

# NOTICE OF ORDINARY MEETING

## 28 FEBRUARY 2023



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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2.	PROPOSED CLOSURE AND SALE OF PATHWAY IN BOAT HARBOUR
3.	NEWCASTLE AIRPORT

## **BUSINESS**

- 1) Opening meeting.
- 2) Acknowledgement of Country - We acknowledge the Worimi people as the original Custodians and inhabitants of Port Stephens. We acknowledge and pay respects to Worimi elders past and present. May we walk the road to tomorrow with mutual respect and admiration as we care for the beautiful land and waterways together.
- 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 14 February 2023.
- 7) Mayoral minute(s) – if submitted
- 8) Motions to close meeting to the public – if submitted.
- 9) Reports to Council.
- 10) General Manager's reports – if submitted.
- 11) Questions with Notice – if submitted.
- 12) Questions on Notice.
- 13) Notices of motions – if submitted.
- 14) Rescission motions – if submitted.
- 15) Confidential matters – if submitted.
- 16) Conclusion of the meeting.

### **Statement of Ethical Obligations**

The Mayor and Councillors are reminded that they remain bound by the Oath/Affirmation of Office made at the commencement of this Council term to undertake their civic duties in the best interests of the people of Port Stephens and Port Stephens Council and to faithfully and impartially carry out the functions, powers, authorities and discretions vested in them under the Local Government Act 1993 or any other Act, to the best of their skill and judgement.

The Mayor and Councillors are also reminded of the requirement for disclosure of conflicts of interest in relation to items listed for consideration on the Agenda or which are considered at this meeting in accordance with the Code of Meeting Practice and Code of Conduct.

## **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.

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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.

# MOTIONS TO CLOSE

ITEM NO. 1

FILE NO: 23/33562  
EDRMS NO: PSC2007-0025-311

**MOTION TO CLOSE**

REPORT OF: TIMOTHY CROSDALE - GENERAL MANAGER  
GROUP: GENERAL MANAGER'S OFFICE

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**RECOMMENDATION:**

- 1) That pursuant to section 10A(2) (c) of the Local Government Act 1993, the Committee and Council resolve to close to the public that part of its meetings to discuss Confidential Item 1 on the Ordinary agenda namely **Acquisition of Easement to Drain Water - Nelson Bay**.
  - 2) That the reasons for closing the meeting to the public to consider this item is that the discussion will include information containing:
    - information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business.
  - 3) That the report remain confidential and the minute be released in accordance with Council's resolution.
-



ITEM NO. 2

FILE NO: 23/33607  
EDRMS NO: PSC2021-01584

**MOTION TO CLOSE**

REPORT OF: TIMOTHY CROSDALE - GENERAL MANAGER  
GROUP: GENERAL MANAGER'S OFFICE

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**RECOMMENDATION:**

- 1) That pursuant to section 10A(2) (c) of the Local Government Act 1993, the Committee and Council resolve to close to the public that part of its meetings to discuss Confidential Item 2 on the Ordinary agenda namely **Proposed Closure and Sale of Pathway in Boat Harbour**.
  - 2) That the reasons for closing the meeting to the public to consider this item is that the discussion will include information containing:
    - information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business.
  - 3) That the report remain confidential and the minute be released in accordance with Council's resolution.
-

ITEM NO. 3

FILE NO: 23/42209  
EDRMS NO: PSC2013-01853

**MOTION TO CLOSE**

REPORT OF: TIMOTHY CROSDALE - GENERAL MANAGER  
GROUP: GENERAL MANAGER'S OFFICE

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**RECOMMENDATION:**

- 1) That pursuant to section 10A(2) (c), (d)i and (d)ii of the Local Government Act 1993, the Committee and Council resolve to close to the public that part of its meetings to discuss Confidential Item 3 on the Ordinary agenda namely **Newcastle Airport**.
  - 2) That the reasons for closing the meeting to the public to consider this item is that the discussion will include information containing:
    - information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business,  
and
    - commercial information of a confidential nature that would, if disclosed prejudice the commercial position of the person who supplied it,  
and
    - information that would, if disclosed, confer a commercial advantage on a competitor of the council.
  - 3) That the report remain confidential and the minute be released in accordance with Council's resolution.
-

# COUNCIL REPORTS

**ITEM NO. 1**

**FILE NO: 23/15834  
EDRMS NO: 16-2019-598-2**

**DEVELOPMENT APPLICATION 16-2019-598-2 FOR A S4.55(1A) MODIFICATION TO APPROVED CAMPING GROUND AT 47 THE BUCKETTS WAY, TWELVE MILE CREEK**

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

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Approve Development Application DA No. 16-2019-598-2 for a s4.55(1A) modification to the approved camping ground at 47 The Bucketts Way, Twelve Mile Creek (Lot 9 DP 243144) subject to the conditions contained in **(ATTACHMENT 1)**.

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**BACKGROUND**

The purpose of this report is to present Development Application (DA) 16-2019-598-2 for a 4.55(1A) modification to the approved Camping Ground at 47 The Bucketts Way, Twelve Mile Creek to Council for determination.

A summary of the application and property is provided below:

Subject Land:	47 The Bucketts Way, Twelve Mile Creek
Total Area:	10.12ha
Zoning:	RU2 Rural Landscape
Submissions:	2
Key Issues:	Satisfying the substantially the same test for s4.55(1A) modifications and compliance with the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2021.

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 Councillors Leah Anderson, Giacomo Arnott and Peter Kafer **(ATTACHMENT 2)**.

A Locality plan is provided at **(ATTACHMENT 3)**.

This DA was previously reported to the 13 December 2022 Council meeting **(ATTACHMENT 4)**. Council resolved to defer the s4.55(1A) modification application for the following reasons:

- 1) Council to receive further information regarding the definition of area for a primitive camp ground.
- 2) Detention basin wall – The construction of the detention basin wall along the southern boundary of the site must be completed in accordance with Condition 2.15 to the satisfaction of Council.

The final pad shape, levels and location of the detention basin wall will be confirmed by the submission of a detailed survey plan prepared by a registered surveyor. The detailed Works as Executed (WAE) survey plan must be provided in accordance with Council's Infrastructure Specification to Council. Written confirmation that the works have been undertaken to the satisfaction of Council must be provided prior to reporting back to Council meeting.

The modified application is being reported back to Council following consideration of, and amendments to address, the above matters.

#### Proposal

This S4.55(1A) modification application proposes to convert the approved camping ground from 50 campsites to 20 'primitive' camp sites. The specific amendments proposed are as follows:

- Reduce the total number of camp sites from 50 to 20
- Convert the use of the sites to 'primitive' camp sites rather than 'camp sites'
- Deletion of the approved storage shed and associated hardstand space located within the north eastern portion of the site
- Amend the nominated campground to cover the entire site.

No other changes to the approved development are proposed.

#### Site Description and History

The subject site is legally identified as Lot 9 DP 243144. The site is rectangular in shape and has an area of approximately 10.12ha, refer to Figure 4 in the Planners Assessment Report (**ATTACHMENT 5**). The site currently contains 2 dwellings and a number of outbuildings. The amenities, camp kitchen and water tanks associated with the original consent have already been constructed on the site.

The site contains dense vegetation to the west. The vegetation density reduces to the east in the vicinity of the camping ground. The site is accessible from The Bucketts Way, which is approximately 550m from an intersection with the Pacific Highway. The surrounding locality is characterised by rural residential land uses.

The site has historically been utilised for rural residential purposes with historic DA's relating to a farm shed, dual occupancy and swimming pool.

The original DA (16-2019-598-1) was lodged with Council on 16 September 2019. The DA was for a camping ground consisting of 50 camp sites with amenities and a camp kitchen. The application was approved by Council on 25 August 2020.

### Key Issues

The key issues addressed in this report relate to the Council resolution of 13 December 2022. A detailed assessment of all relevant planning matters associated with the DA is contained within the Planners Assessment Report (**ATTACHMENT 5**).

### Area of a Primitive Campground

Council staff have relied on Planning Circular PS 06-001 'Regulation of camping density in primitive camping grounds' to guide the assessment of the area permitted for the primitive campground under the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2021 (the Regulations).

Section 131 of the Regulations, provides 2 options to regulate density for primitive campgrounds, these are as follows:

- 1) **designate** camp sites where tents, caravans and campervans may be located - in which case the maximum number of camp sites is not to exceed an average of 2 per hectare (that average being calculated over the total area of the primitive campground), or
- 2) **not designate** camp sites - in which case the maximum number of tents, caravans and campervans permitted to use the ground at any one time is not to exceed an average of 2 per hectare (that average being calculated over the total area of the primitive campground); with a concession that 2 or more tents occupied by not more than 12 persons camping together as a group are to be counted as only 1 tent.

The primitive campground seeks to designate sites and therefore Section 131(1) above is applicable. The total area of the primitive campground is taken to mean the total area of the site to which the primitive campground operates. The submitted plans reported to Council previously referenced the campground area as being 2.079 hectares. The plans have since been amended by the applicant to nominate the entire site as being a primitive campground with designated sites. As such, the total area of the campground is 10.12 hectares and therefore 20 sites are permitted as per Section 131(1) of the Regulations.

The development as modified is substantially the same as the approved development on the following grounds:

- The development is materially the same in essence, with the use now a 'primitive campground' rather than a 'campground'. A primitive campground is a type of campground as defined under the PSLEP2013 and as such there is no modification to the approved use

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- There are no significant changes to the approved amenities, camp kitchen or road layout
- The amended area of the campground does not impact the approved use nor require any additional vegetation clearing to what has been approved
- When considering all components of the original development consent, the quantitative and qualitative changes are considered minor and therefore the modified development is substantially the same as the original development.

On this basis, the application is considered to be substantially the same under the provisions of S4.55(1A)(b)

### Detention Basin Wall

Works as Executed (WAE) plans dated 10 January 2023 prepared by a registered surveyor have been provided to Council. The WAE plans show that the detention basin wall located along the southern boundary of the site has been constructed to a finished height of 1.2m above the existing ground level as required by Condition 2.15 of the existing consent. The proposal is therefore considered to satisfy this condition and the resolution of deferral from the 13 December 2022 Council meeting.

### Conclusion

The proposed modifications are considered to be of minimal environmental impact and result in substantially the same development as that originally approved. The modification is therefore supported by Council staff, subject to the recommended conditions of consent in **(ATTACHMENT 1)**.

## COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2022-2026
Strong Economy, Vibrant Businesses, Active Investment	Support sustainable business development in Port Stephens.

## FINANCIAL/RESOURCE IMPLICATIONS

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes		
Reserve Funds	No		
Developer Contributions (\$7.11)	Yes		The development is subject to \$7.12 contributions.
External Grants	No		
Other	No		

**LEGAL, POLICY AND RISK IMPLICATIONS**

The modification application is consistent with the relevant planning instruments including the Environmental Planning and Assessment Act 1979 (EP&A Act), Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2021, Port Stephens Local Environmental Plan 2013 (PSLEP) and the Port Stephens Development Control Plan 2014 (DCP 2014). A detailed assessment against these environmental planning instruments is contained within the Planners Assessment Report contained at (**ATTACHMENT 5**).

<b>Risk</b>	<b><u>Risk Ranking</u></b>	<b>Proposed Treatments</b>	<b>Within Existing Resources?</b>
There is a risk that if the DA is approved, 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
There is a risk that if the DA is refused, the determination of the DA may be challenged by the applicant in the Land and Environment Court.	Medium	Accept the recommendation.	Yes

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

Social and Economic Impacts

The site will provide a location for short term tourist accommodation within the locality. The modified proposal is not expected to result in any social or economic impacts not already assessed in the previous approval.

Built Environment

The proposed development reduces the overall footprint through the removal of the storage shed and reduction in the number of camp sites. No other changes are sought and as such, there are no expected adverse impacts to the built environment.

Natural Environment

No additional vegetation is proposed to be removed as part of the application. The location of the 20 primitive camp sites is within the same footprint as the 50 originally approved camp sites, and therefore no additional clearing or disturbance is proposed.



## **CONSULTATION**

Consultation with key stakeholders including internal referral officers has been undertaken for the purposes of the assessment of the application. Consultation with the public occurred as part of the notification process.

### Public exhibition

The application was notified in accordance with Councils Community Engagement Strategy from 24 October 2022 until 7 November 2022. During this period, 2 submissions were received.

A detailed response to the submissions is outlined within the Planners Assessment Report (**ATTACHMENT 5**).

## **OPTIONS**

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

## **ATTACHMENTS**

- 1) Recommended Modified Conditions. [↓](#)
- 2) Call to Council Form. [↓](#)
- 3) Locality Plan. [↓](#)
- 4) Minutes - Ordinary Council Meeting 13 December 2022. (Provided under separate cover) [⇒](#)
- 5) Planners Assessment Report. [↓](#)

## **COUNCILLORS ROOM**

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

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

## **TABLED DOCUMENTS**

Nil.



## RECOMMENDED CONDITIONS OF CONSENT

### 1.0 - General Conditions of Consent

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

- (1A) **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, DA-2019-03512-S4.55-1, 28 October 2022.

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

- (2A) **Approved plans and documentation** – Development must be carried out in accordance with the following plans and documentation, and all recommendations made therein, except where amended by the conditions of this development consent:

Plan reference	Name of plan	Prepared by	Date
1902748 Issue I	Proposed Site Plan (2 of 5)	Sorensen Design & Planning	29/08/2022
1902748	Amenities Plan (3 of 4)	Sorensen Design & Planning	24/05/2020
1902748	Camp Kitchen Plan (4 of 4)	Sorensen Design & Planning	24/05/2020
190203	Stormwater Management Plan (Sheets CIV00 to CIV06)	DRB Consulting Engineers	15/05/2020
190203	Cut/Fill Plan (Sheets CIV13 to CIV21)	DRB Consulting Engineers	15/05/2020

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

- (3) **Amendments to documents and plans** – The development must be amended as follows:

- a) As per the annotations on Civil Plans, Ref 190203 by DRB Consulting Engineers, dated 15/05/2020.

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

## PORT STEPHENS COUNCIL

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- (4) **Tree removal/pruning** – The trees identified below are approved for removal:
- a) The trees identified for removal as shown on Proposed Site Plan - Proposed Campground & Eco Tourist Facility (Sheet 2 of 4; Document Reference no. 1902748) prepared by Sorensen Design and Planning, dated 24 May 2019 are approved for removal.
  - b) Eucalyptus opposite proposed site entry within the road reserve.
- (5) **Removal of Vegetation** - No vegetation or natural landscape features other than that authorised for removal or pruning by this Consent must be disturbed, damaged or removed. No additional works or access/parking routes transecting the protected vegetation must be undertaken without Council Approval. A map indicating the location of protected vegetation is available from Council upon request.
- (6) **Separate approval for signs** – A separate development application for any proposed signage, must be provide to, and approved by, the Consent Authority or under the provision of the *State Environmental Planning Policy (Exempt and Complying Codes) 2008* if applicable prior to the erection or display of any such signs.
- (7) **Building Code of Australia** – All building work must be carried out in accordance with the BCA and where applicable the Disability (Access to Premises – Buildings) Standards 2010. 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.
- (8) **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.
- (9) **Outdoor lighting** - All lighting must comply with AS 1158 'Lighting for Roads and Public Spaces' and AS 4282 'Control of Obtrusive Effects of Outdoor Lighting'.
- (9.1) **Prior to Commencement of Use** – Prior to the commencement of use, an Approval to Operate under section 68 of the Local Government Act 1993 must be issued by Council.

## 2.0 – Prior to Issue of a Construction Certificate

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

- (1) **Structural engineer's Certificate** A certificate must be prepared by a qualified Structural Engineer certifying that the building design is capable of withstanding the effects of flood waters, including immersion, structural stability, buoyancy, impact and loading from debris up to and including the future 1% Annual Exceedance Probability (AEP) event.

## ITEM 1 - ATTACHMENT 1 RECOMMENDED MODIFIED CONDITIONS.



Details demonstrating compliance must be provided to the Certifying Authority.

- (2) **Free flow of water** - The location and design of the proposed doors must allow free access and escape of floodwaters without causing damage to the building. Details demonstrating compliance must be provided to the Certifying Authority.
- (3) **Potential acid sulfate soils** - A geotechnical assessment of the site is to be undertaken to determine whether the development works will disturb Potential Acid Sulfate Soils (ASS). Should ASS be encountered within the zone of works, an ASS Management Plan is to be prepared by a suitably qualified Geotechnical Engineer and submitted to the Certifying Authority.

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

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

- (6) **Flood Risk Management Plan** – A Flood Risk Management Plan prepared by a suitably qualified Engineer must be provided to the Certifying Authority demonstrating compliance with the following:
  - a) The design must show that the proposed development is capable of withstanding the effects of flood waters, including immersion, structural stability, buoyancy and impact and loading from debris up to and including the 1% Annual Exceedance Probability (AEP) event.
  - b) Certification that the proposed development/ building flood refuge is capable of withstanding the force of any flood waters experienced up to the Probable Maximum Flood Event (PMF).
  - c) Certification demonstrating that any damage to the proposed development sustained in a flood will not generate debris capable of causing damage to downstream buildings or property
  - d) Certification demonstrating that the rainwater tank, finishes, plant fittings and equipment and any other buoyant fixtures will be of materials and functional



capacity to withstand the forces of floodwater in events up to and including the 1% AEP event including hydrostatic pressure, hydrodynamic pressure and buoyancy forces.

- (7) **Stormwater system Operation and Maintenance Procedure Plan** – An Operation and Maintenance Plan for the stormwater system must be prepared by a qualified engineer detailing a regular maintenance programme for pollution control devices, covering inspection, cleaning and waste disposal. Details demonstrating compliance must be provided to the Certifying Authority.
- (8) **Approval of OSMS under LG Act** – An approval under Section 68 of the Local Government Act 1993 is to be obtained from Council for the installation of an on-site sewage management system (OSMS) prior to the issue of a Construction Certificate.
- (9) **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.
- (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*.
- (11) **Construction Management Plan** - A Construction Management Plan must be submitted to and approved by to the Certifying Authority and Council. The required CMP must outline the sequence and construction methodology and specify mitigating measures to ensure all works are carried out with minimal environmental impact in relation to project staging, waste management, noise and dust management, traffic management and environmental management
- (12) **Section 7.12 development contributions** - A monetary contribution is to be paid to Council, pursuant to Section 7.12 of the *Environmental Planning & Assessment Act 1979* and the Port Stephens Council Fixed Local Infrastructure Contributions Plan, related to the Capital Investment Value (CIV) of the development as determined in accordance with clause 25j of the *Environmental Planning and Assessment Regulation 2000* and outlined in the table below.

Capital Investment Value	Levy Rate (\$ of CIV)
Up to and including \$100,000	Nil
More than \$100,000 and up to and including \$200,000	0.5%
More than \$200,000	1%

The payment of the fixed development consent levy is to be accompanied by a Cost Summary Report Form setting out an estimate of the CIV in accordance with Schedule 1 of the Port Stephens Council Fixed Local Infrastructure Contributions Plan.



Where the estimated cost of carrying out the whole of the development is more than \$1,000,000, the Cost Summary Report Form must be completed by a Quantity Surveyor who is a Registered Associate member or above, of the Australian Institute of Quantity Surveyors.

This condition cannot be taken to be satisfied until a payment has been made in accordance with the CIV stated on a cost summary report submitted to Council in accordance with this condition.

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

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

- (13) **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.
- (14) **Site access / egress** - Prior to the issue of a Construction Certificate, plans are to be prepared demonstrating a BAL/BAR intersection treatment, in accordance with current Austroads Guides, at the proposed main entry to the site (this may include tree removal within the clear zone at the Direction of the Roads Authority).
- (15) **Amenity** – The detention basin wall along the southern boundary of the site must be redesigned to have a finished height of 1.2m above existing ground level.

### 3.0 - Prior to Commencement of Works

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

- (1) **Public liability insurance** – The owner or contractor must take out a Public Liability Insurance Policy with a minimum cover of \$20 million in relation to the occupation of, and works within, public property (i.e. kerbs, gutters, footpaths, walkways, reserves, etc.) for the full duration of the proposed works.

Evidence of this Policy must be provided to Council and the Certifying Authority.

- (2) **Notice of Principal Certifying Authority appointment** – Notice must be given to Council at least two days prior to subdivision and/or building works commencing in accordance with Clause 103 of the *Environmental Planning & Assessment Regulation 2000*. The notice must include:
  - a) a description of the work to be carried out;
  - b) the address of the land on which the work is to be carried out;
  - c) the Registered number and date of issue of the relevant development consent;
  - d) the name and address of the Principal Certifying Authority (PCA), and of the person by whom the PCA was appointed;
  - e) if the PCA is an accredited certifier, their accreditation number, and a statement signed by the accredited certifier consenting to being appointed as PCA; and
  - f) a telephone number on which the PCA may be contacted for business purposes.



- (3) **Notice commencement of work** – Notice must be given to Council at least two days prior to subdivision and/or building works commencing in accordance with Clause 104 of the *Environmental Planning & Assessment Regulation 2000*. The notice must include:
- a) the name and address of the person by whom the notice is being given;
  - b) a description of the work to be carried out;
  - c) the address of the land on which the work is to be carried out;
  - d) the Registered number and date of issue of the relevant development consent and construction certificate;
  - e) a statement signed by or on behalf of the Principal Certifying Authority to the effect that all conditions of the consent that are required to be satisfied prior to the work commencing have been satisfied; and
  - f) the date on which the work is intended to commence.
- (4) **Sign of PCA and contact details** – A sign must be erected in a prominent position on the site stating the following:
- a) that unauthorised entry to the work site is prohibited;
  - b) the name of the principal contractor (or person in charge of the site) and a telephone number on which that person can be contacted at any time for business purposes and outside working hours;
  - c) the name, address and telephone number of the Principal Certifying Authority.
- The sign must be maintained while the work is being carried out and must be removed upon the completion of works. Where Council is the PCA, the sign is available from Council's Administration Building at Raymond Terrace or the Tomaree Library at Salamander Bay free of charge.
- (5) **Construction Certificate Required** – In accordance with the provisions of Section 6.7 of the *Environmental Planning & Assessment Act 1979 (EP&A Act 1979)*, construction or subdivision works approved by this consent must not commence until the following has been satisfied:
- a) a Construction Certificate has been issued by a Consent Authority;
  - b) a Principal Certifying Authority (PCA) has been appointed by the person having benefit of the development consent in accordance with Section 6.5 of the *EP&A Act 1979*; and
  - c) the PCA is notified in writing of the name and contractor licence number of the owner/builder intending to carry out the approved works.
- (6) **Site is to be secured** – The site must be secured and fenced to the satisfaction of the Principal Certifying Authority. All hoarding, fencing or awnings (associated with securing the site during construction) is to be removed upon the completion of works.
- (7) **Soil erosion and sediment control** – Soil erosion and sediment controls must be implemented prior to works commencing on the site in accordance with 'Managing Urban Stormwater – Soils and Construction (the blue book)' and any Sediment and Erosion plans approved with this Development Consent.





Soil erosion and sediment control measures must be maintained during construction works and must only be removed upon completion of the project when all landscaping and disturbed surfaces have been stabilised (for example, with site turfing, paving or re-vegetation).

- (8) **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.

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

No rubbish must be stockpiled in a manner which facilitates the rubbish to be blown or washed off site. The site must be cleared of all building refuse and spoil immediately upon completion of the development. Council may issue 'on the spot' fines for pollution/littering offences under the Protection of the Environment Operations Act 1997.

