuccessful applicants are displeased with Council decision-making	Low	Provide feedback and grant writing support to unsuccessful applicants	Yes
There is a risk that 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

Adopting the recommendation will result in improved social and environmental outcomes for the Port Stephens community through opportunities to generate social connections, and improvements for community wellbeing and to local environments.

CONSULTATION

Consultation with key stakeholders has been undertaken by the Economic Development and Tourism and the Community Development and Engagement teams.

The realigned grant, sponsorship and donations program for 2021 to 2022 was launched on 1 September 2021 and was promoted through existing community networks and media.

OPTIONS

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

ATTACHMENTS

Nil.

MINUTES ORDINARY COUNCIL - 26 OCTOBER 2021

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ITEM NO. 3

**FILE NO: 22/124005
EDRMS NO: PSC2015-03017**

PETITION FOR KERB AND GUTTERING WYCHEWOOD AVENUE, MALLABULA

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

BACKGROUND

The purpose of this report is to advise Council of a petition received with 41 signatures requesting that Port Stephens Council act to reconstruct and provide kerb and guttering to the 200m unfinished section of Wychewood Avenue between Eagle Lane and Strathmore Road, Mallabula.

This section of road does not have kerb and gutter, a drainage system or a wide pavement that is present in adjacent sections of this same road. This section of road has a less than standard road formation that does result in water ponding after rain. Vehicles are also forced to travel on the unformed road verge or crossing the centre lane when passing a parked or oncoming vehicles. Wychewood Avenue is also a bus route. It is for these reasons that this section of Wychewood Avenue is funded in the draft Capital Works Program.

The current draft Capital Works Program that is on public exhibition has this upgrade scheduled for 2030-2031 with a desktop current value estimated at \$830,527.

Staff are currently looking at temporary options to widen the road pavement with an asphalt strip. This temporary option will provide a short term solution until the upgrade is undertaken in 2030-2031.

It should be noted that the current Contribution to Works for Kerb and Gutter Construction Policy will require the residents to contribute towards the introduction of concrete kerb and gutter.

Without an increase in funds, moving this project forward would result in other roads projects in Capital Works Program being deferred to a later date.

ATTACHMENTS

- 1) Petition for kerb and guttering in Wychewood Avenue, Mallabula [↓](#)

COUNCILLORS ROOM

- 1) Petition.

TABLED DOCUMENTS

Nil.

**ITEM 3 - ATTACHMENT 1 PETITION FOR KERB AND GUTTERING IN
WYCHEWOOD AVENUE, MALLABULA**

Petition to Port Stephens Council

We the undersigned residents of Wychewood Avenue, Mallabula request that Port Stephens Council act to reconstruct and provide kerb and guttering to the 200m unfinished section of Wychewood Avenue between Eagle Lane and Strathmore Road.

Wychewood Avenue is a main bus route, and as such, our homes are subject to excessive vibration. Additionally, buses set down on the rough gravel verge, creating difficulty for disabled persons and small children.

ITEM NO. 4

FILE NO: 22/109122
EDRMS NO: PSC2018-00494

ELECTION SURVEY

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

BACKGROUND

The purpose of this report is to provide the results from the Council Election survey.

Council, at its meeting of 22 February 2022, (**ATTACHMENT 1**) resolved:

- "1) Acknowledges the 2021 Council Elections were held on 4 December 2021.
- 2) Agrees to prepare a report for submission to the NSW Electoral Commission, the State Member for Port Stephens, the Minister for Local Government and the Shadow Minister for Local Government.
- 3) Writes to all candidates at that Election inviting them to provide submissions to the Council on:
 - a. What worked well?
 - b. What did not work well?
 - c. What could be done better?
 - d. What could be done differently?
 - e. Anything else they wish to comment on in relation to the Election.
- 4) Request the General Manager prepare a report for consideration by Council following receipt of the responses from the candidates."

NSW local government elections were held on Saturday 4 December 2021. The NSW Electoral Commission conducted the election on behalf of Port Stephens Council. Nominations were called for a popularly elected mayor and 9 councillors. A total of 2 nominations were received for popularly elected mayor and 34 nominations for councillors.

Candidates were invited to participate in the survey and a **total of 8 responses were received**. Some candidates did not respond to Council's request to use their personal information or contact details were not available to Council. It should be noted that candidate nomination contact details are held by the NSW Electoral Commission and not available to Council.

Question 1 - Thinking about the election process, what worked well?

- a) 25% of respondents thought pre-poll and/or postal voting worked well, particularly given the challenging times with COVID-19.

- b) 37% of respondents thought the access to parking and having the ability to speak with electors worked well.
- c) The experience with iVote worked well, however, it was noted further development may be required.
- d) 12% of respondents acknowledged the Candidate Information session provided by Council, however, thought more support could be given to candidates, especially first time candidates.

Question 2 - What did not work well from your perspective?

