NOTICE OF ORDINARY MEETING 13 SEPTEMBER 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.

SUBJECT

INDEX

МО	TIONS TO CLOSE	15
1.	MOTION TO CLOSE	16
CO	UNCIL REPORTS	
1.	DEPUTY MAYOR ELECTION	18
2.	COUNCIL MEETINGS - ACKNOWLEDGEMENT OF COUNTRY	21
3.	CODE OF MEETING PRACTICE	24
4.	DELEGATIONS: GENERAL MANAGER AND ACTING GENERAL	
	MANAGER	28
5.	DEVELOPMENT APPLICATION 16-2021-703-1 FOR A	
	RESIDENTIAL FLAT BUILDING AT 11 TO 15 CHURCH STREET,	
	NELSON BAY	37
6.	PLANNING PROPOSAL FOR PART OF 100 AND 174A	
_	SALAMANDER WAY, SALAMANDER BAY	75
7.	PLANNING PROPOSAL FOR 42 FULLERTON COVE ROAD,	444
_	FULLERTON COVE	
8.	DRAFT LOCAL INFRASTRUCTURE CONTRIBUTIONS PLAN 2020 -	
9.	AMENDMENT NO. 2 TEMPORARY SUSPENSION OF PART OF THE ALCOHOL FREE	134
9.	ZONES (AFZS) IN NELSON BAY AND RAYMOND TERRACE	140
10.	DRAFT INTEGRATED PLANNING AND REPORTING DOCUMENTS	140
10.	INCLUDING SPECIAL RATE VARIATION OPTIONS - PHASE 2	
	(RATE RISE OPTIONS)	146
11.	BASKETBALL BACKBOARD AND HOOP - BOOMERANG PARK,	140
	RAYMOND TERRACE	171
12.	POLICY REVIEW: COMMUNITY LEASING, LICENCING AND	
	TENANCY POLICY	176
13.	POLICY REVIEW: ACCESS TO INFORMATION	185
14.	REQUEST FOR FINANCIAL ASSISTANCE	
15.	INFORMATION PAPERS	209
		040
INF	ORMATION PAPERS	210
1.	ROAD PAVEMENT MAINTENANCE	211
2.	QUESTIONS ON NOTICE / QUESTIONS WITH NOTICE	217
3.	DELEGATIONS REPORT	
4.	COUNCIL RESOLUTIONS	221
NO.	TICES OF MOTION	221
140		
1.	ANNA BAY RESORT SITE - 74 - 84 GAN GAN ROAD. ANNA BAY	232

PAGE NO

CONFIDENTIAL	234

1. PROPOSED SALE OF LAND - PART 2 AND 3 ROW 873 BOURKE STREET, RAYMOND TERRACE

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 23 August 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 motions if submitted.
- 14) Rescission motions if submitted.
- 15) Confidential matters if submitted.
- 16) Conclusion of the meeting.

PRINCIPLES FOR LOCAL GOVERNMENT

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

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

Guiding principles for Council

1) Exercise of functions generally

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

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

2) Decision-making

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

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

3) Community participation

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

Principles of sound financial management

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

- a. spend responsible and sustainable, aligning general revenue and expenses.
- b. invest in responsible and sustainable infrastructure for the benefit of the local community.
- c. have effective financial and asset management, including sound policies and processes for the following:
- 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 - 13 SEPTEMBER 2022			
Special disclosure of pecuniary interests by [full name of councillor]			
in the matter of [insert name of environment	ntal planning instrument]		
which is to be considered at a meeting of t			
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.]	☐ 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). ☐ An associated person of the councillor has an interest in the land. ☐ 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]	☐ The identified land. ☐ 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			

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 for each additional interest.]	e declared, reprint the above box and fill in
Mayor/Councillor's signature	
Date	
[This form is to be retained by the council's the minutes of the meeting]	general manager and included in full in



Declaration of Interest form

Agenda item No	
Report title	
Mayor/Councillor	declared a
Tick the relevant response:	
pecuniary conflict of interest significant non pecuniary conflict of interest 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 in the meeting, the councillor needs to provide an exthe conflict requires no further action to manage the conflict separate sheet if required.)	xplanation as to why
OFFICE USE ONLY: (Committee of the Whole may not be appl meetings.)	icable at all
Mayor/Councillor left the Council meeting in Committee of the W	/hole atpm.
Mayor/Councillor returned to the Council meeting in Committee pm.	of the Whole at
Mayor/Councillor left the Council meeting at pm.	
Mayor/Councillor returned to the Council meeting at	pm.

MOTIONS TO CLOSE

ITEM NO. 1 FILE NO: 22/240774 EDRMS NO: PSC2017-00180

MOTION TO CLOSE

REPORT OF: TIMOTHY CROSDALE - GENERAL MANAGER

GROUP: GENERAL MANAGER'S OFFICE

RECOMMENDATION:

1) That pursuant to section 10A(2) (c) of the Local Government Act 1993, the Committee and Council resolve to close to the public that part of its meetings to discuss Confidential Item 1 on the Ordinary agenda namely **Proposed Sale of Land - Part 2 and 3 ROW 873 Bourke Street, Raymond Terrace**.

- 2) That the reasons for closing the meeting to the public to consider this item is that the discussion will include information containing:
- information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business.
- 3) That the report remain confidential and the minute be released in accordance with Council's resolution.

COUNCIL REPORTS

ITEM NO. 1 FILE NO: 22/210671 EDRMS NO: PSC2022-02477

DEPUTY MAYOR ELECTION

REPORT OF: TONY WICKHAM - GOVERNANCE SECTION MANAGER

GROUP: GENERAL MANAGER'S OFFICE

RECOMMENDATION IS THAT COUNCIL:

1) Determine the term of the Deputy Mayor.

- 2) Determine the method of voting to elect the Deputy Mayor.
- 3) Authorise the General Manager or his delegate to conduct the election of the Deputy Mayor.

BACKGROUND

The purpose of this report is to elect the Deputy Mayor.

The election of the Deputy Mayor is to be held in accordance with the provisions of the Local Government Act 1993 and the Local Government (General) Regulation 2021, should Council wish to proceed with the election of Deputy Mayor. The role of Deputy Mayor is not required under the Local Government Act 1993.

The General Manager has appointed Council's Governance Section Manager as Returning Officer for the election, should Council wish to proceed.

The previous terms of the Deputy Mayor have been for a period of 1 year. Council may fix the Deputy Mayor term for a period not greater than the Mayoral role, which is normally 4 years. The role of Deputy Mayor is only paid an allowance in the absence of the Mayor for periods greater than 7 calendar days, which is funded from the Mayoral allowance.

NOMINATIONS FOR THE OFFICE OF DEPUTY MAYOR

Nominations may be made without notice and should be made in writing by 2 or more Councillors (1 of whom may be the nominee) or the Mayor. A nomination is not valid unless the nominee has indicated consent in writing. The Returning Officer will announce the name(s) of the nominee(s) at the Council meeting at which the election is to be held. If more than 1 Councillor is nominated an election will take place.

DETERMINE METHOD OF VOTING FOR ELECTION OF DEPUTY MAYOR

- a) Preferential Ballot.
- b) Ordinary Ballot.

c) Open Voting.

STATEMENT FROM DEPUTY MAYORAL CANDIDATES (OPTIONAL)

A time limit of 5 minutes per candidate will apply in accordance with Council's Code of Meeting Practice.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2022-2026	
Governance	Provide strong civic leadership and	
	government regulations.	

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		

LEGAL, POLICY AND RISK IMPLICATIONS

There is no legal requirement under the Local Government Act 1993 to elect a Deputy Mayor.

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
There is a risk that in the absence of the Mayor Council would not have an elected representative to act as the Mayor.	Low	Adopt the recommendations.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Nil.

CONSULTATION

Nil.

OPTIONS

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

ATTACHMENTS

Nil.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ITEM NO. 2 FILE NO: 22/218027 EDRMS NO: A2004-0372

COUNCIL MEETINGS - ACKNOWLEDGEMENT OF COUNTRY

REPORT OF: TONY WICKHAM - GOVERNANCE SECTION MANAGER

GROUP: GENERAL MANAGER'S OFFICE

RECOMMENDATION IS THAT COUNCIL:

1) Adopts the following Acknowledgement of Country:

"We acknowledge the Worimi people as the original Custodians and inhabitants of Port Stephens. We acknowledge and pay respects to Worimi elders past and present. May we walk the road to tomorrow with mutual respect and admiration as we care for the beautiful land and waterways together."

BACKGROUND

The purpose of this report is to provide Council with the outcome of the consultation undertaken with the Aboriginal Strategic Committee, Worimi Local Aboriginal Land Council and Karuah Local Aboriginal Land Council regarding the wording of the Acknowledgement of Country.

Council currently includes the following Acknowledgement of Country as part of the proceedings of each council meeting:

"Today, we are meeting on Worimi Country, we acknowledge the past, we are working towards a better tomorrow."

At the Extra Ordinary Council meeting held on 11 January 2022, Council resolved to refer a draft Acknowledgement of Country to the Aboriginal Strategic Committee, Worimi Land Council and Karuah Land Council for advice and report back to Council.

The draft Acknowledgement of Country is as follows:

"Port Stephens Council acknowledges the Aboriginal peoples as the First Peoples of this country, and the Worimi Nation as the Traditional Custodians, Owners and Knowledge Holders of the lands and Waterways on which we Live, Work, and Play. We are thankful to be able to learn from the oldest continuous culture on this planet and acknowledge their lands were never ceded and no treaty has been signed. We pay respect to All Aboriginal Elders of the Worimi Country, past, present, and emerging and respect the unbroken deep cultural and spiritual connection Aboriginal people have with this Country."

Consultation has been undertaken with the Aboriginal Strategic Committee, Worimi Local Aboriginal Land Council and Karuah Local Aboriginal Land Council. As a result, an agreed draft Acknowledgement of Country has been provided for Council's consideration:

"We acknowledge the Worimi as the original Custodians and inhabitants of Port Stephens. May we walk the road to tomorrow with mutual respect and admiration as we care for the beautiful land and waterways together."

The Acknowledgement tabled at the Aboriginal Strategic Committee meeting was subsequently modified after consultation with the Committee.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2022-2026	
	Provide strong civic leadership and government regulations.	

FINANCIAL/RESOURCE IMPLICATIONS

There are no financial or resource implications with the recommendation.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes		
Reserve Funds	No		
Developer Contributions (S7.11)	No		
External Grants	No		
Other	No		

LEGAL, POLICY AND RISK IMPLICATIONS

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
There is a positive relationship risk outcome from the adoption of the Acknowledgement of Country following the consultation with the Aboriginal community.	Low	Adopt the recommendation.	Yes.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

An Acknowledgement of Country is an opportunity for anyone to show respect for Traditional Owners and the continuing connection of Aboriginal and Torres Strait Islander peoples to Country.

CONSULTATION

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

External

- Aboriginal Strategic Committee
- Worimi Local Aboriginal Land Council
- Karuah Local Aboriginal Land Council

OPTIONS

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

ATTACHMENTS

Nil.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ITEM NO. 3 FILE NO: 22/223275 EDRMS NO: A2004-0284

CODE OF MEETING PRACTICE

REPORT OF: TONY WICKHAM - GOVERNANCE SECTION MANAGER

GROUP: GENERAL MANAGER'S OFFICE

RECOMMENDATION IS THAT COUNCIL:

1) Receives and note submissions at (ATTACHMENT 1).

- 2) Revokes the Code of Meeting Practice dated 9 June 2020 (Minute No. 098).
- 3) Adopts the revised Code of Meeting Practice shown at (ATTACHMENT 2).

BACKGROUND

The purpose of this report is seek Council's endorsement of the revised Code of Meeting Practice (the 'Code') following the public exhibition period from 4 July 2022 to 15 August 2022.

As a result of the public exhibition, 1 submission was received. A summary of the submission is shown at (ATTACHMENT 1).

The Port Stephens Council's Code of Meeting Practice is based on the revised Model Code of Meeting Practice released by the Office of Local Government on 29 October 2021.

The Code applies to meetings of the Council and Committees of Council where the membership comprises all elected members.

Please note that yellow highlighting in the attached Code indicates an amendment has been made and strikethrough text is to be deleted.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2022-2026	
	Provide strong civic leadership and government regulations.	

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		

LEGAL, POLICY AND RISK IMPLICATIONS

Council is required to adopt a Code of Meeting Practice based on the model Code to ensure it meets all legislative requirements in relation to conducting a meeting of the Council and a committee meeting of Council. In addition, Council is required to review its Code of Meeting Practice within 12 months of an ordinary local government election.

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
There is a risk that Council may be in breach of the Local Government Act 1993 and Local Government (General) Regulation 2021 should it not adopt a Code of Meeting Practice.	Low	Adopt the recommendations.	Yes.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Nil.

CONSULTATION

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

<u>Internal</u>

Executive Team.

External

The revised Code of Meeting Practice was publicly exhibited from 4 July to 15 August 2022.

OPTIONS

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

ATTACHMENTS

- 1) Submission. J
- 2) Revised Code of Meeting Practice. (Provided under separate cover) ⇒

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ITEM 3 - ATTACHMENT 1 SUBMISSION.

SUBMISSION - CODE OF MEETING PRACTICE

No.	Author of submission	Comment	Council response
1	Tomaree Ratepayers & Residents Association (TRRA)	a) The submission supports changes to clauses 3.3 and 3.7, allowing an extra 4 days for the Councillors and the community to consider the agenda	Noted.
		b) The submissions raises the support for the past practice of holding alternate meetings as committee of the whole meetings and a full Council meeting respectively (a practice before 2012). It is considered that this would allow Councillors and the community greater opportunity to consider and seek feedback on matters. c) The submission supports the provision of clauses 4.25 and 4.26 to webcast Public Access sessions, with the consent of the	Section 365 of the Local Government Act 1993 requires Council to meet at least 10 times per year. Council currently meets 21 times per year, on 2 occasions per month. The model suggested in the submission would see a combination of 4 meetings per month (Committee of Council meetings and Ordinary Council meetings), with 21 Committee meetings and 21 Council meetings to consider the recommendations of the Committee meetings. Noted.
		speaker/s – noting clauses 4.26 addresses circumstances where a person does not wish have be included in the webcast.	
		d) The submission supports the inclusion of clauses 11.6 and 20.23 to record the voting outcome on each item, noting the recent trial appears to have gone well and will bring additional transparency and accountability.	Noted.
		e) The submission acknowledges the change in practice for the Councillors to remain seated when addressing the Chairperson and believes this to be a sensible and practical change, and also improves the audio in the Council Chamber with Councillors having better access to the microphone system.	Noted.
		f) The submission notes an inadvertent error at clause 4.21 where 4.19 should read 4.20.	The reference has been amended.

ITEM NO. 4 FILE NO: 22/231699

EDRMS NO: PSC2009-0965

DELEGATIONS: GENERAL MANAGER AND ACTING GENERAL MANAGER

REPORT OF: TONY WICKHAM - GOVERNANCE SECTION MANAGER

GROUP: GENERAL MANAGER'S OFFICE

RECOMMENDATION IS THAT COUNCIL:

1) Delegate the functions in accordance with the Instrument of Delegation to the General Manager attached to this report as **(ATTACHMENT 1)**.

- 2) Appoint the 3 Group Managers (Development Services, Facilities & Services and Corporate Services) to act in the capacity of the General Manager on a rotational basis, in the absence of the General Manager, and that such appointment ceases upon the return to work of the General Manager or other resolution of Council.
- 3) The Mayor and General Manager be authorised to establish a rotational calendar for the role of acting General Manager.
- 4) Any person acting as General Manager pursuant to this resolution has all the functions, delegations and sub-delegations given to the General Manager by the Council.

BACKGROUND

The purpose of this report is to provide the General Manager's and acting General Manager's delegations for Council's consideration and adoption, given the recent appointment of the new General Manager.

The General Manager's delegations have been reviewed and are shown at **(ATTACHMENT 1)**.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2022-2026
Governance	Provide a strong ethical governance structure and systems for Council.

FINANCIAL/RESOURCE IMPLICATIONS

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

Source of Funds	Yes/No	Funding (\$)	Comment
Reserve Funds	No		
Developer Contributions (S7.11)	No		
External Grants	No		
Other	No		

LEGAL, POLICY AND RISK IMPLICATIONS

Council is required to have appropriate delegations for the roles of General Manager and acting General Manager, in accordance with the Local Government Act 1993. Without such delegations Council is at risk of breaching the law and individuals operating outside their limits of responsibility.

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
There is a risk that the General Manager does not hold the appropriate delegations to exercise the functions of their respective roles.	Low	Adopt the recommendations.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Nil.

CONSULTATION

There is no requirement for consultation for this report, as it is a legislative compliance process report.

OPTIONS

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

ATTACHMENTS

1) General Manager delegation.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

GENERAL MANAGER DELEGATION

PORT STEPHENS COUNCIL

INSTRUMENT OF DELEGATION TO GENERAL MANAGER

On Tuesday, 13 September 2022 the Port Stephens Council ("Council") resolved that:

- 1. All previous delegations of Functions the subject of this Instrument be revoked.
- 2. The person who from time to time holds the position of General Manager of Council ("General Manager"), being at the date of this instrument Tim Crosdale, be delegated authority under section 377 of the LG Act, to exercise and/or perform on behalf of Council the Council's Functions under all Legislation in force and as amended from time to time:
 - 2.a Subject to any condition or limitation on a Function specified in Schedule 1; and
 - 2.b Excluding those Functions:
 - that are expressly prohibited from delegation as listed under Section 377 of the LG Act;
 - which are expressly required by legislation to be exercised by a resolution of the Council.
- 3. The General Manager be sub-delegated authority to exercise and/or perform on behalf of Council the Functions delegated to the Council under, and in accordance with, the instrument of delegation to the Council set out in **Schedule 2**, **excluding** those Functions which pursuant to the terms of the delegation to the Council may not be sub-delegated.
- 4. The General Manager be conferred authority to carry out the Policy Authorities listed in Schedule 3 and undertake any administrative actions necessary to carry out those Policy Authorities.
- 5. The General Manager be delegated any Function which is taken to be conferred or imposed on the Council pursuant to section 381(1) of the LG Act.
- 6. In the absence of the General Manager that a person appointed by resolution to act as General Manager assume all Functions, delegations, and sub-delegations of the General Manager for the period only of the absence of the General Manager unless otherwise resolved by the Council.

7.

- 8. These delegations and authorities are subject to, and are to be exercised in accordance with:
 - a.a the requirements of the relevant Legislation;
 - a.b any conditions or limitations set out in Schedule 1 and Schedule 3; and
 - a.c any resolution or policy, procedure or budget adopted from time to time by the Council.
- 9. These delegations and authorities are effective from the date of the Resolution of the Council and remain in force until amended or revoked by a resolution of the Council.
- 10. In this delegation:
 - "Functions" means powers, authorities, duties and functions and anything ancillary or related to the exercise or performance thereof.
 - "Legislation" means legislation enacted by the parliament of New South Wales and the parliament of the Commonwealth of Australia, including an Act, regulation made under an Act, by-law, rule or ordinance.
 - o "LG Act" means the Local Government Act 1993 as amended.

Schedule 1: Limitations

Part A – Limitations applicable to specific statutory Function (if any)			
Legislation	Limitation (if any)		
N/A	N/A		
Part B – General Limitations			
N/A			

Schedule 2: Instruments of Delegation to Council

Delegator	Instrument Name	Date Of Instrument
Roads and Maritime Services (RMS)	Roads and Maritime Services delegations - Section 50 - The RMS delegates to councils constituted under the Local Government Act 1993 listed in Schedule 1 and 2 respectively ("delegates") the functions of RMS set out in Schedule 3 ("the functions") subject to the limitations set out in Schedule 4 and authorises delegates to subdelegate the functions to the persons in Schedule 5 ("subdelegates") subject to the limitations in Schedule 4.	Monday, 31 October 2011

Schedule 3: Policy Authorities

Code	Policy Authority	Conditions / Limitations (if any)
CP014 - Media Policy	Authority to issue media releases and to provide supporting factual information and comment in accordance with the Media Policy and associated Management Directive.	N/A
CP017 - Annual leave	Authority to approve annual leave applications for staff within his/her section.	N/A
CP018 - Sick/carer's leave	Authority to approve staff applications for sick or carer's leave within his/her section.	N/A
CP019 - Other leave	Authority to approve staff applications for other leave including but not limited to: long service leave, parental leave, bereavement/compassionate leave or	N/A

	career break, in accordance with any corporate processes.	
CP020 - Overtime/leave in lieu	Authority to approve the allocation and payment of overtime, leave in lieu and payment of meal allowances and travelling time to staff within his/her section.	N/A
CP021 - Authorise scheduled training	Authority to approve the attendance of staff within his/her section at scheduled training courses or seminars.	N/A
CP022 - Authorised scheduled training	Authority to approve attendance of staff within his/her Group to attend unscheduled training courses or seminars.	N/A
CP023 - Unscheduled training	Authority to approve attendance of staff within his/her Section to attend unscheduled training courses or seminars.	N/A
CP024 - Examination leave	Authority to approve examination and study leave for staff within his/her area of responsibility, in accordance with any corporate processes.	N/A
CP025 - Approve timesheets	Authority to approve timesheets for staff within his/her area of responsibility.	N/A
CP026 - Approve flexi time	Authority to approve flexi time leave for staff within his/her area of responsibility.	N/A
CP028 - Rostered days off and rostering working times	Authority to approve variations to rostered day off patterns and rostered working times.	N/A
CP030 - Social Media Spokesperson	Authority to act as a social media spokesperson for the purpose of representing Council's position on matters of policy, and to provide information on Council's activities within their area or responsibility.	N/A
CP031 - Speak to the Media	Authority to act as a spokesperson for Council for the purposes of representing Council's position on matters of policy, and	N/A

	to provide factual background information on Council's administration and operations within their area of responsibility.	
CP032 - Transfer of vote within a program maximum \$10,000	Authority to transfer a vote within a budget program up to a maximum of \$10,000.	N/A
CP033 - Write off bad debts up to \$10,000	Authority to write off bad debts to an amount of \$10,000 in any one instance.	N/A
CP033A - Write off rate or charges up to \$10,000	Authority to write off rate or charges to an amount of \$10,000 in any one instance.	N/A
CP034 - Appoint & replace Group Managers	Authority to appoint and replace Group Managers in accordance with the current structure and staff establishment numbers and after consultation with Council.	N/A
CP037 - Written and oral communications	Authority to carry out administrative actions, including written and oral communication, necessary to perform the duties and functions of the position.	N/A
CP041 - Authority to sign contracts for sale	Authority to sign contracts of sale in accordance with the Resolution of Council to buy or sell land.	N/A
CP043 - Authority to endorse cheques, bills, promissory notes and EFT	Authority to solely endorse cheques, bills, promissory notes and EFT payable to the Order of the Council in accordance with the duties and functions of the delegates position.	N/A
CP044 - Authority to enter into a contract	Authority to sign and enter into a contract on behalf of Council.	N/A
CP065 - Authority to use purchasing card	Authority to use purchasing card to pay suppliers within your area of responsibility and within the approved budget.	N/A
	Note: General Manager and Group Managers only.	

CP069 - Authority to approve purchase orders	Authority to approve purchase orders within your area of responsibility and within the approved budget. Note: General Manager and Group Managers only.	N/A
CP090 - Authority to serve on Newcastle Airport	Authority to act as a Council nominated director on Newcastle Airport Pty Ltd, Greater Newcastle Aerotropolis Pty Ltd, Newcastle Airport Partnership, Greater Newcastle Aerotropolis Partnership, Newcastle Airport Partnership Company 3 and Newcastle Airport Partnership Company 4	N/A

Pursuant to a Resolution of the Council at its meeting of Tuesday, 13 September 2022,

Ryan Palmer

Mayor / Councillor

Date: Tuesday, 13 September 2022

Review date: Friday, 12 September 2025

General Manager's acknowledgement of Delegations of Authority

I Tim Crosdale, currently employed by the Council in the position of General Manager, do hereby acknowledge that I have read and understood this Instrument of Delegation and that I will perform these delegations and authorities in accordance with this Instrument of Delegation and my position description.

General Manager of Port Stephens Council

Date:

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ITEM NO. 5 FILE NO: 22/202840

EDRMS NO: 16-2021-703-1

DEVELOPMENT APPLICATION 16-2021-703-1 FOR A RESIDENTIAL FLAT BUILDING AT 11 TO 15 CHURCH 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. 16-2021-703-1 for a Residential Flat Building comprising 81 units, neighbourhood shop, basement parking and strata subdivision at 11 to 15 Church Street, Nelson Bay (Lot 156 DP 1094233 and Lot 178 DP1235236) subject to the conditions contained in (ATTACHMENT 1).

2) Support the Clause 4.6 variation request to the building height for the reasons outlined within this report.

BACKGROUND

The purpose of this report is to present a Development Application (DA) 16-2021-703-1 for a residential flat building comprising 81 units, neighbourhood shop (including ancillary café), basement parking and strata subdivision at 11-15 Church Street, Nelson Bay, to Council for determination.

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

Subject Land:	11 to 15 Church Street, Nelson Bay (Lot 156 DP 1094233
	and Lot 178 DP1235236)
Total Area:	4628.79m ²
Zoning:	R3 Medium Density Residential
Submissions:	136 (108 on first notification, 28 on second notification)
Key Issues:	The key issues identified throughout the assessment of
	the DA relate to building height, bulk and scale,
	overshadowing, view loss and visual impact.

This 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 14.9%.

A Locality Plan is provided at (ATTACHMENT 2).

Proposal

The DA seeks consent for a residential flat building (RFB), neighbourhood shop with ancillary café and strata subdivision. The DA specifically proposes:

- An 11 storey building containing 81 residential dwellings.
- 159 car parking spaces (for residents and the neighbourhood shop/café tenancy).
- 8 motorcycle parking spaces.
- A neighbourhood shop on the ground floor with ancillary café.
- Gym for residents use.
- Strata subdivision of the units and common property.

The apartment mix is comprised of the following unit configurations:

- 5 x 1 bedrooms units.
- 46 x 2 bedroom units.
- 25 x 3 bedrooms units.
- 5 x 4 bedroom units.

The main entry to the building is from the forecourt created along Church Street, which leads to dual lobby areas that provide elevator and stair access to the upper levels within the building. There is a basement and lower ground level semi-basement, which both are dedicated to resident car parking and waste storage. The ground level also contains car parking for residents and the neighbourhood shop.

A neighbourhood shop is proposed on the ground level accessible from the forecourt on Church Street. The neighbourhood shop is 99.7m² in size and includes an ancillary café. The café will only operate as part of the neighbourhood shop and not as an independent use. There is a communal gym also located on the ground level that will only be for residents, not for public use.

The ground level is the main entry to the building from Church Street and includes a landscaped forecourt with trees and low shrubs as well as street trees along the verge. The first floor level of the development includes communal open space with landscaping treatments, furniture and various pieces of outdoor recreational equipment. Outdoor planting has been included at the upper levels in the form of planter boxes along the balconies primarily facing Church Street.

Site Description

The subject site comprises 2 lots being Lot 178 DP 1235236 and Lot 156 DP 1094233, known as 11 and 15 Church Street, Nelson Bay (the 'site'). Generally rectangular in shape, the site has a fall from the west to north-east and is 4628.79m² in size.

The site has undergone significant earthworks that were approved under previous development approvals, including partially constructed basement foundations from a

previously approved development, which has ceased construction. There is also a crane present on site.

To the south of the site is the Oaks Nelson Bay Lure Suites. To the north of the site are the Seaview at the Bay holiday units and Donald Street beyond the units, which contains a variety of retail and business uses. To the east of the site is the Cote D'Azur serviced apartments and a block of townhouses. To the west are residential dwellings, primarily single and 2 storey in height.

The site is located approximately 400m from D'Albora Marina to the north, 500m to Nelson Bay Golf Course to the south-east and 1.3km from Gan Gan Lookout to the south-west.

History

The site the development is proposed upon has been subject to several historical DAs, which are outlined below.

11-13 Church Street, Nelson Bay

On 9 May 2017, a DA 16-2016-631-1 for a residential flat building (incorporating an 8 storey apartment complex with underground car parking) was approved on the site. The DA included 56 residential apartments with a building height of 32m above ground level.

Prior to this, DA 16-2008-236-1 was approved on site for a 5 storey residential apartment complex comprising 33 units over 2 buildings. A modification to the consent was approved to increase the number of units to 36 with a building height of 16.8m.

15 Church Street, Nelson Bay

On 16 May 2002, a DA 16-2000-1014-1 was approved on site for an Urban Housing Development containing 21 residential units. This application was subsequently modified to increase the floor to ceiling heights from 2.5m to 2.8m, and was approximately 15.5m in building height.

Key issues

The key issues identified throughout the assessment of the DA relate to building height, bulk and scale, overshadowing, view loss and visual impact.

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 proposed development at its highest point is 30.18m which exceeds the 28m height limit and represents a 14.9% (4.18m) variation to the development standard.

The building design has undergone multiple iterations from the pre-lodgement concept stage through consultation with Council staff and the Urban Design Panel (UDP) to the final design presented in the DA. The architect has reduced the bulk of the section over the 28m height plane by centralising the massing within the site and setting the top level in further from both side boundaries to the south and north.

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:

- Only a small portion of the overall building exceeds the height limit which is centralised on the site and as such reduces it visibility from the public domain.
- The development is compliant with the floor space ratio controls applying to the site.
- When considering the impact of the portion of the building over the height limit, there is considered to be a minor impact in terms of visual impact, view loss, overshadowing and privacy. A building design that is completely contained under the 28m height limit would produce a negligible difference in terms of visual impact, view loss, overshadowing and privacy.
- The portion of the building that exceeds the 28m height limit is not habitable floor area for the units, rather it is communal and private open space areas which benefits all residents of the building.
- The proposed design is able to integrate into the existing context and reflects the building height hierarchy desired in the area.
- The development is consistent with the vision of the 'Nelson Bay Town Centre Strategy' as the exceedance does not interrupt any important view corridors.

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.

Whilst height limits are described as a maximum in PSLEP, Clause 4.6 is a mechanism to allow flexibility where a development standard is not considered necessary or reasonable to achieve the best design outcome on a particular site.

When considering the site specific development characteristics, objectives of the relevant policies and the proposed design, it is considered that the proposed height variation can be supported in its current form.

A detailed assessment against Clause 4.6 is contained within the Planners Assessment Report (ATTACHMENT 3).

Bulk and Scale

Several of the community submissions received consider that the scale of the building will have a negative impact on adjoining development and character on the area.

The numerical bulk and scale of a development is controlled through the floor space ratio (FSR) control applicable to the site as prescribed by PSLEP. The objective of the FSR control is to achieve a building compatible with the bulk and scale of the desired future character of the locality. The FSR of the proposed development is 2.56:1 which is below the maximum 3:1.

Further to the compliance with the FSR controls, the development has been appropriately articulated so that the bulk and scale has been moderated. The Urban Design Panel (UDP) noted the design appropriately responded to neighbouring properties and the locality. This has been achieved through the following design features:

- Tapering the sides of the building down to be a similar height to the adjoining northern and southern neighbours to assist in providing a transition of height and scale.
- Indenting the forecourt and centre of the building along Church Street.
- Placing the building on an angle which reduces any box like shapes, whilst also providing better solar access.
- Setting the top level covered communal space in from the sides so it is not visually dominant.

These design elements provide a building that achieves a compatible relationship to the adjacent built form and which will positively contribute to the architectural quality of development within the locality.

Overshadowing

Solar access and overshadowing is a key consideration for any new residential apartment development as required under the Apartment Design Guide (ADG), specifically Objective 3B-2. The ADG requires solar access to living rooms, balconies and private open spaces of neighbours to be considered and overshadowing should be minimised through building design and separation. The winter solstice is the 'worst case scenario' for solar access throughout a calendar year and forms the basis for solar impact assessment. The ADG design guidance outlines a new building should not decrease surrounding buildings solar access by more than 20% and adjoining buildings should allow living spaces to receive a minimum of 3 hours direct sunlight between 9am and 3pm at mid winter for 70% of apartments. As discussed below, Oaks Lure to the south is the main building affected.

Oaks Lure

Shadow diagrams submitted with the application demonstrate the Oaks Lure apartments overshadow its own communal space gradually from 12pm until 3pm. After 3pm, the whole communal space is overshadowed. Prior to 3pm, some overshadowing occurs from the existing tall trees planted around the pool area.

The DA will overshadow the Oaks Lure western elevation and approximately one third of the communal space at 9am. The overshadowing of the western elevation

reduces as the day progresses. The overshadowing of the communal area is increased by the DA (in addition to the Oaks own internal overshadowing) from 10am. This primarily impacts the pool area on the northern boundary and approximately half the outdoor area.