- (10) **Flood design measures** – Evidence of certification demonstrating that the following flood related design precautions have been adhered to in the design must be submitted to the Principal Certifying Authority:

- a) In sewered areas some plumbing fixtures may be located below the *Flood Planning Level (FPL)*. Where this occurs sanitary drainage is to be fitted with a reflux valve to protect against internal sewage surcharge;
- b) All materials stored at the site and capable of causing harm to the environment must be stored at a level not less than the *FPL* or suitable bunding must be placed around such materials to a minimum of the *FPL*;
- c) All building materials, equipment, ducting, etc., below the *FPL* must be flood compatible and ducting must be provided with openings for drainage and cleaning;
- d) All main power supply, heating and air conditioning service installations, including meters must be located above the *FPL*. All electrical equipment installed below the *FPL* must be capable of disconnection by a single plug from the power supply;
- e) All electrical wiring below the *FPL* must be suitable for continuous submergence in water. All conduits below the *FPL* must be self-draining. Earth core leakage systems or safety switches are to be installed;
- f) Wherever possible, the premises must be designed to ensure that plant, equipment, storage tanks or other fixtures or fittings liable to damage by floods are located above the *FPL* or be moveable to levels above the *FPL*. Should this not have the ability to occur, they shall be suitable for submergence in water and securely anchored to overcome buoyancy and movement. All storage tanks must be vented to an elevation above the *FPL*.

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

- a) No existing nature strip(s), street tree(s), tree guard(s), protective bollard(s), garden bed surrounds or root barrier installation(s) must be disturbed, relocated,





removed or damaged during earthworks, demolition, excavation (including any driveway installation), construction, maintenance and/or establishment works applicable to this consent, without Council agreement and/or consent.

- (12) **Vegetation Management Plan** - A Vegetation Management Plan (VMP) must be developed for the retained areas of native vegetation, and submitted to Council for approval prior to any clearing works occurring on site.

The VMP must be prepared and implemented by a suitably qualified Environmental Consultant.

The plan should include clear management objectives, a schedule of works and maps in accordance with Port Stephens 'Technical Specification Vegetation' (May 2014), and shall include detailed management measures for the on-going management of habitat for the threatened orchid species *Pterostylis chaetophora* (mapped areas of habitat available from Council on request) including:

- Fencing to exclude visitor access.
- Backfilling of existing trenches by manual methods.
- 'Ecologically Sensitive Area' signage.
- Restrictions on maintenance activities (slashing/mowing) i.e. timing, frequency, slashing height.
- Weed and pathogen hygiene protocols.
- Prohibiting the use of heavy machinery or vehicle parking.
- Prohibiting the introduction of fill material or topsoil.

The Vegetation Management Plan must be approved prior to the commencement of works on the site.

#### 4.0 - During Works

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

- (1) **Construction hours** – Construction work that is likely to cause annoyance due to noise is to be restricted to the following times:-

- Monday to Friday, 7am to 6pm;
- Saturday, 8am to 1pm;
- No construction work to take place on Sunday or Public Holidays.

All possible steps should be taken to silence construction site equipment.

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

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



- (3) **Compliance with BCA** – All building work must be carried out in accordance with the requirements of the Building Code of Australia.
- (4) **Excavations and backfilling** – All excavations and backfilling associated with this development consent must be executed safely, and be properly guarded and protected to prevent them from being dangerous to life or property, and in accordance with the design of a suitably qualified Structural Engineer.  
If an excavation extends below the level of the base of the footings of a building on an adjoining allotment, the person causing the excavation must:
- a) preserve and protect the building from damage; and
  - b) if necessary, underpin and support the building in an approved manner; and
  - c) give at least seven days notice to the adjoining owner before excavating, of the intention to excavate.
- The principal contractor, owner builder or any person who needs to excavate and undertake building work, must contact “Dial Before You Dig” prior to works commencing, and allow a reasonable period of time for the utilities to provide locations of their underground assets.
- This condition does not apply if the person having the benefit of the development consent owns the adjoining land or the owner of the adjoining land has given consent in writing to that condition not applying.
- (5) **Finished floor level** – A survey report prepared by a Registered Surveyor confirming that the finished floor level complies with the approved plans or floor levels specified by the development consent, must be provided to Principal Certifying Authority prior to the development proceeding beyond floor level stage. A Flood Certificate is to be sought from Council to determine the finished floor level of the site.
- (6) **Survey report** – The building must be set out by a Registered land surveyor. A peg out survey detailing the siting of the building in accordance with the approved plans must be provided to the Principal Certifying Authority prior to the pouring of concrete.
- (7) **Traffic Management Plan implementation** - All construction traffic management procedures and systems identified in the approved Construction Management Plan must be introduced during construction of the development to ensure safety and to minimise the effect on adjoining pedestrian and traffic systems.
- (8) **Stormwater disposal** – Following the installation of any roof, collected stormwater runoff from the structure must be:
- a) Dispersed at ground level, so as not to be concentrated or create nuisance flows onto any buildings, or neighbouring properties. The discharge location must be at least 3m down slope of the building and 6m minimum clearance from receiving down slope property boundaries.
- (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) **Location of stockpiles** – Stockpiles of soil must not be located on / near any drainage lines or easements, natural watercourses or water bodies, footpath or roadway without first providing suitable protective measures adequate to protect these water bodies. All stockpiles of contaminated materials must be suitably covered to prevent dust and odour nuisance.
- (11) **Tree protection measures** – All trees to be retained must be protected in accordance with AS4970 'Protection of Trees on Development Sites' for the duration of construction.
- (12) **Tree Removal** - All approved tree removal/ pruning is subject to all works being undertaken by a qualified arborist with a 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) **Vegetation Management Plan** - All works must be undertaken in accordance with the approved Vegetation Management Plan.
- (14) **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.

- (15) **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.
- (16) **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.

#### **5.0 - Prior to Issue of an Occupation Certificate**

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

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



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

- (2) **Approval to Operate (Waste Treatment)** - An Approval to Operate must be obtained by Council in accordance with the *Local Government Act, 1993* (Section 68A) following the satisfactory installation of the waste treatment device/human waste storage facility.
- (3) **Fire Safety Certificates** - A fire safety certificate as prescribed by Section 174 Environmental Planning & Assessment Regulations 2000 which certifies the performance of the implemented fire safety measures in accordance with Section 170 of the Regulation must be submitted to the Principal Certifying Authority and the Commissioner of New South Wales Fire Brigades. A copy of fire safety certificate needs to be forwarded to Council, If Council is not nominated as the Principal Certifying Authority. A further copy of the certificate must also be prominently displayed in the building.
- (4) **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.
- (5) **Services** – Evidence is to be provided to Council demonstrating that sufficient capacity of the following services are available to the development:
  - a) Electricity;
  - b) Water (including potable water), and;
  - c) 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.

- (6) **Stormwater/drainage works** – All stormwater and drainage works required to be undertaken in accordance with this consent must be completed.  
The certification/verification must be provided to the satisfaction of the Principal Certifying Authority.
- (7) **Rectification damage to public infrastructure** – The applicant must rectify any new damage to public infrastructure to the satisfaction of the Council as the Roads Authority.
- (8) **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.
- (9) **Protection and certification of electrical services** – All power points, fittings, electrical connections and the incoming meter box are to be located above the Flood Planning Level (FPL).



Switches, light fittings and power points may be located below the FPL provided they are capable of being isolated by a single Residual Current Device (RCD) protected switch that is located above the FPL. Certification of these works are to be provided to the Principal Certifying Authority.

- (10) **Flood signage** – A flood marker sign of durable material having minimum dimensions of 600mm x 600mm, is to be installed within a prominent location indicating the expected future 1% Annual Exceedance Probability and Probable Maximum Flood levels, and the date of installation.

The level indicated on the sign shall be certified by a Registered Surveyor. Evidence of such certification shall be submitted to the Certifying Authority.

- (11) **Flood Risk Management Plan** – A Certificate of Compliance prepared by a suitably qualified Flood engineer must be provided to the Principal Certifying Authority stating that all aspects of the Flood Risk Management Plan have been completed and/or implemented in accordance with the approved Plan.

- (12) **Flood Emergency Response Plan** - A Flood Emergency Response Plan (FERP) for the proposed development must be provided to the Principal Certifying Authority. The FERP must include the following as a minimum:

- a) A map of the proposed evacuation route to a suitable location above the Probable Maximum Flood (*PMF*) that provides adequate shelter from the storm, including the route direction and description and identification of the depth of floodwater along the evacuation route in the 1% Annual Exceedance Probability flood and *PMF* events;
- b) Specific trigger heights linked to the nearest river and tidal gauges used for flood warnings and the specific evacuation route cut-off times linked to the gauge height;
- c) Description of the specific flood inundation at the site and the relevant surrounding area, including flood depths, direction of flow, velocities, hazard and specific relevant vulnerabilities;
- d) Consideration of and strategies for, the needs of the elderly, disabled and vulnerable who may be on site;
- e) A realistic time period for evacuation preparations linked to the trigger heights and evacuation route cut-off times, which includes:
  - Locating important papers, valuables etc., that will be evacuated
  - Locating and stacking possessions that are to be left behind, well above the predicted flood level
  - Dealing with all utilities such as electricity, gas, water, fuel, toilets, showers, wastewater system (including removal fuses) and moving pumps and machinery above the predicted flood level
  - Time to gather, identify and load animals (pets, livestock and other animals), including the possible need for additional assistance in handling your animals in an emergency.
- f) Determining the vehicular needs of the site to appropriately respond to the flood risk;
- g) A strategy for a night time flood emergency; and
- h) A strategy for effective flood risk management when the electricity, internet, telecommunications etc., are unavailable.



**Note:** Digital elevation data is available from Geosciences Australia, current flood studies are available on Council's website and river gauge/tidal gauge data is available from the Bureau of Meteorology website.

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

This certificate must accompany the Works as Executed plans.

- (14A) **Car parking requirements** – A minimum of 20 car parking spaces are to be provided in accordance with AS2890 and the approved plans. Parking must be permanently marked on the pavement surface.

Two additional parking spaces are required for visitors and must be signposted as "visitor parking".

- (15) **Waste disposal** – The building owner must ensure that there is a contract with a licensed contractor for the removal of all waste. No garbage is to be placed on public land (e.g. footpaths, roadways, plazas, reserves) at any time.

#### **6.0 – Prior to the Issue of an Approval to Operate (Camping Ground)**

The following conditions are to be complied with prior to the issue of an Approval to Operate under Section 68 of the Local Government Act 1993.

- (1) **Occupation Certificate required** - An Occupation Certificate for the amenities block and camp kitchen must be obtained prior to any issue of an approval to operate the development. The Principal Certifying Authority must be satisfied that the development has been constructed in accordance with approved plans, specifications and conditions of this consent.
- (2) **Site Entry** - A BAL/BAR entry in accordance with current Austroads Guides is to be constructed at the proposed new entry to the site.
- (3) **Local Government Regulations** - The camping ground must be constructed and operated in accordance with the requirements of the Local Government Regulations (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005, excluding any objection approved in accordance with Section 82 of the *Local Government Act 1993*.
- (4) **Ecological Assessment** - Construction of the development must comply with the recommendations of *Ecological Assessment Report for Proposed Campground & Eco Tourist Facility at 47 The Bucketts Way Twelve Mile Creek, NSW*, prepared for: Tudor Property Services c/- Perception Planning, by Anderson Ecology and Planning, dated March 2020 (Document reference no. 1950), detailed as follows:



- Appropriate sediment and erosion controls should be enacted to ensure that the development does not impact on the EEC and Twelve Mile Creek in the western portion of the lot, outside the subject site.
- Clearing of trees should be undertaken to ensure that trees with hollows or potential to offer nesting or roosting habitat be felled under the instruction of a suitably qualified ecologist/fauna catcher and that soft felling techniques be utilised.
- Equipment used in the felling of trees should be cleaned thoroughly and disinfected before entering site to prevent weed and disease introduction such as exotic grasses, *Phytophthora cinnamomi* (Root-rot fungus), Frog Chytrid fungus and others.
- A weed management plan should be enacted to ensure that weeds are not introduced to EEC vegetation or creek lines in the western section of the lot.

(5) **Revegetation planting** – The applicant must plant within the following areas:

- along the southern boundary;
- along the northern boundary of the lot between the new shed (east) and the parking area (west). No planting must occur within the areas of the mapped habitat area for *Pterostylis chaetophora*; and
- along the northern edge of the access road between the eastern extent of the amenities building camping site 43 (west). Planting in this area should consist of shrubs only.

The following plant species must be planted at no cost to Council:

Species name	Common name	Pot size	Density
Trees			
<i>Corymbia maculata</i>	Spotted Gum	Tube stock Mature tree stock (20 litre pot size)	1 per 6 m <sup>2</sup>
<i>Eucalyptus tereticornis</i>	Forest Red Gum		1 per 10 m <sup>2</sup>
<i>Eucalyptus fibrosa</i>	Broad-leaved Ironbark		
Shrubs			
<i>Melaleuca decora</i>	White Feather Honey Myrtle	Tube stock Mature tree stock (20 litre pot size)	1 per 4 m <sup>2</sup>
<i>Melaleuca stypheloides</i>	Prickly-leaved Paperbark		1 per 10 m <sup>2</sup>
<i>Callistemon salignus</i>	Willow Bottlebrush		
Groundcover			
<i>Lomandra longifolia</i>	Spiny-headed Mat-rush	Tube stock / hiko	1 per 2 m <sup>2</sup>

Planting must include at least 30% mature tree stock.

Details demonstrating compliance must be provided to the Certifying Authority.





- (6) **Construction to be in accordance with Acoustic Report** – Certification is to be submitted to the Principal Certifying Authority to certify that the construction of the development complies with the recommendations of the Acoustic Assessment Report, prepared by RAPT Consulting dated 11 February 2020.
- (7) **Operational Plan of Management** – An Operation Plan of Management for the site is to be drafted and provided to Council outlining proposed management actions in relation to:
- 24 hour on-site management
  - Noise management and abatement
  - Emergency procedures
  - Emergency and after hours contact numbers for visitors and nearby residents
  - Security
  - Antisocial behaviour of visitors
  - Visitor arrival and departure times
  - Maximum onsite stay of four (4) consecutive nights for visitors
  - Restriction on individual campsite fires
  - Litter Management Strategy (with the intent to reduce the impact on the site and neighbouring sites)
  - Restraining animals at all times.
- (7.1) **On-site Sewerage Management** – Prior to the issue of an Approval to Operate under Section 68 of the Local Government Act 1993, a report must be approved by Council detailing the intended use of the on-site sewerage management system and any required adaptations in order for the on-site sewerage management system to function at intended levels that achieve appropriate effluent quality. The report should also detail the service requirements and frequency.

## 7.0 – Ongoing Use

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

- (1) **Manoeuvring of vehicles** – All vehicles must enter and exit the site in a forward direction.
- (2) **Parking areas to be kept clear** – At all times, the loading, car parking spaces, driveways and footpaths must be kept clear of goods and must not be used for storage purposes.
- (3) **Fire Safety Schedule** – At all times, a copy of the Fire Safety Schedule and Fire Safety Certificate must be prominently displayed in the building and a copy forwarded to the Commissioner of New South Wales Fire Brigades in accordance with the *Environmental Planning & Assessment Regulations 2000*.
- (4) **Fire Safety Schedule** - At least once in each twelve (12) month period, fire safety statements as prescribed by Section 175 Environmental Planning & Assessment Regulations 2000 in respect of each required essential fire safety measure installed within the building are to be submitted to Council. Such certificates are to state that:





- a) The service has been inspected and tested by a person (chosen by the owner of the building) who is competent to carry out such inspection and test; and
- b) That the service was or was not (as at the date on which it was inspected and tested) found to be capable of operating to a standard not less than that specified in the fire safety schedule for the building.

(5) **Amenity** – The business must be conducted, and customers controlled at all times so that no interference occurs to the amenity of the area, the footpath, adjoining occupations and residential premises.

(6) **Wastewater treatment devices** – All wastewater treatment devices (including drainage systems, sumps, traps and pumps) must be regularly maintained in good working order to ensure that they remain effective.

A maintenance schedule must be developed and incorporated into a Plan of Management (PoM) and kept on-site at all times for staff to comply with. All liquid and solid wastes collected from the treatment device must be disposed of in accordance with relevant environmental protection and waste control Legislation.

(7) **Vegetation Management Plan** - Monitoring reports in accordance with the approved Vegetation Management Plan must be prepared and submitted to Council.

(8) **Maintenance of Plantings** - Commencing from the date of practical completion, a 12-month maintenance establishment period applies. This includes the establishment, care and repair of all plantings.

The date of Practical Completion is taken to mean completion of all civil works, soil preparation and treatment and initial weed control, and completion of all planting.

(9A) **Use of Caravans** – A caravan is not to stay onsite for any longer than four (4) consecutive nights. The use of caravans must comply with Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2021.

(9.1) **Camping Restricted to Designated Sites** – Camping is not permitted outside of the designated sites identified in grey hatch on the sites plans prepared by Sorensen Design and Planning, Revision I, Dated 29/08/2022.

(9.2) **Location of Caravans, Annexe and Campervans** – A caravan, annexe or campervan must not be installed within 6 metres of another caravan, annexe, campervan or tent.

(9.3) **Location of Tents** – A tent must not be permitted to be installed within 6 metres of a caravan, campervan or an annexe or within 3 metres of another tent.

(9.4) **Unoccupied caravans, campervans and tents** – Unoccupied caravans, campervans and tents are not permitted to remain in the camping ground for more than 24 hours.

(9.5) **Water Use** – Any time the private water supply is being used for any part of the primitive camp ground it must be provided in accordance with the Quality Assurance Program.



(9.6) **Site Capacity** – As per the NSW RFS General Terms of Approval (reference DA-2019-03512-S4.55-1, dated 28 October 2022), the camping ground is limited to having a maximum of 81 persons on site.

**Advice Note(s):**

- A. **'Dial Before you Dig'** – Before any excavation work starts, contractors and others should phone the "Dial Before You Dig" service to access plans/information for underground pipes and cables.
- B. **Disability Discrimination Act** – The Commonwealth Disability Discrimination Act makes it an offence to discriminate against people on the grounds of disability, in the provision of access to premises, accommodation, or services. It is the owner/applicants responsibility to ensure compliance with the requirements of this Act.
- C. **Aboriginal archaeological deposit** – In the event of any aboriginal artefact, object or structure being unearthed, all work must cease immediately in the affected area, and the Biodiversity Conservation Division (BCD) shall be informed of the discovery. Work must not recommence until the material has been inspected and permission has been given by BCD to proceed.
- D. **Flood information is subject to change** – You are advised that flood information is subject to change if more accurate data becomes available to Council. It is the responsibility of the applicant to use the most up-to-date flood information. Prior to applying for a construction certificate, Council should be contacted to verify the currency of the flood information.
- E. **Flood Evacuation Plan** – A flood evacuation plan indicating that permanent, fail-safe, maintenance free measures are incorporated in the development to ensure that timely, orderly and safe evacuation of people and potential pollutant material from the buildings on-site should a flood occur. Details demonstrating compliance must be provided to the Certifying Authority with the Construction Certificate application.
- F. **Signage** – You are advised that any proposed advertising signs that are not shown on the approved plans, or classified as exempt development, are subject to a separate Development Application to Council.
- G. **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.



PORT STEPHENS  
COUNCIL

## CALL TO COUNCIL FORM DEVELOPMENT APPLICATION

### Development application (DA) call to Council request:

I/We (Mayor/Councillor/s) Arnott, Anderson and Kafer request  
that DA number 16-2019-598-2 for DA  
description s4.55(1A) modification to the approved camping ground located at  
47 The Bucketts Way, Twelve Mile Creek  
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) Arnott, Anderson and Kafer 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:

Please sign or  
type name &  
attached to  
an email.

Date: 5/8/2022 Please enter a date.

### Signed:

Please sign or  
forward  
supporting  
email.

Date: 14/11/2022 Please enter a date.

### Signed:

Please sign or  
forward  
supporting  
email.

Date: 14/11/2022 Please enter a date.





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>	16-2019-598-2
<b>Development description</b>	Camping Ground (50 camp sites) with amenities and kitchen
<b>Modification description</b>	S4.55(1A) Modification to approved camping ground (50 camp sites) – convert camping ground to 20 primitive camp sites
<b>Applicant</b>	PERCEPTION PLANNING PTY LTD
<b>Date of lodgement</b>	02/08/2022

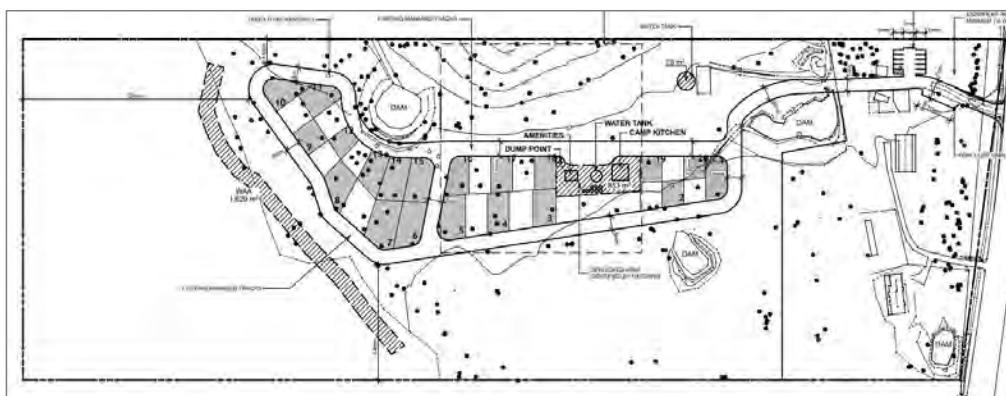
### Modification proposal

This modification application proposes to convert the approved camping ground from 50 camp sites to 20 primitive camp sites. The amendments proposed are as follows:

- Reduce the total number of camp sites from 50 to 20;
- Convert the use of the sites to 'primitive' camp sites rather than 'camp sites'. The site plan is identified in Figure 1 with the 'primitive' camp sites shown in grey.
- Amend the site plan to include the entirety of the site as a campground.
- Deletion of the approved storage shed and associated hard stand space located within the north eastern portion of the site. Figure 2 identifies the approved location of the shed and Figure 3 identifies the amended site plan.

No other changes to the approved development are proposed.

The conditions of consent proposed to be modified have been discussed in further detail below.



**Figure 1.** Proposed primitive sites identified shown in grey

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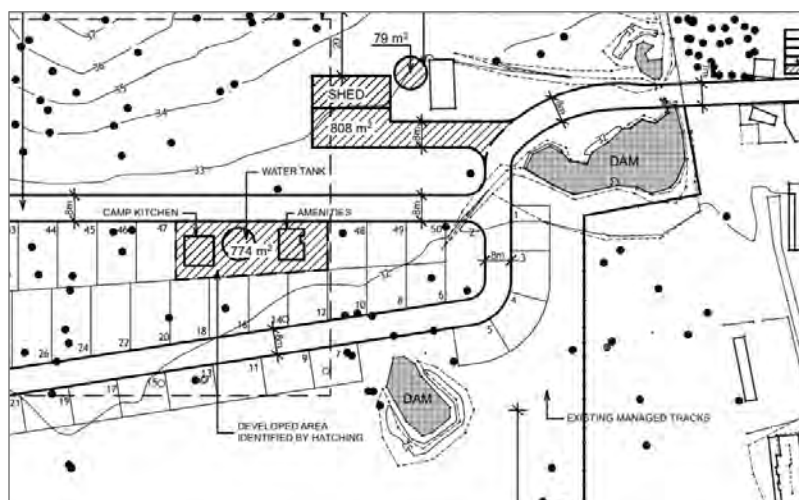


Figure 2. Approved site plan showing location of shed

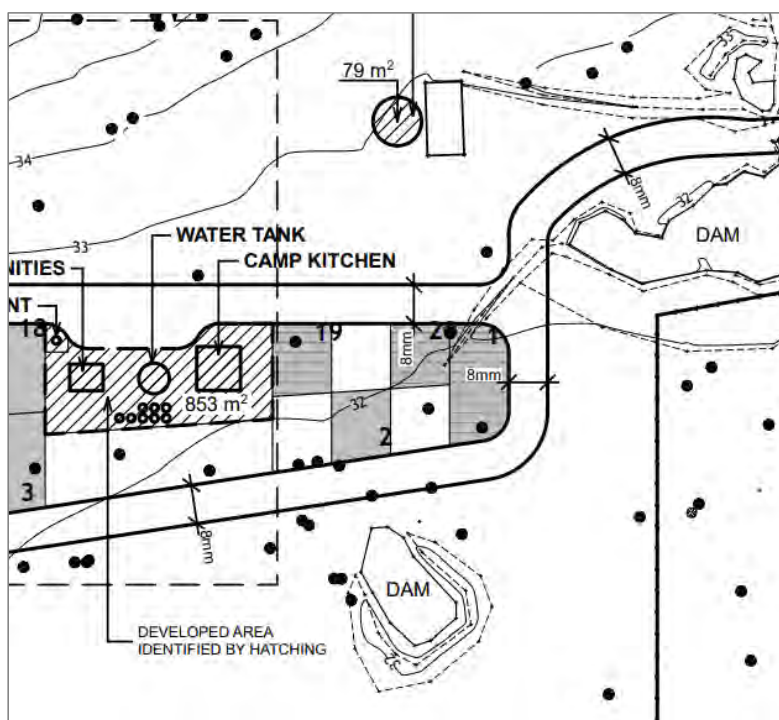


Figure 3. Proposed modified site plan with shed removed



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**Site Description**

The subject site is legally identified as Lot 9 DP 243144. The site is rectangular in shape and has an area of approximately 10.12ha, refer to Figure 4. The site currently contains two dwellings and a number of outbuildings. The amenities, camp kitchen and water tanks associated with the original consent have already been constructed on the site.