- a) 12% of respondents believed all worked well.
- b) 25% of respondents held concerns about the iVote option and the potential failure of the system.
- c) 25% of respondents believe electors were confused by the instructions on the ballot papers and, with effectively no 'how to vote', contributed to a high informal vote.
- d) 25% of respondents raised concerns about the placement of election signage, particularly on public land, and the perceived limited action taken by Council to manage the placement of signage.
- e) Various views were held on one or more of the following:
 - the on-line nomination system was awful.
 - did not agree with the rules about displaying A-frames.
 - the results took too long to be displayed.
 - thought the time delays with the nomination draw and uploading the candidates list was frustrating.
 - the iVote option as less than effective and should be provided to everyone regardless of their status.
 - that 2 weeks pre-poll was not appropriate.
 - held concerns that some candidates/party's gaining access within school grounds and the limitation with the 100 metres exclusion zone that was implemented as part of the COVID-19 measures.
 - concerns about a polling booth being located at licensed premises.
 - difficulty in obtaining and delays in clarifying rules on election material.
 - there was some negativity on social media.
 - election official conduct and response times from NSW Electoral Commission were considered poor.

Question 3 - What do you think could be done better?

- a) 12% of respondents suggested there was nothing to improve on.
- b) 25% of respondents requested that the areas of concerns raised in Question 2 be improved, such as:
 - make improvements to the on-line nomination system.
 - review the rules about displaying A-frames.
 - improve timeframes to deliver election results.
 - make the nomination draw and uploading the candidates list timelier.
 - improve customer service and response times from NSW Electoral Commission.

- c) 50% of respondents would like to see the iVote or on-line voting system improved and made available to everyone.
- d) 25% of respondents would like to see earlier/more communication about becoming a candidate (noting the COVID-19 challenges this election) and more support to candidates from Council.
- e) Improvements made in response to reports on illegal signage/material during an election.
- f) Improvements to any restrictions on 'how to vote' requirements, especially communicating to the electors, and the 100 metres exclusion zone.

Question 4 - What do you think could be done differently?

- a) 12.5% of respondents did not believe anything was needed to be done differently.
- b) 12.5% of respondents thought improvements could be made to candidates' profiles and election policies of candidates.
- c) 12.5% of respondents believe pre-poll should be reduced to 1 week.
- d) 12.5% of respondents believe on-line voting and more advertising about on-line voting to raise awareness is needed.
- e) 12.5% of respondents believe the iVote system should be changed and remove face to face voting to save money.
- f) 12.5% of respondents suggested all COVID measures should be repealed.
- g) 12.5% of respondents called for fairer opportunities and ensure all candidates display signage correctly.
- h) 12.5% of respondents repeated their request for improvements made in question 3.

Question 5 - Please provide any additional comments relevant to the election process.

- a) 12.5% of respondents considered the election process to be professional.
- b) 12.5% of respondents considered the COVID-19 period very challenging with the number of lockdowns during the campaign.
- c) 12.5% of respondents suggested that if Council was unable to make improvements to accessing candidate profiles and election policies of candidates, then Council should liaise with the Minister for Local Government and the NSW Electoral Commission.
- d) 12.5% of respondents believe the NSW Electoral Commission needs to make improvements to the training of returning officers to ensure rules are interpreted correctly, which will improve the overall electoral participation. Suggesting information needs to be centralised and improvements made to expectations of electoral staff.

The following information is provided to clarify some responses received:

1. Council is limited in the support it can provide to candidates. Council provided an on-line Candidate Information session (due to COVID-19), with candidates invited to ask questions on the role of a councillor or aspects of Council's operations.

ORDINARY COUNCIL - 24 MAY 2022

Under normal circumstances, these sessions would be held in person and would provide greater opportunities for candidates to interact with senior staff. The session was also recorded and accessible from Council's website. Council provides a wealth of information through the "Councillor Development Program" on its website. This information is freely available to candidates and the community.

2. Council investigated any reports of illegal signage and candidates were requested to remove the signage. If this did not occur, Council would then remove the signage if it was found to be illegally placed.
3. The Local Government (General) Regulation 2021 requires pre-poll to be conducted for a period of 2 weeks.
4. A number of measures were introduced at this election due to COVID-19, therefore it is not envisaged they will be in place at the next election.

ATTACHMENTS

- 1) Council resolution of 22 February 2022. [↓](#)

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

MINUTES ORDINARY COUNCIL - 22 FEBRUARY 2022**NOTICE OF MOTION****ITEM NO. 8****FILE NO: 22/46131****EDRMS NO: PSC2021-04195****ELECTION REPORT****COUNCILLOR: GIACOMO ARNOTT****THAT COUNCIL:**

- 1) Acknowledges the 2021 Council Elections were held on 4 December 2021.
- 2) Agrees to prepare a report for submission to the NSW Electoral Commission, the State Member for Port Stephens, the Minister for Local Government and the Shadow Minister for Local Government.
- 3) Writes to all candidates at that Election inviting them to provide submissions to the Council on:
 - a. What worked well
 - b. What did not work well
 - c. What could be done better
 - d. What could be done differently
 - e. Anything else they wish to comment on in relation to the Election.
- 4) Request the General Manager prepare a report for consideration by Council following receipt of the responses from the candidates.

**ORDINARY COUNCIL MEETING - 22 FEBRUARY 2022
MOTION**

061	Councillor Giacomo Arnott Councillor Peter Francis It was resolved that Council: <ol style="list-style-type: none">1) Acknowledges the 2021 Council Elections were held on 4 December 2021.2) Agrees to prepare a report for submission to the NSW Electoral Commission, the State Member for Port Stephens, the Minister for Local Government and the Shadow Minister for Local Government.3) Writes to all candidates at that Election inviting them to provide submissions to the Council on:<ol style="list-style-type: none">a. What worked wellb. What did not work well
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MINUTES ORDINARY COUNCIL - 22 FEBRUARY 2022

	<ul style="list-style-type: none">c. What could be done betterd. What could be done differentlye. Anything else they wish to comment on in relation to the Election. <p>4) Request the General Manager prepare a report for consideration by Council following receipt of the responses from the candidates.</p>
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Councillor Matthew Bailey left the meeting at 9:20pm.

