

# NOTICE OF ORDINARY MEETING

## 12 APRIL 2022



The Mayor and Councillors attendance is respectfully requested:

Mayor: R Palmer (Chair).

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

### SCHEDULE OF MEETINGS

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

### Please Note:

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

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

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

Food and beverages are not permitted in the Council Chamber.

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## **BUSINESS**

- 1) Opening meeting.
- 2) Acknowledgement of Country - Today, we are meeting on Worimi Country, we acknowledge the past, we are working towards a better tomorrow.
- 3) Prayer - We recognise the rich cultural and religious diversity in Port Stephens and pay respect to the beliefs of all members of our community, regardless of creed or faith.
- 4) Apologies and applications for a leave of absence by Councillors.
- 5) Disclosures of interests.
- 6) Confirmation of minutes Ordinary Meeting of 22 March 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 report – if submitted.
- 11) Questions with Notice – if submitted.
- 12) Questions on Notice.
- 13) Notices of motion – if submitted.
- 14) Rescission motions – if submitted.
- 15) Confidential matters – if submitted.
- 16) Conclusion of the meeting.

## **PRINCIPLES FOR LOCAL GOVERNMENT**

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

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

### **Guiding principles for Council**

#### **1) Exercise of functions generally**

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

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

#### **2) Decision-making**

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

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



### 3) Community participation

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

#### **Principles of sound financial management**

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

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

#### **Integrated planning and reporting principles that apply to Council**

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

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

## PORT STEPHENS COMMUNITY STRATEGIC PLAN

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

The Community Strategic Plan is organised into 4 focus areas:

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

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

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

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

## BUSINESS EXCELLENCE

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

These outcomes align with the following Business Excellence principles:

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

## MEETING PROCEDURES SUMMARY

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

**Quorum** – A quorum at Port Stephens Council is 6.

### **Declarations of Interest**

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

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

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

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

### **Motions and Amendments**

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

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

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

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

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

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

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

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

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

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

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

A Point of Order can be raised where:

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

## **Declarations of Conflict of Interest – Definitions**

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

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

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

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



## Form of Special Disclosure of Pecuniary Interest

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

### Important information

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

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

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

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

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

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

**ORDINARY COUNCIL - 12 APRIL 2022**

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

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

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

to be held on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

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

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

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

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

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

Mayor/Councillor's signature \_\_\_\_\_

Date \_\_\_\_\_

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





## Declaration of Interest form

Agenda item No. \_\_\_\_\_

Report title \_\_\_\_\_

Mayor/Councillor \_\_\_\_\_ declared a

Tick the relevant response:

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

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

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

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

Mayor/Councillor left the Council meeting in Committee of the Whole at \_\_\_\_\_pm.

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

Mayor/Councillor left the Council meeting at \_\_\_\_\_ pm.

Mayor/Councillor returned to the Council meeting at \_\_\_\_\_ pm.

# COUNCIL REPORTS

**ITEM NO. 1****FILE NO: 22/83836  
EDRMS NO: 16-2020-4-2****DA 16-2020-4-2 - MODIFICATION TO CONDITIONS OF CONSENT FOR  
APPROVED CAMPING GROUND - 2 PATERSON STREET, HINTON**

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

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Refuse Development Application DA No. 16-2020-4-2 – S4.55(1A) modification to Camping Ground and Community Facilities for the reasons contained in **(ATTACHMENT 3)**.

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**BACKGROUND**

The purpose of this report is to present S4.55(1A) modification application 16-2020-4-2 to Council for determination. The modification application seeks to allow for caravans to use the approved campground.

The DA was reported to Council at its meeting of 22 March 2022 **(ATTACHMENT 5)** with a recommendation for refusal. At that meeting Council resolved to defer the Modification Application 16-2020-4-2 – S4.55(1A) to Camping Ground and Community Facilities to permit short term caravan stays for further consideration.

The below is unchanged from the report tabled at the 22 March 2022 meeting.

A summary of the application and property is provided below:

Subject Land:	2 Paterson Street, Hinton (Lot 12 DP: 1204972).
Zoning:	RU5 Village
Submissions:	1
Key Issues:	The proposed modification seeks to delete Condition 7.9 from the consent to allow for caravan to utilise the approved campground on a short-term basis. Caravans are not considered to form part of a campground as defined by the Port Stephens Local Environmental Plan (PSLEP) and are therefore not permitted in the RU5 Village zone.

The modification application has been reported in accordance with Council's Planning Matters to be Reported to Council Policy as it has been called up by Mayor Ryan Palmer, Councillors Glen Dunkley and Chris Doohan (**ATTACHMENT 4**).

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

#### Proposal

The application proposes to delete Condition 9 of Section 7 (7.9) of the consent, which currently prohibits the use of caravans in the approved campground. The proposed deletion of Condition 7.9 will allow for caravans to be used within the approved campground.

The Statement of Environmental Effects (SEE) submitted with the application makes reference to legal advice relating to a similar proposal that stipulates caravans are legally permitted within campgrounds.

#### Site Description and History

The subject site is identified as Lot 12 DP1204972, known as 2 Paterson Street, Hinton. The site is located on the intersection of Paterson Street and Old Punt Road, Hinton.

The site is relatively flat. Site access is via Paterson Street and Old Punt Road. The overall site is scarcely vegetated with an open paddock which is the location of the approved camping ground and facilities.

The site is located on the outskirts of the village/township of Hinton and is zoned RU5 – Village. The site supports the Victoria Hotel, which is listed as a Local Heritage Item (I19), located on the corner of Paterson Street and Old Punt Road, at the western entrance of Hinton. The Victoria Hotel resides on a large allotment of land with views over the neighbouring Paterson River.

The site is bound by rural and residential properties to the north, east and south, and the Paterson River to the west.

#### Key Issues

The key issues identified throughout the assessment of the application relate to permissibility of caravan parks in the RU5 Village zone.

A detailed assessment of the modification application and permissibility matters is contained within the Planners Assessment Report (**ATTACHMENT 2**).

#### Permissibility

The site is zoned RU5 Village in accordance with the PSLEP 2013. Camping grounds are permissible with consent in this zone.

In accordance with PSLEP 2013 a camping ground means an area of land that has access to communal amenities and on which campervans or tents, annexes or other similar portable and lightweight temporary shelters are, or are to be, installed, erected or placed for short term use, but does not include a caravan park.

The above specifically excludes caravan parks from its definition. It is considered that the placement of a caravan/s within a campground would change its use to a caravan park. A caravan park is not a permissible use within the zone. A caravan park is defined by PSLEP 2013 as land (including a camping ground) on which caravans (or caravans and other moveable dwellings) are, or are to be, installed or placed.

The applicants SEE submitted with the application states that legal advice has been received which confirms that a campground may permit caravans. Central to the applicant's argument is that State Environmental Planning Policy No. 21 (Caravan Parks) (SEPP 21) is applicable to this application. SEPP 21 allows for caravans on camping grounds as it allows for the definition of camping ground and caravan parks to be used interchangeably.

It is Council officer's opinion having considered legal advice that SEPP 21 is not applicable to this application. SEPP 21 only becomes applicable for an application for a caravan park, which the current application cannot be because caravan parks are prohibited.

Due to the proposed inclusion of caravans as part of the application, the proposal could be characterised as a caravan park (which is not permissible in the zone). A caravan park use is defined by the PSLEP as land on which caravans and other moveable dwellings are installed or placed. If the development was characterised as a caravan park it could provide opportunities for longer term stays, including permanent installations of caravans and other moveable dwellings. In light of this and to negate any opportunity for the site to be used for the purpose of a caravan park, Council recommend Condition 7.9 be upheld on the consent to prohibit caravans utilising the site.

### Conclusion

Council officers consider that caravan parks are a prohibited land use within the RU5 Village zone in accordance with the PSLEP 2013. The deletion of Condition 7.9 of the consent is therefore not supported by Council officers, as per the reasons for refusal contained in **(ATTACHMENT 3)** and Planners Assessment Report at **(ATTACHMENT 2)**.

### **COMMUNITY STRATEGIC PLAN**

<b>Strategic Direction</b>	<b>Delivery Program 2018-2021</b>
Thriving and Safe Place to Live	Support sustainable business development in Port Stephens.

**FINANCIAL/RESOURCE IMPLICATIONS**

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

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

**LEGAL, POLICY AND RISK IMPLICATIONS**

The proposed modification seeks to delete Condition 7.9 from the consent to allow for caravans to utilise the approved campground. Caravans are not considered to form part of a campground as defined by the Port Stephens Local Environmental Plan (PSLEP) and are therefore not permitted in the RU5 Village zone.

A detailed assessment against these environmental planning instruments is contained within the Planners Assessment Report contained at **(ATTACHMENT 2)**.

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

## **SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

### Social and Economic Impacts

The proposed modification will not likely result in any impacts in addition to those that were assessment as part of the original application. However, if caravans are permitted on the site, it could establish a legal pathway to enable long-term stays on the site, which would create adverse social impacts to neighbouring properties.

### Built Environment

There are no physical works proposed and therefore the built environment will remain unchanged.

### Natural Environment

There will be no adverse impacts it the natural environment as a result of the proposed development as originally approved.

## **CONSULTATION**

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

### Public exhibition

The application was notified in accordance with Councils Community Engagement Strategy from 30 November 2021 to 14 December 2021. One submission was received during this period.

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

## **OPTIONS**

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

## **ATTACHMENTS**

- 1) Locality Plan. [↓](#)
- 2) Planners Assessment Report. [↓](#)
- 3) Recommended Reasons for Refusal. [↓](#)
- 4) Call to Council Form. [↓](#)
- 5) Council Meeting Minutes - 22 March 2022. [↓](#)

**COUNCILLORS ROOM**

- 1) Unredacted submission.
- 2) Development plans.

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





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



## S4.55(1A) MODIFICATION APPLICATION ASSESSMENT REPORT

### APPLICATION DETAILS

<b>Modification application no.</b>	16-2020-4-2
<b>Development description</b>	Camping Ground and Community Facilities
<b>Modification description</b>	S4.55(1A) Modification to Camping Ground and Community Facilities – Delete Condition 9 (Section 7.0)
<b>Applicant</b>	PERCEPTION PLANNING PTY LTD
<b>Date of lodgement</b>	18/11/2021

### PLANNERS PRE-ASSESSMENT CHECKLIST

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

### Modification proposal

The application proposes to delete Condition 7.9 of the consent, which prohibits the use of caravans in the approved campground. The proposed deletion of Condition 7.9 from the consent will allow caravans to be used within the approved campground.

The Statement of Environmental Effects (SEE) submitted with the application makes reference to legal advice relating to a similar proposal that stipulates caravans are legally permitted within campgrounds. The SEE states that the legal advice confirmed that the approved use is properly characterised as a 'camping ground', which is permissible under the Port Stephens Local Environmental Plan 2013 (PSLEP 2013) but is subject to the operations of the former State Environmental Planning Policy No. 21 (Caravan Parks) (SEPP 21), suggesting that SEPP 21 overrides the PSLEP 2013.

The applicant accordingly suggests that caravan parks are permissible within the zone as per the operation of the former Clause 7 of SEPP 21.

## ITEM 1 - ATTACHMENT 2 PLANNERS ASSESSMENT REPORT.

16-2020-4-2

At the time of the original approval, State Environmental Planning Policy No. 21 (Caravan Parks) (SEPP 21) was applicable to the application. On 26 November 2021, State Environmental Planning Policy (Housing) 2021 (Housing SEPP) commenced, which consolidated a number of housing related State Environmental Planning Policies, including SEPP No. 21 (Caravan Parks). Reference to Clause 7 of SEPP 21 by the applicant has been replaced with Clause 130 of the Housing SEPP. For the purpose of this report, Council staff will make reference to the currently in force legislation.

**PROPERTY DETAILS**

<b>Property address</b>	2 Paterson Street HINTON
<b>Lot and DP</b>	LOT: 12 DP: 1204972
<b>Zoning</b>	RU5 VILLAGE
<b>Site constraints that affect the modification</b>	Bushfire Prone Land – Vegetation Category 3

**ASSESSMENT SUMMARY**

Designated Development	The application is not designated development.
Integrated Development	<p>The application does not require additional approvals listed under s.4.46 of the EP&amp;A Act.</p> <p>The subject site is currently mapped as being bushfire prone land. When consent was granted under DA 16-2020-4-1 in December 2020, the site was not mapped bushfire prone land and therefore the application did not require integrated referral to the NSW Rural Fire Service under Section 100B of the Rural Fires Act 1997. The proposed modification does not propose any change to the number of sites or development footprint, therefore has not been referred to the RFS.</p>
Concurrence	The application does not require the concurrence of another body.

**Referrals**

The proposed modification was not required to be referred to internal specialist staff or external agencies.

**MODIFICATIONS INVOLVING MINIMAL ENVIRONMENTAL IMPACT – S4.55(1A)****S4.55(1A)(a) – Minimal Environmental Impact**

The application does not propose any vegetation removal or increase to the approved development footprint. The number of sites and overall capacity of the approved campground will

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## ITEM 1 - ATTACHMENT 2 PLANNERS ASSESSMENT REPORT.

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remain unchanged. Accordingly, no detrimental environmental impacts are expected as a result of the proposed modification. On this basis, the proposed modification is considered of minimal environmental impact.

**S4.55(1A)(b) – Substantially The Same Development**

The development is not considered to be substantially the same development as originally approved, as the proposed modification seeks to allow for the use of caravans on the site, which in Council staff's view, will regularise a prohibited land use under the RU5 zone.

**S4.55(1A)(c) – Notification**

The application was notified in accordance with Councils Community Engagement Strategy from 30 November 2021 – 14 December 2021. One submission was received during this time.

**S4.55(1A)(d) – Submissions**

The matters raised in the submission objecting to the development are discussed in the table below:

Objection	Comments
<ul style="list-style-type: none"> <li>- Hinton is a small village and residents have invested in its rural location.</li> <li>- Flooding concerns and introduction of tourists and people who are not familiar with the area and associated flooding.</li> <li>- Traffic concerns noting that the intersection at Paterson Road and Old Punt Road does not have adequate visibility to cater for increased traffic.</li> <li>- Increase in population concern given Hinton relies on septic for sewerage management.</li> </ul>	<p>It is noted that the campground has already been approved. The application is for a modification, which seeks to delete Condition 7.9 of the consent to allow for caravans to utilise the campground. The number of sites and overall capacity of the approved campground will remain unchanged by the proposed modification. It is therefore considered that the proposed modification will not increase the number of tourists visiting the area, nor likely to increase traffic.</p> <p>In regard to sewage management, the original c included an upgrade to the sites existing on-site sewerage management system to cater for the additional demand from the approved camping ground. This upgrade is still required as per the original consent, with demand not likely to be further increased through the proposed modification.</p>

**S4.55(3) – S4.15(1) Assessment****s4.15(1)(a)(i) – The provisions of any EPI**

*Port Stephens Local Environment Plan 2013 (PSLEP2013)*

The site is zoned RU5 Village in accordance with the PSLEP 2013. Camping grounds are permissible with consent in this zone. Caravan parks are not specified in the RU5 land use table as being permitted with consent in the zone, and accordingly are considered to be a prohibited land use. On this basis, Condition 7.9 was placed on the original consent.

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## ITEM 1 - ATTACHMENT 2 PLANNERS ASSESSMENT REPORT.

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As noted above, the SEE for the application makes reference to legal advice obtained for a similar proposal, which suggested that caravans can be placed on campgrounds through the former provisions of Clause 7 of SEPP 21 (now Clause 130 of the Housing SEPP 2021).

Council staff do not support the applicant's interpretation of Clause 7 of SEPP 21. The decision in *Wygiren Pty Limited v Kiama Municipal Council* makes clear, Clause 7 of SEPP 21 "does not replace the definitions in other instruments" it simply ensures that all references to "camping ground" are taken to include caravan parks, as defined in SEPP 21. Clause 7 of SEPP 21 "does not replace the definitions in other instruments" it simply ensures that all references to "camping ground" are taken to include caravan parks, as defined in SEPP 21.

Thus, the effect to the reference to camping ground in the LEP definition of "camping ground" is simply to include caravan park as defined in SEPP 21. Accordingly, the "exclusion" in the LEP definition that a camping ground "does not include a caravan park", remains legally valid.

Due to the proposed inclusion of caravans as part of the application, the proposal could be characterised as a caravan park (which is not permissible in the zone). A caravan park use is defined by the LEP as land on which caravans and other moveable dwellings are installed or placed. If the development was characterised as a caravan park it could provide opportunities for longer terms stays, including permanent installations of caravans and other moveable dwellings.

In light of this and to negate any opportunity for the site to be used for the purpose of a caravan park, Council recommend Condition 7.9 be upheld on the consent to prohibit caravans utilising the site.

Considering the above interpretation and that caravan parks are prohibited in the RU5 zone, the proposed modification is not supported by Council officers and is recommended to be refused by Council. The proposed modification is considered to be inconsistent with the provisions of the PSLEP 2013, specifically the RU5 Village Land Use table.

s4.15(1)(a)(ii) – Any Draft EPI

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

s4.15(1)(a)(iii) – Port Stephens Development Control Plan 2014

Chapter	Compliant	Notes (where needed or if not compliant)
B	<input checked="" type="checkbox"/> General Controls	
C	<input checked="" type="checkbox"/> Development Types	
D	<input checked="" type="checkbox"/> Specific Areas	

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s4.15(1)(a)(iia) – Any planning agreement or draft planning agreement entered into under section 93F

	Notes (where needed)
<input checked="" type="checkbox"/> There are no planning agreements that have been entered into under section 7.4 relevant to the proposed development.	

s4.15(1)(a)(iv) – The regulations

	Notes (where needed)
<input checked="" type="checkbox"/> There are no matters within the regulations that are relevant to the determination of the application.	

s4.15(1)(b) – The likely impacts of the development

	Notes (where needed)
<input checked="" type="checkbox"/> Social and Economic Environment: There would be beneficial impacts as a result of the development.	The proposed modification will not likely result in any impacts in addition to those that were assessment as part of the original application. However, if caravans are permitted on the site, it could establish a legal pathway to enable long-term stays on the site, which would create adverse social impacts to neighbouring properties.
<input checked="" type="checkbox"/> Built Environment: The proposed development would not cause harm to the existing character.	There is no change to the built form, the proposal seeks to allow for caravans to be used within the approved camping ground.
<input checked="" type="checkbox"/> Natural Environment: There are no adverse impacts expected as a result of the proposed development and appropriate conditions have been added.	There will be no adverse impacts if the natural environment as a result of the proposed development as originally approved.

s4.15(1)(c) – The suitability of the site

The subject site is zoned RU5 Village in accordance with the PSLEP 2013. Camping grounds are permissible with consent in this zone as approved. However, caravan parks are not specified in the land use table as being permitted with or without consent in the zone and are therefore considered to be a prohibited land use. The proposed modification and use of caravans on the site is therefore not considered suitable for the site.

s4.15(1)(d) – Any submissions

There was one submission received relating to the proposed modification. This has been addressed above.

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s4.15(1)(e) – The public interest

The proposed modification is not considered to be in the public interest as caravan parks are a prohibited use within the RU5 Village zoning.

**MODIFIED CONDITIONS**

Nil

**DETERMINATION**

The modification application is recommended to be refused by Council.

COURTNEY SARGENT

Senior Development Planner



**RECOMMENDED REASONS FOR REFUSAL**

**Reasons for Refusal**

1. The proposed modification would result in a prohibited land use on the site and is therefore inconsistent with the RU5 Village Land Use zone as per the Port Stephens Local Environmental Plan 2013.
2. The proposed modification is not considered to be in the public interest as the development would result in a prohibited use on the site (s.4.15(1)(e) of the EP&A Act).



**PORT STEPHENS COUNCIL**

116 Adelaide Street  
Raymond Terrace NSW 2324

PO Box 42  
Raymond Terrace NSW 2324

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

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PORT STEPHENS  
COUNCILCALL TO COUNCIL FORM  
DEVELOPMENT APPLICATION**Development application (DA) call to Council request:**

I/We (Mayor/Councillor/s) Mayor Ryan Palmer, Cr Glen Dunkley, Cr Chris Doohan request that DA number 16-2020-4-2 for DA description Modification of Conditions of Consent to Camp Ground located at 2 Paterson Street, Hinton be reported to Council for determination.

**Reason:**

Public Interest

**Declaration of Interest:**

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

I/We (Mayor/Councillor/s) \_\_\_\_\_ have a conflict of interest:

☒ No

☐ Yes

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

**Signed:** Mayor Ryan Palmer - email received  
Please sign or type name & attached to an email.

**Date:** 1/2/2022  
Click here to enter a date.

**Signed:** Cr Chris Doohan - email received  
Please sign or forward supporting email.

**Date:** 3/2/2022  
Click here to enter a date.

**Signed:** Cr Glen Dunkley - email received  
Please sign or forward supporting email.

**Date:** 3/2/2022  
Click here to enter a date.

**MINUTES ORDINARY COUNCIL - 22 MARCH 2022**

Councillor Matthew Bailey left the meeting at 7:30pm.

**ITEM NO. 1**

**FILE NO: 22/41997  
EDRMS NO: 16-2020-4-2**

**DA 16-2020-4-2 - MODIFICATION TO CONDITIONS OF CONSENT FOR  
APPROVED CAMPING GROUND - 2 PATERSON STREET, HINTON**

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

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Refuse Development Application DA No. 16-2020-4-2 – S4.55(1A) modification to Camping Ground and Community Facilities for the reasons contained in **(ATTACHMENT 3)**.
- 

**ORDINARY COUNCIL MEETING - 22 MARCH 2022  
MOTION**

<b>073</b>	<b>Mayor Ryan Palmer Councillor Chris Doohan</b>  It was resolved that Council defer the Modification Application 16-2020-4-2 – S4.55(1A) to Camping Ground and Community Facilities to permit short term caravan stays for further consideration.
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In accordance with Section 375 (A) of the Local Government Act 1993, a division is required for this item.

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

Those against the Motion: Nil.

The motion was carried.

**MINUTES ORDINARY COUNCIL - 22 MARCH 2022****ORDINARY COUNCIL MEETING - 22 MARCH 2022****MOTION**

	<b>Councillor Giacomo Arnott</b> <b>Councillor Peter Kafer</b>  That a motion of dissent be moved.
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Councillor Peter Kafer left the meeting at 7:36pm and did not return to the meeting.

Those for the Motion: Crs Giacomo Arnott and Peter Francis.

Those against the Motion: Mayor Ryan Palmer, Crs Leah Anderson, Chris Doohan, Glen Dunkley, Steve Tucker and Jason Wells.

The motion was lost.

Councillor Jason Wells left the meeting at 7:50pm.

Councillor Jason Wells returned to the meeting at 7:52pm.

Mayor Ryan Palmer vacated the Chair and left the meeting at 7:57pm. Deputy Mayor, Cr Steve Tucker chaired the meeting.

Mayor Ryan Palmer returned to the meeting at 7:59pm and resumed the Chair.

**BACKGROUND**

The purpose of this report is to present S4.55(1A) modification application 16-2020-4-2 to Council for determination. The modification application seeks to allow for caravans to use the approved campground.

A summary of the application and property is provided below:

Subject Land:	2 Paterson Street, Hinton (Lot 12 DP: 1204972).
Zoning:	RU5 Village
Submissions:	1
Key Issues:	The proposed modification seeks to delete Condition 7.9 from the consent to allow for caravan to utilise the approved campground on a short-term basis. Caravans are not considered to form part of a campground as defined by the Port Stephens Local Environmental Plan (PSLEP) and are therefore not permitted in the RU5 Village zone.

**MINUTES ORDINARY COUNCIL - 22 MARCH 2022**

The modification application has been reported in accordance with Council's Planning Matters to be Reported to Council Policy as it has been called up by Mayor Ryan Palmer, Councillors Glen Dunkley and Chris Doohan (**ATTACHMENT 4**).

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

Proposal

The application proposes to delete Condition 9 of Section 7 (7.9) of the consent, which currently prohibits the use of caravans in the approved campground. The proposed deletion of Condition 7.9 will allow for caravans to be used within the approved campground.

The Statement of Environmental Effects (SEE) submitted with the application makes reference to legal advice relating to a similar proposal that stipulates caravans are legally permitted within campgrounds.

Site Description and History

The subject site is identified as Lot 12 DP1204972, known as 2 Paterson Street, Hinton. The site is located on the intersection of Paterson Street and Old Punt Road, Hinton.

The site is relatively flat. Site access is via Paterson Street and Old Punt Road. The overall site is scarcely vegetated with an open paddock which is the location of the approved camping ground and facilities.

The site is located on the outskirts of the village/township of Hinton and is zoned RU5 – Village. The site supports the Victoria Hotel, which is listed as a Local Heritage Item (I19), located on the corner of Paterson Street and Old Punt Road, at the western entrance of Hinton. The Victoria Hotel resides on a large allotment of land with views over the neighbouring Paterson River.

The site is bound by rural and residential properties to the north, east and south, and the Paterson River to the west.

Key Issues

The key issues identified throughout the assessment of the application relate to permissibility of caravan parks in the RU5 Village zone.

A detailed assessment of the modification application and permissibility matters is contained within the Planners Assessment Report (**ATTACHMENT 2**).

Permissibility

The site is zoned RU5 Village in accordance with the PSLEP 2013. Camping grounds are permissible with consent in this zone.

**MINUTES ORDINARY COUNCIL - 22 MARCH 2022**

In accordance with PSLEP 2013 a camping ground means an area of land that has access to communal amenities and on which campervans or tents, annexes or other similar portable and lightweight temporary shelters are, or are to be, installed, erected or placed for short term use, but does not include a caravan park.

The above specifically excludes caravan parks from its definition. It is considered that the placement of a caravan/s within a campground would change its use to a caravan park. A caravan park is not a permissible use within the zone. A caravan park is defined by PSLEP 2013 as land (including a camping ground) on which caravans (or caravans and other moveable dwellings) are, or are to be, installed or placed.

The applicants SEE submitted with the application states that legal advice has been received which confirms that a campground may permit caravans. Central to the applicant's argument is that State Environmental Planning Policy No. 21 (Caravan Parks) (SEPP 21) is applicable to this application. SEPP 21 allows for caravans on camping grounds as it allows for the definition of camping ground and caravan parks to be used interchangeably.

It is Council officer's opinion having considered legal advice that SEPP 21 is not applicable to this application. SEPP 21 only becomes applicable for an application for a caravan park, which the current application cannot be because caravan parks are prohibited.

Due to the proposed inclusion of caravans as part of the application, the proposal could be characterised as a caravan park (which is not permissible in the zone). A caravan park use is defined by the PSLEP as land on which caravans and other moveable dwellings are installed or placed. If the development was characterised as a caravan park it could provide opportunities for longer term stays, including permanent installations of caravans and other moveable dwellings. In light of this and to negate any opportunity for the site to be used for the purpose of a caravan park, Council recommend Condition 7.9 be upheld on the consent to prohibit caravans utilising the site.

**Conclusion**

Council officers consider that caravan parks are a prohibited land use within the RU5 Village zone in accordance with the PSLEP 2013. The deletion of Condition 7.9 of the consent is therefore not supported by Council officers, as per the reasons for refusal contained in **(ATTACHMENT 3)** and Planners Assessment Report at **(ATTACHMENT 2)**.

**COMMUNITY STRATEGIC PLAN**

<b>Strategic Direction</b>	<b>Delivery Program 2018-2021</b>
Thriving and Safe Place to Live	Support sustainable business development in Port Stephens.

## MINUTES ORDINARY COUNCIL - 22 MARCH 2022

## FINANCIAL/RESOURCE IMPLICATIONS

The modification 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	No		
Reserve Funds	No		
Developer Contributions (\$7.11)	No		
External Grants	No		
Other	No		

## LEGAL, POLICY AND RISK IMPLICATIONS

The proposed modification seeks to delete Condition 7.9 from the consent to allow for caravans to utilise the approved campground. Caravans are not considered to form part of a campground as defined by the Port Stephens Local Environmental Plan (PSLEP) and are therefore not permitted in the RU5 Village zone.

A detailed assessment against these environmental planning instruments is contained within the Planners Assessment Report contained at **(ATTACHMENT 2)**.

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

**MINUTES ORDINARY COUNCIL - 22 MARCH 2022****SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

Social and Economic Impacts

The proposed modification will not likely result in any impacts in addition to those that were assessment as part of the original application. However, if caravans are permitted on the site, it could establish a legal pathway to enable long-term stays on the site, which would create adverse social impacts to neighbouring properties.

Built Environment

There are no physical works proposed and therefore the built environment will remain unchanged.

Natural Environment

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

**CONSULTATION**

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

Public exhibition

The application was notified in accordance with Councils Community Engagement Strategy from 30 November 2021 to 14 December 2021. One submission was received during this period.

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

**OPTIONS**

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

**ATTACHMENTS**

- 1) Locality Plan.
- 2) Planners Assessment Report.
- 3) Recommended Reasons for Refusal.
- 4) Call to Council Form.

**MINUTES ORDINARY COUNCIL - 22 MARCH 2022**

**COUNCILLORS ROOM**

- 1) Unredacted submission.
- 2) Development plans.

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



MINUTES ORDINARY COUNCIL - 22 MARCH 2022

ITEM 1 - ATTACHMENT 1 LOCALITY PLAN.



116 Adelaide Street, Raymond Terrace NSW 2264. Phone: (02) 49600259 Fax: (02) 49673612 Email: council@portstephens.nsw.gov.au

## MINUTES ORDINARY COUNCIL - 22 MARCH 2022

## ITEM 1 - ATTACHMENT 2 PLANNERS ASSESSMENT REPORT.

 <b>PORT STEPHENS COUNCIL</b>		<b>S4.55(1A) MODIFICATION APPLICATION ASSESSMENT REPORT</b>
<b>APPLICATION DETAILS</b>		
<b>Modification application no.</b>	16-2020-4-2	
<b>Development description</b>	Camping Ground and Community Facilities	
<b>Modification description</b>	S4.55(1A) Modification to Camping Ground and Community Facilities – Delete Condition 9 (Section 7.0)	
<b>Applicant</b>	PERCEPTION PLANNING PTY LTD	
<b>Date of lodgement</b>	18/11/2021	
<b>PLANNERS PRE-ASSESSMENT CHECKLIST</b>		
<b>OWNERS CONSENT</b>	<b>YES / N/A</b>	
Check if S.4.55 to be reported to Council (original DA determined by Council)	N/A	
Check whether consent is still valid (check lapse date).	Yes	
<b>NOTIFICATION</b>		
S.4.55 application only - notify previous objectors.	Yes	
<b>REFERRALS</b>		
S.4.55 Application only - Integrated referral bodies notified.	N/A	

**Modification proposal**

The application proposes to delete Condition 7.9 of the consent, which prohibits the use of caravans in the approved campground. The proposed deletion of Condition 7.9 from the consent will allow caravans to be used within the approved campground.

The Statement of Environmental Effects (SEE) submitted with the application makes reference to legal advice relating to a similar proposal that stipulates caravans are legally permitted within campgrounds. The SEE states that the legal advice confirmed that the approved use is properly characterised as a 'camping ground', which is permissible under the Port Stephens Local Environmental Plan 2013 (PSLEP 2013) but is subject to the operations of the former State Environmental Planning Policy No. 21 (Caravan Parks) (SEPP 21), suggesting that SEPP 21 overrides the PSLEP 2013.

The applicant accordingly suggests that caravan parks are permissible within the zone as per the operation of the former Clause 7 of SEPP 21.

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## MINUTES ORDINARY COUNCIL - 22 MARCH 2022

## ITEM 1 - ATTACHMENT 2 PLANNERS ASSESSMENT REPORT.

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At the time of the original approval, State Environmental Planning Policy No. 21 (Caravan Parks) (SEPP 21) was applicable to the application. On 26 November 2021, State Environmental Planning Policy (Housing) 2021 (Housing SEPP) commenced, which consolidated a number of housing related State Environmental Planning Policies, including SEPP No. 21 (Caravan Parks). Reference to Clause 7 of SEPP 21 by the applicant has been replaced with Clause 130 of the Housing SEPP. For the purpose of this report, Council staff will make reference to the currently in force legislation.

## PROPERTY DETAILS

Property address	2 Paterson Street HINTON
Lot and DP	LOT: 12 DP: 1204972
Zoning	RU5 VILLAGE
Site constraints that affect the modification	Bushfire Prone Land – Vegetation Category 3

## ASSESSMENT SUMMARY

Designated Development	The application is not designated development.
Integrated Development	<p>The application does not require additional approvals listed under s.4.46 of the EP&amp;A Act.</p> <p>The subject site is currently mapped as being bushfire prone land. When consent was granted under DA 16-2020-4-1 in December 2020, the site was not mapped bushfire prone land and therefore the application did not require integrated referral to the NSW Rural Fire Service under Section 100B of the Rural Fires Act 1997. The proposed modification does not propose any change to the number of sites or development footprint, therefore has not been referred to the RFS.</p>
Concurrence	The application does not require the concurrence of another body.