The site contains dense vegetation to the west. The vegetation density reduces to the east in the vicinity of the camping ground. The site is accessible from The Bucketts Way, which is approximately 550m from an intersection with the Pacific Highway.

The surrounding locality is characterised by rural residential land uses.



**Figure 4. Site Aerial**

**Site History**

The site has historically been utilised for rural residential purposes with historic Development Application's (DA) relating to a farm shed, dual occupancy and swimming pool.

The original DA (16-2019-598-1) was lodged with Council on 16 September 2019. The DA was for a camping ground consisting of 50 camp sites with amenities and a camp kitchen. The application was approved by Council on 25 August 2020.

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**PROPERTY DETAILS**

<b>Property address</b>	47 The Bucketts Way TWELVE MILE CREEK
<b>Lot and DP</b>	LOT: 9 DP: 243144
<b>Zoning</b>	RU2 RURAL LANDSCAPE
<b>Site constraints that affect the modification</b>	Bushfire Prone Land – Vegetation Category 1 and 3

**ASSESSMENT SUMMARY**

Designated Development	The application is not designated development
Integrated Development	The initial application was referred to the Rural Fire Service (RFS) as integrated development under Section 100B of the <i>Rural Fires Act 1997</i> for Special Fire Protection Purpose (SFPP). The proposed modification seeks to amend the approved camping ground to be only 20 primitive camp sites. As such, the proposed modification was referred to the RFS for comment. Revised General Terms of Approval (GTA's) were provided from RFS to reflect the amended configuration.
Concurrence	The application does not require the concurrence of another body

**Internal Referrals**

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

**Environmental Health** – The application was referred to Council's Environmental Health Officer (EHO) for comment. It was noted in the referral that the previously approved (and now constructed) on-site sewerage management system (OSMS) was designed to service 50 camping sites. Given the reduction in camping sites proposed, concern was raised in regard to the partial use of the OSMS as when the system is not fully functioning it may not be able to be tested appropriately. Council's EHO therefore recommended that a new condition be added to the consent requiring the submission of a report to Council, written by a suitably qualified wastewater specialist, detailing the intended use of the OSMS including any modifications or adaptations to allow the system to operate in an environmentally satisfactory manner achieving effluent quality parameters. This condition has been added to the recommended conditions of consent.

In regard to the proposed use of the site as a primitive campground, Council's EHO noted that the proposal must be undertaken in accordance with Part 3 Subdivision 9 of the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2021. An assessment against this section has been undertaken below.

**External Referrals**

The proposed modification was referred to the following external agencies in accordance with Clause 109 of the *EP&A Regulations 2021*:

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Rural Fire Service (RFS) – The initial application was referred to the RFS as integrated development under Section 100B of the *Rural Fires Act 1997* as the proposed development was for a Special Fire Protection Purpose. The proposed modification seeks to reduce and convert the approved 50 camp sites to a total of 20 'primitive' camping sites. As such, the proposed modification was referred to the RFS for comment. Revised General Terms of Approval (GTA's) were provided by the RFS to reflect the amended camping ground layout. The revised GTAs have been incorporated through an amended condition of consent.

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

The modification does not propose the removal of any additional vegetation and reduces the overall development footprint on the site by reducing the number of total sites and deletion of the shed. The modified development reduces the overall capacity of the camping ground and does not propose to amend the operational components or the approved amenities.

Accordingly, no adverse environmental impacts are anticipated to occur as a result of the modification. As such, the proposal is considered to be of minimal environmental impact.

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

The development as modified is substantially the same as the approved development on the following grounds:

- The development is materially the same in essence, with the use now a 'primitive campground' rather than a 'campground'. A primitive campground is considered to be a type of campground as defined under the PSLEP2013; Accordingly, there is no modification to the approved use;
- There are no significant changes to the approved amenities, camp kitchen or road layout;
- The amended area of the campground does not impact the approved use nor require any additional vegetation clearing to what has been approved.
- When considering all components of the original development consent, the quantitative and qualitative changes are considered minor and therefore, substantially the same as the original development.

On this basis, the application is considered to be substantially the same under the provisions of S4.55(1A)(b).

**S4.55(1A)(c) – Notification**

The application was notified from 24 October 2022 until 7 November 2022 in accordance with Councils Community Engagement Strategy.

**S4.55(1A)(d) – Submissions**

There were two submissions received during the notification period. The matters raised in the submissions objecting to the development are discussed in the table below:

Objection	Comments
<b>Submission 1</b>	
Failure to comply with maximum number of	Council have assessed the total number of

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<p><u>designated campsites</u></p> <p>The submission references that the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2021 states that "if an approval to operate a primitive camping ground designates one or more camp sites within that ground, then the maximum number of designated camp sites is not to exceed a mean average of 2 for each hectare of the camping ground (where that figure is the average calculated over the total area of the primitive camping ground)." The submission notes that the plans provided with the application reference the campground area to be 2.079ha and therefore the maximum number of campsites allowable should be 4 rather than 20 as proposed.</p>	<p>allowable primitive camp sites based on the total area of the site. The plans have been amended to include the entirety of the site as a campground. The total area of the site/campground is 10.12 hectares, permitting 20 primitive camp sites, as proposed. The planning circular for primitive campgrounds (PS 06-001) acknowledges that where camp sites are designated (as proposed) they may be concentrated within a specific area of a campground using the example that:</p> <p><i>In a five-hectare primitive camp ground with designated camp sites there might be ten sites all within a two hectare section of the camping ground.</i></p> <p>It is noted that where camp sites are designated, camping is not permitted elsewhere on the site. The intention of this approach is to conserve the natural environment and encourage campers to utilise facilities required by the regulation. The proposed development seeks to concentrate the 20 camp sites within a 2 hectare area, which are located in close proximity to the approved and constructed amenities including the camp kitchen, which is required to serve a dual purpose as a fire refuge.</p> <p>A condition has been recommended to be added to the consent noting that camping outside of the designated sites is prohibited.</p> <p>It is further noted that the campground, as modified, is capable of complying with the required setbacks from neighbouring sites as identified in Section 131 (3)(c) and (d) of the <i>Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2021</i>.</p>
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<p><u>Amenity, Rural Landscape and Character</u></p> <p>The submission raised concern regarding the proposals impacts on amenity, rural landscape and character.</p> <p>The submission notes that a number of conditions on the consent have failed to be satisfied despite the issuing of a Construction Certificate (CC).</p> <p>The submission questioned the cost of works associated with the modification noting that there is still outstanding works which have costs associated with them.</p> <p>The submission requested that the width of planting be expanded to provide reasonable protection to their properties amenity.</p>	<p>The proposal seeks to reduce the total number of camp sites from 50 to 20 and remove the approved storage shed from the approved plans. It is considered that the reduction in sites will not exacerbate potential negative impacts on the amenity of the area, nor the surrounding rural landscape or character.</p> <p>Non-compliance with conditions of consent and potential unlawful issuing of a CC is not a matter assessed through the DA modification process, but is rather a compliance matter which is dealt with separately.</p> <p>The modification seeks to reduce the total number of camp sites from 50 to 20 and remove the approved storage shed from the plans. The costs associated with outstanding works under the original approval is a separate matter to the modifications proposed.</p> <p>The majority of the outstanding works identified within the submission would have been taken into consideration in the cost of works associated with the original DA minus those costs associated with conditions added to the consent. It is noted that cost of works are required for Development Applications (DA) as this is how DA fees are estimated. \$4.55 fees are then estimated based on cost of works associated with the original DA.</p> <p>The proposal seeks to reduce the capacity of the campground. The proposed modification is therefore not considered likely to exacerbate amenity impacts to neighbouring properties. The existing condition relating to planting remains appropriate.</p>
<p><u>Ongoing issues with the development</u></p> <p>The submission noted that sites unlawful operations and non-compliance with conditions outlined in the consent. The submission raised concern regarding the continued unlawful use of the site despite the modifications proposed. It was requested that an additional condition be added to the consent noting that camping must not occur outside the designated area and that fencing be constructed around the designated</p>	<p>A condition has been added to the consent noting that camping is not to occur outside of the designed camp sites. It is not considered necessary to require additional fencing around the perimeter of the designated camping area. There is no requirement for this measure under the <i>Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation</i></p>

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<p>campground area.</p> <p>The submission noted that patrons of the campground have entered into their property. The submission requested assurance from Council that patrons are unable to enter their property. It was recommended that this be done through perimeter fencing around the designated campground area or enhanced barriers between the campground and their property.</p> <p>The submission noted that animals of been unrestrained and there have been individual campfires despite conditions of consent. It has been requested that both animals and individual campsites be made prohibited due to the historic non-compliances.</p>	<p>2021.</p> <p>Neither the existing nor modification provides consent for patrons of the campground to enter neighbouring properties. This is a trespassing matter.</p> <p>Condition 6.7 remains on the consent relating to the requirement for an Operational Management Plan to address matters of this nature. The Management Plan is required to be provided to Council prior to issue of an Approval to Operate.</p>
<p><b>Submission 2</b></p>	
<p>The submission raised concern regarding failure to comply with the Regulations in that 20 campsites are proposed to be provided within a 2 hectare area.</p> <p>Concern was also raised that the septic system would not be designed appropriately to cater for the 20 primitive sites.</p>	<p>As noted above, Council have assessed the total number of allowable primitive camp sites based on the total area of the site. . The plans have been amended to include the entirety of the site as a campground. The total area of the site/campground is 10.12 hectares, permitting 20 primitive camp sites, as proposed. The planning circular for primitive campgrounds (PS 06-001) acknowledges that where camp sites are designated (as proposed) they may be concentrated within a specific area of a campground using the example that:</p> <p><i>In a five-hectare primitive camp ground with designated camp sites there might be ten sites all within a two hectare section of the camping ground.</i></p> <p>It is noted that where camp sites are designated, camping is not permitted elsewhere on the site. The intention of this approach is to conserve the natural environment and encourage campers to utilise facilities required by the regulation. The proposed development seeks to concentrate the 20 camp sites within a 2 hectare area, which are located in close proximity to the approved and constructed amenities including the camp kitchen, which is required to serve a dual purpose as a fire refuge.</p>

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	<p>A condition has been recommended to be added to the consent noting that camping outside of the designated sites is prohibited.</p> <p>It is further noted that the campground, as modified, is capable of complying with the required setbacks from neighbouring sites as identified in Section 131 (3)(c) and (d) of the <i>Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2021</i>.</p> <p>In regard to the septic system, it was approved and has since been constructed to service the originally approved 50 sites. Given the campground capacity is proposed to be reduced, a condition has been recommended to be added to the consent requiring that a report be provided to Council prior to the approval to operate detailing the required adaptations in order for the on-site sewerage management system to function at intended levels that achieve appropriate effluent quality.</p>
<p>Given the non-compliance with the Regulations, the submission requested that Council reduce the number of campsites proposed to be compliant with the Regulations.</p> <p>It was also requested that caravans not be allowed to be located on the campground.</p>	<p>As noted above, Council have assessed the proposed number of campgrounds against the Regulations and note that given the total area of the campground is proposed to be 10.12 hectares, it is considered that 20 primitive camp sites are permitted. This proposed modification reduces the number of sites from 50 to 20 therefore significantly reducing the sites capacity. It is further noted that as per the RFS General Terms of Approval, only 81 patrons are permitted on site at any one time. A condition has also been recommended to be added to consent noting this maximum number of persons. A condition has also been recommended to be added to the consent restricting the maximum number of patrons to use the campground.</p> <p>The Regulations note that the installation of tents, caravans and annexes is permitted within a primitive campground as long as the appropriate setbacks are achieved. It is considered that the setbacks are achieved and conditions regarding the setbacks have been recommended to be added to the consent.</p>
The submissions notes that requirements of the originally application such as landscaping	The landscaping is required to be completed prior to the issue of an Approval to Operate

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along the northern and southern boundary and creation of a mound has not been completed. It was requested that these requirement be met before any further operation of the campground takes place.	despite the modification. Details demonstrating compliance is required to be provided to Council.
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**S4.55(3) – S4.15(1) Assessment**s4.15(1)(a)(i) – The provisions of any EPI

The modification is consistent with the provision of the PSLEP 2013 and all relevant SEPPs applicable to the development.

Port Stephens Local Environmental Plan 2013Clause 2.3 – Zone Objectives and Land Use Table

The site is zoned RU2 Rural Landscape. The proposed modification seeks to convert the 50 approved camp sites to 20 'primitive' camping sites. A primitive camping ground is considered to be a type of camping ground, which is permissible with consent in the RU2 Rural Landscape zone.

The proposed modification is considered to be consistent with the zoning objectives.

Clause 7.6 – Essential Services

The site is not connected to reticulated sewer and therefore relies on an on-site sewerage management system (OSMS). The OSMS approved under the original consent was designed to cater for 50 camp sites. Given the reduction in camping sites proposed, concern was raised by Council's Environmental Health Officer (EHO) with regard to the partial use of the OSMS. When the system is not fully functioning, it may not be able to be operate appropriately. Councils EHO therefore recommended that a new condition be added to the consent, requiring a report written by a suitably qualified wastewater consultant be provided to Council detailing the intended use of the OSMS. This report must include any modifications or adaptations to enable the system to operate in an environmentally satisfactory manner, achieving effluent quality parameters. This condition has been incorporated into the recommended conditions of consent.

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	<u>Chapter B3 Environmental Management</u>

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		<p><b>B3.C Noise</b> The proposed modification seeks to reduce the overall number of camp sites on the site from 50 to 20. It is therefore considered that noise impacts will not be increased as a result of the modification.</p> <p><b>B8 Road Network and Parking</b> Figure BU of this Chapter identifies that a camping ground is to provide:</p> <ul style="list-style-type: none"> <li>• 1 car space per site; and</li> <li>• 1 visitor space for every 10 sites.</li> </ul> <p>Condition 5.0(14) addressed the required car parking under the original consent. This condition has been recommended to be updated to reflect number of parking spaces required for the modified camp sites which is:</p> <ul style="list-style-type: none"> <li>• 20 car spaces;</li> <li>• 2 visitor spaces.</li> </ul>
C	<input checked="" type="checkbox"/> Development Types	No applicable requirements.
D	<input checked="" type="checkbox"/> Specific Areas	No applicable requirements.

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.	Nil applicable.

s4.15(1)(a)(iv) – The regulations

*Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2021*

*Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds & Moveable Dwellings) Regulation 2021* (LG Regulations) contains standards for primitive campgrounds. Clause 71 of the LG Regulations stipulate that Council must not grant an approval to operate a primitive campground, under the Local Government Act 1993 (LG Act) unless it is satisfied that it will be designed, constructed, maintained and operated in accordance with the relevant requirements of Division 3, Subdivision 9.

The relevant matters relate to the design and operation of the site. A Section 68 approval cannot be granted to an operation that is inconsistent with the approved development, therefore, consideration has been given to the relevant provisions of the LG Regulations in Table 1 below.

**Table 1.** Subdivision 9 – Primitive camping grounds

Clause	Comment	Complies
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Clause	Comment	Complies
<b>Subdivision 9 – Primitive Camping Grounds</b>		
<b>Section 131 Primitive Camping Grounds</b>		
(1) The maximum number of designated camp sites in a primitive camping ground must not exceed an average of 2 for each hectare in the camping ground.	The site has an area of 10 hectares and therefore is able to support a total of 20 primitive sites. The proposal seeks to modify the consent from 50 camp sites to a total of 20 primitive camp sites, which is compliant with this control.	Yes
(2) If the approval to operate a primitive camping ground does not designate camp sites, a council may impose a condition on the approval that the installation of tents, caravans, campervans and annexes is not permitted in specified areas of the primitive camping ground—  (a) for the health and safety of occupiers of the camping ground, or  (b) to ensure consistency with the principles of ecologically sustainable development, or  (c) for another purpose.	N/A - the proposal designates the 20 primitive camp sites as per the proposed site plan.	Yes
(3) The following conditions apply to a primitive camping ground—  (a) if at least 1 camp site is designated—camping is not permitted within the primitive camping ground other than on the designated camp site or sites,  (b) if no camp sites are designated—the maximum number of caravans, campervans and tents permitted to use the camping ground at the same time must not exceed an average of 2 for each hectare in the camping	The proposal designates campground area. A condition has been recommended that camping is not permitted outside of the designated camp sites.  N/A	Yes

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Clause	Comment	Complies
<p>ground,</p> <p>(c) a caravan, annexe or campervan must not be permitted to be installed within 6 metres of another caravan, annexe, campervan or tent,</p> <p>(d) a tent must not be permitted to be installed within 6 metres of a caravan, campervan or an annexe or within 3 metres of another tent,</p> <p>(e) the camping ground must be provided with a water supply, toilet and refuse disposal facilities as specified in the approval for the camping ground,</p> <p>(f) unoccupied caravans, campervans and tents are not permitted to remain in the camping ground for more than 24 hours,</p> <p>(g) if a fee is charged for camping—a register must—</p> <p>(i) be kept in accordance with section 121, and</p> <p>(ii) must specify the size of the group accompanying the registered person,</p> <p>(h) fire fighting facilities required by the approval must be provided at the primitive camping ground.</p>	<p>A condition has been recommended to be added to the consent to this regard.</p> <p>A condition has been recommended to be added to the consent to this regard.</p> <p>The site is provided with appropriate amenities as originally approved.</p> <p>A condition has been recommended to be added to the consent to this regard.</p> <p>Noted. To be managed as part of the s68 approval to operate.</p> <p>Noted. To be managed as part of the s68 approval to operate.</p>	
(4) Subdivisions 1–8 do not apply to a primitive camping ground.	Noted.	N/A
(5) The general manager of the council for the area in which a primitive camping ground is located may modify the conditions applying to the camping ground if the general manager is	Noted.	

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**ITEM 1 - ATTACHMENT 5 PLANNERS ASSESSMENT REPORT.**

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Clause	Comment	Complies
reasonably satisfied that it is necessary to accommodate displaced persons.		
(6) In subsection (3)(b), 2 or more tents occupied by no more than 12 persons camping together must be counted as 1 tent.	Noted. To be managed through the s68 approval to operate.	Yes

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 site will provide a location for short term tourist accommodation within the locality. The modified proposal is not expected to result in any social or economic impacts not already assessed in the previous approval.
<input checked="" type="checkbox"/> Built Environment: The proposed development would not cause harm to the existing character.	The proposed development reduces the overall footprint through the removal of the storage shed and reduction in the number of camp sites. No other changes are sought and as such, there are no expected adverse impacts to the built environment.
<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.	No additional vegetation is proposed to be removed as part of the application. The location of the 20 primitive camp sites is within the same footprint as the 50 originally approved camp sites, and therefore no additional clearing or disturbance is proposed.

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

The site suitability considerations assessed under the original application remain unchanged as a result of the proposed modification.

s4.15(1)(d) – Any submissions

Consideration of submissions has been given against section S4.55(1A)(d) above.

s4.15(1)(e) – The public interest

The proposed modification is considered to be in the public interest as it will continue to provide tourist and visitor accommodation within the locality.

**MODIFIED CONDITIONS****Existing condition****1.0 - General Conditions of Consent**

(1) **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, DA-2019-03512-CL55-1, 25 May 2020

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

**Modified Condition****1.0 - General Conditions of Consent**

(1A) **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, DA-2019-03512-S4.55-1, 28 October 2022.

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

**Existing Condition****1.0 - General Conditions of Consent**

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

Plan reference	Name of plan	Prepared by	Date
1902748	Proposed Site Plan (2 of 4)	Sorensen Design & Planning	24/05/2020
1902748	Amenities Plan (3 of 4)	Sorensen Design & Planning	24/05/2020
1902748	Camp Kitchen Plan (4 of 4)	Sorensen Design & Planning	24/05/2020
190203	Stormwater Management Plan (Sheets CIV00 to CIV06)	DRB Consulting Engineers	15/05/2020
190203	Cut/Fill Plan (Sheets CIV13 to CIV21)	DRB Consulting Engineers	15/05/2020

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

**Modified Condition****1.0 - General Conditions of Consent**

(2A) **Approved plans and documentation** – Development must be carried out in accordance with the following plans and documentation, and all recommendations made therein, except where amended by the conditions of this development consent:

Plan reference	Name of plan	Prepared by	Date
1902748 Issue I	Proposed Site Plan (2 of 5)	Sorensen Design & Planning	29/08/2022
1902748	Amenities Plan (3 of 4)	Sorensen Design & Planning	24/05/2020
1902748	Camp Kitchen Plan (4 of 4)	Sorensen Design & Planning	24/05/2020
190203	Stormwater Management Plan (Sheets CIV00 to CIV06)	DRB Consulting Engineers	15/05/2020
190203	Cut/Fill Plan (Sheets CIV13 to CIV21)	DRB Consulting Engineers	15/05/2020

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

**New Condition****1.0 – General Conditions of Consent**

(9.1) **Prior to Commencement of Use** – Prior to the commencement of use, an Approval to Operate under section 68 of the Local Government Act 1993 must be issued by Council.

**Existing Condition****5.0 - Prior to Issue of an Occupation Certificate**

(14) **Car parking requirements** – A minimum of 50 car parking spaces are to be provided in accordance with AS2890 and the approved plans. Parking must be permanently marked on the pavement surface.

Five additional parking spaces are required for visitors, and must be signposted as “visitor parking”.

**Modified Condition****5.0 - Prior to Issue of an Occupation Certificate**

(14A) **Car parking requirements** – A minimum of 20 car parking spaces are to be provided in accordance with AS2890 and the approved plans. Parking must be permanently marked on the pavement surface.

Two additional parking spaces are required for visitors, and must be signposted as “visitor parking”.