Councillor Matthew Bailey returned to the meeting at 9:23pm.

The motion was carried.

**BACKGROUND REPORT OF: TONY WICKHAM – GOVERNANCE SECTION
MANAGER****BACKGROUND**

The Port Stephens Council local government election was held on Saturday 4 December 2021.

A total of 36 candidates (Mayoral – 2, East Ward – 11, Central Ward – 13 and West Ward – 10) nominated for the 2021 election in Port Stephens.

Pursuant to section 393AA of the Local Government Act 1993, the NSW Electoral Commissioner is required to provide the Minister with a report on the conduct of the election within 6 months after the election day.

The report is required to include, but not limited to:

- (a) the names of the areas whose elections were conducted by the Electoral Commissioner
- (b) details of the declared results in those elections
- (c) details of any requests for recounts of ballot-papers in those elections
- (d) details of any proceedings commenced in a court or tribunal relating to those elections
- (e) any recommendations by the Electoral Commissioner to the Minister regarding changes to the Act or this Regulation relating to the conduct of elections.

In addition to the above, the NSW Electoral Commission also surveys all candidates, general managers of the councils and the Commission's employees on the election process to inform the report.

MINUTES ORDINARY COUNCIL - 22 FEBRUARY 2022**FINANCIAL/RESOURCE IMPLICATIONS**

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

ATTACHMENTS

Nil.

ITEM NO. 5

**FILE NO: 22/109446
EDRMS NO: PSC2022-01241**

ANNUAL DISCLOSURE OF INTEREST RETURNS FOR 2022 TO 2023

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

BACKGROUND

The purpose of this report is to advise Council of the Mayor, Councillors and persons designated for the submission of pecuniary interest returns for the period 1 July 2022 to 30 June 2023.

Elected Members

Mayor Ryan Palmer
Cr Leah Anderson
Cr Giacomo Arnott
Cr Matthew Bailey
Cr Glen Dunkley
Cr Chris Doohan
Cr Peter Francis
Cr Peter Kafer
Cr Steve Tucker
Cr Jason Wells

General Manager's Office

General Manager
Governance Section Manager
Legal Services Manager
Lawyer

Corporate Services Group

Group Manager Corporate Services
Organisation Support Section Manager
Financial Services Section Manager
Holiday Parks Section Manager
Business Development & Marketing Manager
Strategic Property Coordinator
Corporate Analyst
Principal Property Planner

Development Services Group

Building & Certification Coordinator
Building Surveyor (4)
Building Surveyor (Fire Safety)
Communications Section Manager
Compliance Coordinator
Development and Compliance Section Manager
Development Compliance Officer (3)
Development Planner (3)
Environmental Health Officer (2)
Environmental Health Team Leader
Environmental Officer (2)
Environmental Planner (2)
Group Manager Development Services
Natural Systems Coordinator
Development Planning Coordinator
Principal Building Surveyor
Principal Strategic Planner
Ranger (4)
Ranger Team Leader
Senior Building Surveyor
Senior Building Surveyor – Certifications
Senior Building Surveyor (Fire Safety)
Senior Development Planner (2)
Senior Environmental Health Officer
Senior Environmental Planner (2)
Senior Ranger
Senior Strategic Planner (2)
Senior Strategic Planner – Growth and Infrastructure
Strategic Planner (4)
Strategic Planning Coordinator
Strategy and Environment Section Manager
Vegetation Management Officer
Vibrant Places Team Leader
Waste & Compliance Coordinator

Facilities & Services Group

Assets Section Manager
Capital Works Section Manager
Community Services Section Manager
Group Manager Facilities & Services
Public Domain and Services Section Manager
Senior Development Engineer

ATTACHMENTS

Nil.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ITEM NO. 6

**FILE NO: 22/120528
EDRMS NO: PSC2021-01880**

DESIGNATED PERSONS' RETURN

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

BACKGROUND

The purpose of this report is to table Designated Persons' Return/s (return) submitted.

In accordance with the Part 4 – Pecuniary Interest of the Code of Conduct, all designated persons are required to submit a return. Returns are to be tabled at the first Council meeting after the lodgement date.

The following is a list of position/s who have submitted return/s:

- Communications Section Manager (PSC651)

ATTACHMENTS

Nil.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

- 1) Designated Persons' Return.

ITEM NO. 7**FILE NO: 22/126615
EDRMS NO: PSC2021-02510****QUESTIONS ON NOTICE / QUESTIONS WITH NOTICE****REPORT OF: WAYNE WALLIS - GENERAL MANAGER
GROUP: GENERAL MANAGER'S OFFICE****BACKGROUND**

The purpose of this report is to provide a response to Questions taken on or with Notice in accordance with the Code of Meeting Practice.

Item:	1
Councillor:	Councillor Giacomo Arnott
Date Received:	10 May 2022
Question with Notice:	Were there any accessories purchased with the Mayor's vehicle?
Response:	Accessories included window tint, rubber floor mats and tray cover.