Eleven of the 58 units will be impacted by additional overshadowing as a result of the DA. This does not result in a 20% decrease of solar access to the neighbouring properties as stipulated under the ADG. It is noted that a large portion of the impacted units are dual aspect, having a western aspect fronting Church Street, allowing sun light in from the west.

The DA will increase the overshadowing of the Oaks Lure in winter, however the summer months are only impacted to a minor scale. Whilst the DA will create additional overshadowing in some instances, the increase is primarily within midwinter and will not considerably decrease the amenity of neighbouring properties, noting overshadowing already occurs from the existing built form.

Importantly, reducing the height of the building to the maximum LEP height of 28m would result in minimal to no change on the existing state of overshadowing, as the portion of the proposed building that overshadows the Oaks Lure is compliant with the LEP height and ADG setback controls. Accordingly, the proposal satisfies the objectives of the ADG.

18 Tomaree Street and 61 Donald Street

18 Tomaree Street, which is to the south east of the site, will be overshadowed partially from 1pm, which increases into the afternoon. To the north east, 61 Donald Street, becomes partly overshadowed from 2pm onwards. Both of these buildings will retain sufficient solar access to private and communal areas during the 'winter solstice'.

The public domain along Church Street is overshadowed by the DA from 9am to 11am, however, this area is already overshadowed by the existing Oaks Lure and Seaview Apartments.

Overall, the impact of overshadowing on the surrounding properties and public domain from the proposed development is considered acceptable. As discussed previously, reducing the height of the building to the maximum LEP height of 28m would result in minimal to no change on the existing state of overshadowing, as the portion of the proposed building that overshadows the Oaks Lure is compliant with the LEP height and ADG setback controls. Given the Level 8 internal space/roof is setback considerably, these elements do not cast a shadow that extends onto the Oaks Lure site.

Council's Urban Design Panel reviewed the shadow diagrams and level of overshadowing impact to adjoining properties and raised no objection to the proposed building on these grounds.

A more detailed assessment of overshadowing is contained within the Planners Assessment Report (ATTACHMENT 3).

View Loss

The proposed development will result in some apartments located to the south of the site (Oaks Lure) having their views impacted to the north and north-west, along with some single residential dwellings to the west on the upslope from the site that maintain views towards Nelson Bay and the headlands. Some level of view loss is expected to occur as a result of the proposed development, noting the site is currently vacant and a 28m height limit applies to the site. View loss has been assessed based on site inspections, planning principles and the information included in the submitted Visual Impact Assessment (VIA).

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

- 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.

The building envelope does not remove the entire view for all Oaks Lure northern facing units, given only half of the view will be obstructed. The view loss from the most north-eastern units is likely to be minor, as the angle of the proposed development will allow them to retain the majority or entirety of their view. For the Oaks Lure eastern facing units, these views are held from an angled position from a window or balcony. It is unrealistic to maintain these views as they already require the occupant to stand in a certain direction to obtain them. These units however, may retain a partial view of the water towards Tomaree headlands.

Whilst the building height is not compliant, an important consideration is that the portion of the proposed building obstructing the views is within the compliant height

limit of 28m. If the whole building was reduced to 28m in height, it would not change the view impact to the water from the Oaks Lure. The building would need to be lower than the height of the Oaks Lure for all apartments to retain the same or similar views, which is unreasonable and not consistent the objectives of the zone, height limit or the desired built form character under Nelson Bay Town Centre Strategy. It would also result in an underdevelopment of the site.

The existing topography and current subdivision pattern results in the Oaks Lure losing views, noting the Oaks is not built to its full height potential under current planning controls and has so far benefitted from being adjacent to undeveloped lots. Changes to the design of the proposed building may not warrant a better outcome in terms of view loss as it may result in a bulkier design spanning across the site, rather than the proposed angle form.

Having regard to the Tenacity principles, whilst the loss of views for some dwellings and units would be significant, on balance the impact is acceptable within the context of the proposed development, given a compliant building height would result in the same or similar impact. Additionally, the proposed development would not obstruct any of the significant vistas identified in the PSDCP 2014.

With consideration to the assessment above, the submitted VIA and advice from Councils Urban Design Panel, the proposed development is considered to be acceptable in terms of impact on views.

Visual Impact

The Urban Design Analysis that accompanied the Nelson Bay Town Centre Strategy, identified that a primary view corridor exists from the water, looking south along Stockton Street towards Kurrara Hill. The proposed development is considered to have minimal impact on this view corridor.

At a human scale, when pedestrians are traversing the Nelson Bay Centre, primarily the village area bound by Stockton Street, Victoria Parade, Yacaaba Street and Tomaree Street, the existing buildings will block the view towards the proposed development when viewed from people on the ground. This is represented in the Visual Impact Assessment (VIA) submitted with the application to address the view impact of the proposal on the broader locality.

The main visibility of the building from pedestrians and in the local context is along Church Street, and the view lines between buildings on Donald Street and Government Road. The building will blend into the scale of built form in those views however, and not obstruct vistas towards Kurrara Hill.

The building will be visible from the water (on boats or from the marinas' wharf) as the distance provides an expansive view of Kurrara Hill and the city centre. Multiple existing high rise buildings are already visible from this viewpoint, and the proposal does not detract or remove the ability to view Kurrara Hill.

Accordingly, the scale of the building does not detract from the existing visual quality or scenic amenity of Nelson Bay to a greater extent than the existing built form.

Traffic Impact and Parking

The development provides parking that is compliant with the DCP. An electric vehicle car space is provided for vehicle charging.

The building has 2 main vehicle entries. It is proposed that all traffic will enter left (from the north) to the site and exit left (to the south) from the site along Church Street. This removes the ability for cars to queue along Church Street northbound to turn right into the development, potentially blocking traffic into Nelson Bay Centre.

Traffic modelling was provided as part of the Traffic Impact Assessment (TIA) to assess the capacity of the road network and ability to cater for the proposed development. The modelling showed that all intersections are currently operating well within intended capacity and will continue to do so post development.

Conclusion

This DA has been considered in accordance with the requirements of the EP&A Act and the Regulations as outlined in this report. Following a thorough assessment of the relevant planning controls, issues raised in submissions and the key issues identified in this report, it is considered that the application can be supported. On balance, the proposed development is suitable for the site and adequately responds to environmental, social and economic impacts from the development and therefore, is within the public interest.

The proposed development is considered to be a positive addition to Nelson Bay Town Centre. When considering the applicable planning controls and objectives, the proposed development will positively contribute to the desired future character of Nelson Bay in addition to contributing additional housing supply in a well serviced area of Port Stephens. The key planning considerations including view loss, building height and overshadowing have all been considered as acceptable.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2022-2026	
1	Provide land use plans, tools and advice that sustainably support the community.	

FINANCIAL/RESOURCE IMPLICATIONS

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

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes		
Reserve Funds	No		
Developer Contributions (S7.11)	Yes		Should Council determine to approve the DA, s.7.11 development contributions would be applicable and would be levied in accordance with conditions of consent. The s7.11 contributions applicable to the proposal are \$1,139,703.
External Grants	No		
Other	No		

LEGAL, POLICY AND RISK IMPLICATIONS

The development application, with the exception of a variation to building height, is consistent with the relevant planning instruments including the Environmental Planning and Assessment Act 1979 (EP&A Act), Port Stephens Local Environmental Plan 2013 (PS LEP), Port Stephens Development Control Plan 2014 (DCP 2014), Port Stephens Comprehensive Koala Plan of Management and associated State Environmental Planning Policies. A detailed assessment against the relevant environmental planning instruments is contained within the Planners Assessment Report contained at (ATTACHMENT 3).

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
There is a risk that if he DA is approved, the determination of the DA may be challenged by a third party in the Land and Environment Court.	Low	Accept the recommendation.	Yes
There is a risk that if the DA is refused, the determination of the DA may be challenged by the applicant in the Land and Environment Court.	High	Accept the recommendation.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Social and Economic Impact

The development will increase housing in Nelson Bay and is considered to have a positive social impact as it will provide for a range of housing sizes to meet the needs of the community. The neighbourhood shop and ancillary café will provide an additional retail use which can service not only the residents but wider community.

During the construction phase, the development will generate more jobs on site. The neighbourhood shop and ancillary café will be staffed which will generate several jobs into the future, as may the strata management, waste collection and maintenance of the overall building.

Built Environment Impact

The proposed development will result in a positive addition to the built form of Nelson Bay with acceptable offsite impacts. Whilst the building will create additional overshadowing in some instances, the increase is primarily within mid-winter and will not significantly decrease the amenity of neighbouring properties, noting overshadowing already occurs to some capacity within these properties. There will be view loss to some properties to the south, however that has been assessed in this report as being acceptable with consideration to the relevant case law.

The applicant provided detailed architectural plans for consideration as well as a Visual Impact Assessment (VIA), 3D renderings of the building within its adjacent context, and overshadowing diagrams. Based on this information, the proposed design and built form has been assessed by both the UDP and Council staff as being supportable.

Overall, the development will provide a high quality architecturally designed building, which will have a positive impact on the streetscape and positive impact on the public domain.

Environmental Impact

The proposed development site does not contain any Koala habitat, critical habitat, threatened species or ecological communities. The existing site is devoid of any natural habitat or native vegetation. None of these vegetation types are present on adjoining sites either, removing any potential interference with flora or fauna habitat or corridors.

There are weeds present on site, which will be removed once construction commences. On these grounds, the proposed development will not have an adverse impact 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 Development Engineering, Environmental Health, Building Surveyor, Strategic Planning, Council's Urban Design Panel (UDP) and Developer Contributions teams. The referral comments from these officers have been considered as part of the Planners Assessment Report (ATTACHMENT 3). The internal referral officers and UDP supported the DA, subject to recommended conditions of consent (ATTACHMENT 1).

Developer Contributions

Section 7.11 contributions apply to the development of a residential flat building. Under the previously approved DA 16-2000-1014-1 on the site, contributions amounting to \$87,308 were paid on 15 February 2006. On this basis, a credit has been applied to the applicable s7.11 monetary contribution to reflect the previous payment.

The total contributions payable, as calculated in May 2022 are \$1,139,703 (subject to CPI increases).

External

Consultation was undertaken with Ausgrid who provided conditions to be met prior to the issue of a Construction Certificate. A condition is recommended accordingly.

Public Exhibition

The application was exhibited from 7 September 2021 to 21 September 2021, in accordance with the provisions of the Port Stephens Council Community Engagement Strategy. There were 108 submissions received during this period.

The application was re-notified after the submission of amended plans and documentation from the applicant from 7 April 2022 to 21 April 2022. There were 28 submissions received during this period.

A detailed response to these submissions is provided in the Planners Assessment Report in **(ATTACHMENT 3)**.

OPTIONS

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

ATTACHMENTS

- 1) Recommended Conditions of Consent. <a>J
- 2) Locality Plan. J
- 3) Planners Assessment Report. (Provided under separate cover) ⇒

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.

SCHEDULE 1 – CONDITIONS OF CONSENT

1.0 - General Conditions of Consent

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

(1) 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.
A-A100	Q	Floor Plan – Basement	Holdsworth Design	23.02.2022
A-A101	Т	Floor Plan – Lower Ground	Holdsworth Design	15.04.2022
A-A102	V	Floor Plan – Ground Level	Holdsworth Design	18.05.2022
A-A103	U	Floor Plan –Level 1	Holdsworth Design	18.05.2022
A-A104	Т	Floor Plan –Level 2	Holdsworth Design	18.05.2022
A-A105	Т	Floor Plan –Level 3	Holdsworth Design	18.05.2022
A-A106	Т	Floor Plan –Level 4	Holdsworth Design	18.05.2022
A-A107	R	Floor Plan –Level 5	Holdsworth Design	18.05.2022
A-A108	Т	Floor Plan –Level 6	Holdsworth Design	18.05.2022
A-A109	Т	Floor Plan –Level 7	Holdsworth Design	18.05.2022
A-A110	X	Floor Plan – Level 8	Holdsworth Design	18.05.2022
A-A400	L	Elevations – Sheet 1	Holdsworth Design	23.02.2022
A-A401	М	Elevations – Sheet 2	Holdsworth Design	15.04.2022
A-A450	N	Sections	Holdsworth Design	23.02.2022
LP.01/G	G	Landscape Plan – Ground Floor	Meraki Green Landscape Architecture	17.06.2022
LP.02/E	E	Landscape Plan – First Floor	Meraki Green Landscape Architecture	20.06.2022
LP.03/D	D	Landscape Plan – Fourth Floor	Meraki Green Landscape Architecture	02.03.2022



Plan No.	Revision No.	Plan Title.	Drawn By.	Dated.
LP.04/D	D	Landscape Plan – Seventh Floor	Meraki Green Landscape Architecture	02.03.22
LP.05/D	D	Landscape Plan – Eighth Floor	Meraki Green Landscape Architecture	02.03.22
LP.06/C	С	Landscape Plan – Specifications Sheet	Meraki Green Landscape Architecture	02.03.22
12549041- C100	F	Civil Stormwater Basement Stormwater Plan	GHD	30.06.2022
12549041- C200	F	Civil Stormwater Lower Ground Floor Stormwater Plan	GHD	30.06.2022

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.

- (2) Surrender of Development Consent The applicant must surrender the consents relating to DA No. 16-2000-1014 (as amended) for a Urban Housing Development (21 units) and DA No. 16-2016-631 (as amended) for a Residential Flat Building (Incorporating 8 Storey Apartment Complex with Underground Car Parking) by submitting an application for 'Surrender of a Consent' to Port Stephens Council in accordance with Clause 68 of the Environmental Planning & Assessment Regulation 2021. This must be done prior to the issue of the first Construction Certificate.
- (3) Limits of consent This consent does not approve:
 - a) The fit out or hours of operation of the neighbourhood shop and ancillary café.
 - b) Signage.

The above must be approved under a separate development application.

- (4) Design Amendments Before the issue of a construction certificate, the certifier must ensure the approved construction certificate plans (and specifications) detail the following required amendments to the approved plans and supporting documentation stamped by Council.
 - a) The Landscape Plan is to be updated to remove any bamboo species of plants along the sites southern and eastern boundaries and should be replaced by a species that can be easily maintained.

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Page 2 of 24



b) The Landscape Plan is to be updated to include permanent intermittent panels of climbing structures on the blank concrete wall on the eastern elevation at the lower ground and ground levels. In the planter in the base, install Ficus pumila (under the blank sections) and Trachelospermum jasmenoides (under the climbing structures). The bed should also be planted with native grass like Poalabilliardi and Lomandra tanika to form a long-term living mulch.

This should also be repeated on the southern side using Parthenocissus tricuspidate instead of the Ficus pumila. Any climbing structure should be high quality stainless using Ronstan Greening System or equivalent.

The above plan amendments are to be endorsed by Council.

- (5) **Building Code of Australia** All building work must be carried out in accordance with the BCA. In this clause, a reference to the BCA is a reference to that Code as in force on the date the application for the relevant Construction Certificate is made.
- (6) Excavation for residential building works If the approved development involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the consent must, at the person's own expense:
 - a) protect and support the adjoining premises from possible damage from the excavation; and
 - b) where necessary, underpin the adjoining premises to prevent any such damage.

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

(7) Sign on building – Except in the case of work only carried out to the interior of a building or Crown building work, a sign must be erected in a prominent position on the site showing the name, address and telephone number of the Principal Certifying Authority for the work, the name of any principal contractor and their after-hours contact number, and must contain a statement that unauthorised entry to the site is prohibited.

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

- (8) **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'.
- (9) Reflectivity The reflectivity of glass externally must not exceed 20%. Details demonstrating compliance must be provided to the Certifying Authority.
- (10) Roof mounted equipment All roof mounted equipment such as air conditioning units, service pipes and vents etc., are required to be installed must be concealed

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Page 3 of 24



within the external walls of the development or adequately screened so as not to be visible from a public place.

(11) 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.

Materials and colours are to be consistent with the Finishes Schedule on the approved Elevations – Sheet 1 and Sheet 2 by Holdsworth Design referenced in Part 1.0 Condition 1 of this consent.

- (12) 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 following requirements:
 - a) the graphic display must be complimentary to the surrounding character;
 - 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,
 - graphic displays must be installed to ensure long-term durability with a clean finish to the face of the temporary site structure;
 - e) 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.

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) Certification from a Structural and Geotechnical Engineer to be provided for all retaining structures with consideration given specifically referencing walls adjacent to neighbouring properties, possible settlement influenced by the water table and stormwater infiltration system, water proofing and stability.

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.

- (2) Ausgrid The applicant must submit a NECF-01 'Preliminary Enquiry' form for a response from Ausgrid which must be received before a Construction Certificate is issued.
- (3) Potential acid sulfate soils A geotechnical assessment of the site is to be undertaken to determine whether the development works will disturb Potential Acid Sulfate Soils (ASS). Should ASS be encountered within the zone of works, an ASS

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Page 4 of 24



Management Plan is to be prepared by a suitably qualified Geotechnical Engineer and submitted to the Certifying Authority.

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

- (4) 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. The plans are also to include:
 - a) Details shall be in accordance with this consent, the BCA, Councils Infrastructure Specification, as a minimum and include by are not limited to:
 - Structural and geotechnical details for footings taking into consideration the effects of the proposed stormwater infiltration discharge method;
 - Structural details for concrete or masonry drainage structures;
 - Structural details for boundary retaining walls;
 - Construction erosion and sediment control.
 - b) Certification from a Structural and Geotechnical Engineer for the 50mm concrete binding layer on the internal face of the detention tanks where it is attached to the outlet emergency pipe to ensure that the external pressure from groundwater and the soil will not result in collapse.

Details demonstrating compliance must be provided to the Certifying Authority and Council.

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

- (5) 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). The plans must include:
 - a) The stormwater quality treatment train shall treat stormwater, prior to discharge, to Port Stephens Council Development Control Plan requirements. Before water is released into public drainage it must achieve Council's water quality stripping targets which are:
 - a. Total nitrogen retention post-development load: 45%
 - b. Total phosphorus retention post-development load: 60%
 - c. Total suspended solids post-development load: 90%

Gross pollutants post-development load: 90%.

b) All downpipes and associated guttering to cater for 1% AEP storm events in order to direct all runoff to infiltration areas.

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Page 5 of 24



Details such as plans and models demonstrating compliance must be provided to the Certifying Authority and Council.

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

(6) 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.

- (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:
 - Council's development control plan,
 - 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.
- (9) Landscape plan / street tree plan Street trees must be planted at no cost to Council and in the location(s) specified on the Landscape Plan prepared by Meraki Green Landscape Architecture, dated 22 April 2022 Rev F.

Details demonstrating compliance must be provided to the Certifying Authority.

- (10) **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.
- (11) **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:
 - The room must be constructed of solid material, cement rendered and trowelled to a smooth even surface;

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Page 6 of 24



- 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
- Garbage rooms must be vented to the external air by natural or mechanical ventilation.

Details demonstrating compliance must be provided to the Certifying Authority.

- (12) Hunter Water Corporation Approval A Section 50 application under the Hunter Water Act 1991 must be lodged with Hunter Water Corporation (HWC).
- (13) **Car parking details** Before the issue of a 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.
- (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, including proposed truck movements to and from the site and estimated frequency of those movements, and measures to preserve pedestrian safety in the vicinity of the site
 - e) protective measures for on-site tree preservation (including in accordance with AS 4970-2009 Protection of trees on development sites and Council's DCP, if applicable) and trees in adjoining public domain (if applicable)
 - f) details of any bulk earthworks to be carried out
 - 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
 - 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.

Note. Condition only applies to dual occupancy developments and above.

(15) Section 7.11 Development contributions – A monetary contribution is to be paid to Council for the provision of 59 additional dwellings pursuant to Section 7.11 of the

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Page 7 of 24



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	\$27,848
Civic Administration – Works Depot	\$1,231	\$72,629
Town Centre Upgrades	\$3,316	\$195,644
Public Open Space, Parks and Reserves	\$2,012	\$118,708
Sports & Leisure Facilities	\$1,914	\$112,926
Cultural & Community Facilities	\$1,296	\$76,464
Road Works	\$3,489	\$205,851
Shared Paths	\$3,196	\$188,564
Bus Facilities	\$12	\$708
Fire & Emergency Services	\$240	\$14,160
Flood & Drainage	\$1,846	\$108,914
Kings Hill Urban Release Area	\$293	\$17,287
	TOTAL	\$1,139,703

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) **Roads Act Application** The following information must be provided to Council as Roads Authority with the Roads Act application:
 - a) A design for a public footpath along Church Street, which will join into the existing footpath on either side of the development site. The footpath must be designed in accordance with Councils Infrastructure Specifications.
- (17) 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.
- (18) Dilapidation Report Adjoining Property A dilapidation report including a photographic survey of the following adjoining properties must be provided to the Certifying Authority. The dilapidation report must detail the physical condition of those properties, both internally and externally, including walls, ceilings, roof, structural members and other similar items.
 - a) 19 Church Street, Nelson Bay
 - b) 9 Church Street, Nelson Bay
 - c) 18 Tomaree Street, Nelson Bay
 - d) 61 Donald Street, Nelson Bay

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Page 8 of 24



The dilapidation report is to be prepared by a qualified engineer. All costs incurred in achieving compliance with this condition must be borne by the applicant.

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

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

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

Details demonstrating compliance must be provided to the Certifying Authority and Council.

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
 - 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 underthat 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) Home Building Act – Insurance - 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.

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Page 9 of 24



- (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;
 - 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
 - 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 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;
 - the Registered numbers and date of issue of the development consent and construction certificate;
 - 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:
 - showing the name, address and telephone number of the principal certifier for the work, and

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Page 10 of 24



- 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;
 - a Principal Certifying Authority (PCA) has been appointed by the person having benefit of the development consent in accordance with Section 6.5 of the EP&A Act 1979; and
 - the PCA is notified in writing of the name and contractor licence number of the owner/builder intending to carry out the approved works.
- (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) Demolition work All demolition works are to be carried out in accordance with Australian Standard AS 2601 'The demolition of Structures'. All waste materials are to be either recycled or disposed of to a licensed waste facility.
 - Any asbestos containing material encountered during demolition or works, is to be removed in accordance with the requirements of Safe Work NSW and disposed of to an appropriately licenced waste facility.
 - Evidence is to be provided to the Certifying Authority demonstrating that asbestos waste has been disposed of in accordance with this condition.
- (9) 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 groundon site).

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Page 11 of 24



(10) 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.

(11) 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.

(12) **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.

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 vegetationremoval is only carried out between:

7.00am to 5.00pm on Monday to Saturday

The principal certifier must ensure building work, demolition or vegetation

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Page 12 of 24



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
- 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 —

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Page 13 of 24



- a) All footings/ foundations
- At other stages of construction any marks that are required by the principal certifier.
- (9) Construction Management Plan implementation All construction management procedures and systems identified in the approved construction site management plan must be introduced during construction of the development.
- (10) Stormwater disposal Following the installation of any roof, collected stormwater runoff from the structure must be:
 - a) Diverted through a first flush system before being connected to an existing stormwater easement/system/street.
- (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 be 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 beingcarried out.

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Page 14 of 24



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

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

- (17) Cut and fill 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.

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Page 15 of 24



The applicant will be required to submit documentary evidence that the property has been developed in accordance with the plans approved by this development consent 16-2021-703-1 and of compliance with the relevant conditions of consent, prior to the issuing of a Strata Plan of Subdivision.

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

- (2) Restriction on issue of Strata Plan of Subdivision An Occupation Certificate for the building must be issued by the PCA prior to the issue of any Strata Plan of subdivision associated with this development consent 16-2021-703-1.
 - 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) **Outstanding works** The applicant is to lodge a bond with Council for the construction of outstanding works, including concrete footpath and/or pedestrian/cycle shared way and a bond can only be lodged once the agreement has been made with Council to accept this.
- (6) **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.
- (7) 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).

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Page 16 of 24



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

- (8) Section 88B Instrument The applicant must prepare a Section 88B Instrument which incorporates the following easements, positive covenants and restrictions to user where necessary:
 - a) easement for services;
 - b) easement to drain water and drainage easement/s over overland flow paths;
 - c) easement for on-site detention;
 - d) positive covenant over the on-site detention / water quality facility for the maintenance, repair and insurance of such a facility;
 - e) retaining wall, positive covenant, and restriction to user;
 - restriction as to user over sub-surface drainage pipes contained within the building area of allotments;
 - g) restriction as to user over any lots adjacent to a public reserve stipulating dividing fence type;
 - h) restriction as to user preventing the alteration of the final overland flow path shape, and the erection of any structures (other than open form fencing) in the overland flow path without the written permission of Council;
 - restriction as to user creating an easement for support and maintenance 900mm wide adjacent to the "zero" lot line wall;

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.

 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) 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

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Page 17 of 24



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.

(4) 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.

(5) 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 submittedwill be used to cover the rectification work.

- (6) Completion of Roads Act Approval works All approved road, footpath and/or drainage works, including vehicle crossings and footpaths, have been completed in the road reserve in accordance with the Roads Act Approval to the satisfaction of the Council as the Roads Authority.
- (7) 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 followingcompleted 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.

(8) **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.

- (9) Street tree planting All street trees must be planted in accordance with the approved Street Tree Planting plan (as required under condition 2.0(1) of 16-2021-703-1).
- (10) 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,

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Page 18 of 24



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 plansand any relevant conditions of this consent.

(11) Car parking requirements – A minimum of 15 car parking spaces including 2 disabled car parking spaces are to be dedicated to the Neighbourhood Shop and ancillary café tenancy. Parking must be permanently marked on the pavement surface.

There are to be a minimum 27 parking spaces marked for visitors, which must be signposted as "visitor parking".

Car parking for residential units must be provided in accordance with the following minimums:

- One bedroom unit 1 car space
- Two bedroom unit 1 car space
- Three bedroom unit 2 car spaces
- Four bedroom unit 2 car spaces

Residential car parking is to be permanently numbered on the pavement.

There are to be 8 motorcycle parking spaces provided in accordance with the approved plans.

The electric vehicle parking space must be available for the use of all residents.

All car parking is to be provided in accordance with AS2890 and the approved plans.

- (12) Bicycle requirements Bicycle parking racks to accommodate 5 bicycles must be installed on Ground Level.
- (13) **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.
- (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) Lot Consolidation Before the issue of any occupation certificate, Lot 156 DP 1094233 and Lot 178 DP 1235236 are to be consolidated.

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Page 19 of 24



A copy of the Registered Plan of consolidation must be provided to the Principal Certifying Authority.

7.0 - Ongoing Use

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

- Maneuvering of vehicles All vehicles must enter and exit the site in a forward direction.
- (2) **Removal of graffiti** The owner/manager of the site is responsible for the removal of all graffiti from the building and fences within 48 hours of its application.
- (3) Parking areas to be kept clear At all times, the loading, car parking spaces, driveways and footpaths must be kept clear of goods and must not be used for storage purposes.
- (4) Privacy screen Any privacy screen/s must be permanently maintained in accordance with the approved plans for the life of the development.
- (5) **Residential air conditioning units –** 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.
- (6) Maintenance of landscaping Landscaping must be maintained in accordance with the approved landscape plan and conditions of this development consent. All landscape areas must be kept free of parked vehicles, stored goods, garbage or waste material at all times.
 - If any of the vegetation dies or is removed, it is to be replaced with vegetation of the same species and similar maturity as the vegetation which has died or was removed.
- (7) **Waste management and collection –** The building owner must ensure that there is a contract with a licensed contractor for the removal of all waste. No garbage is to be placed on public land (e.g. footpaths, roadways, plazas, reserves) at any time.
- (8) Operation of Neighbourhood Shop and ancillary café The café component must only operate whilst the Neighbourhood Shop operates and never independently. If the use of the Neighbourhood Shop ceases, the use of the ancillary café also ceases.
- (9) Gym The gym is for the use of residents only. It must not be operated or leased in any commercial form.

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Page 20 of 24



- (10) Communal Area Access All residents of the development are to have access to all communal areas, including:
 - The enclosed and open communal areas on Ground Level and Level 8; and
 - Resident gym on ground floor.

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) Flood information is subject to change You are advised that flood information is subject to change if more accurate data becomes available to Council. It is the responsibility of the applicant to use the most up-to-date flood information. Prior to applying for a construction certificate, Council should be contacted to verify the currency of the flood information.
- (5) Works near/adjoining electricity network assets There are electricity network assets adjacent to the proposed development in Church 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
- (6) Responsibility for damage for tree removal/pruning The applicant is responsible for any damage caused to existing public utilities, footpaths or public roads during the cutting down, grinding, removal and disposal of the timber and roots. Care must also be taken by the applicant and the applicant's agents to prevent any damage to adjoining properties. The applicant or the applicants' agent may be liable to pay compensation to any adjoining owner if, due to tree works, damage is caused to such adjoining property.

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Page 21 of 24

ITEM 5 - ATTACHMENT 1 RECOMMENDED CONDITIONS OF CONSENT.



SCHEDULE 2 - REASONS FOR DETERMINATION AND REASONS FOR CONDITIONS

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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 (Biodiversity and Conservation) 2021, State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004, State Environmental Planning Policy (Transport and Infrastructure) 2021 and State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development.
- Council has considered and accepted the proposed development standard variation request to Clause 4.3 of the PSLEP. The proposed 32.18m building height and subsequent 4.18m variation is considered acceptable in the particular circumstances of this case as the variation will not significantly overshadow the neighbouring properties, obstruct significant view corridors, or result in negative privacy issues.
- 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;
- Identify modifications and additional requirements that will result in improved compliance, development and environmental outcomes;
- Prevent, minimise, and/or offset adverse environmental impacts including economic and social impacts;
- Set standards and performance measures for acceptable environmental performance; and
- 5. Provide for the ongoing management of the development.

SCHEDULE 3 – RIGHT OF APPEAL AND REVIEW

RIGHT OF APPEAL

If you are dissatisfied with this decision (including a determination on a review under Section 8.2), Section 8.7 and 8.10 of the Environmental Planning and Assessment Act

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Page 23 of 24

ITEM 5 - ATTACHMENT 1 RECOMMENDED CONDITIONS OF CONSENT.



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

RIGHT OF REVIEW

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

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

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

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Page 24 of 24

ITEM 5 - ATTACHMENT 2 LOCALITY PLAN.



ITEM NO. 6 FILE NO: 22/210262

EDRMS NO: 58-2022-4-1

PLANNING PROPOSAL FOR PART OF 100 AND 174A SALAMANDER WAY, SALAMANDER BAY

REPORT OF: BROCK LAMONT - STRATEGY & ENVIRONMENT SECTION

MANAGER

GROUP: DEVELOPMENT SERVICES

RECOMMENDATION IS THAT COUNCIL:

1) Adopt the planning proposal **(ATTACHMENT 1)** to amend the Port Stephens Local Environmental Plan 2013 to reclassify part of 100 and 174A Salamander Way, Salamander Bay (part of Lots 21 and 23 DP 1044009) from community to operational land.

2) Forward the planning proposal to the NSW Department of Planning and Environment for a Gateway determination and request authority to make the plan.

BACKGROUND

The purpose of this report is to recommend that Council adopt a planning proposal (ATTACHMENT 1) to amend the Port Stephens Local Environmental Plan 2013 (LEP) to reclassify part of 100 and 174A Salamander Way, Salamander Bay (part of Lots 21 and 23 DP 1044009) (ATTACHMENT 2) from community to operational land. A Strategic Planning Assessment Report is included at (ATTACHMENT 3).

A planning proposal to amend LEP Schedule 4 Classification and reclassification of public land is the appropriate mechanism to consider the reclassification of the subject land. The NSW Department of Planning and Environment (Department) has additional requirements that must be addressed in the justification of planning proposals that seek to reclassify public land. These requirements are set out in NSW LEP Practice Note PN 16-001 Classification and reclassification of public land through a local environmental plan. They include additional information on Council's interests in the land and a requirement for an independently chaired public hearing following public exhibition.

Council previously resolved as landowner on 28 September 2021 to commence the reclassification process for the subject land and authorise St Philip's Christian College to lodge a planning proposal for consideration by Council.

The planning proposal **(ATTACHMENT 1)** has subsequently been lodged by Barr Property and Planning Pty Ltd (for St Philip's Christian College) in the NSW Planning Portal for consideration by Council. If the planning proposal is adopted, a Gateway

determination will be sought from the Department. If the planning proposal proceeds, it will be subject to the community consultation process, including public exhibition and an independently chaired public hearing. A post-exhibition report will be prepared for consideration by Council.

The subject land is currently occupied by St Philip's Christian College under a licence arrangement issued in 2016 for a 21 year period for the purpose of 'construction and maintenance of an area for car parking and playing fields'. The development application authorising the construction of the car park and playground extension was approved in 2017 and construction was completed in 2019. The car park and playing fields form part of the school.