Referrals

The proposed modification was not required to be referred to internal specialist staff or external agencies.

## MODIFICATIONS INVOLVING MINIMAL ENVIRONMENTAL IMPACT – S4.55(1A)

S4.55(1A)(a) – Minimal Environmental Impact

The application does not propose any vegetation removal or increase to the approved development footprint. The number of sites and overall capacity of the approved campground will

Page 2 of 6

## MINUTES ORDINARY COUNCIL - 22 MARCH 2022

## ITEM 1 - ATTACHMENT 2 PLANNERS ASSESSMENT REPORT.

16-2020-4-2

remain unchanged. Accordingly, no detrimental environmental impacts are expected as a result of the proposed modification. On this basis, the proposed modification is considered of minimal environmental impact.

**S4.55(1A)(b) – Substantially The Same Development**

The development is not considered to be substantially the same development as originally approved, as the proposed modification seeks to allow for the use of caravans on the site, which in Council staff's view, will regularise a prohibited land use under the RU5 zone.

**S4.55(1A)(c) – Notification**

The application was notified in accordance with Councils Community Engagement Strategy from 30 November 2021 – 14 December 2021. One submission was received during this time.

**S4.55(1A)(d) – Submissions**

The matters raised in the submission objecting to the development are discussed in the table below:

Objection	Comments
<ul style="list-style-type: none"> <li>- Hinton is a small village and residents have invested in its rural location.</li> <li>- Flooding concerns and introduction of tourists and people who are not familiar with the area and associated flooding.</li> <li>- Traffic concerns noting that the intersection at Paterson Road and Old Punt Road does not have adequate visibility to cater for increased traffic.</li> <li>- Increase in population concern given Hinton relies on septic for sewerage management.</li> </ul>	<p>It is noted that the campground has already been approved. The application is for a modification, which seeks to delete Condition 7.9 of the consent to allow for caravans to utilise the campground. The number of sites and overall capacity of the approved campground will remain unchanged by the proposed modification. It is therefore considered that the proposed modification will not increase the number of tourists visiting the area, nor likely to increase traffic.</p> <p>In regard to sewage management, the original c included an upgrade to the sites existing on-site sewerage management system to cater for the additional demand from the approved camping ground. This upgrade is still required as per the original consent, with demand not likely to be further increased through the proposed modification.</p>

**S4.55(3) – S4.15(1) Assessment****s4.15(1)(a)(i) – The provisions of any EPI****Port Stephens Local Environment Plan 2013 (PSLEP2013)**

The site is zoned RU5 Village in accordance with the PSLEP 2013. Camping grounds are permissible with consent in this zone. Caravan parks are not specified in the RU5 land use table as being permitted with consent in the zone, and accordingly are considered to be a prohibited land use. On this basis, Condition 7.9 was placed on the original consent.

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## MINUTES ORDINARY COUNCIL - 22 MARCH 2022

## ITEM 1 - ATTACHMENT 2 PLANNERS ASSESSMENT REPORT.

16-2020-4-2

As noted above, the SEE for the application makes reference to legal advice obtained for a similar proposal, which suggested that caravans can be placed on campgrounds through the former provisions of Clause 7 of SEPP 21 (now Clause 130 of the Housing SEPP 2021).

Council staff do not support the applicant's interpretation of Clause 7 of SEPP 21. The decision in *Wygiren Pty Limited v Kiama Municipal Council* makes clear, Clause 7 of SEPP 21 "does not replace the definitions in other instruments" it simply ensures that all references to "camping ground" are taken to include caravan parks, as defined in SEPP 21. Clause 7 of SEPP 21 "does not replace the definitions in other instruments" it simply ensures that all references to "camping ground" are taken to include caravan parks, as defined in SEPP 21.

Thus, the effect to the reference to camping ground in the LEP definition of "camping ground" is simply to include caravan park as defined in SEPP 21. Accordingly, the "exclusion" in the LEP definition that a camping ground "does not include a caravan park", remains legally valid.

Due to the proposed inclusion of caravans as part of the application, the proposal could be characterised as a caravan park (which is not permissible in the zone). A caravan park use is defined by the LEP as land on which caravans and other moveable dwellings are installed or placed. If the development was characterised as a caravan park it could provide opportunities for longer term stays, including permanent installations of caravans and other moveable dwellings.

In light of this and to negate any opportunity for the site to be used for the purpose of a caravan park, Council recommend Condition 7.9 be upheld on the consent to prohibit caravans utilising the site.

Considering the above interpretation and that caravan parks are prohibited in the RU5 zone, the proposed modification is not supported by Council officers and is recommended to be refused by Council. The proposed modification is considered to be inconsistent with the provisions of the PSLEP 2013, specifically the RU5 Village Land Use table.

## s4.15(1)(a)(ii) – Any Draft EPI

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

## s4.15(1)(a)(iii) – Port Stephens Development Control Plan 2014

Chapter	Compliant	Notes (where needed or if not compliant)
B	<input checked="" type="checkbox"/> General Controls	
C	<input checked="" type="checkbox"/> Development Types	
D	<input checked="" type="checkbox"/> Specific Areas	

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## MINUTES ORDINARY COUNCIL - 22 MARCH 2022

## ITEM 1 - ATTACHMENT 2 PLANNERS ASSESSMENT REPORT.

16-2020-4-2

s4.15(1)(a)(iii) – Any planning agreement or draft planning agreement entered into under section 93F

	Notes (where needed)
<input checked="" type="checkbox"/> There are no planning agreements that have been entered into under section 7.4 relevant to the proposed development.	

s4.15(1)(a)(iv) – The regulations

	Notes (where needed)
<input checked="" type="checkbox"/> There are no matters within the regulations that are relevant to the determination of the application.	

s4.15(1)(b) – The likely impacts of the development

	Notes (where needed)
<input checked="" type="checkbox"/> Social and Economic Environment: There would be beneficial impacts as a result of the development.	The proposed modification will not likely result in any impacts in addition to those that were assessment as part of the original application. However, if caravans are permitted on the site, it could establish a legal pathway to enable long-term stays on the site, which would create adverse social impacts to neighbouring properties.
<input checked="" type="checkbox"/> Built Environment: The proposed development would not cause harm to the existing character.	There is no change to the built form, the proposal seeks to allow for caravans to be used within the approved camping ground.
<input checked="" type="checkbox"/> Natural Environment: There are no adverse impacts expected as a result of the proposed development and appropriate conditions have been added.	There will be no adverse impacts if the natural environment as a result of the proposed development as originally approved.

s4.15(1)(c) – The suitability of the site

The subject site is zoned RU5 Village in accordance with the PSLEP 2013. Camping grounds are permissible with consent in this zone as approved. However, caravan parks are not specified in the land use table as being permitted with or without consent in the zone and are therefore considered to be a prohibited land use. The proposed modification and use of caravans on the site is therefore not considered suitable for the site.

s4.15(1)(d) – Any submissions

There was one submission received relating to the proposed modification. This has been addressed above.

Page 5 of 6

**MINUTES ORDINARY COUNCIL - 22 MARCH 2022**

**ITEM 1 - ATTACHMENT 2 PLANNERS ASSESSMENT REPORT.**

16-2020-4-2

s4.15(1)(e) – The public interest

The proposed modification is not considered to be in the public interest as caravan parks are a prohibited use within the RU5 Village zoning.

**MODIFIED CONDITIONS**

Nil

**DETERMINATION**

The modification application is recommended to be refused by Council.

COURTNEY SARGENT

Senior Development Planner

Page 6 of 6

MINUTES ORDINARY COUNCIL - 22 MARCH 2022

ITEM 1 - ATTACHMENT 3 RECOMMENDED REASONS FOR REFUSAL.



RECOMMENDED REASONS FOR REFUSAL

Reasons for Refusal

1. The proposed modification would result in a prohibited land use on the site and is therefore inconsistent with the RU5 Village Land Use zone as per the Port Stephens Local Environmental Plan 2013.
2. The proposed modification is not considered to be in the public interest as the development would result in a prohibited use on the site (s.4.15(1)(e) of the EP&A Act).



PORT STEPHENS COUNCIL

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## MINUTES ORDINARY COUNCIL - 22 MARCH 2022

## ITEM 1 - ATTACHMENT 4 CALL TO COUNCIL FORM.

 <b>PORT STEPHENS COUNCIL</b> <b>CALL TO COUNCIL FORM DEVELOPMENT APPLICATION</b>	
<b>Development application (DA) call to Council request:</b> I/We (Mayor/Councillor/s) <u>Mayor Ryan Palmer, Cr Glen Dunkley, Cr Chris Doohan</u> request that DA number <u>16-2020-4-2</u> for DA description <u>Modification of Conditions of Consent to Camp Ground</u> located at <u>2 Paterson Street, Hinton</u> be reported to Council for determination.	
<b>Reason:</b> Public Interest	
<b>Declaration of Interest:</b> I/We have considered any pecuniary or non-pecuniary conflict of interest (including political donations) associated with this DA on my part or an associated person. I/We (Mayor/Councillor/s) _____ have a conflict of interest: <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes If <b>yes</b> , please provide the nature of the interest and reasons why further action should be taken to bring this DA to Council:	
<b>Signed:</b> Mayor Ryan Palmer - email received <small>Please sign or type name &amp; attached to an email.</small>	<b>Date:</b> <u>1/2/2022</u> <small>enter a date</small>
<b>Signed:</b> Cr Chris Doohan - email received <small>Please sign or forward supporting email.</small>	<b>Date:</b> <u>3/2/2022</u> <small>enter a date</small>
<b>Signed:</b> Cr Glen Dunkley - email received <small>Please sign or forward supporting email.</small>	<b>Date:</b> <u>3/2/2022</u> <small>enter a date</small>

**ITEM NO. 2**

**FILE NO: 22/83821  
EDRMS NO: 58-2018-25-1**

**PLANNING PROPOSAL FOR 70, 70A, 70B, 70C LATITUDE DRIVE AND 4473 NELSON BAY ROAD, ANNA BAY**

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

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Note the amendments to the planning proposal (**ATTACHMENT 2**) to permit 'caravan park' on Lots 2 & 4 DP 398888, Lot 2 DP 1204319, Lot 1 DP 1225542 and Lot 25 DP 852410 at 70, 70A, 70B, 70C Latitude Drive and 4473 Nelson Bay Road, Anna Bay and amend the Land Zoning Map – from RU2 Rural Landscape to part RU2 Rural Landscape and part C2 Environmental Conservation for Lot 25 DP 852410.
- 2) Receive and note the submissions (**ATTACHMENT 3**) received during the public exhibition of the planning proposal.
- 3) Authorise the exercise of delegations to make the amendment to the Port Stephens Local Environmental Plan 2013 under section 3.36 of the Environmental Planning and Assessment Act 1979 (NSW).

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**BACKGROUND**

At its meeting on 22 March 2022 (**ATTACHMENT 5**), Council resolved to defer the decision on this report to the next meeting of Council so that the Councillors could better understand how a future development application might address:

- Traffic impacts.
- Stormwater drainage.
- Caravan and boat storage.
- Adequacy of the Vegetation Management Plan.
- Koala fencing and dog control.
- Specific environmental and sustainability initiative for the site.

The above information was subsequently provided to Councillors by email.

As noted in the email and in the submissions table (**ATTACHMENT 3**) the matters raised can only be resolved at development application (DA) stage. Therefore, these DA related matters do not result in changes to the final planning proposal currently presented to Council.

The purpose of this report is to advise Council of the outcome of the exhibition of the planning proposal (**ATTACHMENT 2**) for 70, 70A, 70B and 70C Latitude Drive, and 4473 Nelson Bay Road, Anna Bay and note the submissions received (**ATTACHMENT 3**). The report also seeks authorisation to exercise delegations to make the amendments to the Port Stephens Local Environmental Plan 2013 (LEP) set out in this report. A locality plan is provided at (**ATTACHMENT 1**).

The planning proposal seeks to amend the LEP to regularise the approved caravan park located on part of the site, by adding 'caravan park' as an additional permitted use on these lots, to Schedule 1 of the LEP. The approved caravan park has 270 sites on which manufactured homes are currently located, or being installed and is operating as a seniors living lifestyle resort. The current zoning of the site is RU2 Rural Landscape which no longer permits this use and the development operates relying on existing use rights.

The planning proposal also seeks to facilitate the extension of this use to part of an adjoining parcel, Lot 25 DP852410, by extending the additional permitted use outlined above, over this lot. Subject to development consent and further approvals, an additional 170 manufactured homes could potentially be accommodated on Lot 25 DP852410. The planning proposal would also amend the Land Zoning Map from RU2 Rural Landscape to part RU2 Rural Landscape and part C2 Environmental Conservation for Lot 25 DP852410.

A summary of the planning proposal is set out below:

Date Lodged:	17 October 2018
Proponent:	Focus Town Planning on behalf of Ingenia Communities
Subject properties:	70 Latitude Drive, Anna Bay (Lot 2 DP 398888) 70A Latitude Drive, Anna Bay (Lot 4 DP 398888) 70B Latitude Drive, Anna Bay (Lot 2 DP 1204319) 70C Latitude Drive, Anna Bay (Lot 1 DP 1225542) and 4473 Nelson Bay Road, Anna Bay (Lot 25 DP 852410)
Site Area:	Total site area (all lots combined) is approximately 43ha, comprised of: Lot 2 DP 39888 approx. 10.3ha Lot 4 DP 39888 approx. 18.8ha Lot 1 DP 1225542 approx. 0.5ha Lot 2 DP 1204319 approx. 0.7ha Lot 25 DP 852410 approx. 13.2ha
Current Zoning:	RU2 Rural Landscape
Proposed Zoning	RU2 Rural Landscape and C2 Environmental Conservation and Schedule 1 additional permitted use 'caravan park'.

At its meeting on 26 November 2019 (**ATTACHMENT 4**), Council resolved to adopt the planning proposal and forward it to the Department of Planning, Industry and

Environment (DPIE) to seek a Gateway determination and delegated authority to make the plan.

In response to the Gateway determination subsequently issued on 11 May 2020, the planning proposal was updated to address a number of ministerial directions and SEPPs, including a review of ecological outcomes on the site. Through discussion with the Biodiversity Conservation Division, the proposal was amended to include land to be rezoned C2 Environmental Conservation.

The Gateway determination authorises Council to make the necessary amendments to the LEP to give effect to the planning proposal following public exhibition.

### **COMMUNITY STRATEGIC PLAN**

<b>Strategic Direction</b>	<b>Delivery Program 2018-2022</b>
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.

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

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

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

<b>Risk</b>	<b><a href="#">Risk Ranking</a></b>	<b>Proposed Treatments</b>	<b>Within Existing Resources?</b>
There is a risk that there is insufficient land available in the Anna Bay area for future housing to satisfy demand in the locality.	Low	Adopt the recommendations.	Yes

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

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

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

#### Hunter Regional Plan 2036 (HRP)

The planning proposal is generally consistent with the visions and goals of the HRP. The proposal will make efficient use of the land, as it provides housing choice (including for seniors) with easy access to a range of community facilities and services within a lifestyle village setting.

#### Port Stephens Local Environmental Plan 2013 (LEP)

The subject land is zoned RU2 Rural Landscape under the LEP, which does not permit caravan parks. The current development on the site was approved under the previous Port Stephens Local Environmental Plan 2000 and relies on existing use rights to operate.

The planning proposal would result in an addition to Schedule 1 Additional Permitted Uses to permit a caravan park on the subject land.

#### Anna Bay Strategy and Town Plan 2008

The subject land is not located within the Anna Bay town centre and therefore many of the key strategic directions outlined in the strategy are not relevant. The planning proposal is considered to support the vision established in the Strategy for Anna Bay as a small and vibrant town with a mix of retail and office space for local and visitor patronage. The proposed development will provide for additional residents within proximity of Anna Bay, resulting in patronage to the commercial uses within the town centre.

Port Stephens Local Strategic Planning Statement (LSPS)

The planning proposal is consistent with planning priorities 4 and 5 from the LSPS and will respond to the need for suitable land supply for housing and increase housing choice that suits the needs and lifestyle of current and future residents.

Live Port Stephens Local Housing Strategy (LHS)

The planning proposal is consistent with the LHS. It gives effect to the LHS as it meets the locational criteria of the LHS and provides additional housing supply in a suitable location with access to various town centres and adequate on site facilities.

**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:

- Additional housing choices in the Anna Bay area and the Port Stephens LGA
- Employment through construction and the long term employees within the lifestyle village
- Increased retail and service industry patronage for nearby town centres
- Efficient use of (private) community facilities and services provided at the existing approved caravan park.

Environmental

The land is partially developed for the purposes of an approved caravan park. Lot 25 DP 852410 is predominately vacant, comprising grassland and scattered vegetation towards the southern and eastern periphery. Sand extraction has previously occurred over part of lot 25, resulting in a heavily disturbed area.

The planning proposal seeks to rezone an environmentally sensitive part of Lot 25 DP 852410 from RU2 Rural Landscape to C2 Environmental Conservation. This will incentivise future opportunities to enhance faunal movements across the site and improve the vegetation found within this corridor.

**CONSULTATION**

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

Following issue of the Gateway determination, consultation was undertaken with Biodiversity Conservation Division. The planning proposal was updated as a result of this consultation, before being public exhibited.

Four submissions were received as a result of agency consultation. All agency concerns have been resolved and there are no objections to the planning proposal.

Eleven submissions were received during the public exhibition period. No further amendments have been made to the planning proposal as a result of these submissions.

All submissions are addressed in detail in **(ATTACHMENT 3)**.

#### Internal

Consultation with internal stakeholders was undertaken to assess the planning proposal, including with Asset Engineering Services, Development Planning, and Natural Systems units. No objections were raised and associated impacts can be addressed adequately at the development assessment stage.

#### External

The Gateway determination required Council to identify an environmental outcome in consultation with Biodiversity Conservation Division (BCD), the Central Coast and Hunter Team (DPIE), and Council. Various meetings and conversations were held with BCD about the rezoning of an environmentally sensitive part of Lot 25 DP 852410 from RU2 Rural Landscape to C2 Environmental Conservation. In addition, opportunities were identified (subject to a future development application) for a koala corridor, replanting of koala feed trees, and the development of a vegetation management plan supported by a legal mechanism.

As a result of consultation, the following changes were made to the proposed LEP provisions:

- Inclusion of the rezoning of Lot 25 DP 852410 from RU2 Rural Landscape to part RU2 Rural Landscape and part C2 Environmental Conservation
- Removal, on request of the proponent, of the initially proposed provision to enable a one-in-two lot subdivision of Lot 25 DP 852410.

Following the above amendments, the planning proposal was publicly exhibited in accordance with the Gateway determination from 19 November 2021 to 17 December 2021. During the public exhibition period, 11 submissions were received. The matters raised relate primarily to traffic safety and potential impact on koala habitat, however did not justify further amendment to the planning proposal. The matters raised in the submissions have been summarised and addressed in **(ATTACHMENT 3)**.

In addition, the following public authorities were consulted prior to and during public exhibition in accordance with the Gateway determination:

- Department of Planning, Industry and Environment (Biodiversity Conservation Division)

- Department of Planning, Industry and Environment (Geoscience Division)
- NSW Rural Fire Service
- Transport NSW
- Worimi Local Aboriginal Land Council.

No public authorities objected to the planning proposal. A summary of submissions and responses is provided at **(ATTACHMENT 3)**.

## **OPTIONS**

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

## **ATTACHMENTS**

- 1) Locality Plan. [↓](#)
- 2) Planning Proposal. (Provided under separate cover)
- 3) Submissions Summary and Response Table. [↓](#)
- 4) Council Minutes - 26 November 2019. [↓](#)
- 5) Council Minutes - 22 March 2022. (Provided under separate cover)

## **COUNCILLORS ROOM**

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

## **TABLED DOCUMENTS**

Nil.





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## ITEM 2 - ATTACHMENT 3 SUBMISSIONS SUMMARY AND RESPONSE TABLE.

## Planning Proposal for 70 Latitude Drive, Anna Bay – Response to Submissions

No.	Author of submission	Summary	Council response
1	Resident	The submission states that the current development is not a caravan park as the structures are permanent fixtures and therefore it is a housing estate.	<p>The Standard Instrument Local Environmental Plan definition of 'caravan park' includes land on which caravans and moveable dwellings are, or are to be, installed or placed.</p> <p>The existing Latitude One development has an approval for 'caravan park' for the land use and a separate approvals under the local government legislation for the installation of the moveable dwellings.</p>
		The submission raises concerns that future development will use Council services and infrastructure like roads and libraries, but not contribute fairly via Council rates.	<p>Clause 121 of the <i>Local Government (General) Regulation 2021</i> provides that land used for a caravan park or a manufactured home estate is to be categorised as business for rating purposes. The owner of the estate pays the business rate.</p> <p>Residents will only contribute to rates through the fees they pay the park operator. Council is not permitted to levy rates on each separate occupancy as they are not separately valued by the NSW Valuer General. The NSW Valuer General can only provide separate valuations based on occupancy where all services are separate and there are no shared facilities.</p> <p>In addition, any future installation of moveable dwellings as a result of the planning proposal will be subject to developer contributions for each dwelling</p>



ITEM 2 - ATTACHMENT 3  
TABLE.

## SUBMISSIONS SUMMARY AND RESPONSE

			<p>at the same value as a single dwelling on a single lot. This is in accordance with the Port Stephens Local Infrastructure Contributions Plan which came into effect on 1 January 2020.</p> <p>It should be noted that the current and future proposed development on the subject land provides for a range of on-site private facilities and services. This includes pools, library, community centre, parks, walking trails, and a dog exercise area.</p> <p>Internal roads, infrastructure, and resident facilities will be provided and maintained at the cost of the owner of the site which will reduce the reliance on Council provided facilities and services.</p>
		<p>The submission suggests that a roundabout at the intersection of 70 Latitude Drive and Nelson Bay Road would be required as a prerequisite for any expansion and should be paid for by the proponent.</p>	<p>A Traffic and Parking Assessment report was prepared for the planning proposal.</p> <p>Modelling shows that the likely additional traffic from the full development of the proposed expansion of the park will not have an adverse impact on the operation/capacity of the Nelson Bay Road/Latitude Drive T- intersection post development in 2021 and in 2031.</p> <p>Council's Traffic Engineer reviewed the planning proposal and the Traffic and Parking Assessment Report and has no objection to the planning proposal.</p> <p>Transport for NSW (TfNSW) reviewed the planning</p>

## ITEM 2 - ATTACHMENT 3 SUBMISSIONS SUMMARY AND RESPONSE TABLE.

			<p>proposal and the Traffic and Parking Assessment report and raises no objections to or requirements for the proposed development.</p> <p>TfNSW considers there will be no significant impact on the nearby classified (State) road network.</p>
2	Resident	<p>The submission requests consideration of road safety for all road users, including older drivers, when entering and exiting Latitude Drive from and onto Nelson Bay Road.</p> <p>Points of concern include:</p> <ul style="list-style-type: none"> <li>• safety of drivers, cyclists, and vehicles towing caravans, boats, and box trailers accessing Nelson Bay Road;</li> <li>• Peak hour times traffic congestion into and from Latitude Drive;</li> <li>• Holiday tourism traffic which impedes access and reduces safety;</li> <li>• Increased caution because of fears of collision causing vehicle build up to and from Latitude Drive;</li> <li>• The 90km speed limit on Nelson Bay Road being too high.</li> </ul>	<p>A Traffic and Parking Assessment Report was prepared for the planning proposal.</p> <p>Modelling shows that the likely additional traffic from the full development of the proposed expansion of the park will not have an adverse impact on the operation/capacity of the Nelson Bay Road/Latitude Drive T- intersection post development in 2021 and in 2031.</p> <p>Council's Traffic Engineer reviewed the planning proposal and the Traffic and Parking Assessment Report and has no objection to the planning proposal.</p> <p>Transport for NSW (TfNSW) reviewed the planning proposal and the Traffic and Parking Assessment report and raises no objections to or requirements for the proposed development.</p> <p>TfNSW considers there will be no significant impact on the nearby classified (State) road network.</p> <p>Council could consider approaching TfNSW to review the speed limit at Nelson Bay Road. However, this is not a</p>

## ITEM 2 - ATTACHMENT 3 SUBMISSIONS SUMMARY AND RESPONSE TABLE.

			requirement for the planning proposal, but can be done independently and at any time.
3	Resident	<p>The submission objects to the proposed extension of the Latitude One development as the present onsite community facilities are considered inadequate for the current number of residents. An increase of residents will exacerbate this situation.</p> <p>The submission includes suggestions to minimise the effects of the planning proposal on existing residents including:</p> <ul style="list-style-type: none"> <li>• That new dwellings are not permitted to be occupied until completion of the planned new resident facilities;</li> <li>• New facilities should be built closer to the existing facilities as they are centrally located.</li> </ul>	<p>Any future development application will need to meet the minimum requirements in concurrence with the <i>Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2021</i> (the Regulations). The Regulations set out requirements for community amenities:</p> <ul style="list-style-type: none"> <li>• A minimum of 10% of the total land area of a caravan park or camping ground must be reserved for recreation or other communal activities.</li> <li>• The council may allow a lower percentage, not less than 6% of the total land area of the caravan park or camping ground, to be reserved for recreation or other communal activities.</li> <li>• Before allowing a lower percentage, the council must consider (a) the type and range of amenities to be provided, and (b) other matters the council considers relevant.</li> </ul>
		<p>The submission requests a revision of the future traffic situation as access to Nelson Bay Road in both directions is considered dangerous because of high vehicle speed.</p>	<p>A Traffic and Parking Assessment Report was prepared for the planning proposal.</p> <p>Modelling shows that the likely additional traffic from the full development of the proposed expansion of the park will not have an adverse impact on the operation/capacity of the Nelson Bay Road/Latitude</p>

## ITEM 2 - ATTACHMENT 3 SUBMISSIONS SUMMARY AND RESPONSE TABLE.

			<p>Drive T- intersection post development in 2021 and in 2031.</p> <p>Council's Traffic Engineer reviewed the planning proposal and the Traffic and Parking Assessment report and has no objection to the planning proposal.</p> <p>Transport for NSW (TfNSW) reviewed the planning proposal and the Traffic and Parking Assessment report and raises no objections to or requirements for the proposed development.</p> <p>TfNSW considers there will be no significant impact on the nearby classified (State) road network.</p>
4	Resident	<p>The submission objects to the planning proposal.</p> <p>The submission notes that the current development is approved as a 'caravan park' with on-site manufactured homes (moveable dwellings) and is marketed as a housing estate.</p> <p>The submission is concerned that the land is subject to lower rural land rates compared to residential land rates paid by other residents. The submission acknowledges that the current planning framework for moveable dwellings within caravan parks is set by the NSW planning framework (and not Council) and leads to potential disadvantage to existing ratepayers.</p>	<p>The Standard Instrument Local Environmental Plan definition of 'caravan park' includes land on which caravans and moveable dwellings are, or are to be, installed or placed.</p> <p>The existing Latitude One development has an approval for 'caravan park' for the land use and a separate approvals under the local government legislation for the installation of the moveable dwellings.</p> <p>Council charges the owner of the estate business rates, based on the land value of the entire estate as determined by the NSW Valuer General.</p> <p>Any future installation of moveable dwellings as a result of the planning proposal will be subject to developer contributions for each dwelling</p>

# ITEM 2 - ATTACHMENT 3 SUBMISSIONS SUMMARY AND RESPONSE TABLE.

			<p>at the same value as a single dwelling on a residential lot, in accordance with the Port Stephens Development Contribution Plan 2014.</p> <p>The current and future proposed development on the subject land provides for a range of on-site private facilities and services. This includes pools, library, community centre, parks, walking trails, and a dog exercise area. This will reduce the reliance on Council provided facilities and services.</p> <p>Internal roads, infrastructure, and resident facilities will be provided and maintained at the cost of the owner of the site.</p>
5	Resident	<p>The submission raises concerns about stormwater potentially being discharged from the development site onto adjoining properties and into the main drain.</p> <p>The submission advises that adjoining properties do not currently receive stormwater discharge.</p>	<p>The proponent provided a Stormwater Strategy to demonstrate that stormwater from future development is able to be managed appropriately.</p> <p>At development application stage the proponent will need to provide sufficient detail to demonstrate if stormwater can be contained within the boundaries of the future development site.</p> <p>If this is not possible, detail is required at development application stage to demonstrate how any stormwater flows discharged from the development site shall not have a negative impact on surrounding land and/or that a legal point of discharge has been achieved.</p>

## ITEM 2 - ATTACHMENT 3 SUBMISSIONS SUMMARY AND RESPONSE TABLE.

			Alternatively, a deferred development application commencement condition may be imposed requiring an easement to be obtained.
		The submission expresses concerns about future maintenance of stormwater controls.	<p>The owner of the estate will be required to maintain all private infrastructure for the life of the development.</p> <p>If there were any infrastructure dedicated to Council as part of the future development, then Council will, as per standard process, be responsible for future maintenance of this infrastructure.</p> <p>Maintenance of stormwater controls can be secured through a concept operation &amp; maintenance plan, to be provided as part of a future development application.</p>
		The submission seeks more information about the proposed installation of sewer and water mains to the site.	Further information about the proposed installation of sewer and water mains will be addressed by the proponent and Hunter Water at development application stage when more detailed information is available.
		The submission states that the proposal will put more strain on already overwhelmed doctors and hospitals.	<p>The existing demand for health services is acknowledged.</p> <p>The planning proposal is likely to create demand for health services associated with population growth generally in the local area and Hunter region. Health services are established (and permitted with consent) in nearby centres and in the Hunter region generally.</p>
6	Anna Bay Drainage Union	The submission raises concerns that the Anna Bay Drainage Union was not contacted by the proponent in	Drainage matters will be addressed at the development application stage when more



## ITEM 2 - ATTACHMENT 3 SUBMISSIONS SUMMARY AND RESPONSE TABLE.

		respect to their drainage plans for this planning proposal.	<p>detailed information is available.</p> <p>The land is located within the catchment of the Anna Bay Drainage Union. Future development may need to contribute to the maintenance of the local drainage network, consistent with other existing development in the catchment area, in further consultation with the Anna Bay Drainage Union and Council.</p>
7	Resident	The submission objects to the planning proposal on a range of grounds.	Noted. Concerns are responded to in the below.
		<p>The submission raises concerns relating to traffic movements and the increased potential for accidents, including:</p> <ul style="list-style-type: none"> <li>• access and exit points between Latitude Drive and Nelson Bay Road</li> <li>• 90km speed limit on Nelson Bay Road</li> <li>• traffic increase over time</li> <li>• lack of slip lanes on Nelson Bay Road at the intersection with Latitude Drive</li> </ul>	<p>A Traffic and Parking Assessment Report was prepared for the planning proposal.</p> <p>Modelling shows that the likely additional traffic from the full development of the proposed expansion of the park will not have an adverse impact on the operation/capacity of the Nelson Bay Road/Latitude Drive T- intersection post development in 2021 and in 2031.</p> <p>Council's Traffic Engineer reviewed the planning proposal and the Traffic and Parking Assessment report and has no objection to the planning proposal.</p> <p>Transport for NSW (TfNSW) reviewed the planning proposal and the Traffic and Parking Assessment Report and raises no objections to or requirements for the proposed development.</p> <p>TfNSW considers there will be no significant impact on the</p>

## ITEM 2 - ATTACHMENT 3 SUBMISSIONS SUMMARY AND RESPONSE TABLE.

			<p>nearby classified (State) road network.</p> <p>Council could consider approaching TfNSW to review the speed limit at Nelson Bay Road. However, this is not a requirement for the planning proposal, but can be done independently and at any time.</p>
		The submission objects to the positioning of the boat and caravan storage as it is unsightly for this location and a distraction to motorists. The submission states that the plans do not allow for landscaping to screen the area from Nelson Bay Road.	Any future development application proposing boat and caravan storage will be assessed in accordance with local planning controls at the time of lodgement. This includes the potential need for screening the area from Nelson Bay Road.
		The submission states that it is unclear if the proposed expansion of Latitude One will affect other infrastructure in Port Stephens, especially waste water (sewerage) management, and overload of other services.	Hunter Water will advise if infrastructure upgrades are required at the development application stage.
		<p>The submission raises concerns regarding the potential impact of the planning proposal on koala habitat and refers to several points raised in the preliminary advice provided by the BCD, including:</p> <ul style="list-style-type: none"> <li>• Querying compliance with previous rehabilitation requirements.</li> <li>• Recommending a Biodiversity Stewardship Agreement in addition to the Vegetation Management Plan for the conservation zone.</li> <li>• Identifying the development will impact on preferred koala habitat mapped under the Port Stephens Comprehensive</li> </ul>	<p>The submission refers to superseded preliminary advice provided by Biodiversity and Conservation Division (BCD) on 14 September 2021.</p> <p>Since then, a Biodiversity Assessment Report was prepared by the proponent and considered by BCD as part of their assessment of the planning proposal (undertaken in December 2022).</p> <p>Refer to the response provided to the final submission 14 received from BCD.</p>