ATTACHMENTS

Nil.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ITEM NO. 8

**FILE NO: 22/123679
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 Council resolutions. [↓](#)
- 2) Development Services Group Council resolutions. [↓](#)
- 3) Facilities & Services Group Council resolutions. [↓](#)
- 4) General Manager's Office Council resolutions. [↓](#)

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ITEM 8 - ATTACHMENT 1 CORPORATE SERVICES GROUP COUNCIL RESOLUTIONS.

Action Sheets
Report

Division: Corporate Services
Committee:
Officer:

Date From: 27/08/2013
Date To: 10/05/2022

Printed: Monday, 16 May 2022

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 27/08/2013	Crosdale, Timothy	Campvale Drain	30/12/2022		
243		Crosdale, Timothy				
13 May 2022						
Two private owners, Hunter Water Corporation and National Parks and Wildlife Service (NPWS). Matter ongoing.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council	Crosdale, Timothy	Financial Sustainability Committee	30/06/2022		
		Crosdale, Timothy				
13 May 2022						
Financial Sustainability Committee is established. Report back to Council end of June 2022.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 11/05/2021	Crosdale, Timothy	Car parking in Shoal Bay	30/12/2022	12/05/2021	
1		Crosdale, Timothy				21/12/3694
13 May 2022						
In principle approval received from Crown Lands.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 22/09/2020	Crosdale, Timothy	Newline Road, Raymond Terrace	30/09/2022		
2		Crosdale, Timothy				20/288489
199						
13 May 2022						
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	30/07/2022	14/04/2021	
2		Crosdale, Timothy				21/96728
090						
13 May 2022						
Matter progressing.						

ITEM 8 - ATTACHMENT 2 DEVELOPMENT SERVICES GROUP COUNCIL RESOLUTIONS.

Action Sheets
Report

Division: Development Services
Committee:
Officer:

Date From: 13/07/2021
Date To: 10/06/2022

Printed: Monday, 16 May 2022

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 22/02/2022	Gardner, Janelle	Newspaper Notices	31/08/2022	25/02/2022	
2 055		Peart, Steven				22/57049
13 May 2022						
Due to finances a number of options are being considered and will be reported back to Council in August 2022.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 22/02/2022	Drinan, Kate	Minor DA Modification Reporting	15/06/2022	25/02/2022	
7 060		Peart, Steven				22/57049
13 May 2022						
Review of Planning Matters to be Report to Council Policy is currently being circulated to the Executive Team. Council Report will be drafted and reported to Council 14 June 2022.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 10/05/2022	Lamont, Brock	Re-Establishment of Alcohol Free Zones in Medowie and Shoal Bay	1/07/2022	12/05/2022	
2		Peart, Steven				22/124235
12 May 2022						
Proposal for the re-establishment of Alcohol Free Zones to be placed on Public Exhibition (AFZ) in Medowie and Shoal Bay (ATTACHMENT 1) in accordance with section 644A of the Local Government Act 1993 (NSW). If no objections are received, adopt the proposal to re-establish the above AFZs for four years. With changes to include Muir Street and Medowie Road. Also communications to go out to remind the Community and new signage.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 26/04/2022	Lamont, Brock	Medowie High School	30/06/2022	28/04/2022	
3		Peart, Steven				22/109684
03 May 2022						
Letter has been drafted to be sent to the various agencies identified. Letter currently awaiting SLT approval.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 13/07/2021	Drinan, Kate	Publication of Development Application Submissions	17/06/2022		
4		Peart, Steven				21/190429
13 May 2022						
Discuss Publication of Development Application Information and Submissions two way has been scheduled for Tuesday 14 June 2022.						

ITEM 8 - ATTACHMENT 2 DEVELOPMENT SERVICES GROUP COUNCIL RESOLUTIONS.

Action Sheets
Report

Division: Development Services
Committee:
Officer:

Date From: 13/07/2021
Date To: 10/06/2022

Printed: Monday, 16 May 2022

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 13/07/2021	Drinan, Kate	Publication of Development Application Information	17/06/2022		
3 178		Pear, Steven				21/190429
13 May 2022						
Discuss Publication of Development Application Information and Submissions two way has been scheduled for Tuesday 14 June 2022.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 14/09/2021	Connell, Sarah	Port Stephens Waterway Strategy	30/06/2022	15/09/2021	
1 240		Pear, Steven				21/252518
13 May 2022						
Research is being undertaken and an internal team meeting has been scheduled to determine the next steps and prepare a project scope to be presented for review to the Strategy & Environment Section Manager in late May 2022.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 8/02/2022	Lourens, Rean	Flying-fox issues at Ross Wallbridge Reserve	30/09/2022	14/02/2022	
7 032		Pear, Steven				22/45826
12 May 2022						
Flying Fox Issues at Ross Walbridge Reserve –Report is being drafted and will be reported back to Council in July.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 12/10/2021	Lourens, Rean	Carbon Neutrality	28/04/2023	13/10/2021	
2 275		Pear, Steven				21/274186
13 May 2022						
Natural Systems team will complete a report to Ordinary Council in September 2022 stepping through the roadmap to achieving carbon neutrality by 2025, along with suitable funding source to achieve the goal.						

ITEM 8 - ATTACHMENT 3 FACILITIES & SERVICES GROUP COUNCIL RESOLUTIONS.