To facilitate any potential sale of the land, reclassification to operational land under the Local Government Act 1993 is required.

A summary of the planning proposal is set out below:

Date lodged:	6 July 2022
Proponent:	Barr Property and Planning Pty Ltd (for St
	Philip's Christian College)
Subject land:	Part of 100 Salamander Way, Salamander Bay
	(part of Lot 21 DP 1044009)
	Part of 174A Salamander Way, Salamander Bay
	(part of Lot 23 DP 1044009)
Subject land area:	1.3 hectares (approximate)
Current classification:	Community land
Proposed classification:	Operational land
Zoning (to be retained):	SP2 Infrastructure (School/Child care centre)

Purpose of the amendment

The purpose of the planning proposal is to amend LEP Schedule 4 Classification and reclassification of public land for the subject land from community to operational land. Reclassification will enable commencement of negotiations to sell the subject land as outlined in the planning proposal (ATTACHMENT 1).

Existing and surrounding uses

The subject land has an area of 1.3 hectares. It is currently occupied by St Philip's Christian College for use as a car park and extension of its playing fields under a 21 year license with Council.

Suitability of the subject land

The subject land proposed for reclassification is already developed and suitably zoned SP2 Infrastructure (School/Child care centre) consistent with its current use. It is suitable for reclassification from community to operational land, subject to the

planning proposal process including community consultation and an independently chaired public hearing.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2022-2026
	Provide land use plans, tools and advice that sustainably support the community.

FINANCIAL/RESOURCE IMPLICATIONS

There are potential positive financial implications for Council as a result of the planning proposal. Reclassification of the subject land would enable long term tenure of the site.

The proponent has engaged an independent consultant, at their cost, to prepare and lodge the planning proposal.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes	6,300	Stage 1 planning proposal fee
Reserve Funds	No		
Developer Contributions (S7.11)	No		
External Grants	No		
Other	No		

LEGAL, POLICY AND RISK IMPLICATIONS

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

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
There is a risk that parts of the community may not support the reclassification of the subject land.	Low	Undertake community consultation consistent with the planning proposal process for the reclassification of community land, including an independently chaired public hearing following exhibition.	Yes

Environmental Planning and Assessment Act 1979 (NSW)

The planning proposal is being processed in accordance with Part 3 of the Environmental Planning and Assessment Act 1979 (NSW) (EP & A Act). Should Council resolve to adopt the planning proposal, it would be forwarded to the NSW Department of Planning and Environment (Department) for a Gateway determination and a request for delegated authority to make the plan.

Port Stephens Local Environmental Plan 2013

The planning proposal seeks to amend Port Stephens Local Environmental Plan 2013 (LEP) Schedule 4 Classification and reclassification of public land and the accompanying LEP Reclassification Map to identify the subject land as operational.

The subject land proposed for reclassification would retain its current zoning of SP2 Infrastructure (School/Child care centre). The objectives of this zone are:

- To provide for infrastructure and related uses.
- To prevent development that is not compatible with or that may detract from the provision of infrastructure.

The existing development and use of the land is consistent with these objectives.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The planning proposal has positive social and economic impacts. The subject land is currently used for the purpose of a car park and playing field and reclassification will secure ongoing tenure of the site for this purpose. There are no environmental implications from the planning proposal.

CONSULTATION

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

Internal

No objections were raised during internal consultation.

External

Consultation with the community and any relevant government authorities would be undertaken in accordance with any Gateway determination issued by the Department.

It is anticipated that the planning proposal would be exhibited for a minimum of 28 days.

A public hearing, chaired independently and at full cost to the proponent, would be held following public exhibition of the planning proposal, consistent with the planning proposal process for the reclassification of community land.

OPTIONS

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

ATTACHMENTS

- 1) Planning Proposal 100 and 174A Salamander Way, Salamander Bay. J
- 2) Locality Plan 100 and 174A Salamander Way, Salamander Bay. U
- 3) Strategic Planning Assessment Report 100 and 174A Salamander Way, Salamander Bay. J

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.



Proposed amendment to Port Stephens Local Environmental Plan 2013

Reclassification of Community Land
Part of 100 & 174A Salamander Way (Part of Lots 21 &
23 DP 1044009) Salamander Bay



ITEM 6 - ATTACHMENT 1 PLANNING PROPOSAL 100 AND 174A SALAMANDER WAY, SALAMANDER BAY.

FILE NUMBERS

Port Stephens Council: 58-2022-4-1 (Version 2.0 Council Report)

NSW Department of Planning and Environment: To be provided at Gateway determination.

SUMMARY

Subject land: Part of Lot 21 DP 1044009 (100 Salamander Way,

Salamander Bay)

Part of Lot 23 DP 1044009 (174A Salamander Way,

Salamander Bay)

Proponent: Barr Planning Pty Ltd (for St Philip's Christian

Education Foundation Pty Ltd)

Proposed changes: Reclassification from Community land to

Operational land

Area of land: 1.3 hectares

Lot yield: Not applicable

BACKGROUND

The planning proposal seeks to reclassify a portion of land within 100 and 174A Salamander Way, Salamander Bay (also known as Lot 21 and Lot 23, DP 1044009) from Community Land to Operational Land.

The broader site is split zoned part C2 Environmental Conservation, RE1 Public Recreation and SP2 Infrastructure (School/Child care centre) under the Port Stephens Local Environmental Plan 2013 (LEP). The reclassification will only apply to the portion of the lots zoned as SP2 Infrastructure (School/Child care centre). The reclassification boundary will reflect the existing SP2 Infrastructure zoning on the two subject lots, which has an approximate area of 1.3 hectares. A subdivision will follow to create new lots to match the existing zone boundary.

The subject land proposed for reclassification is currently occupied by St Philip's Christian College Port Stephens for use as a car park and extension of its playing fields under a 21-year license with Port Stephens Council. The subject site is Community Land under the Local Government Act 1993 (NSW) (LG Act) and is zoned SP2 Infrastructure (School/Child care centre). The land is owned by Port Stephens Council as indicated in a certificate of title obtained on 28 January 2021. Reclassification from Community Land to Operational Land is sought in order to transfer the licenced land to the ownership of St Philip's Education Foundation Pty Ltd, the organisation that oversees various St Philip's Christian College campuses.

ITEM 6 - ATTACHMENT 1 PLANNING PROPOSAL 100 AND 174A SALAMANDER WAY, SALAMANDER BAY.

St Philip's Christian College was founded in 1982 and currently operates six schools across Newcastle, Port Stephens, Cessnock, and Gosford. St Philip's Christian College has been owned and operated by St Philip's Christian Education Foundation Limited, a not-for-profit company, since 1985. St Philip's Christian College Port Stephens at 182 Salamander Way, Salamander Bay has operated since 1995. The school provides education services to students ranging from early learning to primary and secondary schooling. The school site has been subject to progressive development and expansion ranging from landscaping and playing field extensions to demountable classrooms to construction of a three-storey senior school building.

A licence agreement was issued by Council in July 2016 for a 21-year period for the 'Construction and maintenance of an area for car parking and playing fields'. Development Application 16-2016-770-1 was approved in June 2017 and allowed the construction of a car park, playground extension and relocation of fire trail. The licence and development application apply to the school site as well as the Council-owned subject site. Currently, the car park completed in 2019 operates for the benefit of the school.

On 28 September 2021, Council resolved to commence the reclassification process for the proposed footprint shown in *Figure 1 Site Location*.

The desired outcome of the reclassification is the eventual subdivision and transfer of ownership the subject site from Port Stephens Council to St Philip's Education Foundation Pty Ltd, through an acquisition process. This fully consolidates the St Philip's Christian College Port Stephens campus to include the land upon on which infrastructure, constructed and operated by St Philip's, is situated. Further physical works or development of the subject land is not proposed. The planning proposal seeks to facilitate a development application for the purpose of subdivision for future acquisition to occur.

SITE

This planning proposal applies to a 1.3 hectare area within 100 and 174A Salamander Way, Salamander Bay, otherwise known as Lot 21 DP 1044009 and Lot 23 DP 1044009 respectively.

The subject land is occupied in the north by a sealed formal car park and in the south by part of turfed playing fields, both of which are in service of St Philip's Christian College Port Stephens. An unsealed track extends south from the car park to a gated fire trail to the east. The site is accessed via a roundabout off Salamander Way. With the exception of the turfed playing fields, the site is generally clear of vegetation. The site is partially mapped as containing bushfire prone land, coastal wetland, and biodiversity values despite being cleared and developed. The site is mapped as Class 3 acid sulphate soils. The site is not identified as containing any Indigenous or non-Indigenous heritage.





4

ITEM 6 - ATTACHMENT 1 PLANNING PROPOSAL 100 AND 174A SALAMANDER WAY, SALAMANDER BAY.

The proposed reclassification of the subject land from Community Land to Operational Land has significant strategic merit as it is consistent with the SP2 Infrastructure (School/Child care centre) land use zone, regional and local planning strategies and the existing development on the site.

Land Use Zone

The area of the site subject to reclassification is zoned SP2 Infrastructure (School/Child care centre). The zone objectives listed in the LEP Land Use Table are:

- To provide for infrastructure and related uses.
- To prevent development that is not compatible with or that may detract from the provision of infrastructure.

The reclassification will facilitate the acquisition and incorporation of the subject site land with the St Philip's campus, which will ensure the long-term security of educational infrastructure. As a result, the reclassification will contribute to the provision of infrastructure and related uses. The reclassification will not vary the permissible or prohibited uses under the SP2 Infrastructure zone or exceed the relevant development standards. The reclassification will therefore not encourage development that is not compatible with, or that may detract from infrastructure provision.

Existing Split Zone

The broader site, being both 100 and 174A Salamander Way, is split-zoned as part C2 Environmental Conservation, RE1 Public Recreation and SP2 Infrastructure (School/Child care centre). The split zoning is considered undesirable, as undertaking any planning or development is typically reflective of the spatially dominant environmental zoning. The Community Land, being the entirety of the lots, is currently listed as natural areas (bushland, wetland) under Council's Natural Areas Generic Plan of Management 2003, which incorrectly reflects the SP2 Infrastructure (School/Child care centre) zoned areas of the lots. The reclassification and proposed subsequent subdivision along the zone boundaries will clearly delineate between conservation and infrastructure provisions, recognising the infrastructure purpose of the site whilst maintaining the environmental management status of the remnant lot portions.

Figure 2 Area Subject to Reclassification (Aerial)

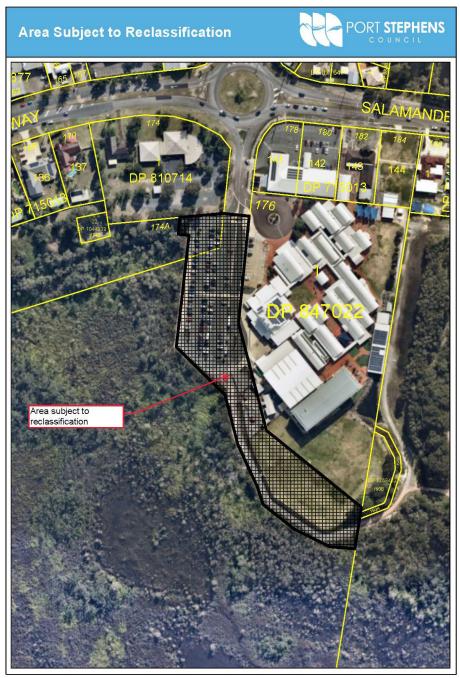
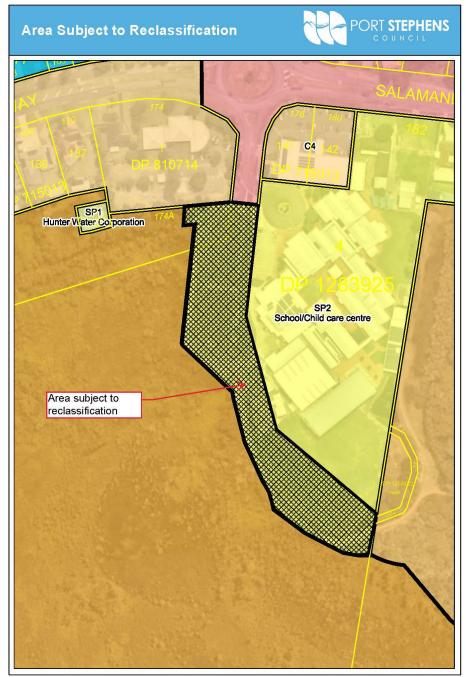


Figure 3 Area Subject to Reclassification (Zoning)



7

PART 1 - Objectives and intended outcomes

The planning proposal seeks to achieve the following outcome:

• To reclassify the subject site from Community Land to Operational Land.

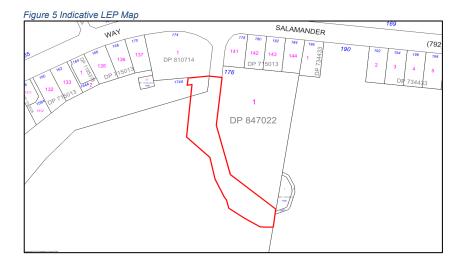
The planning proposal will enable the subdivision of the lots present on the site and allow for Council's divestment of the parcel zoned SP2 Infrastructure (School/Child care centre).

PART 2 - Explanation of provisions

The objectives of the planning proposal will be achieved by the following amendments to the Port Stephens Local Environmental Plan 2013 (LEP):

Figure 4 Proposed Amendment to Port Stephens Local Environmental Plan 2013 (LEP)

Schedule 4 Classification and reclassification of public land		
Part 1 Land Classified, or reclassified, as operational land – no interests changed		
Column 1	Column 2	
Locality	Description	
Part of 100 Salamander Way, Salamander Bay	Part of Lot 21 DP 1044009	
Part of 174A Salamander Way, Salamander Bay	Part of Lot 23 DP 1044009	



8

ITEM 6 - ATTACHMENT 1 PLANNING PROPOSAL 100 AND 174A SALAMANDER WAY, SALAMANDER BAY.

PART 3 - Justification of strategic and site specific merit

Section A - Need for the planning proposal

Q1. Is the planning proposal a result of an endorsed LSPS, strategic study or report?

The planning proposal is not the result of a strategic study or report.

Q2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

The planning proposal is the only way to adhere to the relevant objectives. The land is classified as Community Land under the provisions of the LG Act, which imposes statutory limitations on the transfer of ownership. In order for St Philip's Education Foundation Pty Ltd to purchase the land, it must be classified as Operational Land in accordance with Part 2 of the LG Act. The reclassification cannot be made by council resolution under Section 31, 32, or 33 of the LG Act, therefore it must be made via LEP amendment.

Section B - Relationship to strategic planning framework

Q3. Will the planning proposal give effect to the objectives and actions of the applicable regional or district plan or strategy (including any exhibited plans or strategies)?

Hunter Regional Plan 2036

The proposed reclassification is consistent with the Hunter Regional Plan 2036 (HRP), which has a focus on providing the Hunter region with a leading regional economy, a biodiversity-rich natural environment, thriving communities and greater housing choice and jobs. The consolidation of the subject site with St Philip's Christian College Port Stephens campus and transference into private ownership will ensure the long-term use of the site for educational and infrastructure purposes, including the provision of high-quality outdoor recreation opportunities for students in accordance with Direction 18 'Enhance access to recreational facilities and connect open spaces' of the HRP. The certainty provided through St Philip's acquisition of the subject land will ensure that the campus will continue to accommodate the needs of students, staff, and the community.

Greater Newcastle Metropolitan Plan 2036

The proposed reclassification is consistent with the Greater Newcastle Metropolitan Plan 2036 (GNMP), which sets out strategies and actions that will drive sustainable growth across the Cessnock, Lake Macquarie, Maitland, Newcastle, and Port Stephens local government areas. The reclassification will enable St Philip's Christian College Port Stephens campus greater autonomy over its built infrastructure and open space, which will allow for flexibility and future assurance into the use and development of the site. The

ITEM 6 - ATTACHMENT 1 PLANNING PROPOSAL 100 AND 174A SALAMANDER WAY, SALAMANDER BAY.

ability to control and plan for the land in the long-term will ensure that students, staff, and the school community can enjoy enhanced green space and amenity in accordance with Outcome 2 'Enhance environment, amenity and resilience for quality of life' of the GNMP.

Draft Hunter Regional Plan 2041

The proposed reclassification is consistent with the Draft Hunter Regional Plan 2041 (Draft HRP) The Draft HRP has a renewed focus on providing inclusive and vibrant local communities, as set out in Objective 3 'Create a 15 minute region made up of mixed, multi-modal, inclusive and vibrant local communities'.

Similar, to that of the existing HRP, the consolidation of the site and ultimate transfer into private ownership will maintain and reinforce educational uses across the entire site, to support the provision of continuous local employment and education for the community. The retention of the C2 Environmental Conservation zone on the balance of the site supports the draft HRP objective to improve the quality of open spaces and improving the natural environment.

Q4. Is the planning proposal consistent with a council LSPS that has been endorsed by the Planning Secretary or another endorsed local strategy or strategic plan?

Port Stephens Local Strategic Planning Statement

The proposed reclassification is consistent with the Port Stephens Local Strategic Planning Statement (LSPS), which identifies the 20-year vision for land use in Port Stephens. It sets out social, economic and environmental planning priorities for the future and identifies when they will be delivered. The reclassification will contribute to retention of open space within the school's ownership, allowing for long term asset planning for healthy, active spaces for young people in accordance with Planning Priority 10 'Create people friendly spaces in our local centres where people can come together'. This planning proposal is relevant to the LSPS and Section 9.1 Directions in accordance with the requirements of the LSPS and EP&A Act.

Port Stephens Community Strategic Plan 2018-2028

The proposed reclassification is consistent with Port Stephens Community Strategic Plan (CSP), which outlines a roadmap to achieve community aspirations and priorities within Port Stephens LGA over the next 7 years to 2028.

The reclassification will, through its facilitation of St Philip's intended purchase of the land, contribute to the school's ability to continue deliver education services to the region in accordance with the CSP's intention to foster creative and active communities (CSP C3 Community partnerships). The consolidation of ownership will encourage the long-term management of private civil and

ITEM 6 - ATTACHMENT 1 PLANNING PROPOSAL 100 AND 174A SALAMANDER WAY, SALAMANDER BAY.

community infrastructure in support of the CSP's vision for infrastructure and facilities (CSP P2 Infrastructure and facilities). Council's divestment from the land will contribute to the organisation's financial sustainability (CSP L2 Financial management). Following of statutory procedures to reclassify the subject land will provide an opportunity for the expression of community voice (CSP L3 Communication and engagement).

Q5. Is the planning proposal consistent with any other applicable State and regional studies or strategies?

The planning proposal is not relevant within the context of other State or regional studies or strategies.

Q6. Is the planning proposal consistent with applicable State Environmental Planning Policies (SEPPs)?

Assessment of the planning proposal against relevant SEPPs is provided in the following table.

Table 1 - Relevant State Environmental Planning Policies

SEPP

Consistency and Implications

SEPP (Resilience and Hazards) 2021

Chapter 2 Coastal Management

Promotes an integrated and coordinated approach to land use planning in the coastal zone consistent with the objects of the Coastal Management Act 2016 (NSW).

Relevance

The land is partially mapped as Coastal Wetlands under the Coastal Management chapter of the SEPP.



Consistency

The proposed reclassification will not affect the application of this SEPP. The planning proposal is consistent with the objectives contained within Chapter 2 Coastal Management of the SEPP and the Coastal Management Act 2016 (NSW). The area proposed for reclassification is already developed for the purposes of a car park and playing field and will have no additional impact on coastal management.

ITEM 6 - ATTACHMENT 1 PLANNING PROPOSAL 100 AND 174A SALAMANDER WAY, SALAMANDER BAY.

SEPP	Consistency and Implications
Chapter 4 Remediation of Land This SEPP applies to land across NSW and states that land must not be developed if it is unsuitable for a proposed use because of contamination.	Relevance Chapter 4 applies to all land, particularly where sensitive uses (such as schools) are proposed. The SEPP requires consideration of contamination issues when rezoning land. Consistency The land is not proposed to be rezoned. The site has no known history of current or previous contamination. The area proposed for reclassification is already developed for the purposes of a car park and playing field.
SEPP (Transport and I	nfrastructure) 2021
Chapter 3 Educational Establishments and Child Care Facilities This chapter aims to facilitate the effective delivery of educational establishments and early education and care facilities.	Relevance Chapter 3 aims to facilitate the effective delivery of educational establishments and early education and care facilities across the State. Consistency The land is proposed to be reclassified and does not propose or require any physical works. The subject land to which the reclassification applies to is already developed for the purposes of carparking and sports fields to serve the school.
SEPP (Biodiversity and	d Conservation) 2021
Chapter 4 Koala habitat protection 2021 Aims to help reverse the decline of koala populations by ensuring koala habitat is properly considered during the development assessment process, and to provide a process for councils to strategically manage koala habitat through the development of koala plans of management.	Relevance Chapter 4 provides for development assessment processes for land affected by koalas or koala habitat. The land is mapped as 50m Buffer over Cleared within the Port Stephens Council Comprehensive Koala Plan of Management. Consistency The proposed reclassification will not affect koala habitat or the application of the Koala SEPP during any development assessment process. The area proposed for reclassification is already developed for the purposes of a car park and playing field.

Q7. Is the planning proposal consistent with applicable Ministerial Directions (section 9.1 directions)?

Assessment of the planning proposal against relevant Ministerial Directions is provided in the following table.

Table 2 - Relevant Ministerial Directions

Ministerial Directions	Consistency and Implications
1. PLANNING SYS	TEMS
1.1 Implementation of Regional Plans The objective of this direction is to give legal effect to the vision, land use strategy, goals, directions, and actions contained in Regional Plans.	Relevance Applicable. The Hunter Regional Plan 2036 (HRP), draft Hunter Regional Plan 2041 (draft HRP) and Greater Newcastle Metropolitan Plan 2036 (GNMP) are applicable to the site. Consistency The proposal is aligned with the objectives and directions outlined in both the HRP, and the draft HRP Specifically, the proposal is consistent with Direction 18 'Enhance access to recreation facilities and connect open spaces' of the HRP and Objective 3 'Create a 15 minute region made up of mixed, multi-modal, inclusive and vibrant local communities' of the draft HRP. The reclassification will enable the transfer and consolidation of the subject site with the existing St Philip's Christian College Port Stephens campus to ensure the long-term use of the site for educational and infrastructure purposes. This will include the provision of high-quality outdoor recreation opportunities for students in accordance with Direction 18 of the HRP, and enhanced green space and amenity in accordance with Outcome 2 'Enhance environment, amenity and resilience for quality of life' of the GNMP. The reclassification will also support the provision of continuous local employment and education for the community. The retention of the C2 Environmental Conservation on the balance of the site, supports the draft Plan's objectives to improve the quality of open spaces and improving the natural environment.

ITEM 6 - ATTACHMENT 1 PLANNING PROPOSAL 100 AND 174A SALAMANDER WAY, SALAMANDER BAY.

Ministerial Directions	Consistency and Implications		
3. BIODIVERSITY AND CONSERVATION			
3.1 Conservation Zones The objective of this direction is the protection and conservation of environmentally sensitive areas, by ensuring that planning proposals do not reduce the environmental protection standards applying to such land unless it is suitably justified by a relevant strategy or study or is of minor significance.	Relevance Applicable. Direction 3.1 applies to all relevant planning authorities during the preparation of a planning proposal. Consistency The planning proposal will not affect environmentally sensitive areas and does not apply to land within an environmental protection zone or land otherwise identified for environmental protection purposes in an LEP. The proposal seeks to reclassify land that is zoned SP2 Infrastructure (School/Child care centre) from Operational Land to Community Land.		
3.2 Heritage Conservation The objective of this direction is to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance.	Relevance Applicable. Direction 3.2 applies to all relevant planning authorities that prepare a planning proposal. Consistency The site is not located in the vicinity of local or State heritage items. Aboriginal sites and places were not identified on a Basic AHIMS search conducted on 29 October 2021. The area proposed for reclassification is already developed for the purposes of a car park and playing field.		

Ministerial Directions

Consistency and Implications

4. RESILIENCE AND HAZARDS

4.2 Coastal Management

The objective of this direction is to protect and manage coastal areas of NSW. This direction applies to land within the coastal zone.

Relevance

Applicable. Direction 4.2 applies to all relevant planning authorities that prepare a planning proposal. The land is partially within the 'Coastal Wetlands' area and the 'Proximity Area for Coastal Wetlands' under the SEPP (Coastal Management) 2018.

Consistency

The planning proposal is strictly limited to the reclassification of the subject site and does not involve any development or physical modifications on or to the site. The area proposed for reclassification is already developed for the purposes of a car park and playing field. The proposal is consistent with this direction.

4.3 Planning for Bushfire Protection

The objectives of this direction are to protect life, property, and the environment from bush fire hazards, by discouraging the establishment of incompatible land uses in bush fire prone areas, to encourage sound management of bush fire prone areas.

Relevance

Applicable. The subject land is partially mapped as bush fire prone land.



Consistency

The planning proposal may satisfy Direction 4.3 following Gateway determination. The planning proposal does not enable inappropriate development in hazardous areas.. The area proposed for reclassification is already developed for the purposes of a car park and playing field. The planning proposal will be referred to the NSW Rural Fire Service for confirmation of consistency with this Direction.

ITEM 6 - ATTACHMENT 1 PLANNING PROPOSAL 100 AND 174A SALAMANDER WAY, SALAMANDER BAY.

Ministerial Directions	Consistency and Implications
4.5 Acid Sulphate	Relevance
Soils	Applicable. The planning proposal applies to land having
The objective of this direction is to avoid significant	a probability of containing acid sulfate soils. The land is mapped as Class 3 Acid Sulphate Soils on the relevant LEP map.
adverse	<u>Consistency</u>
environmental impacts from the use of land that has a probability of containing acid sulphate soils.	The planning proposal is consistent with this Direction The planning proposal will not introduce provisions to regulate works in acid sulphate soils and thus the Acid Sulfate Soils Planning Guidelines. The planning proposal does not propose an intensification of land uses on the subject land.

ITEM 6 - ATTACHMENT 1 PLANNING PROPOSAL 100 AND 174A SALAMANDER WAY, SALAMANDER BAY.

Section C - Environmental, social, and economic impact

Q8. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected because of the proposal?

The proposed reclassification will not affect critical habitat, threatened species, populations or ecological communities, or their habitats. The subject site contains hardstand car park, unsealed fire trail, and cleared turfed playing fields. The reclassification will not enable any further uses not already permitted on the site.

Q9. Are there any other likely environmental effects of the planning proposal and how are they proposed to be managed?

No adverse environmental effects are anticipated as a result of the proposed reclassification. The reclassification will not enable any further uses not already permitted on the site.

Q10. Has the planning proposal adequately addressed any social and economic effects?

The planning proposal will be processed in accordance with statutory obligations, which will ensure that the community is adequately consulted during the preparation of the LEP amendment. The planning proposal will not be to the detriment of community use as the land does not currently service the community beyond the utilisation of St Philip's Christian College functions.

Section D - Infrastructure (Local, State and Commonwealth)

Q11. Is there adequate public infrastructure for the planning proposal?

There is adequate public infrastructure. The planning proposal does not facilitate any works that are not already permissible. The change in classification will not necessitate additional public infrastructure.

Section E - State and Commonwealth Interests

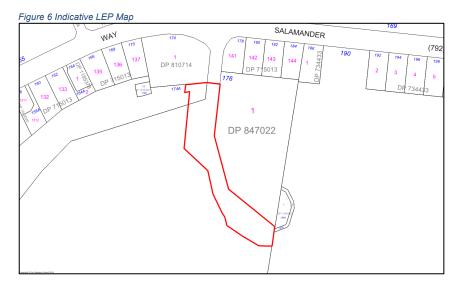
Q12. What are the views of state and federal public authorities and government agencies consulted in order to inform the Gateway determination?

The planning proposal was referred to the Rural Fire Service and the Biodiversity and Conservation Division of the NSW Department of Planning and Environment for preliminary consultation with no objections received.

Consultation with the Rural Fire Service will be formally undertaken following Gateway determination.

PART 4 - Maps

The proposed LEP map layer amendment is: 6400_COM_RPL_005B_ [XXX_XXXXXXX]. The map will identify the part of the land subject to the planning proposal as Operational Land as indicted in the following figure:



PART 5 – Community consultation

Community consultation will be undertaken in accordance with the Gateway determination.

The planning proposal will be made available on the Port Stephens Council website.

A public hearing is required to be held following public exhibition.

ITEM 6 - ATTACHMENT 1 PLANNING PROPOSAL 100 AND 174A SALAMANDER WAY, SALAMANDER BAY.

PART 6 - Project timeline

The planning proposal will be reported to Council following the completion of the public exhibition period. The following timetable is proposed:

Stage	Timeframe and/or date
Consideration by council	Aug 2022
Council decision	September 2022
Gateway determination	October 2022
Pre-exhibition	November 2022
Commencement and completion of public exhibition period	November 2022
Public hearing	December 2022 Notice of the Public Hearing is required for 21 days prior the Public Hearing forum.
Consideration of submissions	January 2022
Post-exhibition review and additional studies	February 2022
Submission to the Department for finalisation	March 2023
Gazettal of LEP amendment	April 2023

Attachment 1 – Response to Planning Practice Note PN 16-001 – Classification and reclassification of public land through a local environmental plan

All planning proposals classifying or reclassifying public land must address the following matters for Gateway consideration.

Item	Comment
The current and proposed classification of the land.	The subject land is currently classified as Community Land and is proposed to be reclassified to Operational Land under the provisions of the Local Government Act 1993 (NSW) (LG Act).
Whether the land is a 'public reserve' (defined in the LG Act).	The land is not a public reserve as per the meaning of public reserve defined in the LG Act.
The strategic and site specific merits of the reclassification and evidence to support this.	The proposed reclassification of the subject land from Community Land to Operational Land has significant strategic merit as it is consistent with the SP2 Infrastructure (School/Child care centre) land use zone, regional and local planning strategies, and the existing development on the site.
	The proposed reclassification of the land is limited and would reflect the existing use and infrastructure developed on the land. There is strong site specific merit for the proposal.
Whether the planning proposal is the result of a strategic study or report.	The proposed reclassification is not the result of a strategic study or report, but does reflect Council's long term intension to divest the land to the adjoining school, as reflected by the issuing of development consent for support infrastructure.

Whether the planning proposal is consistent with council's community plan or other local strategic plans.	The proposed reclassification is consistent with the Port Stephens Local Strategic Planning Statement (LSPS), as it will contribute to the retention of open space within the school's ownership, allowing for long term asset planning for healthy, active spaces for young people in accordance with Planning Priority 10 'Create people friendly spaces in our local centres where people can come together'.
	The proposed reclassification is also consistent with Port Stephens Community Strategic Plan (CSP), through its facilitation of St Philip's intended purchase of the land, contributing to the school's ability to continue deliver education services to the region in accordance with the CSP's intention to foster creative and active communities.
A summary of council's interests in the land, including:	The land is owned by Port Stephens Council.
 how and when the land was first acquired (e.g., was it dedicated, donated, provided as part of a subdivision for public open space or other purpose, or a developer contribution); if council does not own the land, the 	The land was first acquired by Council as part of a much larger land holding purchased by Council in the 1950s from the Commonwealth Government. Over the past 50 years Council has subdivided and developed this original land holding to generate funds to support Council to offer its services to the local community.
- the nature of any trusts, dedications etc.	The land was classified as Community Land in 1993 when the LG Act 1993 was enacted. At this time Council did not to classify all land they owned, and the land defaulted to Community Land. However, it has been Council's intention to develop/sell the site, indicating Councils intention to dispose of this land rather than retain it for community purposes.
Whether an interest in land is proposed to be discharged, and if so, an explanation of the reasons why.	There are a number of interests on the land, all of which are to be retained, being for access, water and sewer easements.

22

ITEM 6 - ATTACHMENT 1 PLANNING PROPOSAL 100 AND 174A SALAMANDER WAY, SALAMANDER BAY.