## ITEM 2 - ATTACHMENT 3 SUBMISSIONS SUMMARY AND RESPONSE TABLE.

		Koala Plan of Management.	
		The submission states that the public interest needs to be considered regarding a range of topics including submissions from residents and visitors and issues including alternative transport, community facilities, traffic safety and signage.	Community submissions raising a wide range of issues have been received and responded to in this submission summary table and the Council report. The matters raised have been considered in the recommendation to adopt the planning proposal.
8	Department of Planning, Industry and Environment - Crown Lands (as adjoining land owner)	The submission raises no objection to the planning proposal as no impact to Crown land has been identified.	Noted.
9	Koala Coalition Econetwork Port Stephens Inc. (KKEPS)	<p>The submission acknowledges the willingness of the proponent (Ingenia) to engage with local community, environment groups like KKEPS, and Council to seek 'win-win' outcomes.</p> <p>The submission states that several issues would need to be addressed and resolved before the planning proposal could be approved.</p>	Noted.
		<p>The submission seeks consideration of:</p> <ul style="list-style-type: none"> <li>• Safe crossing options at Nelson Bay Road for native wildlife including koalas.</li> <li>• Making the development 'wildlife friendly' including assurances that provision is made and kept for koalas to move through the site, including koala friendly fencing, koala feed trees, and the exclusion of dogs.</li> </ul>	<p>Measures to ensure the safety of koalas can be addressed at development application stage and may include:</p> <ul style="list-style-type: none"> <li>• Fencing and structures that only allow one way access for koalas (from east to west) from Nelson Bay Road.</li> <li>• Speed limits.</li> <li>• Traffic signs raising awareness of koalas.</li> <li>• Requirements for dogs to be kept on leash.</li> </ul>

## ITEM 2 - ATTACHMENT 3 SUBMISSIONS SUMMARY AND RESPONSE TABLE.

			A Vegetation Management Plan (VMP) will be required as a condition of consent for a future development application. A VMP can consider recommendations made in the submission.
		The submission supports the proposal for a vegetation management plan which includes re-planting to establish a corridor linking native wildlife habitat to the east and west of Lot 25.	Noted.
		The submission expresses concerns about future infrastructure needs (water and sewer) that may require additional clearing.	At this stage it is not known if and where additional infrastructure (water and sewer) may occur.  Hunter Water will advise if infrastructure upgrades are required at development application stage.
		The submission notes that the Vegetation Management Plan (VMP) required as a condition of approval for the 'borrow pit' (DA 2017-282 for Lot 25) has not been fully implemented, and that more vegetation may have been cleared from Lot 25 than was approved.	The VMP for the 'borrow pit' has not been implemented, but a requirement for an updated VMP can be a condition of any future DA.  A new VMP can be required to reflect the current proposed development, the inclusion of the C2 Environmental Conservation zone and the future koala corridor.  The landholder has advised that clearing activities were carried out by the landholder in accordance with the <i>Local Lands Service Act (2013)</i> .
		The submission notes preliminary advice from Biodiversity Conservation Division (BCD) dated 14 September 2021 and states that it would be premature for Council to approve the planning proposal until the proponent has prepared a	The submission refers to preliminary advice provided by BCD on 14 September 2021.  Since then, a Biodiversity Assessment Report has been prepared by the proponent and considered by BCD as part of their assessment of the

## ITEM 2 - ATTACHMENT 3 SUBMISSIONS SUMMARY AND RESPONSE TABLE.

		Biodiversity Assessment Report and recommendations from BCD have been received and any concerns satisfied.	<p>planning proposal (undertaken in December 2022).</p> <p>Refer to the response provided to the final submission 14 received from BCD.</p>
		<p>The submission supports the recommendation from the BCD that the koala corridor should be reinstated to be a complete functioning vegetation community with all vegetation structural layers and that it will need to be as wide as possible.</p> <p>The submission states that the proposed koala corridor is narrower than previously indicated and submits that wider corridors provide utility for their intended purpose.</p>	<p>The proposed koala corridor will provide a north-south and an east-west koala connection for koalas moving across Nelson Bay Road at this location.</p> <p>The planning proposal and supporting Biodiversity Assessment Report was prepared by the proponent and considered the existing vegetation, opportunities for revegetation, introducing a C2 Environmental Conservation Zone and the need for an Asset Protection Zone.</p> <p>The planning proposal and supporting documentation was referred to BCD for review. BCD have no objections to the planning proposal proceeding.</p> <p>Refer to the response provided to the final submission 14 received from BCD.</p>
		The submission states that the inclusion of the existing Vegetation Management Plan (VMP) prepared by Anderson (consultants) as part of the 'borrow pit' development application is confusing as the vegetation management areas identified in the Biodiversity Assessment Report prepared by MJD (consultants) are different.	<p>The planning proposal includes an older VMP which was prepared for a development application for the 'borrow pit' (DA 2017-282 for Lot 25 DA). It was a condition of the Gateway determination to include a copy of this VMP as an attachment to the planning proposal.</p> <p>A new VMP will be required as part of any future development application to better reflect the</p>

## ITEM 2 - ATTACHMENT 3 SUBMISSIONS SUMMARY AND RESPONSE TABLE.

			proposed future extension of the existing development over Lot 25, the inclusion of the new C2 Environmental Conservation zone, and proposed the koala corridor. This new VMP will replace the previous one.
		The submission states that a proposed Vegetation Management Area (VMA) close to Nelson Bay Road is dangerous as a high number of koalas is killed along Nelson Bay Road.	<p>The east-west koala corridor connection is proposed because there are records to indicate that koalas move across Nelson Bay Road at this location.</p> <p>It is acknowledged that road strike is a serious threat to koalas. Therefore, measures to establish this part of the corridor as a one-way crossing (to accept koalas from the east only) will be considered further at DA stage. The one-way crossing seeks to prevent koalas crossing Nelson Bay Road from Lot 25.</p>
		<p>The submission states that the location of Swamp Sclerophyll Forest EEC on Lot 25 appears different in the Vegetation Management Plan (VMP) from 2017 compared to the Biodiversity Assessment report for this planning proposal (MJD 2021).</p> <p>The submission seeks for the proposal to have greater consistency with the original VMP and to include the Vegetation Management Areas (VMA) 1 and 2 (currently identified as potential caravan storage area on the draft concept layout plan) as part of the future VMP area to strengthen the koala corridor.</p>	<p>The previous VMP prepared by Anderson Environmental (consultants) did not provide detailed vegetation mapping of the VMA in the 2017 Ecological Assessment or the VMP prepared for the 'borrow pit' development application.</p> <p>The latest vegetation mapping prepared by MJD (2020) to support this planning proposal is considered an accurate representation of the vegetation currently on site.</p> <p>The VMA identified in the 2017 Anderson VMP reflects vegetation condition classes (i.e. vegetation structure and level of weed infestation). They provide a guide for management and should not</p>

## ITEM 2 - ATTACHMENT 3 SUBMISSIONS SUMMARY AND RESPONSE TABLE.

			<p>be considered representative of vegetation mapping.</p> <p>A new VMP will be required as part of any future development application to better reflect the proposed future extension of the existing development over Lot 25, the inclusion of the new C2 Environmental Conservation zone, and proposed the koala corridor. This new VMP will replace the previous one.</p>
		<p>The submission raises concerns about the location of a caravan and boat storage area in the south east corner of Lot 25 as it will be visible from Nelson Bay Road and reduces the vegetation management area.</p>	<p>Any future development application proposing a boat and caravan storage will be assessed against planning provisions in force at the time of lodgement. This includes consideration of the potential need for screening the area from Nelson Bay Road and the requirement for a vegetation management plan, including the vegetation management area.</p>
		<p>The submission states that the Biodiversity Assessment Report for the planning proposal mentions the presence of koala scats on Lot 25, but does not provide the exact locations. The submission states that without a map of these locations it is not possible to see if koala scats have been found in the area indicated to provide storage space for caravans and boats.</p>	<p>The recorded presence of koala scat provides evidence that koalas are utilising habitat on site. All habitat on site has been considered as habitat for koalas. The exact location of the scat would not influence the assessment of the planning proposal.</p>
		<p>The submission raises concerns about traffic matters including:</p> <ul style="list-style-type: none"> <li>Road deaths to any wildlife trying to cross Nelson Bay Road.</li> </ul>	<p>A Traffic and Parking Assessment Report was prepared for the planning proposal.</p> <p>Modelling shows that the likely additional traffic from the full development of the proposed expansion of the park will not</p>

## ITEM 2 - ATTACHMENT 3 SUBMISSIONS SUMMARY AND RESPONSE TABLE.

		<ul style="list-style-type: none"> <li>• Safety concerns for residents entering and leaving the precinct.</li> <li>• The need for a more comprehensive traffic survey.</li> <li>• The need to reduce the maximum speed on Latitude Drive.</li> </ul>	<p>have an adverse impact on the operation/capacity of the Nelson Bay Road/Latitude Drive T- intersection post development in 2021 and in 2031.</p> <p>Council's Traffic Engineer reviewed the planning proposal and the Traffic and Parking Assessment Report and has no objection to the planning proposal.</p> <p>Transport for NSW (TfNSW) reviewed the planning proposal and the Traffic and Parking Assessment report and raises no objections to or requirements for the proposed development.</p> <p>TfNSW considers there will be no significant impact on the nearby classified (State) road network.</p> <p>Council could consider approaching TfNSW to review the speed limit at Latitude Drive for the public part of the road. The road owner can implement speed limits for the private portion of Latitude Drive. However, this is not a requirement for the planning proposal, and can be done independently and at any time.</p>
10	Tomaree Ratepayers & Residents Association (TRRA)	<p>The submission acknowledges that the Latitude One development and other similar land-lease communities are filling a gap in the housing market in Port Stephens and meeting a demand.</p> <p>The submission does not accept that the proposed expansion of the development is in the public interest unless</p>	<p>Noted.</p>



## ITEM 2 - ATTACHMENT 3 SUBMISSIONS SUMMARY AND RESPONSE TABLE.

		and until several outstanding issues are resolved.	
		The submission states that feedback should be obtained from existing residents of Latitude One and a summary of the feedback included in the report to Council on the planning proposal.	<p>At the time of community consultation (19 November – 17 December 2021), the requirements for public exhibition were set out in Local Environmental Plans – A guide to preparing local environmental plans 2018 (DPIE).</p> <p>The guide requires that public exhibition of the planning proposal is generally undertaken in the following manner:</p> <ul style="list-style-type: none"> <li>• notification in a newspaper that circulates in the area affected by the planning proposal</li> <li>• notification on the website of the planning proposal authority</li> <li>• notification in writing to affected and adjoining landowners, unless the planning authority is of the opinion that the number of landowners makes it impractical to notify them.</li> </ul> <p>Public exhibition for the planning proposal was undertaken in accordance with these requirements.</p> <p>The submissions received are responded to in this submissions table.</p>
		<p>The submission supports the proposed rezoning of part of Lot 25 to C2 Environmental Conservation.</p> <p>The submission also supports the preparation of a Vegetation Management Plan (VMP) and potentially linking native wildlife habitat to the east and west of Lot 25.</p>	Noted.

## ITEM 2 - ATTACHMENT 3 SUBMISSIONS SUMMARY AND RESPONSE TABLE.

		The submission supports adding a permitted use to the RU2 Rural Landscape zone for this site only. This option is preferred to a residential zone which could allow for uses like local shops which could undermine the viability of nearby centres	Noted.
		<p>The submission seeks the preliminary comments made by Biodiversity and Conservation Division (BCD) of DPIE on the Vegetation Management Plan (VMP) to be addressed in an updated version.</p> <p>A biodiversity stewardship agreement should be required in addition to the VMP for the proposed C2 Environmental Conservation zone.</p>	<p>The submission refers to superseded preliminary advice provided by Biodiversity and Conservation Division (BCD) on 14 September 2021.</p> <p>Since then, a Biodiversity Assessment Report was prepared by the proponent and considered by BCD as part of their assessment of the planning proposal (undertaken in December 2022).</p> <p>Refer to the response provided to the final submission 14 received from BCD.</p>
		The submission requests that a safe wildlife crossing option for Latitude Drive should be required and implemented at the expense of the developer.	It is acknowledged that road strike is a serious threat to koalas. Therefore, measures to establish safe wildlife crossings will be considered further at DA stage.
		<p>The submission requests consideration of a safe wildlife crossing of Nelson Bay Road to the northeast of the Latitude Drive junction.</p> <p>This requires an appropriate contribution by the developer to the cost, and integration with the required road safety improvements to the junction.</p>	<p>The land to the northeast of Latitude Drive is not owned by the proponent. Therefore, this proposed wildlife crossing is unlikely to be feasible.</p> <p>Detailed measures for the koala corridors will be considered at development application stage.</p>
		The submission requests Council require discussions between the proponent and volunteer koala care and protection groups about arrangements for fencing,	Volunteer koala care and protection groups are encouraged to engage with the project throughout the submissions process for

## ITEM 2 - ATTACHMENT 3 SUBMISSIONS SUMMARY AND RESPONSE TABLE.

		planting and control of domestic animals within the Latitude One development, and protection of native wildlife in the proposed C2 Environmental Conservation zone and vegetation management area.	planning proposals and development applications.
		The submission requests Council require the caravan and boat storage area to be relocated to the north or west of the C2 Environmental Conservation zone, and that zone extended to include the southeast corner of Lot 25.	This is not a matter that can be addressed in the planning proposal. Any future development application proposing relocation of boat and caravan storage will be assessed against planning provisions in force at the time of lodgement.
		The submission requests that the provision of some specific additional community facilities for residents are 'locked in' to the approval of the planning proposal, with details of the facilities to be agreed with the Latitude One Residents Committee.	<p>Additional facilities are not required to be determined with the planning proposal.</p> <p>Any future development application will need to meet the minimum requirements in concurrence with the <i>Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2021</i> (the Regulations). The Regulations set out requirements for community amenities:</p> <ul style="list-style-type: none"> <li>• A minimum of 10% of the total land area of a caravan park or camping ground must be reserved for recreation or other communal activities.</li> <li>• The council may allow a lower percentage, not less than 6% of the total land area of the caravan park or camping ground, to be reserved for recreation or other communal activities.</li> </ul>

## ITEM 2 - ATTACHMENT 3 SUBMISSIONS SUMMARY AND RESPONSE TABLE.

			<ul style="list-style-type: none"> <li>Before allowing a lower percentage, the council must consider (a) the type and range of amenities to be provided, and (b) other matters the council considers relevant.</li> </ul>
		<p>The submission request a more comprehensive traffic survey as a basis both for technical assessment against the RTA/RMS guidelines and for a separate 'common sense' appraisal of the actual situation on the ground at this location.</p> <p>The submission requests improvements to the junction of Latitude Drive and Nelson Bay Road to prevent increased risk of serious accidents.</p> <p>The submission requests consideration by TfNSW for installation of a roundabout, or at least to a physically protected centre lane in Nelson Bay Road for vehicles turning right out of Latitude Drive.</p> <p>The submission requests that intersection-improvements should be made a condition of confirmation of the planning proposal.</p>	<p>A Traffic and Parking Assessment Report was prepared for the planning proposal.</p> <p>The Traffic and Parking Assessment Report for this the planning proposal was prepared with reference to the RTA's Guide to Traffic Generating Developments, Austroads Guide to Road Design (2019), and the Austroads Guide to Traffic Management (2020).</p> <p>Reference is also made to the Port Stephens Council Development Control Plan 2014 and the <i>Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2021</i>, and information provided by ADW Johnson Pty Ltd (consultants).</p> <p>Modelling shows that the likely additional traffic from the full development of the proposed expansion of the park will not have an adverse impact on the operation/capacity of the Nelson Bay Road/Latitude Drive T- intersection post development in 2021 and in 2031.</p> <p>Council's Traffic Engineer reviewed the planning proposal and the Traffic and Parking Assessment report</p>

## ITEM 2 - ATTACHMENT 3 SUBMISSIONS SUMMARY AND RESPONSE TABLE.

			<p>and has no objection to the planning proposal.</p> <p>Transport for NSW (TfNSW) reviewed the planning proposal and the Traffic and Parking Assessment Report and raises no objections to or requirements for the proposed development.</p> <p>TfNSW considers there will be no significant impact on the nearby classified (State) road network.</p>
		The submission requests that Council and/or Transport for NSW/RMS should implement a low speed limit on the public part of Latitude Drive.	<p>Council could consider approaching TfNSW to review the speed limit at Latitude Drive for the public part of the road. The road owner can implement speed limits for the private portion of Latitude Drive. However, this is not a requirement for the planning proposal, and can be done independently and at any time.</p>
		The submission states that the developer should be required to fund at least the 'marking' of a shared path (and street lighting) along Latitude Drive, including the 400m stretch for which Council is responsible.	<p>This is not a matter that can be addressed in a planning proposal.</p> <p>In addition, the current road width is approximately 6m. This is not wide enough to allow for any additional marked lanes, while maintaining 2-way travel.</p> <p>Austroroads suggests that on local streets with low volumes, it is usually not necessary to make special provision for cyclists as the lower speed of motor traffic should enable cyclists to safely share the road with other users. Consideration of reducing speed limits has been addressed in the above.</p>

# ITEM 2 - ATTACHMENT 3 SUBMISSIONS SUMMARY AND RESPONSE TABLE.

		The submission states that any concerns Hunter Water has about the proposal should be addressed, with the cost of any further works required to be met as a condition on the developer.	<p>This is not a matter that can be addressed in a planning proposal.</p> <p>Hunter Water will advise if infrastructure upgrades are required at development application stage.</p>
		The submission states that written consent for the establishment of an easement across Lot 27 for stormwater be established prior to the planning proposal being confirmed, and provisions included to ensure any clearing of native vegetation on this easement is minimised.	<p>The proponent provided a Stormwater Strategy to demonstrate that stormwater from future development is able to be managed appropriately.</p> <p>At development application stage the proponent will need to provide sufficient detail to demonstrate if stormwater can be contained within the boundaries of the future development site.</p> <p>If this is not possible, detail is required at development application stage to demonstrate how any stormwater flows discharged from the development site shall not have a negative impact on surrounding land and/or that a legal point of discharge has been achieved.</p> <p>Alternatively, a deferred development application commencement condition may be imposed requiring an easement to be obtained.</p>
11	Resident	The submission objects to the planning proposal because of potential impact on preferred koala habitat. The submission makes reference to the preliminary advice provided by BCD.	The planning proposal aims to protect and enhance koala habitat with the introduction of a C2 Environmental Conservation zone and the future revegetation with koala feed trees on part of the site, and ongoing management and protection through a future vegetation management plan

# ITEM 2 - ATTACHMENT 3 SUBMISSIONS SUMMARY AND RESPONSE TABLE.

			<p>The submission refers to superseded preliminary advice provided by Biodiversity and Conservation Division (BCD) on 14 September 2021.</p> <p>Since then, a Biodiversity Assessment Report was prepared by the proponent and considered by BCD as part of their assessment of the planning proposal (undertaken in December 2022).</p> <p>Refer to the response provided to the final submission 14 received from BCD.</p>
		<p>The submission raises concerns about the safety of the intersection between Latitude Drive and Nelson Bay Road.</p>	<p>A Traffic and Parking Assessment Report was prepared for the planning proposal.</p> <p>Modelling shows that the likely additional traffic from the full development of the proposed expansion of the park will not have an adverse impact on the operation/capacity of the Nelson Bay Road/Latitude Drive T- intersection post development in 2021 and in 2031.</p> <p>Council's Traffic Engineer reviewed the planning proposal and the Traffic and Parking Assessment report and has no objection to the planning proposal.</p> <p>Transport for NSW (TfNSW) reviewed the planning proposal and the Traffic and Parking Assessment Report and raises no objections to or requirements for the proposed development.</p>

## ITEM 2 - ATTACHMENT 3 SUBMISSIONS SUMMARY AND RESPONSE TABLE.

			TfNSW considers there will be no significant impact on the nearby classified (State) road network.
12	Transport for NSW (TfNSW)	The submission states that TfNSW raises no objections to or requirements for the proposed development as it is considered there will be no significant impact on the nearby classified (State) road network.	Noted.
		The submission advises that Council should consult with the local bus company about the potential to service the development through Latitude Drive. This arrangement may complement the current minibus service for the residents.	Council may consider consulting with a local bus company about the opportunity to provide a bus service to Latitude Drive.  This is not a matter for the planning proposal and can be actioned independently and at any time.
13	Department of Regional NSW – Mining, Exploration & Geoscience (MEG) – Geological Survey of NSW (GSNSW)	The submission advises that GSNSW have no resource sterilisation issues for consideration under section 9.1 of the Environmental Planning and Assessment Act 1979, Ministerial Direction 1.3 Mining, Petroleum Production and Extractive Industries.	Noted.
14	Department of Planning, Industry and Environment – Biodiversity and Conservation Division (BCD)	The submission supersedes the preliminary advice from 14 September 2021 and does not provide objections to the planning proposal.  The submission makes 3 recommendations and BCD understands that these will be addressed at the development application stage, following determination of the planning proposal.	Noted.
		The submission recommends for Council to consider whether the proposal will	Any future development application will be required to consider this matter.



## ITEM 2 - ATTACHMENT 3 SUBMISSIONS SUMMARY AND RESPONSE TABLE.

		<p>cause 'prescribed impacts' which trigger entry into the Biodiversity Offset Scheme.</p> <p>The <i>Biodiversity Conservation Regulation 2017</i>, Part 6 section 6.1 outlines 'prescribed impacts' including possible vehicle strike, or impacts on the connectivity between different areas of habitat of threatened species that facilitates the movement of those species across their range', or changes to the hydrology of the area.</p>	
		<p>The submission recommends a review of the Test of Significance (ToS) included in the Biodiversity Assessment Report.</p> <p>Information on each species/entity is to be provided in accordance with the ToS guidelines and may some species may require their own individual ToS.</p>	<p>Council agrees that the format of the Test of Significance (ToS) does not follow standard best practice, but is sufficient for the purposes of this planning proposal.</p> <p>Any future development application will be required to consider this matter.</p>
		<p>The submission recommends that a suitable mechanism is provided to ensure the biodiversity values of the koala corridor are protected into the future.</p> <p>BCD recommends a new Vegetation Management Plan with a legal mechanism attached to it. Alternatively, the proponent could investigate whether they could enter into a Biodiversity Stewardship Agreement.</p>	<p>Any future development application will be required to consider this matter.</p>
15	NSW Rural Fire Service	<p>The submission has no objection to the planning proposal.</p> <p>The submission provides recommendations for additional provisions to be</p>	Noted.

## ITEM 2 - ATTACHMENT 3 SUBMISSIONS SUMMARY AND RESPONSE TABLE.

		made at development application stage.	
		The submission recommends that any future additional areas, outside of Lot 25, proposed to be rezoned to C2 Environmental Conservation need to be assessed against the requirements for bush fire protection measures.	<p>The C2 Environmental Conservation zone over Lot 25, as identified in the planning proposal, has been considered against the requirements of the Planning for Bush Fire Protection 2019. No issues have been identified.</p> <p>No land outside of Lot 25 is proposed to be rezoned to C2 Environmental Conservation as part of this planning proposal.</p> <p>It is acknowledged that land outside of Lot 25 would require further assessment and consideration through a separate rezoning process.</p>
		The submission recommends to consider the internal road design and best traffic movement for emergency service vehicles at development application stage.	A final layout plan and internal road designs will be required and prepared for a future development application. Traffic movement for emergency service vehicles can be assessed at that stage.
		The submission recommends a review of traffic volumes onto Latitude Drive, taking into account emergency vehicle access. This matter can be considered at development application stage.	<p>TfNSW have reviewed the planning proposal and the traffic assessment and do not object to the planning proposal.</p> <p>A future development application will take into account the recommendations from NSW RFS.</p>
		The submission recommends the provision of a traffic-able defensible space for firefighters at the unmanaged hazard interface with the proposed future development. This matter can be addressed at development application stage.	A final layout design plan will be prepared at development application stage and consider the recommendations from NSW RFS.

## ITEM 2 - ATTACHMENT 3 SUBMISSIONS SUMMARY AND RESPONSE TABLE.

16	Worimi Local Aboriginal Land Council	No submission was received.	<p>Worimi Local Aboriginal Land Council was invited to comment on the planning proposal, however no submission was received.</p> <p>Consultation with Worimi Local Aboriginal Land Council was undertaken during the preparation of the Aboriginal Cultural Heritage Assessment for this planning proposal.</p>
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**MINUTES ORDINARY COUNCIL - 26 NOVEMBER 2019**

ITEM NO. 2

FILE NO: 19/324404  
EDRMS NO: 58-2018-25-1**PLANNING PROPOSAL FOR 70, 70A, 70B, 70C LATITUDE DRIVE AND 4473 NELSON BAY ROAD, ANNA BAY**REPORT OF: STEVEN PEART - STRATEGY & ENVIRONMENT SECTION  
MANAGER

GROUP: DEVELOPMENT SERVICES

**RECOMMENDATION IS THAT COUNCIL:**

- 1) Adopt the Planning Proposal (**ATTACHMENT 3**) to amend the Port Stephens Local Environmental Plan 2013 to:
  - a. Regularise the existing approved use of land at Lots 2 & 4 DP 398888, Lot 2 DP 1204319, Lot 1 DP 1225542 at 70, 70A, 70B and 70C Latitude Drive (known as the 'Latitude One Lifestyle Resort').
  - b. Enable the extension of the existing use to adjoining land at Lot 25 DP852410 at 4473 Nelson Bay Road (subject to development consent); and
  - c. Facilitate future subdivision of Lot 25 DP852410 at 4473 Nelson Bay Road, Anna Bay into 2 lots.
- 2) Forward the Planning Proposal to the NSW Department of Planning, Industry and Environment for a Gateway Determination and request authority to make the plan.

**ORDINARY COUNCIL MEETING - 26 NOVEMBER 2019  
MOTION**

<b>224</b>	<b>Councillor John Nell</b> <b>Councillor Chris Doohan</b>  It was resolved that Council:  <ol style="list-style-type: none"><li>1) Adopt the Planning Proposal (<b>ATTACHMENT 3</b>) to amend the Port Stephens Local Environmental Plan 2013 to:<ol style="list-style-type: none"><li>a. Regularise the existing approved use of land at Lots 2 &amp; 4 DP 398888, Lot 2 DP 1204319, Lot 1 DP 1225542 at 70, 70A, 70B and 70C Latitude Drive (known as the 'Latitude One Lifestyle Resort').</li><li>b. Enable the extension of the existing use to adjoining land at Lot 25 DP852410 at 4473 Nelson Bay Road (subject to development consent); and</li><li>c. Facilitate future subdivision of Lot 25 DP852410 at 4473 Nelson Bay Road, Anna Bay into 2 lots.</li></ol></li></ol>
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**MINUTES ORDINARY COUNCIL - 26 NOVEMBER 2019**

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|  | 2) Forward the Planning Proposal to the NSW Department of Planning, Industry and Environment for a Gateway Determination and request authority to make the plan. |
|--|--|

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 Chris Doohan, Ken Jordan, Paul Le Mottee, John Nell and Steve Tucker.

Those against the Motion: Nil.

**BACKGROUND**

The purpose of this report is to recommend that Council adopt a Planning Proposal (**ATTACHMENT 3**) to amend the Port Stephens Local Environmental Plan 2013 (PSLEP 2013) to regularise the existing approved use of land at 70, 70A, 70B and 70C Latitude Drive, enable the extension of that use to adjoining land at 4473 Nelson Bay Road, and to facilitate the future subdivision of the adjoining land.

A locality map of the land the subject of the Planning Proposal is available at (**ATTACHMENT 1**) and a Strategic Planning Assessment Report (SPAR) for this Planning Proposal is available at (**ATTACHMENT 2**).

The Planning Proposal will regularise the approved existing use on the part of the site where an approved caravan park is located. The approved caravan park has 270 sites on which manufactured homes are currently located, or being installed and it is currently operating as a seniors living lifestyle resort. The current zoning of the site no longer permits this use and the development operates relying on existing use rights.

The Planning Proposal seeks to facilitate the extension of this use to part of an adjoining parcel, Lot 25 DP852410. Subject to development consent and further approvals, an additional 170 manufactured homes could potentially be accommodated on Lot 25 DP852410.

On 12 March 2019, Council resolved to prepare a planning proposal to amend the PSLEP 2013 to better plan for manufactured homes and caravan parks (Minute Number 045). That resolution responded to recent case law that potentially broadened the scope of the permissibility of this type of development. The Planning Proposal is not inconsistent with this resolution given the existing approved use of land. The Planning Proposal will facilitate the extension of this approved use and does not rely on the recent case law to enable the permissibility of manufactured homes on the site.

**MINUTES ORDINARY COUNCIL - 26 NOVEMBER 2019**

The Planning Proposal will also facilitate the future subdivision of Lot 25 DP852410, enabling the part of the lot fronting Nelson Bay Road that is that not proposed to be used for the caravan park, to be excised.

Any expansion of the existing caravan park and future subdivision would be subject to future applications and assessment.

Should Council resolve to adopt the Planning Proposal, it will be forwarded to the NSW Department of Planning, Industry & Environment (DPIE) for a Gateway determination.

A summary of the Planning Proposal and property details are provided below.

Date Lodged:	17 October 2018
Proponent:	Ingenia Communities C/- ADW Johnson
Subject Site:	Lots 2 and 4 DP 39888; Lot 1 DP 1225542; Lot 2 DP 1204319; Lot 25 DP 852410
Total Area:	Total site area (all lots combined) is approximately 43ha, comprised of: Lot 2 DP 39888 approx. 10.3ha Lot 4 DP 39888 approx. 18.8ha Lot 1 DP 1225542 approx. 0.5ha Lot 2 DP 1204319 approx. 0.7ha Lot 25 DP 852410 approx. 13.2ha
Current Use:	Approved development on Lots 2 and 4 DP 39888; Lot 2 DP 1204319 and Lot 1 DP 1225542 consists of a caravan park with 270 sites, on which manufactured homes have been installed. This development was approved under a historic zoning and currently operates relying on existing use rights. Lot 25 DP 852410 is not included in the land subject to the caravan park approval. A single dwelling house is currently located on this lot.
Intended Use:	The purpose of the Planning Proposal is to regularise the existing approved use of Lots 2 and 4 DP 39888; Lot 2 DP 1204319 and Lot 1 DP 1225542 and to facilitate the future extension of that use to the adjoining Lot 25 DP 852410. The Planning Proposal also seeks to enable the future subdivision of Lot 25 DP 852410 which currently contains a dwelling fronting Nelson Bay Road.
Current Zoning:	RU2 Rural Landscape
Current Minimum Lot Size:	The minimum lot size that currently applies to all of the site is 20ha.

**MINUTES ORDINARY COUNCIL - 26 NOVEMBER 2019**

Proposed amendment to PSLEP 2013:	<p>The PSLEP 2013 will be amended to regularise the existing, approved use of Lots 2 and 4 DP 398888; Lot 2 DP 1204319 and Lot 1 DP 1225542 and to facilitate the future extension of that use to the adjoining Lot 25 DP 852410.</p> <p>The amendments will also enable the future subdivision of Lot 25 DP 852410 so as to permit a minimum lot of approximately 8,000m<sup>2</sup> to be created fronting Nelson Bay Road.</p> <p>The necessary amendments to the PSLEP 2013 to achieve these outcomes will be identified in consultation with DPIE, should a Gateway determination be issued.</p>
Residential Lot Yield:	<p>Lot 25 DP 852410 is proposed to create 1 additional lot with capacity for approximately 170 sites on which manufactured homes could be installed.</p>

Development Application (DA16-2009-257)

On 13 July 2010, Council approved a development application (DA16-2009-257-1) for a caravan park on the land now known as 70, 70A, 70B and 70C Latitude Drive, Anna Bay. At that time the land was zoned 1(a) Rural Agriculture zone and caravan parks were permissible with consent (under the Port Stephens Local Environmental Plan 2000).

The Local Government Act 1993 and Local Government (Manufactured Homes Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005 permits the installation of moveable dwellings in approved caravan parks, including manufactured homes, without further Council approval. The consent has been modified over time and the site currently has 270 caravan sites on which manufactured homes are being installed.

The PSLEP 2013 zoned the land RU2 Rural Landscape zone, which does not permit caravan parks. The development on the site relies on the existing consent to operate.

Suitability of the site

The subject land is considered suitable for the proposed future use given that part of the land is already utilised for this use. The residual land (Lot 25 DP 852410) that will accommodate an extension of the caravan park (subject to development consent) is relatively unconstrained and, based on preliminary investigations, it is considered that constraints relating to ecology, acid sulphate soils, and flood prone land can be resolved should the Planning Proposal receive a Gateway determination to proceed.