Action Sheets Report	Division:	Facilities & Services	Date From:	8/12/2020
	Committee:		Date To:	10/05/2022
	Officer:		Printed:	Monday, 16 May 2022

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 8/02/2022	Burton , Paul	Boomerang Park BBQs	28/06/2022	14/02/2022	
9 034		Kable, Gregory				22/45826
11 May 2022						
Report shall be provided to Council on the proposal to increase facilities as per this NOM.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 8/02/2022	Maretich, John	Tomaree Road Footpath	24/05/2022	14/02/2022	
13 037		Kable, Gregory				22/45826
12 May 2022						
Report will be provided to Council.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 8/02/2022	Maretich, John	Basketball Backboard and Rings - Croquet Court, Boomerang Park	24/05/2022	14/02/2022	
15 039		Kable, Gregory				22/45826
12 May 2022						
Further investigation on the foundation will be undertaken to ensure the court is fit for the proposed use. Report will then be provided back to Council.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 8/02/2022	Maretich, John	Raymond Terrace Lakeside Pathway	24/05/2022	14/02/2022	
4 029		Kable, Gregory				22/45826
12 May 2022						
Preliminary investigation was undertaken to form part of the NOM background. Additional investigation with assistance from NSW Police will be undertaken and report will be presented to Council.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 8/02/2022	Maretich, John	Foreshore Reserves and Parking on Council Land	26/07/2022	14/02/2022	
5 030		Kable, Gregory				22/45826
12 May 2022						
Report shall be provided to Council.						

ITEM 8 - ATTACHMENT 3 FACILITIES & SERVICES GROUP COUNCIL RESOLUTIONS.

Action Sheets
Report

Division: Facilities & Services
Committee:
Officer:

Date From: 8/12/2020
Date To: 10/05/2022

Printed: Monday, 16 May 2022

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 8/02/2022	Gutsche, Tammy	Reusable Nappies and Menstrual Products	22/06/2022	14/02/2022	
6 031		Kable, Gregory				22/45826
13 May 2022						
Report is currently in progress.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 8/02/2022	Gutsche, Tammy	Independent Audit of Financial Positions of 355c Hall Committees	22/06/2022	14/02/2022	
16 041		Kable, Gregory				22/45826
13 May 2022						
Report is currently in progress.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 22/03/2022	Maretich, John	Guy Marks Oval, King Park, Raymond Terrace	30/06/2022	23/03/2022	
6 091		Kable, Gregory				22/81589
12 May 2022						
Staff to prepare a sign to rename the oval						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 22/03/2022	Maretich, John	Identifying Potholes	30/06/2022	23/03/2022	
7 092		Kable, Gregory				22/81589
12 May 2022						
Report is currently in progress.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 26/04/2022	Maretich, John	Lakeside Leisure Centre	10/05/2022	28/04/2022	
2 114		Kable, Gregory				22/109684
12 May 2022						
Report to be prepared to go back to Council						

ITEM 8 - ATTACHMENT 3 FACILITIES & SERVICES GROUP COUNCIL RESOLUTIONS.

Action Sheets
Report

Division: Facilities & Services
Committee:
Officer:

Date From: 8/12/2020
Date To: 10/05/2022

Printed: Monday, 16 May 2022

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 22/03/2022	Maretich, John	Policy Review - Public Property Encroachment Policy	31/05/2022	23/03/2022	
7		Kable, Gregory				22/81589
12 May 2022						
The Policy was placed on Public Exhibition and two submissions were received. A report will be prepared go to Council in June 2022.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 22/03/2022	Maretich, John	Policy review - floodplain risk management	31/05/2022	23/03/2022	
8		Kable, Gregory				22/81589
12 May 2022						
The policy was placed on Public Exhibition with one submission received. A report will be prepared to go to Council in May 2022.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 22/03/2022	Gutsche, Tammy	Policy review - provision and management of cemeteries policy	31/05/2022	23/03/2022	
10		Kable, Gregory				22/81589
13 May 2022						
A report is currently be prepared and will be presented back to Council on 24 May 2022.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 8/02/2022	Maretich, John	Medowie Library	28/06/2022	14/02/2022	
2 027		Kable, Gregory				22/45826
12 May 2022						
Investigation underway to determine viability as requested.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 25/05/2021	Maretich, John	Anna Bay Drainage Union	1/06/2022	26/05/2021	
2 126		Kable, Gregory				21/138820
12 May 2022						
The State Government agency responsible for Anna Bay Drainage Union shall be consulted with.						

ITEM 8 - ATTACHMENT 3 FACILITIES & SERVICES GROUP COUNCIL RESOLUTIONS.


[Action Sheets Report](#)

Division: Facilities & Services
Committee:
Officer:

Date From: 8/12/2020
Date To: 10/05/2022

Printed: Monday, 16 May 2022

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 25/05/2021	Maretich, John	Bus Stop in Seaside Estate, Fern Bay	31/05/2022	26/05/2021	
5 128		Kable, Gregory				21/138820
12 May 2022						
This review shall be undertaken through Local Traffic Committee and consultation with members of the Seaside Community Association and a report is being compiled.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 13/07/2021	Mitchell, Darren	Hydrogen and Electric Vehicles in Council's Fleet	30/06/2022		
2 177		Kable, Gregory				21/190429
13 May 2022						
Staff are currently in consultation with suppliers on how to introduce new fuel sources for our vehicles.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 8/12/2020	Mitchell, Darren	Fly Point and Little Beach Parking/SMART Parking	31/05/2022		
3		Kable, Gregory				20/391301
13 May 2022						
The 2 way session held in late April was predominantly for Shoal Bay and Birubi, not specifically Fly Point and Little Beach as mentioned last month. A Council report will be drafted for additional Smart Parking locations which will include these two sites, Fly Point and Little Beach. The report will go to Council in June 2022.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 9/02/2021	Mitchell, Darren	5G Small Cell Technology Rollout in Port Stephens	30/06/2022		
3 006		Kable, Gregory				21/33235
13 May 2022						
Discussions have commenced with Telstra and are ongoing.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 9/02/2021	Burton , Paul	Medowie regional playground and town centre	31/08/2022		
2 012		Kable, Gregory				21/33235
05 May 2022						
Two-Way Council briefing will be scheduled in the near future to discuss the future of this land.						

ITEM 8 - ATTACHMENT 3 FACILITIES & SERVICES GROUP COUNCIL RESOLUTIONS.



Action Sheets Report	Division:	Facilities & Services	Date From:	8/12/2020
	Committee:		Date To:	10/05/2022
	Officer:		Printed:	Monday, 16 May 2022

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						
12 May 2022						
Council staff will commence transfer of land parcel to the road reserve.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 12/10/2021	Gutsche, Tammy	Change to Lease Arrangements for Fingal Bay Surf Life Saving Club and Commercial Tenancies	31/05/2022	13/10/2021	
8		Kable, Gregory				21/274186
270						
13 May 2022						
Paperwork currently being prepared for the Mayor and General Manager for the official seal.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 26/10/2021	Maretich, John	REVIEW OF DOG OFF LEAD AREAS - BOAT HARBOUR	31/08/2022	28/10/2021	
20		Kable, Gregory				21/286560
12 May 2022						
A report will be prepared following a 2 way that was held on 19 April 2022.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 8/02/2022	Maretich, John	POLICY REVIEW - CONTRIBUTION TO WORKS FOR KERB AND GUTTERING CONSTRUCTION POLICY	26/07/2022	14/02/2022	
6		Kable, Gregory				22/45826
018						
12 May 2022						
Report with requested information shall be provided to Council.						

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	30/06/2022		
4		Kable, Gregory				21/218740
208						
12 May 2022						
Council to enter agreement with the Community Association DP 270468 in accordance with the confidential terms as per Council report.						

ITEM 8 - ATTACHMENT 3 FACILITIES & SERVICES GROUP COUNCIL RESOLUTIONS.



Action Sheets Report	Division:	Facilities & Services	Date From:	8/12/2020
	Committee:		Date To:	10/05/2022
	Officer:		Printed:	Monday, 16 May 2022

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 10/08/2021	Mitchell, Darren	Kirrang Drive, Medowie Shared Pathway	30/06/2022	13/08/2021	
8 217		Kable, Gregory				21/218740
13 May 2022						
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	Burton , Paul	Raymond Terrace Seven Day Makeover	31/12/2022		
17 228		Kable, Gregory				21/218740
11 May 2022						
This will be discussed with the Councillors in the lead up to William Street, Stage 2 which is funded through the Public Spaces Legacy Fund.						

ITEM 8 - ATTACHMENT 4 GENERAL MANAGER'S OFFICE COUNCIL RESOLUTIONS.



Action Sheets
Report

Division: General Manager's Office
Committee:
Officer:

Date From: 22/02/2022
Date To: 10/05/2022

Printed: Monday, 16 May 2022

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 26/04/2022	Wickham, Tony	CODE OF MEETING PRACTICE REVIEW	14/06/2022	28/04/2022	
4		Wallis, Wayne				22/109684
13 May 2022						
Item deferred pending advice from the Office of Local Government.						

NOTICES OF MOTION

NOTICE OF MOTION

ITEM NO. 1

FILE NO: 22/125921

EDRMS NO: PSC2017-00180

WORLD MENSTRUATION HYGIENE DAY

COUNCILLOR: LEAH ANDERSON

THAT COUNCIL:

- 1) Recognises that 28 May is World Menstrual Hygiene Day.
 - 2) Raises awareness about the challenges regarding access to menstrual products, education about menstruation and period-friendly sanitation facilities.
 - 3) Notes the brand-new sportsgrounds/amenities recently opened at Nelson Bay and not 1 sanitary bin has been installed. The toilets and change rooms are unisex/disabled access but you need to find a bin outside. Also, there is reportedly no soap either for hand washing?
 - 4) Notes that nearby Nelson Bay netball courts are littered with girls and women, again not 1 sanitary bin.
 - 5) Notes that the lack of amenity overall in council public toilets and allied infrastructure (i.e. sport facilities) is appalling and an issue that needs addressing.
 - 6) Also recognises that 'A lack of sanitary bins for men is a wee problem that nobody wants to talk about. In fact, The Continence Foundation estimates about 1 in 4 Australians suffer incontinence and, if you add in the fact that about 1 in 6 men develop prostate cancer, that means you have a good chance of needing to seek out a sanitary bin if you're a bloke'.
 - 7) Requests the General Manager to provide a report to Council to advise how many sanitary bins for both men and women are in Council's public toilets and what toilet locations have them.
 - 8) Includes in the requested report high traffic public toilets that do not have sanitary bins for men and women.
 - 9) Investigates proactive councils such as the:
 - a. **City of Kingston**, which notes in its Public Toilet Strategy Document 'The provision of sanitary napkin disposal bins should be provided in all female toilet facilities and unisex facilities, including ambulant toilets, accessible toilets and changing places facilities'.
 - b. The **South Australian Council of Gawler**, in the Barossa Valley, which is leading the way for local government by installing continence pad disposal bins in their men's public toilets.
-

- c. **Camden Council** - Men's incontinence product disposal bins installed across Camden.
- 10) Investigates the cost of placing sanitary bins for both men and women in Council's public toilets across the LGA.
- 11) Seeks community consultation and reports community feedback back to Council.