The effect of the reclassification (including, the loss of public open space, the land ceases to be a public reserve or particular interests will be discharged).	The land is currently subject of a long term licence agreement and has been developed for the purposes of a car park with associated drainage and a sports field. It is currently not available for public open space.
Evidence of public reserve status or relevant interests, or lack thereof applying to the land (e.g., electronic title searches, notice in a Government Gazette, trust documents).	The Certificates of Title for Lots 21 and 23 DP 1044009 confirm the owner of the land as being Port Stephens Council, but do not indicate that the land is a public reserve.
Current use(s) of the land, and whether uses are authorised or unauthorised.	The part of the land subject to the planning proposal is currently used for car parking, associated drainage and part of the school sports field. Development Application 16-2016-770-1 was approved in June 2017 to permit the construction of a car park and playground extension. The car park was completed in 2019 for the benefit of the school.
Current or proposed lease or agreements applying to the land, together with their duration, terms, and controls.	A licence agreement was issued by Council in July 2016 for a 21-year period for the 'Construction and maintenance of an area for car parking and playing fields'. The licence and Development Application 16-2016-770-1 apply to the school site as well as the Council-owned subject site.
Current or proposed business dealings (e.g., agreement for the sale or lease of the land, the basic details of any such agreement and if relevant, when council intends to realise its asset, either immediately after rezoning/reclassification or at a later time).	Council's intention is to commence commercial negotiations with St Philip's Education Foundation Pty Ltd, immediately following the reclassification of the land, with the intent to agree on the acquisition and transfer of the land.
Any rezoning associated with the reclassification (if yes, need to demonstrate consistency with an endorsed Plan of Management or strategy).	The planning proposal is not associated with a rezoning. The existing zoning of SP2 Infrastructure (School/Child care centre) is appropriate for the current and future proposed use.

ITEM 6 - ATTACHMENT 1 PLANNING PROPOSAL 100 AND 174A SALAMANDER WAY, SALAMANDER BAY.

How council may or will benefit financially, and how these funds will be used.	The reclassification will facilitate the excise of the land from the balance of the lot and the acquisition of this land by the school.
	As per Council's resolution of On 28 September 2021, the proposed reclassification process is being undertaken by the proponent at no cost to Port Stephens Council.
How council will ensure funds remain available to fund proposed open space sites or improvements referred to in justifying the reclassification, if relevant to the proposal.	Not considered to be relevant in this instance. The reclassification is to facilitate an existing use of the site which supports the operation of the school on the adjoining lot, and is subject to a 20 year plus lease for car parking and playing fields. There is no intention to create public open space within this subject portion of land.
A Land Reclassification (part lots) Map, in accordance with any standard technical requirements for spatial datasets and maps, if land to be reclassified does not apply to the whole lot.	Indicative part lot mapping is shown in Part 4 Maps of this planning proposal. An indicative LEP map is at Figure 6 Indicative LEP Map.
Preliminary comments by a relevant government agency, including an agency that dedicated the land to council, if applicable.	The site formed part of a larger lot in 1950 when Council acquired the land from the Commonwealth in 1950.

ITEM 6 - ATTACHMENT 2 LOCALITY PLAN 100 AND 174A SALAMANDER WAY, SALAMANDER BAY.



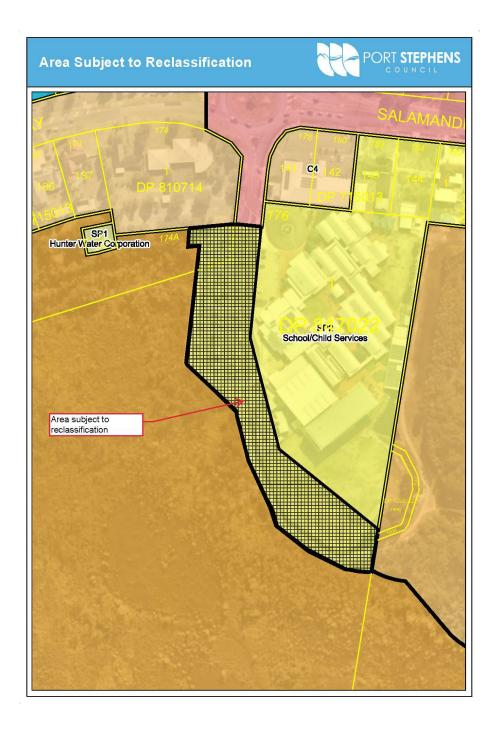


STRATEGIC PLANNING ASSESSMENT REPORT (SPAR)

Application No.	58-2022-4-1
Applicant Name	Barr Property and Planning Pty Ltd (for St Philip's Christian College)
Applicant Address	PO Box 96 CARRNINGTON NSW 2294
Site Location Details	Part of 100 and 174A Salamander Way, Salamander Bay (part of Lot 21 DP 1044009 and Lot 23 DP 1044009)
Proposal Summary	Reclassify the subject land from Community to Operational land. Retain SP2 Infrastructure (School/Child Care Centre) zone



Page 1 of 9



Page 2 of 9



Planning Proposal Assessment

Information	Assessment	
Department of Planning Guide to preparing planning proposals		
Part 1 – Statement of objectives or intended outcomes of the proposed instrument	The statement of objectives or intended outcomes of the proposed instrument is adequate.	
Part 2 – Explanation of the provisions that are to be included in the proposed instrument	The planning proposal adequately explains the provisions that are proposed to be included in the draft instrument.	
Part 3 – Justification for the objectives, outcomes and provisions of the proposed instrument, and whether it will give effect to, or is a product of, a local planning priority or action in an endorsed local strategic planning statement.	The justification provided for the objectives, outcomes and provisions of the proposed instrument, and whether it will give effect to, or is a product of, the local planning statement, is considered to be appropriate.	
Section A – Need for the planning proposal		
Q1 Is the planning proposal a result of an endorsed local strategic planning statement, strategic study or report?	The planning proposal is not the result of an endorsed local strategic planning statement, strategic study or report.	
Q2 Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?	The planning proposal is the best means of achieving the objectives or intended outcomes.	
Section B – Relationship to strategic planning framework		
Q3. Will the planning proposal give effect to the objectives and actions of the applicable regional, or district plan or strategy (including any exhibited draft plans or strategies)?	The planning proposal gives effect to applicable regional, or district plan or strategies.	
Strategic Planning Context and Strategic Merit		
Assessment of consistency with the Hunter Regional Plan.	The planning proposal is consistent with the HRP.	
Assessment of consistency with the Greater Newcastle Metropolitan Plan.	The planning proposal is consistent with the GNMP.	
Give effect to a relevant local strategic planning statement or endorsed local strategy	The planning proposal gives effect to the relevant LSPS or endorsed local strategy.	
Responding to a change in circumstances	The planning proposal is not responding to a change in circumstances.	

Page 3 of 9

Information	Assessment
Site-Specific Merit	
Does the proposal have site-specific merit, having regard to the natural environment (including known significant environmental values, resources or hazards)?	The proposal has site-specific merit, having regard for the natural environment. The subject land is already developed for the purposes of car parking and sports fields in support of the school.
Does the proposal have site-specific merit, having regard to the existing uses, approved uses, and likely future uses of land in the vicinity of the proposal?	The planning proposal has site-specific merit having regard for existing and future land uses of the land and within proximity to the land.
Does the proposal have site-specific merit, having regard to the services and infrastructure that are or will be available to meet the demands arising from the proposal and any proposed financial arrangements for infrastructure provision?	The proposal has site-specific merit, having regard for the provision of services and infrastructure.
Q4. Will the planning proposal give effect to a council's endorsed local strategic planning statement, or another endorsed local strategy or strategic plan?	The planning proposal gives effect to the relevant LSPS or endorsed local strategy.
Is the planning proposal consistent with relevant precinct plan(s) (including structure plans and master plans and any exhibited draft plan(s))	There are no applicable precinct plans.
Is the planning proposal consistent with relevant Council strategy (or strategies) endorsed by the NSW Department of Planning, Industry and Environment, including an endorsed local strategic planning statement.	The planning proposal is consistent with the relevant council strategy.
Is the planning proposal consistent with the Local Housing Strategy?	The LHS is not applicable.
Is the planning proposal consistent with a relevant local area strategy	There is no applicable local area strategy.

SEPP ASSESSMENT

Q5. Is the planning proposal consistent with applicable State Environmental Planning Policies?

SEPP	Overview	Assessment
SEPP (Resilience and Hazards) 2021 Chapter 4 Remediation of Land	Contains state-wide planning controls for the remediation of contaminated land. The policy requires councils to be notified of all remediation proposals and requires lodgement of information for rezoning proposals where the history of use of land is unknown or knowledge incomplete.	The site does not contain contaminated land/potentially contaminated land. The information lodged for the proposal demonstrates consistency with the SEPP.
SEPP (Resilience and Hazards) 20201 Chapter 2 Coastal Management	Promotes an integrated and co-ordinated approach to land use planning in the coastal zone consistent with the objects of the Coastal Management Act 2016 (NSW).	The LEP amendment proposal relates to land identified within the Coastal Zone combined footprint. The information lodged for the proposal demonstrates consistency with the SEPP.
SEPP (Transport and Infrastucture) 2021 Chapter 3 Educational Establishments and Child Care Facilities	The policy aims to facilitate the effective delivery of educational establishments and early education and care facilities.	The LEP amendment proposal relates to educational establishments and child care facilities. The subject land is already developed for the purposes of car parking and sports fields in support of the school.
SEPP (Biodiversity and Conservation) Chapter 4 Koala Habitat Protection	Encourages the conservation and management of natural vegetation areas that provide habitat for koalas to ensure permanent free-living populations will be maintained over their present range.	The site does not comprise koala habitat. The information lodged for the proposal demonstrates consistency with the SEPP.

Page 5 of 9

MINISTERIAL DIRECTION ASSESSMENT

Q6. Is the planning proposal consistent with applicable Ministerial Directions (s.9.1 directions)?

Minis	sterial Direction	Overview	Assessment
1.	PLANNING SYS	TEMS	
1.1	Implementation of Regional Plans	Requires that planning proposals be consistent with relevant regional strategies released by the Minister for Planning, except where, in the opinion of the Secretary of the NSW Department of Planning and Environment (or nominated delegate); the inconsistency is considered to be of minor significance and the intent of the strategy is not undermined.	The Hunter Regional Plan 2036 (HRP) applies to the LEP amendment proposal. The LEP amendment proposal will support the continued long-term operation of the school. The LEP amendment proposal is consistent with this direction.
3.	BIODIVERSITY	AND CONSERVATION	
3.1	Conservation Zones	Applies to all planning proposals. Provides for the protection and conservation of environmentally sensitive areas, by ensuring that planning proposals do not reduce the environmental protection standards applying to such land unless it is suitably justified by a relevant strategy or study or is of minor significance in the opinion of the Secretary of the NSW Department of Planning and Environment (or nominated delegate).	The LEP amendment proposal will not affect environmentally sensitive areas and does not apply to land within an environmental protection zones. The land is zoned SP2 Infrastructure (School/Child care centre) and is already developed for the purposes of car parking and sports fields in support of the school. The LEP amendment proposal is consistent with this direction.
3.2	Heritage Conservation	The objective of this direction is to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance.	The site is not located in the vicinity of State or local heritage items. Aboriginal sites and places were not identified on a Basic AHIMS search. The area proposed for reclassification is already developed for the purposes of a car park and playing field. The information lodged for the proposal demonstrates consistency with this direction.

Page 6 of 9

Ministerial Direction		Overview	Assessment	
4.	RESILIENCE AN	ND HAZARDS		
4.2	Coastal Management	Applies to land within a coastal zone, as defined in the Coastal Management Act 2016. The direction seeks to protect and manage coastal areas of NSW. Proposals must include provisions that give effect to and are consistent with the objects of the Coastal Management Act 2016, the Coastal Management Manual and Toolkit, Coastal Design Guidelines and any relevant Coastal Management Program certified by the Minister.	The land is partially within the 'Coastal Wetlands' area and the 'Proximity Area for Coastal Wetlands' under the SEPP (Coastal Management) 2018. The planning proposal is to reclassify of the subject site and is already developed for the purposes of car parking and sports fields in support of the school. The proposal is consistent with this direction.	
4.3	Planning for Bushfire Protection	Applies requirements for planning proposals affecting land mapped as being bushfire prone land (or land in proximity to such land); except where the Commissioner of the NSW Rural Fire Service has issued written advice to Council that, notwithstanding the noncompliance with the requirements; the NSW Rural Fire Service does not object to progression of the planning proposal.	The LEP amendment proposal relates to land in proximity to bushfire prone land. The site is already developed for the purposes of a car park and playing field. Preliminary consultation advice from the NSW Rural Fire Service (RFS) advises of no objection to the planning proposal. Further consultation with the RFS may be required following a Gateway determination. The information lodged for the proposal demonstrates consistency with the direction.	
4.5	Acid Sulfate Soils	The objective of this direction is to avoid significant adverse environmental impacts from the use of land that has a probability of containing acid sulphate soils.	The land is mapped as having Class 3 Acid Sulfate Soils on the relevant LEP Map. The planning proposal does not propose an intensification of land uses. The planning proposal is consistent with this direction.	

Page 7 of 9

Information	Assessment		
Section C – Environmental, social and economic impact			
Q7. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the	There is no critical habit or threatened species, populations or ecological communities or their habitats located on the site.		
proposal?	The site is already developed for the purposes of car parking and sports fields in support of the school.		
Q8. Are there any other likely environmental effects as a result of the planning proposal	There are no likely environmental effects as a result of the planning proposal.		
and how are they proposed to be managed?	The site is already developed for the purposes of car parking and sports fields in support of the school.		
Q9. Are there any likely social and economic effects as a result of the planning proposal?	There will likely be positive social and economic effects as a result of the planning proposal. The site is already developed for the purposes of car parking and sports fields in support of the school. The proposed reclassification will enable the potential sale of the land.		
Section D – State and Commonwealth interests			
Q10. Is there adequate public infrastructure for the planning proposal?	There is adequate public infrastructure for the planning proposal.		
Q11. What are the views of state and Commonwealth public authorities consulted in accordance with the Gateway determination?	Preliminary consultation advice from the NSW Rural Fire Service (RFS) advises of no objection to the planning proposal. Further consultation with the RFS is required following a Gateway determination.		
Part 4 – Maps containing sufficient detail to indicate the substantive effect of the planning proposal.	The maps included in the planning proposal adequately identify the substantive effect of the planning proposal.		
Part 5 – Details of the community consultation that is to be undertaken before consideration is given to the making of the proposed instrument	The community consultation detailed in the planning proposal is considered appropriate. This includes public exhibition and an independently chaired public hearing following public exhibition.		
Part 6 – Projected timeline of the plan making process	The projected timeline as detailed in the planning proposal is considered appropriate.		

Page 8 of 9

ITEM 6 - ATTACHMENT 3 STRATEGIC PLANNING ASSESSMENT REPORT100 AND 174A SALAMANDER WAY, SALAMANDER BAY.

TECHNICAL CONTENT ASSESSMENT

Assessment of technical information

Supporting plans and studies	Assessment
Site specific DCP	Not required to support the planning proposal.
Traffic impact assessment	Not required to support the planning proposal.
Bushfire hazard assessment	Not required to support the planning proposal.
Air quality assessment	Not required to support the planning proposal.
Flora and fauna assessment	Not required to support the planning proposal.
Geotechnical assessment	Not required to support the planning proposal.
Stormwater management analysis	Not required to support the planning proposal.
Flood impact assessment	Not required to support the planning proposal.
Contamination assessment	Not required to support the planning proposal.
Economic sensitivity analysis	Not required to support the planning proposal.
Heritage impact assessment	Not required to support the planning proposal.
Social impact assessment	Not required to support the planning proposal.
Infrastructure capacity analysis	Not required to support the planning proposal.
Other	An independently chaired public hearing will be required following public exhibition of the planning proposal.

RECOMMENDATION

Based on the information lodged with the rezoning request, the planning proposal is considered to have sufficient merit to proceed to Gateway.

Page 9 of 9

ITEM NO. 7 FILE NO: 22/199947 EDRMS NO: 58-2017-4-1

PLANNING PROPOSAL FOR 42 FULLERTON COVE ROAD, FULLERTON COVE

REPORT OF: BROCK LAMONT - STRATEGY & ENVIRONMENT SECTION

MANAGER

GROUP: DEVELOPMENT SERVICES

RECOMMENDATION IS THAT COUNCIL:

1) Note the amendments to the planning proposal **(ATTACHMENT 1)** for 42 Fullerton Cove Road, Fullerton Cove (Lot 14, DP 258848) to:

- a. Rezone the subject land from RU2 Rural Landscape to part B1 Neighbourhood Centre, and part C2 Environmental Conservation.
- b. Remove the minimum lot size.
- c. Introduce a new height of building limit of 9 metres in the proposed B1 zone.
- d. Introduce a new local provision limiting future commercial development to a maximum gross floor area of 5,500 square metres.
- 2) Receive and note the submissions (ATTACHMENT 2) received during agency consultation and public exhibition of the planning proposal.
- 3) Endorse the submission of the planning proposal (ATTACHMENT 1) to the Department of Planning and Environment requesting they exercise their plan making authority to amend the Port Stephens Local Environmental Plan 2013 under section 3.3.6 of the Environmental Planning and Assessment Act 1979.

BACKGROUND

The purpose of this report is to seek Council endorsement to submit the planning proposal for 42 Fullerton Cove Road, Fullerton Cove (ATTACHMENT 1) to the Department of Planning and Environment (DPE), requesting they exercise their plan making authority to make amendments to the Port Stephens Local Environmental Plan 2013 (LEP). A locality plan is provided at (ATTACHMENT 3).

The report advises Council of the outcome of the exhibition of the planning proposal (ATTACHMENT 1) for 42 Fullerton Cove Road, Fullerton Cove and notes the submissions received (ATTACHMENT 2).

The planning proposal seeks to enable the development of a neighbourhood centre to service the residents of Fullerton Cove and Fern Bay, consistent with actions of the Fern Bay and North Stockton Strategy. Rezoning of the land would allow for the development of a supermarket and other retail shops, subject to a separate development application. The planning proposal would amend the LEP in accordance with the summary set out below:

Date lodged:	4 April 2017
Proponent:	Monteath & Powys
Subject property:	42 Fullerton Cove Road, Fullerton Cove
	Lot 14, DP 258848
Area of land:	Approximately 6.7 hectares
Proposed rezoning area:	B1 zoned land – approximately 2.5 hectares
	C2 zoned land – approximately 4.2 hectares
Jobs created:	Approximately 60 - 90 ongoing jobs
Current zoning:	RU2 Rural Landscape
Proposed zoning:	Part B1 Neighbourhood Centre
	Part C2 Environmental Conservation
Current Minimum Lot Size:	20 hectares
Proposed Minimum Lot Size:	B1 zoned land – no minimum lot size
	C2 zoned land – 20 hectares
Current Height of Buildings:	No height of building limit
Proposed Height of Buildings:	9 metres in proposed B1 zone
Additional clause:	Introduce a new local provision limiting future commercial development to a maximum gross floor area of 5,500m ²

On 14 April 2020, Council endorsed (ATTACHMENT 4) the planning proposal to be submitted to DPE to seek a Gateway determination, which was issued on 12 October 2020 (ATTACHMENT 5). Council is not delegated as the local plan-making authority due to the complexity of the site constraints and additional technical information required. In response to the Gateway determination, additional studies were undertaken to address Ministerial Directions and the planning proposal was updated accordingly.

As a result of the additional studies, a revised gateway was requested in order to increase the permissible gross floor area (GFA) from 1,500m² to 5,500m². The initial 1,500 m² limit was imposed to ensure the proposed neighbourhood centre would not undermine the viability of a future town centre at the Stockton Residential Centre as identified in a commercial needs analysis at the time. However, in 2021 nearby commercial land at Seaside Estate was rezoned to R2 Low Density Residential, decreasing available supply. Further, an addendum to the Fern Bay and North Stockton Commercial Lands Study was undertaken, concluding that additional commercial land is needed in the locality, and would not undermine any future primary town centre in Stockton. An altered Gateway (ATTACHMENT 6) was issued on 23 February 2022 to increase the maximum GFA to 5,500m².

Following this, agency consultation and public exhibition were undertaken. Details of submissions received are discussed further in the consultation section of this report.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2022-2026
Thriving and Safe Place to Live	Provide land use plans, tools and advice that sustainably support the community.

FINANCIAL/RESOURCE IMPLICATIONS

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

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes		
Reserve Funds	No		
Developer Contributions (S7.11)	No		
External Grants	No		
Other	No		

LEGAL, POLICY AND RISK IMPLICATIONS

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

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
There is a risk that there will be insufficient commercial land in Fullerton Cove and Fern Bay to serve the existing residents and satisfy demand in the locality.	Medium	Adopt the recommendations.	Yes

Port Stephens Local Environmental Plan 2013 (LEP)

The planning proposal seeks to rezone the site to part B1 Neighbourhood Centre and part C2 Environmental Conservation, removing the existing minimum lot size for the B1 zoned land, introducing a height of buildings limit of 9m within the proposed B1 zoned land, and including a new local provision limiting future commercial development to a maximum gross floor area of 5,500m².

The objective of the B1 Neighbourhood Centre zone is:

 To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.

Amending the LEP will permit (with development consent) a supermarket with additional supporting retail premises, which is consistent with the objectives of the zone.

The objectives of the C2 Environmental Conservation zone are:

- To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.
- To prevent development that could destroy, damage or otherwise have an adverse effect on those values.

Amending the LEP will allow for conservation of the important vegetation within the perimeter of the subject site, which is consistent with the objectives of the zone.

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

Part 3 of the EP&A Act provides the framework for amending a Local Environmental Plan. A Gateway determination was issued under section 3.34 of the EP&A Act specifying that the planning proposal should proceed to exhibition, subject to conditions and consultation requirements.

The altered Gateway determination (ATTACHMENT 6) does not delegate planmaking authority to Council. Should the recommendations be adopted, arrangements will be made to request that DPE exercise plan making authority and give effect to the planning proposal.

Hunter Regional Plan 2036 (HRP)

The planning proposal is consistent with the visions and goals of the HRP. The proposal will achieve Direction 6 of the HRP as it will assist in growing the Port Stephens economy, as well as provide jobs and protect natural areas.

Greater Newcastle Metropolitan Plan 2036 (GNMP)

The planning proposal is consistent with the GNMP and will give effect to Strategy 8, 9 and 11 as it will address changing retail needs, provide jobs and create places where people can come together.

Port Stephens Local Strategic Planning Statement (LSPS)

The planning proposal is consistent with Planning Priority 2, 6, and 7 of the LSPS as it will provide business opportunities and services for the community, conserve the biodiversity values of the site and help achieve a number of the liveability priorities identified for the area in Council's place based planning outcomes.

Fern Bay and North Stockton Strategy 2020 (FB&NSS)

The planning proposal will give effect to an outcome of the FB&NSS as it will provide a future town centre within Fullerton Cove and Fern Bay. The proposal also aligns with many planning principles of the FB&NSS. It seeks to conserve environmentally significant land as well as facilitate a neighbourhood centre in the Fullerton Cove and Fern Bay locality.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Social and Economic:

The planning proposal is expected to deliver a range of social and economic benefits to the existing and future community, including:

- Employment through construction jobs to carry out building work as well as ongoing employment through retail and transport jobs to service the future commercial development.
- Service existing residents for their day-to-day retail and commercial needs.
- Increased commercial opportunities within the Port Stephens LGA.
- Increased expenditure within the Port Stephens LGA.
- Increase liveability for residents in Fern Bay and Fullerton Cove through the provision of day to day retail services.
- Reduced travel time for Fern Bay and Fullerton Cove residents to access everyday essentials such as groceries.

Environmental:

There are no significant adverse environmental effects expected as a result of this proposal. The zone boundaries have been informed by various ecological assessments. The proposed B1 zone land is predominantly cleared of vegetation, and does not include identified koala habitat and/or corridors, significant native vegetation, endangered ecological communities, threatened species or habitat. The proposed C2 zone will conserve the more vegetated areas of the site and habitat connectivity with other vegetated areas.

An Aboriginal Cultural Heritage Assessment (ACHA) was undertaken in response to potential cultural material being found by Council staff during a site visit. The ACHA identified three areas of Potential Archaeological Deposit (PAD) within the subject site, including one within the proposed B1 zone. The ACHA concludes that the

rezoning can proceed but no development can occur until the recommendations of the ACHA are carried out, including an Aboriginal Heritage Impact Permit (AHIP) for testing of the PAD. The recommendations of the ACHA will inform any future development application on the site.

The planning proposal has considered the impacts of flooding, bushfire, acid sulfate soils, contamination and heritage, and demonstrated that the rezoning is compatible with the characteristics of the land.

CONSULTATION

Internal

Consultation with internal stakeholders has been undertaken to inform the planning proposal, including Engineering Services, Development Planning and Natural Systems units. No objections were raised.

External

In accordance with the Gateway determination, Council referred the planning proposal and associated studies to the following agencies on 19 March 2021:

- Rural Fire Service NSW
- Transport for NSW (TfNSW)
- Department of Primary Industries Agriculture (DPI)
- Biodiversity Conservation Division (BCD)
- Newcastle Airport
- Department of Defence
- Worimi Local Aboriginal Land Council

BCD requested further information in relation to both biodiversity and flooding, with the technical studies updated accordingly. TfNSW expressed concerns over the original Traffic Impact Assessment which was updated with the increased floor space area, resolving any issues. The proponent updated the technical studies and confirmation was received from all agencies that they do not object to the planning proposal. Agency comments have been addressed in more detail within **(ATTACHMENT 2)**.

Consultation with local Registered Aboriginal Parties was undertaken as part of the proposal in the form of a site walkover and formal consultation through the Aboriginal Cultural Heritage Assessment (ACHA). The relevant Parties have signed off on the report and the planning proposal has been updated to reflect this consultation and further requirements.

Public exhibition

The planning proposal was publicly exhibited in accordance with the Gateway determination from 5 May 2022 to 9 June 2022. During the exhibition period, ten

submissions were received. Six of the submissions support the proposal, and one submission objects to the proposal. Matters raised in other submissions relate primarily to retention of important vegetation and concerns related to traffic. No amendments were made to the planning proposal as a result of these submissions as the matters are considered to have been adequately addressed through technical studies. The matters raised in the submissions are addressed within (ATTACHMENT 2).

In addition to the above, a petition of 634 signatures in support of the proposal was provided to Council during public access on 26 November 2019, in response to the preparation of the Fern Bay and North Stockton Strategy.

OPTIONS

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

ATTACHMENTS

- 1) Final Planning Proposal. (Provided under separate cover) ⇒
- 2) Submission Summary and Response Table. 4
- 3) Locality Plan. U
- 4) Minute No. 051, 14 April 2020. U
- 5) Gateway Determination. <a>J
- 6) Alteration of Gateway Determination. J.

COUNCILLORS ROOM

- 1) Relevant studies that form part of the planning proposal are available for review by Councillors upon request.
- 2) Copy of submissions.

TABLED DOCUMENTS

Nil.

Planning Proposal for 42 Fullerton Cove Road, Fullerton Cove submissions

No.	Author of submission	Comment	Council response
1	Resident	The submission supports the proposal and notes that it reserves the right to make comment on any future development application.	Council notes the positive submission.
2	Resident	The submission expresses the necessity of the rezoning due to recent population growth in the locality.	Noted.
		The submission highlights the importance of vegetation retention as outlined in the proposed zone boundaries. The submission emphasises the importance of the vegetation buffer on Nelson Bay Road.	The proposed zone boundaries in the planning proposal have been informed by the Biodiversity Development Assessment Report (BDAR) and Strategic Bushfire Study. The proposed development site has been selected to limit direct impacts to areas of intact native vegetation and is within a previously managed portion of the site that is mostly dominated by planted and exotic vegetation. The proposed C2 Environmental Conservation zone seeks to protect any vegetation of high environmental value on the site. These zone boundaries seek to protect and retain the vegetation along Nelson Bay Road.
		The submission notes that improved road conditions would be beneficial.	The Traffic and Transport Impact Assessment (TIA) confirms that there is sufficient capacity in the existing road network to cater for the expected increase of 507 vehicle trips in the PM Peak and 672 vehicles in the weekend peak. Consultation has been undertaken with Transport for NSW (TfNSW) that confirm no infrastructure upgrades are required for the rezoning.
3	Resident	The submission expresses that the site is a great location for a supermarket and is necessary for the growing population. The submission states that residents currently have to drive to Mayfield or Medowie for commercial needs.	Council notes the positive submission.

4	Resident	The submission states support for the proposal. The submission expresses that a supermarket on the subject site would be a large benefit for the community.	Council notes the positive submission.
5	Resident	The submission expresses concern over the location of the proposed supermarket, particularly in regard to the rural amenity of the area and in regards to the nearby Stanley Park.	The subject site, while zoned rural, is not used for agricultural purposes. Due to the environmental constraints of the site, the land is unsuitable for primary production. The subject site would benefit from the rezoning to C2 Environmental Conservation than its current zoning as it seeks to conserve the land of high biodiversity value. The proposal is not considered to have an impact on rural amenity as the site is currently used for residential purposes and is located within close proximity to low density urban development including the Cove Village, Bayway Village, Palm Lake Resort and Seaside Estate. The redevelopment of this site would be in keeping with the nearby developments and would support the neighbouring residents of Fullerton Cove and Fern Bay.
			The site does not contain any items of heritage significance listed in the LEP. Stanley Park House is located to the north of the subject site and the proposal is not considered to have any impact on the heritage site due to the distance.
		The submission states that the Stockton Residential Centre would be a better location for a supermarket.	Hill PDA Fern Bay and North Stockton Commercial Lands Study 2017 (the Study) was prepared for the Fern Bay and North Stockton Strategy to identify the commercial need in the locality, and in addition an Addendum to the Study was undertaken to review the updated commercial need in the locality.
			The Study identified the Stockton Residential Centre to be a preferred option for a town centre. The NSW Department of Communities and Justice have advised that they are working with the NSW Department of Planning and Environment to investigate potential future uses for the Stockton Residential Centre, however the location and timing of a future town centre remains uncertain. The Study also identified the subject site as a potential future location for a town centre.

			The Addendum was prepared as part of
			this proposal to review the potential for the future Stockton Commercial Centre and the subject site as a secondary centre to co-exist. The Addendum concluded that the long term commercial need in the locality could support both the primary centre at Stockton, with the subject site as a secondary commercial centre.
		The submission expresses safety concerns with the lack of pedestrian access on Fullerton Cove Road, and notes that a supermarket would increase traffic along the road.	See response to submission 2. The provision of any required pathway will be assessed at development application stage, in line with the Port Stephens Development Control Plan. A future shared pathway has been identified in the Port Stephens Pathways Plan along Fullerton Cove Road and Nelson Bay Road in proximity of the subject site.
6	Resident	The submission states support for the proposal. The submission expresses that a supermarket would be beneficial to the existing and future residents of Fern Bay and Fullerton Cove.	Council notes the positive submission.
7	Community Group (Koala Koalition	The submission acknowledges the need for a supermarket in Fern Bay.	Noted.
	Econetwork Port Stephens)	The submission recommends that additional ecological surveys are undertaken, due to the fact that the Biodiversity Development Assessment Report (BDAR) found no perceivable koala presence in the Study Area.	The proposed boundary of the C2 zone has been informed by a BDAR, taking into consideration the existing disturbed land, ecologically endangered communities, and koala habitat. The BDAR was undertaken in 2020 and 2021 in line with the Port Stephens Comprehensive Koala Plan of Management (CKPoM), Biodiversity Conservation Act 2016 (NSW), State Environmental Planning Policy (Koala Habitat Protection) 2019, and Environment Protection and Biodiversity Conservation Act (EPBC Act).
			No areas of preferred koala habitat or preferred koala feed trees are mapped within the subject site. The proposed B1 zone contains a small portion of supplementary habitat. No preferred koala feed trees will be removed as a result of future development in the B1 Zone. The design of the proposed development footprint aims to avoid large areas of supplementary habitat while the proposed C2 zone aims to protect important vegetation. The BDAR

		The submission states there is an	concluded that potential impacts to koala from the proposed rezoning are considered to be negligible. Consultation was undertaken with Biodiversity Conservation Division to assess the BDAR and the planning proposal and no issues were raised in relation to the assessment of koala habitat. Future development of the site would not
		increased vehicle strike risk to koalas as a result of the increased traffic generated by the proposal. The submission recommends possible koala movement patterns be investigated, as well as additional koala protection measures and signage installed.	sever koala movement across the site. Fullerton Cove Road and Nelson Bay Road currently form significant barriers that limit koala movements through the site. Additionally, no roads or parts of the development are designed to create habitat fragmentation for Koalas.
		The submission states that there is an inconsistency where the BDAR refers to the conservation zone as E3 Environmental Management, the proposal references C2 (previously E2) Environmental Conservation. The submission seeks confirmation that the 4.3 hectares will be rezoned C2 Environmental Conservation.	Council confirms that the rezoning is for part B1 Neighbourhood Centre and part C2 Environmental Conservation to protect the environmental values of the site.
8	Resident	The submission expresses support for the proposal and states that there is a need for a supermarket in the locality.	Council notes the positive submission.
9	Resident	The submission expresses support for the proposal.	Council notes the positive submission.
10	Resident	The submission expresses support for the proposal, and makes reference to the 2018 petition that was received by Council in support of a supermarket on the subject site.	Council notes the positive submission. A submission of 634 signatures in support of the proposal was provided to Council during public access on 26 November 2019, in response to the preparation of the Fern Bay and North Stockton Strategy.
11	Biodiversity Conservation Division (BCD)	The planning proposal should be amended to be consistent with the BDAR and clearly identify the Threatened Ecological Communities (TECs) found on site.	The planning proposal has been updated to be consistent with the BDAR.
		Further surveys should be undertaken for the Wallum froglet, green and golden bell frog and Mahony's toadlet to satisfy relevant frog survey guidelines.	The BDAR has since been updated to address these comments. Four nights of targeted surveys have now been completed in accordance with survey guidelines, and this information is provided in Table 9 of the BDAR.