This site can be distinguished from typical residential developments as it can provide a wide range of community facilities and services for future residents due to an existing development on a neighbouring lot. These include a community bus service, a club house (including hall, sports lounge, cinema, craft room, library, salon, indoor pool, spa, sauna, gym and café/hall), outdoor swimming pool, lawn bowls facility, croquet area, pocket parks, off leash dog exercise area, and walking areas.

**MINUTES ORDINARY COUNCIL - 26 NOVEMBER 2019**

The site also offers opportunity to contribute to the targets and directions set by the Greater Newcastle Metropolitan Plan 2036 (GNMP) for new residential development in Port Stephens. The GNMP projects 11,050 new dwellings for Port Stephens by 2036. To support a changing population and dwelling needs, the GNMP sets a 60% target for new dwellings in the existing urban areas (infill) by 2036. The Plan also highlights the need for more variety of housing types and densities, and the provision of access to transport and community services and facilities for local communities.

The Planning Proposal will also respond to the need for increased variety of housing types and densities as identified by the GNMP. More specifically, the subject site provides opportunity for a particular type of medium density infill development which includes access to (bus) transport, and a wide range of community services and facilities. The Planning Proposal will also facilitate dwelling types that are suitable for seniors and will contribute to the housing choices available in the area.

The subject site is considered suitable for the outcomes of the Planning Proposal based on the land being relatively unconstrained, the availability and quality of community facilities and services, and the provision of an existing community bus service which connects the site with nearby town centres.

**Servicing**

Significant public infrastructure works, including a new access road to the subject land and upgrade of the Nelson Bay Road and Latitude Drive intersection, has been carried out as part of the current development consent. Consultation with service providers will be undertaken should the Planning Proposal receive a Gateway determination to proceed.

**Contamination**

Previous assessment of contamination in the vicinity undertaken as part of the development application process for the existing consent indicates that there is potential for contamination due to historic sand mining activities. Further assessment of the potential for contamination will be undertaken should the Planning Proposal receive a Gateway determination to proceed.

**COMMUNITY STRATEGIC PLAN**

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

**FINANCIAL/RESOURCE IMPLICATIONS**

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



## MINUTES ORDINARY COUNCIL - 26 NOVEMBER 2019

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes		Stage 1 fees of \$11,200 (incl. GST)
Reserve Funds	No		
Developer Contributions (\$7.11)	No		
External Grants	No		
Other	No		

## LEGAL, POLICY AND RISK IMPLICATIONS

There are no foreseen legal, policy or risk implications for Council as a result of the recommendation of this report.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that the DPIE will refuse the Planning Proposal at Gateway.	Low	Adopt the recommendations of this Report.	Yes
There is a risk that the Planning Proposal will result in outcomes inconsistent with the Port Stephens Planning Strategy 2011 (PSPS) because the Planning Proposal is not identified for development in the PSPS and it is inconsistent with some of the principles and directions in the PSPS.	Medium	Assess the Planning Proposal in accordance with the guidance issued by DPIE for planning proposals that may not be consistent with State or local strategic plans and policies.  See assessment of strategic and site specific merit assessment below and the Strategic Planning Assessment Report for the Planning Proposal (ATTACHMENT 2).	Yes

Environmental Planning and Assessment Act 1979

The Planning Proposal is being processed in accordance with Part 3 of the EP&A Act. Should Council resolve to adopt the Planning Proposal, it will be forwarded to DPIE for a Gateway determination, including a request for authority to make the plan.

**MINUTES ORDINARY COUNCIL - 26 NOVEMBER 2019**Hunter Regional Plan 2036 (2016)

The Hunter Regional Plan (HRP) sets priorities and provides direction for regional planning decisions. It focuses on new housing and jobs, and targets growth in strategic centres and renewal corridors close to transport to deliver social and economic benefits.

The HRP is applicable to the area, but the subject site is not located in an identified or emerging growth area identified in the HRP. The land is not located in a centre and some external services such as shops for day-to-day needs are a short drive away in nearby Anna Bay, Salamander Bay, and Nelson Bay.

However, the Planning Proposal is generally consistent with the visions and goals of the HRP. The proposal will make efficient use of the land, as it provides housing choice (including for seniors) with easy access to a range of community facilities and services within a lifestyle village setting.

Anna Bay Strategy and Town Plan (2008)

The Anna Bay Strategy and Town Plan guides the management of future population growth and the building of neighbourhoods in Anna Bay. It establishes a context and policy direction for future rezoning requests and development controls in the Anna Bay area. It also integrates the location, timing and funding for community facilities and infrastructure.

The subject land is not located within the Anna Bay town centre and therefore many of the key strategic directions outlined in the strategy are not relevant. The Planning Proposal is considered to support the vision established in the Strategy for Anna Bay as a small and vibrant town with a mix of retail and office space for local and visitor patronage. The proposed development will provide for additional residents within proximity of Anna Bay, resulting in patronage to the commercial uses within the town centre.

Port Stephens Planning Strategy (2011)

The Port Stephens Planning Strategy 2011 (PSPS) provides a comprehensive planning strategy for the Port Stephens LGA and was developed to inform the adoption of the PSLEP 2013. The Strategy identifies that medium density housing areas should be located where residents have good access to services and not in isolated locations to avoid the creation of social disadvantage.

The subject land is centrally located within a short drive from the town centres of Anna Bay (3.2km), Nelson Bay (8km), and the retail centre of Salamander Bay (5.6km). The caravan park is required to provide a community bus service for residents under the existing development consent. This service offers regular trips to surrounding retail centres, connects with existing public bus services, and is likely to be able to service an expanded development footprint.

**MINUTES ORDINARY COUNCIL - 26 NOVEMBER 2019**

In addition, and unlike typical residential developments, the existing caravan park provides high quality community facilities for residents. These include a club house (including hall, sports lounge, cinema, craft room, library, salon, indoor pool, spa, sauna, gym and café/hall), outdoor swimming pool, lawn bowls facility, croquet area, pocket parks, off leash dog exercise area, and walking areas. The Planning Proposal provides the opportunity for the sharing of these facilities and potentially new facilities within future development. Because of the quality and variety of the facilities, the distance of the site from town centres is unlikely to result in an outcome where residents are at social disadvantage or feel isolated.

The PSPS acknowledges that medium density housing should, where practicable, be located according to principles in the PSPS which guide the application of new residential zones. These principles include locating medium density housing within a five minute walk of a centre or a five minute walk of a bus stop with frequent services to major centre or within a ten minute walk of Raymond Terrace or another town centre. As mentioned in the above, the existing caravan park provides residents with a community bus service and in combination with existing public bus services, is likely to provide a reasonable level of service.

The Planning Proposal is inconsistent with some of the principles and directions in the PSPS relating to medium density housing, however given the availability of a wide range of community services and facilities in existing development in combination with the existing community bus service linking residents to surrounding town centres, the proposal is considered to respond adequately to the PSPS directions.

State Environmental Planning Policy No 21—Caravan Parks (SEPP 21)

SEPP 21 applies to caravan parks or camping grounds, this includes moveable dwellings (such as manufactured homes) where they are located in a caravan park. This SEPP may apply to future development applications on the subject site, depending on the potential amendments made to the PSLEP 2013.

SEPP 21 provides matters for consideration when development consent is granted for a caravan park, including a caravan park that includes manufactured homes. These matters include site suitability, location and character, and whether necessary community facilities and services are available.

The Planning Proposal is considered to be consistent with the aims and objectives of the SEPP relating to the provision of community facilities, the protection of the environment in the vicinity of the land, and the orderly and economic development of the land used for long term residents. The proposal is also likely to be generally consistent with the matters listed for consideration during the assessment of any future development application.

**MINUTES ORDINARY COUNCIL - 26 NOVEMBER 2019**State Environmental Planning Policy No 36—Manufactured Home Estates (SEPP 36)

SEPP 36 provides for manufactured home estates to be carried out in zones where caravan parks are permissible and where the land is not otherwise excluded by the SEPP. Schedule 2 of SEPP 36 lists categories of excluded land, including land in Port Stephens that is not zoned for an urban use and not identified as suitable for urban development in a strategy endorsed by DPIE.

SEPP 36 does not currently apply to the site given the current zoning does not permit caravan parks, the current zone is not for urban purposes, and the site is not identified in an endorsed strategy as suitable for urban development.

Should the Planning Proposal receive a Gateway determination, it is proposed to consult with DPIE on the specific amendments to the PSLEP necessary to achieve the intended outcomes and the application of SEPP 36 to future development applications.

Port Stephens Local Environmental Plan 2013

The PSLEP 2013 zones the land RU2 Rural Landscape, which does not permit caravan parks. The current development on the site relies on the existing consent to operate and an extension of that use to the adjoining parcel would not be permissible under the current zoning.

Similarly the existing minimum lot size that applies to the land would not permit Lot 25 DP 852410 to be subdivided so as to excise the land fronting Nelson Bay Road.

There are a number of potential amendments that could be made to the PSLEP to facilitate the outcomes of the Planning Proposal. As outlined above, some mechanisms may relate to the application of State policies. Other potential amendments include site specific local provisions to permit and regulate additional uses.

DPIE provides guidance to councils that it is not necessary to identify the specifics of amendments to a local environmental plan prior to a Gateway determination if the objectives and outcomes have been identified.

Should the Planning Proposal receive a Gateway determination, it is proposed to consult with DPIE on the specific amendments to the PSLEP necessary to achieve the intended outcomes.

Assessment and Recommendation

As noted above, the subject site is not identified in State and local planning strategies for urban development. DPIE provides general guidance for assessing planning proposals that may not be consistent with State or local strategic plans and policies (Planning Proposals – a guide to preparing planning proposals, 2018) (DPIE Guide).

**MINUTES ORDINARY COUNCIL - 26 NOVEMBER 2019**

The assessment requires consideration of both the strategic merit and site-specific merits of a proposal:

(a) Strategic merit

The DPIE Guide specifies that Planning Proposal is considered to have strategic merit if it gives effect to relevant State strategies and local strategies that have been endorsed by DPIE, or responds to a change in circumstances that have not been considered by existing strategic plans.

As outlined above, the Planning Proposal is not consistent with State or local planning strategies, however it is considered to demonstrate strategic merit as it responds to a change in circumstances that has not been recognised by existing strategic plans.

The existing approved development is currently underway and includes a substantial investment in new infrastructure such as roads, services, and community infrastructure. The Planning Proposal would facilitate efficient use of this investment, including the community facilities and services located within the existing approved development site.

While the Planning Proposal does not demonstrate consistency with the medium density housing principles in the PSPS, the existing approved development includes a wide range of community facilities and services for residents which typical medium residential developments do not provide. Therefore, the principles of the PSPS can be considered more relevant to medium density residential development housing types that are not operating under land lease arrangements with substantial on-site facilities and services for residents.

These facilities and services and the nature of the manufactured homes that have been installed under the existing approval can also be distinguished from the caravan parks with moveable dwellings that were more predominant at the time the PSPS 2011 was prepared. The HRP similarly does not identify or address the range of modern housing typologies under land lease arrangements that have become more prevalent in coastal areas such as Port Stephens.

Given these changes since the preparation of the PSPS in 2011, and the changes in the housing market that are not reflected in the HRP, the Planning Proposal is considered to have strategic merit as it will respond appropriately by ensuring the orderly and economic use and development of land, consistent with the objects of the EP&A Act.

(b) Site-specific merit of the Proposal

The DPIE Guide requires a Planning Proposal to be assessed having regard to site-specific criteria as follows.

**MINUTES ORDINARY COUNCIL - 26 NOVEMBER 2019****1. The natural environment**

The land is relatively clear from environmental constraints. Parts of Lot 25 DP 852410 are significantly degraded from previous use (sand mining) and current earthworks. The environmental values that remain on site can be protected and kept outside the proposed development footprint and these matters can be addressed at the development application stage. The Planning Proposal provides a balance between housing and conservation outcomes and is unlikely to result in significant adverse impacts on the natural environment.

**2. The existing uses, approved uses, and likely future uses of land in the vicinity of the proposal.**

The existing uses of land in the vicinity of the site include a limited number of single dwellings, dual occupancies, rural land, a trotting track, a golf course with a driving range, and vegetated sites.

Land to the north of the subject site consists of vacant vegetated land zoned E2 Environmental Conservation pursuant to the PSLEP. All other land to the south, east and west is zoned RU2 Rural Landscape pursuant to the PSLEP.

Directly adjoining the site to the east and south is land used for rural residential purposes, consisting of dwellings, dual occupancies and associated outbuildings on large lots. To the west of the subject site (at the rear of the rural residential properties) is land which contains cleared and vegetated areas and areas used for rural industry.

There are no unacted-on consents for approved uses in the vicinity of the site and the likely future uses of the land in the vicinity are expected to remain as per the current uses given there are no current planning proposals for that land. The surrounding land is also not identified in a State or local strategy for future land use changes.

Proposed vegetation management areas on the southern and eastern boundaries of Lot 25 DP 852410 will also create a buffer between any future development on that lot and land in the vicinity of the proposal.

The Planning Proposal is not expected to have a negative effect on land in the vicinity of the proposal.

**3. The services and infrastructure that are or will be available to meet demands from the proposal.**

Existing public utility services, (road) infrastructure, and community facilities and services associated within the site of the existing approved use can be extended to service a proposed extension on to Lot 25 DP 852410 (subject to development consent).

**MINUTES ORDINARY COUNCIL - 26 NOVEMBER 2019**

The site can provide a wide range of existing community facilities for future residents which are not available in typical medium residential developments. Demands for services and infrastructure from the proposal can therefore be met efficiently and to a high standard.

Given the Planning Proposal's ability to demonstrate both strategic merit and site-specific merits, it is considered appropriate for the Planning Proposal to proceed for a Gateway Determination.

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

Social and Economic

The Planning Proposal is likely to deliver a range of social and economic benefits, including:

- Additional housing choices in the Anna Bay area and the Port Stephens LGA.
- Employment through construction and the long term employees within the lifestyle village.
- Increased retail and service industry patronage for nearby town centres.
- Efficient use of (private) community facilities and services provided at the existing approved caravan park.

Environmental

The land is partially cleared and Lot 25 DP 852410 is predominately vacant, comprising grassland and scattered vegetation towards the southern and eastern periphery. Sand extraction has previously occurred over part of the lot, resulting in a heavily disturbed area.

A Vegetation Management Plan (VMP) was prepared for Lot 25 DP 852410 which proposes vegetation management areas totalling approximately 3.6ha, adjacent to the southern and eastern boundaries of the lot.

**CONSULTATION**Internal

Internal consultation was undertaken with the Natural Resources, Development Engineering, Traffic Engineering, Drainage & Flooding teams.

Further detailed investigations will be required should the Planning Proposal receive a Gateway Determination to proceed, including further ecological assessments.

**MINUTES ORDINARY COUNCIL - 26 NOVEMBER 2019**External

External consultation was undertaken with the DPIE to discuss possible amendments to the PSLEP 2013 to implement the outcomes the Planning Proposal seeks to achieve. The Department supports the approach taken in the Planning Proposal to outline the objectives and outcomes of the proposed amendment in the PSLEP 2013 and for the matter to be determined in accordance with any Gateway determination.

Further consultation with community and State Government agencies will be undertaken in accordance with the Gateway determination.

**OPTIONS**

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

**ATTACHMENTS**

- 1) Locality Map. [↓](#)
- 2) Strategic Planning Assessment Report (SPAR). [↓](#)
- 3) Planning Proposal. (Provided under separate cover)

**COUNCILLORS ROOM**

Note: All relevant technical studies referenced in this report can be inspected upon request.

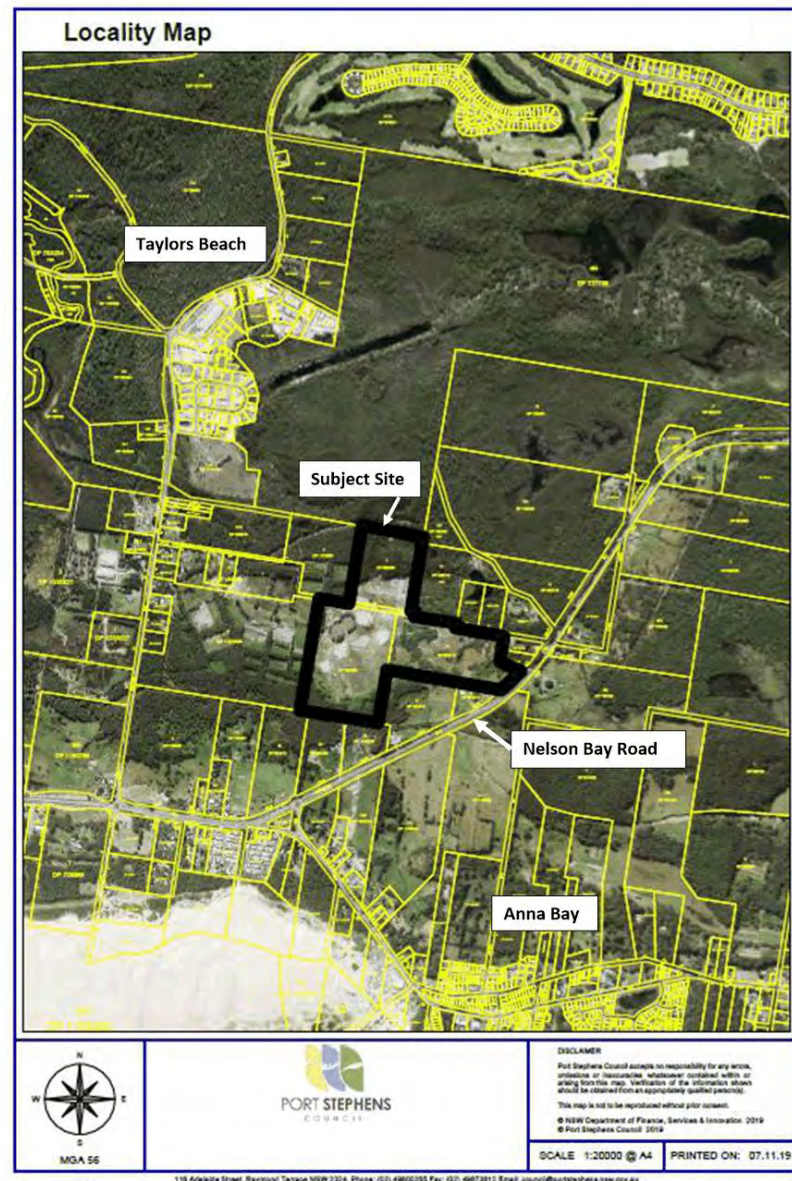
**TABLED DOCUMENTS**

Nil.



MINUTES ORDINARY COUNCIL - 26 NOVEMBER 2019

ITEM 2 - ATTACHMENT 1 LOCALITY MAP.



**ITEM NO. 3****FILE NO: 22/77794  
EDRMS NO: 16-2021-662-1****DEVELOPMENT APPLICATION DA 16-2021-662-1 – 37 CANOMII CLOSE,  
NELSON BAY**REPORT OF: KATE DRINAN - DEVELOPMENT AND COMPLIANCE SECTION  
MANAGER

GROUP: DEVELOPMENT SERVICES

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Support the Clause 4.6 variation request to the building height for the reasons outlined within this report.
- 2) Approve Development Application DA No. 16-2021-662-1 for 2 semi-detached dwellings and a 1 into 2 lot Torrens title subdivision at 37 Canomii Close, Nelson Bay (Lot 5945 DP 1007523) subject to the conditions contained in **(ATTACHMENT 3)**.

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**BACKGROUND**

The purpose of this report is to present a Development Application (DA) 16-2021-662-1 for 2 semi-detached dwellings and a 1 into 2 lot Torrens title subdivision to Council for determination.

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

Subject Land:	37 Canomii Close, Nelson Bay (Lot 5945 DP 1007523)
Total Area:	719.1m <sup>2</sup>
Zoning:	R2 Low Density Residential Zone
Submissions:	0
Key Issues:	The key issues identified throughout the assessment of the DA relate to bushfire, building height, privacy, overshadowing and building design.

The DA has been reported to Council in accordance with Council's 'Planning Matters to be Reported to Council Policy' as the DA includes a request to vary a development standard by greater than 10%. The development standard is Clause 4.3 – Height of Buildings and the extent of the variation is 27.7% (2.5m).

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

### Proposal

The proposal seeks consent for the removal of existing vegetation on the site, the construction of 2 semi-detached 3 storey dwellings and a 1 into 2 lot Torrens title subdivision. Each dwelling is proposed to be provided with a double garage, 4 bedrooms, open plan living and dining spaces and a pool at the rear. Each dwelling will also be provided a lift for internal access to each level. The dwellings are proposed to use a shared crossover from Canomii Close for vehicular access.

### Site Description and History

The site is located within an established residential area, is a rectangular shaped lot and is located at the end of the cul-de-sac off Canomii Close. An unformed laneway exists along the sites southern boundary. The site currently contains mature trees and shrubs and is vacant of any built structures. The site falls significantly from the west to the east.

### Key Issues

The key issues identified throughout the assessment of the DA relate to the proposed exceedance of the building height, privacy, overshadowing and bushfire.

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

### Building Height

The DA exceeds the maximum allowable building height for the site prescribed under Clause 4.3 of the Port Stephens LEP 2013 (LEP 2013). The DA proposes a maximum building height of 11.5m, which exceeds the 9m height limit; representing a 27.7% variation to the development standard.

A written request to vary the building height development standard has been submitted by the applicant in accordance with Clause 4.6 of the LEP 2013. The applicant's variation request has been assessed by Council staff with the following findings:

- Surrounding development is generally characterised by a mixture of 1, 2 and 3 storey dwellings of similar form to the proposed.
- Development as viewed from Canomii Close will appear as 2 storeys and will appear less in height than the neighbouring development at 35 Canomii Close.
- Given the significant slope of the land, much of the height variation is experienced toward the rear of the dwelling.
- The dwellings have been designed to reduce potential amenity impacts from the height exceedance through the provision of appropriate rear setbacks and the

inclusion of landscaping and planter boxes on the rear balconies to provide screening and reduce any overlooking potential.

- The development maintains acceptable privacy and solar access to the neighbouring properties consistent with Council's DCP requirements despite the variation.

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

### Privacy

Privacy impacts to neighbouring properties are a key consideration due to the reduced rear setbacks and height exceedance proposed. To ensure privacy is maintained particular design measures have been adopted, including both rear balconies being provided with 0.5m wide planter boxes along the rear elevation. The presence of planter boxes will reduce overlooking opportunities and provide further screening increasing privacy for neighbouring properties and future residents. Other design elements include appropriate fenestration and internal layout configuration to ensure no unreasonable privacy impacts will occur.

### Overshadowing

Due to the orientation of the lot, overshadowing will occur to the neighbouring properties to south and east. Despite the overshadowing, both adjoining properties will continue to receive a minimum of 2 hours of sunlight between 9am and 3pm to their respective private open space during midwinter, satisfying the requirements of the DCP.

### Bushfire

The subject site is identified as bushfire prone land. The asset protection zone (APZ) for the development is primarily located within the lot boundaries, however there is a 4.6m encroachment into Council's adjoining unformed road reserve. This portion of the road reserve currently contains exotic grass vegetation, which will be replaced with the hardstand driveway, ensuring compliance with the Asset Protection Zone (APZ) requirements of PBP2019. A condition of consent has been recommended to enforce the requirement for the grass vegetation to be made hardstand.

Further, the Rural Fire Service (RFS) General Terms of Approval (GTA) note that a legal arrangement with Council is to be entered into prior to the issue of a subdivision certificate. As compliance with Planning for Bushfire Protection 2019 (PBP) is contingent upon this arrangement, a deferred commencement condition has been recommended to ensure this agreement is resolved prior to the consent becoming operational and any works occurring on the site. There will be no unmanaged

vegetation on Council owned land within the nominated APZ area. Councils Engineering Officer and Emergency Management Resilience Officer were satisfied with this arrangement.

#### Conclusion

As detailed in the Planners Assessment Report (**ATTACHMENT 2**), the application is considered to be consistent with the aims and objectives of the relevant environmental planning instruments and Council policies applicable to the subject site. There will be no adverse impact to the natural or built environment.

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

### **COMMUNITY STRATEGIC PLAN**

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

### **FINANCIAL/RESOURCE IMPLICATIONS**

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

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

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

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

The non-compliances with PSLEP 2013 the Port Stephens Development Control Plan 2014 (DCP 2014) are considered acceptable and consistent with the relevant control objectives. A detailed assessment against the environmental planning instruments is contained within the Planners Assessment Report contained at **(ATTACHMENT 2)**.

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

## **SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

### Social and Economic Impacts

The proposed development represents a modern residential development and will result in additional housing to service the needs of the community. The semi-detached dwellings will allow for the development of currently vacant land in an already established residential area.

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

As assessed throughout the report, the proposed development has been designed to reduce potential adverse impacts to neighbouring properties from an amenity perspective.

Overall, there are no anticipated adverse social or economic impacts as a result of the proposed development.

### Impacts on the Built Environment

Whilst the height of the dwellings exceed the maximum height limit, the development has been designed to present Canomii Close as a 2 storey dwelling, which is consistent with surrounding development in the area. In addition, further design elements have been included to reduce the potential for overlooking and privacy impacts including the provision of planter boxes on balconies and landscaping along rear boundaries. Overall, the proposed development will make use of an existing vacant site with no adverse impacts to the surrounding built environment.

### Impacts on the Natural Environment

The proposed development is not expected to negatively impact the natural environment. As noted throughout this assessment, the site is not located on land that contains species of environmental significance. The site does contain vegetation, which has not been identified as being koala habitat or of high environmental value and therefore, is supported for removal.

## **CONSULTATION**

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

### Internal

Consultation was undertaken with Council's Development Engineering, Natural Systems, Development Contributions and Spatial Services teams. The referral comments from these officers have been considered as part of the Planners Assessment Report (**ATTACHMENT 2**). The internal referral officers supported the DA, subject to the recommended conditions of consent (**ATTACHMENT 3**).

### External

Consultation was undertaken with the NSW Rural Fire Service (RFS). No objection was made by the RFS with General Terms of Approval being issued. The comments provided by the external agencies are discussed within the Planners Assessment Report (**ATTACHMENT 2**).

### Public exhibition

The DA was advertised and notified in accordance with the requirements of the Port Stephens Council Community Engagement Strategy. The application was exhibited for a period of 14 days from 30 August 2021 to 13 September 2021. No submissions were received in relation to the DA.

## **OPTIONS**

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

## **ATTACHMENTS**

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

## **COUNCILLORS ROOM**

- 1) Development Plans.

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





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



**PORT STEPHENS**  
COUNCIL

# DEVELOPMENT ASSESSMENT REPORT

## APPLICATION REFERENCES

<b>Application Number</b>	16-2021-662-1
<b>Development Description</b>	Semi-detached dwellings and a one into two lot Torrens title subdivision
<b>Applicant</b>	Perception Planning
<b>Land owner</b>	BAY DREAMS PTY LTD
<b>Date of Lodgement</b>	19/08/2021
<b>Value of Works</b>	\$1,260,000.00
<b>Submissions</b>	0

## PROPERTY DETAILS

<b>Property Address</b>	37 Canomii Close NELSON BAY
<b>Lot and DP</b>	LOT: 5942 DP: 1007523
<b>88B Restrictions on Title</b>	N/A
<b>Current Use</b>	Vacant
<b>Zoning</b>	R2 LOW DENSITY RESIDENTIAL
<b>Site Constraints</b>	<p>Bushfire Prone Land – Vegetation Buffer</p> <p>Acid Sulfate Soils – Class 5</p> <p>Koala Habitat Planning Map – Mainly Cleared and 50m buffer over cleared.</p> <p>High Environmental Value Mapping</p> <p>SEPP (Coastal Management) 2018 – Coastal Environment Area</p> <p>Stormwater Drainage Requirement Areas</p>
<b>State Environmental Planning Policies</b>	<p>State Environmental Planning No. 55 – Remediation of Land</p> <p>State Environmental Planning Policy (Coastal Management) 2018</p> <p>State Environmental Planning Policy (Building Sustainability Index: BASIX) 2008</p>

State Environmental Planning Policy (Koala Habitat Protection) 2021

#### PLANNERS PRE-ASSESSMENT CHECKLIST

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

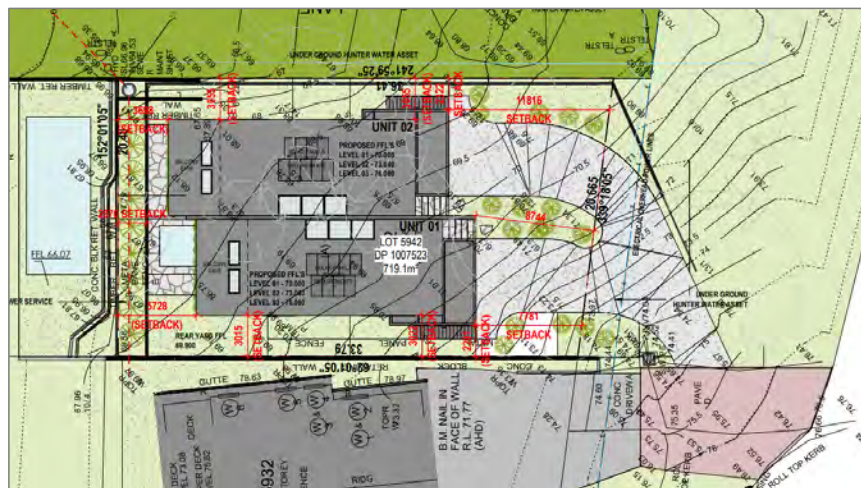
## ITEM 3 - ATTACHMENT 2 PLANNERS ASSESSMENT REPORT.

**PROPOSAL**

The development application seeks consent for the removal of existing vegetation on the site, the construction of two semi-detached three-storey dwellings and a 1 into 2 lot Torrens title subdivision, as per Figure 1 below. Each dwelling is proposed to be provided with a double garage, four bedrooms, open plan living and dining spaces and a pool at the rear. Each dwelling will also be provided a lift for internal access to each level. The dwellings are proposed to use a shared crossover from Canomii Close for vehicular access.

The site falls significantly to the east and requires substantial earthworks in the form of both cut and fill. A retaining wall is proposed along the rear of the site, 2m setback from the boundary. This retaining wall is approximately 1.1m in height. There is an existing retaining wall also located along the eastern boundary, which will remain unchanged by the proposal. New landscaping is proposed between the existing and proposed retaining wall along the eastern boundary to reduce any potential visual impacts of the proposed retaining wall.

A terraced retaining wall is also proposed along the southern boundary. The retaining wall on the southern boundary ranges in height from 1.9m to 4.3m. Landscaping is proposed along this boundary and the terraced sections of the wall to screen unsightliness.



**Figure 1. Proposed Site Plan**

The proposal will result in the creation of two lots resulting in a single dwelling on each of the lots. The lot details are as follows:

- Proposed Lot 1 – 353m<sup>2</sup>
- Proposed Lot 2 – 366.1m<sup>2</sup>

In accordance with the Port Stephens Local Environmental Plan 2013 (PSLEP 2013), the maximum height of buildings for the site is 9m. The maximum height of the dwellings is 11.5m and therefore a 27.7% variation is proposed.

Given the application proposes a height variation over 10%; the proposal is required to be reported to Council for determination in accordance with the 'Planning Matters reported to Council' policy.



**SITE DESCRIPTION**

The subject site is legally identified as Lot 5945 DP 1007523 and generally known as 37 Canomii Close, Nelson Bay. The site is a rectangular shaped lot and is located at the end of the cul-de-sac off Canomii Close. An unformed laneway exists along the sites southern boundary. The site currently contains mature trees and shrubs and is vacant of any built structure, refer to Figure 2. The site falls from the west to the east and is largely surrounded by residential development.



**Figure 2. Site Aerial**

**SITE HISTORY**

There is one record of a previous application relating to the site, which is for combined BA/DA for a two lot subdivision (7-1982-1637-1).

There are no other relevant application nor compliance matters relating to the site.

**SITE INSPECTION**

A site inspection was carried out on 13 September 2021.

The subject site can be seen in figures 3 and 6 below:





**Figure 3.** The site from Canomii Close



**Figure 4.** The end of Canomii Close with the site to the left





**Figure 5.** Existing dwelling to the south of the site



**Figure 6.** Existing dwellings to the north of the site located on Canomii Close



**Figure 7.** Existing retaining wall and fence located on the sites northern boundary to be retained.

### PLANNING ASSESSMENT

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

#### Internal

Development Engineer – The application was referred to Council's Development Engineer to review the proposed access and stormwater management. Overall, the application was supported subject to conditions, which have been included within the recommended conditions attached to this report.

Natural Systems – Given the existing vegetation on the site, the proposal was referred to Council's Natural Resources team for review. The referral found that there is unlikely to be a significant impact on any threatened species. It was however noted that proposal will result in the removal of three small tree hollows. A condition has been recommended that these hollows are to be salvaged. Overall, the proposal was supported subject to conditions of consent. These conditions have been included in the recommended conditions attached to this report.

Spatial Services – Addressing has been allocated by Council's Spatial Services team. An advice note with the addressing has been included in the recommended conditions.