BACKGROUND REPORT OF: TAMMY GUTSCHE – COMMUNITY SERVICES SECTION MANAGER

BACKGROUND

The purpose of this report is to provide background information for this Notice of Motion.

Poor menstrual hygiene caused by a lack of education on the issue, persisting taboos and stigma, limited access to hygienic menstrual products and poor sanitation infrastructure undermines the educational opportunities, health and overall social status of women and girls around the world. Today, millions of women and girls around the world are stigmatised, excluded and discriminated against simply because they menstruate.

Menstrual Hygiene Day (MH Day) is a global platform that brings together non-profits, government agencies, individuals, the private sector and the media to promote good menstrual health and hygiene for all women and girls.

Council actively raises awareness of the challenges regarding access to menstrual products, education and menstruation. Raymond Terrace Library has the first 'Share the Dignity' vending machine in the region, dispensing free packs of 6 tampons and 2 pads to ensure people have access to basic sanitary items during their menstrual cycle.

We know that there are people across Australia and our community that struggle to afford menstrual products each month. The Share the Dignity program is one way we can support our community and provide access to safe and hygienic menstrual products.

A review of existing sanitary bin locations can be undertaken along with an investigation into the costs associated with the supply and installation of further sanitary bins across the LGA.

A report can be provided to Council in the coming months outlining details associated with potential implementation including ongoing costs to Council.

FINANCIAL/RESOURCE IMPLICATIONS

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes		
Reserve Funds	No		
Developer Contributions (S7.11)	No		
External Grants	No		
Other	No		

ATTACHMENTS

Nil.

NOTICE OF MOTION

ITEM NO. 2

FILE NO: 22/126004

EDRMS NO: PSC2021-04195

FINGAL BAY

COUNCILLOR: LEAH ANDERSON

THAT COUNCIL:

- 1) Acknowledges the Community of Fingal Bay called a meeting with Mayor Palmer and all East Ward Councillors on Thursday 24 March 2022 to discuss a list of issues that were concerning some local residents.
 - 2) Notes that Mayor Palmer and East Ward Councillor Anderson attended the meeting and were provided with the following list of issues at Fingal Bay:-
 - a. Repair fence on foreshore or replace with suitable vegetation.
 - b. Cut vegetation back on stairs leading to the beach, and check access points as to the step required from end of steps to sand (some are quite low).
 - c. Remove overgrowth of vegetation especially the amount of Bitou Bush and Lantana along the foreshore embankment.
 - d. Levelling of the footpath between Boulder Bay Road and Tuna Crescent to make it easier for walkers, especially the elderly, disabled, and mothers with prams.
 - e. Utilisation of the in ground sprinkler system.
 - f. Public chairs and tables need painting and repairs, covers also required in hot weather and rainy days.
 - g. Repairs to existing outdoor showers, consider 2 shower heads and drinks stations (similar to Shoal Bay).
 - h. Shade sail over children's play area at surf club.
 - i. Pedestrian crossing at the holiday park.
 - j. Creek pollution - Advise Hunter Water to check regarding possible storm water pollution.
 - k. Provide an update on the Marine Drive landslip and when it will be fixed.
 - l. Advise why Fingal Bay is not listed on the 10 Year works plan anywhere.
 - m. Provide a detailed reason why the sale proceeds of 4 blocks of land at Fingal Bay are going to fund a development at Salamander Bay.
 - 3) Acknowledges that the Fingal Bay Community Group "Fingal Bay News and Views" invited Mayor Palmer and all East Ward Councillors via their Facebook group to attend a wider community forum, including the Federal Members of
-

ORDINARY COUNCIL - 24 MAY 2022

Parliament, to discuss what both local and federal levels of Government can promise in terms of support to the Fingal Bay community.

- 4) Notes that only East Ward Councillor Anderson attended the community meeting on Thursday 5 May 2022.
- 5) Notes The Fingal Bay Community Group titled the Community Meeting “Forgotten Fingal” and spoke to the 100 locals who turned up that afternoon. They informed the residents that Council does not have a Place Plan for Fingal and there is no schedule of works planned in Council's 10 year plan of works for Fingal Bay, even though Fingal Bay is rated Number 12 out of Australia's top 20 beaches (2020) and is one of the Tomaree Peninsula's top tourist spots.
- 6) Requests the General Manager to provide a report to Council on the cost of the list of improvements requested by Fingal residents and what Council can do to allocate funds to fix these issues, so that Fingal is no longer forgotten.

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

Given the range of issues within this Notice of Motion, if supported, staff shall prepare a report detailing each issue raised.

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.