		The BDAR should be amended to include all components required by Table 25 of the BAM.	This has been addressed in the revised BDAR.
		The species polygon for southern myotis should be amended to include PCT 1737 and the species credit calculations are adjusted accordingly.	This has been addressed in the revised BDAR.
		The steps taken to avoid and minimise impacts of the development on the two TECs should be included in the BDAR.	This has been addressed in the revised BDAR.
		The proponent should review the adopted hydraulic roughness values used for the flood assessment.	The Flood Study was updated to undertake a sensitivity analysis to test the potential impacts of increasing the mannings roughness (in-line with Council's flood studies).
		The hydraulic model should be revised so that Bellbird Ct is included in the hydraulic model and flood impact assessment should be reassessed accordingly.	The Flood Study was revised to update the roughness in the Bellbird Ct drainage channel as part of the sensitivity assessment.
		The proponent should review the size and need for on-site detention (OSD) and review capacity of the receiving 450mm pipe.	The Flood Study was updated to run an additional sensitivity test to show the potential impacts of a future development without the use of OSD. The sensitivity test has indicated that the requirement for OSD may not be necessary, however would be reliant on a more detailed assessment of what is accurately being proposed on the site and its impacts to the downstream drainage facilities at future DA stage.
		After review of the updated BDAR and Flood Study, BCD confirmed their previous recommendations were addressed. BCD considers the planning proposal could proceed however 'avoid and minimise' measure warrant further consideration during the development assessment process.	Noted, consideration will be given to these measures at development application stage.
12	Transport for NSW (TfNSW)	The referral notes that cumulative traffic impact from surrounding future development (including remaining lot yield from nearby Fern Bay Seaside Village and the Stockton Rifle Range), the TIA concludes that the intersection performance of the roundabout at Nelson Bay Road / Fullerton Cove Road / Seaside Boulevard is reduced	Council facilitated a meeting between the proponent, SCT consulting, and TfNSW on 9 September 2021 to discuss an update to the TIA and revised modelling. It was noted that the existing modelling used contained additional traffic numbers providing a worst-case scenario.
		to a Level of Service (LoS) D in the PM peak and creates a unacceptable delay on the network.	It was expressed and noted that the modelling for the original TIA based on 1,500m² indicated a LoS of 'D' for the roundabout which is not deemed acceptable, LoS of C or better is required.

		The referral recommends Council consider the anticipated traffic impact on the classified (State) road network and require that the proponent investigate mitigation measures to address the adverse impacts of the development at the intersection of Nelson Bay Road / Fullerton Cove Road / Seaside Boulevard.	A revised TIA was undertaken by SCT Consulting, with revised modelling in consultation with TfNSW and an updated increased floor space area to 5,500m². The revised TIA addresses these concerns and concludes that the impacts of the planning proposal are at a level able to be accommodated by the existing and planned infrastructure.
		The referral requests that Council establish an 88B Instrument by means of access restriction on the site across the boundaries marked on map provided by TfNSW. The 88B will protect the State road corridor and intersection from any future development of Main Road (MR108) wanting direct access points. The authority to vary, revoke and/or rescind the restriction will be Council however, not without the concurrence of TfNSW. After review of the revised TIA, TfNSW confirmed that they had no objections to the proposal.	This request can be addressed at DA stage. Noted.
13	NSW Rural Fire Service	The proposal is supported on the basis of the outcomes and recommendations of the Strategic Bushfire Study, prepared by Bushfire Planning Australia dated February 2021. Future development shall reflect the principles and recommendations of the study.	Noted.
14	Worimi Local Aboriginal Land Council	A site walkover was requested by Worimi, following identification of potential significant Shell Deposits on the site by Council staff.	A site visit was conducted with Council officers, Worimi LALC and other Registered Aboriginal Parties (RAPs) on 9 June 2021. Shell material was observed on many areas of the site, with a sandy ridgeline having potential to be a burial site. It was deemed an Aboriginal Cultural Heritage Assessment (ACHA) was necessary to determine mitigation and management measures. NGH Consulting has been commissioned to undertake an Aboriginal Cultural Heritage Assessment of the site. Worimi and other RAPs were consulted as part of this process and

ITEM 7 - ATTACHMENT 3 LOCALITY PLAN.



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ITEM 7 - ATTACHMENT 4 MINUTE NO. 051, 14 APRIL 2020.

MINUTES ORDINARY COUNCIL - 14 APRIL 2020

ITEM NO. 4 FILE NO: 20/30675

EDRMS NO: 58-2017- 4-1

58-2017-1-1

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

REPORT OF: STEVEN PEART - STRATEGY & ENVIRONMENT SECTION

MANAGER

GROUP: DEVELOPMENT SERVICES

RECOMMENDATION IS THAT COUNCIL:

 Adopt the planning proposal (ATTACHMENT 4) to amend the Port Stephens Local Environmental Plan 2013 for land at 42 Fullerton Cove Road, Fullerton Cove (Lot 14 DP 258848) to:

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

PORT STEPHENS COUNCIL

74

ITEM 7 - ATTACHMENT 4 MINUTE NO. 051, 14 APRIL 2020.

MINUTES ORDINARY COUNCIL - 14 APRIL 2020

ORDINARY COUNCIL MEETING - 14 APRIL 2020 MOTION

051 Councillor Chris Doohan Councillor Jaimie Abbott

It was resolved that Council:

- Note the proponent for the planning proposal (ATTACHMENT 5 to Item No. 4) at 2, 4, 4A, 4B, and 6 Seaside Boulevarde, Fern Bay and 20, 22, 23, 24, 25 and 26 Sovereign Street, Fern Bay (Part of Lot 27, DP 270466, Lots 2, 3, 4, 20, 21 and 22, and Part of Lots 5, 19, 23 and 24, DP 280072) withdrew the planning proposal request on 9 April 2020.
- 2) Adopt the planning proposal (ATTACHMENT 4 to Item No. 4) to amend the Port Stephens Local Environmental Plan 2013 for land at 42 Fullerton Cove Road, Fullerton Cove (Lot 14 DP 258848) to:
- a. rezone the land from RU2 Rural Landscape to part B1 Neighbourhood Centre and part E2 Environmental Conservation.
- remove the minimum lot size restrictions for the proposed B1 zoned land.
- apply a building height restriction of 9 metres on the proposed B1 zoned land.
- d. insert a local provision to restrict the retail gross floor area of development on the site to 1500sqm.
- 3) Forward the planning proposal to amend the Port Stephens Local Environmental Plan 2013 for land at 42 Fullerton Cove Road, Fullerton Cove (Lot 14 DP 258848) to the NSW Department of Planning, Industry and Environment for Gateway determination and request authorisation to make the plan.
- 4) Does not adopt the planning proposal (ATTACHMENT 5 to Item No. 4) for the land at 2, 4, 4A, 4B, and 6 Seaside Boulevarde, Fern Bay and 20, 22, 23, 24, 25 and 26 Sovereign Street, Fern Bay (Part of Lot 27, DP 270466, Lots 2, 3, 4, 20, 21 and 22, and Part of Lots 5, 19, 23 and 24, DP 280072).

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

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

Those against the Motion: Nil.

PORT STEPHENS COUNCIL

75

ITEM 7 - ATTACHMENT 4 MINUTE NO. 051, 14 APRIL 2020.

MINUTES ORDINARY COUNCIL - 14 APRIL 2020

The motion was carried.

BACKGROUND

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

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

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

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

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

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

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

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

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

42 Fullerton Cove Road Proposal				
Date Lodged: 4 April 2017.				
Proponent:	Monteath & Powys Surveyors on behalf of landowners.			
Subject Property:	42 Fullerton Cove Road, Fullerton Cove (Lot 14 DP 258848).			

PORT STEPHENS COUNCIL

76

ITEM 7 - ATTACHMENT 5 GATEWAY DETERMINATION.



Gateway Determination

Planning proposal (Department Ref: PP_2020_PORTS_001_00): to rezone the site to enable the creation of a neighbourhood supermarket and centre.

I, the Director, Central Coast and Hunter Region, as delegate of the Minister for Planning and Public Spaces, have determined under section 3.34(2) of the *Environmental Planning and Assessment Act 1979* (the Act) that an amendment to the *Port Stephens Local Environmental Plan 2013* to rezone the site from RU2 Rural Landscape to B1 Neighbourhood Centre and E2 Environmental Conservation to enable the creation of a neighbourhood supermarket and centre should proceed subject to the following conditions:

- 1. The planning proposal should be made available for community consultation for a minimum of 28 days.
- 2. Prior to public exhibition, the planning proposal should be updated to identify if the proposed local provision limiting the retail gross floor area intends to refer to the 'neighbourhood supermarket' definition under clause 5.4 of the *Port Stephens Local Environment Plan 2013*.
- 3. Update the planning proposal to include:
 - a. biodiversity development assessment report;
 - b. traffic impact assessment;
 - c. acid sulfate soils study;
 - d. bushfire risk assessment; and
 - e. flood and drainage study to assess the impact of the proposed fill on flood heights and characteristics in the flood catchment and potential impacts on the Hunter Wetlands National Park.
- 4. Public exhibition is required under section 3.34(2)(c) and schedule 1 clause 4 of the Act as follows:
 - (a) the planning proposal must be made publicly available for a minimum of 28 days; and
 - (b) the planning proposal authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 6.5.2 of *A guide to preparing local environmental plans* (Department of Planning and Environment, 2018).
- Consultation is required with the following public authorities/organisations under section 3.34(2)(d) of the Act and to comply with the requirements of relevant section 9.1 Directions:
 - NSW Rural Fire Service:

ITEM 7 - ATTACHMENT 5 GATEWAY DETERMINATION.

- · Department of Primary Industries;
- Transport for NSW;
- · Biodiversity Conservation Division; and
- · Worimi Aboriginal Land Council.

Each public authority/organisation is to be provided with a copy of the planning proposal and any relevant supporting material and given at least 21 days to comment on the proposal.

- 6. A public hearing is not required to be held into the matter by any person or body under section 3.34(2)(e) of the Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).
- The time frame for completing the LEP is to be 24 months following the date of the Gateway determination.

Dated 12th day of October 2020.

Dan Simpkins
Director, Central Coast and Hunter Region
Planning and Assessment
Department of Planning, Industry and
Environment

Delegate of the Minister for Planning and Public Spaces

PP_2020_PORTS_001_00 (IRF20/4214)

ITEM 7 - ATTACHMENT 6 ALTERATION OF GATEWAY DETERMINATION.



Department of Planning and Environment

Alteration of Gateway Determination

Planning proposal (Department Ref: PP-2021-1011)

I, Director, Central Coast and Hunter at the Department of Planning and Environment, as delegate of the Minister for Planning and Homes, have determined under section 3.34(7) of the *Environmental Planning and Assessment Act 1979* to alter the Gateway determination dated 12 October 2020 for the proposed amendment to the *Port Stephens Local Environmental Plan 2013* as follows:

1. Delete: "condition 2"

and replace with:

new condition 2: The gross floor area for the proposed neighbourhood supermarket or commercial premises is to be limited to 5,500 square metres.

Dated 23rd day of February 2022.

Dan Simpkins
Director, Central Coast and Hunter Region
Planning and Assessment
Department of Planning and Environment

Delegate of the Minister for Planning and Homes

[PP-2021-1011] (IRF22/334)

ITEM NO. 8 FILE NO: 22/151756 EDRMS NO: PSC2022-01759

DRAFT LOCAL INFRASTRUCTURE CONTRIBUTIONS PLAN 2020 – AMENDMENT NO. 2

REPORT OF: BROCK LAMONT - STRATEGY & ENVIRONMENT SECTION

MANAGER

GROUP: DEVELOPMENT SERVICES

RECOMMENDATION IS THAT COUNCIL:

1) Endorse the draft Port Stephens Local Infrastructure Contributions Plan - Amendment No.2 (ATTACHMENT 1) for exhibition.

- 2) Exhibit the draft Port Stephens Local Infrastructure Contributions Plan Amendment No.2 (the Amendment) for 28 days in accordance with the Environmental Planning and Assessment Act 1979 and Environmental Planning and Assessment Regulation 2021.
- 3) If no submissions are received, approve the Amendment as exhibited, without a further report to Council.

BACKGROUND

The purpose of this report is to seek endorsement to publicly exhibit the draft Port Stephens Local Infrastructure Contributions Plan (LIC plan) – Amendment No. 2 (the Amendment).

Council collects local infrastructure contributions to support growth from new developments by funding community infrastructure such as local roads, pathways, parks and sporting facilities. Local infrastructure contributions are levied in accordance with Part 7 of the Environmental Planning and Assessment Act 1979 (EP&A Act) and the endorsed LIC plan. The funds collected must be allocated to the projects identified within the LIC plan.

The LIC plan is amended on an annual basis to make administrative changes and to update projects identified to support growth and development. The amendment includes the removal of infrastructure items, the amendment of the amounts required to deliver infrastructure items and the introduction of additional infrastructure items.

The administrative amendments to the LIC plan relates to:

- Clarifications regarding secondary dwellings, moveable dwellings and cost of works.
- Replacement of any reference to the recently repealed Environmental Planning and Assessment Regulations 2000 (EP&A Regulation) and its contents with the

Environmental Planning and Assessment Regulations 2021 (EP&A Regulation) and its contents.

The removal of infrastructure items from the LIC plan relates to:

- Items that have been funded by the LIC plan and completed.
- Items that have been funded by sources other than infrastructure contributions (i.e. grant funding), or
- Items that are not considered feasible within the life of the plan due to population growth and contributions income within the catchment.

The amendment of the amounts dedicated to infrastructure items from the LIC plan relates to:

- Increasing market values for the delivery of infrastructure, or
- Increased scope of the infrastructure projects to be delivered.

The introduction of new infrastructure items into the LIC plan relates to:

 The addition of infrastructure projects that have been identified as being required to support growth and development.

The Amendment results in changes to the contribution rates for all of the catchments in the Local Government Area as shown in the table below.

Contributions catchments	Current contribution rate	Proposed contribution rate	Difference
Raymond Terrace and the West	\$18,938	\$19,833	\$895
Central Growth Corridor	\$19,550	\$19,729	\$179
Tomaree	\$19,623	\$19,854	\$231
Fern Bay	\$17,735	\$19,833	\$2,098
Kings Hill URA	\$24,416	\$24,726	\$310

The rate for the Fern Bay catchment would be increased under the Amendment as the LIC plan includes new infrastructure items to support future growth. This achieves alignment with Actions 13 and 14 of the adopted Fern Bay and North Stockton Strategy.

Proposed changes to the LIC plan are outlined in more detail in the Amendment (ATTACHMENT 1).

COMMUNITY STRATEGIC PLAN

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

FINANCIAL/RESOURCE IMPLICATIONS

The Amendment aims to secure contributions from development towards local infrastructure. Should the Amendment be adopted, it would enable funding and construction of essential public infrastructure to satisfy the demands of the future population.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	No		
Reserve Funds	No		
Developer Contributions (S7.11)	Yes		
External Grants	No		
Other	No		

LEGAL, POLICY AND RISK IMPLICATIONS

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
There is a risk that the Amendment includes infrastructure not considered essential to support new development.	Low	The LIC plan is informed by independent studies and Council's adopted Strategic Asset Management Plan. The plan identifies the infrastructure needs of projected population increases. Endorse the Amendment for public exhibition.	Yes

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
There is a risk that local infrastructure contributions will impact development feasibility.	Low	Contributions rates have been calculated in accordance with the relevant Ministerial Direction which sets a maximum cap of \$20,000 for residential contribution rates. Rates have been calculated to fund the infrastructure prioritised as necessary to provide the facilities and services of the projected population. Rates have also been benchmarked to ensure development charges are reasonable.	Yes
There is a risk the Amendment includes infrastructure items that have been incorrectly costed and Council will need to fund a shortfall in the future.	Low	The LIC plan is informed by independent studies and Council's adopted Strategic Asset Management Plan. The plan identifies the infrastructure costs based on current market conditions. The annual review of the LIC plan allows for cost escalation. Endorse the Amendment for public exhibition.	Yes

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

Part 7 of the EP&A Act authorises Council to collect local infrastructure contributions from new development. Conditions imposed on new development would be in accordance with an approved local infrastructure contributions plan.

Environmental Planning and Assessment Regulations 2021 (EP&A Regulation)

Part 9 of the EP&A Regulation relates to development contributions. The Amendment will amend the current contribution plan, pursuant to clause 215 (1).

Clause 212 sets out the particulars a local infrastructure contributions plan must contain. The Amendment is consistent with this clause.

Clause 213 sets out the exhibition requirements for amendments and draft contributions plans. The public exhibition of the Amendment will be carried out in accordance with the EP&A Regulation, as detailed below.

Environmental Planning and Assessment (Local Infrastructure Contributions)
Direction 2012 (the Direction)

The Direction sets maximum contribution rates for new development and development in URAs, unless a contributions plan is reviewed by the Independent Pricing and Regulations Tribunal. In Port Stephens, the maximum rate per residential lot is \$20,000, and in the Kings Hill URA the maximum rate per residential lot is \$30,000. As the proposed rates are below these figures, the Amendment satisfies the Direction.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The Amendment ensures an adequate standard of services and facilities can be provided in the LGA and that the existing community will not be funding the infrastructure needs that result from new development. This has been balanced against the need to ensure unreasonable costs are not imposed upon new residential development, thereby reducing financial viability.

CONSULTATION

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

Internal

The Amendment has been prepared in consultation with the Development Contributions Analysis Team, Financial Services Section, Assets Section and Development Assessment and Compliance Section.

The projects in the Amendment have been aligned with Council's Strategic Asset Management Plan, Capital Works Program, Plans of Management and adopted land use strategies.

External

The Amendment will be publicly exhibited in accordance with the EP&A Regulations for a period of 28 days, including being made available on Council's website. Submissions made during the exhibition period will be considered in a report to Council with details of any post-exhibition changes.

OPTIONS

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

ATTACHMENTS

1) Draft Amended Local Infrastructure Contributions Plan - Amendment 2. (Provided under separate cover) ⇒

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ITEM NO. 9 FILE NO: 22/208717 EDRMS NO: PSC2018-03515

TEMPORARY SUSPENSION OF PART OF THE ALCOHOL FREE ZONES (AFZS) IN NELSON BAY AND RAYMOND TERRACE

REPORT OF: BROCK LAMONT - STRATEGY & ENVIRONMENT SECTION

MANAGER

GROUP: DEVELOPMENT SERVICES

RECOMMENDATION IS THAT COUNCIL:

1) Approve the temporary suspension of part of the Nelson Bay and Raymond Terrace Alcohol Free Zones (AFZs) (ATTACHMENTS 1 and 2) during Art in the Park events on 30 September 2022 and 7 October 2022, respectively, in accordance with section 645 of the Local Government Act 1993 (LG Act).

- 2) Should the events be unable to proceed on the 30 September 2022 or 7 October 2022, approve the temporary suspension of part of the Nelson Bay and Raymond Terrace Alcohol Free Zones (ATTACHMENTS 1 and 2) during Art in the Park events on 7 October and 14 October 2022, respectively, in accordance with section 645 of the Local Government Act 1993.
- 3) Publicly notify the temporary suspension by publishing a notice on Council's website prior to the events for the purposes of satisfying section 645 (1) of the Local Government Act 1993.
- 4) Implement the requirements for signage in accordance with the Ministerial Guidelines Alcohol Free Zones 2009.

BACKGROUND

The purpose of this report is to gain the endorsement of Council to temporarily suspend part of the Nelson Bay and Raymond Terrace Alcohol Free Zones (AFZs). The temporary suspension is to support the Art in the Park events in Nelson Bay and Raymond Terrace funded by the NSW Government's Cultural Tourism Accelerator fund.

It is proposed to temporarily suspend the Nelson Bay AFZ at Yacaaba Street between Magnus Street and Victoria Parade (ATTACHMENT 1) on 30 September 2022 from 12 noon to 10pm and the Raymond Terrace AFZ at Sturgeon Street and Library Lane, between the roundabout on William Street and the Marketplace access road (ATTACHMENT 2) on 7 October 2022 between 12 noon and 10pm.

In the event of wet weather and the events are unable to proceed, it is proposed to temporarily suspend the Nelson Bay AFZ on 7 October 2022 from 12 noon to 10pm and the Raymond Terrace AFZ on 14 October 2022 between 12 noon and 10pm.

Under the Local Government Act 1993 (LG Act), Council may resolve to temporarily suspend a particular AFZ for purposes such as to accommodate short term community events.

Other process requirements for suspending an AFZ are outlined in the Ministerial Guidelines Alcohol Free Zones 2009 (the Guidelines), including specific requirements for signage as detailed below.

The proposed suspension will not impact the term of the current Nelson Bay and Raymond Terrace AFZ's (4 years).

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2022-2026	
Thriving and Safe Place to Live	Enhance public safety, health and liveability through use of Council's regulatory controls and services.	

FINANCIAL/RESOURCE IMPLICATIONS

As the event organiser, the Vibrant Places Team in the Strategy and Environment Section will be responsible for the costs associated with meeting the public notice requirements and the amendments required to signage during the event.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	No		
Reserve Funds	No		
Developer Contributions (S7.11)	No		
External Grants	Yes	\$10,000	NSW Government's Cultural Tourism Accelerator fund.
Other	Yes		The event organiser will be charged by Council for all associated costs incurred by Council, including the temporary covers for AFZ signage.

LEGAL, POLICY AND RISK IMPLICATIONS

The existing AFZ restricts alcohol in the declared area 24 hours, 7 days a week. Council has the power to suspend the AFZ under section 645 of the LG Act for any reason, however the Guidelines specify that a suspension would not usually be appropriate for any period longer than 1 month, and generally would be of a much shorter duration (eg to accommodate a specific event). The proposed suspension is for less than one day in each AFZ.

The LG Act includes a requirement to give public notice in a manner that is likely to bring the notice to the attention of members of the public in the area as a whole or in a part of the area that includes the AFZ concerned. A notice will be published on Council's website.

The Guidelines require the existing alcohol restriction signage within the affected AFZ event area to be amended for the temporary suspended period and reinstated following the event. The existing signs restricting alcohol use in the area will be covered over with a material bag during the event and uncovered following the event.

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
There is a risk that visitors to Nelson Bay and Raymond Terrace will drink within the existing AFZ area that has not been suspended.	Medium	NSW Police have indicated their support for the temporary suspension of the Nelson Bay and Raymond Terrace AFZs for these events and will resource the area and surrounds as required.	Yes
There is a risk that broken glass and litter could accumulate and be left behind from the event.	Medium	Relevant sections in Council have been notified of the event and Council will increase the waste management in place if necessary.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The temporary suspension of the AFZ will make a positive contribution to the liveability and well-being of those who live, work and visit Port Stephens through place-based events that showcase the arts and culture. The Art in the Park events are consistent with the Our Incredible Places Strategy, as they will use public space to showcase innovative, temporary and permanent art which promotes our local identity.

CONSULTATION

Consultation with key stakeholders has been undertaken by the Strategic Planning Unit.

<u>Internal</u>

The Strategic Planning Unit has notified relevant sections in Council and discussed the requirements arising from a temporary suspension of the AFZ and the potential impacts, including impacts related to waste management.

External

The Strategic Planning Unit has liaised with the Port Stephens Hunter Police District Licensing Officer to discuss the proposed event, NSW Police resourcing, alcohol licensing conditions and the proposed temporary suspension of the AFZ.

NSW Police support the temporary suspension of the AFZ and have stated that they will adequately resource the event.

If endorsed, notification will also be available via Council's website.

OPTIONS

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

ATTACHMENTS

- 1) Location of proposed AFZ suspension Nelson Bay. J.
- 2) Location of proposed AFZ suspension Raymond Terrace. J.

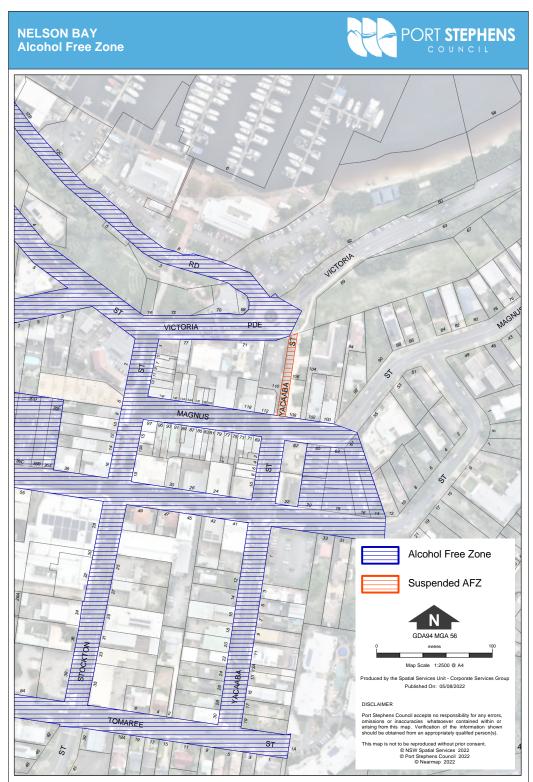
COUNCILLORS ROOM

Nil.

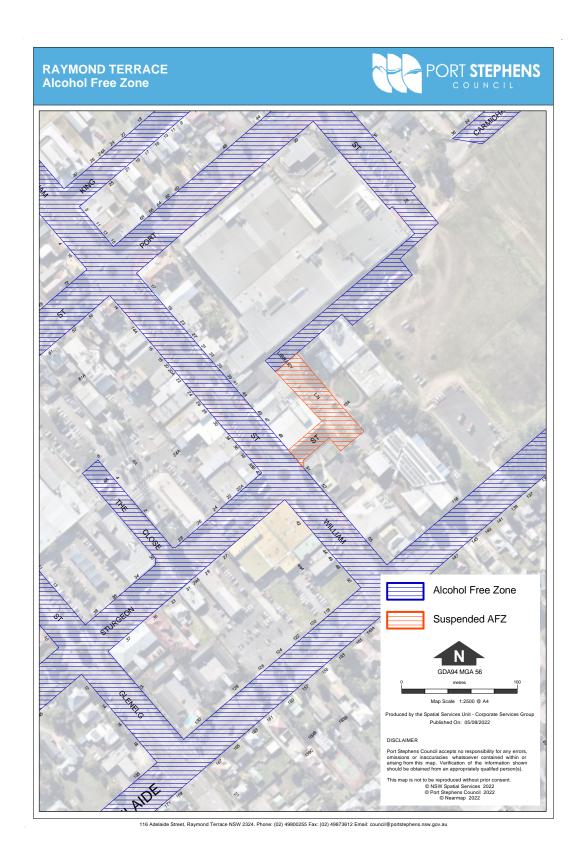
TABLED DOCUMENTS

Nil.

ITEM 9 - ATTACHMENT 1 LOCATION OF PROPOSED AFZ SUSPENSION - NELSON BAY.



ITEM 9 - ATTACHMENT 2 LOCATION OF PROPOSED AFZ SUSPENSION - RAYMOND TERRACE.



ITEM NO. 10 FILE NO: 22/223589

EDRMS NO: PSC2021-02359

DRAFT INTEGRATED PLANNING AND REPORTING DOCUMENTS INCLUDING SPECIAL RATE VARIATION OPTIONS - PHASE 2 (RATE RISE OPTIONS)

REPORT OF: TIM HAZELL - FINANCIAL SERVICES SECTION MANAGER

GROUP: CORPORATE SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Endorse the draft Integrated Planning and Reporting documents, being the Delivery Program 2022 to 2026, incorporating the Operational Plan 2023 to 2024, Resourcing Strategy 2023 to 2033 incorporating the Workforce Management Strategy 2022 to 2026, Long Term Financial Plan 2023 to 2033 and Strategic Asset Management Plan 2023 to 2033 that have been revised to model 2 options of a Special Rate Variation, as per amendments outlined in (ATTACHMENT 1).
- 2) Note the proposed additional affordability measures, included as Appendix 4 of the draft Operational Plan 2023 to 2024 (ATTACHMENT 1).
- 3) Place the draft revised documents on public exhibition for a period of 28 days, invite submissions and report back to Council.
- 4) Endorse the revised Phase 2 Rate Rise Options Engagement Plan (ATTACHMENT 2).

BACKGROUND

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

- Draft revised Integrated Planning and Reporting (IP&R) documents to incorporate 2 proposed special rate variation options:
 - Delivery Program 2022 to 2026
 - Operational Plan 2023 to 2024
 - Resourcing Strategy 2023 to 2033 incorporating the Workforce Management Strategy 2022 to 2026, Long Term Financial Plan 2023 to 2033 and Strategic Asset Management Plan 2023 to 2033

Following the Council meeting on 23 August 2022, Council endorsed the development of revised IP&R documentation to incorporate feedback gained from the community during Phases 0 and 1 of the Our Funded Future Engagement Plan whilst balancing Council's financial sustainability for further engagement with the community.

Further to the discussion at the Council meeting on 23 August 2022, it was resolved (Minute No. 219) **(ATTACHMENT 3)** to rename the engagement moving forward to ensure the narrowed focus is clear to the community.

The Delivery Program outlines a 4 year program that Council commits to delivering within the resources available. It translates the key directions/goals into clear activities and actions.

The Operational Plan is Council's annual action plan which contributes to the 4 year Delivery Program. It outlines what Council proposes to deliver for 2022 to 2023 and which area of Council is responsible for delivery.

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

These documents provide further detail and a narrowed-down selection of options surrounding a Special Rate Variation for further community consultation.

Amendments made to the documents are shown in **ATTACHMENT 1**.

Inclusion of:

- Base Scenario: 2.5% Rate cap and next steps toward reducing service delivery.
- Scenario 1: SRV Independent Recommendation 10.5% for 3 years.
- Scenario 2: SRV Single Year 26% for 1 year.
- Increase of fees and charges for the 2023 to 2024 financial year at 5 percent.
- Continue seeking grant funding.
- Continue investigations and community consultation of selling underperforming assets, with any profits to be placed in the Resilience Fund.

Exclusion of:

Removal of any references to residential exemption for paid parking.

The key purpose for Council considering a Special Rate Variation is to be financially sustainable. It is unsustainable for Council to operate year after year with budget shortfalls. The additional income raised by any approved Special Rate Variation would be used to repair the budget. By eliminating the forecasted shortfalls that are associated with the rising costs, Council will be able to deliver the planned services to our community over the next 10 years.

Council understands that it may be difficult for some of our community to pay for an increase in rates or fees and charges. Therefore, Council is proposing additional affordability measures to ensure we have a range of initiatives in place to assist any members of our community experiencing hardship as a result of any potential rate

rise. See appendix four in **(ATTACHMENT 1)** for proposed additional affordability measures.

To aid in the public exhibition phase and seek further community input on this important decision, Phase 2, now known as Rate Rise Options Engagement Plan, was also endorsed for revision following the Council meeting on 23 August 2022. This revised plan incorporates feedback on the engagement process and methods gained in Phase 0 and 1. Please refer to (ATTACHMENT 2) for detailed plan.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2022-2026	
Financial Management	Maintain strong financial sustainability.	

FINANCIAL/RESOURCE IMPLICATIONS

The cost of printing these draft documents can be substantial. For this reason, a limited number of copies are produced and will be made available for inspection at Council's libraries and Administration Building. They are also available for download from Council's website.

The costs for the community consultation have been absorbed by Council's operational budget. If Council proceeds with a Special Rate Variation application, these costs will also be absorbed by Council's operating budget.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes		
Reserve Funds	No		
Developer Contributions (S7.11)	No		
External Grants	No		
Other	No		

LEGAL, POLICY AND RISK IMPLICATIONS

Council is required to undertake integrated planning and report activities in accordance with the Local Government Act, Local Government (General) Regulation 2021 (Local Government Regulation) and the NSW Government's Integrated Planning and Reporting Guidelines (IPR Guidelines) and Handbook (IPR Handbook) September 2021. Sections 402 to 406 and 608 to 610 of the Local Government Act outline the specific requirements for developing the IPR documents and Fees and Charges.

Under the Local Government Act 1993, councils may apply to IPART for a Special Rate Variation under s508 (2) or s508A of the Act. IPART assesses these applications against criteria in guidelines set by the Office of Local Government.