Development Contributions – The application was referred to Council Development Contributions Officer. It was found that S.11 contributions apply, and a recommended condition has been provided and included in the recommended conditions.

#### External

NSW Rural Fire Service – The proposal was referred to the NSW RFS due to the proposed subdivision. The RFS issued General Terms of Approval, which are discussed further below in this report.



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

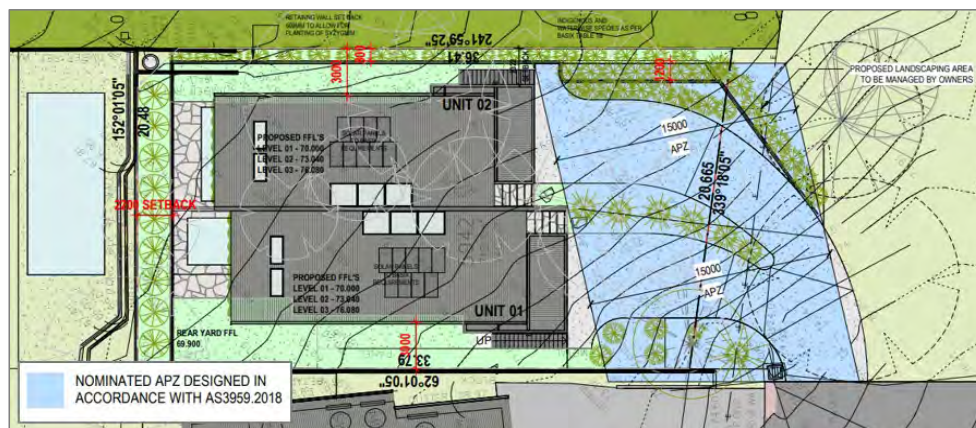
Section 4.46 EP&A Act provides that development is integrated development if in order to be carried out, the development requires development consent and one or more other approvals. The proposed development is integrated as it requires approval under the Rural Fires Act 1997. As per s100B of the Rural Fires Act 1997 approval is required from the NSW Rural Fire Service for the subdivision of land for residential purposes.

General Terms of Approval (GTAs) were issued by the RFS subject to conditions. These conditions required that:

- The entire site be managed as an inner protection area.
- That from the commencement of works and in perpetuity, the Council managed road reserve, is to be managed as an inner protection area in accordance with the Planning for Bushfire Protection (PBP) 2019 and that prior to the issued of a Subdivision Certificate (SC) the applicant is to enter into a legal arrangement with Council, that permits on-going management of that land to inner protection area. The legal arrangement is required to be placed on the land title of each lot.
- Each dwelling is to be constructed to BAL 29.
- New water, electricity and gas must comply with the PBP 2019.
- Fences, provision of services and landscaping are also required to comply with the PBP 2019.

The proposed asset protection zone (APZ) associated with the above GTAs and the proposed development are shown in Figure 8 below. As illustrated, the APZ is primarily located within the lot boundaries, however there is a minor 4.6m encroachment into Council's road reserve. This portion of the road reserve currently contains exotic grass vegetation, which will be replaced with the hardstand driveway, ensuring compliance with the APZ requirements of PBP2019. A condition of consent has been recommended to enforce the requirement for the grass vegetation to be made hardstand.

Further, the RFS GTAs note that a legal arrangement with Council is to be entered into prior to the issue of a Subdivision Certificate. As compliance with PBP 2019 is contingent upon this arrangement, a deferred commencement condition has been recommended to ensure this agreement is resolved prior to the consent becoming operational and any works occurring on the site. There will no unmanaged vegetation on Council owned land within the nominated APZ area. Councils Engineering Officer and Emergency Management Resilience Officer were satisfied with this arrangement.



**Figure 8. Proposed Asset Protection Zone**

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

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

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

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

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

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

A valid BASIX certificate (certificate no. 1225850M) has been submitted with the development application which demonstrates that the water, thermal comfort and energy requirements for the proposal have been achieved. The proposal is considered to satisfy the relevant provisions of SEPP BASIX.

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

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

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

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

State Environmental Planning Policy No. 55 – Remediation of Land

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

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

State Environmental Planning Policy (Koala Habitat Protection) 2021

This policy aims to encourage the conservation and management of areas of natural vegetation that provide habitat for koalas to support a permanent free-living population over their present range and reverse the current trend of koala population decline. All development applications in the Port Stephens LGA are required to comply with the provisions of the Port Stephens Council CKPoM to comply with State Environmental Planning Policy – Koala Habitat Protection 2021. Port Stephens Council Comprehensive Koala Plan of Management (CKPoM) (2002) contains performance criteria to assess development applications, which aim to protect and manage development on land containing Koala habitat.

The application included an Ecological Assessment Report that included site surveys and assessed the development against the CKPoM. The site is mapped as containing 'other vegetation' on Council's Koala Habitat Planning Map. This was confirmed in the site surveys, which did not identify any preferred koala feed trees on the site. During site surveys no koalas or koala scat were observed on the site. However, potential koala scratches were observed on trees.

The application was assessed against the CKPoM by Council's Natural Systems section which noted that Council may waive the provisions of a), b) and c) of Appendix 4 of the CKPoM (the requirement to maximise retention of vegetation within supplementary habitat on site) only for the purposes of establishing a building envelope and associated works, and only if the proponent can demonstrate:

1. That the building envelope and associated works including fire fuel reduction zones cannot be located in such a way that would avoid the removal of native vegetation within Preferred or Supplementary Koala Habitat, Habitat Buffers, or Habitat Linking Areas, or removal of preferred koala food trees;
2. That the location of the building envelope and associated works minimises the need to remove vegetation as per 1 above;
3. That, in the case of subdivisions, they are designed in such a way as to retain and enhance koala habitat on the site and are consistent with the objectives of appendix 4; and
4. That koala survey methods (as per the Guidelines for Koala Habitat Assessment in Appendix 6) have been used to determine the most appropriate location for the building envelope and associated works (so as to minimise the impact on koala habitat and any koala populations that might occur on the site).

Given the sites location within a suburban area and applicable bushfire requirements, it was not considered possible to retain native vegetation on the site. Further, the trees are located within an established residential area, creating limited opportunity or benefit for Koala occupation on the site. It was therefore deemed appropriate to waive criteria b) of Appendix 4 of the CKPoM. Overall, the impact to Koala habitat is negligible.

State Environmental Planning Policy Coastal Management 2018

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

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

The site is not in close proximity to the shoreline, public spaces or any sensitive coastal environmental areas. Accordingly, the development will not impact the integrity of the biophysical and ecological environment, the values and natural coastal processes, marine vegetation, native vegetation and fauna or access to and along the foreshore.

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

Therefore, the application satisfies the aims of the SEPP and the other matters for consideration stipulated under Clause 13 and 15, and can therefore be supported.

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

The site is zoned R2 Low Density Residential in accordance with the PSLEP 2013.

The proposed development is defined as semi-detached dwellings, which is permissible with consent in the R2 zone. The proposal is considered to be consistent with the objectives of the zone in that it will provide additional housing in an established residential area and is compatible with surrounding development.

**Clause 4.1 – Minimum Subdivision Lot Size**

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

The minimum lot size applicable to the site is 500m<sup>2</sup>. The proposal seeks to subdivide to a lot size smaller than 500m<sup>2</sup>. Whilst not consistent with Clause 4.1, the proposal is consistent with Clause 4.1C of the PSLEP, as discussed further below.

**Clause 4.1C – Exceptions to minimum lot sizes for certain residential development**

Clause 4.1C allow for exceptions to the minimum lot size despite Clause 4.1 for certain residential development and certain zones.

Clause 4.1C applies to the R2 Low Density Residential zones. The Clause notes that development must include:

- (a) the subdivision of land into 2 lots for the purpose of an attached dwelling, a dwelling house or a semi-detached dwelling,
- (b) the erection of a dwelling on each lot resulting from the subdivision, if the size of each lot is equal to or greater than—
  - (i) for the erection of an attached dwelling—200 square metres, or
  - (ii) for the erection of a dwelling house—250 square metres, or

(iii) for the erection of a semi-detached dwelling—250 square metres.

The proposed development seeks to subdivide the land into two lots for the purposes of semi-detached dwellings. The proposed lots exceed the minimum 250m<sup>2</sup> requirement specified in (b)(iii) above, with the proposed lots being 353m<sup>2</sup> (Unit/Lot 1) and 366.1m<sup>2</sup> (Unit 2/Lot 2). Therefore, the proposal is compliant with Clause 4.1C.

#### **Clause 4.3 – Height of Buildings**

In accordance with the PSLEP Height of Buildings map, the maximum permissible building height on the site is 9m. The proposed development has a maximum height of 11.5 metres from the existing ground level and is therefore non-compliant with Clause 4.3. The proposed height results in a variation of 27.7% and therefore is required to be reported to Council for determination.

Given the height variation, a Clause 4.6 written request to vary the height standard has been prepared for the proposal and is provided at Attachment 1.

#### **Clause 4.6 – Exceptions to development standards**

As discussed against Clause 4.3 above, the application includes a proposed variation to the maximum height of buildings. The development standard is 9m and the proposed maximum height is 11.5m, representing at 27.7% variation.

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

- The proposed development is considered to be appropriate for the context of the area which is characterised by a mixture of 1, 2 and 3 storey residential developments.
- Given the stepped dwelling design and slope of the site, the dwellings appear less in height than the neighbouring development at 35 Canomii Close. At this location the proposed variation is 2.2% or 0.2m.
- The height exceedance is generally located at the rear of the dwellings and design elements have been incorporated into the dwelling to reduce potential amenity impacts including the incorporation of planter boxes on the rear third storey balconies, no balconies on the second floor and deep soil landscaping located along the rear boundary.
- The zone objectives and objectives of Clause 4.3 are achieved despite the non-compliance.

It is considered that the applicant's written Clause 4.6 variation request adequately demonstrates that there are sufficient environmental planning grounds to justify contravening the maximum building height standard and compliance with the standard is unnecessary in the circumstances of this application.

On this basis, the height variation is supported.

A detailed assessment against clause 4.6 can be found at Attachment 1 of this report.

#### **Clause 5.10 – Heritage conservation**

The site has not been identified as heritage listed item nor is it within a heritage listed area or within proximity to an item of heritage significance. An AHIMS search was submitted with the application, which did not identify any known Aboriginal items within proximity of the site.

#### **Clause 5.21 – Flood Planning**

The subject site has not been identified as flood prone land.

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**Clause 7.1 – Acid Sulfate Soils**

The subject land is mapped as containing potential Class 5 acid sulfate soils. The proposed development is not anticipated to entail excavations below 5 metres and therefore it is not expected that acid sulfate soils would be encountered during works. As a precautionary measure, a condition has been included that an ASSMP be prepared prior to works commencing on the site.

**Clause 7.2 – Earthworks**

Given the slope of the site earthworks are required to facilitate the proposed development, involving both cut and fill. There is proposed to be approximately 130m<sup>2</sup> of cut and 550m<sup>2</sup> of fill. Conditions have been recommended requiring that all fill is to be Virgin Excavated Natural Material (VENM).

Given the topography of the site and surrounds, a number of retaining walls exist along the boundaries. There is an existing retaining wall located on the northern (side) boundary with 35 Canomii Close, which will remain unchanged by the proposal. An existing retaining wall is also located along the eastern (rear) boundary, shared with 24 Wollomi Avenue, which will also remain unchanged by the proposal.

A new retaining wall is proposed 2m setback from the existing retaining wall along the eastern (rear) boundary and is approximately 1.1m in height. Landscaping is proposed to be provided between the proposed and existing retaining wall to provide visual screening.

A terraced style retaining wall is also proposed along the southern boundary. It ranges in height from 1.9m to 4.3m given the sites slope. Landscaping and plantings are proposed on the wall and along the site boundary to screen visual unsightliness.

A condition has been recommended requiring that the retaining walls be designed and certified by a suitably qualified Structural Engineer.

Overall, the earthworks are not anticipated to result in any negative impacts on the subject or adjoining land and can be managed through the implementation of the recommended conditions of consent.

**Clause 7.6 – Essential Services**

The subject site can be serviced by reticulated water, electricity and sewer. In addition the application has demonstrated appropriate stormwater management can be provided in accordance with Councils requirements. The site has direct access from Canomii Close, meeting the requirements of this clause.

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

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

***Section 4.15(a)(iii) – any development control plan*****Port Stephens Development Control Plan 2014**

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

**Chapter B1 – Tree Management**

This part applies to development to remove or prune trees or other vegetation within non-rural areas and therefore applies to the site. The proposal seeks to remove the existing vegetation on the site. The application was therefore referred to Council's Natural Systems section for review. It

was found that the vegetation removal would be unlikely to result in significant impacts on threatened species. The proposed tree removal was therefore supported.

#### **Chapter B2 – Natural Resources**

The subject site is not located on land that contains items of environmental significance, nor does the application seek to use biodiversity offsets. There have also been no weeds identified on the site. The site is mapped as being cleared and being a buffer over cleared koala habitat. It was however identified by Council's Natural Resources team that given the extent of the vegetation on the site, this is likely now considered to be supplementary koala habitat. Notwithstanding, during site surveys no koalas or koala scat were observed on the site. Potential koala scratches were observed on trees, however no preferred koala feed trees were identified on the site.

All development applications in the Port Stephens LGA are required to comply with the provisions of the Port Stephens Council CKPoM to comply with State Environmental Planning Policy – Koala Habitat Protection 2021. Port Stephens Council Comprehensive Koala Plan of Management (CKPoM) (2002) contains performance criteria to assess development applications, which aims to protect and manage development on land containing Koala habitat.

As addressed earlier in this report, the application was assessed against the CKPoM by Council's Natural Systems section. Given the sites location within a suburban area and applicable bushfire requirements, it was not considered possible to retain native vegetation on the site. It was therefore deemed appropriate to waive criteria b) of Appendix 4 of the CKPoM.

Council's Natural Systems section recommended that the clearing of vegetation on the site must be undertaken under supervision of a suitability qualified ecologist and that the three small hollows proposed to be removed from the site are to be salvaged and utilised within the landscape plan for terrestrial fauna habitat. These recommendations are consistent with the Ecological Assessment Report submitted with the DA and have been reflected in the recommended conditions.

The proposal is considered to comply with all other components of the CKPoM and this Chapter of the DCP.

#### **Chapter B3 – Environmental Management**

##### Acid Sulfate Soils

The objective of this DCP Chapter is to ensure that developments do not disturb, expose or drain Acid Sulfate Soils (ASS) and cause environmental damage. As detailed within clause 7.1 discussion above, the proposed development does not seek to undertake excavations below 5m from the natural ground surface and are therefore unlikely to disturb ASS.

##### Noise

The separation distances incorporated into the development will limit any ongoing significant impacts on the adjoining development. The impacts of the development during construction could be limited through conditions of consent, which limit construction work hours and mitigate noise derived from equipment, ventilation and air conditioning systems. Subject to conditions, the application is satisfactory in regards to noise management.

##### Earthworks

As discussed at clause 7.2 above, the proposed development involves earthworks in the form of cut and fill and construction of retaining walls. The impacts of the proposed earthworks can be mitigated through conditions of consent. The proposal is therefore consistent with requirements outlined in Council's DCP relating to earthworks.

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**Chapter B4 – Drainage and Water Quality**

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

The stormwater is proposed to run from the subject along the existing road reserve to the south with connection to the stormwater network on Wollomi Avenue. A condition has been recommended requiring the stormwater line within the road reserve to be constructed to Council standards and that maintenance is the responsibility of the owner of the lot in perpetuity for the life of the development.

**Chapter B8 – Road Network and Parking**

The potential impacts of the development to the local road network have been assessed and it has been determined that subject to conditions of consent the development is satisfactory.

The proposed access arrangements are considered to be suitable and compliant with Council requirements.

Figure BU identifies the on-site parking requirements for the development as follows:

Development type	DCP requirement	Parking requirement	Proposed
Semi-detached dwellings	<ul style="list-style-type: none"> <li>1 car space for one and two bedroom dwellings</li> <li>2 car spaces for three &gt; bedroom dwellings</li> </ul>	Each dwelling has four bedrooms and therefore 2 car spaces are required in accordance with the DCP.	Each dwelling is proposed to be provided with a double garage.

In accordance with the above, the proposal is compliant with the DCP car parking requirements.

**Chapter C – Development Types**

The proposed development is for the construction of semi-detached dwellings and a one into two lot Torrens title subdivision, therefore the provisions of chapter C1 and C4 are applicable.

**Chapter C1 – Subdivision**

Reference	Control	Assessment
Objective C1.A Requirement C1.1-C1.4	<b>All subdivision – lot size and dimensions</b> <ul style="list-style-type: none"> <li>To ensure all new lots have a size and shape appropriate to their proposed use, and to allow for the provisions of necessary services and other requirements.</li> </ul>	<p>The proposed lots meet the lot size requirements as per Clause 4.1C of the PSLEP.</p> <p>The plans demonstrated that the lots are capable of supporting appropriate building footprints.</p> <p>The lot is not a battle axe lot.</p>
Objective C1.B	<b>All subdivision – street trees</b> <ul style="list-style-type: none"> <li>To ensure street tree planting is of an appropriate species and undertaken</li> </ul>	Street trees are not required given the minor nature of the subdivision and the presence of nearby vegetation.



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Reference	Control	Assessment
Requirement C1.5–C1.6	in accordance with Council's guidelines.	
Objective C1.C Requirement C1.7	<b>All subdivision - Solar Access</b> <ul style="list-style-type: none"> <li>To maximise solar access for residential dwellings</li> </ul>	Appropriate solar access is provided to each lot.
Objectives C1.D Requirement C1.8-C1.10	<b>All subdivision – public scale drainage</b> <ul style="list-style-type: none"> <li>To ensure further guidance is provided for subdivision that is consistent with B4 Drainage and Water Quality and the infrastructure specification – design (where relevant)</li> </ul>	Appropriate drainage is proposed to service the lots, which was supported by Council's Development Engineer.
Objectives C1.E Requirement C1.11-C1.14	<b>Major subdivision – block and street layout</b> <ul style="list-style-type: none"> <li>To ensure local streets are well-connected to the street network with obvious pedestrian and cycle links to higher order streets</li> <li>To ensure priority is provided to residents' needs when designing local streets to encourage usability.</li> <li>To ensure pathways follow desire lines</li> </ul>	N/A - the proposed development is not considered to be a major subdivision.
Objective C1.F Requirement C1.15-C1.19	<b>Major subdivision – public open space</b> <ul style="list-style-type: none"> <li>To provide a hierarchy of public open space in accordance with public open space hierarchy</li> <li>To provide parks that are multi-functional</li> <li>To ensure parks achieve centrality by being located near transport nodes, public buildings, waterfronts, libraries or places of public worship</li> <li>To ensure public open space meets the demands of the local community to encourage usability and critical mass</li> </ul>	N/A - the proposed development is not considered to be a major subdivision.
Objective C1.G Requirement C1.20 – C1.22	<b>Major subdivision – infrastructure</b> <ul style="list-style-type: none"> <li>To ensure detailed consideration is provided to the provision of integrated and quality public infrastructure</li> </ul>	N/A - the proposed development is not considered to be a major subdivision.

Chapter C4 – Dwelling House, Secondary Dwelling, or Dual occupancy

Reference	Control	Assessment
Objective C4.A	<b>Height</b>	The proposed development has a maximum height of 11.5 metres, which is non-compliant

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Reference	Control	Assessment
Requirement C4.1	<ul style="list-style-type: none"> <li>To ensure the height of buildings is appropriate for the context and character of the area</li> <li>To ensure building height reflects the hierarchy of centres and land use structure</li> </ul>	<p>with the PSLEP requirement of 9m. A Clause 4.6 variation has been prepared for the proposal and is provided at Attachment 1.</p> <p>Notwithstanding the above, the proposed development is considered to be consistent with the objectives of the DCP in that:</p> <ul style="list-style-type: none"> <li>The proposed building height is appropriate for the context and character of the area as surrounding development is generally characterised by a mixture of 1, 2 and 3 storey dwellings. Further, given the slope of the site, the proposed dwellings will present to Canomii Close as two storey dwellings and have perceived height being less than the neighbouring development.</li> </ul>
Objective C4.B  Requirement C4.2-C4.11	<p><b>Setbacks</b></p> <ul style="list-style-type: none"> <li>To ensure development provides continuity and consistency to the public domain</li> <li>To ensure development contributes to the streetscape and does not detract from the amenity of the area</li> </ul>	<p><u>C4.2 – C4.5 - Setbacks</u></p> <p>The subject site is located within Nelson Bay West precinct, specifically the area identified as the Upper Slopes. Therefore, the proposal is subject to differing front and side setback requirements to those listed within Chapter C4. The front and side setbacks proposed are noted below and discussed in further detail in the assessment against Chapter D6.</p> <p>The proposed dwellings provide for the following setbacks:</p> <ul style="list-style-type: none"> <li>The minimum front setback provided is 7.78m. This is compliant with the Chapter D6 front setback requirement of 6m and C4.B.</li> <li>The minimum side setback for the ground floor and first floor is 2.29m for both dwellings. These setbacks are non-compliant with the Chapter D6 requirement of 3m. This is discussed further below.</li> <li>The second floor side setback minimum is 3.015m which is compliant with the requirement.</li> </ul> <p>Chapter D6 does not provide specific rear setback requirements for the Upper Slopes area of Nelson Bay West and therefore the rear setbacks noted within Chapter C4 apply. The rear setbacks proposed are as follows:</p> <p><u>Unit 1</u></p> <ul style="list-style-type: none"> <li>The ground floor rear setback for Unit 1 is 9.5m, which exceeds the minimum 2m DCP setback requirement.</li> </ul>

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Reference	Control	Assessment
		<ul style="list-style-type: none"> <li>The first rear floor setback for Unit 1 is 7m, which exceeds the 6m requirement.</li> <li>The second rear floor setback for Unit 1 is 5.72m. This is not compliant with the DCP 6m requirement.</li> </ul> <p>Unit 1 is largely compliant with the DCP rear setback requirements apart from a minor non-compliance with the second floor rear setback which is 5.72m instead of the required 6m, representing a 0.28m variation.</p> <p>This minor variation is considered acceptable as the balcony located on the second floor which encroaches the rear setback has been designed to include a planter box to limit opportunity for overlooking. When including the planter box within the setback, a total rear setback of 6.2m is provided. Therefore, the variation satisfies the objectives of the control and the minor numerical variation is considered acceptable.</p> <p><u>Unit 2</u></p> <ul style="list-style-type: none"> <li>The ground floor setback for Unit 2 is 7.5m, which exceeds the minimum 2m DCP setback requirement.</li> <li>The first floor setback for Unit 2 is 5m. This is not compliant with the DCP 6m requirement.</li> <li>The second floor setback for Unit 2 is 4.69m. This is not compliant with the DCP 6m requirement.</li> </ul> <p>Unit 2 is not compliant with the first floor and second floor rear setback requirements. The first floor rear setback proposes a variation to the DCP requirement of 1m.</p> <p>This variation is considered acceptable in the circumstances as the first floor does not provide access to outdoor open space but rather contains the master bedroom and ensuite. Given this layout, it is considered the opportunity for overlooking is minimal. To further address the variation, a condition has been recommended that the rear windows in the ensuite on the first floor of Unit 2 be amended to be a high-level window only. This will reduce the potential for overlooking. Taking the above into consideration, this amendment is considered acceptable and consistent with the objectives of the control.</p> <p>The second floor rear setback also proposes a variation. The rear setback proposed is 4.69m and therefore represents a 1.31m</p>

## ITEM 3 - ATTACHMENT 2 PLANNERS ASSESSMENT REPORT.

Reference	Control	Assessment
		<p>variation. The proposed rear setback is considered supportable for the following reasons:</p> <ul style="list-style-type: none"> <li>• The balcony, which encroaches the rear setback has been designed with a planter box to reduce the potential for overlooking for the neighbouring properties.</li> <li>• When including the planter box into the setback, a total setback of 5.2m is proposed, representing only a 0.8m variation, which is considered to be minor in nature.</li> <li>• The varied setback of Units 1 and 2 provide additional privacy to both dwellings on site.</li> <li>• The landscaping provided along the sites rear boundary consists of syzgium pink cascade, which has a mature height of 5m. The inclusion of this landscaping will assist in screening the existing dwelling at the rear and therefore reducing potential overlooking.</li> <li>• The rear setback encroachment does not result in any additional adverse overshadowing.</li> </ul> <p><u>C4.6 – Garage Setback</u></p> <p>The garages are not setback 1m behind the building line as per the DCP, but rather form the front building line. Given the developments significant front setback and shaped lot that does not directly front Canomii Close, it is considered that the variation to the garage control is supportable given the garages will not dominate the streetscape.</p>
<p>Objective C4.C</p> <p>Requirement C4.12-4.18</p>	<p><b>Streetscape and privacy</b></p> <ul style="list-style-type: none"> <li>• To ensure development activates the streetscape to provide passive surveillance and privacy.</li> </ul>	<p>Each dwelling provides appropriate passive surveillance with windows and balcony's provided to the front elevation.</p> <p>The proposed development is considered to be sympathetic the existing streetscape in that it presents to Canomii Close as a two storey development, which is consistent with the surrounding dwellings and built form context. The dwellings have incorporated a modern design and articulation that responds to the site constraints, whilst also providing a visually interesting development.</p> <p>Unit 1 has a front balcony, which is compliant with the DCP. However, Unit 2 does not. Unit</p>

## ITEM 3 - ATTACHMENT 2 PLANNERS ASSESSMENT REPORT.

Reference	Control	Assessment
		<p>2 instead has a large window along the front elevation, which provides views from the living room. This approach is considered acceptable to address the objectives of the control.</p> <p>The proposed rear secondary storey balconies have been designed to minimise overlooking to adjoining properties. Both balconies are provided with planter boxes along the rear elevation, of which are approximately 0.5m in width. The subject development has also been design with a varied rear setback to limit overlooking between each proposed dwelling.</p> <p>As previously noted in this report, given the reduced setback proposed on Unit 2, a condition has been recommended requiring the ensuite to be provided with a high-level window to be consistent with the DCP in terms of privacy.</p>
<p>Objective C4.D</p> <p>Requirement C4.19-C4.22</p>	<p><b>Private open space</b></p> <ul style="list-style-type: none"> <li>To ensure private open space with solar access is provided to allow opportunity for passive and active outdoor recreation</li> </ul>	<p>Unit 1 has 73m<sup>2</sup> of private open space on the ground floor. When removing the pool area, 43.5m<sup>2</sup> is usable which is compliant with the DCP requirement of 35m<sup>2</sup>. The private open space (POS) has dimensions exceeding the minimum 4m x 4m required by the DCP, is accessed directly from the rumpus room and is not located within the front setback. The POS also has a northerly aspect. The overall ground floor private open space is compliant with the DCP requirements. In addition to the ground floor POS, Unit 1 has a covered balcony on the second floor, which has an area of 22m<sup>2</sup> and is directly accessed from the kitchen/dining area.</p> <p>Unit 2 has 51.8m<sup>2</sup> of POS on the ground floor which is compliant with the DCP. When removing the pool area 15m<sup>2</sup> becomes usable, which is considered non-compliant. It is noted however, that these calculation do not include the area along the dwellings side boundary, which would make the usable area exceed the 35m<sup>2</sup>. As with Unit 1, the POS is accessed directly from the rumpus room, is not located within the front setback and has a northerly aspect. Unit 2 also has a balcony provided on the second floor which is 22m<sup>2</sup> in area and is directly accessed from the kitchen/dining area. Given the inclusion of the additional POS on the second floor, the non-compliance in usable outdoor open space is considered appropriate.</p>

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Reference	Control	Assessment
		<p>Overall, both dwellings are provided with ample useable private open space areas.</p> <p>In regards to solar access, the principal private open space for each dwelling receives sunlight between 9:00am – 1:00pm (4 hours) between mid-winter which exceeds the minimum 2 hour requirement.</p> <p>Adjoining neighbour's private open space will not be adversely impacted by the proposal. The dwelling at the sites direct rear, which will be most impacted by the proposal, will continue to receive sunlight to their POS between the hours of 11am – 2pm in midwinter satisfying the 3 hour requirement of the DCP.</p>
<p>Objective C4.E</p> <p>Requirement C4.23-C4.25</p>	<p><b>Car parking and garages</b></p> <ul style="list-style-type: none"> <li>To ensure car parking caters for anticipated vehicle movements to and from the development and does not adversely impact on building articulation</li> </ul>	<p>The driveway minimum width is 3.7m, which exceeds the minimum 3m requirement.</p> <p>Each dwelling has a width of approximately 7.9m and therefore each dwellings garage is to be a maximum of 4m wide. Each garage door is however, 4.7m wide. This is considered appropriate as:</p> <ul style="list-style-type: none"> <li>In accordance with the DCP, the dwellings are required to provide two car parking spaces. The garage door widths allow for the parking of two vehicles to meet this requirement.</li> <li>The dwellings are significantly setback from Canomii Close and the garages will therefore not visually dominate the streetscape.</li> <li>The dwellings have been designed to provide visual interest to the front façade through the use of articulation and different building materials to ensure the development is visually appealing and the garages do not dominate the front façade.</li> </ul>
<p>Objective C4.F</p> <p>Requirement C4.26-C4.30</p>	<p><b>Landscaping</b></p> <ul style="list-style-type: none"> <li>To enhance the appearance and amenity of developments through the retention and/or</li> <li>planting of large and medium sized trees</li> <li>To encourage landscaping between buildings for screening</li> </ul>	<p>A total of 297m<sup>2</sup> of the development is to be landscaped, which equates to 41.3% of the site. This is compliant with the DCP, which requires 20% of the site to be landscaped. However, non-compliant with the Chapter D6 landscaping requirement which is discussed further below in the assessment against Chapter D6.</p> <p>The proposed landscaping includes landscaping within the sites front setback along the boundaries and between the frontage of each dwelling. Further landscaping is provided along the sites rear</p>

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Reference	Control	Assessment
	<ul style="list-style-type: none"> <li>To ensure landscaped areas are consolidated and maintainable spaces that contribute to</li> <li>the open space structure of the area</li> <li>To add value and quality of life for residents and occupants within a development in terms</li> <li>of privacy, outlook, views and recreational opportunities</li> <li>To create and enhance vegetation links between natural areas and reduce weed potential</li> <li>to environmentally sensitive areas</li> <li>To reduce energy consumption through microclimate regulation</li> <li>To reduce air borne pollution by reducing the heat island effect</li> <li>To intercept stormwater to reduce stormwater runoff</li> </ul>	<p>boundary to provide screening for the retaining wall and further privacy for future residents.</p> <p>The proposed landscaping design incorporates trees, shrubs, grasses and ground covers, which are considered to be appropriate for the proposed development and will add visual value to the site and surrounds.</p>
Objective C4.G  Requirement C4.31-C4.32	<b>Site facilities and services</b> <ul style="list-style-type: none"> <li>To ensure development provides appropriate facilities and services in the most appropriate site location</li> </ul>	Appropriate space is provided for waste storage and clothes drying.