NOTICE OF MOTION

ITEM NO. 3

FILE NO: 22/126027

EDRMS NO: PSC2021-04195

TAYLORS BEACH

COUNCILLOR: LEAH ANDERSON

THAT COUNCIL:

- 1) Acknowledges the community group, Taylors Beach Residents Committee, invited all 3 East Ward Councillors to a meeting on Thursday 5 May 2022 at the rotunda in the park.
 - 2) Notes that Councillor Anderson and Councillor Bailey attended the meeting.
 - 3) Notes that the residents of Taylors Beach feel that Taylors Beach looks tired and residents feel neglected and have the following issues that need to be addressed:-
 - a. Electricity to the rotunda.
 - b. Walking path along Taylors Beach Road. They advised that Taylors Beach residents and visitors have to walk on the side of a windy and dangerous road (that also requires pothole maintenance) and push bike riders also have concerns for their safety.
 - c. Extension of concrete boat ramp. Residents advise it is a very popular boat ramp for locals and other residents of the LGA plus visitors and the boat ramp is not long enough, people are often getting stuck in the sand.
 - d. Road repairs are required down to the boat ramp, the roadside is cracked and falling away due to the amount of people taking boats down to the ramp.
 - e. Notes that some of the Norfolk Island Pines are dangerous with falling branches. Recent events had branches on 1 resident's pergola and a shade sail potentially saved the family from injury when they fell.
 - f. Thanks Sam from the Natural Systems team who met and spoke with Councillors Anderson, Bailey and the concerned residents and is investigating the health and safety of the Norfolk Island Pines along the front of the residents' houses.
 - g. Requests the General Manager to provide a report on the maintenance concerns of Taylors Beach and how council will fund the above requests from tired Taylors Beach locals.
-

BACKGROUND REPORT OF: JOHN MARETICH – ASSETS SECTION MANAGER

The purpose of this background is to supply information in relation to the Notice of Motion.

Port Stephens Council (like most councils) has a financial infrastructure funding gap.

Council currently requires \$14.4 million to return our community assets back to an original satisfactory condition. To prioritise these works, inspections are undertaken to assess the condition, compliance and public safety risk on our assets.

Maintenance works and future capital rehabilitation / upgrade works are prioritised based on these assessments. Works are completed in priority order within budgetary constraints.

Council has recently been fortunate to obtain a grant to undertake a review of our boating infrastructure to prioritise future works across our local government area. This review will be used to seek funding to physically undertake works on our boating infrastructure.

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.

NOTICE OF MOTION**ITEM NO. 4****FILE NO: 22/126641****EDRMS NO: PSC2021-04195****GRANT SUSPENSION 2022****COUNCILLOR: STEVE TUCKER**

THAT COUNCIL:

- 1) Suspend all internal grant programs and subsidies for 12 months with funds being redirected towards urgent repairs and maintenance.
-

BACKGROUND REPORT OF: BROCK LAMONT – ACTING STRATEGY & ENVIRONMENT SECTION MANAGER**BACKGROUND**

The Port Stephens Community Funding Program is designed to provide financial support to community and business, creating resilient and vibrant neighbourhoods and to improve the liveability and wellbeing of the community.

The programs are managed by various teams within Council under the Grants and Donations Policy and the Sponsorship Policy.

The following provides a summary of all grant and sponsorship programs proposed for 2022-23.

PROGRAM	PURPOSE	CURRENT BUDGET
Local Strengthening Fund	Build sustainable local communities and environments, and enhance the wellbeing and development of the Port Stephens community, welcoming applications from community groups and not for profit organisations.	\$73,000 (\$36,000 funded by Ward Funds)
My Incredible Place Micro Grants	Support short-term, low cost projects (up to \$500)	\$10,000

ORDINARY COUNCIL - 24 MAY 2022

PROGRAM	PURPOSE	CURRENT BUDGET
	that encourage community-based place activation across Port Stephens.	
Vibrant Spaces Fund	Support Port Stephens communities and business in delivering projects in our town centres and public spaces to drive economic and social outcomes.	\$50,000
Aboriginal Projects Fund	Support community projects designed or intended to empower and raise the profile of local Aboriginal and Torres Strait Islander people	\$35,000
Community Event Development Fund	Support the delivery of events that create social connections, improve the liveability and wellbeing of our residents or the environment and contribute to the social, historical and cultural identity of our community.	\$30,000
Major Event Sponsorship Fund	Support well managed events that drive overnight visitor spend, build the Port Stephens brand and reduce seasonal fluctuations.	\$100,000
International Women's Day Scholarships	Scholarships to local women to achieve their goals across arts, culture, environment, business, community, health or sport.	\$3,000 (\$1,000 per ward from Ward Funds)
Mayoral Funds	Provide assistance across the community from time to time. These funds help support community programs and initiatives that have a positive impact on Port Stephens	\$50,000

ORDINARY COUNCIL - 24 MAY 2022

PROGRAM	PURPOSE	CURRENT BUDGET
	and that do not meet the criteria of other funding streams.	
Rapid Response Financial Assistance Fund (Ward Funds)	Provide financial assistance for small financial requests from the community including school canteen inspection fees.	\$18,000 (\$2,000 per Councillor – Rapid Response) \$5,200 (School canteen inspections)
Ward Funds - balance	Community financial assistance.	\$3,800
Environmental Projects Fund	Provide financial assistance to Port Stephens individuals, schools and groups to carry out environmental related projects and activities that have a positive benefit for the environment.	\$20,000

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.