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
There is a risk that Council does not have adequate funding to ensure ongoing levels of operations without significant change in service levels.	High	Adopt the recommendations. Publicly exhibit the revised IPR documents.	Yes
There is a risk of continuing these discussions including a Special Rate Variation will be received poorly by the community.	High	Adopt the recommendations. Clear and concise datadriven communication and engagement on the reasoning, purpose, need, and impact of financial sustainability measures.	Yes
There is a risk that if the revised draft documents are not exhibited as required plans will not be adopted. This could lead to Council being unable to implement the range of financial sustainability measures.	Low	Adopt the recommendations. Public exhibition of revised draft documents during September and October 2022 to allow sufficient time for public submissions and Council consideration and adoption of final documents.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The draft plans has been developed in alignment with the principles of sustainability and social justice addressing social, economic, environmental and governance factors (quadruple bottom line) through 4 interconnected focus areas: Our Community, Our Place, Our Environment and Our Council.

The 4 focus areas provide a structure for planning in each of the documents, enabling Council to address key actions while aiming to holistically meet the community's vision of 'A great lifestyle in a treasured environment'.

CONSULTATION

Consultation with key stakeholders has been undertaken by the Financial Services Section in consultation with the Integrated Planning and Excellence team and Communications and Engagement sections.

Internal

- Executive Team.
- Senior Leadership Team.
- Project Control Group Financial Sustainability.
- Councillor workshops.

External

- Community Strategic Plan 2022 to 2032 Adopted 28 June 2022.
- Long Term Financial Plan 2022 to 2032 Adopted 28 June 2022.
- Delivery Program and Operational Plan 2022 to 2032 Adopted 28 June 2022.
- Integrated Planning and Reporting Engagement Program.
- Our Funded Future Engagement Program Phase 0 and 1.
- Rate Rise Options Engagement Program Phase 2.

In accordance with local government legislation, the draft revised Integrated Planning and Reporting documents will go on public exhibition from 14 September 2022 to 12 October 2022.

OPTIONS

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

ATTACHMENTS

- Amendments to DRAFT IP&R documents revised for a special rate variation.
 (Provided under separate cover) ⇒
- 2) Rate Rise Options Engagement Plan. J.
- 3) Minute No. 219 Council Meeting 23 August 2022. J.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ATTACHMENT 2



Continuing the conversation with our community about the preferred rate increase options to strike a balance between the needs of our community and Council's funded future.



A commitment to long term financial sustainability

In June this year, Council adopted the Our Funded Future Communication and Engagement Plan to commence the conversation with the community about Councils financial position and explore a number of non-rate increase and rate increase options. The plan outlined a series of engagement phases:

- Phase 0 informed the community on Council's financial situation and the current and short term mitigation strategies that have been implemented to date.
- Phase 1 explored non rate income and rate income options with the community that creates a financially sustainable Council.
- Phase 2 publically exhibit the options within the Integrated Planning & Reporting documents and further discuss the community's views on the narrowed down preferred options.

Phase 0 and Phase 1 are completed and we are now ready to progress to Phase 2 and discuss further with our community the preferred rate increase options from Phase 1. As the conversations has now progressed we are renaming the engagement moving forward from 'Our Funded Future' to 'Rate rise Options', making sure the purpose of the engagement is clear to the community.

Council will continue efforts made to increase participation through the use of a refined short survey, attending community events, and as planned Council's messaging will now focus clearly on the rate rise options.

Engagement outcomes from Phase 0 and 1 can be viewed in the Our Funded Future Community Engagement Report

2 Port Stephens Council



Objectives



Continue to increase community awareness of Council's financial situation and its journey to date



Inform the community about the preferred rate increase options for Council's financial sustainability



Seek community feedback on the preferred rate increase options for Council's financial sustainability



Identify the community's views on the preferred rate increase scenarios

Engagement approach

Engagement level

The engagement level for Phase 2: Rate rise options is an 'Involve' engagement level working directly with the community to ensure that their thoughts are understood and considered.

Engagement level	Phase 2
Level 1 – Inform Provide stakeholders with information to assist them in understanding the problems, alternatives and/or solutions.	
Level 2 – Consult Obtain stakeholder feedback on the project to aid decision making.	
Level 3 – Involve Work with stakeholders throughout the project, ensuring issues and concerns are understood and incorporated in decision making.	\bigcirc
Level 4 – Collaborate Partner with stakeholders throughout the project to develop alternatives and identify the preferred solution.	

Engagement methods

Phase	Engagement methods
Phase 2	Communications
Public exhibition	 Media release Social media including paid social Newspaper advertisements – existing notices Direct email Council website page On hold messaging Councillor social media toolkit
	Engagement
	Drop in / engagement booths Online short survey Recorded presentation webinar (three-part series) Independent video – Professor Drew Shopping Centre drop in stall Interactive online rating calculator Online and hardcopy submissions Designated email Officer call paths for direct calls to Customer Experience

Success criteria



Engagement methods target all Port Stephens demographics



Minimal negative feedback on engagement process



Minimal negative submissions received during Phase 2 of engagement



Community feedback reflected in direction taken by Council

Stakeholders

Key:

- High interest, high influence immediate and direct, tailored approach
- High interest, low influence immediate, tailored approach
- Low interest, high influence tailored approach
- Low interest, low influence general approach

Name and contact	Interest	Influence
External		
Rate payers and residents	High	High
General community	High	High
Special interest groups	High	Medium
Independent Planning & Reporting Tribunal (IPART)	High	High
Media	High	Low

6 Port Stephens Council



Key risks

Risk	Mitigation strategy
Previous rate increase proposal not supported by parts of the community or IPART	 Continued communication campaign providing story and context. FAQ on website.
Financial situation a surprise to the community	 Continued education and communication of financial sustainability story and context. Continued communication campaign outlining strategies undertaken to reduce expenditure and create savings.
Community backlash	 Continued information and education of Council's financial position and our independent assessment Base rates and reduced services options available.
Engagement perceived as not genuine and transparent	 Clear messaging about how community feedback will be used. Many engagement methods to be used and promotion of each. Reporting back to the community on link between decisions and community feedback.
Phase 2 formal report not prepared within timeframes	Pre-planned days scheduled for council staff to analyse data and prepare report.

Community Engagement and Communications Plan 7

Key milestones

Milestone	Date
Engagement plan approval	13 September 2022
Phase 2 – engagement commences	14 September 2022
Phase 2 – engagement concludes	14 October 2022
Phase 2 – engagement report presented to Council	25 October 2022

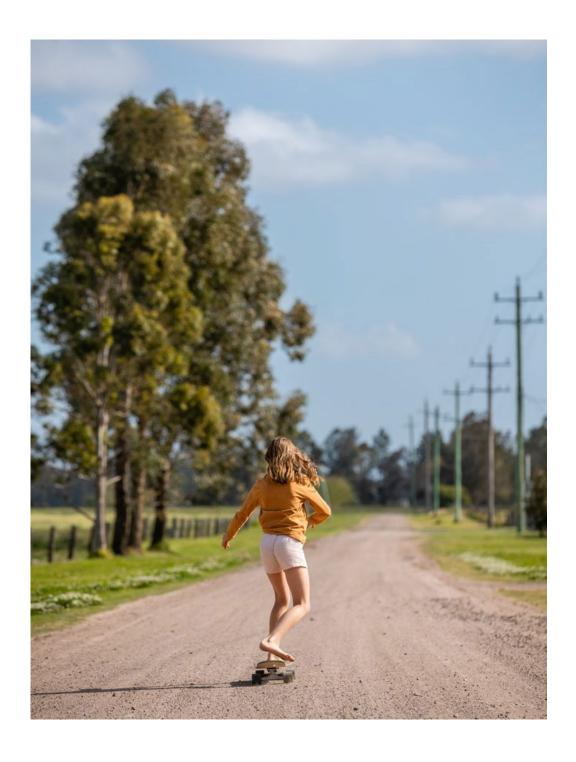
Engagement approach

Key Messages

- Councils financial forecasting estimates a budget shortfall of \$80 million over the next 10 years.
- The last 2 years of COVID-19 impacts have taken their toll. Income from our holiday parks, childcare centres and the Newcastle Airport has been slashed, while at the same time the construction, transport and insurance costs have continued to increase. These impacts have also been further exacerbated by 2 major storm events.
- Council's current and forecast financial situation will make it very difficult to meet the community needs, priorities and aspirations they have shared with Council over the past 2 years to the same level unless we take a new approach.
- Council has been considering all options to improve our financial situation including reducing service delivery, increasing fees and charges, a rate variation or investigating new revenue streams or property sales.
- We've been talking to our community about a range of non-rate income and rate income options to ensure Council is financially sustainable for the future.
- Five rate increase options ranging from a 26% to 45% overall rate increase, either in a single year or over a number of years, were explored with the community.

- We have collated all community feedback and used this to revise our draft Integrated Planning & Reporting plans.
- The revised plans incorporate increasing fees and charges, continuing efforts made for external grant funding, working with the Councillors and community on the sale of underperforming land identified, an option of reducing service levels and two options for a special rate variation (rate increase).
- Within the two rate increase scenarios, there are some enhanced services as identified through the integrated engagement program over the past two years and prioritised by the community in Phase 1. Some enhancements are proposed for increased maintenance of roads, the environment and waterways, and public space.
- We are now seeking community feedback on the draft Integrated Planning & Reporting Plans including two rate increase options.
- You can share your thoughts via an online survey, at a drop in session or by providing a submission
- Find out more by visiting portstephens.nsw.gov.au.
- The community can share their thoughts until Wednesday 12 October 2022.

⁸ Port Stephens Council



Community Engagement and Communications Plan 9

Action Plan

Action plan for Phase 2.

Activity	Date
Media release – Engagement opens	14 September
Designated webpage updated including rates calculator	14 September
On hold messaging	14 September
Draft Integrated Planning & Reporting plans published (website and hardcopy)	14 September
Online and hardcopy submissions	14 September – 14 October
Online short survey	14 September – 14 October
Special interest groups	14 September – 14 October
Social media (paid and organic) – including Councillor social media toolkit	14 September – 14 October
Direct email – inform/invite for the short survey	16 September
Shopping Centre drop-in stall	19 September – 23 September
Recorded presentation webinar	21 September
Newspaper public notices	22 September
Independent Video - Professor Drew	27 September
Face-to-face drop-in/short survey booth – Visitor Information Center	21 September
Face-to-face drop-in/short survey booth – Raymond Terrace – start 4:45 pm	27 September
Face-to-face drop-in/short survey booth – Medowie – start 4:45 pm	29 September
Face-to-face drop-in/short survey booth – Nelson Bay – start 4:45 pm	1 October

¹⁰ Port Stephens Council

ITEM 10 - ATTACHMENT 2 RATE RISE OPTIONS ENGAGEMENT PLAN.



MINUTES ORDINARY COUNCIL - 23 AUGUST 2022

ITEM NO. 4 FILE NO: 22/218108 EDRMS NO: PSC2021-02359

OUR FUNDED FUTURE - PHASE 0 AND PHASE 1 ENGAGEMENT

REPORT OF: TIM HAZELL - FINANCIAL SERVICES SECTION MANAGER

GROUP: CORPORATE SERVICES

RECOMMENDATION IS THAT COUNCIL:

- Notes the outcomes of the community engagement for Phase 0 and Phase 1 of Our Funded Future, including a proposed Special Rate Variation (ATTACHMENT 1).
- 2) Endorses the development of Our Funded Future Phase 2 Engagement Plan.
- 3) Endorses the development of revised Integrated Planning and Reporting documents, including Special Rate Variation options, to incorporate feedback gained from the community during Phase 0 and 1 whilst balancing Council's financial sustainability for further engagement with the community.

ORDINARY COUNCIL MEETING - 23 AUGUST 2022 MOTION

Councillor Leah Anderson Councillor Chris Doohan

That Council:

- Notes the outcomes of the community engagement for Phase 0 and Phase 1 of Our Funded Future, including a proposed Special Rate Variation (ATTACHMENT 1).
- 2) Endorses the development of Our Funded Future Phase 2 Engagement Plan.
- 3) Endorses the development of revised Integrated Planning and Reporting documents, including Special Rate Variation options, to incorporate feedback gained from the community during Phase 0 and 1 whilst balancing Council's financial sustainability for further engagement with the community.

Councillor Peter Francis left the meeting at 7:16pm.
Councillor Peter Francis returned to the meeting at 7:20pm.

PORT STEPHENS COUNCIL

MINUTES ORDINARY COUNCIL - 23 AUGUST 2022

ORDINARY COUNCIL MEETING - 23 AUGUST 2022 MOTION

218	Councillor Giacomo Arnott Councillor Jason Wells
	It was resolved that Cr Peter Kafer be granted a 3 minutes extension of time to address Council.

Those for the Motion: Crs Leah Anderson, Giacomo Arnott, Matthew Bailey, Chris Doohan, Glen Dunkley, Peter Francis, Mayor Ryan Palmer, Steve Tucker and Jason Wells.

Those against the Motion: Nil.

The motion was carried.

ORDINARY COUNCIL MEETING - 23 AUGUST 2022 AMENDMENT

219 Councillor Giacomo Arnott Councillor Peter Kafer

It was resolved that Council:

- 1) Notes the outcomes of the community engagement for Phase 0 and Phase 1 of Our Funded Future, including a proposed Special Rate Variation (ATTACHMENT 1).
- 2) Endorses the development of Our Funded Future Phase 2 Engagement Plan.
- 3) Endorses the development of revised Integrated Planning and Reporting documents, including Special Rate Variation options, to incorporate feedback gained from the community during Phase 0 and 1 whilst balancing Council's financial sustainability for further engagement with the community.
- The name of the engagement will not be called 'Our Funded Future' going forward.

Councillor Matthew Bailey left the meeting at 7:47pm. Councillor Matthew Bailey returned to the meeting at 7:50pm.

Those for the Amendment: Mayor Ryan Palmer, Crs Leah Anderson, Giacomo Arnott, Peter Francis, Peter Kafer and Jason Wells.

PORT STEPHENS COUNCIL

MINUTES ORDINARY COUNCIL - 23 AUGUST 2022

Those against the Amendment: Crs Matthew Bailey, Chris Doohan, Glen Dunkley, Mayor Ryan Palmer and Steve Tucker.

The amendment on being put became the motion, which was carried.

Those for the Motion: Crs Leah Anderson, Matthew Bailey, Chris Doohan, Glen Dunkley, Peter Francis, Peter Kafer, Mayor Ryan Palmer, Steve Tucker and Jason Wells.

Those against the Motion: Cr Giacomo Arnott.

The motion was carried.

BACKGROUND

The purpose of this report is to advise Council on the outcomes of the Our Funded Future phase 0 and 1 community engagement undertaken to discuss the financial sustainability of the Council over the next 10 years with the community.

In June 2022, Council adopted its 2022-2023 Integrated Planning and Reporting (IP&R) documents which includes the Long Term Financial Plan. These documents stated Council's concern with its ongoing financial sustainability, and sought to inform the community of mitigation strategies that were already being undertaken, and predicted an \$80 million shortfall over the next 10 years.

In conjunction with the adoption of the IP&R documents Council considered the Financial Sustainability Report. The report detailed the financial history of the organisation, highlighted Council's reliance on non-rate revenues and external shocks faced by the organisation during and continued in the COVID-19 pandemic, as well as efforts made by the organisation and Councillors to address financial sustainability to date. With this report, Council endorsed to move forward with an engagement program to discuss financial sustainability with the community and seek feedback on a number of options to turn around the forecasted financial position.

The planned engagement approach consisted of 3 phases:

Phase 0 – inform the community about Council's financial situation and the current and short-term mitigation strategies that have been implemented to date. **Phase 1** – provide options to the community that create a financially sustainable Council.

Phase 2 - (dependent on outcomes of Phase 1) publically exhibit options within the Integrated Planning and Reporting documents and further discuss the community's views on the preferred path forward.

Phase 0 commenced on 29 June 2022 with Phase 1 following on 18 July 2022. During this period an extensive communication and engagement program, including a wide variety of methods, was undertaken and concluded on 8 August 2022.

PORT STEPHENS COUNCIL

MINUTES ORDINARY COUNCIL - 23 AUGUST 2022

The financial sustainability options that were put forward for community discussion included:

Potentially Reducing Service Delivery

 Explanation of what this means for the community and, if chosen, a further indepth discussion with the community to identify what services that would see reduced or stopped in the future.

Non-rate Option

- Increase fees and charges by 10% for the 2023-2024 financial year.
- Remove exemption for local residents from smart parking in their towns and centres
- Continue to seek additional grant funding via our dedicated grants office.
- · Sell underperforming surplus assets.

Rate Income Options, Special Rate Variation (SRV)

All options have the key purpose of financial sustainability. Some options allow for additional funds to be used to enhance current services for areas that have been identified through the integrated engagement program over the past 2 years.

- Option 1 Steady Growth: 38.56% cumulative increase Year 1 - 7%, Year 2 - 8%, Year 3 - 9%, Year 4 - 10%
- Option 2 Independent Recommendation: 34.92% cumulative increase 10.5% for 3 years
- Option 3 Short Term Solution: 29.68% cumulative increase Year 1 – 11.5%, Year 2 – 5.5%, Year 3 – 4%, Year 4 – 6%
- Option 4 Single Year: 26% increase 26% for 1 year
- Option 5 Long Term Solution: 45.08% cumulative increase 9.75% for 4 years

A comprehensive report of all communications and engagement methods and outcomes is included in the Our Funded Future Phase 0 and 1 Engagement Report (ATTACHMENT 1).

Key themes identified through the Phase 0 and 1 engagement and response are summarised below.

Level of understanding of complex local government financial matters

Summary

PORT STEPHENS COUNCIL

MINUTES ORDINARY COUNCIL - 23 AUGUST 2022

Areas of Council's operations and finances were found complex by some members of the community. Issues surrounding Council's operating and capital budgets, rate capping, land re-valuation, and developer contributions, as well as concerns around the analytical level of the independent reports were raised. The community put forward many other options to assist in turning Council's financial situation around, generating more income from developers and tourists, such as a bed tax or paid parking at boat ramps.

Response

The local government sector is heavily regulated and many functions of Council's processes are legislated by either state government or, in a financial sense, Australian Accounting Standards with the Local Government Accounting Code.

Recognising this the engagement plan included:

- · Facebook Live Q&A event.
- Detailed FAQs that were located on the Our Funded Future Website and hard copies were available at the face-to-face sessions.
- A summary video of the independent reports in 'plain-English' was promoted.
- During each information session the Executive Team and staff made themselves available to answer questions from our community directly.

During the engagement period, Council added Frequently Asked Questions Answered Videos to our socials and website that were provided in direct response to concerns and questions raised by the community, in efforts to explain the complexity and regulations surrounding common misunderstandings.

During the information sessions, there were numerous clarifications made surrounding regulations and Council functions resulting in 'light bulb moments' or a greater understanding from community members. Pre and post-polling of the attendees showed that 80% left 'a fair bit' informed, being the highest level of informed selection compared to 33% before the session. Whilst the survey size was small, these results clearly show that the communications and presentations delivered were informative and effective.

Council welcomes options from the community to combat the projected financial position and will work through the feasibility of any viable option however, unfortunately, most options put forward Council is unable to implement with respect to current legislation restrictions.

Efficiency and cost containment

Summary

There were concerns raised around Council's efficiency and containing costs internally prior to discussing increasing non-rate and rate income options with the community. Statements with the sentiment of 'Live within Council's means' were commonly put forward.

PORT STEPHENS COUNCIL

MINUTES ORDINARY COUNCIL - 23 AUGUST 2022

Response

Council strives to deliver services demanded by the community in the most efficient and best way possible. In 2010 Council introduced a Service Review program based on the Australian Business Excellence Framework to regularly review operations to ensure significant and sustainable savings. Improving efficiency and finding productivity enhancements are supported by dedicated teams that drive efficiency.

Independent experts Professor Dollery and Professor Drew were commissioned to assess Council's efficiency. A comparison to other similar NSW local Councils and whether the services we provide are considered good value for money was conducted. Our efficiency was very close to the typical score when assessed against 67 Councils. These reports concluded that ratepayers and Councillors can be assured that Council was conducting its operations efficiently and providing good value for money.

Over the years Council has committed to cutting internal costs and, as such, any further significant internal cost-cutting would directly result in reducing services to the community.

Should an SRV application be submitted, Council will be assessed on its past and planned productivity and cost containment strategies.

Hardship and economic factors

Summary

The affordability of increasing non-rate and rate income was of concern for many respondents during the engagement. The current economy and rising costs of living were highlighted.

Response

Council understands that affordability or capacity to pay is an issue for some sections of our community with some people being more financially vulnerable than others. For some of these people, even a small rate increase would have an impact. Within Council's range of hardship policies, there are a number of mechanisms to act fairly and flexibly to assist a ratepayer who is experiencing hardship, whether it be temporary or more enduring. With these policies, Council aims to ensure that hardship is recognised and people are treated with respect and compassion in considering their circumstances. The policies currently provide the following rate hardship assistance for all ratepayers including self-funded retirees:

- Flexible payment options
- Flexible repayments of overdue rates and charges
- Interest reduction
- Financial assistance in the year following a general revaluation
- · Pensioner concession rebate

PORT STEPHENS COUNCIL

MINUTES ORDINARY COUNCIL - 23 AUGUST 2022

- Backdating and extenuation of pensioner concession rebates and
- · Deferral of rates against estate

Council has an additional policy to assist its community experiencing hardship in the form of its Rates Assistance Program for non-pensioners. This program partners with local welfare and financial counselling services to act as referral points for ratepayers experiencing financial hardship and, through this process, Council can provide monetary rate relief.

Through the independent report that assessed the community's capacity to pay it was again highlighted that Port Stephens residents pay the lowest average residential rates by a significant 30 to 35% compared to similar and neighbouring councils and our outstanding rates ratio is far lower than the state benchmark.

The centre of this discussion with the community is financial sustainability and the financial outlook of Council. Issues are faced both by our community and Council itself. Council will need to balance the concerns raised by the community with its responsibility of being financially sustainable.

Should an SRV application be submitted, Council will be assessed on the impact on its ratepayers and Council's hardship provisions. Council will commit to strengthening/reviewing our Hardship Policy.

Opposing service levels preferences

Summary

Throughout all communication and engagement methods, there was mixed sentiments around service levels. Views held of 'cutting back to basic' were alongside the desire for enhancing current services and seeking more grant funding. The recurrent issue of the condition of roads was a key focus.

Response

Council serves many different stakeholders with a wide range of values and desires. It also has been combatting natural disasters, severe weather events, and financial pressures that have impacted our ability to deliver services. The path forward needs to balance all community views but reflect the community's message of focusing on current services and an ongoing commitment to focusing on services that meet expectations.

It is therefore considered imperative that the dialogue with the community continues and phase 2 of the Our Funded Future program, including revised Integrated Planning and Reporting documents, is developed. These documents would detail a narrow-down selection of options for further community consultation.

Inclusion of:

 Base Scenario: 2.5% rate cap and next steps towards reducing service delivery to meet projected deficits

PORT STEPHENS COUNCIL

MINUTES ORDINARY COUNCIL - 23 AUGUST 2022

- Scenario 1: SRV Independent Recommendation 10.5% for 3 years
- Scenario 2: SRV Single Year 26% for 1 year
- Increase of fees and charges for the 2023-2024 financial year at 5 percent
- · Continue seeking grant funding
- Continue investigations and community consultation of selling underperforming assets, with any profits to be placed in the Resilience Fund
- Consideration of any further expansion of the paid parking outside of identified areas.

Exclusion of:

Removal of residential exemption for paid parking.

Balancing feedback gained from Phase 0 and 1 with the financial sustainability of the organisation the above are to be modelled and reflected in the Integrated Planning and Reporting documents for further community consultation.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2022-2026
Financial Management	Maintain strong financial sustainability.

FINANCIAL/RESOURCE IMPLICATIONS

Council will continue to implement strategies, initiatives and plans to achieve the financial key directions as adopted in October 2021 and planned works with the Councillors.

The costs for the community consultation have been absorbed by Council's operational budget. If Council proceeds with the Our Funded Future Engagement Plan, not limited to a Special Rate Variation application, these costs will also be absorbed by Council's operating budget.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes		
Reserve Funds	No		
Developer Contributions (S7.11)	No		
External Grants	No		
Other	No		

PORT STEPHENS COUNCIL

MINUTES ORDINARY COUNCIL - 23 AUGUST 2022

LEGAL, POLICY AND RISK IMPLICATIONS

Under the Local Government Act 1993, councils may apply to IPART for a Special Rate Variation under s508 (2) or s508A of the Act. IPART assesses these applications against criteria in guidelines set by the Office of Local Government.

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
There is a risk that Council does not have adequate funding to ensure ongoing operations without a significant change in service levels.	High	Adopt the recommendations. Commence Phase 2 of the Our Funded Future Engagement Plan surrounding financial sustainability.	Yes
There is a risk if no action is taken that Council will face an increasingly uncertain long term financial outlook that will directly impact ongoing financial sustainability.	High	Adopt the recommendations.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The continued attainment and enhancement of financial sustainability is central to Council's ability to continue to deliver services valued by the community in the best possible way.

CONSULTATION

Consultation with key stakeholders has been undertaken by the Financial Services Section in consultation with the Communications and Customer Experience Section.

The objectives of the consultation included:

- Increase community awareness of Council's financial situation and its journey to date.
- Inform the community about Council's financial sustainability options.
- Seek community feedback on options for Council's financial sustainability.
- Identify the community's views on options for financial sustainability.

PORT STEPHENS COUNCIL

MINUTES ORDINARY COUNCIL - 23 AUGUST 2022

<u>Internal</u>

- Executive Team
- Senior Leadership Team
- Project Control Group Financial Sustainability
- Councillor workshops

<u>External</u>

- Our Funded Future Engagement Program Phase 0
- Our Funded Future Engagement Program Phase 1

OPTIONS

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

ATTACHMENTS

 Our Funded Future Phase 0 and 1 Engagement Report. (Provided under separate cover)

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

PORT STEPHENS COUNCIL

ITEM NO. 11 FILE NO: 22/179997

EDRMS NO: PSC2019-04754

BASKETBALL BACKBOARD AND HOOP - BOOMERANG PARK, RAYMOND TERRACE

REPORT OF: JOHN MARETICH - ASSET SECTION MANAGER

GROUP: FACILITIES & SERVICES

RECOMMENDATION IS THAT COUNCIL:

1) Proceed with the installation of 2 basketball hoops and line marking at the Raymond Terrace Croquet Court.

BACKGROUND

This report is in response to a Notice of Motion raised at the 8 February 2022 Council Meeting, Minute No. 028 (ATTACHMENT 1) seeking a Council report on the installation of basketball backboard and rings on the existing croquet lawn at Boomerang Park, Raymond Terrace.

Boomerang Park Croquet Facility was constructed in 2017 and has since experienced limited use. The Raymond Terrace Men's Shed is the main user for a variety of fitness and sporting activities.

The courts are constructed on an engineered foundation and the surface would be suitable for social play and ball games. A basketball post could be positioned to limit potential impact on existing users.

Nearest public accessible basketball facilities are located at Lakeside Reserve No. 2, 3.5km away.

The installation of 2 basketball hoops and line marking has been costed and may be funded through development contributions (Public Open Spaces, Parks and Reserves – All Catchments – OSF56 – Boomerang Park, Raymond Terrace – playground upgrade, park facilities improvements and skate park improvements). Should Council resolve to proceed, works may be completed in December 2022.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2022-2026
Infrastructure and Facilities	Maintain the Council's civil and community infrastructure to support the community.

FINANCIAL/RESOURCE IMPLICATIONS

The cost to install a basketball hoop and line marking is estimated at \$15,000. This is able to be funded through development contributions.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget			
Reserve Funds			
Developer Contributions (S7.11)	Yes	15,000	Public Open Spaces, Parks and Reserves – All Catchments – OSF56 – Boomerang Park, Raymond Terrace – playground upgrade, park facilities improvements and skate park improvements.
External Grants			
Other			

LEGAL, POLICY AND RISK IMPLICATIONS

Potential risks to Council have been identified within the below table with appropriate treatments noted.

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
There is a risk that the installation of additional infrastructure will add to Council's asset maintenance liability.	Low	Utilise robust and durable materials suitable for public open space.	Yes
There is a risk that keeping the facility in its current configuration will continue to see low utilisation and minimal community benefit.	Low	Adopt the recommendations to install additional infrastructure and increase the recreational opportunities offered within Boomerang Park.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The installation of a basketball hoop at Boomerang Park will have positive social outcomes by increasing the recreational opportunities within existing open space. Environmental impacts are anticipated to be minor and will be managed in accordance with Council's environmental assessment framework.

CONSULTATION

Consultation with key stakeholders has been undertaken by the Assets Section to review the structural integrity of the playing surface.

<u>Internal</u>

Undertaken with Community Assets.

External

Raymond Terrace Men's Shed were invited to provide feedback on the proposal. A response has not been received.

OPTIONS

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

ATTACHMENTS

1) Council Resolution - Basketball Backboard and Rings - Croquet Court, Boomerang Park - Minute No. 028 - 8 February 2022.

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COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ITEM 11 - ATTACHMENT 1 COUNCIL RESOLUTION - BASKETBALL BACKBOARD AND RINGS - CROQUET COURT, BOOMERANG PARK - MINUTE NO. 028 - 8 FEBRUARY 2022.

MINUTES ORDINARY COUNCIL - 8 FEBRUARY 2022

NOTICE OF MOTION

ITEM NO. 15 FILE NO: 22/24445

EDRMS NO: PSC2021-04195

BASKETBALL BACKBOARD AND RINGS - CROQUET COURT, BOOMERANG PARK

COUNCILLOR: PETER KAFER

THAT COUNCIL:

1) Call upon the General Manager to prepare a report into installing a basketball backboard and rings on the present croquet court facility in Boomerang Park as soon as possible. This structure has sat virtually unused since its construction. Adaptive reuse in the form of a basketball court is one use which will be used by many younger people in our community. Other shared uses, beyond a basketball court, could include, but not limited to, a walking soccer field, badminton, volleyball, cricket, film nights.

ORDINARY COUNCIL MEETING - 8 FEBRUARY 2022 MOTION

028 Councillor Peter Kafer Mayor Ryan Palmer

It was resolved that Council call upon the General Manager to prepare a report into installing a basketball backboard and rings on the present croquet court facility in Boomerang Park as soon as possible. This structure has sat virtually unused since its construction. Adaptive reuse in the form of a basketball court is one use which will be used by many younger people in our community. Other shared uses, beyond a basketball court, could include, but not limited to, a walking soccer field, badminton, volleyball, cricket, film nights.

The motion was carried.

Cr Giacomo Arnott foreshadowed a motion to extend the meeting beyond 9pm.

PORT STEPHENS COUNCIL

ITEM 11 - ATTACHMENT 1 COUNCIL RESOLUTION - BASKETBALL BACKBOARD AND RINGS - CROQUET COURT, BOOMERANG PARK - MINUTE NO. 028 - 8 FEBRUARY 2022.

MINUTES ORDINARY COUNCIL - 8 FEBRUARY 2022

BACKGROUND REPORT OF: JOHN MARETICH, ASSETS SECTION MANAGER

BACKGROUND

The purpose of this background is to provide information on the Notice of Motion.

Boomerang Park Croquet Facility was constructed in later 2017 and has gained limited use. The Raymond Terrace Men's Shed is the main user for a variety of fitness and sporting activities.

The courts are constructed on an engineered foundation and the surface would be suitable for social play and ball games. A basketball post could be positioned to limit potential impact on existing users.

Nearest public accessible basketball facilities are located at Lakeside Reserve No. 2, 3.5km away.

This proposal currently has no allocated budget. Should Council resolve to support this Notice of Motion, a budget would need to be allocated to the project.

Staff are also able to identify potential opportunities such as future grant submissions.

FINANCIAL/RESOURCE IMPLICATIONS

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	No		No existing budget allocation.
Reserve Funds	No		
Developer Contributions (S7.11)	No		
External Grants	No		
Other	No		

ATTACHMENTS

Nil.

ITEM NO. 12 FILE NO: 22/227061

EDRMS NO: PSC2021-02605

POLICY REVIEW: COMMUNITY LEASING, LICENCING AND TENANCY POLICY

REPORT OF: TAMMY GUTSCHE - COMMUNITY SERVICES SECTION

MANAGER

GROUP: FACILITIES & SERVICES

RECOMMENDATION IS THAT COUNCIL:

1) Endorse the revised Community Leasing, Licencing and Tenancy Policy shown at (ATTACHMENT 1).