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parking"
<b>Comment:</b> Condition amended to ensure required car parking reflects the updates number of sites proposed.
<b>New Conditions</b>
<b>6.0 – Prior to the Issue of an Approval to Operation (Camping Ground)</b> <b>(7.1) On-site Sewerage Management</b> – Prior to the issue of an Approval to Operate under Section 68 of the Local Government Act 1993, a report must be approved by Council detailing the intended use of the on-site sewerage management system and any required adaptations in order for the on-site sewerage management system to function at intended levels that achieve appropriate effluent quality. The report should also detail the service requirements and frequency.
<b>Existing Condition</b>
<b>7.0 – Ongoing Use</b> <b>(9) Use of Caravans</b> – No more than 25 caravans are permitted on site at any one time. A caravan is not to stay onsite for any longer than four (4) consecutive nights.
<b>Modified Condition</b>
<b>7.0 – Ongoing Use</b> <b>(9A) Use of Caravans</b> – <del>No more than 25 caravans are permitted on site at any one time.</del> A caravan is not to stay onsite for any longer than four (4) consecutive nights. The use of caravans must comply with Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2021. <b>Comment:</b> Condition 9.2 has been added to limit the number of caravans in accordance with the Local Government Regulations.
<b>New Conditions</b>
<b>7.0 – Ongoing Use</b> <b>(9.1) Camping Restricted to Designated Sites</b> – Camping is not permitted outside of the designated sites identified in grey hatch on the sites plans prepared by Sorensen Design and Planning, Revision I, Dated 29/08/2022. <b>(9.2) Location of Caravans, Annexe and Campervans</b> – A caravan, annexe or campervan must not be installed within 6 metres of another caravan, annexe, campervan or tent. <b>(9.3) Location of Tents</b> – A tent must not be permitted to be installed within 6 metres of a caravan, campervan or an annexe or within 3 metres of another tent. <b>(9.4) Unoccupied caravans, campervans and tents</b> – Unoccupied caravans, campervans and tents are not permitted to remain in the camping ground for more than 24 hours. <b>(9.5) Water Use</b> – Any time the private water supply is being used for any part of the primitive camp ground, it must be provided in accordance with the Quality Assurance Program.

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(9.6) **Site Capacity** – As per the NSW RFS General Terms of Approval (reference DA-2019-03512-S4.55-1, dated 28 October 2022), the camping ground is limited to having a maximum of 81 persons on site.

#### DETERMINATION

The modification application is recommended to be approved by Council, subject to the recommended amended conditions as shown above.

**ITEM NO. 2**

**FILE NO: 22/272043  
EDRMS NO: 16-2021-703-1**

**DEVELOPMENT APPLICATION (DA) 16-2021-703-1 FOR A RESIDENTIAL FLAT BUILDING AT 11 TO 15 CHURCH STREET, NELSON BAY**

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

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Approve Development Application (DA) No. 16-2021-703-1 for a Residential Flat Building comprising 81 units, neighbourhood shop, basement parking and strata subdivision at 11 to 15 Church Street, Nelson Bay (Lot 156 DP 1094233 and Lot 178 DP1235236) subject to the conditions contained in **(ATTACHMENT 1)**.
- 2) Support the Clause 4.6 variation request to the building height for the reasons outlined within this report.

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**BACKGROUND**

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

The DA was previously reported to Council at its meeting of 13 September 2022 with a recommendation for approval **(ATTACHMENT 2)**. At the September 2022 meeting, Council resolved to 'defer DA No. 16-2021-703-1 to allow for conversations between Council staff and the proponent, with the aim of reducing the building height by 1 floor so the infraction against the building height limit is negligible.'

In response, the applicant submitted revised architectural plans with a number of design amendments seeking to address the 13 September 2022 Council resolution. As a result of the design amendments, the maximum height of the building has been reduced by 1.39m from 32.18m to 30.79m (9.9% height variation). A summary of the design amendments and applicant response are provided below:

- Reduced floor to floor heights by 1 brick course for Levels 1 to 7 and 2 brick courses for Ground to Level 1
- Reduced floor to floor heights has resulted in the roof feature and rooftop floor space being 2.8% (0.79m) above the height limit at the southern extent and 9.9% (2.79m) at northern extent, representing the tallest point of the building
- Rooftop floor space is on average 6.35% above 28.00m height limit or 1.8m

- Rooftop floor space is 625m<sup>2</sup> in area or 13.5% of site area and is located centrally within the building floor plate. The roof feature is setback 23.4m from the northern boundary, 18m from the southern boundary, between 14.5m and 23.40m from the western boundary and between 10.50m and 29.40m from the eastern boundary
- The composition of the rooftop floor space is 64.05% public space and 35.95% private space in the form of private external terraces
- The central built form containing apartment floor area on Level 7 is 1.9% (0.53m) above the 28m PSLEP2013 height limit at the northern portion and below the height limit by 12.86% (3.60m below) at the southern portion
- The central built form containing apartment floor area on Level 7 is on average below the 28m PSLEP2013 height limit by 7.38%
- The proposed Floor Space Ratio (FSR) is 2.56:1, which equates to 2,031m<sup>2</sup> of gross floor area. The proposed FSR and permitted gross floor area is well below the PSLEP2013 maximum FSR of 3:1
- The amended development is below the existing approved Residential Flat Building (incorporating 8-storey apartment complex with underground car parking) that exists on the site (DA 16-2016-631-1). This DA included 56 residential apartments with a building height of 32m above ground level.

There are no changes to the number of apartments, basement areas, carparking, façade treatment, landscaping or other building elements other than those identified above.

The applicant also submitted additional massing models and renders of prospective development surrounding the subject site to better inform the impact of the development on the existing and future character, in addition to views from the foreshore.

An Addendum Planners Assessment Report that modifies and supplements the original Planners Assessment Report is provided at **(ATTACHMENT 3)**.

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

Subject Land:	11 to 15 Church Street, Nelson Bay (Lot 156 DP 1094233 and Lot 178 DP1235236)
Total Area:	4628.79m <sup>2</sup>
Zoning:	R3 Medium Density Residential
Submissions:	155 for amended application, comprised of 129 submissions of support and 26 in objection (total of 291 across all exhibition periods)
Key Issues:	The key issues identified throughout the assessment of the DA relate to building height, bulk and scale, overshadowing, view loss and visual impact



This DA was originally reported to Council in accordance with Council's 'Planning Matters to be Reported to Council Policy' as the previous DA requested to vary a development standard, Clause 4.3 – Height of Buildings by greater than 10%. In response to the Council resolution to defer the DA at the meeting of 13 September 2022, the building height has been reduced and the extent of the variation is now 9.9%.

A Locality Plan is provided at **(ATTACHMENT 4)**.

### Proposal

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

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

The apartment mix is comprised of the following unit configurations:

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

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

A neighbourhood shop is proposed on the ground level accessible from the forecourt on Church Street. The neighbourhood shop is 99m<sup>2</sup> in size and includes an ancillary café. The café will only operate as part of the neighbourhood shop and not as an independent use. There is a communal gym also located on the ground level that will only be for residents, not for public use.

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

### Site Description

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

The site has undergone significant earthworks that were approved under previous development approvals, including partially constructed basement foundations from a previously approved development, which has ceased construction. There is also a crane present on site.

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

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

### History

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

#### **11 to 13 Church Street, Nelson Bay**

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

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

#### **15 Church Street, Nelson Bay**

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

### Key issues

The key issues identified throughout the assessment of the DA relate to building height, bulk and scale, overshadowing, view loss and visual impact. This revised assessment considers only those matters relevant to the amended proposal, including building height, overshadowing and view loss. The remaining planning assessment considerations remain unchanged from the Council Report of 13 September 2022.

### Building Height

The proposed development, as amended, has a maximum building height of 30.79m. This represents a variation of 2.79m or 9.9% above the maximum 28m building height under the Port Stephens LEP 2013 (PSLEP). The previous building design encompassed a maximum building height of 32.18m. Despite the amendments, the proposal still exceeds the maximum allowable building height for the site prescribed under Clause 4.3 of the Port Stephens LEP 2013 (PSLEP).

The building design has undergone multiple iterations from the pre-lodgement concept stage through consultation with Council staff, the Urban Design Panel (UDP) and the amended design presented in the DA to Council.

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

- Only a small portion of the overall building exceeds the height limit, which is centralised on the site and as such reduces its visibility from the public domain and foreshore
- The development is compliant with the floor space ratio controls applying to the site
- When considering the impact of the portion of the building over the height limit, there is considered to be no material impact in terms of visual impact, view loss, overshadowing and privacy. A building design that is compliant with the 28m height limit would produce a negligible difference in terms of visual impact, view loss, overshadowing and privacy
- The proposed development includes visually compatible elements within the streetscape and results in a positive impact to the 'gateway' location of the Town Centre. Given the number of taller buildings and density in the Town Centre, the proposed development is not out of character and does not create any perceived dominance. The building is not found to dominate the skyline and respects the scale and setting of the natural environment in which it is located. The impact of tall buildings on the edge of the Town Centre, inclusive of this site and associated proposal reinforces the amphitheatre of the Town Centre, as desired by Council's Planning Strategies for the Nelson Bay Town Centre
- The proposed height exceedance is primarily limited to a roof feature of quality design, which occupies only 644.9m<sup>2</sup> within a site of 4,628.79m<sup>2</sup>, or 13.9% of the site. This element provides cover to expansive internal and external communal

spaces for the occupants, as well as the private open space for the penthouse apartments, and crowns the development in a visually interesting manner

- Whilst the building will be higher than the existing buildings surrounding the site, it is consistent with the desired future character of the Town Centre and adjoining sites being tall in nature to frame the central portion of the Town Centre. The proposed development is complementary to the preferred context of the locality under the 'Nelson Bay Strategy Town Centre Strategy'. The proposed building does not detract from or impact on the existing area nor the associated view corridors associated with the topography of the land on the outer periphery of the Town Centre. The proposed development is considered appropriate for the existing and desired future character of Nelson Bay and consequently provides a building that is consistent with the objectives of the standard
- The additional height will not materially impact on view sharing due to the topography of the site and its location on the outer western edge of the Town Centre as further evidenced and detailed within the Visual Impact Assessment and Town Centre Model submitted with the application. The building elements above 28m have been architecturally designed and appropriately articulated to provide visual interest and prominence within the gateway areas of Nelson Bay. The roof feature and upper level is setback further from the boundaries to ensure it is not a visually dominating feature
- The amended design is able to integrate into the existing context and reflects the building height hierarchy desired in the area
- The development is consistent with the vision of the 'Nelson Bay Town Centre Strategy' as the exceedance does not interrupt any important view corridors
- The height breach is exacerbated by the topography of the land, noting there is a significant cross fall from south to north across the site. The topography results in the height exceeding the PSLEP height limit at the northern portions of the building.

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

Whilst height limits are described as a maximum in PSLEP, Clause 4.6 is a mechanism to allow flexibility where a development standard is not considered necessary or reasonable to achieve the best design outcome on a particular site. When considering the site specific development characteristics, topography of the land, objectives of the relevant instruments and policies with regard to the amended design, it is considered that the proposed height variation can be supported in its current form.

A detailed assessment against Clause 4.6 is provided as a supplementary attachment to the Addendum Planners Assessment Report (**ATTACHMENT 5**).

### Bulk and Scale

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

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

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

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

### Overshadowing

The amended design results in a negligible difference in overshadowing to neighbouring properties. The terrace rooftop feature that is above the 28m LEP building height is setback considerably from the boundaries, consequently this building element does not cast a shadow that extends onto the neighbouring Oaks Lure site. The amended overshadowing diagrams indicate the solar impact is not materially improved by the reduction in building height to 30.79m from 32.18m. Notwithstanding, it is reasonable to expect that the proposed building will cast a degree of overshadowing on neighbouring properties when considering the 28m height limit and the 3:1 Floor Space Ratio (FSR) controls applicable to the site. Moreover, reducing the height of the building to the maximum PSLEP height of 28m would have minimal to no change on the existing state of overshadowing as the portion of the proposed building that overshadows the Oaks Lure is compliant with the PSLEP height standard and ADG setback controls. Consequently, the portions of the building height encroachment do not contribute to the overshadowing of adjoining properties given the roof feature and terrace area represents only 13.5% of the building floor plate and is centrally located, comprising setbacks of 23.4m from the northern boundary, 18.0m from the southern boundary, between 14.5-23.4m from the western boundary and between 10.5m- 29.4m from the eastern boundary respectively.

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

### Oaks Lure

During the 'winter solstice', the amended shadow diagrams submitted demonstrate the Oaks Lure apartments overshadow its own communal space gradually from 12pm until 3pm. After 3pm, the communal space is entirely overshadowed. Prior to 3pm, some overshadowing occurs from the existing tall trees planted around the pool area.

The DA will overshadow the Oaks Lure western elevation and approximately one third of the communal space at 9am. The overshadowing of the western elevation reduces as the day progresses. The overshadowing of the communal area is increased by the DA (in addition to the Oaks own internal overshadowing) from 10am. This primarily impacts the pool area on the northern boundary and approximately half the outdoor area.

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

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

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

### 18 Tomaree Street and 61 Donald Street

18 Tomaree Street, which is to the south east of the site, will be overshadowed partially from 1pm, which increases into the afternoon. To the north east, 61 Donald

Street, becomes partly overshadowed from 2pm onwards. Both of these buildings will retain sufficient solar access to private and communal areas during the 'winter solstice'.

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

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

Councils Urban Design Panel reviewed the shadow diagrams and significance of overshadowing impact to adjoining properties and raised no objection to the proposed building on these grounds.

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

#### View Loss

A detailed view loss assessment was provided in the original Planners Assessment Report of 13 September 2022 (**ATTACHMENT 2**). The reduction in building height from 32.18m to 30.79m under the amended design has no material impact on view loss in comparison to the original view loss assessment contained in the original Planners Assessment Report.

Despite the building height non-compliance, the portion of the proposed building obstructing views is within the compliant height limit envelope. Should the building be reduced to 28m in height, there would be no material difference to the view impact from the adjoining southern property, being the Oaks Lure Apartments. The proposed building would need to be lower than the height of the Oaks Lure for neighbouring apartments to retain the same or similar views, which is unreasonable and not consistent with the objectives of the zone, height limit or the desired built form character envisaged under 'Nelson Bay Town Centre Strategy'. Designing a building with the intent to retain views for the neighbouring Oaks Lure apartments, would consequently result in an underdevelopment of the subject site.

The existing topography, current subdivision pattern and proximity to the foreshore results in the Oaks Lure losing views under a fully compliant building envelope design, noting the Oaks Lure is not built to the maximum permitted PSLEP height limit under current planning controls. The Oaks Lure has largely obtained views and benefitted from being adjacent to undeveloped lots. Accordingly, the findings of the

detailed view loss assessment provided in the original Planners Assessment Report of 13 September 2022 (**ATTACHMENT 2**) remains applicable to the amended design.

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

### Visual Impact

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

At a human scale, when pedestrians are traversing the Nelson Bay Centre, primarily the village area bound by Stockton Street, Victoria Parade, Yacaaba Street and Tomaree Street, the existing buildings will block the view towards the proposed development when viewed from people on the ground. This is represented in the Visual Impact Assessment (VIA) and Town Centre Model submitted with the application to address the view impact of the proposal on the broader locality. The main visibility of the building from pedestrians and in the local context is along Church Street, and the view lines between buildings on Donald Street and Government Road. The building will integrate into the scale of built form in those views however, and not obstruct vistas towards Kurrara Hill.

The applicants submitted a Town Centre Model of prospective development surrounding the subject site to inform the impact of the development on the existing and future character, in addition to views from the foreshore. The massing models were submitted to supplement the Visual Impact Assessment (VIA) and overshadowing diagrams. The Town Centre Model demonstrates the scale of the building is compatible with the surrounding coastal landforms and desired built form under the 'Nelson Bay Town Centre Strategy', noting the building mass is situated below the ridgeline behind the site and lower than the maximum permitted building heights to the south of the site.

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

The site is also located approximately 400m from the foreshore, with building height limits of 28m applicable to the land situated between the foreshore and site. As future development occurs to the north of the site, the view and visual prominence of the proposal will become less discernible from the foreshore as demonstrated in the Town Centre Model submitted by the applicant.



Additionally, a 28m building height also applies to the properties located to the south of the site along Tomaree Street and at 27-31 Church Street. These properties are located higher on the ridgeline, with an Australian Height Datum (AHD) of 36m compared to 26m at the site; accordingly, development to the south built to the 28m height limit would perceptibly extend beyond the proposal when viewed from the foreshore. Furthermore, the Nelson Bay Bowling Club site supports a 42m building height. Consequently, future development on the Bowling Club site would be more visually prominent than the proposed development from the foreshore. The Bowling Club is located 250m to the southwest of the site.

As noted in the Urban Design Analysis, which supported the 'Nelson Bay Town Centre Strategy and Delivery Program', the view looking south from the Western Groyne shows the amphitheatre created by the ridgelines that surround Nelson Bay Town Centre. This amphitheatre shape allows for views from the north of the town to maintain strong landscape character and setting. The topography of Nelson Bay along with vegetation, frames the core town centre. To maintain the natural setting, implementation of large bulky forms is discouraged. However, the impact of tall buildings would reinforce the amphitheatre if placed towards the outside of the Town Centre. The view lines between Kurrara Hill and the marina form an axis for the main street of the Town Centre, which should be maintained. When considering the visual analysis of the site under the submitted Town Centre Model and 'Nelson Bay Strategy', it is evident that taller developments are intended to be generally located on the outer periphery of the 'amphitheatre' consistent with the conclusions made within the 'Nelson Bay Strategy' and associated visual analysis.

Overall, the proposed design and built form is considered compatible with the surrounding coastal landscape and desired future character of the Nelson Bay Town Centre. The reduction in height represents a marginal improvement from the previous design in terms of view impact from the foreshore. Overall, the development will provide a high quality architecturally designed building, which will have a positive impact on the streetscape and positive impact on the public domain.

#### Traffic Impact and Parking

The amended DA proposes no changes to basement areas, traffic or parking provision. The proposed development still provides parking that is compliant with the DCP. An electric vehicle car space is provided for vehicle charging.

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

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

Conclusion

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

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

**COMMUNITY STRATEGIC PLAN**

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

**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 (S7.11)	Yes		Should Council determine to approve the DA, s.7.11 development contributions would be applicable and would be levied in accordance with conditions of consent. The s7.11 contributions applicable to the proposal are \$1,180,000 (subject to CPI increases)
External Grants	No		
Other	No		

**LEGAL, POLICY AND RISK IMPLICATIONS**

The development application, with the exception of a variation to building height, is consistent with the relevant planning instruments including the Environmental

Planning and Assessment Act 1979 (EP&A Act), Port Stephens Local Environmental Plan 2013 (PS LEP), Port Stephens Development Control Plan 2014 (DCP 2014), Port Stephens Comprehensive Koala Plan of Management and associated State Environmental Planning Policies. A detailed assessment against the relevant environmental planning instruments is contained within the original Planners Assessment Report and addendum Planners Assessment Report contained at **(ATTACHMENT 3 and 5)**.

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

## **SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

### Social and Economic Impact

The development will increase housing in Nelson Bay and is considered to have a positive social impact as it will provide for a range of housing sizes to meet the needs of the community. The neighbourhood shop and ancillary café will provide an additional retail use, which can service the residents and wider community.

During the construction phase, the development will generate jobs in the locality. The neighbourhood shop and ancillary café will generate ongoing jobs, as may the strata management, waste collection and maintenance of the building.

### Built Environment Impact

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

Despite the building height non-compliance, the portion of the proposed building obstructing views is within the compliant height limit envelope. Should the building be reduced to 28m in height, there would be no difference to the view impact from the adjoining southern property, being the Oaks Lure Apartments. The proposed building would need to be lower than the height of the Oaks Lure for neighbouring apartments to retain the same or similar views, which is unreasonable and not consistent with the objectives of the zone, height limit or the desired built form character envisaged under 'Nelson Bay Town Centre Strategy'. Designing a building with the intent to retain views for the neighbouring Oaks Lure apartments, would consequently result in an underdevelopment of the subject site.

The existing topography, current subdivision pattern and proximity to the foreshore results in the Oaks Lure losing views under a fully compliant building envelope design, noting the Oaks Lure is not built to the maximum permitted PSLEP height limit under current planning controls. The Oaks Lure has largely obtained views and benefitted from being adjacent to undeveloped lots. Accordingly, the findings of the detailed view loss assessment provided in the original Planners Assessment Report of 13 September 2022 (**ATTACHMENT 2**) remains applicable to the amended design.

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

Overall, the proposed design and built form is considered appropriate within the surrounding coastal landscape and desired future character of the Nelson Bay Town Centre. The reduction in height is a betterment from the previously proposed design under this application and existing approved DA (16-2016-631-1), in terms of views to and from the foreshore. Overall, the development will provide a high quality architecturally designed building, which will have a positive impact on the streetscape and positive impact on the public domain.

### Environmental Impact

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

There are weeds present on site, which will be removed once construction commences. On these grounds, the proposed development will not have an adverse impact on the natural environment.

## **CONSULTATION**

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

### Internal

Consultation was undertaken with Council's Development Engineering, Environmental Health, Building Surveyor, Strategic Planning, Council's Urban Design Panel (UDP) and Developer Contributions teams. The referral comments from these officers have been considered as part of the original and addendum Planners Assessment Report (**ATTACHMENT 3 and 5**). The internal referral officers and UDP supported the DA, subject to recommended conditions of consent (**ATTACHMENT 1**).

The amended design was referred back to Council's UDP in November 2022 for comment. The UDP raised no concern with the amended design, although noted the applicant will need to ensure there is sufficient space for services within subfloors to accommodate fire sprinklers, acoustic floors and other services and still comply with ADG floor to ceiling heights. The UDP were also specifically asked to provide advice on the removal of the rooftop structure to comply with the LEP height control. The UDP advised they would not support a rooftop terrace with no roof structure. The UDP noted the amenity of the area would be inadequate and removal of the roof structure would result in a sub-standard design outcome in terms of resident amenity. It was also noted by the UDP the rooftop structure provides an important part of the buildings form.

### Developer Contributions

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

The total contributions payable, are \$1,180,000 (subject to CPI increases).

### External

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

### Public Exhibition

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

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

On receipt of amended architectural plans in response to the deferral resolution of Council, the application was again re-notified for 14 days from 14 October 2022 to 28 October 2022. During the re-notification period, there were 155 submissions received. A total of 26 submissions objected to the development and 129 submissions supported the development.

A detailed response to the submissions for the amended design from the October exhibition period is provided in the addendum Planners Assessment Report in **(ATTACHMENT 5)**.

## **OPTIONS**

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

## **ATTACHMENTS**

- 1) Recommended Conditions of Consent. [↓](#)
- 2) Council Meeting Minutes - 13 September 2022. [↓](#)
- 3) Original Planners Assessment Report. [↓](#)
- 4) Locality Plan. [↓](#)
- 5) Addendum Planners Assessment Report - Clause 4.6 Report. [↓](#)

## **COUNCILLORS ROOM**

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

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

## **TABLED DOCUMENTS**

Nil.

**SCHEDULE 1 – CONDITIONS OF CONSENT****1.0 - General Conditions of Consent**

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

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

Plan No.	Revision No.	Plan Title.	Drawn By.	Dated.
A-A100	Q	Floor Plan – Basement	Holdsworth Design	23.02.2022
A-A101	T	Floor Plan – Lower Ground	Holdsworth Design	15.04.2022
A-A102	V	Floor Plan – Ground Level	Holdsworth Design	18.05.2022
A-A103	V	Floor Plan –Level 1	Holdsworth Design	22.06.2022
A-A104	T	Floor Plan –Level 2	Holdsworth Design	18.05.2022
A-A105	T	Floor Plan –Level 3	Holdsworth Design	18.05.2022
A-A106	T	Floor Plan –Level 4	Holdsworth Design	18.05.2022
A-A107	R	Floor Plan –Level 5	Holdsworth Design	18.05.2022
A-A108	T	Floor Plan –Level 6	Holdsworth Design	18.05.2022
A-A109	T	Floor Plan –Level 7	Holdsworth Design	18.05.2022
A-A110	Y	Floor Plan – Level 8	Holdsworth Design	27.09.2022
A-A111	U	Floor Plan – Roof Level	Holdsworth Design	27.09.2022
A-A400	M	Elevations – Sheet 1	Holdsworth Design	27.09.2022
A-A401	N	Elevations – Sheet 2	Holdsworth Design	27.09.2022
A-A450	O	Sections	Holdsworth Design	27.09.2022
LP.01/G	G	Landscape Plan – Ground Floor	Meraki Green Landscape Architecture	17.06.2022
LP.02/E	E	Landscape Plan – First Floor	Meraki Green Landscape Architecture	20.06.2022
LP.03/D	D	Landscape Plan – Fourth Floor	Meraki Green Landscape	02.03.2022



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

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

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

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

The above must be approved under a separate development application.
- (4) **Design Amendments** – Before the issue of a construction certificate, the certifier must ensure the approved construction certificate plans (and specifications) detail the following required amendments to the approved plans and supporting documentation stamped by Council.