**Chapter C8 – Ancillary Structures – Sheds, Swimming Pools, Fencing, Retaining Walls and Shipping Containers**

Reference	Control	Assessment
Objective C4.H  Requirement C8.6-C8.7	<b>Swimming Pools</b> <ul style="list-style-type: none"> <li>The water edge must be setback at least 1m from the side and rear boundaries</li> <li>Maximum decking height of 1.4m in height if the pool is located more than 600mm above the ground level (finished)</li> </ul>	<p>Both dwellings pools exceed the 1m rear setback requirement. Both dwellings however, are non-compliant with the pools setback from their shared boundary. Unit 1's pool is setback 0.58m and Unit 2's is 0.46m. Given the dwellings are attached and the pools have been designed to be access directly from the dwelling, it is considered that this non-compliance is acceptable.</p> <p>The pools are compliant with the other side setbacks.</p> <p>Pool decking is not proposed.</p>

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Reference	Control	Assessment
Requirement C8.8-C8.10	<b>Front Fences</b> <ul style="list-style-type: none"> <li>Maximum height of 1.2m and is not of solid infill construction</li> <li>Maximum height of 1.5m along main roads and secondary street frontages</li> <li>Compatible with street facilities, such as mailboxes, and allow easy access to public utilities</li> </ul>	N/A – not front fencing is proposed.
Requirement C8.11 – C8.14	<b>Side and Rear Fences</b> <ul style="list-style-type: none"> <li>Maximum height of 1.8m</li> <li>Side fences must not encroach on the front setback area of any dwelling</li> <li>Fencing materials should reflect context and character of the area</li> <li>Fences within the root zone of an existing tree must be constructed of light weight suspended panels supported by posts with pier footings</li> </ul>	<p>The northern boundary is proposed to utilise the existing boundary fencing.</p> <p>The southern boundary is proposed to have a 1.5m high fence. The fencing does propose to encroach the front setback of the dwelling as it is located on top of the retaining wall, however is considered necessary for safety purposes. It is noted that given the dwellings significant setback and the fencings location on the southern boundary, the fencing arrangement is not considered likely to have an adverse impacts upon the streetscape or neighbouring properties.</p> <p>A 1m fence is proposed along the rear boundary, which is compliant.</p>
Requirement C8.15 – C8.17	<b>Retaining Walls</b> <ul style="list-style-type: none"> <li>Maximum height of 1m</li> <li>Masonry construction within 0.9m of the property boundary when greater than 0.6m in height</li> <li>Retaining walls are wholly contained within the site</li> </ul>	<p>Given the site falls to the east, a number of retaining walls are proposed to facilitate the proposed development. Retaining walls are specifically proposed along the eastern (rear) boundary, which is a stepped design, with one retaining wall measuring 1.4m and the other measuring 1.5m in height. A retaining wall is also proposed along the sites southern boundary. The retaining wall on the southern boundary ranges in height from 1.9m to 4.3m.</p> <p>The retaining walls are therefore non-compliant with the maximum retaining wall height stipulated by the DCP. This is considered to be appropriate in this instance for the following reasons:</p> <ul style="list-style-type: none"> <li>The site experiences a significant fall from the west to the east and therefore the construction of larger retaining walls are required to facilitate development on the site, particularly development that can meet Australian Standard driveway requirements.</li> <li>The retaining walls have included design elements that reduce their visual impact. The northern (rear)</li> </ul>



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Reference	Control	Assessment
		<p>retaining walls are a stepped or terraced design, which aims to break up the visual bulk of the walls. Deep soil landscaping is proposed between the two walls to provide screening to the rear dwelling as well additional privacy to the future residents of the dwellings. Landscaping is located along the front of the southern retaining wall to provide screening. It is noted that this retaining wall currently fronts an unused lane owned by Council.</p> <p>All retaining walls are proposed along wholly within the sites boundaries are of masonry construction.</p>

**Chapter D6 – Nelson Bay West**

The subject site is located within the Nelson Bay West area and therefore Chapter D6 applies. The site is specifically within the 'Upper Slopes' area and therefore controls specific for these areas apply. The assessment against the relevant controls of Chapter D6 is provided below.

Reference	Control	Assessment
Objective D6.A  Requirement D6.1	<b>Setbacks</b> <ul style="list-style-type: none"> <li>To ensure development provides continuity and consistency to the public domain</li> </ul>	<p>As noted previously, the proposed dwellings have been provided with the following setbacks:</p> <ul style="list-style-type: none"> <li>The minimum front setback provided is 7.78m. This is compliant with the front setback requirement of 6m.</li> <li>The minimum side setback for the ground floor and first floor is 2.29m for both dwellings. These setbacks are non-compliant with the requirement of 3m.</li> <li>The minimum side setbacks for the second floor is 3.015m, which is compliant.</li> </ul> <p>The side setback variation is considered to be acceptable in this regard as:</p> <ul style="list-style-type: none"> <li>The side setback encroachment only exists for the extent of the garages footprint for each dwelling, which only accounts for 6.4m of the entire building elevation. The remainder of the dwelling side setbacks exceed the 3m requirement.</li> </ul>

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Reference	Control	Assessment
		<ul style="list-style-type: none"> <li>The encroachment only relates to the ground and first floor of the dwelling garages and therefore overlooking or privacy impacts will not be created.</li> <li>The general DCP requirements allow for dwellings to have a 0.9m side setback on the ground floor and 2m side setback on the upper storeys. The proposed development exceeds these requirements.</li> </ul> <p>On the above grounds, the proposed design is supportable and consistent with the objectives of the DCP control.</p>
Objective D6.B  Requirement D6.5	<b>On-site detention</b> <ul style="list-style-type: none"> <li>To regulate the impacts on the capacity of the public drainage system</li> </ul>	Requirement D6.5 notes that for sites with an impervious area exceeding 50% in the upper slopes area are required to provide onsite detention. The proposed development has an impervious area of 65% and therefore on-site detention will be required. Council's Development Engineers have recommended that each dwelling be provided with a 6000L on-site detention tank. A condition to this effect has been added to the consent.
Objective D6.C  Requirement D6.6	<b>Landscaping</b> <ul style="list-style-type: none"> <li>To ensure landscaping is within context through the appropriate selection of species and site coverage</li> </ul>	<p>Requirement D6.6 notes that development within the Upper Slopes is to provide 50% of the site for landscaping.</p> <p>As noted previously, the proposal proposes that 41.3% of the site to be landscaped and is therefore non-compliant with this control.</p> <p>Taking into consideration the site constraints (slope) and the design of the proposal, it is considered that the landscaping provided is acceptable and appropriate for the context of the site.</p>

The EP&A Act requires a consent authority to be flexible in applying the provisions of the DCP and to 'allow reasonable alternative solutions' that achieve the objectives of those standards. As addressed in the table above, the proposal is consistent with the objectives of the DCP and where a non-compliance exists, a reasonable alternative solution has been proposed.

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

There are no matters within the regulations that are relevant to the determination of the application.

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

Social and Economic Impacts

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The proposed development represents a modern residential development and will result in additional housing to service the needs of the community. The semi-detached dwellings will allow for the development of currently vacant land in an already established residential area.

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

As assessed throughout the report, the proposed development has been designed to reduce potential adverse impacts to neighbouring properties from an amenity perspective.

Overall, there are no anticipated adverse social or economic impacts as a result of the proposed development.

#### Impacts on the Built Environment

Whilst the height of the dwellings exceed the maximum height limit, the development has been designed to present Canomii Close as a two storey dwelling, which is consistent with surrounding development in the area. In addition, further design elements have been included to reduce the potential for overlooking and privacy impacts including the provision of planter boxes on balconies and landscaping along rear boundaries. Overall, the proposed development will make use of an existing vacant site with no adverse impacts to the surrounding built environment.

#### Impacts on the Natural Environment

The proposed development is not expected to negatively impact the natural environment. As noted throughout this assessment, the site is not located on land that contains species of environmental significance. The site does contain vegetation, which has not been identified as being koala habitat or of high environmental value and therefore, is supported for removal.

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

The subject site is located within an established residential area with the site currently being vacant of any structures. Whilst the site does have constraints including its slope, it is capable of supporting the proposed residential development. As assessed throughout the report, there are no anticipated impacts on the locality as a result of the development. The proposal is compliant with the applicable planning framework and policies, and on these grounds, the site is suitable for the development.

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

##### Public Submissions

The application was publically exhibited for 14 days from 30 August 2021 to 13 September 2021 in accordance with the provisions of the Port Stephens Council Community Engagement Strategy. No submissions were received during this period.

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

The proposal is considered to be in the public interest as it involves the construction of two dwellings within an established residential area, which will provide for additional residential accommodation in the locality to service the needs of the community. In addition, the development is not anticipated to have any significant adverse impacts on surrounding properties or the natural environment.

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

Development Contributions under S7.11 are applicable to the development. A condition to this effect has been included in the recommended conditions.

#### **DETERMINATION**

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

COURTNEY SARGENT

Senior Development Planner



## Attachment 1 – Clause 4.6 Assessment Report

### Clause 4.6 – Exceptions to Development Standards

#### CLAUSE OBJECTIVES AND EXCLUSIONS

##### Clause 4.6(1) – Clause Objectives

Clause 4.6 provides a mechanism to vary the development standards, such as building height, prescribed within PSLEP 2013. The objectives of the clause are to provide an appropriate degree of flexibility in applying certain development standards to particular development, and to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

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

The development standard(s) is not excluded from the operation of clause 4.6 (Refer clauses 4.6(2); 4.6(6); and 4.6(8) of PSLEP 2013).

#### PROPOSED REQUEST

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

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

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

Development Standard	Proposed Variation	Extent of Variation (%)
Clause 4.3 of the PSLEP 2013	2.5m	27.7%

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

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

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

The Clause 4.6 request makes reference to *Wehbe v Pittwater Council* (2007) LEC 827 (*Wehbe*), to which Chief Justice Preston noted that the starting point with any request for a variation is to demonstrate that compliance with the development standard is unreasonable or unnecessary which should generally be started by showing the proposal can meet the objectives of the development standard.

The Clause 4.6 request notes that that the objectives of the standard are achieved notwithstanding non-compliance with the standard in that:

- The proposal provides a contemporary designed low density residential development, which provides for the housing needs of the community whilst responding to the sites constraints and also protecting the amenity of residents and recognising the desirable elements of the existing streetscape and built form.
- The height of the non-compliance does not result in the building being out of scale in the context of surrounding development and is not likely to have an adverse impact on local amenity.
- The height limit is exceeded due to the steep topography of the land and the requirement for building height to be measured from existing ground level. The applicant has noted that when viewing the development from the west (front), both dwellings sit below the maximum HoB limit (see figure 1 below). The applicant also noted that the roof height of adjoining neighbour (35 Canomii Close) is higher than the proposed development and utilises the same design elements of ground floor, first storey, second storey on flat level; yet, due to the topography of the land does not exceed the numerical height restriction at the rear of the site to which the subject development does.
- Given the topography of the land, dwellings to the west of the site are positioned above the height limit and above the proposed dwelling, thus views are not materially impacted. The highest portion of the proposed second storey is concentrated towards rear of the site, thus the existing view from dwellings situated to the west of the site are not materially affected.
- The proposal is compliant with DCP controls relating to overshadowing, privacy and amenity reducing potential impacts from the height exceedance to neighbouring properties. The proposed development is argued to be complimentary to the streetscapes character through the incorporation of a contemporary architectural design, desired built form and liveability of the dwellings. The applicant has noted that the building does not result in an overbearing mass due to design elements such as sufficient front setbacks and landscaping to prevent overlooking and softening of the development.



**Figure 1.** Proposed Height Variation elevation*Clause 4.6(3)(b) – Sufficient environmental planning grounds*

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

The applicant notes that strict compliance with the standard is considered unnecessary in that the impact created by the proposed development will be minor and insignificant to neighbouring properties. The applicant notes that the proposed development does not contravene the objectives of the zone and is considered to be a good use of the site. The application notes that the proposed development responds to the sites constraints whilst also being complimentary to the streetscapes character through the incorporation of a contemporary architectural design and desired built form whilst not having adverse impacts on neighbour properties.

The applicant submits that the potential environmental planning benefits justify the contravention of the development standard.

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

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

As stated in the preceding section, in *Wehbe* the Land and Environment Court identified five ways in which a request to vary a development standard may be determined to be well founded. These reasons include:

1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard,
2. The underlying objective or purpose of the development standard is not relevant to the development,
3. The objective or purpose of the development standard would be defeated or thwarted if compliance was required,
4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard, and
5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable or unnecessary as applied to the land.

The applicant's Clause 4.6 Variation request asserts that compliance with Clause 4.3 (height of buildings) is unreasonable or unnecessary having regard to the first test set down in *Wehbe*, being that the objectives of the standard are achieved notwithstanding non-compliance with the standard.

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

The proposed height is considered to be appropriate for the context and character of the area as surrounding development is generally characterised by a mixture of 1, 2 and 3 storey dwellings of similar form to the proposed. Further, given the slope of the site, the proposed dwellings will present to Canomii Close as two storey dwellings and have perceived height being less than the neighbouring development at 35 Canomii Close. In addition, where the height limit is exceeded at the rear, the dwellings have been designed to reduce potential amenity impacts through the provision of appropriate rear setbacks and the inclusion of landscaping and planter boxes on the rear balconies and boundary to provide screening and reduce any overlooking potential.

The land use structure surrounding the site is generally low-density residential development. The proposed development is defined in the PSLEP as semi-detached dwellings, which are permissible within the R2 Low Density Residential zone. As noted above, the site is surrounded largely by residential dwellings, which differ in size and scale. Given the residential nature of the area and the developments permissibility, it is considered that the proposal is consistent with the residential land use structure.

In addition to the above, taking into considered the sites slope, the location of the proposed variation and design elements implemented to ensure privacy impacts and overshadowing impacts are minimised, it is considered that the variation is acceptable.

On this basis, the objectives of Clause 4.3 are achieved, notwithstanding the numerical non-compliance and therefore compliance with the standard is unnecessary in this instance.

The applicant also noted in their variation request that the third and fourth tests set down in *Wehbe* also apply to the proposal. This is not agreed upon for the following reasons:

- In regard to the third test, it is considered that the objective or purpose of the development standard would not be defeated or thwarted if compliance was required.
- In regard to the fourth, it is considered that the development standard has not been abandoned or destroyed as the objectives of the standard are still relevant notwithstanding non-compliance with the numerical standard. The applicant's variation request also made reference to nearby developments that have exceeded the height limit to justify that the fourth test is relevant. It is noted that height of buildings on each development and variations where proposed are assessed on merit on a site by site basis. Accordingly, there is not sufficient evidence to demonstrate an overwhelming pattern of abandonment. The objectives of the standard are still relevant even when numerical non-compliance is proposed.

The second and fifth tests set down in *Wehbe* are also not considered relevant to the current application, for the reasons set out below:

- The underlying purpose and objective of the maximum building height standard are still relevant to the development.
- The zoning of the subject site is suitable and the proposed development is permissible in the zone.



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

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

As outlined above, notwithstanding the non-compliance with the standard, the objectives of Clause 4.3 are achieved noting that the proposed development is considered to be suitable for the character of the area and will not result in adverse impacts to neighbouring properties.

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

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

#### **CONCLUSION**

The proposed height variation is considered to be consistent with the objectives of Clause 4.6, given it will achieve better outcomes for and from the development in these particular circumstances, and on the grounds the objectives of the height development standard are achieved, notwithstanding the non-compliance. The height variation is considered to be appropriate in the context of the site.

**RECOMMENDED CONDITIONS OF CONSENT****PART A - CONDITIONS OF DEFERRED COMMENCEMENT APPROVAL****1.0 Deferred Commencement**

Pursuant to Section 4.16(3) of the Environmental Planning and Assessment Act 1979, these are deferred commencement conditions. The consent is not to operate until the Applicant satisfies Council that:

- (1) **Driveway design** - The driveway is to be redesigned to ensure the hardstand space is extended to the extent of the Asset Protection Zone (APZ) to Council's satisfaction.
- (2) **Asset Protection Zones** - An appropriate legal arrangement is entered into between Council and the person having benefit of this consent permitting the use of Council's road reserve for the purposes of an APZ and include satisfactory arrangements for its ongoing maintenance by the beneficiary of this consent.

The Applicant shall satisfy the deferred commencement conditions listed in Part A, within **24 months** from the date of issue of the deferred commencement consent. The consent will lapse if the conditions are not satisfied within this period.

Upon satisfaction of the matters listed under Part A, and written confirmation from Council to that effect, the consent shall become operative from the date of endorsement included in the written notification subject to the conditions listed in Part B.

**PART B – CONDITIONS OF CONSENT APPLICABLE AFTER SATISFACTION OF DEFERRED COMMENCEMENT CONDITION(S)****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.
DA.02	M	Site Plan	Green Build	23.12.21
DA.03	M	Subdivision Boundaries	Green Build	23.12.21
DA.04	N	APZ Plan	Green Build	23.12.21

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DA.05	M	Floor Plan – Level 1	Green Build	23.12.21
DA.06	M	Floor Plan – Level 2	Green Build	23.12.21
DA.07	M	Floor Plan – Level 3	Green Build	23.12.21
DA.13	M	Elevations - North	Green Build	23.12.21
DA.14	M	Elevations - East	Green Build	23.12.21
DA.15	M	Elevations – South & West	Green Build	23.12.21
DA.32	M	Southern Boundary Elevation – Retaining Wall	Green Build	23.12.21
Sheet 2 of 3	N/A	Landscape Plan	JK's Garden Creations	20.9.2021
210548-SWD 01 of 02	B	Stormwater Management Plan	Forum Consulting Engineers	30.09.2021

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

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

- (2) **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.
- (3) **Excavation for residential building works** – If the approved development involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the consent must, at the person's own expense:
- protect and support the adjoining premises from possible damage from the excavation; and
  - where necessary, underpin the adjoining premises to prevent any such damage.

This condition does not apply if the person having the benefit of the consent owns the adjoining land or the owner of the adjoining land has given consent in

writing that condition not applying, and a copy of that written consent is provided to the PCA prior to the excavation commencing.

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

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

- (5) **General terms of approval** – The General Terms of Approval from state authorities must be complied with prior to, during, and at the completion of the development.

The General Terms of Approval are:

1. NSW Rural Fire Service – dated 27 February 2022, reference: DA20210827003635-CL55-1

A copy of the General Terms of Approval is attached to this determination notice.

- (6) **Tree removal/pruning** – All vegetation on site is approved for removal.

- (7) **Approved report recommendations** – Construction of the development must comply with the recommendations of the 'Ecological Assessment Report - Proposed Duplex Development Lot 5942 DP 1007523 37, Canomii Close, Nelson Bay' (Ref: 2381 Revision: 00), NSW Prepared by Anderson Environment & Planning, dated 13 August 2021 detailed as follows:

- Clearing of vegetation on site must be undertaken under supervision of a suitably experienced Ecologist.
- The three small hollows removed from the site will be salvaged and utilised within the landscape plan for terrestrial fauna habitat.

## 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) **Driveway gradients and design** - For all driveways that relate to development for the purposes of a dwelling house, the driveway gradient and design must comply with AS 2890.1 'Off street Car Parking' and:
- a) the driveway must be at least 1m from any street tree, stormwater pit or service infrastructure; and
  - b) a Works on Public Infrastructure (Driveway) approval must be obtained prior to the commencement of any works.

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Details demonstrating compliance must be provided to the Certifying Authority.

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

Details demonstrating compliance must be provided to the Certifying Authority.

- (3) **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.

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

Facility	Per Lot/Dwelling	Total \$
Civic Administration – Plan Management	\$464	\$464
Civic Administration – Works Depot	\$1,210	\$1,210
Town Centre Upgrades	\$3,260	\$3,260
Public Open Space, Parks and Reserves	\$1,978	\$1,978
Sports & Leisure Facilities	\$1,882	\$1,882
Cultural & Community Facilities	\$1,274	\$1,274
Road Works	\$3,431	\$3,431
Shared Paths	\$3,143	\$3,143
Bus Facilities	\$11	\$11
Fire & Emergency Services	\$236	\$236
Flood & Drainage	\$1,815	\$1,815
Kings Hill Urban Release Area	\$288	\$288
	<b>TOTAL</b>	<b>\$18,992</b>

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

- a) Subdivision and building work - prior to the issue of the Construction Certificate, or Subdivision Certificate, whichever occurs first.

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

- (5) **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.

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

Details demonstrating compliance must be provided to the Certifying Authority.

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

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

Details demonstrating compliance must be provided to the Certifying Authority.

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

- (8) **Footings and excavation near Council property** – All works proposed within the zone of influence of Council's asset/s are to be designed and certified by a qualified Geotechnical or Structural Engineer.

Plans and specifications demonstrating compliance with this requirement must be submitted to the Certifying Authority.

- (9) **Dilapidation Report** – Before the issue of a construction certificate, a suitably qualified engineer must prepare a dilapidation report detailing the structural condition of adjoining buildings, structures or works, and public land, to the satisfaction of the certifier. If the engineer is denied access to any adjoining

properties to prepare the dilapidation report, the report must be based on a survey of what can be observed externally and demonstrate, in writing, to the certifier's satisfaction that all reasonable steps were taken to obtain access to the adjoining properties.

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

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

- a) The stormwater line within the Council road reserve is to be designed and constructed of a minimum class 4, 375mm RCP to connect to existing stormwater network within Wollomi Avenue, Nelson Bay.

Maintenance and responsibility is required by the proprietor of the lot in perpetuity for the life of the development.

- (11) High Set Windows** – The master bedrooms ensuite window in Unit 2 noted as window 25 on the plans must be amended to be a high set window.

Details demonstrating compliance must be provided to the Certifying Authority.

### **3.0 - Prior to Issue of a Subdivision Works Certificate**

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

- (1) Subdivision Works Certificate Required** – In accordance with the provisions of Section 6.13 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 Subdivision Works Certificate has been issued by a Consent Authority;
  - b) a Principal Certifying Authority (PCA) has been appointed by the person having benefit of the development consent in accordance with Section 6.5 of the EP&A Act 1979; and
  - c) the PCA is notified in writing of the name and contractor licence number of the owner/builder intending to carry out the approved works.
- (2) Driveway gradients and design** - For all driveways that relate to development for the purposes of a dwelling house, the driveway gradient and design must comply with AS 2890.1 'Off street Car Parking' and:
- c) the driveway must be at least 1m from any street tree, stormwater pit or service infrastructure; and

- d) a Works on Public Infrastructure (Driveway) approval must be obtained prior to the commencement of any works.

Details demonstrating compliance must be provided to the Certifying Authority.

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

Details demonstrating compliance must be provided to the Certifying Authority.

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

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

Details demonstrating compliance must be provided to the Certifying Authority.

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

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

Details demonstrating compliance must be provided to the Certifying Authority.

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

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

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

- a) The stormwater line within the Council road reserve is to be designed and constructed of a minimum class 4, 375mm RCP to connect to existing stormwater network within Wollomi Avenue, Nelson Bay.



Maintenance and responsibility is required by the proprietor of the lot in perpetuity for the life of the development.

- (8) **Dilapidation Report – Works near 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 works proposed within the zone of influence of Council's asset/s are to be designed and certified by a qualified Geotechnical or Structural Engineer.

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

Plans and specifications demonstrating compliance with this requirement must be submitted to the Certifying Authority.

#### 4.0 - Prior to Commencement of Works

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

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

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

- (2) **Payment of development contributions**- In the case of residential building work for which the *Home Building Act 1989* requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of

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insurance is in force before any building work authorised to be carried out by the consent commences.

- (3) **Notice of Principal Certifying Authority appointment** – Notice must be given to Council at least two days prior to subdivision and/or building works commencing in accordance with Clause 103 of the Environmental Planning & Assessment Regulation 2000. The notice must include:

- a) a description of the work to be carried out;
- b) the address of the land on which the work is to be carried out;
- c) the Registered number and date of issue of the relevant development consent;
- d) the name and address of the Principal Certifying Authority (PCA), and of the person by whom the PCA was appointed;
- e) if the PCA is an accredited certifier, their accreditation number, and a statement signed by the accredited certifier consenting to being appointed as PCA; and
- f) a telephone number on which the PCA may be contacted for business purposes.

- (4) **Notice commencement of work** – Notice must be given to Council at least two days prior to subdivision and/or building works commencing in accordance with Clause 104 of the Environmental Planning & Assessment Regulation 2000. The notice must include:

- a) the name and address of the person by whom the notice is being given;
- b) a description of the work to be carried out;
- c) the address of the land on which the work is to be carried out;
- d) the Registered number and date of issue of the relevant development consent and construction certificate;
- e) a statement signed by or on behalf of the Principal Certifying Authority to the effect that all conditions of the consent that are required to be satisfied prior to the work commencing have been satisfied; and
- f) the date on which the work is intended to commence.

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

- a) showing the name, address and telephone number of the principal certifier for the work, and
- b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
- c) stating that unauthorised entry to the work site is prohibited.

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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:
- d) a Construction Certificate has been issued by a Consent Authority;
  - e) 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
  - f) 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.
- (8) **Erosion and sediment controls in place** – Before the commencement of any site or building work, the principal certifier must be satisfied the erosion and sediment controls in the erosion and sediment control plan, (as approved by the principal certifier) are in place until the site is rectified (at least 70% ground cover achieved over any bare ground on site).
- (9) **All weather access** – A 3m wide all-weather vehicle access is to be provided from the kerb and gutter to the building under construction for the delivery of materials and use by trades people.
- No materials, waste or the like are to be stored on the all-weather access at any time.
- (10) **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.

### 5.0 - During Works

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

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- (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 the development involves an excavation that extends below the level of the base of the footings of a building, structure or work on adjoining land (including any structure or work within a road or rail corridor), the person having the benefit of the development consent must, at the person's own expense —
- a) Protect and support the building, structure or work from possible damage from the excavation, and
  - b) Where necessary, underpin the building, structure or work to prevent any such damage.

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

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

7.00am to 5.00pm on Monday to Saturday

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

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

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

- (4) **Toilet facilities** – Temporary toilet(s) must be provided and maintained on site from the time of commencement of building work to completion. The number of toilets provided must be one toilet per 20 persons or part thereof employed on the site at any one time.

The temporary toilet is to be either connected to the sewerage system or an approved septic tank or otherwise may be a chemical toilet supplied by a licensed contractor.

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

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

and protected to prevent them from being dangerous to life or property, and in accordance with the design of a suitably qualified Structural Engineer.

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

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

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

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

- (7) **Building height** – A survey report prepared by a Registered Surveyor confirming that the building height complies with the approved plans or as specified by the development consent, must be provided to the Principal Certifying Authority prior to the development proceeding beyond frame stage.
- (8) **Stormwater disposal** – Following the installation of any roof, collected stormwater runoff from the structure must be:
  - a) Connected to an approved stormwater quality improvement device such as an infiltrating raingarden in accordance with Council's Standard Drawing S161 (or latest revision of this drawing). Where an infiltration garden is installed, it is to be located in the landscaped area(s) with an overflow pipe connected to the existing drainage easement/system.
- (9) **Placement of fill** - Filling must not be placed in such a manner that natural drainage from adjoining land will be obstructed or in such a manner that surface water will be diverted.  
 Further, any alterations to the natural surface contours must not impede or divert natural surface water runoff so as to cause a nuisance to adjoining property owners.
- (10) **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.
- (11) **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.

- (12) **Tree removal/pruning** – All approved tree removal/pruning is subject to all pruning works being undertaken by a qualified arborist with minimum Australian Qualification Framework Level 3 qualifications or higher. All works are to be undertaken in accordance with the relevant provisions of AS 4373 'Pruning of Amenity trees'.

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

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

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

- (14) **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.

- (15) **Cut and fill (if applicable)** – While building work is being carried out, the principal certifier must be satisfied all soil removed from or imported to the site is managed in accordance with the following requirements:

- (a) All excavated material removed from the site must be classified in accordance with the EPA's Waste Classification Guidelines before it is

disposed of at an approved waste management facility and the classification and the volume of material removed must be reported to the principal certifier.

All fill material imported to the site must be Virgin Excavated Natural Material as defined in Schedule 1 of the *Protection of the Environment Operations Act 1997* or a material identified as being subject to a resource recovery exemption by the NSW EPA.

## 6.0 - 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) **Dual Occupancy and Subdivision** – Prior to the issue of the subdivision certificate the following is to occur:
- a) The dwellings shall have a satisfactory frame inspection undertaken; and
  - b) A report/plan shall be provided from a Registered Surveyor showing that:
    - i) The setback of the buildings from the adjacent and proposed boundaries meets the requirements of the BCA; and

All service lines are wholly contained within their respective lots, or an appropriate Easement or Easements have been shown on the plan of survey and suitably described in the 88B instrument.

- (2) **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.

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

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

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

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

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

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

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

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

- (7) **Hunter Water Corporation approval** - A Section 50 Application under the Hunter Water Act 1991 must be lodged with Hunter Water Corporation (HWC) and details of the Notice of Compliance from HWC must be provided to the Certifying Authority.

- (8) **Requirement for a Subdivision Certificate** - The application for Subdivision Certificate(s) must be made in accordance with the requirements of Clause 157 of the Environmental Planning & Assessment Regulations 2000.

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 [16-2021-662-1], and of compliance with the relevant conditions of consent, prior to the issuing of a Torrens Plan of Subdivision.

In addition, one signed original copy of the original plans and/or documents, and final plan of survey/title, must be submitted to Council. A USB containing an electronic copy of all relevant documents must also be provided.

- (9) **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) Positive covenant over the stormwater line within the Council road reserve for its maintenance and repair in perpetuity for the life of the development.

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

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

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

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



**ITEM 3 - ATTACHMENT 3      RECOMMENDED CONDITIONS OF 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
  - 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) **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.
- (5) **Completion of Roads Act Approval works** - All approved road, footpath and/or drainage works, including vehicle crossings, have been completed in the road reserve in accordance with the Roads Act Approval to the satisfaction of the Council as the Roads Authority.

**8.0 – Ongoing Use**

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

- (1) **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.

**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) **Works near/adjoining electricity network assets** – There are underground electricity network assets adjacent to the proposed development in Canomii Close and the adjoining road reserve. 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
- (4) **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.
- (5) **Council must be nominated as PCA for subdivision works** – Under Section 6.5 of the Environmental Planning & Assessment Act 1979, Council shall be nominated as the Principal Certifying Authority for subdivision work and has the option of undertaking inspection of physical construction works.
- (6) **Street Numbering– Prior to occupying the development or Release of Subdivision Certificate**, (whichever occurs first) the approved dwellings are to be identified as follows:
- a) Lot 1 – 37 Canomii Close, Nelson Bay
  - b) Lot 2 – 37A Canomii Close, Nelson Bay
- Council's Spatial Services Team should be contacted via email at: [addressing@portstephens.nsw.gov.au](mailto:addressing@portstephens.nsw.gov.au) to obtain correct property addressing details. Please state your Development Approval number and property address in order to obtain the correct house numbering.
- Note:** any referencing on Development Application plans to house or lot numbering operates to provide identification for assessment purposes only.

ITEM NO. 4

FILE NO: 21/342489  
EDRMS NO: 79-2022-5-1

**DRAFT TERMS OF REFERENCE FOR COMPREHENSIVE KOALA PLAN OF  
MANAGEMENT STEERING COMMITTEE**

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

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Revoke the original Terms of Reference for the Comprehensive Koala Plan of Management Steering Committee (**ATTACHMENT 2**).
- 2) Note the draft Terms of Reference for the Comprehensive Koala Plan of Management Steering Committee (**ATTACHMENT 1**).

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**BACKGROUND**

The purpose of this report is to seek Council's endorsement for the draft Terms of Reference (ToR) for the Comprehensive Koala Plan of Management (CKPoM) Steering Committee ("Committee").

The Committee was established in 2001 to implement the CKPoM recommendations and its Action Plan. The Committee, comprising representatives of Council, State government agencies, Koala care organisations, and local community members, meets on a quarterly basis.

The original ToR (**ATTACHMENT 2**) have not been updated since they were adopted by Council in 2001. Since this time, Council's governance and risk frameworks have been updated. The draft ToR (**ATTACHMENT 1**) have been prepared to align with these updated frameworks and provide more clarity around the responsibilities of and expectations for the Committee.

This report also seeks the revocation of the original ToR (**ATTACHMENT 2**), which must be rescinded for the draft ToR (**ATTACHMENT 1**) to be adopted.

**COMMUNITY STRATEGIC PLAN**

Strategic Direction	Delivery Program 2018-2022
Ecosystem Function	Protect and enhance the local natural environment.

**FINANCIAL/RESOURCE IMPLICATIONS**

There are no financial implications arising from the draft ToR.

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

**LEGAL, POLICY AND RISK IMPLICATIONS**

The establishment and operation of a Committee is a key recommendation of the CKPoM (s18). The draft ToR have been prepared to meet the scope and responsibilities outlined in section 18.2 of the CKPoM. The draft terms of reference, which provides greater clarity around membership, voting, responsibilities, and actions, limits policy and governance risks to Council.

<b>Risk</b>	<b><a href="#">Risk Ranking</a></b>	<b>Proposed Treatments</b>	<b>Within Existing Resources?</b>
There is a risk that in the absence of an updated terms of reference, the Committee will not function effectively or be able to meet the recommendations of the CKPoM.	Medium	Adopt the recommendations	Yes

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

The primary aim of the draft ToR is to equip the Committee with a robust governance framework to ensure optimal decision-making and a renewed focus on the recommendations and risk treatment actions of the CKPoM. A more effective Committee will improve the implementation of the CKPoM and provide for more sustainable outcomes for the local koala population.

## **CONSULTATION**

Consultation with key stakeholders has been undertaken by the Natural Systems team to develop a ToR capable of aligning with Council's governance and risk frameworks, the recommendations of the CKPoM, and the existing functionality of the Committee and its quarterly meetings.

### Internal

- The Governance Section was consulted to ensure the draft ToR was appropriate and aligned with governance and risk frameworks.
- The Senior Leadership Team was consulted to ensure the ToR was aligned to Council's leadership expectations.

### External

- The Committee were consulted and gave their endorsement of the draft terms of reference at the August 2020 meeting. The draft ToR include amendments made by Committee members.

## **OPTIONS**

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

## **ATTACHMENTS**

- 1) Draft Terms of Reference for Comprehensive Koala Plan of Management Committee 2022. [↓](#)
- 2) Original CKPoM Steering Committee Terms of Reference. [↓](#)

## **COUNCILLORS ROOM**

Nil.

## **TABLED DOCUMENTS**

Nil.

ITEM 4 - ATTACHMENT 1 DRAFT TERMS OF REFERENCE FOR  
COMPREHENSIVE KOALA PLAN OF MANAGEMENT COMMITTEE 2022.