- 2) Place the revised Community Leasing, Licencing and Tenancy Policy, as amended on public exhibition for a period of 28 days and should no submissions be received, the policy be adopted, without a further report to Council.
- 3) Revoke the Community Leasing and Tenancy Policy dated 13 February 2018, Minute No. 012 should no submissions be received.

BACKGROUND

The purpose of this report is seek Council's endorsement of the revised Community Leasing, Licencing and Tenancy Policy (policy) seen at (ATTACHMENT 1).

Council is required to ensure community facilities are managed well and promote community participation.

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 2022-2026	
Community Wellbeing	Provide a program of recreational, leisure and community services	

FINANCIAL/RESOURCE IMPLICATIONS

There are no financial or resource implications from adopting the recommendations. This policy establishes a consistent process for the allocation of facilities and determination of financial contributions.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes		
Reserve Funds	No		
Developer Contributions (S7.11)	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 endorsing this policy.

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 draft Community Leasing, Licensing and Tenancy Policy.

Internal

- Executive Team.
- Facilities and Services Group.
- Property Services.
- Community Services Section.

External

In accordance with local government legislation the draft Community Leasing, Licencing and Tenancy Policy will go on public exhibition for 28 days.

OPTIONS

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

ATTACHMENTS

1) Revised Community Leasing, Licencing and Tenancy Policy. J.

COUNCILLORS ROOM

1) Community Leasing, Licencing and Tenancy - Guideline.

TABLED DOCUMENTS

Nil.

ITEM 12 - ATTACHMENT 1 REVISED COMMUNITY LEASING, LICENCING AND TENANCY POLICY.

Policy



FILE NO: PSC2021-02605

TITLE: COMMUNITY LEASING, LICENCING AND TENANCY POLICY

OWNER: PROPERTY SERVICES MANAGER COMMUNITY SERVICES

SECTION MANAGER

1. PURPOSE:

- 1.1 The purpose objective of this policy is to provide Council with a consistent, structured and transparent framework, for dealing with leases and licences for to Community Service Providers and Community Sporting Groups over Council owned or controlled property managed land to community service providers and community groups.
- 1.2 The policy aims to achieve well-managed community and sporting facilities that promote community participation through establishing a formal process for the allocation of land and determination of financial contributions.
- This policy is to be read in conjunction with the associated Guideline document "Guideline Assessment and Rental Provisions for the Community Leasing and Tenancy Policy". Community Leasing, Licencing and Tenancy Guideline.

2. CONTEXT/BACKGROUND:

2.1 Council's Property Service's section maintains a significant portfolio of leases and licences to various Community Service Providers and Community Sporting Groups generally on behalf of other sections of Council being the asset owners. This Policy seeks to establish a formalised process for the assessment of the contribution of such groups relative to Council's Community Strategic Plan.

The Policy further seeks to establish a formalised system to readily quantify Council's contribution to such groups by way of provision of discounted rents.

Port Stephens has a diverse range of community and sporting facilities including recreational spaces that are well suited to a wide range of uses. A consistent approach to issuing leases and licences will ensure fairness, equity and transparency in the allocation and ongoing management of Council's assets.

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ITEM 12 - ATTACHMENT 1 REVISED COMMUNITY LEASING, LICENCING AND TENANCY POLICY.

Policy



3. SCOPE:

- 3.1 The provisions of this policy apply to all community land owned or controlled managed by Council, including those parcels of Crown land where Council has been appointed as land manager under Crown Land legislation. (under Trust or similar arrangements) which is either leased or licensed to Community Service Providers or Community Sporting Groups.
- 3.2 Community land is intended for general public use. It cannot be sold and cannot be leased for more than 30 years.
- 3.3 Crown land managed by Council is governed by Crown Land Legislation and cannot be leased or licenced if the proposed use is inconsistent with the reserve categories core objectives. Council as land manager can enter into a leasing or licencing arrangement for Crown Land under its care and control.
- 3.4 This policy does not apply to:
- a) Land managed under the Roads Act 1993.
- b) Land classified as Operational under the LG Act 1993.
- c) Crown land where Council is not appointed as land manager.
- d) Temporary events.
- e) Commercial facilities that are subject to a lease.
- f) Commercial use of community halls.
- g) Commercial use of sports facilities.

4. **DEFINITIONS**:

- **4.1** The definitions applicable to this Policy are detailed within the associated Guideline document "Guideline Assessment and Rental Provisions for the Community Leasing and Tenancy Policy".
- 4.1 An outline of the key definitions of terms included in the policy.

Categorisation The category described in sections 36E-36N (inclusive)

of the LG Act that have been applied to the land in the

Plans of Management (POM).

Community Group A company or individual including registered charities

that provide a service to the local or wider community who operate a business on a cost recovery basis and do

not make a profit.

Community Lease Where a landlord grants a tenant a legal right to

exclusive possession of premises for a specified period

of time in return for the payment of rent.

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Community Licence When a licensor grants a licensee a contractual right to

occupy premises in return for the payment of a licence fee. In law, a licensee is not entitled to exclusive

possession of the premises.

Crown Land Land held in the name of the State of NSW and reserved

under Crown Land legislation.

Crown Land Legislation The Crown Land Management Act 2016.

LG Act 1993 The Local Government Act 1993.

Temporary Events Any event that is held less than 4 times in any one

calendar year.

4.2 Other definitions applicable to this policy are detailed within the associated Guideline document "Guideline Assessment and Rental Provisions for the Community Leasing and Tenancy Policy". Community Leasing, Licencing and Tenancy Guideline.

5. STATEMENT:

- 5.1 The leasing or licencing of community sporting and recreation facilities is governed by the Community Strategic Plan and associated Council resources. any lease or licence application must be consistent with the intent of that Plan, and any Plan of Management applying to the land.
- 5.2 Council is committed to providing facilities and partnering with community groups sporting and community service providers to enable the stand alone community management of these facilities where appropriate.
- 5.3 Council is committed to an open and transparent leasing and licencing framework to ensure fair and equitable dealings with all-sporting and community service providers. groups.
- 5.4 Council will encourage multiple uses of community Sporting facilities wherever appropriate to maximising maximise the use of capital infrastructure. and encouraging cooperation between groups and organisations. This can be achieved through licencing parts of facilities to multiple groups and may include use of shared amenities and/or car parking. In this circumstance, maintenance responsibilities will be apportioned on an area basis or pro rata contributions to the cost of maintenance by third parties may be required.
- 5.5 Community Sporting Groups ('CSGs') service providers seeking exclusivity of use must be able to demonstrate significant social and community benefit and ongoing financial viability of the facility and their service. They must also demonstrate a high level of usage and occupancy of the facilities, and must be committed to undertaking continued maintenance of the facility throughout

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Policy



the lease or licence term. Where exclusivity of use is supported, a lease may be offered.

- 6. The assessment and apportioning of rents and Licence fees under this Policy is in accordance with the Port Stephens Council Guideline document "Assessment and Rental Provisions for the Community Leasing and Tenancy Policy".
- 5.6 All requests to lease or licence Council owned or managed land must be submitted in writing on the designated application form.
- 5.7 When assessing an application, Council will take into consideration the following factors:
- The Community Strategic Plan and any Plan of Management applying to the land.
- b) The proposed use of the land.
- c) The current permitted or potential uses of the land.
- d) The applicant's financial standing and ability to manage the facility.
- 5.8 Where the land applied for is Crown land, Council will also consider the following factors, in addition to those specified at 5.7 above:
- a) The Native Title and Aboriginal Land Rights Acts.
- b) Any requirements for community engagement under Crown Land legislation.
- 5.9 The maximum licence term that will be offered at any time is 5 years and the maximum lease term that can be offered is 30 years.
- 5.10 To ensure fairness and transparency vacant community facilities will be advertised through an Expression of Interest (EOI) process, specifying the purpose for which they are available and inviting submissions for use or occupation. Submissions may also be sought by Council directly from specific community groups where:
- a) A prior public competitive process for the lease or licence of the land was unsuccessful, or there are overwhelming public interest considerations.
- b) In emergency situations
- Where an existing tenant seeks to improve Council's facility through capital investment and requires an extension of the existing lease term to amortise the investment
- 5.11 Council may also reserve the right to offer existing tenants a new lease or licence agreement where an option period has not been identified and where it can be demonstrated that the tenant has delivered positive economic and community benefits with its service delivery across the Local Government

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Area. If supported, a business case will be required to go to Council for consideration and approval.

5.12 All leases and licences will attract an annual rental fee. Rental will be determined at either current fees as found in Councils Fees and Charges or through a market rent review where rebates may be applied in accordance with the Community Leasing, Licencing and Tenancy Policy rating criteria questionnaire.

6. RESPONSIBILITIES:

6.1 Council's Investment and Asset Manager Community Contracts Coordinator and Community Services Section Manager are responsible for implementing, complying with, monitoring, evaluating, reviewing and providing advice on the policy.

7. RELATED DOCUMENTS:

- 7.1 Community Leasing, Licencing and Tenancy Guideline.
- 7.2 Community Leasing, Licensing and Tenancy Policy rating criteria questionnaire.
- 7.3 Financial Assistance under Section 356 of the Local Government Act 1993 (NSW).
- 7.4 Community Group Loans Policy.
- 7.5 Setting of Fees and Charges Management Directive.
- 7.6 Events Policy and Guideline.
- 7.7 Commercial Operators Policy.
- 7.8 Mobile Food Guideline.
- 7.9 Port Stephens Council Plans of Management for Community Land.
- 7.10 Local Government Act 1993 (NSW).
- 7.11 Crown Lands Management Act 2016 (NSW).

CONTROLLED DOCUMENT INFORMATION:

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EDRMS container No.	PSC2021-02605	EDRMS record No.	TBA
Audience	Staff, management, Cou service providers. and p		
Process owner	Property Services Section Manager	on Manager <mark>Communit</mark> y	Services Section
Author	Investment and Asset M Coordinator	l anager <mark>Community Co</mark> l	ntracts

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Review timeframe	2 3 years	Next review date	ТВА
Adoption date	23 June 2015		

VERSION HISTORY:

Version	Date	Author	Details	Minute No.
1	23/06/2015	Investment and Asset Manager	Amalgamation of Community Leasing and Tenancy Policy.	173
2	13/02/2018	Property Services Section Manager	Policy has been reviewed following discussions with stakeholders and no changes have been made. Adopted by Council.	012
3	ТВА	Community Services Section Manager	Extensive wording changes to incorporate the inclusion of Community Licencing after amalgamation of all Community leases, licences and tenancy into Community Services Section. Reviewed and updated into the	
			correct Policy template. Amended review timeframe to 3 years in accordance with Council's policy review process.	

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ITEM NO. 13 FILE NO: 22/220723 EDRMS NO: PSC2009-09420

POLICY REVIEW: ACCESS TO INFORMATION

REPORT OF: TONY WICKHAM - GOVERNANCE SECTION MANAGER

GROUP: GENERAL MANAGER'S OFFICE

RECOMMENDATION IS THAT COUNCIL:

1) Endorse the revised Access to Information Policy shown at (ATTACHMENT 1).

- 2) Place the revised Access to Information Policy, as amended, on public exhibition for a period of 28 days and should no submissions be received, the policy be adopted, without a further report to Council.
- 3) Revoke the Access to Information Policy dated 10 November 2020, Minute No. 239, should no submissions be received.

BACKGROUND

The purpose of this report is seek Council's endorsement of the revised Access to Information Policy ('policy'). The policy has been reviewed as part of Council's ongoing policy review program and is shown at **(ATTACHMENT 1).**

The policy provides a supporting framework for the release of information under the Government Information (Public Access) Act 2009 (the 'Act'). The policy and guidelines are designed to inform the community about the release and management of Council information. It also informs the community when certain restrictions of the release of information may occur.

It is the intention of the policy to release as much government information as possible to meet the objectives of the Act, however, Council needs to balance this with its other legislative responsibilities such as, but not limited to, the Copyright Act 1968 (Cth) and the Privacy and Personal Information Protection Act 1998 (NSW), and consider reasons in favour and against disclosure of government information.

Please note that yellow highlighting in the attached policy indicates an amendment has been made and strikethrough text is to be deleted.

The policy is presented for Council's consideration.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2022-2026	
Governance	Provide strong civic leadership and	
	government regulations.	

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		

LEGAL, POLICY AND RISK IMPLICATIONS

As part of good governance, this policy will assist Council in its obligations under the Act.

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
There is a risk that without the appropriate policy and guidelines in place, Council would not meet its obligations under the Act.	Low	Adopt the recommendations.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Nil.

CONSULTATION

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

<u>Internal</u>

Executive Team.

External

 Following Council endorsement, the policy will be placed on public exhibition for 28 days.

OPTIONS

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

ATTACHMENTS

1) Revised Access to Information Policy. J.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

Policy



FILE NO: PSC2009-09420

TITLE: ACCESS TO INFORMATION POLICY

OWNER: GOVERNANCE SECTION MANAGER

PURPOSE:

- 1.1 The Access to Information Policy (the 'policy') ensures Port Stephens Council is committed to the following principles regarding public access to documents and information:
- a) Open and transparent government
- b) Consideration of the overriding public interest in relation to access requests
- c) Proactive disclosure and dissemination of information
- d) Respect for the privacy of individuals.

2. CONTEXT/BACKGROUND:

2.1 The Government Information (Public Access) Act 2009 (NSW) ('GIPA Act') provides four pathways to access Council information – mandatory disclosure, proactive disclosure, informal release and formal access.

3. SCOPE:

- 3.1 Port Stephens Council publishes specific open access information on our website, free of charge unless to do so would impose unreasonable additional costs to Council. Council will facilitate public access through this and other appropriate mediums. Also, Council publishes the inspection documents listed under Schedule 5 of the GIPA Act held by it, unless there is an overriding public interest against doing so not to do so. Council will keep a record of all open access information that is not published due to an overriding public interest against disclosure.
- 3.2 Council also makes as much other information as possible publicly available in an appropriate manner, including on the internet. Such information is also available free of charge or at the lowest reasonable cost.
- 3.3 The 'Access to Information Guidelines' as shown at Appendix 1 of this Ppolicy identifies the documents and types of information that are available for public access and any restrictions that may apply.
- 3.4 Some documents may require a formal access application in accordance with the GIPA Act. Council will assess all requests for access to documents and

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information <mark>held by Council</mark> in a timely manner and in accordance with the 'Access to Information Guidelines' and relevant legislation.

- 3.5 Depending upon the nature of the request and the form of access requested, charges may be applied in accordance with Council's Schedule of Fees and Charges and relevant legislation.
- 3.6 Broad requests for access to a large number of unspecified documents which, if processed, would divert substantial Council resources from dealing with other requests, or from performing other Council functions may be refused on the grounds that such a diversion of resources is contrary to the public interest. Council will endeavour to assist applicants in defining the request to a more manageable one.
- 3.7 Council also endeavours to release information in response to an informal request, subject to any reasonable conditions Council may impose having regard to the circumstances of the request, in accordance with the GIPA Act.
- 3.8 Where information is released to an applicant under a formal access application and Council considers that it will be of interest to other members of the public, Council will provide details of the information in a disclosure log for inspection by the public.
- 3.9 The General Manager has authority to approve Guidelines for Information Access, which is to be available to members of the public.

DEFINITIONS:

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

Application A Formal Access Application made under the GIPA Act.

Disclosure log A disclosure log published on Port Stephens Council's

website, as required by the GIPA Act.

Formal access An applicant is required to lodge a Formal Access

Application under the GIPA Act, if the requested information cannot be provided by way of mandatory release, proactive release or informal release.

GIPA Act The Government Information (Public Access) Act 2009

(NSW)

Informal release Means a request to access information where a formal

access application is not required under the GIPA Act.



Policy



Mandatory release Means information classified as open access

information, in accordance with the GIPA Act and Government Information (Public Access) Regulation

<mark>2018</mark>.

Open access

information is no public inte

Means information that is publicly available unless there is no public interest against disclosure, in accordance

with the GIPA Act.

Proactive release Means government information that Council decides to

release outside other release provisions under the GIPA

Act.

Public interest Means considerations under the GIPA Act either in

favour of release or against release.

Request for information
An informal request for information under section 8 of the

GIPA Act.

5. STATEMENT:

5.1 The objective of this Ppolicy is to describe Council's principles regarding public access to information and to facilitate the processing of requests and applications for such access.

- 5.2 The GIPA Act provides greater access to Council records through accessibility on Council's website where possible, and where this does not create an unreasonable additional cost to Council to publish these documents on the website.
- 5.3 This Ppolicy is to be read in conjunction with the Access to Information Guidelines for Local Government.

6. RESPONSIBILITIES:

- 6.1 The Governance Section Manager is responsible for implementing, complying with, monitoring, evaluating, reviewing and providing advice on this policy.
- 6.2 Employees of Council are responsible for complying with this policy.

7. RELATED DOCUMENTS:

- 7.1 Government Information (Public Access) Act 2009 (NSW)
- 7.2 Government Information (Public Access) Regulation 2009 2018 (NSW)
- 7.3 Privacy and Personal Information Protection Act 1998 (NSW)

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- 7.4 Health Records and Information Privacy Act 2002 (NSW)
- 7.5 State Records Act 1998 (NSW)7.6 Local Government Act 1993 (NSW)
- 7.7 Environmental Planning and Assessment Act 1979 (NSW)
 7.8 Companion Animals Act 1998 (NSW)
 7.9 Access to Information Guidelines for Local Government

- 7.10 Port Stephens Council Code of Conduct.



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CONTROLLED DOCUMENT INFORMATION:

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EDRMS container No.	PSC2009-09420 EDRMS record No. 20/357920 TBA				
Audience	Port Stephens community and Council employees				
Process owner	Governance Section Manager				
Author	Governance Section Manager				
Review timeframe	Two 3 years Next review date 31 August 2022 31 August 2025				
Adoption date	23 August 2016				

VERSION HISTORY:

Version	Date	Author	Details	Minute No.
1	16 September 1997	Governance Manager	Original policy adopted by Council.	1282
2	19 October 2004	Governance Manager	Adopted by Council.	375
3	28 March 2006	Governance Manager	Adopted by Council.	462
4	13 July 2010	Governance Manager	Adopted by Council.	208
5	11 February 2014	Governance Manager	Adopted by Council.	016
6	23/8/2016	Governance Manager	Policy formatted into new template. Changes made to legislation references and definitions added. Also included the guidelines.	241

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Version	Date	Author	Details	Minute No.
6.1	14/08/2018	Governance Manager	Reviewed the policy, included numbering to each paragraph and updated version control.	247
			1.1 – inserted the word 'the policy'.	
			3.1 – delete 'because of' and insert 'due to'.	
			3.7 – delete the word 'other'.	
			4.0 – amended the definition of 'informal request', updated 'mandatory release', 'open access information', proactive release' and inserted 'for information' under the 'Request' definition.	
			7.2 – inserted new clause and renumbered subsequent numbering 7.3 to 7.9.	
			Guidelines update	
			1.2 – updated telephone number.	

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Version	Date	Author	Details	Minute No.
7	10/11/2020	Governance Section Manager	Reviewed the policy, reformatted bullet points removed italics from all legislation to align with the current style guide.	239
			Updated Policy owner to reflect title changes as well as in 6.1.	
			1.1-replaced 'Policy' with 'policy' and deleted the bullet points with alphabetical listing.	
			2.1 and 2.2– deleted.	
			2.1 – new clause.	
			Guidelines update	
			Reviewed the guideline, reformatted bullet points removed italitcs from all legislation to align with the current style guide 2.1-inserted "viewing a".	
			5.1-delete 'know'.	
			6.2-inserted "refusing access to information" and insert 'may', delete 'will'.	
			6.4-inserted further information regarding public interests against disclosure	
			8.1-delete 'on' and insert 'of'	

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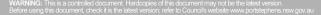


Policy



8	Governance Section Manager	Reviewed the policy, updated into new Policy template, grammatical amendment and the version control.	
		3.1 – Deleted 'not to do so' and replaced with 'doing so'.	
		3.3 – Updated the word 'policy'.	
		3.4 – Deleted 'documents and' and 'and'. Added 'held by Council'.	
		4.1 – Updated the definition of Mandatory release to include the GIPA Regulation.	
		5.1 and 5.3 - Updated the word 'policy'.	
		6.2 – Updated the responsibilities section to include employees of Council.	
		7 – Updated the GIPA Regulation to include 2018 amendment.	
		7.10 – Inserted 'Port Stephens Council'.	
		Guideline Update	
		1.2 – Inserted 'legislative compliance'.	
		1.3 – Inserted 'made' and 'will be either' and \$30.00 in full.	
		2.1 - Inserted \$150,000.00 in full.	
		2.3 – Updated reference to Mayor and Councillors.	
		4 – Inserted 'from 2010'.	
		6.8 – Amended 'eight' to '8' in line with the Corporate Style Guide.	
		7.2 – Inserted 'this request and removed 'application'.	
		7.5 - Amended 'five' to '5' in line with the Corporate Style Guide.	
		8.1 – Inserted 'Applications may	
		also be extended to account for	
		any stop the clock periods where, for example, Council had	
		requested an advanced deposit	
		payment from the applicant'.	

Policy





Policy



Version	Date	Author	Details	Minute No.
			9.1.1 – Updated clause and included \$40.00 in full.	
			9.1.2 - Amended 'eight' to '8' in line with the Corporate Style Guide.	
			9.1.3 - Amended 'four' to '4' and 'eight ' to '8' in line with the Corporate Style Guide.	

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APPENDIX 1

Access to Information Guidelines for Local Government

1. Accessing Information

- 1.1 Port Stephens Council is subject to NSW legislation that requires it to be open and accountable in the exercise of its functions, and to handle personal and health information in a fair and reasonable manner. Council will seek to ensure that legitimate requests for access to information are handled promptly and that members of the public are able to access information, subject to the public interest. In doing so, Council recognises that it must take into account the privacy of others, legal and commercially sensitive information.
- 1.2 These guidelines set out the documents and types of information that are available to members of the public as a matter of legislative compliance, routine, and those that will not generally be available for inspection and copying. Where practicable, Council will deal with requests to inspect documents in accordance with the Government Information (Public Access) Act 2009 (NSW) ('GIPA Act') free of charge but a reasonable photocopying fee may be payable under the GIPA Act and for access to versions of documents that are neither current nor immediately preceding versions of the document and are not reasonably accessible. All charges are detailed in Council's Schedule of Fees and Charges Council's Fees and Charges are available from the Council website or by contacting Council on 4988 0255.
- 1.3 There is a right of access under the GIPA Act to certain documents held by Council unless there is an overriding public interest not to do so. Any applications made under the GIPA Act will be processed in accordance with the Act's requirements and a determination will be either made to release the documents or refuse access on the basis of the relevant considerations under that Act. Charges for formal applications are in accordance with the GIPA Act Fees and Charges and include a \$30.00 application fee. In some circumstances processing charges may also be applied.
- 1.4 Council also may provide access to information under other legislation. Under the Privacy and Personal Information Protection Act 1998 (NSW) ('PPIPA') and the Health Records and Information Privacy Act 2002 (NSW) ('HRIPA'), an individual also has a right to access and amend records held by Council which contain their personal details, matters related to their business affairs and any records containing information about their health. Where information about an individual is held in documents, files or systems that include information about other persons, any request should be made under the GIPA Act. The Act provides for consultation with other affected parties prior to disclosure of information concerning their personal or business affairs. Under the State Records Act 1998 (NSW) Council is required to give an access direction

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(whether the records are open or closed) for all Council's records that are at least thirty (30) 30 years old in what is described as the "open access period". Under the Environmental Planning and Assessment Act 1979 (NSW) and Environmental Planning and Assessment Regulations 2000 (NSW) there is a right to access Development Application registers and documents held by Council subject to restrictions set out in section 268(3).

2. Information Available

- 2.1 Council publishes open access, or mandatory release, information on its website unless there is an overriding public interest against disclosure or to do so would impose an unreasonable additional cost on Council. In respect of the latter the Council will make the information freely available in another format e.g. viewing a hard copy at the Council Administration Building. The open access information is:
- Council's policy documents;
- a publication guide with information about the council's structure and functions, and listing the type of information that is publicly available
- a disclosure log of formal access applications where in Council's opinion the information released may be of interest to other members of the public
- a register of contracts worth more than \$150,000,000 that councils have with private sector bodies
- a record of open access information that council does not make publicly available on the basis of an overriding public interest against disclosure.
- 2.2 In addition schedule 5 of the GIPA Act requires that certain documents held by Council, are to be made publicly available for inspection, free of charge. The public is entitled to inspect these documents either on Council's website (unless there is an unreasonable additional cost to Council to publish these documents on the website) or at the offices of the Council during ordinary office hours or at any other place as determined by the Council. Any current and previous documents of this type may be inspected by the public free of charge. Copies can be supplied for reasonable copying charges.

2.3 These documents are:

- Information about Council
- The model code of conduct prescribed under section 440(1) of the Local Government Act 1993 (NSW) ('LGA')
- Council's adopted Code of Conduct
- Code of Meeting Practice
- Annual Report
- Annual Financial Reports
- Auditor's Report

Policy

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Policy



- Integrated Plans comprises of the Community Strategic Plan, Delivery Program, Operational Plan, Workforce Strategy, Long Term Financial Plan and the Asset Management Plan
- EEO Management Plan
- Policy concerning the payment of expenses and provision of facilities to the mMayor and eCouncillors
- Annual Reports of Bodies Exercising Functions Delegated by Council (e.g. Section 355/377 Committees)
- Any codes referred to in the Local Government Act
- Returns of the Interests of Councillors, Designated Persons and Delegates
- Agendas, business papers and minutes of council/committee meetings (except meetings that are closed to the public)
- Office of Local Government, NSW Department of Premier and Cabinet Representative Reports presented at a meeting of Council
- Land Register
- Register of Investments
- · Register of Delegations
- · Register of Graffiti removal works
- Register of current Declarations of Disclosures of Political donations
- Register of Voting on Planning Matters.

3. Plans and Policies

- Local Policies adopted by Council concerning approvals and orders.
- Plans of Management for Community Land.
- Environmental Planning Instruments, Development Control Plans and Contribution Plans.

4. Information about Development Applications

- 4.1 Development Applications from 2010 and any associated documents received in relation to a proposed development, i.e:
- Home Warranty Insurance documents
- Construction Certificates
- Occupation Certificates
- Structural Certification Documents
- Town Planner Reports
- Submissions received on Development Applications subject to the provision of the Privacy and Personal Information Protection Act 1998 (NSW)
- Heritage Consultant Reports
- Tree Inspections Consultant Reports
- Acoustic Consultant Reports
- Land Contamination Consultant Reports
- Records of decisions on Development Applications including decisions on appeals

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 Records describing the general nature of documents that Council decides to exclude from public view after application of public interest test considerations.

5. Approvals, Orders and Other Documents

- · Applications for approvals under part 7 of the LGA
- Applications for approvals under any other Act and any associated documents received
- Records of approvals granted or refused, any variation from Council Policies with reasons for the variation, and decisions made on appeals concerning approvals
- Orders given under Part 2 of Chapter 7 of the LGA, and any reasons given under section 136 of the LGA
- Orders given under the Authority of any other Act
- Records of Building Certificates under the Environmental Planning and Assessment Act 1979 (NSW)
- Plans of land proposed to be compulsorily acquired by Council
- Compulsory Acquisition Notices
- Leases and Licenses for use of Public Land classified as Community Land.
- 5.1 It should be noted that there is other legislation that can apply to the release of Council records such as, but not limited to, the Privacy and Personal Information Protection Act 1998 (NSW) and Copyright Act 1968 (Cth). Council's Right to Information officers will consider all relevant legislation applicable to any request for information.
- 5.2 Copies of documents provided are given for information purposes only and are provided by Council to meet its requirements under relevant legislation. Copyright laws still apply to each document. The consent of copyright owners is required for documents where copyright applies such as documents on development applications. This information would generally be available for inspection however may not be able to be copied.
- 5.3 In addition, from time to time Council will make as much other information as possible publicly available in an appropriate manner, including on their website. The information will be available free of charge or at the lowest reasonable cost. Such other information includes frequently requested information or information of public interest that has been released as a result of other requests.
- 5.4 Council will endeavour to release other information in response to an informal request, subject to any reasonable conditions as Council thinks fit to impose. However, notwithstanding the lodgement of an informal request, Council may require a formal access application to be submitted where the information sought:

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- is of a sensitive nature that requires careful weighing of the considerations in favour of and against disclosure, or
- contains personal or confidential information about a third party that requires consultation, or
- would involve an unreasonable amount of time and resources to produce.

6. Exemptions to Access

- 6.1 Council may refuse a request for information if there is an overriding public interest against disclosure or if searching for the requested information would require unreasonable and substantial diversion of the Council's resources.
- 6.2 Council will always explain to the applicant its reasons for refusing access to information when applying an exemption. Council will not classify information as exempt unless there are clear reasons for doing so. Where documents contain exempt information, any remaining information contained within the requested document may be available under the Act.
- 6.3 In determining whether there is an overriding public interest against the disclosure of the information, Council will fully consider the Public Interest Test.
- 6.4 The GIPA Act provides an exhaustive list of public interest considerations against disclosure that may be taken into account when determining if there is an overriding public interest against releasing the information. These are the only considerations against disclosure that Council will consider in applying the public interest test.
- 6.5 Considerations are grouped under the following headings:
- · responsible and effective government
- law enforcement and security
- · individual rights, judicial processes and natural justice
- · business interests of agencies and other persons
- environment, culture, economy and general matters
- secrecy provisions (in legislation other than those listed in Schedule 1)
- exempt documents under interstate Freedom of Information legislation.
- 6.6 In applying the public interest test, Council will not take into account:
- that disclosure might cause embarrassment to, or loss of confidence in, the Council;
- that any information disclosed might be misinterpreted or misunderstood by any person.
- 6.7 Council will consider any submissions made by an applicant in relation to public interest considerations, as well as any factors personal to the applicant.

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- 6.8 Under the GIPA Act there are 12 categories of information (eight 8 of which appear to affect local government) for which there is a conclusive presumption of an overriding public interest against disclosure. These eight 8 are:
- Information subject to an overriding secrecy law (26 specifically named Acts);
- Information subject to the direction or order of a court or other body with the power to receive evidence on oath;
- · Information subject to legal professional privilege;
- Excluded information' (judicial and prosecutorial information, information about complaints handling and investigative functions, competitive and market sensitive information and information in relation to specific functions of the Public Trustee);
- · Documents affecting law enforcement and public safety;
- Specific information relating to transport safety;
- · Specific reports concerning the care and protection of children;
- Specific information relating to Aboriginal and environmental heritage.
- 6.9 Generally under the GIPA Act, Council must not publish and must refuse requests to disclose information in the above categories. Formal applications for 'excluded information' are invalid under the Act.
- 6.10 In dealing with informal requests Council will apply a similar decision making framework.

7. Accessing Information and Making an Application

- 7.1 The public may obtain access to information as follows:
- · by searching the Council's website to see if it is already available
- by contacting Council and requesting the information. Council will advise whether the information requested:
- is open access, or mandatory release information that is readily available and where and how to get the information.
- should be made available as part of a proactive release of information.
- can be disclosed through an informal release, for example where no third party personal information is involved.
- requires a formal access application, for example because consultation with a third party is required.
- 7.2 To make an informal request for access to information under the GIPA Act, Council may require the completion of an 'Informal Access Request Form'. No fee is required on this request. application.
- 7.3 To make a formal application for access to information under the GIPA Act, the 'Formal Access Application Form' should be completed. The Formal Application

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fee is \$30.00 and processing charges may be applicable (there is no GST in relation to these charges). An acknowledgement of such application will be provided by Council within five 5 working days.

7.4 If a fee for photocopies of documents provided under the GIPA Act is payable, it will be listed in Council's adopted Fees and Charges and is GST inclusive.

8. Time Limits

- 8.1 In respect of formal applications, Council will notify applicants of the decision of an application within 20 working days, unless the applicant agrees to extend the time. Council may also extend the time by up to 15 working days where consultation with a third party is required or if Council needs to retrieve records from archives. Applications may also be extended to account for any stop the clock periods where, for example, Council had requested an advanced deposit payment from the applicant.
- 8.2 If access is deferred by Council, then Council will notify the applicant and include the reason for deferral and the date on which the applicant will be given access. A decision to defer access is reviewable (see Rights of Review and Appeal). If Council does not decide the applicant's access application within the above timeframes, it is deemed 'refused'. Council will refund the application fee and the applicant may seek internal or external review (see Rights of Review and Appeal) of this refusal. This will not apply if an extension of time has been arranged or payment of an advance deposit is pending.