- a) The Landscape Plan is to be updated to remove any bamboo species of plants along the sites southern and eastern boundaries and should be replaced by a species that can be easily maintained.
  - b) The Landscape Plan is to be updated to include permanent intermittent panels of climbing structures on the blank concrete wall on the eastern elevation at the lower ground and ground levels. In the planter in the base, install *Ficus pumila* (under the blank sections) and *Trachelospermum jasmenoides* (under the climbing structures). The bed should also be planted with native grass like *Poa labillardieri* and *Lomandra tanika* to form a long-term living mulch.  
  
This should also be repeated on the southern side using *Parthenocissus tricuspidate* instead of the *Ficus pumila*. Any climbing structure should be high quality stainless using Ronstan Greening System or equivalent.  
  
The above plan amendments are to be endorsed by Council.
- (5) **Building Code of Australia** – All building work must be carried out in accordance with the BCA. In this clause, a reference to the BCA is a reference to that Code as in force on the date the application for the relevant Construction Certificate is made.
  - (6) **Excavation for residential building works** – If the approved development involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the consent must, at the person's own expense:
    - a) protect and support the adjoining premises from possible damage from the excavation; and
    - b) where necessary, underpin the adjoining premises to prevent any such damage.

This condition does not apply if the person having the benefit of the consent owns the adjoining land or the owner of the adjoining land has given consent in writing that condition not applying, and a copy of that written consent is provided to the PCA prior to the excavation commencing.
  - (7) **Sign on building** – Except in the case of work only carried out to the interior of a building or Crown building work, a sign must be erected in a prominent position on the site showing the name, address and telephone number of the Principal Certifying Authority for the work, the name of any principal contractor and their after-hours contact number, and must contain a statement that unauthorised entry to the site is prohibited.  
  
The sign must be maintained while the work is being carried out and is to be removed when the work is completed.
  - (8) **Outdoor lighting** - All lighting must comply with AS 1158 'Lighting for Roads and Public Spaces' and AS 4282 'Control of Obtrusive Effects of Outdoor Lighting'.
  - (9) **Reflectivity** – The reflectivity of glass externally must not exceed 20%. Details demonstrating compliance must be provided to the Certifying Authority.



- (10) **Roof mounted equipment** – All roof mounted equipment such as air conditioning units, service pipes and vents etc., are required to be installed must be concealed within the external walls of the development or adequately screened so as not to be visible from a public place.
- (11) **Design quality of development** - The approved design (including an element or detail of that design) or materials finish or colours of the building must not be changed so as to affect the internal layout or external appearance of the building without the approval of Council.
- Materials and colours are to be consistent with the Finishes Schedule on the approved Elevations – Sheet 1 and Sheet 2 by Holdsworth Design referenced in Part 1.0 Condition 1 of this consent.
- (12) **Installation of graphics and artwork on temporary site structures (graphic displays)** - A graphic display must be installed on temporary site structures in accordance with the following requirements:
- the graphic display must be complimentary to the surrounding character;
  - required site signage (including developer or corporate identification) must be sympathetic to the graphic display and must not exceed more than 5% (combined) of the surface area of the temporary site structure,
  - no third party advertising is permitted to be displayed at any time,
  - graphic displays must be installed to ensure long-term durability with a clean finish to the face of the temporary site structure;
  - graphic displays must be maintained in good repair for the duration of the project or until such time that the construction works no longer results in an adverse visual impact to the surrounding locality.

## 2.0 – Prior to Issue of a Construction Certificate

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

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

All retaining walls within 1m of a boundary and exceeding 600mm in height must be designed and certified by a suitably qualified Structural Engineer.

Details demonstrating compliance must be provided to the Certifying Authority.

- (2) **Ausgrid** – The applicant must submit a NECF-01 - 'Preliminary Enquiry' form for a response from Ausgrid which must be received before a Construction Certificate is issued.



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

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

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

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

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

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

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

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

Gross pollutants post-development load: 90%.



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

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

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

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

Details demonstrating compliance must be provided to the Certifying Authority.

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

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

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

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

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

Details demonstrating compliance must be provided to the Certifying Authority.

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

- (11) **Garbage room** – Rooms used for the storage of garbage, and rooms used for the washing and storage of garbage receptacles, must be constructed in accordance with the approved plans and the following:



- a) The room must be constructed of solid material, cement rendered and trowelled to a smooth even surface;
- b) The floor must be impervious material coved at the intersection with the walls, graded and drained to an approved floor waste within the room; and
- c) Garbage rooms must be vented to the external air by natural or mechanical ventilation.

Details demonstrating compliance must be provided to the Certifying Authority.

- (12) **Hunter Water Corporation Approval** - A Section 50 application under the Hunter Water Act 1991 must be lodged with Hunter Water Corporation (HWC).
- (13) **Car parking details** – Before the issue of a construction certificate, a suitably qualified engineer must review the plans, which relate to parking facilities and provide written evidence, to the certifier's satisfaction, that it complies with the relevant parts of AS 2890 Parking Facilities - Off- Street Carparking and Council's development control plan.
- (14) **Construction site management plan** - Before the issue of a construction certificate, the applicant must ensure a construction site management plan is prepared before it is provided to and approved by the certifier. The plan must include the following matters:
  - a) location and materials for protective fencing and hoardings to the perimeter on the site
  - b) provisions for public safety
  - c) pedestrian and vehicular site access points and construction activity zones
  - d) details of construction traffic management, including proposed truck movements to and from the site and estimated frequency of those movements, and measures to preserve pedestrian safety in the vicinity of the site
  - e) protective measures for on-site tree preservation (including in accordance with AS 4970-2009 Protection of trees on development sites and Council's DCP, if applicable) and trees in adjoining public domain (if applicable)
  - f) details of any bulk earthworks to be carried out
  - g) location of site storage areas and sheds
  - h) equipment used to carry out all works
  - i) a garbage container with a tight-fitting lid
  - j) dust, noise and vibration control measures
  - k) location of temporary toilets.

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

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



- (15) **Section 7.11 Development contributions** – A monetary contribution is to be paid to Council for the provision of 59 additional dwellings pursuant to Section 7.11 of the *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	\$655	\$38,645
Civic Administration – Works Depot	\$1,266	\$74,694
Town Centre Upgrades	\$3,412	\$201,308
Public Open Space, Parks and Reserves	\$2,085	\$123,015
Sports & Leisure Facilities	\$1,961	\$115,699
Cultural & Community Facilities	\$1,332	\$78,588
Road Works	\$3,570	\$210,630
Shared Paths	\$3,286	\$193,874
Bus Facilities	\$9	\$531
Fire & Emergency Services	\$245	\$14,455
Flood & Drainage	\$1,877	\$110,743
Kings Hill Urban Release Area	\$302	\$17,818
<b>TOTAL</b>	<b>\$20,000</b>	<b>\$1,180,000</b>

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

- a) Prior to the issue of the Construction Certificate.

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

- (16) **Roads Act Application** – The following information must be provided to Council as Roads Authority with the Roads Act application:
- a) A design for a public footpath along Church Street, which will join into the existing footpath on either side of the development site. The footpath must be designed in accordance with Councils Infrastructure Specifications.
- (17) **Long service levy** – In accordance with Section 34 of the Building and Construction Industry Long Service Payments Act 1986, the applicant must pay a long service levy at the prescribed rate to either the Long Service Payments Corporation or Council for any works that cost \$25,000 or more.
- (18) **Dilapidation Report – Adjoining Property** - A dilapidation report including a photographic survey of the following adjoining properties must be provided to the Certifying Authority. The dilapidation report must detail the physical condition of those properties, both internally and externally, including walls, ceilings, roof, structural members and other similar items.
- a) 19 Church Street, Nelson Bay
- b) 9 Church Street, Nelson Bay



- c) 18 Tomaree Street, Nelson Bay
- d) 61 Donald Street, Nelson Bay

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

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

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

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

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

### 3.0 - Prior to Commencement of Works

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

- (1) **Home Building Act requirements** - Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the principal certifier for the development to which the work relates (not being the council) has given the council written notice of the following information —
- a) In the case of work for which a principal contractor is required to be appointed—
    - (i) the name and licence number of the principal contractor, and
    - (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) **Home Building Act – Insurance** - In the case of residential building work for which the *Home Building Act 1989* requires there to be a contract of insurance in force in



accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.

- (3) **Notice of Principal Certifying Authority appointment** – The Principal Certifier for this development must give notice must be given to the consent authority and Council, where the Council is not the consent authority, at least two days prior to subdivision and/or building works commencing in accordance with Section 6.6 (2) (a) of the Environmental Planning and Assessment Act 1979 and Section 57 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021. The notice must include:

- a) a description of the work to be carried out;
- b) the address of the land on which the work is to be carried out;
- c) the Registered number and date of issue of the relevant development consent;
- d) the name and address of the Principal Certifier and the person who appointed the principal certifier;
- e) if the principal certifier is a registered certifier
  - i) the certifier's registration number, and
  - ii) a statement signed by the registered certifier to the effect that the certifier consents to being appointed as principal certifier, and
  - iii) a telephone number on which the certifier may be contacted for business purposes.

The notice must be lodged on the NSW planning portal.

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

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

The notice must be lodged on the NSW planning portal.

- (5) **Signs on site** – A sign must be erected in a prominent position on any site on which





building work or demolition work is being carried out:

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

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

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

- (6) **Construction Certificate Required** – In accordance with the provisions of Section 6.7 of the Environmental Planning & Assessment Act 1979 (EP&A Act 1979), construction or subdivision works approved by this consent must not commence until the following has been satisfied:

- a) a Construction Certificate has been issued by a Consent Authority;
- b) a Principal Certifying Authority (PCA) has been appointed by the person having benefit of the development consent in accordance with Section 6.5 of the EP&A Act 1979; and
- c) the PCA is notified in writing of the name and contractor licence number of the owner/builder intending to carry out the approved works.

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

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

- (8) **Demolition work** – All demolition works are to be carried out in accordance with Australian Standard AS 2601 'The demolition of Structures'. All waste materials are to be either recycled or disposed of to a licensed waste facility.

Any asbestos containing material encountered during demolition or works, is to be removed in accordance with the requirements of Safe Work NSW and disposed of to an appropriately licenced waste facility.

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

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



over any bare ground on site).

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

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

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

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

- (12) **Public liability insurance** – The owner or contractor must take out a Public Liability Insurance Policy with a minimum cover of \$20 million in relation to the occupation of, and works within, public property (i.e. kerbs, gutters, footpaths, walkways, reserves, etc.) for the full duration of the proposed works.

Evidence of this Policy must be provided to Council and the Certifying Authority.

#### 4.0 - During Works

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

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

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

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

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

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



7.00am to 5.00pm on Monday to Saturday

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

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

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

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

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

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

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

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

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

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

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

- (7) **Building height** – A survey report prepared by a Registered Surveyor confirming that the building height complies with the approved plans or as specified by the development consent, must be provided to the Principal Certifying Authority prior to the development proceeding beyond frame stage.

- (8) **Surveys by a registered surveyor** – While building work is being carried out, a



registered surveyor is to measure and mark the positions of the following and provide them to the principal certifier —

- a) All footings/ foundations
  - b) At other stages of construction – any marks that are required by the principal certifier.
- (9) **Construction Management Plan implementation** - All construction management procedures and systems identified in the approved construction site management plan must be introduced during construction of the development.
- (10) **Stormwater disposal** – Following the installation of any roof, collected stormwater runoff from the structure must be:
- a) Diverted through a first flush system before being connected to an existing stormwater easement/system/street.
- (11) **Placement of fill** - Filling must not be placed in such a manner that natural drainage from adjoining land will be obstructed or in such a manner that surface water will be diverted.
- Further, any alterations to the natural surface contours must not impede or divert natural surface water runoff so as to cause a nuisance to adjoining property owners.
- (12) **Unexpected finds contingency (general)** – Should any suspect materials (identified by unusual staining, odour, discolouration or inclusions such as building rubble, asbestos, ash material, etc.) be encountered during any stage of works (including earthworks, site preparation or construction works, etc.), such works must cease immediately until a qualified environmental specialist has been contacted and conducted a thorough assessment.
- In the event that contamination is identified as a result of this assessment and if remediation is required, all works must cease in the vicinity of the contamination and Council must be notified immediately.
- Where remediation work is required, the applicant will be required to obtain consent for the remediation works.
- (13) **Soil, erosion, sediment and water management** – All requirements of the Erosion and Sediment Control Plan or Soil and Water Management Plan must be maintained at all times during the works and any measures required by the plan must not be removed until the site has been stabilised.
- (14) **Offensive noise, dust, odour and vibration** – All work must not give rise to offensive noise, dust, odour or vibration as defined in the Protection of the Environment Operations Act 1997 when measured at the nearest property boundary.
- (15) **Construction noise** – While building work is being carried out and where no noise and vibration management plan is approved under this consent, the applicant is to ensure that any noise caused by demolition, vegetation removal or construction



does not exceed an LAeq (15 min) of 5dB(A) above background noise, when measured at any lot boundary of the property where the construction is being carried out.

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

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

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

- (a) All excavated material removed from the site must be classified in accordance with the EPA's Waste Classification Guidelines before it is disposed of at an approved waste management facility and the classification and the volume of material removed must be reported to the principal certifier.

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

- (18) **Uncovering relics or Aboriginal objects** - While demolition or building work is being carried out, all such works must cease immediately if a relic or Aboriginal object is unexpectedly discovered. The applicant must notify the Heritage Council of NSW in respect of a relic and notify the Secretary of the Department of Planning, Industry and Environment and the Heritage Council of NSW in respect of an Aboriginal object. Building work may recommence at a time confirmed by either the Heritage Council of NSW or the Secretary of the Department of Planning, Industry and Environment.

In this condition:

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

#### 5.0 - Prior to Issue of a Subdivision Certificate

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



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

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

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

- (2) **Restriction on issue of Strata Plan of Subdivision** – An Occupation Certificate for the building must be issued by the PCA prior to the issue of any Strata Plan of subdivision associated with this development consent 16-2021-703-1.

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

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

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

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

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

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

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

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

- a) Electricity.
- b) Water.
- c) Sewer.



- d) Gas (where available).

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

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

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

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

- (1) **Occupation Certificate required** - An Occupation Certificate must be obtained prior to any use or occupation of the development.  
The Principal Certifying Authority must be satisfied that the development has been constructed in accordance with approved plans, specifications and conditions of this consent.
- (2) **Survey Certificate** – A Registered Surveyor must prepare a Survey Certificate to certify that the location of the building in relation to the allotment boundaries complies with the approved plans or as specified by this consent. The Survey Certificate must be provided to the satisfaction of the Principal Certifying Authority.
- (3) **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) **Stormwater/drainage works** – All stormwater and drainage works required to be undertaken in accordance with this consent must be completed.

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

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

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

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

- (7) **Works as Executed Plans and any other documentary evidence** - Before the issue of the relevant occupation certificate, the applicant must submit, to the satisfaction of the principal certifier, works-as-executed plans, any compliance certificates and any other evidence confirming the following completed works:

- (a) All stormwater drainage systems and storage systems

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

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

This certificate must accompany the Works as Executed plans.

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

- (10) **Completion of landscape and tree works** – Before the issue of an occupation





certificate, the principal certifier must be satisfied that all landscape and tree-works, including pruning in accordance with *AS 4373-2007 Pruning of amenity trees* and the removal of all noxious weed species, have been completed in accordance with the approved plans and any relevant conditions of this consent.

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

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

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

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

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

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

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

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

- (12) **Bicycle requirements** – Bicycle parking racks to accommodate 5 bicycles must be installed on Ground Level.
- (13) **Loading/unloading facilities** – Loading /unloading facilities must be constructed in accordance with the approved plans. The extent of the loading bay must be permanently marked on the pavement surface.
- (14) **SEPP 65 – Design verification** – A design verification statement from a Registered and qualified architect must be submitted to the Principal Certifying Authority demonstrating the development has been constructed in accordance with the approved plans and the requirements of State Environmental Planning Policy No.65 – Design Quality of Residential Flat Development (unless superseded by this DA Consent).
- (15) **Hunter Water Corporation approval** - A Section 50 Application under the Hunter Water Act 1991 must be lodged with Hunter Water Corporation (HWC) and details of the Notice of Compliance from HWC must be provided to the Certifying Authority.
- (16) **Lot Consolidation** - Before the issue of any occupation certificate, Lot 156 DP 1094233 and Lot 178 DP 1235236 are to be consolidated.



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

### 7.0 – Ongoing Use

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

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



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

**Advice Note(s):**

- (1) **'Dial Before you Dig'** – Before any excavation work starts, contractors and others should phone the "Dial Before You Dig" service to access plans/information for underground pipes and cables.
- (2) **Dividing fences** – The erection of dividing fences under this consent does not affect the provisions of the Dividing Fences Act 1991. Under this Act, all relevant parties must be in agreement prior to the erection of any approved dividing fence/s under this consent.
- Council has no regulatory authority in this area and does not adjudicate civil disputes relating to the provision of, or payment for, the erection of dividing fences. If there is a neighbour dispute about the boundary fence and you are seeking mediation, you may contact the Community Justice Centre, or if legal advice or action is required, you may contact the Chamber Magistrate.
- (3) **Disability Discrimination Act** – The Commonwealth Disability Discrimination Act makes it an offence to discriminate against people on the grounds of disability, in the provision of access to premises, accommodation, or services. It is the owner/applicants responsibility to ensure compliance with the requirements of this Act.
- (4) **Flood information is subject to change** – You are advised that flood information is subject to change if more accurate data becomes available to Council. It is the responsibility of the applicant to use the most up-to-date flood information. Prior to applying for a construction certificate, Council should be contacted to verify the currency of the flood information.
- (5) **Works near/adjoining electricity network assets** – There are electricity network assets adjacent to the proposed development in Church Street. Any works undertaken adjacent to Ausgrid assets must be undertaken with care in accordance with Ausgrid Network Standard Document NS 156 – Work Near or Around Underground Cables
- (6) **Responsibility for damage for tree removal/pruning** – The applicant is responsible for any damage caused to existing public utilities, footpaths or public roads during the cutting down, grinding, removal and disposal of the timber and roots. Care must also be taken by the applicant and the applicant's agents to prevent any damage to adjoining properties. The applicant or the applicants' agent may be liable to pay compensation to any adjoining owner if, due to tree works, damage is caused to such adjoining property.

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

The determination decision was reached for the following reasons:

- The proposed development, subject to the recommended conditions, is consistent with the objectives of the applicable environmental planning instruments, being; Port Stephens Local Environmental Plan 2013 (PSLEP), State Environmental Planning (Resilience and Hazards) 2021, State Environmental Planning Policy (Biodiversity and Conservation) 2021, State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004, State Environmental Planning Policy (Transport and Infrastructure) 2021 and State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development.
- Council has considered and accepted the proposed development standard variation request to Clause 4.3 of the PSLEP. The proposed 32.18m building height and subsequent 4.18m variation is considered acceptable in the particular circumstances of this case as the variation will not significantly overshadow the neighbouring properties, obstruct significant view corridors, or result in negative privacy issues.
- The proposed development is, subject to the recommended conditions, consistent with the objectives of the Port Stephens Council Development Control Plan 2014 (PSDCP).
- Subject to the recommended conditions the proposed development will be provided with adequate essential services required under the PSLEP.
- The proposed development is considered to be of an appropriate scale and form for the site and the character of the locality.
- The proposed development, subject to the recommended conditions, will not result in unacceptable adverse impacts upon the natural or built environments.
- The proposed development is a suitable and planned use of the site and its approval is within the public interest.
- Any submission issues raised have been taken into account in the assessment report and where appropriate conditions of consent have been included in the determination. Council has given due consideration to community views when making the decision to determine the application.

**REASONS WHY THE CONDITIONS HAVE BEEN IMPOSED**

The following conditions are applied to:

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

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

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



1979 gives you the right to appeal to the Land and Environment Court within six months after:

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

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

#### **RIGHT OF REVIEW**

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

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

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

**MINUTES ORDINARY COUNCIL - 13 SEPTEMBER 2022****ITEM NO. 5****FILE NO: 22/202840  
EDRMS NO: 16-2021-703-1****DEVELOPMENT APPLICATION 16-2021-703-1 FOR A RESIDENTIAL FLAT BUILDING AT 11 TO 15 CHURCH STREET, NELSON BAY****REPORT OF: KATE DRINAN - DEVELOPMENT AND COMPLIANCE SECTION  
MANAGER****GROUP: DEVELOPMENT SERVICES****RECOMMENDATION IS THAT COUNCIL:**

- 1) Approve Development Application (DA) No. 16-2021-703-1 for a Residential Flat Building comprising 81 units, neighbourhood shop, basement parking and strata subdivision at 11 to 15 Church Street, Nelson Bay (Lot 156 DP 1094233 and Lot 178 DP1235236) subject to the conditions contained in **(ATTACHMENT 1)**.
- 2) Support the Clause 4.6 variation request to the building height for the reasons outlined within this report.

**ORDINARY COUNCIL MEETING - 13 SEPTEMBER 2022  
MOTION****Councillor Steve Tucker  
Mayor Ryan Palmer**

That Council:

- 1) Approve Development Application (DA) No. 16-2021-703-1 for a Residential Flat Building comprising 81 units, neighbourhood shop, basement parking and strata subdivision at 11 to 15 Church Street, Nelson Bay (Lot 156 DP 1094233 and Lot 178 DP1235236) subject to the conditions contained in **(ATTACHMENT 1)**.
- 2) Support the Clause 4.6 variation request to the building height for the reasons outlined within this report.

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 Matthew Bailey and Steve Tucker.

Those against the Motion: Crs Leah Anderson, Giacomo Arnott, Peter Francis and Jason Wells.

**MINUTES ORDINARY COUNCIL - 13 SEPTEMBER 2022**

The motion was lost.

Cr Giacomo Arnott gave notice of 2 foreshadowed motions.

- 1) Defer the DA to allow for conversations between Council staff and the proponent, with the aim of reducing the building height by one floor so the infraction against the building height limit is negligible.
- 2) Refuse Development Application (DA) No. 16-2021-703-1 for a Residential Flat Building comprising 81 units, neighbourhood shop, basement parking and strata subdivision at 11 to 15 Church Street, Nelson Bay (Lot 156 DP 1094233 and Lot 178 DP1235236) on the following grounds:
  - a) The proposal is inconsistent with S4.15(1)(a)(i) of the Environmental Planning and Assessment Act (the Act) as it breaches the height limit contained within the Port Stephens Local Environment Plan.
  - b) The proposal is inconsistent with S4.15(1)(b) of the Act as it will have a significant impact on the natural and built environments, including sight lines, views, overshadowing and height.
  - c) The proposal is inconsistent with S4.15(1)(c) of the Act as the site is not suitable for a building of the height that is proposed, and would be better served by a building that is built within the applicable height limit.
  - d) The proposal is inconsistent with S4.15(1)(d) of the Act, as the majority of submissions made by the public are opposed to the development due to it breaching the applicable height limit.
  - e) The proposal is inconsistent with S4.15(1)(e) of the Act, as it is not in the public interest to allow the proposal to breach the height limit and be forever imposed on the people of Port Stephens who went to significant effort to make submissions on the height limits, and this proposal.