TERMS OF REFERENCE



**PORT STEPHENS COMPREHENSIVE KOALA PLAN OF  
MANAGEMENT (CKPoM) STEERING COMMITTEE**

**1. PURPOSE:**

- 1.1 The purpose of the Steering Committee is to oversee the implementation of the Comprehensive Koala Plan of Management (CKPoM):

*"...to encourage the proper conservation and management of areas of natural vegetation that provide habitat for koalas, to ensure permanent free-living populations over their present range and to reverse the current trend of population decline."*

**2. CONTEXT/BACKGROUND:**

- 2.1 The CKPoM was adopted by Port Stephens Council and the Department of Planning in 2002 and was developed in accordance with Part 3 of the *State Environmental Planning Policy No 44 – Koala Habitat Protection* (SEPP 44).
- 2.2 The CKPoM provided for the establishment of a Steering Committee to (amongst other things) "oversee the implementation of the CKPoM".

**3. SCOPE:**

- 3.1 The role of the Steering Committee is to:
- a) Implement the CKPoM Action Plan (in accordance with Part 1: 18.1 - p.48 of the CKPoM).
  - b) Monitor the impact of implementing the CKPoM Action Plan.
  - c) Advise Port Stephens Council on any further measures to protect and support the Port Stephens' Koala population.
- 3.2 Council retains the responsibilities for planning matters in accordance with the *Environmental Planning and Assessment Act 1979* and will report to the Steering Committee on these matters. It is therefore not the role of the Steering Committee to resolve issues associated with development or rezoning applications impacting Koala habitat.

# ITEM 4 - ATTACHMENT 1 DRAFT TERMS OF REFERENCE FOR COMPREHENSIVE KOALA PLAN OF MANAGEMENT COMMITTEE 2022.

## TERMS OF REFERENCE



### 4. DEFINITIONS:

4.1 An outline of the key definitions included in the Terms of Reference.

Action Plan	Lists actions recommended in the Port Stephens Council CKPoM, the organisations responsible for its implementation and the nominal priority for each action.
Annual Report	An annual report produced by the Steering Committee which details progress on implementation of the CKPoM, outlines current research projects and provides a review of any additional action that may be required.
Council	Port Stephens Council
CKPoM	Comprehensive Koala Plan of Management
SEPP44	<i>State Environmental Planning Policy 44 – Koala Habitat Protection</i>

### 5. AUTHORITY:

5.1 This Steering Committee is responsible for:

- a) Overseeing the implementation of the CKPoM in Port Stephens as required under Part 1: 18.1 - p.48.
- b) Reviewing and reporting on an ongoing monitoring program (Part 2: 17.6 - p.9).
- c) Producing an Annual Report that details progress on implementation of the CKPoM (Part1: 18.2(v) - p.48).
- d) Formally reviewing the CKPoM at the end of each 12 month period following adoption. Where failure to meet any one of the Performance Indicators has been reported, the CKPoM Steering Committee will determine whether the measures established by the Port Stephens Council CKPoM require amendment (Part 2: 17.7 - p.9).
- e) Proposing, in consultation with the General Manager of Port Stephens Council and the Director-General of NSW National Parks and Wildlife Service, any amendments to the CKPoM. Amendments to the CKPoM will require the approval of both the Director-General of the Department of Planning, Industry and Environment and Port Stephens Council before they take effect (Part 2: 17.7(v) - p.9).

# ITEM 4 - ATTACHMENT 1 DRAFT TERMS OF REFERENCE FOR COMPREHENSIVE KOALA PLAN OF MANAGEMENT COMMITTEE 2022.

## TERMS OF REFERENCE



### 6. TERM:

- 6.1 The Terms of Reference for the Steering Committee will take effect after adoption by the Elected Council and stay in effect whilst the Steering Committee is active.

### 7. MEMBERSHIP:

- 7.1 The Steering Committee must comprise core members (including 3 community members) and occasional members as detailed in Table 1 below. The Steering Committee includes the following members:

**Table 1**

Organisation	Membership type (Core or Occasional)	Voting Rights? (Yes / No)	Role
Port Stephens Council Elected Councillor	Core	Yes	Chairperson
NSW National Parks and Wildlife Service/Department of Planning and Environment (Biodiversity Conservation Division)	Core	Yes	Member
Australian Koala Foundation (AKF)	Core	Yes	Member
Hunter Wildlife Rescue (formerly Native Animal Trust Fund)	Core	Yes	Member
Port Stephens Koala Hospital (PSKH)	Core	Yes	Member
Voice of Wallalong, Woodville and Surrounds (VoWW)	Core	Yes	Member
Wildlife in Need of Care (WINC)	Core	Yes	Member
Koala Coalition	Core	Yes	Member
EcoNetwork Port Stephens	Core	Yes	Member
Community Member 1	Core	Yes	Member
Community Member 2	Core	Yes	Member
Community Member 3	Core	Yes	Member

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# ITEM 4 - ATTACHMENT 1 DRAFT TERMS OF REFERENCE FOR COMPREHENSIVE KOALA PLAN OF MANAGEMENT COMMITTEE 2022.

## TERMS OF REFERENCE



Organisation	Membership type (Core or Occasional)	Voting Rights? (Yes / No)	Role
Port Stephens Council Officer	Core	No	Secretariat (administrative support)
Transport for NSW	Occasional	No	Guest
Hunter Water Corporation	Occasional	No	Guest
State Forests of NSW	Occasional	No	Guest
Worimi Local Aboriginal Land Council	Occasional	No	Guest
University of Newcastle	Occasional	No	Guest
NSW Rural Fire Service Lower Hunter (formerly Port Stephens Fire Control)	Occasional	No	Guest

- 7.2 The Steering Committee is comprised of one delegated representative from each of the approved organisations listed in Section 7.1. Each organisation must nominate a member annually at the start of the calendar year.
- 7.3 The Committee must call for public expressions of interest to appoint the three (3) community representatives at the start of each Council term. Eligible applicants must demonstrate an active interest in local koala care and/or conservation. The community representatives must be confirmed by a Steering Committee vote.
- 7.4 The Steering Committee may invite others to attend meetings as required (CKPoM Part 1: 18.1- p.48).
- 7.5 Other organisations may be represented on the steering committee as either a Core member or Occasional Member if their membership is sponsored by a Core Member and their admission is resolved by a Committee Vote.
- 7.6 Members who fail to meet the requirements of this Terms of Reference and the meeting code of cooperation (see Section 14), may be expelled from the Steering Committee on recommendation of the Chair and General Manager of Port Stephens Council.

# ITEM 4 - ATTACHMENT 1 DRAFT TERMS OF REFERENCE FOR COMPREHENSIVE KOALA PLAN OF MANAGEMENT COMMITTEE 2022.

## TERMS OF REFERENCE



### 8. ROLES AND RESPONSIBILITIES:

- 8.1 The roles and responsibilities of the Steering Committee members are outlined below Table 2 below:

**Table 2**

Role	Before meeting	During Meeting	Following Meeting
<b>Secretariat (Council staff)</b>	<ul style="list-style-type: none"> <li>Schedule meetings.</li> <li>Call for agenda items.</li> <li>Invite occasional members.</li> <li>Distribute draft agenda.</li> </ul>	<ul style="list-style-type: none"> <li>Provide updates as per agenda.</li> <li>Record action items and outcomes as required.</li> <li>Update outstanding actions.</li> </ul>	<ul style="list-style-type: none"> <li>Finalise minutes.</li> <li>Save a record to EDRMS.</li> <li>Maintain list of Steering Committee member contact details.</li> </ul>
<b>Chair</b>	<ul style="list-style-type: none"> <li>Review agenda and read supporting information.</li> </ul>	<ul style="list-style-type: none"> <li>Chair Meeting</li> </ul>	<ul style="list-style-type: none"> <li>Table the Steering Committee's Annual Report with Council.</li> </ul>
<b>Members</b>	<ul style="list-style-type: none"> <li>Produce and provide reports to the Secretariat.</li> <li>Review agenda and read supporting information.</li> </ul>	<ul style="list-style-type: none"> <li>Actively participate in meetings.</li> <li>Support collaborative information sharing.</li> </ul>	<ul style="list-style-type: none"> <li>Complete actions as required.</li> <li>Communicate with staff as necessary.</li> </ul>

### 9. ADMINISTRATION ARRANGEMENTS:

#### 9.1 Meeting practices and cycles

- a) The Steering Committee will meet quarterly, or at an interval deemed appropriate by the Steering Committee. All attendees are required to comply with the Port Stephens Council Meeting Code of Cooperation listed in Section 14 of this Terms of Reference and appended to every agenda.

#### 9.2 Secretariat

- a) The Natural Systems section of Port Stephens Council will provide administrative support to the Steering Committee.

**ITEM 4 - ATTACHMENT 1 DRAFT TERMS OF REFERENCE FOR  
COMPREHENSIVE KOALA PLAN OF MANAGEMENT COMMITTEE 2022.**

**TERMS OF REFERENCE**



**9.3 Agenda and minutes**

- a) The Secretariat will provide the meeting agenda to all members of the Steering Committee no later than five (5) business days prior to the scheduled meeting date.
- b) The Secretariat will provide the meeting minutes to all members of the Steering Committee no later than ten (10) working days following the scheduled meeting date.

**9.4 Voting**

- a) Voting rights of the Steering Committee is outlined in Section 7.1 of these Terms of Reference and the CKPoM document (Part 1: 18.1 -p.48).
- b) A quorum of 50% of the voting members plus 1 is established. Meetings may still go ahead where a quorum has not been reached, but no decisions shall be made without a quorum present.
- c) Each organisation must nominate a representative member annually. This delegate retains the voting rights for the calendar year, unless the organisation nominates an alternate to attend and vote in the instance of a delegate's absence.

**9.5 Guests**

- a) Core members may, with approval from the Chair, invite a guest to attend a meeting. Requests for guest attendance must be made to the Chair at least 1 week before the scheduled meeting.

**9.6 Record keeping**

- a) All record keeping will be made and maintained by the Secretariat.

**10. CONFIDENTIALITY:**

- 10.1 Members listed in this Terms of Reference may become acquainted with or have access to confidential and/or sensitive information. Members should not disclose such information to any other party unless specifically authorised to do so and should not make improper use of any information.

**ITEM 4 - ATTACHMENT 1 DRAFT TERMS OF REFERENCE FOR  
COMPREHENSIVE KOALA PLAN OF MANAGEMENT COMMITTEE 2022.**

**TERMS OF REFERENCE**



**11. INTELLECTUAL PROPERTY:**

11.1 The Port Stephens Council Comprehensive Koala Plan of Management Steering Committee acknowledges and agrees:

- a) It is important for Council to develop, maintain, protect and manage the organisation's intellectual property including copyrights, trademarks, registered designs, patents and databases.
- b) The Port Stephens Council CKPoM Steering Committee has a duty to observe and help protect Council's intellectual property by not copying or supplying such property without the express permission of Council or the copyright owner.
- c) Council retains ownership of all intellectual property created by members in the course of their Port Stephens Council CKPoM Steering Committee work.
- d) Council will acknowledge the Port Stephens Council CKPoM Steering Committee if publishing or reproducing copies of Port Stephens Council CKPoM Steering Committee research, including images and historical data.

11.2 The Port Stephens Council CKPoM Steering Committee refers to the Secretariat any questions relating to intellectual property rights or the use of another organisation's document.

**12. MEDIA:**

12.1 Any media liaison associated with the activities of the Port Stephens Council CKPoM Steering Committee shall be undertaken in accordance with Port Stephens Council protocols and with the approval of the Port Stephens Council CKPoM Steering Committee.

**13. REVIEW:**

13.1 The Terms of Reference will be reviewed every 3 years or at the commencement of each Council term.

# ITEM 4 - ATTACHMENT 1 DRAFT TERMS OF REFERENCE FOR COMPREHENSIVE KOALA PLAN OF MANAGEMENT COMMITTEE 2022.

## TERMS OF REFERENCE



### 14. MEETING CODE OF COOPERATION:

- We start on time and finish on time.
- We focus on the strategic intent of the item.
- We ensure that people attending meetings are provided with guidance and support.
- We consider the risks and opportunities of each item.
- We are prepared to have open and honest conversations about an issue even if it is uncomfortable.
- We all participate fully and are prepared to challenge each other.
- We use improvement tools that enhance meeting efficiency and effectiveness.
- We actively listen to what others have to say, seeking first to understand then to be understood.
- We consider the deployment of actions and programs through appropriate frameworks and communicate the consensus view through appropriate channels.
- We follow up on the actions we are assigned responsibility for and complete them on time.
- We give and receive open and honest feedback in a constructive manner.
- We use data to make decisions (whenever possible).
- We determine issues arising by consensus or refer to the Chair for consideration.
- We strive to continually improve our meeting process and build time into each agenda for reflection and learning.
- We will promote best practice, keeping open minds, combining our experiences and shared learnings to inform our deliberations.

### 15. RELATED DOCUMENTS:

- 15.1 *State Environmental Planning Policy No 44 - Koala Habitat Protection* (SEPP 44) (repealed February 2020) - <https://www.legislation.nsw.gov.au/#/view/EPI/1995/5>
- 15.2 *State Environmental Planning Policy (Koala Habitat Protection) 2021:* <https://legacy.legislation.nsw.gov.au/EPIs/2021-115.pdf>
- 15.3 *State Environmental Planning Policy (Koala Habitat Protection) 2020:* <https://legislation.nsw.gov.au/view/pdf/asmade/epi-2020-698>
- 15.4 Port Stephens Council Comprehensive Koala Plan of Management Part 1: <https://www.portstephens.nsw.gov.au/trim/other?RecordNumber=PS C2015-03576%2F036>

# ITEM 4 - ATTACHMENT 1 DRAFT TERMS OF REFERENCE FOR COMPREHENSIVE KOALA PLAN OF MANAGEMENT COMMITTEE 2022.

## TERMS OF REFERENCE



- 15.5 Port Stephens Council Comprehensive Koala Plan of Management Part 2:  
<https://www.portstephens.nsw.gov.au/trim/other?RecordNumber=18%2F200915>
- 15.6 Port Stephens Council Comprehensive Koala Plan of Management Part 3:  
<https://www.portstephens.nsw.gov.au/trim/other?RecordNumber=18%2F200921>
- 15.7 Port Stephens Council's Code of Conduct:  
<https://www.portstephens.nsw.gov.au/trim/policies?RecordNumber=19%2F102443>

### CONTROLLED DOCUMENT INFORMATION:

This is a controlled document. Hardcopies of this document may not be the latest version. Before using this document, check it is the latest version; refer to Council's website <a href="http://www.portstephens.nsw.gov.au">www.portstephens.nsw.gov.au</a>			
EDRMS container No	PSC2020-00559-004	EDRMS record No	TBC
Audience	Staff, Councillors and the Community		
Process owner	Natural Systems Coordinator		
Author	Environmental Planner		
Review timeframe	3 years, or at the commencement of each Council term.	Next review date	
Adoption date	TBC		

**ITEM 4 - ATTACHMENT 2 ORIGINAL CKPOM STEERING COMMITTEE  
TERMS OF REFERENCE.****TERMS OF REFERENCE FOR THE CKPOM STEERING COMMITTEE****ROLE OF THE COMMITTEE**

The role of the CKPoM Steering Committee is to:

- 1) Implement the CKPoM Action Plan;
- 2) Monitor the impacts associated with implementation of the CKPoM Action Plan; and
- 3) Advise Council on any further immediate measures to address the decline of the koala population.

It is not the role of the Steering Committee to further critique and amend the CKPoM, nor is it to resolve issues associated with development or rezoning applications and koalas. Council will retain this responsibility in accordance with the Environmental Planning and Assessment Act 1979. The impact of the CKPoM on development during the review period will therefore be assessed by Council Development staff and reported to Council through the Steering Committee.

**Key Actions for which Committee is responsible**

- Prioritising areas for habitat restoration
- Promoting and overseeing koala research
- Investigating additional safety measures for koalas in respect to traffic issues
- Developing educational material and programs
- Liaison with the Bushfire Management Committee
- Investigating the establishment of Koala Conservation Areas
- Undertaking liaison with the media
- Identification of trial eco-tourism areas, development of koala based tourism guidelines and monitoring of the impacts of tourism on koalas.
- Determining costs and securing funding for implementation of the CKPoM
- Co-ordination of Koala Monitoring Program.

**Composition of the Committee**

Core members of the Steering Committee include a Port Stephens Councillor to chair the Committee, an officer from each of Port Stephens Council, the NSW National Parks and Wildlife Service, the Department of Urban Affairs and Planning and the Australian Koala Foundation, together with a representative from each of the Native Animal Trust Fund, the Hunter Koala Preservation Society, Australian Wildlife Hospital, and a minimum of three local landholders.

Representatives from other agencies and organisations will be called upon by the Steering Committee to participate as required.

**Operation of the Committee**

1. Quorum (½ of voting committee members plus one)
2. All members of the Committee other than the Port Stephens Council Officer will have voting rights.
3. Venue – PSC Administration Centre.
4. Minutes will be taken of all meetings and provided to Committee Members.  
Meetings will be conducted on a quarterly basis for the first year, and as often as is considered necessary by the Committee after that time.

**ITEM NO. 5**

**FILE NO: 22/82312  
EDRMS NO: PSC2017-00180**

**ADDITIONAL SPECIAL VARIATION APPLICATION 2022-2023**

REPORT OF: TIM HAZELL - FINANCIAL SERVICES SECTION MANAGER  
GROUP: CORPORATE SERVICES

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Resolves to apply to the Independent Pricing and Regulatory Tribunal for a one-off Additional Special Variation (ASV) of 2.5% for the 2022-2023 financial year, and for this to be a permanent increase retained within the rate base.

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**BACKGROUND**

The purpose of this report is to seek approval to apply for a one-off Additional Special Variation (ASV) to the Independent Pricing and Regulatory Tribunal (IPART).

Council is subject to an annual rate pegging regime to be determined by IPART each year. For many years, local government authorities have argued that the methodology used by IPART was flawed and the rate pegging factor did not keep pace with the cost increases imposed on councils.

IPART instructs council's to assume a rate peg increase of 2.5% when preparing their Long Term Financial Plan (LTFP) and upcoming financial year budgets. On 13 December 2021, IPART announced the 2022-2023 rate peg of 0.7%, and Port Stephens Council was granted a new additional population growth factor of 0.6%. This total increase of 1.3% falls short of expectations, being 1.2% lower than anticipated. Such an announcement caused concern throughout the industry and Council made representations to various levels of government and to IPART directly.

On 7 March 2022, the Office of Local Government (OLG) issued a circular on IPART's announcement that they will accept a one-off additional round of 2022-2023 Special Variation Application under Section 508(2) of the Local Government Act 1993 (the Act).

The purpose of this one-off ASV round is that any council which can demonstrate that, in the absence of a special variation, it would not have sufficient funds to meet its obligations as identified in its 2021-2022 (LTFP), as and when they fall due in 2022-2023.

The percentage sought in the application will be the lower of either:

- 1) 2.5% (including population factor) or



2) The Council's assumed 2022-2023 rate peg as exhibited in its 2021-2022 LTFP.

Whilst official application forms are yet to be released, it is evident that this rate peg adjustment application process and guidelines are a simple, more targeted process in place of the standard guidelines established by the OLG.

### **ASV Guidelines**

1. Demonstrable financial need for the 2022-2023 financial year.
2. Demonstrable financial need for the special variation to be retained in the rate base.
3. Council's 2021-2022 Integrated Planning & Reporting (IP&R) documentation budgeted for an income increase above the percentage specified for Council for 2022-2023 under section 506 of the Act.
4. Council resolution to apply for ASV clearly stating:
  - a) Temporary or permanent increase sought.
  - b) The additional income that Council will receive if the special variation is approved.
  - c) Why the special variation is required.
  - d) That Council has considered the impact on ratepayers and the community in 2022-2023 and, if permanent, it considers that the ongoing impact is reasonable.

### **Guideline 1 Response**

Council, as part of the 2021-2022 IP&R Operational Plan, LTFP, and Budget cycle process identified that Councils projected result for 2022-2023 was a deficit of (\$364,670). The lower than expected rate peg of 1.3% will result in a larger deficit of \$923,406, this is without taking into consideration the current economic instability and the COVID-19 pandemic implications on the 2022-2023 result. A projected deficit result is a clear demonstration of the financial need for the additional income generated by the ASV.

### **Guideline 2 Response**

Council's LTFP has, for several years, indicated that financial sustainability would be increasingly difficult to maintain, with the first critical year being 2021-2022. A lower than expected rate peg of 1.3% will have an accumulative impact on Councils rate base. Council's long term financial position has been further exasperated with the current economic instability due to the COVID-19 pandemic resulting in current and future expected increases to external and internal cost pressures, such as the current Consumer Price Index being reasonably predicted to be in excess of 3.5% per annum.

It is imperative that Council is able to access all available sources of funding and retain it in the rate base to be able to service the community needs as identified in the Community Strategic Plan (CSP), Delivery and Operational Plan (DP/OP), and the Strategic Asset Management Plan (SAMP).

**Guideline 3 Response**

Council as per IPART and the OLG's instructions exhibited and adopted a LTFP in guidance with the IP&R documentation requirements, that included a rate peg increase of 2.5%, this was above the percentage of 1.3% specified for Port Stephens Council for the 2022-2023 determination under section 506 of the Act.

**Guideline 4 Response**

- a) Council is applying for a permanent increase.
- b) The additional income Council will receive if the application is approved would be approximately \$550,000.
- c) Council requires the special variation in order to have sufficient funds to meet its obligations as identified in its 2021-2022 (LTFP) as and when they fall due in 2022-2023 and to be able to deliver planned services for the community as identified in the Community Strategic Plan (CSP), Delivery and Operational Plan (DP/OP), and the Strategic Asset Management Plan (SAMP).
- d) Council has considered the impact of ratepayers and the community in 2022-2023 and the ongoing impact as it seeks the increase to be held in perpetuity. The impact of the ASV on the average rate per category is detailed in Table 2.

**TABLE 2**

<b>2022-2023 Average Rates</b>			
<b>Rating Category</b>	<b>Sub-Category</b>	<b>1.3%</b>	<b>2.5%</b>
Residential		\$1,136	\$1,149
Residential	Williamtown Primary	\$512	\$517
Residential	Williamtown Secondary	\$733	\$741
Residential	Williamtown Broader	\$896	\$907
Farmland		\$1,914	\$1,938
Farmland	Williamtown Primary	\$665	\$673
Farmland	Williamtown Secondary	\$1,104	\$1,117
Farmland	Williamtown Broader	\$1,359	\$1,376
Business		\$4,850	\$4,916

Assuming Council still wishes to support the reduced rating structure for Williamtown area. Council will follow its 2021-2022 IP&R documents and each rating category will be equally increased by the same percentage.

Whilst a small and appropriate increase is being sought, the rate increase will impact some ratepayers more than others. This is partially offset by the pensioner concession and rates relief, deferrals, and repayment arrangements included in Council's Hardship Policy. Furthermore, Councils average residential rates are the lowest compared to other council's in the OLG's Category 5, and Councils outstanding rates ratio has continued to stay below both the OLG's Metropolitan and Rural Benchmarks of 10% and 5% respectively, during the past 2 years.

**COMMUNITY STRATEGIC PLAN**

<b>Strategic Direction</b>	<b>Delivery Program 2018-2022</b>
Financial Management	Maintain strong financial sustainability.

**FINANCIAL/RESOURCE IMPLICATIONS**

The costs for Council to apply have been absorbed by Council's operational budget.

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

**LEGAL, POLICY AND RISK IMPLICATIONS**

Under the Local Government Act 1993, Councils may apply to IPART for a Special Rate Variation under s508 (2) of the Act. IPART will assess these applications against criteria laid out in the Office of Local Government Council Circular 22-03 Guidelines for Additional Special Variation (ASV) Process for 2022-2023.

<b>Risk</b>	<b><a href="#">Risk Ranking</a></b>	<b>Proposed Treatments</b>	<b>Within Existing Resources?</b>
There is a risk that by not proceeding with this one-off ASV application and accepting the lower rate peg amount of 1.3%, Council would not have sufficient funds to meet its obligations as identified in its 2021-2022 (LTFP) as and when they fall due in 2022-2023.	High	Adopt the recommendation.	Yes

There is a risk that proceeding with an ASV application could be poorly received by the community.	Medium	Council has publicly exhibited and gained public submissions on the 2021-2022 IP&R documents including the rate peg of 2.5%. Council would clearly articulate 2 scenarios based on 1.3% and 2.5% rate increases in the upcoming 2022-2023 IP&R public exhibition phase.	Yes
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**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

The sustainability implications need to be carefully considered as part of the ASV application. A decision not to apply for the ASV would be of significant detriment to the financial sustainability of Council. The negative impact would be cumulative on Council's ability to fund and meet current and future community demands, as the additional income from this application is only accessible in this one-off ASV process. The cumulative loss, should Council not elect to proceed with the ASV application, would be unrecoverable.

**CONSULTATION**

Consultation with key stakeholders has been undertaken by the Financial Services Section.

Internal

- Executive Team.
- IP&R Project Control Group.
- Council staff in appropriate business units.
- Mayor and Councillors.

External

- The 2021-2022 IP&R documents were adopted by Council following a 28 day public exhibition period.
- IPART will conduct a 3 week engagement period.
- Through the 2022-2023 IP&R public exhibition process, Council will publicly exhibit the 2 rate increase scenarios, 1.3% and 2.5% within the Long Term Financial Plan for 28 days. Context of the 2 different scenarios will be given in the Operational Plan and Delivery Program.

**OPTIONS**

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

**ATTACHMENTS**

Nil.

**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

Nil.

**ITEM NO. 6**

**FILE NO: 22/90623  
EDRMS NO: PSC2006-1027**

**ANNA BAY HALL 355C COMMITTEE**

REPORT OF: TAMMY GUTSCHE - COMMUNITY SERVICES SECTION  
MANAGER  
GROUP: FACILITIES & SERVICES

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Dissolve the Anna Bay 355c Hall Committee as of 30 April 2022 and close related committee bank accounts.
- 2) Acknowledge past achievements of the Committee members and thank them for their dedication.

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**BACKGROUND**

The purpose of this report is to recommend that Council dissolve the Anna Bay 355c Hall Committee and acknowledge past achievements of the outgoing committee members.

The Anna Bay 355c Hall Committee held its Annual General Meeting (AGM) on Thursday 24 March 2022, with all office bearer positions declared vacant. There were no nominations for any of the Executive positions at the meeting.

Section 4.3 of the 355c Committee Terms of Reference states: "If a Committee does not have any nominations for Committee membership, then the Council will determine the process for the future management of the Committee".

All assets and unspent funds associated with the Anna Bay 355c Hall Committee will return to Council and the bank account will be closed. Council's Community Services Section will take over coordination of bookings and financial management of Anna Bay Hall.

Our volunteers are highly valued and will be supported to maintain their representation as an active volunteer group that will continue to participate in their operation and caring for the facility.

Council will arrange an event for the outgoing committee members to acknowledge their achievements and thank them for all their hard work. Council staff will continue to engage with interested volunteers in order to maintain their involvement in caring for the facility.

**COMMUNITY STRATEGIC PLAN**

<b>Strategic Direction</b>	<b>Delivery Program 2018-2022</b>
Community Diversity	Support volunteers to deliver appropriate community services.

**FINANCIAL/RESOURCE IMPLICATIONS**

The bank account held by the Anna Bay 355c Hall Committee will be closed prior to 30 April 2022, with remaining funds to be transferred to Council and used for continued hall management purposes.

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

**LEGAL, POLICY AND RISK IMPLICATIONS**

There are no legal or policy impediments to accepting the recommendations. Council is able to dissolve 355c committees under the Local Government Act 1993.

<b>Risk</b>	<b><a href="#">Risk Ranking</a></b>	<b>Proposed Treatments</b>	<b>Within Existing Resources?</b>
There is a risk that the community will have no access to the facility if Council does not take over management.	Low	Adopt the recommendations.	Yes
There is a risk to Council's reputation if community assets remained unutilised.	Low	Adopt the recommendations.	Yes

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

There are no sustainability implications resulting from the dissolution of this 355c Committee.

## **CONSULTATION**

Consultation with key stakeholders has been undertaken by the Community Services Section. Consultation, both within Council and with the community, is vital for key governance documents such as this to ensure requirements are met in the operation of community volunteers under the Local Government Act 1993.

### Internal

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

### External

- Anna Bay 355c Hall Committee members.

## **OPTIONS**

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

## **ATTACHMENTS**

Nil.

## **COUNCILLORS ROOM**

Nil.

## **TABLED DOCUMENTS**

Nil.



**ITEM NO. 7**

**FILE NO: 22/85752  
EDRMS NO: PSC2021-04205**

**REQUEST FOR FINANCIAL ASSISTANCE**

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

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Approves provision of financial assistance under Section 356 of the Local Government Act 1993 from Ward funds to the following:-
  - a. Endorse the provision of funds to Charles Tennyson - Cr Glen Dunkley - East Ward - Rapid Response - \$500 donation towards the cost of a driller and compressor for research to be undertaken at Fly Point 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.
- 2) Should no submissions be received as a result of the public exhibition stated in 1a) 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 Capacity Building

Council is unable to grant approval of financial assistance to individuals unless it is performed in accordance with the Local Government Act 1993. This would mean that the financial assistance would need to be included in the Operational Plan or Council would need to advertise for 28 days of its intent to grant approval. Council can make donations to community groups.

The requests for financial assistance are shown below:

**WARD FUNDS**

Mr Charles Tennyson	Mr Tennyson is conducting historical research at Fly Point.	\$500	Donation towards cost of a driller and compressor.
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**COMMUNITY STRATEGIC PLAN**

<b>Strategic Direction</b>	<b>Delivery Program 2018-2022</b>
Community Partnerships	Support financially creative and active communities.

**FINANCIAL/RESOURCE IMPLICATIONS**

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

**LEGAL AND POLICY IMPLICATIONS**

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

The policy interpretation required is whether the Council believes that:

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

<b>Risk</b>	<b><u>Risk Ranking</u></b>	<b>Proposed Treatments</b>	<b>Within Existing Resources?</b>
There is a risk that Council may set a precedent when allocating funds to the community and an expectation those funds will always be available.	Low	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. 8**

**FILE NO: 22/86678  
EDRMS NO: PSC2017-00015**

**INFORMATION PAPERS**

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

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**RECOMMENDATION IS THAT COUNCIL:**

Receives and notes the Information Papers listed below being presented to Council on 12 April 2022.

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<b>No:</b>	<b>Report Title</b>	<b>Page:</b>
1	Fern Bay Bus Stop - Seaside Boulevarde, Fern Bay	177
2	Waste Management Contract	186
3	Designated Persons' Return	188
4	Council Resolutions	189

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# INFORMATION PAPERS

**ITEM NO. 1**

**FILE NO: 22/65921  
EDRMS NO: PSC2005-2610**

**FERN BAY BUS STOP - SEASIDE BOULEVARDE, FERN BAY**

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

**BACKGROUND**

The purpose of this report is to provide a history and additional information regarding an existing Bus Stop ID 229560 on Seaside Boulevarde, Fern Bay, in response to the Council resolution (Minute No. 128) of the Council Meeting of 25 May 2021 **(ATTACHMENT 1)**.

Upon commencement of a bus service into the then new Fern Bay development, buses stopped on the road verge at a location on the western side of the Seaside Boulevarde/Ironbark Drive roundabout **(ATTACHMENT 2)**. At this point in time, the bus route only extended into the development to the roundabout as this was the only means for buses to turn around and exit the development.

Council, in response to safety concerns, consulted with relevant stakeholders and received NSW State Government funding via the Country Passenger Transport Infrastructure Grants Scheme (CPTIGS) to upgrade and formalise the bus stop via the construction of an indented bay in that location. This was undertaken in 2013 **(ATTACHMENT 3)**.

As the development of the estate increased in size and further road infrastructure was constructed, the bus route was revised by Transport for New South Wales (TfNSW). The Fern Bay estate is a residential community title subdivision which is a state significant development and, as such, approvals have been determined by the NSW State Government (as the consent authority) and not Council.

The developer at the time further subdivided the land in the immediate vicinity thereby facilitating the construction of houses adjacent to the bus stop **(ATTACHMENT 4)**.

Council staff have made representations to bus companies and TfNSW on behalf of the Fern Bay Fullerton Cove Progress Association and residents on numerous occasions including discussing it opportunistically as a General Business item with the Local Traffic Committee members. The relocation of the bus stop has been considered at Local Traffic Committee meetings in March 2017 and May 2020 and via correspondence between relevant stakeholders. Whilst the determination of bus stop locations is not a delegated function of the Local Traffic Committee, the members of the Local Traffic Committee have not supported the relocation of this bus stop.

The scheduling and operation of buses is determined by bus companies in consultation with TfNSW. Council have been advised by bus companies that they have been working with TfNSW to extend services into the estate and that until this has been approved, they have no choice but to continue to utilise the bus stop. Council has liaised with relevant stakeholders and has advocated on behalf of the residents but such decisions do not fall within Council control.