9. Rights of Review and Appeal

- 9.1 Where a member of the public is refused access under a formal application under the GIPA Act, staff will provide details of the reasons for refusal to the member of the public in writing. An applicant who has been refused access by Council to information requested under a formal application for access to information under the GIPA Act has three options of review available.
- 9.1.1 Applicants can apply to Council for an internal review. This is a review by someone in a more senior role than the original decision maker and there is a \$40,00 fee. Applicants have 20 working days from receiving notice of a decision to ask for an internal review.
- 9.1.2 If an applicant is not satisfied with the internal review, or does not want one, they can ask for a review by the Information Commissioner. Applicants have eight 8 weeks from being notified of a decision to ask for this review.
- 9.1.3 If an applicant is not satisfied with the decision of the Information Commissioner or the internal reviewer or if they do not want to take these options they can apply to the NSW Civil and Administrative Tribunal (NCAT). If the applicant has

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already had a review by the Information Commissioner they have four 4 weeks from notification of the decision to make this application. If they have not had a review by the Information Commissioner they have eight 8 weeks from notification of the decision to make this application.

9.2 It is noted that there are no rights of review in respect of informal requests, but the applicant may make a formal application at any time.

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ITEM NO. 14 FILE NO: 22/220190 EDRMS NO: PSC2021-04206

REQUEST FOR FINANCIAL ASSISTANCE

REPORT OF: TIMOTHY CROSDALE - GENERAL MANAGER

GROUP: GENERAL MANAGER'S OFFICE

RECOMMENDATION IS THAT COUNCIL:

1) Approves provision of financial assistance under Section 356 of the Local Government Act 1993 from Mayoral funds to the following:-

- a. Tilligerry & Districts Little Athletics Mayoral fund \$1587.50 donation towards the purchase of a USB Hub to assist with timing races and events.
- b. River Terkildsen (Sincerely, LGBT) Mayoral fund \$600 donation towards supporting Sincerely, LGBT holding their meetings at Tomaree Library, and place the proposal on public exhibition for a period of 28 days, in accordance with the Local Government Act 1993 to seek public comment.
- The Parent Teacher Fellowship at St Phillips Christian School Mayoral fund
 \$2000 donation towards a fireworks display for the St Phillips Fair in October
 2022.
- d. Raymond Terrace Historical Society Mayoral fund \$2000 donation towards roof structure at Sketchley Cottage Museum.
- 2) Should no submissions be received as a result of the public exhibition stated in 1b) above, the funds be approved.

BACKGROUND

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

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

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

Council is unable to grant approval of financial assistance to individuals unless it is performed in accordance with the Local Government Act 1993. This would mean that

the financial assistance would need to be included in the Operational Plan or Council would need to advertise for 28 days of its intent to grant approval. Council can make donations to community groups.

The requests for financial assistance are shown below:

MAYORAL FUNDS – Mayor Palmer

Tilligerry & Districts Little Athletics	Little Athletics is the foundation for all sports. It offers young people activities and skills that will stand them in good stead for their sporting future.	\$1587.50	Donation towards the purchase of a USB Hub to assist with timing races and events.
River Terkildsen (Sincerely, LGBT)	Sincerely, LGBT is a youth run youth group for queer youth that was started in early 2021. They hold regular meetings at the Tomaree Library and provide support and advice for queer youth.	\$600	Donation towards supporting Sincerely, LGBTQ holding their meetings at Tomaree Library.
Parent Teacher Fellowship (PTF) at St Phillips Christian School	The PTF provides opportunities for parents to be involved with the school and run an activity/event each term which helps raise funds for school equipment.	\$2000	Donation towards a fireworks display for the St Phillips Fair in October 2022.
Raymond Terrace Historical Society	The Society is a voluntary group which aims to bring together people who share a love for their heritage, admire the achievements of people of the past, and desire to discover, record and publicise these people, their lives, and the times in which they lived.	\$2000	Donation towards roof structure at Sketchley Cottage Museum.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2022-2026	
Thriving and safe place to live	Provide the Community Financial	
	Assistance Program	

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		

LEGAL AND POLICY IMPLICATIONS

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

The policy interpretation required is whether the Council believes that:

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

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

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Nil.

CONSULTATION

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

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

OPTIONS

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

ATTACHMENTS

Nil.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ITEM NO. 15 FILE NO: 22/227208

EDRMS NO: PSC2022-02308

INFORMATION PAPERS

REPORT OF: TIMOTHY CROSDALE - GENERAL MANAGER

GROUP: GENERAL MANAGER'S OFFICE

RECOMMENDATION IS THAT COUNCIL:

Receives and notes the Information Papers listed below being presented to Council on 13 September 2022.

Report Title	Page:
Road Pavement Maintenance	211
Questions on Notice / Questions with Notice	217
Delegations Report	219
Council Resolutions	221
	Road Pavement Maintenance Questions on Notice / Questions with Notice Delegations Report

INFORMATION PAPERS

ITEM NO. 1 FILE NO: 22/228715 EDRMS NO: PSC2022-02308

ROAD PAVEMENT MAINTENANCE

REPORT OF: JOHN MARETICH - ASSET SECTION MANAGER

GROUP: FACILITIES & SERVICES

BACKGROUND

The purpose of the report is to provide succinct information on the management of our road pavements to answer the questions raised in the attached Urgency Motion dated 26 July 2022, Minute No. 191 (ATTACHMENT 1).

The typical road pavement is made up of compacted layers of selected gravel material with a top coat called a seal. The design thickness of the gravel layers and the type of seal depends on a number of factors such as vehicles per day, percentage of heavy vehicles and the strength of the ground, to name a few.

The seal protects the gravel layers from getting wet. As the seal ages it can crack allowing water to enter through the seal and into the gravel layers. Wet gravel layers can result in a failed road pavement which is evident from the formation of potholes and other failures such as shoves and pushes. These are typical failures we and many other NSW Councils have seen during the recent few years of rain.

The optimum management of the pavement has the road surface recoated/resealed on average every 10 to 15 years. Resealing prevents the gravel layers from getting wet and hence allows the road to reach a maximum life. Like most Government road owners in Australia, the funds needed to manage our pavements in the best/optimal way require more funds to be spent on reseals than are available. During drought conditions, this shortfall in funds can go unnoticed to the general public. Though once periods of rainfall occurs the road failures start to appear, as we have seen. Optimal resealing budget at Port Stephens Council should be \$7.4 million, though the available budget is \$1.6 million.

Once a road has failed, there are basically 3 main typical methods of pavement management. These include, but are not limited to, pothole patching, heavy patching and road pavement rehabilitation. These typically occur over the life of a pavement.

Pothole patching is not a pavement repair. There are 2 fundamental types of pothole repairs. Cold Mix (including polymer) and Hot Mix. Cold Mix is used during wet periods and is a temporary measure. Hot Mix is a more permanent fix that lasts longer, though it does not work well whilst it raining or wet, is slower to apply resulting in other roads with open pot holes and dangerous to undertake under traffic when wet. Hot Mix is used during dry periods and uses different application method when compared to Cold Mix.

Filling potholes is a very short term measure to provide road users a safe surface to drive on. Filled potholes can last from days to years depending on amount of rain and how wet the pavement it. During periods of rain this is standard practice to fill potholes to improve road user safety.

Heavy patching is a road repair technique to remove a small failed section of the pavement and replacing it with more suitable layers of gravel. Heavy patches look like large rectangles of newer pavement. While this is actually a pavement repair, it is quite expensive for a temporary measure and is in the order of \$100/m2.

Road pavement rehabilitation is replacing or strengthening the existing gravel layers and resealing the whole width of the road for long lengths. Rehabilitated roads provide a new pavement and are less expensive than a heavy patch over the life of the asset and due to the economy of scale. Depending on the required works, a pavement rehabilitation can cost in the order of \$140/m2 - \$250/m2, noting that these works can last 3 times longer than a heavy patch.

Road educational videos and information are now circulating on social platforms to better explain the differences in pavement management as noted above.

Council had repaired in excess of 54,000 potholes from July 2021 to June 2022. This mostly resulted from the excessive rain periods that we have sustained. Noting that in the order of 75% of potholes repaired in the 2022 financial year were filled with hot mix while it was not raining.

Pothole patching is funded from Council's recurrent Operational Budget. Given the limited Council operational budget, increasing the pothole activity would result in a reduction of another service that Council supplies the Community. Noting that pothole patching is not a road repair technique and is a reactionary risk mitigation activity to improve road user safety.

Road pavement rehabilitation is funded from the Capital Budget. Of the \$19.8 million that will be allocated to road pavement works in this financial year, \$10.7 million is from grants, \$2.2 million is from externally restricted funds with the remaining \$6.8 million is from internally restricted funds. These restricted funds either have to be spent on roads and/or used as matching funds to the grants. Council currently has a Capital Budget of \$59.6 million of which \$26.6 million is externally funded via grants. It should be noted that some of these projects will occur over a number of financial years. The remaining funds either have to be spent on a specific purpose and/or used as matching funds to the grants. Delaying projects will not free up funds for roads projects. Delaying projects will result in grant funds being handed back to the funding agency and the non-road project not being delivered.

ATTACHMENTS

1) Urgency Motion - Potholes - Minute No. 191 - Council Meeting 26 July 2022. U

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ITEM 1 - ATTACHMENT 1 URGENCY MOTION - POTHOLES - MINUTE NO. 191 - COUNCIL MEETING 26 JULY 2022.

MINUTES ORDINARY COUNCIL - 26 JULY 2022

Cr Anderson moved to introduce a matter of great urgency under clause 9.3 of the Code of Meeting Practice.

ORDINARY COUNCIL MEETING - 26 JULY 2022 MOTION

Councillor Leah Anderson

That Council:

- 1) Notes the awful state of local roads, which are littered with potholes as a result of recent sustained wet weather.
- 2) Notes that potholes are a danger to all road users, forcing cars all over the road to dodge them and damaging cars which don't dodge them successfully.
- 3) Notes that the state of Council's roads and the number and size of potholes are one of the biggest talked about issues in Port Stephens right now.
- 4) Agrees that every day large, unsafe potholes persist, the community is at risk and working families are paying to fix their cars from damage.
- 5) Requests the Acting General Manager to commence an ongoing pothole and roads media campaign informing residents of the need to report potholes as soon as possible so that they can be prioritised and fixed, and informing the community of what roads are scheduled for repair and when.
- Requests the Acting General Manager to prepare an urgent report as soon as possible:
- 6 a. Outlining pothole remediation performance each month for the past year, including details on how many potholes have been re-filled on more than one occasion.
- 6 b. Outlining the current methods used for filling potholes, and why, and any alternate methods for filling potholes which might last longer than the current methods used.
- 6 c. Outlining Council's plan for the next 12 months for locations for road reseals.
- 6 d. Outlining Council's capacity to increase pothole and road reseal remediation within the current budget.
- 6 e. If no option is available to increase works per 6 d), outline what works could be shifted, delayed or cancelled to ensure that more roadworks are able to be undertaken over the next 12 months.

The chairperson ruled the motion of great urgency and put the motion to the meeting.

PORT STEPHENS COUNCIL

ITEM 1 - ATTACHMENT 1 URGENCY MOTION - POTHOLES - MINUTE NO. 191 - COUNCIL MEETING 26 JULY 2022.

MINUTES ORDINARY COUNCIL - 26 JULY 2022

ORDINARY COUNCIL MEETING - 26 JULY 2022 MOTION

190	Councillor Leah Anderson Councillor Peter Kafer
	It was resolved that the urgency motion was considered by Council.

Those for the Motion: Crs Leah Anderson, Giacomo Arnott, Matthew Bailey, Glen Dunkley, Peter Francis, Peter Kafer and Jason Wells.

Those against the Motion: Nil.

The motion was carried.

ORDINARY COUNCIL MEETING - 26 JULY 2022 MOTION

191		ncillor Leah Anderson ncillor Peter Kafer
	That	Council:
	1)	Notes the awful state of local roads, which are littered with potholes as a result of recent sustained wet weather.
	2)	Notes that potholes are a danger to all road users, forcing cars all over the road to dodge them and damaging cars which don't dodge them successfully.
	3)	Notes that the state of Council's roads and the number and size of potholes are one of the biggest talked about issues in Port Stephens right now.
	4)	Agrees that every day large, unsafe potholes persist, the community is at risk and working families are paying to fix their cars from damage.
	5)	Requests the Acting General Manager to commence an ongoing pothole and roads media campaign informing residents of the need to report potholes as soon as possible so that they can be prioritised and fixed, and informing the community of what roads are scheduled for repair and when.
	6)	Requests the Acting General Manager to prepare an urgent report as soon as possible:
	6 a.	Outlining pothole remediation performance each month for the past year, including details on how many potholes have been re-filled on more than one occasion.
	6 b.	Outlining the current methods used for filling potholes, and why, and any alternate methods for filling potholes which might last longer than the current methods used.

PORT STEPHENS COUNCIL

ITEM 1 - ATTACHMENT 1 URGENCY MOTION - POTHOLES - MINUTE NO. 191 - COUNCIL MEETING 26 JULY 2022.

MINUTES ORDINARY COUNCIL - 26 JULY 2022

- 6 c. Outlining Council's plan for the next 12 months for locations for road reseals.
- 6 d. Outlining Council's capacity to increase pothole and road reseal remediation within the current budget.
- 6 e. If no option is available to increase works per 6 d), outline what works could be shifted, delayed or cancelled to ensure that more roadworks are able to be undertaken over the next 12 months.

Those for the Motion: Crs Leah Anderson, Giacomo Arnott, Matthew Bailey, Glen Dunkley, Peter Francis, Peter Kafer and Jason Wells.

Those against the Motion: Nil.

The motion was carried.

ITEM NO. 2 FILE NO: 22/229186 EDRMS NO: PSC2021-02510

QUESTIONS ON NOTICE / QUESTIONS WITH NOTICE

REPORT OF: GREGORY KABLE - FACILITIES AND SERVICES GROUP

MANAGER

GROUP: FACILITIES & SERVICES

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:	5
Councillor:	Councillor Arnott
Date Received:	24 August 2022
Question with Notice:	Provide information on the precise source of funding for the Rock Wall and Guardrail on East Seaham Road and Bus Shelter Replacement on Gan Gan Road.
Response:	Both the East Seaham Road Rock Wall and Guardrail and the Gan Gan Road – bus shelter replacement are related to recent Fixing Local Roads projects.
	The East Seaham Road rock wall and guardrail is an extension of the current Newline Road roadworks and associated pavement repairs. Council received 2 grants, State Blackspot funding and Fixing Local Roads grant funding, for pavement rehabilitation and safety improvements primarily along Newline Road, with additional works along East Seaham Road to address a number of recent crashes. Council is required to contribute to Fixing Local Roads funding. By adding Council funding to these works, as required, all the sources of funds are accumulated into the one work order. In breaking up the work order into Council's asset based financial system, funding is allocated to all the aspects of the project. This includes all the road rehabilitation works, relocation of power poles and installation of guardrail for the blackspot works, and minor works along East Seaham Road which include linemarking, signage, removal of loose rock from the rock wall adjacent and guardrail replacement at bridge structure at Balickera Canal. In
	the process of dividing the project and funding sources up for this job, part of Council's allocation for

contribution towards Fixing Local Roads funding has been added to these two activities on East Seaham Road.

In relation to the bus shelter on Gan Gan Road, Council has Fixing Local Roads funding on Gan Gan Road at Eucalyptus Dr to which Council contributed towards the road rehabilitation of this road. This also involved works on the bus shelter at the intersection of Gan Gan Road and Eucalyptus Drive due to the roadworks to ensure we meet current standards. As with the item above, the way in which funding is split up within the one work order across all the assets being worked on, funding was allocated to the bus shelter. How this project differs, is that there were two bus shelters which were worked on along Gan Gan Road last Financial Year. It seems that an error has occurred and the funding swapped between the 2 shelters. This will be corrected and will have no impact on the budget or expenditure.

The Fixing Local Roads \$3 million funds was used on the pavement component of these projects.

ATTACHMENTS

Nil.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

ITEM NO. 3 FILE NO: 22/220665 EDRMS NO: PSC2009-00965

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DELEGATIONS REPORT

REPORT OF: TONY WICKHAM - GOVERNANCE SECTION MANAGER

GROUP: GENERAL MANAGER'S OFFICE

BACKGROUND

The purpose of this report is to advise Council of each occasion the Mayor and/or General Manager have exercised their delegations, other than under section 226 and 335 of the Local Government Act 1993, which are conferred on each role.

The report at **(ATTACHMENT 1)** provides details of the delegation exercised, such as the delegated authority, the date and the reason for exercising the delegation.

ATTACHMENTS

1) Mayor and General Manager Delegation Report. J.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

ITEM 3 - ATTACHMENT 1 MAYOR AND GENERAL MANAGER DELEGATION REPORT.

MAYOR AND GENERAL MANAGER DELEGATION REPORT

Date exercised	Delegations exercised	Purpose	Role exercising delegation	Reported to Council
16 August 2022	Clause 178 of the Local Government (General) Regulation 2021	Acceptance of a tender - provision of preparing Coastal Management Program Stages 3 and 4.	General Manager	13 September 2022
	Code of Meeting Practice	Approval of 4 Public Access applications for 23 August 2022 - Item 1 DA - 58 Sandy Point Road, Corlette.	Mayor	13 September 2022
22 August 2022		Approval of 2 Public Access applications for 23 August 2022 - Item 2 Planning Proposal - 610 Seaham Road, Nelsons Plains.		13 September 2022
25 August 2022	Roads and Maritime Services delegations	Port Stephens Local Traffic Committee Meeting Minutes - 2 August 2022.	General Manager	13 September 2022
25 August 2022	Roads and Maritime Services delegations	Authorises the installation, display, removal or alteration of the traffic control devices for the listed items identified in the Port Stephens Local Traffic Committee report dated 2 August 2022.	General Manager	13 September 2022

PORT STEPHENS COUNCIL 220

ITEM NO. 4 FILE NO: 22/220200

EDRMS NO: PSC2017-00106

COUNCIL RESOLUTIONS

REPORT OF: TIMOTHY CROSDALE - 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. <u>U</u>
- 2) Development Services Group Council resolutions.

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- 3) Facilities and Services Group Council resolutions. J.
- 4) General Manager's Office Council resolutions. U

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

ITEM 4 - ATTACHMENT 1 CORPORATE SERVICES GROUP COUNCIL RESOLUTIONS.



Division: Corporate Services Date From: 27/08/2013
Committee: Date To: 23/08/2022
Officer:

Action Sheets Report Printed: Monday, 5 September 2022

Туре	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 11/05/2021	Pattison, Zoe	Car parking in Shoal Bay	30/12/2022	12/05/2021	21/123694
02 Sep In princi		eceived from Crown L	ands. Matter progressing.			

Туре	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 27/08/2013	Pattison, Zoe	Campvale Drain	30/12/2022		
02 Sep Two priv		lunter Water Corporati	on and National Parks and Wile	dlife Service (N	IPWS). Matter	ongoing.

Туре	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed			
Report	Ordinary Council 22/09/2020	Pattison, Zoe	Newline Road, Raymond Terrace	30/09/2022					
2 199						20/288489			
	02 Sep 2022 Approved. Contracts prepared. Finalising survey levels in contract.								

Туре	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report 2 090	Ordinary Council 13/04/2021	Pattison, Zoe	PROPOSED CLOSURE AND SALE OF PATHWAY IN BOAT HARBOUR	30/06/2023	14/04/2021	21/96728
02 Sep : Matter p	2022 rogressing.					

InfoCouncil Page 1 of 1

Officer/Director

Gardner, Janelle

Peart, Steven

ITEM 4 - ATTACHMENT 2 RESOLUTIONS.

DEVELOPMENT SERVICES GROUP COUNCIL



Division: Development Services Date From: 14/09/2021 Committee: Date To: 23/08/2022 Officer:

Subject

Action Sheets

Meeting

Ordinary

14/06/2022

Council

Report

Type

Report

8

Est. **Emailed** Completed Compl. 18/11/2022 16/06/2022 **Engagement Strategy**

22/155619

Printed: Monday, 5 September 2022

25 Aug 2022

Submissions received from public Exhibition. Report being drafted for 8 November 2022 Council Meeting

Communications &

Туре	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed		
Report	Ordinary Council 23/08/2022	Lamont, Brock	Homelessness in Port Stephens	28/10/2022	24/08/2022			
1		Peart, Steven				22/225860		
	02 Sep 2022 Preparing a report and letters following the recommendation per its meeting on 23 August 2022, Minute No. 229.							

Туре	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 23/08/2022	Lamont, Brock	Annual Awards Policy	30/12/2022	24/08/2022	
3		Peart, Steven				22/225860

02 Sep 2022

Port Stephens Annual Awards policy has been amended to reflect the resolution per its meeting on 23 August 2022, Minute No. 230. The draft is due to return to Council on 8 November 2022 for endorsement before going on Public Exhibition for a 28 day period.

Туре	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 14/09/2021	Connell, Sarah	Port Stephens Waterway Strategy	29/12/2023	15/09/2021	
1 240	1 1700/2021	Peart, Steven				21/252518

02 Sep 2022

The Strategic Planning Team has submitted grant applications for two projects under the Regional NSW - Business Case and Strategy Development Fund. Funding is being sought for consultants to prepare the Port Stephens Waterways Strategy. Once the grant is awarded (\$93,750) the Waterways Strategy will be drafted.

InfoCouncil Page 1 of 2

ITEM 4 - ATTACHMENT 2 DEVELOPMENT SERVICES GROUP COUNCIL RESOLUTIONS.



Division: Development Services Date From: 14/09/2021
Committee: Date To: 23/08/2022
Officer:

Action Sheets Report Printed: Monday, 5 September 2022

Туре	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 12/10/2021	Whitfield, Hannah	Carbon Neutrality	30/10/2022	13/10/2021	
2 275	, . 0, _ 0	Peart, Steven				21/274186
October	or Briefing (Tw		cheduled for 20 September 2022. ap to achieving carbon neutrality			

Туре	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 22/02/2022	Gardner, Janelle	Newspaper Notices	13/12/2022	25/02/2022	
2 055		Peart, Steven				22/57049
25 Aug Report o		g decision from the	Financial Sustainability PCG.			

InfoCouncil Page 2 of 2



Division: Facilities & Services Date From: 09/02/2021 Committee: Date To: 23/08/2022 Officer:

Action Sheets Report Printed: Monday, 5 September 2022

Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Ordinary Council 8/02/2022	Gutsche, Tammy	Independent Audit of Financial Positions of 355c Hall Committees	31/10/2022	14/02/2022	00/45000
22	, 3,				22/45826
3	Ordinary Council V02/2022	Ordinary Jouncil Gutsche, Tammy J02/2022 Kable, Gregory	Ordinary Council Gutsche, Tammy Financial Positions of 355c Hall Committees Kable, Gregory	Ordinary Gutsche, Tammy Financial Positions of 355c Hall Committees Kable, Gregory Kable, Gregory Compl. Compl. Compl. Financial Positions of 355c Hall Committees	Ordinary Council Gutsche, Tammy Council Gutsche, Tammy Kable, Gregory Independent Audit of Financial Positions of 355c Hall Committees Kable, Gregory

Туре	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed	
Report	Ordinary Council 22/03/2022	Maretich, John	Identifying Potholes	30/11/2022	23/03/2022		
7 092		Kable, Gregory				22/81589	
01 Sep 2022 Report is currently in progress.							

Туре	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed			
Report	Ordinary Council 8/02/2022	Bridge, Clinton	Boomerang Park BBQs	30/11/2022	14/02/2022				
9 034		Kable, Gregory				22/45826			
	01 Sep 2022 Report shall be provided to Council on the proposal to increase facilities as per this NOM.								

Туре	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed			
Report	Ordinary Council 8/02/2022	Bridge, Clinton	Basketball Backboard and Rings - Croquet Court, Boomerang Park	20/10/2022	14/02/2022				
15 039		Kable, Gregory	C .			22/45826			
Further	01 Sep 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.								

Туре	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report 2 114	Ordinary Council 26/04/2022	Maretich, John Kable, Gregory	Lakeside Leisure Centre	31/01/2023	28/04/2022	22/109684
01 Sep 2022 Report to be prepared to go back to Council						

InfoCouncil Page 1 of 5



Division: Facilities & Services Date From: 09/02/2021
Committee: Date To: 23/08/2022
Officer:

Action Sheets Report

Printed: Monday, 5 September 2022

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed			
Report	Ordinary Council 12/07/2022	Newall, Charlette	Koala Signage	31/10/2022	13/07/2022				
1		Kable, Gregory				22/186061			
Complia	O1 Sep 2022 Compliance approach to continue. Assets section to liaise with signage group to reach agreement on approach to signage moving forward. Staff are currently preparing a report for Council.								

Туре	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed	
Report	Ordinary Council 26/07/2022	Maretich, John	Smart Parking	31/10/2022	27/07/2022		
2		Kable, Gregory				22/199431	
01 Sep 2022 Staff compiling details to report back to Council.							

Туре	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed			
Report	Ordinary Council 24/05/2022	Maretich, John	Review of Dog Off Lead Areas - Boat Harbour Beach	30/06/2023	27/05/2022				
4		Kable, Gregory				22/136825			
	01 Sep 2022 Report was endorsed by Council at its meeting held 24 May 2022, Minute No. 133. A review will be carried out in 12								

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 24/05/2022	Maretich, John	World Menstruation Hygiene Day	31/12/2022	27/05/2022	
1		Kable, Gregory				22/136825
01 Sep A report	2022 t will be prepare	ed for Council.				

Туре	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report 5	Ordinary Council 8/02/2022	Maretich, John Kable, Gregory	Foreshore Reserves and Parking on Council Land	30/11/2022	14/02/2022	22/45826
030		Kable, Gregory				22/43020
01 Sep : Report s		d back to Council.				

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InfoCouncil Page 2 of 5



 Division:
 Facilities & Services
 Date From:
 09/02/2021

 Committee:
 Date To:
 23/08/2022

 Officer:

Action Sheets Report Printed: Monday, 5 September 2022

Туре	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed		
Report	Ordinary Council 13/07/2021	Newall, Charlette	Hydrogen and Electric Vehicles in Council's Fleet	31/10/2022				
2 177		Kable, Gregory				21/190429		
	01 Sep 2022 Staff are currently in consultation with suppliers on how to introduce new fuel sources for our vehicles.							

Туре	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed			
Report 4 208	Ordinary Council 10/08/2021	Maretich, John Kable, Gregory	Agreement with Community Association DP270468 - Lagoons Estate, Nelson Bay	30/11/2022		21/218740			
Council	O1 Sep 2022 Council to enter agreement with the Community Association DP 270468 in accordance with the confidential terms as per Council report.								

Туре	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed			
	Ordinary		MEDOWIE REGIONAL						
Report	Council	Bridge, Clinton	PLAYGROUND AND TOWN	30/12/2022					
	9/02/2021		CENTRE						
2		Kable, Gregory				21/33235			
012									
1 Sep 2	022								
	The regional playground will be addressed in the Medowie Place Plan Two-Way briefing scheduled for September 2022. A report will then be prepared.								

Туре	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed	
Report	Ordinary Council 25/05/2021	Maretich, John	Bus Stop in Seaside Estate, Fern Bay	31/10/2022	26/05/2021		
5 128		Kable, Gregory				21/138820	
01 Sep	01 Sep 2022						

This review shall be undertaken through Local Traffic Committee and consultation with members of the Seaside Community Association.

InfoCouncil Page 3 of 5



Division: Facilities & Services Date From: 09/02/2021
Committee: Date To: 23/08/2022
Officer:

Action Sheets Report Printed: Monday, 5 September 2022

Туре	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 10/08/2021	Newall, Charlette	Kirrang Drive, Medowie Shared Pathway	31/12/2022	13/08/2021	
8 217		Kable, Gregory				21/218740
01 Sep 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.						

Туре	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	28/02/2023	14/02/2022	
6 018		Kable, Gregory				22/45826
01 Sep 2022 This action is still under investigation. A report with requested information will be provided once the data is available.						

Туре	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 8/02/2022	Maretich, John	Medowie Library	31/12/2022	14/02/2022	
2 027		Kable, Gregory				22/45826
01 Sep 2022 Investigation is still underway to determine viability as requested. Staff are currently consulting with Cr Wells.						

Туре	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 10/08/2021	Bridge, Clinton	Raymond Terrace Seven Day Makeover	31/12/2022		
17 228		Kable, Gregory				21/218740
01 Sep 2022 This will be discussed with the Councillors in the lead up to William St, Stage 2 which funded through the Streets of Shared Spaces grant.						

InfoCouncil Page 4 of 5

ITEM 4 - ATTACHMENT 3 FACILITIES AND SERVICES GROUP COUNCIL RESOLUTIONS.



Division: Facilities & Services Date From: 09/02/2021
Committee: Date To: 23/08/2022
Officer:

Action Sheets
Report

Printed: Monday, 5 September 2022

Туре	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	31/10/2022	13/10/2021	
8 270		Kable, Gregory				21/274186
02 Sep 2022 1 Paperwork currently being prepared for the Mayor and General Manager for the official seal.						

InfoCouncil Page 5 of 5

ITEM 4 - ATTACHMENT 4 RESOLUTIONS.

GENERAL MANAGER'S OFFICE COUNCIL



Division:General Manager's OfficeDate From:23/08/2022Committee:Date To:23/08/2022

Officer:

Action Sheets Printed: Monday, 5 September 2022
Report

Туре	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 23/08/2022	Wickham, Tony Crosdale, Tim	POLICY REVIEW: MANAGING UNREASONABLE COMPLAINANT CONDUCT	6/09/2022	24/08/2022	22/225860
25 Aug 2022 On public exhibition until 25 September 2022.						

Туре	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 23/08/2022	Wickham, Tony	POLICY REVIEW: GIFTS AND BENEFITS	6/09/2022	24/08/2022	
9		Crosdale, Tim				22/225860
25 Aug 2022 On public exhibition until 25 September 2022.						

InfoCouncil Page 1 of 1

NOTICES OF MOTION

NOTICE OF MOTION

ITEM NO. 1 FILE NO: 22/233604

EDRMS NO: PSC2021-04195

ANNA BAY RESORT SITE - 74 - 84 GAN GAN ROAD, ANNA BAY

COUNCILLOR: JASON WELLS

THAT COUNCIL:

1) Acknowledges the poor state of the Anna Bay Resort site at 74-84 Gan Gan Road, Anna Bay.

- 2) Requests that the General Manager commence compliance action to improve the state of the site by requiring the property owner to:
- a. Maintain the landscaping as required by previous compliance action to ensure the Gan Gan Road frontage and along the boundary adjoining the 4wd access road is effectively landscaped to screen the development from the public domain.
- b. Remove all graffiti visible from Gan Gan Road and the 4wd access road.

BACKGROUND REPORT OF: KATE DRINAN – DEVELOPMENT AND COMPLIANCE SECTION MANAGER

BACKGROUND

A Development Application for a tourist facility including 154 units and strata subdivision was approved under DA 16-2009-160 in 2009. The development of the facility commenced but subsequently stalled, leaving the site in a state of disrepair. Council has sought to improve the state of the site on a number of occasions, with requests to the owners dating back to 2013. However, limited action can be taken by Council to manage the appearance of development sites.

In June 2020, Council participated in Court proceedings to seek to improve the state of the site and a court order was imposed requiring the owner to:

- 1) Install hay bales along the driveway on Gan Gan Road for sediment and erosion control.
- 2) Plant the remainder of the Gan Gan Road frontage with Cheese trees to match planting undertaken between the driveway and the 4wd access road.
- 3) Relocate nominated derelict buildings and shipping containers away from the frontage of the site.
- 4) Remove all graffiti visible from Gan Gan Road and the 4wd access road.

- 5) Clear a 5 metre wide landscape strip on 74-84 Gan Gan Road on the northern side of the existing footpath on the boundary adjoining the 4wd access road. Within this landscape strip the following works were to be undertaken:
 - Cover landscape strip with 200mm of mulch
 - Plant with coastal rosemary (1 per 5 sqm) and Banksia Integrifolia / Serrata (1 per 10 sqm)
 - Install 1 litre of water absorbing gel per plant
 - Install sediment control fencing along the southern boundary shared with 4wd access road prior to planting. The sediment control fencing is to be installed on the road side of the landscape strip.

The above works were undertaken by the owner and completed to the satisfaction of the court order.

Following the planting of the vegetation as required, Council has made a number of requests to the owner to ensure the landscaping is maintained. However, the company who owns the site is now in liquidation and a liquidator was appointed on 30 March 2022.

If this Notice of Motion is supported, Council will commence compliance action accordingly.

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

CONFIDENTIAL ITEMS

In accordance with Section 10A, of the Local Government Act 1993, Council can close part of a meeting to the public to consider matters involving personnel, personal ratepayer hardship, commercial information, nature and location of a place or item of Aboriginal significance on community land, matters affecting the security of Council, Councillors, staff or Council property and matters that could be prejudice to the maintenance of law.

Further information on any item that is listed for consideration as a confidential item can be sought by contacting Council.