**ORDINARY COUNCIL MEETING - 13 SEPTEMBER 2022  
MOTION**

<b>242</b>	<b>Councillor Giacomo Arnott Councillor Leah Anderson</b>  It was resolved that Council defer Development Application No. 16-2021-703-1 to allow for conversations between Council staff and the proponent, with the aim of reducing the building height by one floor so the infraction against the building height limit is negligible.
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In accordance with Section 375 (A) of the Local Government Act 1993, a division is required for this item.

**ITEM 2 - ATTACHMENT 2 COUNCIL MEETING MINUTES - 13 SEPTEMBER 2022.****MINUTES ORDINARY COUNCIL - 13 SEPTEMBER 2022**

Those for the Motion: Crs Leah Anderson, Giacomo Arnott, Peter Francis and Jason Wells.

Those against the Motion: Mayor Ryan Palmer, Crs Matthew Bailey Steve Tucker.

The motion was carried.

**BACKGROUND**

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

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

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

This DA has been reported to Council in accordance with Council's 'Planning Matters to be Reported to Council Policy' as the DA includes a request to vary a development standard by greater than 10%. The development standard is Clause 4.3 – Height of Buildings and the extent of the variation is 14.9%.

A Locality Plan is provided at **(ATTACHMENT 2)**.

Proposal

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

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

The apartment mix is comprised of the following unit configurations:

- 5 x 1 bedrooms units



**MINUTES ORDINARY COUNCIL - 13 SEPTEMBER 2022**

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

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

A neighbourhood shop is proposed on the ground level accessible from the forecourt on Church Street. The neighbourhood shop is 99.7m<sup>2</sup> in size and includes an ancillary café. The café will only operate as part of the neighbourhood shop and not as an independent use. There is a communal gym also located on the ground level that will only be for residents, not for public use.

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

Site Description

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

The site has undergone significant earthworks that were approved under previous development approvals, including partially constructed basement foundations from a previously approved development, which has ceased construction. There is also a crane present on site.

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

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

**MINUTES ORDINARY COUNCIL - 13 SEPTEMBER 2022**History

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

**11-13 Church Street, Nelson Bay**

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

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

**15 Church Street, Nelson Bay**

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

Key issues

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

Building Height

The proposal exceeds the maximum allowable building height for the site prescribed under Clause 4.3 of the Port Stephens LEP 2013 (PSLEP). The proposed development at its highest point is 30.18m which exceeds the 28m height limit and represents a 14.9% (4.18m) variation to the development standard.

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

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

- Only a small portion of the overall building exceeds the height limit which is centralised on the site and as such reduces its visibility from the public domain
- The development is compliant with the floor space ratio controls applying to the site

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

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

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

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

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

**Bulk and Scale**

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

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

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

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

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

Overshadowing

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

Oaks Lure

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

The DA will overshadow the Oaks Lure western elevation and approximately one third of the communal space at 9am. The overshadowing of the western elevation reduces as the day progresses. The overshadowing of the communal area is increased by the DA (in addition to the Oaks own internal overshadowing) from 10am. This primarily impacts the pool area on the northern boundary and approximately half the outdoor area.

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

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

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

18 Tomaree Street and 61 Donald Street

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

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

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

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

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

View Loss

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

**MINUTES ORDINARY COUNCIL - 13 SEPTEMBER 2022**

assessed based on site inspections, planning principles and the information included in the submitted Visual Impact Assessment (VIA).

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

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

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

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

The existing topography and current subdivision pattern results in the Oaks Lure losing views, noting the Oaks is not built to its full height potential under current planning controls and has so far benefitted from being adjacent to undeveloped lots. Changes to the design of the proposed building may not warrant a better outcome in

**MINUTES ORDINARY COUNCIL - 13 SEPTEMBER 2022**

terms of view loss as it may result in a bulkier design spanning across the site, rather than the proposed angle form.

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

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

**Visual Impact**

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

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

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

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

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

**Traffic Impact and Parking**

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

The building has 2 main vehicle entries. It is proposed that all traffic will enter left (from the north) to the site and exit left (to the south) from the site along Church

**MINUTES ORDINARY COUNCIL - 13 SEPTEMBER 2022**

Street. This removes the ability for cars to queue along Church Street northbound to turn right into the development, potentially blocking traffic into Nelson Bay Centre.

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

**Conclusion**

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

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

**COMMUNITY STRATEGIC PLAN**

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

**FINANCIAL/RESOURCE IMPLICATIONS**

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

<b>Source of Funds</b>	<b>Yes/No</b>	<b>Funding (\$)</b>	<b>Comment</b>
Existing budget	Yes		
Reserve Funds	No		



**MINUTES ORDINARY COUNCIL - 13 SEPTEMBER 2022**

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

**LEGAL, POLICY AND RISK IMPLICATIONS**

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

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

**MINUTES ORDINARY COUNCIL - 13 SEPTEMBER 2022****SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

**Social and Economic Impact**

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

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

**Built Environment Impact**

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

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

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

**Environmental Impact**

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

There are weeds present on site, which will be removed once construction commences. On these grounds, the proposed development will not have an adverse impact on the natural environment.

**MINUTES ORDINARY COUNCIL - 13 SEPTEMBER 2022****CONSULTATION**

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

Internal

Consultation was undertaken with Council's Development Engineering, Environmental Health, Building Surveyor, Strategic Planning, Council's Urban Design Panel (UDP) and Developer Contributions teams. The referral comments from these officers have been considered as part of the Planners Assessment Report **(ATTACHMENT 3)**. The internal referral officers and UDP supported the DA, subject to recommended conditions of consent **(ATTACHMENT 1)**.

Developer Contributions

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

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

External

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

Public Exhibition

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

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

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

**OPTIONS**

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

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- 3) Reject the recommendations.

**ATTACHMENTS**

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

**COUNCILLORS ROOM**

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

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

**TABLED DOCUMENTS**

Nil.

**SCHEDULE 1 – CONDITIONS OF CONSENT****1.0 - General Conditions of Consent**

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

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

Plan No.	Revision No.	Plan Title.	Drawn By.	Dated.
A-A100	Q	Floor Plan – Basement	Holdsworth Design	23.02.2022
A-A101	T	Floor Plan – Lower Ground	Holdsworth Design	15.04.2022
A-A102	V	Floor Plan – Ground Level	Holdsworth Design	18.05.2022
A-A103	U	Floor Plan –Level 1	Holdsworth Design	18.05.2022
A-A104	T	Floor Plan –Level 2	Holdsworth Design	18.05.2022
A-A105	T	Floor Plan –Level 3	Holdsworth Design	18.05.2022
A-A106	T	Floor Plan –Level 4	Holdsworth Design	18.05.2022
A-A107	R	Floor Plan –Level 5	Holdsworth Design	18.05.2022
A-A108	T	Floor Plan –Level 6	Holdsworth Design	18.05.2022
A-A109	T	Floor Plan –Level 7	Holdsworth Design	18.05.2022
A-A110	X	Floor Plan – Level 8	Holdsworth Design	18.05.2022
A-A400	L	Elevations – Sheet 1	Holdsworth Design	23.02.2022
A-A401	M	Elevations – Sheet 2	Holdsworth Design	15.04.2022
A-A450	N	Sections	Holdsworth Design	23.02.2022
LP.01/G	G	Landscape Plan – Ground Floor	Meraki Green Landscape Architecture	17.06.2022
LP.02/E	E	Landscape Plan – First Floor	Meraki Green Landscape Architecture	20.06.2022
LP.03/D	D	Landscape Plan – Fourth Floor	Meraki Green Landscape Architecture	02.03.2022

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

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

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

- (2) **Surrender of Development Consent** – The applicant must surrender the consents relating to **DA No. 16-2000-1014** (as amended) for a Urban Housing Development (21 units) and **DA No. 16-2016-631** (as amended) for a Residential Flat Building (Incorporating 8 Storey Apartment Complex with Underground Car Parking) by submitting an application for 'Surrender of a Consent' to Port Stephens Council in accordance with *Clause 68 of the Environmental Planning & Assessment Regulation 2021*. This must be done prior to the issue of the first Construction Certificate.
- (3) **Limits of consent** – This consent does not approve:
- The fit out or hours of operation of the neighbourhood shop and ancillary café.
  - Signage.
- The above must be approved under a separate development application.
- (4) **Design Amendments** – Before the issue of a construction certificate, the certifier must ensure the approved construction certificate plans (and specifications) detail the following required amendments to the approved plans and supporting documentation stamped by Council.
- The Landscape Plan is to be updated to remove any bamboo species of plants along the sites southern and eastern boundaries and should be replaced by a species that can be easily maintained.

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

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

The above plan amendments are to be endorsed by Council.

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

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

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

- (8) **Outdoor lighting** – All lighting must comply with AS 1158 'Lighting for Roads and Public Spaces' and AS 4282 'Control of Obtrusive Effects of Outdoor Lighting'.
- (9) **Reflectivity** – The reflectivity of glass externally must not exceed 20%. Details demonstrating compliance must be provided to the Certifying Authority.
- (10) **Roof mounted equipment** – All roof mounted equipment such as air conditioning units, service pipes and vents etc., are required to be installed must be concealed

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

- (11) **Design quality of development** - The approved design (including an element or detail of that design) or materials finish or colours of the building must not be changed so as to affect the internal layout or external appearance of the building without the approval of Council.

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

- (12) **Installation of graphics and artwork on temporary site structures (graphic displays)** - A graphic display must be installed on temporary site structures in accordance with the following requirements:

- the graphic display must be complimentary to the surrounding character;
- required site signage (including developer or corporate identification) must be sympathetic to the graphic display and must not exceed more than 5% (combined) of the surface area of the temporary site structure,
- no third party advertising is permitted to be displayed at any time,
- graphic displays must be installed to ensure long-term durability with a clean finish to the face of the temporary site structure;
- graphic displays must be maintained in good repair for the duration of the project or until such time that the construction works no longer results in an adverse visual impact to the surrounding locality.

## 2.0 – Prior to Issue of a Construction Certificate

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

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

All retaining walls within 1m of a boundary and exceeding 600mm in height must be designed and certified by a suitably qualified Structural Engineer.

Details demonstrating compliance must be provided to the Certifying Authority.

- (2) **Ausgrid** – The applicant must submit a NECF-01 - 'Preliminary Enquiry' form for a response from Ausgrid which must be received before a Construction Certificate is issued.

- (3) **Potential acid sulfate soils** - A geotechnical assessment of the site is to be undertaken to determine whether the development works will disturb Potential Acid Sulfate Soils (ASS). Should ASS be encountered within the zone of works, an ASS

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

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

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

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

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

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

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

- a) The stormwater quality treatment train shall treat stormwater, prior to discharge, to Port Stephens Council Development Control Plan requirements. Before water is released into public drainage it must achieve Council's water quality stripping targets which are:
  - a. Total nitrogen retention post-development load: 45%
  - b. Total phosphorus retention post-development load: 60%
  - c. Total suspended solids post-development load: 90%
 Gross pollutants post-development load: 90%.
- b) All downpipes and associated guttering to cater for 1% AEP storm events in order to direct all runoff to infiltration areas.

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

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

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

Details demonstrating compliance must be provided to the Certifying Authority.

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

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

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

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

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

Details demonstrating compliance must be provided to the Certifying Authority.

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

- (11) **Garbage room** – Rooms used for the storage of garbage, and rooms used for the washing and storage of garbage receptacles, must be constructed in accordance with the approved plans and the following:

- a) The room must be constructed of solid material, cement rendered and trowelled to a smooth even surface;

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- b) The floor must be impervious material covered at the intersection with the walls, graded and drained to an approved floor waste within the room; and
- c) Garbage rooms must be vented to the external air by natural or mechanical ventilation.

Details demonstrating compliance must be provided to the Certifying Authority.

- (12) **Hunter Water Corporation Approval** - A Section 50 application under the Hunter Water Act 1991 must be lodged with Hunter Water Corporation (HWC).

- (13) **Car parking details** – Before the issue of a construction certificate, a suitably qualified engineer must review the plans, which relate to parking facilities and provide written evidence, to the certifier's satisfaction, that it complies with the relevant parts of AS 2890 Parking Facilities – Off- Street Carparking and Council's development control plan.

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

- a) location and materials for protective fencing and hoardings to the perimeter on the site
- b) provisions for public safety
- c) pedestrian and vehicular site access points and construction activity zones
- d) details of construction traffic management, including proposed truck movements to and from the site and estimated frequency of those movements, and measures to preserve pedestrian safety in the vicinity of the site
- e) protective measures for on-site tree preservation (including in accordance with AS 4970-2009 Protection of trees on development sites and Council's DCP, if applicable) and trees in adjoining public domain (if applicable)
- f) details of any bulk earthworks to be carried out
- g) location of site storage areas and sheds
- h) equipment used to carry out all works
- i) a garbage container with a tight-fitting lid
- j) dust, noise and vibration control measures
- k) location of temporary toilets.

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

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

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

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Environmental Planning & Assessment Act 1979 and the Port Stephens Local Infrastructure Contributions Plan 2020 towards the provision of the following public facilities:

Facility	Per Lot/Dwelling	Total \$
Civic Administration – Plan Management	\$472	\$27,848
Civic Administration – Works Depot	\$1,231	\$72,629
Town Centre Upgrades	\$3,316	\$195,644
Public Open Space, Parks and Reserves	\$2,012	\$118,708
Sports & Leisure Facilities	\$1,914	\$112,926
Cultural & Community Facilities	\$1,296	\$76,464
Road Works	\$3,489	\$205,851
Shared Paths	\$3,196	\$188,564
Bus Facilities	\$12	\$708
Fire & Emergency Services	\$240	\$14,160
Flood & Drainage	\$1,846	\$108,914
Kings Hill Urban Release Area	\$293	\$17,287
<b>TOTAL</b>		<b>\$1,139,703</b>

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

- a) Prior to the issue of the Construction Certificate.

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

- (16) **Roads Act Application** – The following information must be provided to Council as Roads Authority with the Roads Act application:
- a) A design for a public footpath along Church Street, which will join into the existing footpath on either side of the development site. The footpath must be designed in accordance with Councils Infrastructure Specifications.
- (17) **Long service levy** – In accordance with Section 34 of the Building and Construction Industry Long Service Payments Act 1986, the applicant must pay a long service levy at the prescribed rate to either the Long Service Payments Corporation or Council for any works that cost \$25,000 or more.
- (18) **Dilapidation Report – Adjoining Property** - A dilapidation report including a photographic survey of the following adjoining properties must be provided to the Certifying Authority. The dilapidation report must detail the physical condition of those properties, both internally and externally, including walls, ceilings, roof, structural members and other similar items.
- a) 19 Church Street, Nelson Bay  
 b) 9 Church Street, Nelson Bay  
 c) 18 Tomaree Street, Nelson Bay  
 d) 61 Donald Street, Nelson Bay

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

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

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

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

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

### 3.0 - Prior to Commencement of Works

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

- (1) **Home Building Act requirements** - Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the principal certifier for the development to which the work relates (not being the council) has given the council written notice of the following information —
- a) In the case of work for which a principal contractor is required to be appointed—
    - (i) the name and licence number of the principal contractor, and
    - (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) **Home Building Act – Insurance** - In the case of residential building work for which the *Home Building Act 1989* requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.

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- (3) **Notice of Principal Certifying Authority appointment** – The Principal Certifier for this development must give notice must be given to the consent authority and Council, where the Council is not the consent authority, at least two days prior to subdivision and/or building works commencing in accordance with Section 6.6 (2) (a) of the Environmental Planning and Assessment Act 1979 and Section 57 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021. The notice must include:

- a) a description of the work to be carried out;
- b) the address of the land on which the work is to be carried out;
- c) the Registered number and date of issue of the relevant development consent;
- d) the name and address of the Principal Certifier and the person who appointed the principal certifier;
- e) if the principal certifier is a registered certifier
  - i) the certifier's registration number, and
  - ii) a statement signed by the registered certifier to the effect that the certifier consents to being appointed as principal certifier, and
  - iii) a telephone number on which the certifier may be contacted for business purposes.

The notice must be lodged on the NSW planning portal.

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

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

The notice must be lodged on the NSW planning portal.

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

- a) showing the name, address and telephone number of the principal certifier for the work, and

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

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

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

- (6) **Construction Certificate Required** – In accordance with the provisions of Section 6.7 of the Environmental Planning & Assessment Act 1979 (EP&A Act 1979), construction or subdivision works approved by this consent must not commence until the following has been satisfied:
  - a) a Construction Certificate has been issued by a Consent Authority;
  - b) a Principal Certifying Authority (PCA) has been appointed by the person having benefit of the development consent in accordance with Section 6.5 of the EP&A Act 1979; and
  - c) the PCA is notified in writing of the name and contractor licence number of the owner/builder intending to carry out the approved works.
- (7) **Site is to be secured** – The site must be secured and fenced to the satisfaction of the Principal Certifying Authority. All hoarding, fencing or awnings (associated with securing the site during construction) is to be removed upon the completion of works.  
 An awning is to be erected that would sufficiently prevent any substance from the construction work falling onto public property. The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons on public property.
- (8) **Demolition work** – All demolition works are to be carried out in accordance with Australian Standard AS 2601 'The demolition of Structures'. All waste materials are to be either recycled or disposed of to a licensed waste facility.  
 Any asbestos containing material encountered during demolition or works, is to be removed in accordance with the requirements of Safe Work NSW and disposed of to an appropriately licenced waste facility.  
 Evidence is to be provided to the Certifying Authority demonstrating that asbestos waste has been disposed of in accordance with this condition.
- (9) **Erosion and sediment controls in place** – Before the commencement of any site or building work, the principal certifier must be satisfied the erosion and sediment controls in the erosion and sediment control plan, (as approved by the principal certifier) are in place until the site is rectified (at least 70% ground cover achieved over any bare ground on site).

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

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

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

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

- (12) **Public liability insurance** – The owner or contractor must take out a Public Liability Insurance Policy with a minimum cover of \$20 million in relation to the occupation of, and works within, public property (i.e. kerbs, gutters, footpaths, walkways, reserves, etc.) for the full duration of the proposed works.

Evidence of this Policy must be provided to Council and the Certifying Authority.

#### 4.0 - During Works

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

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

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

- Protect and support the building, structure or work from possible damage from the excavation, and
- 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

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removal is not carried out on Sundays and public holidays, except where there is an emergency.

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

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

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

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

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

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

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

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

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

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

- (7) **Building height** – A survey report prepared by a Registered Surveyor confirming that the building height complies with the approved plans or as specified by the development consent, must be provided to the Principal Certifying Authority prior to the development proceeding beyond frame stage.

- (8) **Surveys by a registered surveyor** – While building work is being carried out, a registered surveyor is to measure and mark the positions of the following and provide them to the principal certifier –

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## MINUTES ORDINARY COUNCIL - 13 SEPTEMBER 2022

## ITEM 5 - ATTACHMENT 1 RECOMMENDED CONDITIONS OF CONSENT.



- a) All footings/ foundations
  - b) At other stages of construction – any marks that are required by the principal certifier.
- (9) **Construction Management Plan implementation** - All construction management procedures and systems identified in the approved construction site management plan must be introduced during construction of the development.
- (10) **Stormwater disposal** – Following the installation of any roof, collected stormwater runoff from the structure must be:
- a) Diverted through a first flush system before being connected to an existing stormwater easement/system/street.
- (11) **Placement of fill** - Filling must not be placed in such a manner that natural drainage from adjoining land will be obstructed or in such a manner that surface water will be diverted.
- Further, any alterations to the natural surface contours must not impede or divert natural surface water runoff so as to cause a nuisance to adjoining property owners.
- (12) **Unexpected finds contingency (general)** – Should any suspect materials (identified by unusual staining, odour, discolouration or inclusions such as building rubble, asbestos, ash material, etc.) be encountered during any stage of works (including earthworks, site preparation or construction works, etc.), such works must cease immediately until a qualified environmental specialist has been contacted and conducted a thorough assessment.
- In the event that contamination is identified as a result of this assessment and if remediation is required, all works must cease in the vicinity of the contamination and Council must be notified immediately.
- Where remediation work is required, the applicant will be required to obtain consent for the remediation works.
- (13) **Soil, erosion, sediment and water management** – All requirements of the Erosion and Sediment Control Plan or Soil and Water Management Plan must be maintained at all times during the works and any measures required by the plan must not be removed until the site has been stabilised.
- (14) **Offensive noise, dust, odour and vibration** – All work must not give rise to offensive noise, dust, odour or vibration as defined in the Protection of the Environment Operations Act 1997 when measured at the nearest property boundary.
- (15) **Construction noise** – While building work is being carried out and where no noise and vibration management plan is approved under this consent, the applicant is to ensure that any noise caused by demolition, vegetation removal or construction does not exceed an LAeq (15 min) of 5dB(A) above background noise, when measured at any lot boundary of the property where the construction is being carried out.

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

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

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

- (a) All excavated material removed from the site must be classified in accordance with the EPA's Waste Classification Guidelines before it is disposed of at an approved waste management facility and the classification and the volume of material removed must be reported to the principal certifier.

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

- (18) **Uncovering relics or Aboriginal objects** - While demolition or building work is being carried out, all such works must cease immediately if a relic or Aboriginal object is unexpectedly discovered. The applicant must notify the Heritage Council of NSW in respect of a relic and notify the Secretary of the Department of Planning, Industry and Environment and the Heritage Council of NSW in respect of an Aboriginal object. Building work may recommence at a time confirmed by either the Heritage Council of NSW or the Secretary of the Department of Planning, Industry and Environment.

In this condition:

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

#### 5.0 - Prior to Issue of a Subdivision Certificate

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

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

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## MINUTES ORDINARY COUNCIL - 13 SEPTEMBER 2022

## ITEM 5 - ATTACHMENT 1 RECOMMENDED CONDITIONS OF CONSENT.



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

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

- (2) **Restriction on issue of Strata Plan of Subdivision** – An Occupation Certificate for the building must be issued by the PCA prior to the issue of any Strata Plan of subdivision associated with this development consent 16-2021-703-1.

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

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

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

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

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

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

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

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

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

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## MINUTES ORDINARY COUNCIL - 13 SEPTEMBER 2022

## ITEM 5 - ATTACHMENT 1 RECOMMENDED CONDITIONS OF CONSENT.



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

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

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

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

- (1) **Occupation Certificate required** - An Occupation Certificate must be obtained prior to any use or occupation of the development.
- The Principal Certifying Authority must be satisfied that the development has been constructed in accordance with approved plans, specifications and conditions of this consent.
- (2) **Survey Certificate** – A Registered Surveyor must prepare a Survey Certificate to certify that the location of the building in relation to the allotment boundaries complies with the approved plans or as specified by this consent. The Survey Certificate must be provided to the satisfaction of the Principal Certifying Authority.
- (3) **Services** – Evidence is to be provided to Council demonstrating that the following reticulated services are available to each lot:
- a) Electricity;
  - b) Water;
  - c) Sewer; and

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## MINUTES ORDINARY COUNCIL - 13 SEPTEMBER 2022

## ITEM 5 - ATTACHMENT 1 RECOMMENDED CONDITIONS OF CONSENT.



d) Gas (where available).

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

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

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

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

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

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

- (7) **Works as Executed Plans and any other documentary evidence** - Before the issue of the relevant occupation certificate, the applicant must submit, to the satisfaction of the principal certifier, works-as-executed plans, any compliance certificates and any other evidence confirming the following completed works:

- (a) All stormwater drainage systems and storage systems

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

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

This certificate must accompany the Works as Executed plans.

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

- (10) **Completion of landscape and tree works** – Before the issue of an occupation certificate, the principal certifier must be satisfied that all landscape and tree-works,

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## MINUTES ORDINARY COUNCIL - 13 SEPTEMBER 2022

## ITEM 5 - ATTACHMENT 1 RECOMMENDED CONDITIONS OF CONSENT.



including pruning in accordance with AS 4373-2007 *Pruning of amenity trees* and the removal of all noxious weed species, have been completed in accordance with the approved plans and any relevant conditions of this consent.