The Fern Bay – Fullerton Cove Progress Association and residents of the area have, on occasions, made representations to Council seeking to have the bus stop relocated. As a result, Council staff have undertaken preliminary high level investigations into bus stop relocation options including:

- Relocation to the west of Piper Street – may be possible but would move the bus stop further away from the population.
- Relocation to the westbound side of the road – may be possible but would require the majority of passengers (school children) to cross the busy road to get to and from the stop. It may become redundant if bus services were to loop through the estate (one way).
- If the public bus route is extended into the estate in future, it may be an option to remove the current bus stop and to provide an additional bus stop prior to Piper Street as well as a new bus stop in the vicinity of Stringybark Drive.

Council staff will to continue to liaise, advocate and seek support for the relocation of the bus stop in consultation with the relevant stakeholders.

## **ATTACHMENTS**

- 1) Notice of Motion - Bus Stop in Seaside Estate Fern Bay - 25 May 2021 - Minute No. 128. [↓](#)
- 2) Attachment 2 - Photo of road verge on Seaside Boulevarde/Ironbark Drive, Fern Bay. [↓](#)
- 3) Attachment 3 - Photo of Indented Bay for Bus Stop at Seaside Boulevarde/Ironbark Drive, Fern Bay. [↓](#)
- 4) Attachment 4 - Photo of Development adjacent to Bus Stop at Seaside Boulevarde/Ironbark Drive, Fern Bay. [↓](#)

## **COUNCILLORS ROOM**

Nil.

## **TABLED DOCUMENTS**

Nil.

**ITEM 1 - ATTACHMENT 1 NOTICE OF MOTION - BUS STOP IN SEASIDE ESTATE FERN BAY - 25 MAY 2021 - MINUTE NO. 128.****MINUTES ORDINARY COUNCIL - 25 MAY 2021****NOTICE OF MOTION****ITEM NO. 5****FILE NO: 21/124386****EDRMS NO: PSC2017-00019****BUS STOP IN SEASIDE ESTATE, FERN BAY****COUNCILLOR: GIACOMO ARNOTT****THAT COUNCIL:**

- 1) Notes that bus stop ID 229560 in Seaside Estate, Fern Bay is directly in front of driveways and poorly located.
- 2) Requests a report from staff on alternate locations so that the bus stop can be moved.

**ORDINARY COUNCIL MEETING - 25 MAY 2021  
MOTION**

<b>128</b>	<b>Councillor Giacomo Arnott Councillor Chris Doohan</b>  It was resolved that Council:  <ol style="list-style-type: none"><li>1) Notes that bus stop ID 229560 in Seaside Estate, Fern Bay is directly in front of driveways and poorly located.</li><li>2) Requests a report from staff on alternate locations so that the bus stop can be moved.</li></ol>
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The motion was carried.

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

The bus stop in the Seaside Estate was built in an earlier stage of this estate and prior to the dwellings.

The request to relocate the bus stop has previously been put forward and assessed by the Local Traffic Committee (LTC) in 2017 and 2020. At both times this relocation was not supported by the LTC.



**ITEM 1 - ATTACHMENT 1 NOTICE OF MOTION - BUS STOP IN SEASIDE ESTATE FERN BAY - 25 MAY 2021 - MINUTE NO. 128.****MINUTES ORDINARY COUNCIL - 25 MAY 2021**

Representatives from the estate have informed Council that the number of students who use this bus stop appear to exceed the room allowed to board and exit the bus. Alternatives have been suggested and Council staff are reviewing these.

Communication will also be undertaken with the bus company.

**FINANCIAL/RESOURCE IMPLICATIONS**

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

**ATTACHMENTS**

Nil.

ITEM 1 - ATTACHMENT 2      ATTACHMENT 2 - PHOTO OF ROAD VERGE ON  
SEASIDE BOULEVARDE/IRONBARK DRIVE, FERN BAY.

APPENDIX A



ITEM 1 - ATTACHMENT 2      ATTACHMENT 2 - PHOTO OF ROAD VERGE ON  
SEASIDE BOULEVARDE/IRONBARK DRIVE, FERN BAY.





**ITEM 1 - ATTACHMENT 3      ATTACHMENT 3 - PHOTO OF INDENTED BAY FOR  
BUS STOP AT SEASIDE BOULEVARDE/IRONBARK DRIVE, FERN BAY.**

**APPENDIX B**



**ITEM 1 - ATTACHMENT 4      ATTACHMENT 4 - PHOTO OF DEVELOPMENT  
ADJACENT TO BUS STOP AT SEASIDE BOULEVARDE/IRONBARK DRIVE,  
FERN BAY.**

**APPENDIX C**



**ITEM NO. 2****FILE NO: 22/92253  
EDRMS NO: PSC2014-04022V2****WASTE MANAGEMENT CONTRACT**

REPORT OF: TAMMY GUTSCHE - COMMUNITY SERVICES SECTION  
MANAGER  
GROUP: FACILITIES & SERVICES

**BACKGROUND**

The purpose of this report is to inform Council of a change to Council's Waste Management contract with Suez for the processing of Council's waste and the commencement of a Council-to-Council agreement with the City of Newcastle to dispose of this waste at Summerhill Waste Management Centre.

For over 20 years, Port Stephens Council (PSC) held a long-term contract with Suez to compost Council's waste through the facility at Newline Road. This process involved the decomposition of waste into a reusable product for land use through the Bedminster system creating a Mixed Waste Organic Output (MWOO). In October 2018, the Environmental Protection Authority (EPA) investigated the use of this product and ultimately banned this use due to concerns with contamination. Since this time PSC has been working closely with Suez to find alternative uses for this product and, to that end, the EPA was exempting the landfill levy on this product for the purposes of supporting research and development.

In October 2021, the EPA released its strategy document outlining the future for the waste industry over the next 20 years. In this document, the EPA advised of its intention to mandate Food Organic Green Organic (FOGO) to all NSW Councils by 2030. This also indicated a move away from MWOO. In January 2022, Suez informed PSC that the EPA was removing the levy exemption as of May 2022. The cost of the landfill levy in addition to the cost to produce MWOO makes this process unviable.

Council staff have been investigating alternative disposal methods for waste generated in the Port Stephens area for some time through the compilation of the recent Waste Management Strategy document. These investigations found the only viable option at this time is to take the waste to City of Newcastle's Summerhill Waste Management Centre. Summerhill is envisaged to be a short-term solution and not a long-term alternative moving forward. Council staff are continuing to investigate all other alternatives to divert waste from landfill into the future.

The implementation of a green bin is an ideal option, as it will allow Council to gain 30 percent diversion of the green waste out of landfill. It also aligns with feedback from the public consultation through the strategy process and puts Council in a good position for the future move to FOGO. Port Stephens is in a fortunate position for the future of waste as a number of companies are poised to set up FOGO processing in

the region within the next 3 to 4 years. There are also companies indicating other waste processing alternatives in the area such as power generation through anaerobic digestion and other waste to energy methodologies.

These options, whilst putting Council in a good position into the future, are a number of years away, leaving Summerhill the preferred option at this point.

In order to facilitate the logistics of the processes outlined above, Council staff have been negotiating amendments of the processing contract and ensuring Suez has the capability required for delivery and disposal to the Summerhill site under the existing current collection contract. The disposal of the waste at Summerhill will be governed through a Council-to-Council agreement with City of Newcastle.

Although the new arrangement through the City of Newcastle will temporarily impact the environmental outcomes Council aims to achieve outlined in the Waste Management Strategy, it will result in financial savings for Council which provides an opportunity to bring forward the implementation of the third bin system.

#### **ATTACHMENTS**

Nil.

#### **COUNCILLORS ROOM**

Nil.

#### **TABLED DOCUMENTS**

Nil.

**ITEM NO. 3**

**FILE NO: 22/81418  
EDRMS NO: PSC2021-01880**

**DESIGNATED PERSONS' RETURN**

REPORT OF: TONY WICKHAM - GOVERNANCE SECTION MANAGER  
GROUP: GENERAL MANAGER'S OFFICE

**BACKGROUND**

The purpose of this report is to table Mayor and Councillor Return/s (return) submitted following the 2021 local government election.

In accordance with the Part 4 – Pecuniary Interest of the Code of Conduct, all elected officials are required to submit a return within 3 months of becoming an elected official. Returns are to be tabled at the first Council meeting after the lodgement date.

The returns have been received from:

- Mayor Ryan Palmer
- Cr Leah Anderson
- Cr Giacomo Arnott
- Cr Matthew Bailey
- Cr Chris Doohan
- Cr Glen Dunkley
- Cr Peter Francis
- Cr Peter Kafer
- Cr Steve Tucker
- Cr Jason Wells

**ATTACHMENTS**

Nil.

**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

- 1) Mayor and Councillor returns.



**ITEM NO. 4**

**FILE NO: 22/85483  
EDRMS NO: PSC2017-00106**

## **COUNCIL RESOLUTIONS**

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

## **BACKGROUND**

The purpose of this report is to inform the Mayor and Councillors of the status of all matters to be dealt with arising out of the proceedings of previous meetings of the Council in accordance with the Code of Meeting Practice.

## **ATTACHMENTS**

- 1) Corporate Services Group Resolutions. [↓](#)
- 2) Development Services Group Resolutions. [↓](#)
- 3) Facilities & Services Group Resolutions. [↓](#)
- 4) General Manager's Office Resolutions. [↓](#)

## **COUNCILLORS ROOM**

Nil.

## **TABLED DOCUMENTS**

Nil.



<b>Division:</b>	Corporate Services	<b>Date From:</b>	27/08/2013
<b>Committee:</b>		<b>Date To:</b>	22/03/2022
<b>Officer:</b>		<b>Printed:</b>	Monday, 4 April 2022
<b>Action Sheets Report</b>			

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report 243	Ordinary Council 27/08/2013	Crosdale, Timothy Crosdale, Timothy	Campvale Drain	30/12/2022		
<b>30 Mar 2022</b> Hunter Water Corporation, National Parks and Wildlife Service (NPWS) and two private owners involved. Matter ongoing.						
Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report 1	Ordinary Council 11/05/2021	Crosdale, Timothy Crosdale, Timothy	Car parking in Shoal Bay	30/06/2022	12/05/2021	21/123694
<b>30 Mar 2022</b> In principle approval received from Crown Lands. Plan of Management to be addressed before progressing works.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report 2 199	Ordinary Council 22/09/2020	Crosdale, Timothy Crosdale, Timothy	Newline Road, Raymond Terrace	31/05/2022		20/288489
<b>30 Mar 2022</b> Approved. Contracts prepared. Finalising survey levels in contract.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report 2 090	Ordinary Council 13/04/2021	Crosdale, Timothy Crosdale, Timothy	Proposed Closure and Sale of Pathway in Boat Harbour	31/05/2022	14/04/2021	21/96728
<b>30 Mar 2022</b> Matter progressing.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
	22/03/2022	Lloyd, Tracey Crosdale, Tim	Financial Sustainability Committee	8/04/2022		
<b>01 Apr 2022</b> Terms of Reference in train and near completion. Endorsement will be requested at inaugural meeting of the Committee.						

ITEM 4 - ATTACHMENT 2 DEVELOPMENT SERVICES GROUP  
RESOLUTIONS.

<b>Action Sheets Report</b>	<b>Division:</b>	Development Services	<b>Date From:</b>	13/07/2021
	<b>Committee:</b>		<b>Date To:</b>	22/03/2022
	<b>Officer:</b>		<b>Printed:</b>	Monday, 4 April 2022

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 22/02/2022	Drinan, Kate	Minor DA Modification Reporting	25/05/2022	25/02/2022	
7 060		Peart, Steven				22/57049
<b>30 Mar 2022</b> Should submissions be received following public exhibition, the policy will be returned to Council.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 22/02/2022	Gardner, Janelle	Newspaper Notices	26/07/2022	25/02/2022	
2 055		Peart, Steven				22/57049
<b>30 Mar 2022</b> Due to finances a number of options are being considered and will be reported back to Council in July 2022.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 22/02/2022	Lamont, Brock	Policy Review: Rezoning Request Policy	12/05/2022	25/02/2022	
4 051		Peart, Steven				22/57049
<b>24 Mar 2022</b> Should submissions be received following public exhibition, the policy will be returned to Council.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 22/03/2022	Lourens, Rean	Tree Moratorium	5/04/2022	23/03/2022	
2 086		Peart, Steven				22/81589
<b>01 Apr 2022</b> Councillor request made at Ordinary Council meeting 22 March 2022, data in relation to education, applications and savings is being collated. The requested information will be provided via Information Paper to Ordinary Council Meeting 26 April 2022.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 14/09/2021	Connell, Sarah	Port Stephens Waterway Strategy	30/06/2022	15/09/2021	
1 240		Peart, Steven				21/252518
<b>01 Apr 2022</b> Project scope to be defined.						

ITEM 4 - ATTACHMENT 2 DEVELOPMENT SERVICES GROUP  
RESOLUTIONS.

<b>Action Sheets Report</b>	<b>Division:</b>	Development Services	<b>Date From:</b>	13/07/2021
	<b>Committee:</b>		<b>Date To:</b>	22/03/2022
	<b>Officer:</b>		<b>Printed:</b>	Monday, 4 April 2022

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 13/07/2021	Drinan, Kate	Publication of Development Application Submissions	30/04/2022		
4		Peart, Steven				21/190429
<b>30 Mar 2022</b>						
Two Way postponed - awaiting Legal advice.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 13/07/2021	Drinan, Kate	Publication of Development Application Information	30/04/2022		
3		Peart, Steven				21/190429
178						
<b>30 Mar 2022</b>						
Two Way postponed - awaiting Legal advice.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 12/10/2021	Lourens, Rean	Carbon Neutrality	31/03/2023	13/10/2021	
2		Peart, Steven				21/274186
275						
<b>30 Mar 2022</b>						
Councillor Briefing (Two Way) has been scheduled for 19 April 2022.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 8/02/2022	Drinan, Kate	Illegal Dumping	3/05/2022	14/02/2022	
10		Peart, Steven				22/45826
035						
<b>30 Mar 2022</b>						
A Council report is being prepared for the Ordinary Meeting of Council on 10 May 2022.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 8/02/2022	Lourens, Rean	Flying Fox issues at Ross Wallbridge Reserve	15/04/2022	14/02/2022	
7		Peart, Steven				22/45826
032						
<b>01 Apr 2022</b>						
The requested information will be provided via Information Paper to Ordinary Council Meeting 26 April 2022.						

**ITEM 4 - ATTACHMENT 2 DEVELOPMENT SERVICES GROUP  
RESOLUTIONS.**

<a href="#">Action Sheets Report</a>	<b>Division:</b>	Development Services	<b>Date From:</b>	13/07/2021
	<b>Committee:</b>		<b>Date To:</b>	22/03/2022
	<b>Officer:</b>		<b>Printed:</b>	Monday, 4 April 2022

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 8/02/2022	Drinan, Kate	Caravan Park Communities	26/04/2022	14/02/2022	
1 026		Pearl, Steven				22/45826
<b>30 Mar 2022</b>						
A Council report is being prepared for the Ordinary Meeting of Council on 26 April 2022.						



<b>Action Sheets Report</b>	<b>Division:</b>	Facilities & Services	<b>Date From:</b>	8/12/2020
	<b>Committee:</b>		<b>Date To:</b>	22/03/2022
	<b>Officer:</b>		<b>Printed:</b>	Monday, 4 April 2022

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 8/02/2022	Burton , Paul	Iris Moore Reserve	29/03/2022	14/02/2022	
12 036		Kable, Gregory				22/45826
<b>31 Mar 2022</b>						
As requested Council staff shall write to National Parks.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 8/02/2022	Burton , Paul	Boomerang Park BBQs	28/06/2022	14/02/2022	
9 034		Kable, Gregory				22/45826
<b>31 Mar 2022</b>						
Report shall be provided to Council on the proposal to increase facilities as per this NOM.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 8/02/2022	Maretich, John	Basketball Backboard and Rings - Croquet Court, Boomerang Park	24/05/2022	14/02/2022	
15 039		Kable, Gregory				22/45826
<b>31 Mar 2022</b>						
Further investigation on the foundation will be undertaken to ensure the court is fit for the proposed use. Report will then be provided back to Council.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 8/02/2022	Maretich, John	Tomaree Road Footpath	24/05/2022	14/02/2022	
13 037		Kable, Gregory				22/45826
<b>31 Mar 2022</b>						
Report will be provided to Council.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 8/02/2022	Maretich, John	Raymond Terrace Lakeside Pathway	24/05/2022	14/02/2022	
4 029		Kable, Gregory				22/45826
<b>31 Mar 2022</b>						
Preliminary investigation was undertaken to form part of the NOM background. Additional investigation with assistance from NSW Police will be undertaken and report will be presented to Council.						



<b>Division:</b>	Facilities & Services	<b>Date From:</b>	8/12/2020
<b>Committee:</b>		<b>Date To:</b>	22/03/2022
<b>Officer:</b>		<b>Printed:</b>	Monday, 4 April 2022
<b>Action Sheets Report</b>			

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 8/02/2022	Gutsche, Tammy	Medowie Library	28/06/2022	14/02/2022	
2 027		Kable, Gregory				22/45826
<b>01 Apr 2022</b>						
Investigation underway to determine viability as requested.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 8/02/2022	Gutsche, Tammy	Reusable Nappies and Menstrual Products	22/06/2022	14/02/2022	
6 031		Kable, Gregory				22/45826
<b>01 Apr 2022</b>						
Report is currently in progress.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 8/02/2022	Maretich, John	Foreshore Reserves and Parking on Council Land	26/07/2022	14/02/2022	
5 030		Kable, Gregory				22/45826
<b>31 Mar 2022</b>						
Report shall be provided to Council.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 22/03/2022	Maretich, John	Lakeside Leisure Centre	26/04/2022	23/03/2022	
5 090		Kable, Gregory				22/81589
<b>31 Mar 2022</b>						
NOM deferred to go to Council on 12 April 2022.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 22/03/2022	Gutsche, Tammy	POLICY REVIEW - PROVISION AND MANAGEMENT OF CEMETERIES POLICY	31/05/2022	23/03/2022	
10		Kable, Gregory				22/81589
<b>01 Apr 2022</b>						
Policy is currently on Public Exhibition - during the dates of 23 March - 19 April 2022.						



<b>Action Sheets Report</b>	<b>Division:</b>	Facilities & Services	<b>Date From:</b>	8/12/2020
	<b>Committee:</b>		<b>Date To:</b>	22/03/2022
	<b>Officer:</b>		<b>Printed:</b>	Monday, 4 April 2022

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 22/03/2022	Maretich, John	Identifying Potholes	30/06/2022	23/03/2022	
7 092		Kable, Gregory				22/81589
<b>31 Mar 2022</b> Report is currently in progress.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 22/03/2022	Maretich, John	Guy Marks Oval, King Park, Raymond Terrace	30/06/2022	23/03/2022	
6 091		Kable, Gregory				22/81589
<b>31 Mar 2022</b> Staff to prepare a sign to rename the oval.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 22/03/2022	Maretich, John	Policy Review - Public Property Encroachment Policy	31/05/2022	23/03/2022	
7		Kable, Gregory				22/81589
<b>31 Mar 2022</b> The Policy has been placed on Public Exhibition from 23 March until 19 April 2022.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 8/02/2022	Gutsche, Tammy	Independent Audit of Financial Positions of 355c Hall Committees	22/06/2022	14/02/2022	
16 041		Kable, Gregory				22/45826
<b>01 Apr 2022</b> Report is currently in progress.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 22/03/2022	Gutsche, Tammy	POLICY REVIEW - FINANCIAL ASSISTANCE FOR THE DISPOSAL OF WASTE	31/05/2022	23/03/2022	
9		Kable, Gregory				22/81589
<b>01 Apr 2022</b> Policy is currently on Public Exhibition - during the dates of 23 March - 19 April 2022.						





<b>Action Sheets Report</b>	<b>Division:</b>	Facilities & Services	<b>Date From:</b>	8/12/2020
	<b>Committee:</b>		<b>Date To:</b>	22/03/2022
	<b>Officer:</b>		<b>Printed:</b>	Monday, 4 April 2022

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 22/03/2022	Maretich, John	POLICY REVIEW - FLOODPLAIN RISK MANAGEMENT	31/05/2022	23/03/2022	
8		Kable, Gregory				22/81589
<b>31 Mar 2022</b>						
The Policy has been placed on Public Exhibition from 23 March until 19 April 2022.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 8/02/2022	Maretich, John	POLICY REVIEW - CONTRIBUTION TO WORKS FOR KERB AND GUTTERING CONSTRUCTION POLICY	26/07/2022	14/02/2022	
6 018		Kable, Gregory				22/45826
<b>31 Mar 2022</b>						
Report with requested information shall be provided to Council.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 25/05/2021	Maretich, John	Bus Stop in Seaside Estate, Fern Bay	31/05/2022	26/05/2021	
5 128		Kable, Gregory				21/138820
<b>31 Mar 2022</b>						
This review shall be undertaken through Local Traffic Committee and consultation with members of the Seaside Community Association and a report is being compiled.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 25/05/2021	Maretich, John	Anna Bay Drainage Union	1/06/2022	26/05/2021	
2 126		Kable, Gregory				21/138820
<b>31 Mar 2022</b>						
The State Government agency responsible for Anna Bay Drainage Union shall be consulted with.						



<b>Division:</b>	Facilities & Services	<b>Date From:</b>	8/12/2020
<b>Committee:</b>		<b>Date To:</b>	22/03/2022
<b>Officer:</b>		<b>Printed:</b>	Monday, 4 April 2022
<b>Action Sheets Report</b>			

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 10/08/2021	Maretich, John	DEDICATION AS PUBLIC ROAD OF PART LOT 491 DP 27846 - 18C CROMARTY ROAD, SOLDIERS POINT	31/12/2022	13/08/2021	
1 210		Kable, Gregory				21/218740
<b>31 Mar 2022</b>						
Council staff will commence transfer of land parcel to the road reserve.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 13/07/2021	Stewart, Adam	Hydrogen and Electric Vehicles in Council's Fleet	30/06/2022		
2 177		Kable, Gregory				21/190429
<b>31 Mar 2022</b>						
Staff are currently in consultation with suppliers on how to introduce new fuel sources for our vehicles.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 8/12/2020	Stewart, Adam	Fly Point and Little Beach Parking/SMART Parking	31/05/2022		
3		Kable, Gregory				20/391301
<b>31 Mar 2022</b>						
A 2 Way Briefing has been scheduled for 26 April 2022.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 24/11/2020	Miles, Philip	Disposal of Surplus Excavated Materials at Newcastle Airport Development Project Site.	30/06/2022		
11 261		Kable, Gregory				20/358525
<b>31 Mar 2022</b>						
Council response to Newcastle Airport DA modification is expected in coming weeks. Legal Contracts have been drafted in preparation for DA modification approval.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 9/02/2021	Burton , Paul	Medowie Regional Playground and Town Centre	31/08/2022		
2 012		Kable, Gregory				21/33235
<b>31 Mar 2022</b>						
Two-Way Council briefing will be scheduled in the near future to discuss the future of this land.						



<b>Action Sheets Report</b>	<b>Division:</b>	Facilities & Services	<b>Date From:</b>	8/12/2020
	<b>Committee:</b>		<b>Date To:</b>	22/03/2022
	<b>Officer:</b>		<b>Printed:</b>	Monday, 4 April 2022

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 9/02/2021	Stewart, Adam	5G Small Cell Technology Rollout in Port Stephens	30/06/2022		
3 006		Kable, Gregory				21/33235
<b>31 Mar 2022</b> Discussions have commenced with Telstra.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 12/10/2021	Gutsche, Tammy	Change to Lease Arrangements for Fingal Bay Surf Life Saving Club and Commercial Tenancies	30/04/2022	13/10/2021	
8 270		Kable, Gregory				21/274186
<b>01 Apr 2022</b> Paperwork currently being prepared for the Mayor and General Manager for the official seal.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 12/10/2021	Burton , Paul	Shade Sail at Robinson Reserve, Anna Bay	30/06/2022	13/10/2021	
7 269		Kable, Gregory				21/274186
<b>31 Mar 2022</b> Item will be added to WPP. Grant funding opportunities will be investigated following adoption of the WPP.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 26/10/2021	Maretich, John	REVIEW OF DOG OFF LEAD AREAS - BOAT HARBOUR	31/08/2022	28/10/2021	
20		Kable, Gregory				21/286560
<b>31 Mar 2022</b> A report will be prepared following a 2 way booked for 19 April 2022.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 12/10/2021	Burton , Paul	Raymond Terrace Indoor Sports Facility	30/06/2022	13/10/2021	
9 271		Kable, Gregory				21/274186
<b>31 Mar 2022</b> Item will be added to WPP. Grant funding opportunities will be investigated following adoption of the WPP.						



<b>Action Sheets Report</b>	<b>Division:</b>	Facilities & Services	<b>Date From:</b>	8/12/2020
	<b>Committee:</b>		<b>Date To:</b>	22/03/2022
	<b>Officer:</b>		<b>Printed:</b>	Monday, 4 April 2022

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 10/08/2021	Stewart, Adam	Kirrang Drive, Medowie Shared Pathway	30/06/2022	13/08/2021	
8 217		Kable, Gregory				21/218740
<b>31 Mar 2022</b> Council staff will undertake further investigations into the financial requirements and options to accelerate the Kirrang Drive, Medowie pathway. Staff will report the outcomes back to Council.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 10/08/2021	Maretich, John	Agreement with Community Association DP270468 - Lagoons Estate, Nelson Bay	30/06/2022		
4 208		Kable, Gregory				21/218740
<b>31 Mar 2022</b> Council to enter agreement with the Community Association DP 270468 in accordance with the confidential terms as per Council report.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 10/08/2021	Burton , Paul	Raymond Terrace Seven Day Makeover	31/12/2022		
17 228		Kable, Gregory				21/218740
<b>31 Mar 2022</b> 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.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 10/08/2021	Stewart, Adam	Australia Post Mail Box, 14A William Street, Raymond Terrace	30/06/2022	13/08/2021	
20 229		Kable, Gregory				21/218740
<b>31 Mar 2022</b> There are a variety of site specific constraints and factors which need to be taken into account including compliance with the Disability Discrimination Act, NSW Road Rules in regard to stopping near a postbox, and Council's Stage 2 works for William Street which will seek to relocate and optimise the location of street furniture including mail boxes.						



<b>Action Sheets Report</b>	<b>Division:</b>	General Manager's Office	<b>Date From:</b>	22/02/2022
	<b>Committee:</b>		<b>Date To:</b>	22/03/2022
	<b>Officer:</b>		<b>Printed:</b>	Monday, 4 April 2022

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 22/03/2022	Wickham, Tony	Conflicts of Interest	30/04/2022	23/03/2022	
1 085		Wallis, Wayne				22/81589
<b>1 Apr 2022</b> To be considered as part of the review of the Code of Meeting Practice.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 22/03/2022	Wickham, Tony	Council Agendas	30/04/2022	23/03/2022	
3 087		Wallis, Wayne				22/81589
<b>1 Apr 2022</b> To be considered as part of the review of the Code of Meeting Practice.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 22/02/2022	Wickham, Tony	Election Report	26/04/2022	25/02/2022	
8 061		Wallis, Wayne				22/57049
<b>25 Feb 2022</b> Survey has been distributed and closed on 3 April 2022.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 22/02/2022	Wickham, Tony	Public Access	26/04/2022	25/02/2022	
1 054		Wallis, Wayne				22/57049
<b>25 Feb 2022</b> Council staff will commence review of the Public Access process as resolved by Council.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 22/02/2022	Wickham, Tony	Vote Recording	26/04/2022	25/02/2022	
6 059		Wallis, Wayne				22/57049
<b>25 Feb 2022</b> The trial to commence from 8 March 2022 and conclude on 26 April 2022.						

# NOTICES OF MOTION

**NOTICE OF MOTION**

**ITEM NO. 1**

**FILE NO: 22/83846**

**EDRMS NO: PSC2021-04195**

**OPERATIONAL LAND**

**COUNCILLOR: PETER KAHER**

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**THAT COUNCIL:**

- 1) Notes the importance of protecting the local environment of Port Stephens.
  - 2) Calls upon the General Manager to brief Councillors on parcels of land within Port Stephens that Council owns that are operational and could be sold and be used to fund projects for the community of Port Stephens in the future.
- 

**BACKGROUND REPORT OF: TIM CROSDALE – GROUP MANAGER  
CORPORATE SERVICES**

**BACKGROUND**

A briefing on operational land resources can be arranged through Council's two way conversation process. In the context of potential land sales, Council has 3 main types of operational land in its property portfolio being lands surplus to Council, property development sites and investment properties.

Surplus lands are operational lands that are held by Council for no specific or identified purpose, or are underutilised, underperforming or declining assets.

Property development sites are those that have been identified as appropriate for subdivision or development. These sites are prioritised and managed in accordance with Council's Property Investment Strategy (PIS) to enable Council to generate a non-rate capital revenue source. In accordance with the PIS, the revenue generated through property development sites is reinvested into property assets to continue this source of non-rate revenue into the future.

Investment properties are those that have been purchased or developed by Council for the sole purpose of returning a recurrent non-rate revenue to Council. Should Council resolve to sell an investment property, the proceeds need to be reinvested to maintain or improve the recurrent revenue generated from Council's property portfolio. This process is undertaken in accordance with the PIS.

The management of the property portfolio and implementation of the PIS is undertaken with input from Council's Property Advisory Panel (PAP) consisting of the Mayor and nominated Councillors.

### **FINANCIAL/RESOURCE IMPLICATIONS**

The revenue generated from surplus land sales and property development projects are directed to the Restricted Property Reserve and used to fund future capital projects with any surplus profits directed to the Prosperity Fund.

Investment income supplements Council's rate income and supports operational needs.

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

### **ATTACHMENTS**

Nil.



**NOTICE OF MOTION****ITEM NO. 2****FILE NO: 22/83847****EDRMS NO: PSC2021-04195****LAKESIDE LEISURE CENTRE****COUNCILLOR: PETER KAHER**

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**THAT COUNCIL:**

- 1) Call upon the General Manager to brief Council where the subsequent staged works of Lakeside Leisure Centre (pool) are up to given Stage 1 (the indoor and outside 50 metre pool) has been in place for over 20 years – (so the local community becomes better informed – as Raymond Terrace community have been asking this question for years).
- 

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

The purpose of this report is provide information on this Notice of Motion.

The centre was constructed in 2000 to replace the previous aquatic centre that was located in Raymond Terrace. Compared to the previous aquatic centre, Lakeside Leisure Centre increased the level of service to include an indoor heated leisure pool for both learn to swim and recreation swimmers. The new centre also has an external 50m pool that is also heated all year round.

This centre was located at Lakeside to cater for the growth in Raymond Terrace and Medowie districts.

The centre site has the capacity for future expansion that includes a 25m indoor pool. External market expressions of interest were undertaken in the past. Due to the quantum of capital expense required for this next stage, there were no interested parties.

**FINANCIAL/RESOURCE IMPLICATIONS**

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

**ORDINARY COUNCIL - 12 APRIL 2022**

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

**ATTACHMENTS**

Nil.

**NOTICE OF MOTION**

**ITEM NO. 3**

**FILE NO: 22/87086**

**EDRMS NO: PSC2021-04195**

**PUBLIC HIGH SCHOOL MEDOWIE**

**COUNCILLOR: JASON WELLS**

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**THAT COUNCIL:**

- 1) Notes the importance of the provision of quality education opportunities to all people of Port Stephens.
  - 2) Agrees that Medowie's booming population desperately needs and deserves a public high school.
  - 3) Agrees to join the local community in advocating for a public high school in Medowie by drafting written correspondence to the NSW Minister for Education, NSW Premier and the State Member for Port Stephens in support of such action.
- 

**BACKGROUND REPORT OF: BROCK LAMONT – ACTING STRATEGY AND ENVIRONMENT SECTION MANAGER**

**BACKGROUND**

The purpose of this report is to provide background information to allow consideration of this Notice of Motion relating to the provision of a public high school in Medowie. The NSW Department of Education is responsible for the delivery and coordination of public secondary school education and associated infrastructure.

Two public high schools currently exist in Raymond Terrace, Irrawang High School at Raymond Terrace (80 Mount Hall Road, Raymond Terrace) and Hunter River High School (36 Elkin Avenue, Heatherbrae). Public high school students living in Medowie are currently zoned to attend Irrawang High School.

Within Medowie there are 2 private schools that cater for high school students, Medowie Christian School (Years 7-12) and Catherine McAuley Catholic College (planning to offer Years 7-12 by 2025).

According to the 2016 Census, the population of Medowie was 10,300 people. Population projections expect an increase by 7,200 people to a total of 17,500 people by year 2036. These figures are estimates under a maximum growth scenario with potential areas for new land release and infill housing being considered.

**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**

- 1) Irrawang High School Catchment. [↓](#)