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

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

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

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

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

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

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

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

- (12) **Bicycle requirements** – Bicycle parking racks to accommodate 5 bicycles must be installed on Ground Level.
- (13) **Loading/unloading facilities** – Loading /unloading facilities must be constructed in accordance with the approved plans. The extent of the loading bay must be permanently marked on the pavement surface.
- (14) **SEPP 65 – Design verification** – A design verification statement from a Registered and qualified architect must be submitted to the Principal Certifying Authority demonstrating the development has been constructed in accordance with the approved plans and the requirements of State Environmental Planning Policy No.65 – Design Quality of Residential Flat Development (unless superseded by this DA Consent).
- (15) **Hunter Water Corporation approval** – A Section 50 Application under the Hunter Water Act 1991 must be lodged with Hunter Water Corporation (HWC) and details of the Notice of Compliance from HWC must be provided to the Certifying Authority.
- (16) **Lot Consolidation** - Before the issue of any occupation certificate, Lot 156 DP 1094233 and Lot 178 DP 1235236 are to be consolidated.

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

#### 7.0 – Ongoing Use

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

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

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## MINUTES ORDINARY COUNCIL - 13 SEPTEMBER 2022

## ITEM 5 - ATTACHMENT 1 RECOMMENDED CONDITIONS OF CONSENT.



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

**Advice Note(s):**

- (1) **'Dial Before you Dig'** – Before any excavation work starts, contractors and others should phone the "Dial Before You Dig" service to access plans/information for underground pipes and cables.
- (2) **Dividing fences** – The erection of dividing fences under this consent does not affect the provisions of the Dividing Fences Act 1991. Under this Act, all relevant parties must be in agreement prior to the erection of any approved dividing fence/s under this consent.
- Council has no regulatory authority in this area and does not adjudicate civil disputes relating to the provision of, or payment for, the erection of dividing fences. If there is a neighbour dispute about the boundary fence and you are seeking mediation, you may contact the Community Justice Centre, or if legal advice or action is required, you may contact the Chamber Magistrate.
- (3) **Disability Discrimination Act** – The Commonwealth Disability Discrimination Act makes it an offence to discriminate against people on the grounds of disability, in the provision of access to premises, accommodation, or services. It is the owner/applicants responsibility to ensure compliance with the requirements of this Act.
- (4) **Flood information is subject to change** – You are advised that flood information is subject to change if more accurate data becomes available to Council. It is the responsibility of the applicant to use the most up-to-date flood information. Prior to applying for a construction certificate, Council should be contacted to verify the currency of the flood information.
- (5) **Works near/adjoining electricity network assets** – There are electricity network assets adjacent to the proposed development in Church Street. Any works undertaken adjacent to Ausgrid assets must be undertaken with care in accordance with Ausgrid Network Standard Document NS 156 – Work Near or Around Underground Cables
- (6) **Responsibility for damage for tree removal/pruning** – The applicant is responsible for any damage caused to existing public utilities, footpaths or public roads during the cutting down, grinding, removal and disposal of the timber and roots. Care must also be taken by the applicant and the applicant's agents to prevent any damage to adjoining properties. The applicant or the applicants' agent may be liable to pay compensation to any adjoining owner if, due to tree works, damage is caused to such adjoining property.

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**SCHEDULE 2 - REASONS FOR DETERMINATION AND REASONS FOR CONDITIONS**

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**MINUTES ORDINARY COUNCIL - 13 SEPTEMBER 2022****ITEM 5 - ATTACHMENT 1 RECOMMENDED CONDITIONS OF CONSENT.****REASONS FOR THE DETERMINATION & CONSIDERATION OF COMMUNITY VIEWS**

The determination decision was reached for the following reasons:

- The proposed development, subject to the recommended conditions, is consistent with the objectives of the applicable environmental planning instruments, being: Port Stephens Local Environmental Plan 2013 (PSLEP), State Environmental Planning (Resilience and Hazards) 2021, State Environmental Planning Policy (Biodiversity and Conservation) 2021, State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004, State Environmental Planning Policy (Transport and Infrastructure) 2021 and State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development.
- Council has considered and accepted the proposed development standard variation request to Clause 4.3 of the PSLEP. The proposed 32.18m building height and subsequent 4.18m variation is considered acceptable in the particular circumstances of this case as the variation will not significantly overshadow the neighbouring properties, obstruct significant view corridors, or result in negative privacy issues.
- The proposed development is, subject to the recommended conditions, consistent with the objectives of the Port Stephens Council Development Control Plan 2014 (PSDCP).
- Subject to the recommended conditions the proposed development will be provided with adequate essential services required under the PSLEP.
- The proposed development is considered to be of an appropriate scale and form for the site and the character of the locality.
- The proposed development, subject to the recommended conditions, will not result in unacceptable adverse impacts upon the natural or built environments.
- The proposed development is a suitable and planned use of the site and its approval is within the public interest.
- Any submission issues raised have been taken into account in the assessment report and where appropriate conditions of consent have been included in the determination. Council has given due consideration to community views when making the decision to determine the application.

**REASONS WHY THE CONDITIONS HAVE BEEN IMPOSED**

The following conditions are applied to:

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

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

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

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**ITEM 2 - ATTACHMENT 2 COUNCIL MEETING MINUTES - 13 SEPTEMBER 2022.****MINUTES ORDINARY COUNCIL - 13 SEPTEMBER 2022****ITEM 5 - ATTACHMENT 1 RECOMMENDED CONDITIONS OF CONSENT.**

1979 gives you the right to appeal to the Land and Environment Court within six months after:

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

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

**RIGHT OF REVIEW**

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

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

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

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## DEVELOPMENT ASSESSMENT REPORT

### APPLICATION REFERENCES

<b>Application Number</b>	16-2021-703-1
<b>Development Description</b>	Residential flat building comprising 81 units, neighbourhood shop (including ancillary café), basement parking and strata subdivision
<b>Applicant</b>	PERCEPTION PLANNING PTY LTD
<b>Land owner</b>	KINALA PTY LTD
<b>Date of Lodgement</b>	25/08/2021
<b>Value of Works</b>	\$29,706,291.00
<b>Submissions</b>	136

### PROPERTY DETAILS

<b>Property Address</b>	15 Church Street NELSON BAY, 11-13 Church Street NELSON BAY
<b>Lot and DP</b>	LOT: 156 DP: 1094233, LOT: 178 DP: 1235236
<b>88B Restrictions on Title</b>	Nil
<b>Current Use</b>	Partially constructed residential basement
<b>Zoning</b>	R3 MEDIUM DENSITY RESIDENTIAL
<b>Site Constraints</b>	Acid Sulfate Soils – Class 5 Koala Habitat Planning Map – Clear SEPP (Coastal Management) Combined Footprint Stormwater drainage requirements area – 100year ARI infiltration required
<b>State Environmental Planning Policies</b>	State Environmental Planning Policy (Biodiversity and Conservation) 2021 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 State Environmental Planning Policy (Planning Systems) 2021

State Environmental Planning Policy (Resilience and Hazards) 2021

State Environmental Planning Policy (Transport and Infrastructure) 2021

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

#### 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).	N/A
For works occurring outside property, neighbouring consent provided.	N/A
For works occurring on common property within Strata, owner's consent from Strata body provided (common seal).	N/A
DA FORM AND AUTHORITY	
Applicant's description of proposal consistent with DA plans.	Yes
DA description correct in Authority (i.e. LEP definition).	Yes
DA lodged over all affected properties and Authority correct.	Yes
Satisfactory cost of works.	Yes
NOTIFICATION	
Application notified correctly (i.e. check properties notified).	Yes
REFERRALS	
Check referrals are correct and identify if additional required: i.e. Integrated Development (send within 14 days cl.66(2) EPA Regs 2000	Yes
Call applicant and send email acknowledgement.	Yes

**PROPOSAL**

The proposed development is for a Residential Flat Building (RFB), neighbourhood shop with ancillary café and strata subdivision. The development specifically includes:

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

The apartment configuration is as below:

**Table 1: Apartment configuration**

<b>Bedrooms</b>	<b>Quantity</b>
One bedroom units	5
Two bedrooms units	46
Three bedroom units	25
Four bedroom units	5
<b>Total</b>	<b>81</b>

The main entry to the building is from the forecourt created along Church Street, which leads to two lobby areas that provide lift and stair access to the levels within the building.

A neighbourhood shop is proposed on the Ground Floor Level accessed from the forecourt on Church Street. The neighbourhood shop is 99.7m<sup>2</sup> in size and includes an ancillary café. The applicant has indicated the café will only operate as part of the neighbourhood shop and not be an independent use. There is a communal gym located on the Ground Floor Level, which will only be for residents use, not for public use.

The Ground Floor Level is the main entry to the building from Church Street and includes a landscaped forecourt with trees and low shrubs as well as street trees along the verge. The First Floor Level of the development includes communal open space with landscaping treatments, a mini golf area and various pieces of outdoor gym equipment. Outdoor planting has been included at the upper levels in the form of planter boxes along the balconies mainly facing Church Street.

Figures 1 and 2 below show the architectural renders of the proposed development.





Figure 1: View of building along Church Street.



Figure 2: South-eastern view of the proposed building.

**SITE DESCRIPTION**

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

The site has undergone significant earthworks that were approved under previous DAs, including partially constructed basement foundations from a previously approved development, which has ceased construction. There is also a crane present on site.

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

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



Figure 3: Aerial view of the site (outlined in white).





Figure 4: Surrounding context (site outlined in red).

#### SITE HISTORY

The site has been subject to multiple development application (DAs), which are outlined below.

##### 11-13 Church Street, Nelson Bay

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

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

##### 15 Church Street, Nelson Bay

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

**SITE INSPECTION**

A site inspection was carried out on 6 September 2021. The subject site can be seen in the images below.



**Image 1: View from west of Church Street looking east towards the site.**



**Image 2: Looking north-east towards the site.**



**Image 3: View into site where crane and partially constructed footings exist.**



**Image 4: Southern boundary of site shared with the Oaks Lure to the south.**





**Image 5: Existing works on site.**



**Image 6: View north-west from site towards neighbouring properties.**



Image 7: View south-west to neighbouring properties.



Image 8: Seaview Apartments located on adjacent northern site.

**PLANNING ASSESSMENT**

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

Internal

**Development Engineer** – Supported with conditions. The recommended conditions relate to water quality and on-site storage requirements.

**Environmental Health** – Supported with conditions. The recommended conditions relate to the neighbourhood shop and ancillary café, and require the construction and fit-out of the food premises to accord with the relevant Health and Food Acts and Regulations.

**Building Surveyor** – Supported with conditions. The recommended conditions relate to ensuring the construction of the building is in accordance with the BCA.

**Strategic Planning** – Supported unconditionally. The referral outlined that the proposed development is consistent with the objectives of the applicable planning strategies such as the Hunter Regional Plan 2036, Port Stephens Local Housing Strategy, Port Stephens Local Strategic Planning Statement and Nelson Bay Strategy.

**Developer Contributions** – Supported with conditions. Section 7.11 contributions apply to the portion of the development that is a residential flat building. Under DA 16-2000-1014-1, contributions were paid on 15 February 2006 for the creation of 19 additional dwellings over two lots (21 units in total). This proposal is over two lots, and therefore, a 22 lot credit has been applied and contributions apply for an additional 59 dwellings. The s7.11 contributions will be spent in accordance with the work schedule within the Tomaree catchment, as indicated in the Section 7.11 Contributions Plan.

**Waste Management** – Supported unconditionally. The development will remain to be rated for residential waste services as required, though the applicant will use a private waste contractor to service the development.

**Comment:** All internal referral officers have supported the application.

External

**Ausgrid** – Supported with conditions. The applicant will be required to submit a NECF-01 - 'Preliminary Enquiry' form for a response from Ausgrid which must be received before a Construction Certificate is issued.

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

Section 4.46 EP&A Act provides that development is integrated development if in order to be carried out, the development requires development consent and one or more other approvals. The proposed development is not integrated development for the purposes of this section of the Act.

**Section 4.15 - Matters for consideration**

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



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

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

**State Environmental Planning Policy (Biodiversity and Conservation) 2021*****Chapter 4 – Koala habitat protection 2021***

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

The site is mapped as 'Clear' on the Koala habitat map. The site only contains weeds and no other vegetation, and none of the adjacent sites contain any koala feed species or preferred habitat. The development will not have an impact on koala habitat or the koala population.

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

A BASIX Certificate has been submitted for the proposed development, which demonstrates that the proposal can achieve required water and energy saving targets compared to the standard model house. A condition of consent has been included in the notice of determination requiring the development to be carried out in accordance with the BASIX Certificate.

**State Environmental Planning Policy (Planning Systems) 2021*****Chapter 2 – State and regional development***

In accordance with Schedule 6 of this SEPP, general development with a capital investment value (CIV) over \$30 million is classified as regionally significant development and must be determined by the Hunter and Central Coast Regional Planning Panel.

The cost summary provided by the applicant outlined the CIV was \$29,706,291.00. Considering this, the application is classified as local development to be determined by the elected Council.

**State Environmental Planning Policy (Resilience and Hazards) 2021*****Chapter 2 Coastal management***

The site is mapped within the Coastal Environment Area, as such the following general matters are required to be considered when determining an application.

As per Section 2.10 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 development is sufficiently setback from the coastal area, being the combination of Nelson Bay/Dutchman's Bay/Karuah River, by approximately 380 metres. Water runoff from the building will be managed on site, as will sediment runoff during the construction process.

Therefore, the application would generally comply with the aims of the SEPP and can therefore be supported.

***Chapter 4 Remediation of land***

The object of this Chapter is to provide for a State-wide planning approach to the remediation of contaminated land. Section 4.6 requires that a consent authority must consider whether land is contaminated prior to granting development consent.

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

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

The development was referred to Ausgrid as per Section 2.48 of this SEPP. Ausgrid has underground electricity assets in the vicinity of the development, and additionally there are overhead power lines along the western side of Church Street. Ausgrid provided no objection to the application and outlined the required applications the developer would need to apply for prior to commencing any electricity works.

The development is not traffic generating development as per Schedule 3 of SEPP (Transport and Infrastructure) 2021. The proposal includes residential accommodation, which contains more than 75 dwellings as per column 3 of Schedule 3, notwithstanding, Church Street is not a classified road and does not connect to a classified road within 90 metres. Therefore, no referral to TfNSW for concurrence is required.

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

State Environmental Planning Policy State Environmental Planning Policy No. 65 – Quality Design of Residential Apartment Development (SEPP 65) aims to improve the quality of residential apartment development and provides an assessment framework in the Apartment Design Guide (ADG) to facilitate the assessment of 'good design'. This policy applies, as the development is for a residential flat building that is more than three storeys in height and contains at least four dwellings. The application was referred to Council's Urban Design Panel (UDP) for assessment against the ADG and the principles of Schedule 1 of this policy.

The application was initially reviewed in a Pre-DA Meeting (18-2021-16-1) prior to DA lodgement on 13 May 2021. The plans were conceptual at this stage, however the Panel gave design recommendations such as; optimising deep soils planting and landscaping in the streetscape and around the building to balance the size of the development, setbacks from neighbouring properties, detail in regard to solar access to building and building impact on neighbours solar access, and increasing the communal spaces, particularly the one on the top level if it is proposed to be above the height limit.



Figure 5: Pre-DA Concept

The UDP reviewed the submitted DA design on 14 October 2021, and raised the following matters:

- Generally unsupportive of height exceedance if used primarily for private use and not communal space.
- Areas for landscaping, planting and deep soil needed complete revision to offset bulk and scale.
- Ground level/podium communal open space should have less hardstand and offer a variety of uses.
- Recommended Visual Impact Assessment (VIA) is updated due to some outdated references.
- Mid-rise section of the south-western wing should be reduced in bulk.

The UDP outlined support could not be given to the design without the design being further amended to incorporate the matters outlined above.



Figure 6: DA lodged concept

The applicant revised the design and the UDP subsequently reviewed the proposal as amended on 14 April 2022. The amended design incorporated the changes as suggested by the UDP, such as changing the top level (above the height limit) to be predominately communal space for all residents, rather than private space for few residents. The UDP was generally supportive of the revised design, though required the following changes to be made to receive final support:

- Additional landscaping to be provided as a buffer between residential units facing communal area.
- More 'soft' landscaping along the ground level units frontage required.
- Comments in regard to species proposed and ability to survive and be well maintained.

The applicant made the above changes and the Panel provided support for the application.



Figure 7: Proposed final concept

Considering the final iteration of plans, the following table outlines each objective and how the final design has addressed each principle.

Table 2: SEPP 65 Schedule 1 Design Quality Principles

Criteria	Comments
Principle 1: Context and neighbourhood character	<p>The site is located within the Nelson Bay Town Centre. The site is zoned R3 Medium Density Residential to encourage the construction of denser residential housing on the fringe of the Nelson Bay Village.</p> <p>The sites location is at an elevated position on the western edge of the town centre, with close access to the main retail and commercial core of the town.</p> <p>The area is undergoing significant change, with more RFBs being developed in the area amongst the existing lower density and tourist accommodation developments.</p>

Criteria	Comments
	<p>The proposal responds to these emerging changes by providing a high quality design which caters for the future desired character of Nelson Bay.</p>
Principle 2: Built form and scale	<p>The design of the building, whilst large in scale, provides a compatible connection to the adjacent neighbours and will improve the architectural quality that exists within the locality.</p> <p>The objectives of the height controls are to achieve buildings with appropriate heights for the character on context whilst reflecting the hierarchy of centres and the land use structure. The objectives of the FSR control is to achieve a building compatible with the bulk and scale of the desired future character of the locality, a balance between built form and landscaping and to minimise the effects of bulk and scale.</p> <p>The design does achieve a height suitable for the area and desired hierarchy of buildings in accordance with the Nelson Bay Town Centre Strategy. It also achieves the desired built form character, as it is a modern building that will improve the aesthetic quality of the existing area. The design also provides ample landscaping and communal space to residents whilst remaining below the FSR.</p> <p>The buildings interface with Church Street and the public domain, provides a positive addition to the streetscape through clear pedestrian and vehicle connection and provision of landscaping and areas for social interaction, which the street does not currently have.</p>
Principle 3: Density	<p>The design and size of each unit provides a high level of amenity for future residents. The units are all above the minimum size required per the ADG and include a desirable mix to meet the requirements of small to large households.</p> <p>The FSR is 2.56:1, below the maximum 3.1:1.</p> <p>The development is located within a well serviced area with public transport options available and is within walking distance to the retail and commercial core of Nelson Bay.</p>

Criteria	Comments
Principle 4: Sustainability	<p>The application has provided a BASIX certificate which outlines the buildings ability to meet the required standards per SEPP BASIX.</p> <p>The development has also incorporated:</p> <ul style="list-style-type: none"> <li>• An electric vehicle car charging space.</li> <li>• Units are dual aspect and have cross-ventilation where possible.</li> <li>• On-site water detention is included.</li> <li>• Solar panels are provided at roof level to power common areas.</li> </ul>
Principle 5: Landscape	<p>The proposal incorporates ample landscaping in the communal areas on the Ground Level and Level 8, as well as being interspersed on the outdoor areas on other levels.</p> <p>There is an architecturally landscaped forecourt that is a positive addition to the street frontage which provides a well designed space for pedestrians and residents and will encourage social interaction along the street.</p>
Principle 6: Amenity	<p>Internally, the proposal achieves good amenity through the design and location of units within the building that optimise ventilation, solar access and visual privacy.</p> <p>Communal open space is provided on multiple levels with landscaping adding to the quality of these spaces.</p> <p>Externally, the proposal is located in a well serviced area, with access to public transport and a short walking distance to the retail and commercial core of the town.</p>
Principle 7: Safety	<p>The proposal has addressed safety through the following measures:</p> <ul style="list-style-type: none"> <li>• The residential and vehicular entries are well located in high activity and visibility areas on Church Street.</li> <li>• The building entry has been designed to provide an appropriate, identifiable, secure, safe and accessible entry.</li> <li>• Separate entries are provided for pedestrians and vehicles.</li> <li>• There will be passive surveillance from apartments addressing Church Street.</li> <li>• Access lobbies are to be well lit and suitably scaled.</li> <li>• Secure car parking spaces for residential apartments are provided</li> </ul>

Criteria	Comments																											
	<ul style="list-style-type: none"><li>External areas will be well lit with clear lines of sight from active frontages</li></ul> <p>The principles of CPTED (Crime Prevention Through Environmental Design) have been addressed as follows:</p> <ul style="list-style-type: none"><li>Casual surveillance of the street through balconies and communal open space fronting the street.</li><li>Landscaping has been used to delineate private and public space.</li><li>Security entry to the resident car park and pedestrian entries.</li></ul>																											
Principle 8: Housing diversity and social interaction	<p>A range of apartment designs and sizes are provided catering to different household sizes. The development provides housing choice responsive to market demand, with a mix of apartment sizes proposed including the following:</p> <table><tr><td>5</td><td>1 Bed.</td><td>6.2%</td></tr><tr><td>40</td><td>2 Bed.</td><td>49.4%</td></tr><tr><td>6</td><td>2 Bed. + Study</td><td>7.4%</td></tr><tr><td>21</td><td>3 Bed.</td><td>25.9%</td></tr><tr><td>4</td><td>3 Bed. + Study</td><td>4.9%</td></tr><tr><td>1</td><td>3 Bed. + Study + 2 Living</td><td>1.2%</td></tr><tr><td>2</td><td>4 Bed. + Study</td><td>2.5%</td></tr><tr><td>2</td><td>4 Bed. + Study + 2 Living</td><td>2.5%</td></tr><tr><td>81</td><td></td><td>100.0%</td></tr></table> <p>A large communal room and associated outdoor space including swimming pool is proposed at the top most floor to take advantage of the expansive views over the bay, ocean and bush.</p> <p>A large communal terrace at Level 1 incorporating a walking track, exercise equipment, yoga/tai chi space and mini-golf course all within a landscaped setting.</p>	5	1 Bed.	6.2%	40	2 Bed.	49.4%	6	2 Bed. + Study	7.4%	21	3 Bed.	25.9%	4	3 Bed. + Study	4.9%	1	3 Bed. + Study + 2 Living	1.2%	2	4 Bed. + Study	2.5%	2	4 Bed. + Study + 2 Living	2.5%	81		100.0%
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Principle 9: Aesthetics	<p>The proposed design provides a balanced composition of elements including a well-defined base level, middle or 'body' and top.</p> <ul style="list-style-type: none"><li>The base is envisaged as a solid form anchoring the building to the site.</li></ul>																											



Criteria	Comments
	<ul style="list-style-type: none"> <li>The middle or body of the building is conceived as a screened element which extends to the ground fronting Church Street to the west. The buildings two cores and lobbies to the west are expressed as vertical elements with hanging gardens between, defining the residential entry points.</li> <li>To the east the body of the building is a more horizontal expression although carefully articulated with landscape planter recesses to break down the length of the building.</li> <li>The top of the building provides the iconic statement, with a bird/flight inspired roof hovering over the development, a wet edge pool &amp; communal spaces, and the township below.</li> </ul> <p>The materials used on the elevations are modern, durable and provide visual interest. They add to the articulation of the building by breaking up large areas with material changes, alternative materials are used for balconies (some solid and some metal) and assist in defining the major components of the building (base, middle and top).</p>

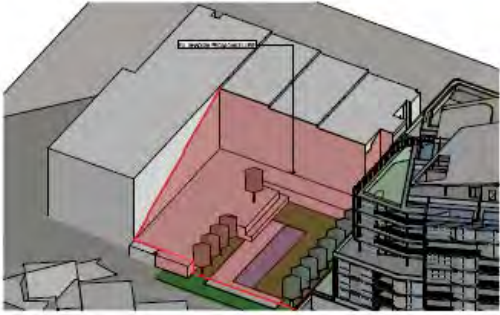
#### **Apartment Design Guide (ADG) Assessment**

The ADG provides consistent planning and design standards for apartments across the State.

It provides design criteria and general guidance about how development proposals can achieve the nine design quality principles identified in SEPP 65. Table 3 below contains an assessment of the proposal against the relevant controls.

**Table 3: Apartment Design Guide Assessment**

Control / Requirement	Compliance/Comment
<b>3A-1 – Site analysis</b>  Site analysis illustrates that design decisions have been based on opportunities and constraints of the site conditions and their relationship to the surrounding context.	A site analysis plan was provided outlining the existing site conditions and constraints.
<b>3B-1 Orientation</b>  Building types and layouts respond to the streetscape and site while optimising solar access within the development.	The development site runs lengthwise on a north-south axis. The building is orientated on an angle to maximise eastern and northern exposure and views towards Nelson Bay.
<b>3B-2 Orientation</b>	<u>Winter Solstice (21 June)</u>

Control / Requirement	Compliance/Comment
Overshadowing of neighbouring properties is minimised during mid-winter.	<p>The Winter Solstice is the 'worst case scenario' for solar access throughout a calendar year.</p> <p>The Oaks Lure apartments overshadow its own communal space gradually from its inner western elevation from 12pm until 3pm, see Diagram 1. After 3pm, the whole communal space is overshadowed. Prior to 3pm, some overshadowing occurs from the existing tall trees planted around the pool area.</p>  <p><b>Diagram 1:</b> Oaks Lure overshadowing 3pm mid-winter.</p> <p>The proposed new building will overshadow the Oaks Lure inner western elevation and approximately one third of the communal space at 9am. The overshadowing of the western elevation reduces as the day progresses. The overshadowing of the communal area is increased by the proposal (in addition to the Oaks own overshadowing) from 10am. This mainly impacts the pool area on the northern boundary and approximately half the outdoor area.</p> <p>18 Tomaree Street, which is to the south east of the site, is overshadowed partially from 1pm, which increases into the afternoon. To the north east, 61 Donald Street becomes partly overshadowed from 2pm onwards.</p> <p>The public domain along Church Street is overshadowed by the proposal from 9am to 11 am. Noting however, this area is already overshadowed by the existing Oaks Lure and Seaview Apartments.</p> <p><u>Summer Solstice (22 December)</u> The Summer Solstice is the 'best case scenario' for solar access throughout a calendar year.</p>

Control / Requirement	Compliance/Comment
	<p>The Oaks Lure apartments overshadow its own communal space gradually from its inner western elevation from 1pm until 5pm. After 5pm, the whole communal space is overshadowed.</p> <p>The proposed new building has minimal overshadowing of the Oaks Lure during the summer solstice due to the higher angle of the sun. The setback upper levels of the proposal allow for the sun to penetrate the ground plane for the Oaks Lure.</p> <p>18 Tomaree Street is negligibly overshadowed at 2pm, with two units being overshadowed at 3pm. The front of the Oaks Lure currently overshadows the front of 18 Tomaree Street from 3pm.</p> <p>61 Donald Street becomes overshadowed from 4pm onwards for a small southern portion of the building, which increases until sunset.</p> <p>The public domain along Church Street is overshadowed by the proposal at 9am to 10am and then ceases.</p> <p>The ADG design guidance outlines a proposed building should not decrease surrounding buildings solar access by more than 20%. As demonstrated, Oaks Lure is the main building affected.</p> <p>The additional overshadowing from the proposed building occurs in the morning between 9am to 12pm and affects a portion of the eastern facing units. Many of the eastern units are also dual aspect, having a frontage to the west/Church Street. Eleven of the 58 units will be impacted by additional overshadowing though not at the same time and this occurs on the eastern elevation. This would not result in a 20% increase from the proposed building.</p> <p>The proposal will increase the overshadowing of the Oaks Lure in winter, however the summer months are only impacted to a minor scale. Considering the Oaks Lure is tourist and residential accommodation, solar access is more vital in the summer months with higher tourist rates. It is unlikely the pool area would be utilised to the same extent in mid-winter due to the weather and existing overshadowing occurring.</p> <p>Considering the overshadowing documentation provided with the application, the increase of overshadowing on the surrounding properties and</p>

Control / Requirement	Compliance/Comment
	public domain from the proposal is not considered to adversely impact the amenity of adjacent buildings to an unacceptable level. The documentation has demonstrated that these buildings already overshadow the internal communal areas currently based on the existing built form.
<p><i>3C-1 Public Domain Interface</i></p> <p>Transition between private and public domain is achieved without compromising safety and security.</p>	<p>The vehicular and pedestrian entries to the building are clearly defined along the Church Street frontage. The landscaping structures and planting direct people throughout the spaces, and have been designed to avoid areas of concealment.</p> <p>Fencing is provided for the properties on the ground level facing Church Street and are also elevated to provide a good buffer and delineation between public and private space.</p>
<p><i>3C-2 Public Domain Interface</i></p> <p>Amenity of the public domain is retained and enhanced.</p>	<p>The proposed landscaping enhances the natural environment and streetscape. There are multiple trees proposed in the public verge as well as throughout the forecourt that will increase the amenity of the street.</p> <p>There are two main vehicle entries to the site along Church Street, which are clearly defined but conceal the park from visually impacting the streetscape.</p>
<p><i>3D-1 Communal and Public Open Space</i></p> <p>An adequate area of communal open space is provided to enhance residential amenity and to provide opportunities for landscaping.</p> <p>Numerical design criteria:</p> <ul style="list-style-type: none"> <li>Communal open space has a minimum area equal to 25% of the site area.</li> <li>Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9am and 3pm on 21 June (midwinter).</li> </ul>	<p>The communal open space is provided on Ground Level, Level 1 and Level 8.</p> <p>Ground Level provides 469.1m<sup>2</sup>, Level 1 provides 697.8m<sup>2</sup> and Level 8 provides 267.7m<sup>2</sup>.</p> <p>This provides a total of 1,434.6m<sup>2</sup> or 31% communal space, compliant with the 25% minimum requirement.</p> <p>The communal open space located to the north-east, will receive at least 3 hours sunlight to more than 50% of the area during mid-winter satisfying the requirements of the ADG.</p>
<p><i>3D-2 Communal and Public Open Space</i></p> <p>Communal open space is designed to allow for a range of activities, respond to</p>	<p>The design incorporates a mini golf course, outdoor yoga area, walking track and outdoor gym equipment in the ground level communal space to attract residents and provide opportunities for social interaction.</p>

Control / Requirement	Compliance/Comment						
site conditions and be attractive and inviting							
<p><i>3D-3 Communal and Public Open Space</i></p> <p>Communal open space is designed to maximise safety.</p>	<p>The communal open space on the Ground Level will be overlooked by the eastern facing units.</p> <p>The western facing units will overlook the forecourt. The top level communal area, which includes a pool, is not overlooked due to buffers being provided between the space and the adjacent residential units to reduce noise and overlooking into private areas. It is considered the top level communal space can still remain safe as it is an open design with little opportunity for concealment.</p>						
<p><i>3D-4 Communal and Public Open Space</i></p> <p>Public open space, where provided, is responsive to the existing pattern and uses of the neighbourhood.</p>	Public open space is provided in the western frontage along Church Street as a gesture to the street. There is currently no public open space or existing pattern along Church Street that is similar to the proposed, however, the forecourt area is a positive change in this streetscape.						
<p><i>3E-1 Deep Soil Zones</i></p> <p>Deep soil zones provide areas on the site that allow for and support healthy plant and tree growth. They improve residential amenity and promote management of water and air quality.</p> <p>Numerical design criteria:</p> <ul style="list-style-type: none"> <li>• Site area greater than 1,500 m<sup>2</sup> – minimum dimension 6m and 7% of site area.</li> </ul> <p>However, the design criteria may not be possible on some sites including:</p> <ul style="list-style-type: none"> <li>• Central business district.</li> <li>• Constrained sites.</li> <li>• High density areas.</li> <li>• Commercial centres.</li> <li>• Where there is 100% site coverage or non-residential uses at ground floor.</li> </ul>	The site provides 12.16% of the landscaped area as a deep soil zone, more than the 7% minimum requirement.						
<p><i>3F-1 Visual Privacy</i></p> <p>Adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy.</p>	<table border="1"> <thead> <tr> <th>ADG Requirement</th><th>Proposed</th></tr> </thead> <tbody> <tr> <td>Building height up to 12m</td><td>(4 storeys):</td></tr> <tr> <td>Habitable rooms and balconies - 6m.</td><td>0m to 6m. See below comments for further details.</td></tr> </tbody> </table>	ADG Requirement	Proposed	Building height up to 12m	(4 storeys):	Habitable rooms and balconies - 6m.	0m to 6m. See below comments for further details.
ADG Requirement	Proposed						
Building height up to 12m	(4 storeys):						
Habitable rooms and balconies - 6m.	0m to 6m. See below comments for further details.						

Control / Requirement	Compliance/Comment	
Numerical design criteria: <ul style="list-style-type: none"> <li>Building height up to 12m (4 storeys):               <ul style="list-style-type: none"> <li>Habitable rooms and balconies - 6m.</li> <li>Non-habitable rooms – 3m.</li> </ul> </li> <li>Building height up to 25 metres (5-8 storeys):               <ul style="list-style-type: none"> <li>Habitable rooms and balconies - 9m.</li> <li>Non-habitable rooms – 4.5m.</li> </ul> </li> <li>Building height over 25m (9+ storeys):               <ul style="list-style-type: none"> <li>Habitable rooms and balconies - 12m.</li> <li>Non-habitable rooms – 6m.</li> </ul> </li> <li>No separation is required between blank walls.</li> <li>An additional 3 m separation is required when adjacent to a different zone, which permits lower density residential development to provide a transition in scale and increased landscaping.</li> </ul>	Non-habitable rooms – 3m	NA
	Building height up to 25 metres (5-8 storeys):	
	Habitable rooms and balconies - 12m.	4.5m to 9m See below comments for further details.
	Non-habitable rooms – 6m.	
	Building height over 25m (9+ storeys):	
	Habitable rooms and balconies - 12m.	8.7m to 14m. See below comments for further details.
	No separation is required between blank walls.	No separation towards elevations with blank walls.
	An additional 3 m separation is required when adjacent to a different zone, which permits lower density residential development to provide a transition in scale and increased landscaping.	NA
<p>The building provides a minimum 6m side setback to the eastern portion of the southern boundary for the first three levels and a 9m setback for levels 4 to 8.</p> <p>There is a zero lot setback on the south west and north west corner elements of the building fronting Church Street for levels 1 to 3, and a 4.5m to 8.7m setback for the remaining upper levels on the respective boundaries.</p> <p>The adjacent rooms are habitable (with no windows, doors or balconies) though are blank facades which can be considered to not require separation., the zero lot setback is adjacent to the service stairs and blank façade of the Oaks Lure (south of site) and Seaview Apartments (north of site), therefore results in no amenity impact in terms of visual privacy.</p> <p>The eastern (rear of building) aspect of the building is setback from 5.6m to 35.4m from the boundary due to the angle of the building. These setbacks provide adequate separation to the eastern neighbours.</p>		

Control / Requirement	Compliance/Comment
	Councils UDP supported the building separation and concluded the visual privacy was acceptable with regard to the ADG.
<p><i>3F-2 Visual Privacy</i></p> <p>Site and building design elements increase privacy without compromising access to light and air and balance outlook and views from habitable rooms and private open space.</p>	There are three ground floor units along Church Street, which have been raised to have adequate separation and privacy from the street. The private open space and windows are adequately separated from the communal areas and common circulation areas with retaining, fencing and landscaping.
<p><i>3G-1 Pedestrian Access and Entries</i></p> <p>Building entries and pedestrian access connects to and addresses the public domain.</p>	Two vehicle entries and two pedestrian entries are located along the western frontage to Church Street, which connects from the public domain.
<p><i>3G-2 Pedestrian Access and Entries</i></p> <p>Access, entries and pathways are accessible and easy to identify.</p>	The Landscape Plan includes paving and defined plantings to indicate the main entrance to the building. This makes the entrance easy to identify.
<p><i>3G-3 Pedestrian Access and Entries</i></p> <p>Large sites provide pedestrian links for access to streets and connection to destinations.</p>	Pedestrian links are clearly provided from the entries to the public domain and existing pathways along Church Street.
<p><i>3H-1 Vehicle Access</i></p> <p>Vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes.</p>	Two vehicle entries are proposed off the western frontage to Church Street. These are located on the opposite ends of the building and separated from the main pedestrian entry, which is centrally located along the frontage. This configuration allows the pedestrian entry and forecourt area to be centralised and provide an attractive connection to the streetscape avoiding the fragmentation multiple vehicle entries can create.
<p><i>3J-1 Bicycle and Car Parking</i></p> <p>Car parking is provided based on proximity to public transport in metropolitan Sydney and centres in regional areas.</p> <p>Numerical design criteria:</p> <ul style="list-style-type: none"> <li>• on sites that are within 800m of a railway station or light rail stop in the Sydney Metropolitan Area; or</li> <li>• on land zoned, and sites within 400m of land zoned, B3 Commercial Core,</li> </ul>	The off-street parking provided is compliant with the requirements of the DCP.



Control / Requirement	Compliance/Comment
<p>B4 Mixed Use or equivalent in a nominated regional centre</p> <p>The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever less.</p> <p>The car parking need for a development must be provided off-street.</p>	
<p><i>3J-2 Bicycle and Car Parking</i></p> <p>Parking and facilities are provided for other modes of transport.</p>	<p>There are eight motorcycle spaces provided on the lower ground floor. No bicycle parking is provided.</p> <p>A bicycle rack will be conditioned to be included on the ground floor level.</p>
<p><i>3J-3 Bicycle and Car Parking</i></p> <p>Car park design and access is safe and secure</p>	<p>There is a waste and recycling storage area provided adjacent to the lift on the ground level.</p> <p>The main waste sorting and collection area is on the lower ground level, which can be accessed from the lifts or stair wells and does not require travel over car spaces or across ramps.</p>
<p><i>3J-4 Bicycle and Car Parking</i></p> <p>Visual and environmental impacts of underground car parking are minimised.</p>	<p>The basement car park provides a logical grid design. The car park is located to the east of the building, with only the vehicle access visible along Church Street.</p>
<p><i>3J-5 Bicycle and Car Parking</i></p> <p>Visual and environmental impacts of on-grade car parking are minimised.</p>	<p>Car parking is provided in the basement, not on-grade.</p>
<p><i>3J-6 Bicycle and Car Parking</i></p> <p>Visual and environmental impacts of above ground enclosed car parking area minimised.</p>	<p>No above ground car parking is proposed.</p>
<p><i>4A-1 Solar and Daylight Access</i></p> <p>To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space.</p>	<p>Most units in the building are dual aspect.</p> <p>The units central to the building utilise the north-eastern orientation and include the main living area, a bedroom and a balcony on the north-east to optimise solar access. This provides solar exposure typically from 9am to 1pm.</p>

Control / Requirement	Compliance/Comment
<p>Numerical design criteria:</p> <ul style="list-style-type: none"> <li>In all other areas (i.e. areas outside Sydney metropolitan area, Newcastle and Wollongong local government areas), living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 3 hours direct sunlight between 9 am and 3 pm at mid-winter</li> <li>A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter.</li> </ul>	<p>The units on the northern corner all have optimal orientation, most with exposure north, east and west. This provides solar exposure to parts of the unit throughout the whole day.</p> <p>The units on the southern corner have either a western or an eastern orientation as well to optimise either morning or afternoon solar access into the unit. The western units gain solar access 1pm onwards and the eastern from 9am to 1pm.</p> <p>The solar access to the building has been maximised through the design and achieves a good outcome.</p>
<p><i>4A-2 Solar and Daylight Access</i></p> <p>Daylight access is maximised where sunlight is limited.</p>	<p>Sunlight access is abundant to the units due to their orientation. Daylight will also be available due to the height of surrounding developments, which do not create areas that will block or obstruct daylight.</p>
<p><i>4A-3 Solar and Daylight Access</i></p> <p>Design incorporates shading and glare control, particularly for warmer months.</p>	<p>The windows are generally setback from the balconies, which provides some shading from the roof, and also assists in glare control to reduce direct exposure, mainly on the east, north and west aspects. Louvres have been included on the western façade to manage evening glare.</p>
<p><i>4B-1 Natural Ventilation</i></p> <p>All habitable rooms are naturally ventilated.</p>	<p>All habitable rooms have openable windows providing natural ventilation. There are 'studies' included in some units which are not considered a room as they do not meet the BCA habitable room definition.</p>
<p><i>4B-2 Natural Ventilation</i></p> <p>The layout and design of single aspect apartments maximises natural ventilation.</p>	<p>Most units are dual aspect to allow cross ventilation. There are some units on the western façade orientated north with one aspect. For these single aspect units, the width of the unit has been maximised to allow large balconies and multiple rooms with openable windows and doors to achieve adequate ventilation.</p>
<p><i>4B-3 Natural Ventilation</i></p> <p>The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for Residents.</p> <p>Numerical design criteria:</p> <ul style="list-style-type: none"> <li>At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building.</li> </ul>	<p>More than 60% of the units have cross ventilation with dual or multiple aspects. The use of openable windows and sliding doors optimises natural ventilation.</p>

Control / Requirement	Compliance/Comment
<ul style="list-style-type: none"> <li>Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.</li> </ul>	
<p><i>4C-1 Ceiling Heights</i></p> <p>Ceiling height achieves sufficient natural ventilation and daylight access.</p> <p>Numerical design criteria: Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <ul style="list-style-type: none"> <li>Habitable rooms – 2.7m.</li> <li>Non-habitable rooms – 2.4m,</li> <li>Two storey apartments – 2.7m for main living area floor and 2.4 m for second floor where it does not exceed 50% of the apartment area.</li> <li>Attic spaces – 1.8m at the edge of the room with a 30 degree minimum ceiling slope.</li> <li>If located in mixed use areas – 3.3m for ground floor and first floor to promote future flexibility of use.</li> </ul>	<p>Each unit provides 2.7m ceilings throughout to the habitable and non-habitable rooms. Additional space is provided between the finished ceiling level and the under floor level of the slab above for services.</p> <p>The entry level, including the gym and neighbourhood shop have a floor to ceiling height of 3.13m. This is considered acceptable as the building is within an R3 zone and the bottom floor cannot be used for commercial premises, only resident related uses or the neighbourhood shop.</p>
<p><i>4C-2 Ceiling Heights</i></p> <p>Ceiling height increases the sense of space in apartments and provides for well-proportioned rooms.</p>	<p>The 2.7m ceiling heights provide a sense of space throughout the unit and provide well-proportioned rooms.</p>
<p><i>4C-3 Ceiling Heights</i></p> <p>Ceiling heights contribute to the flexibility of building use over the life of the building.</p>	<p>Greater ceiling heights are not required on the ground floor. The site is located in a R3 zoned area with no commercial ground floor uses permissible.</p>
<p><i>4D-1 Apartment Size and Layout</i></p> <p>The layout of rooms within an apartment is functional, well organised and provides a high standard of amenity.</p> <p>Numerical design criteria: Apartments are required to have the following minimum internal areas:</p> <ul style="list-style-type: none"> <li>Studio – 35 m<sup>2</sup></li> <li>One bedroom – 50 m<sup>2</sup></li> </ul>	<p>The units are achieve the minimum internal size required by the ADG as outlined below (excludes balconies):</p> <p>One bedroom – 59m<sup>2</sup>  Two bedroom – 92.9m<sup>2</sup>  Three bedroom – 135m<sup>2</sup>  Four bedroom – 180m<sup>2</sup></p> <p>These are all compliant with the required minimums.</p>

Control / Requirement	Compliance/Comment
<ul style="list-style-type: none"> <li>Two bedroom – 70m<sup>2</sup></li> <li>Three bedroom – 90m<sup>2</sup></li> <li>An additional 5m<sup>2</sup> is required for apartments with more than one bathroom.</li> <li>An additional 12m<sup>2</sup> is required for a fourth, and further additional bedrooms.</li> <li>Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.</li> </ul>	Each habitable room has a window included to comply with the BCA.
<p><i>4D-2 Apartment Size and Layout</i></p> <p>Environmental performance of the apartment is maximised.</p> <p>Numerical design criteria:</p> <ul style="list-style-type: none"> <li>Habitable room depths are limited to a maximum of 2.5 x the ceiling height.</li> <li>In open plan layout (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.</li> </ul>	Due to the open plan layout and multiple aspects of units, every habitable room complies with the habitable room depths and spacing from windows.
<p><i>4D-3 Apartment Size and Layout</i></p> <p>Apartment layouts are designed to accommodate a variety of household activities and needs.</p> <p>Numerical design criteria:</p> <ul style="list-style-type: none"> <li>Master bedrooms have a minimum area of 10m<sup>2</sup> and other bedrooms 9m<sup>2</sup> (excluding wardrobe space).</li> <li>Bedrooms have a minimum dimension of 3m (excluding wardrobe space).</li> <li>Living rooms or combined living/dining rooms have a minimum width of: <ul style="list-style-type: none"> <li>- One bedroom apartments - 3.6m.</li> <li>- Two or three bedroom apartments – 4m.</li> </ul> </li> <li>The width of cross-over or cross-through apartments are at least 4m</li> </ul>	<p>The master bedrooms are typically 12.9m<sup>2</sup>.</p> <p>Each bedroom has a minimum dimension of 3m excluding the built in robes or walk in robes.</p> <p>The open plan living and dining areas have a minimum width of 4m, compliant with the requirement.</p> <p>No units are less than 4m wide.</p>

Control / Requirement	Compliance/Comment
internally to avoid deep narrow apartment layouts.	
<p><i>4E-1 Private Open Space and Balconies</i></p> <p>Apartments provide appropriately sized private open space and balconies to enhance residential amenity.</p> <p>Numerical design criteria – all apartments are required to have primary balconies as follows:</p> <ul style="list-style-type: none"> <li>• Studio apartments – 4m<sup>2</sup>.</li> <li>• One bedroom apartments – 8m<sup>2</sup> with a depth of 2m.</li> <li>• Two bedroom apartments – 10m<sup>2</sup> with a depth of 2m.</li> <li>• Three + bedroom apartments – 12m<sup>2</sup> with a depth of 2.4m.</li> <li>• For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m<sup>2</sup> and a minimum depth of 3m</li> </ul>	<p>The units provide the following primary balcony sizes at a minimum:</p> <p>One bedroom – 8.4m<sup>2</sup>  Two bedroom – 10.5m<sup>2</sup>  Three bedroom – 9.5m<sup>2</sup> (second balcony 6.8m<sup>2</sup>)  Four bedroom – 21.5m<sup>2</sup></p> <p>Three of the 3 bedroom units do not comply with the 12m<sup>2</sup> on one balcony, however each has a second balcony, which is considered a suitable alternative.</p> <p>None of the balconies are less than 2m deep. The three Ground Level units have private paved terraces and turfed courtyards that are a minimum combined area of 48.4m<sup>2</sup>.</p> <p>The private open space and balconies provided generally comply with the ADG requirements.</p>
<p><i>4E-2 Private Open Space and Balconies</i></p> <p>Primary private open space and balconies are appropriately located to enhance liveability for residents.</p>	<p>All balconies are accessed from the main living area, and several are provided access from a bedroom as well, achieving good useability and functionality of private open space areas.</p>
<p><i>4E-3 Private Open Space and Balconies</i></p> <p>Private open space and balcony design is integrated into and contributes to the overall architectural form and detail of the building.</p>	<p>The balconies have either a soft bronze matte metal balustrade or blonde brick balustrade. This allows view corridors through the balcony but retains a sense of separation and privacy that glass balustrades do not provide.</p> <p>The two balustrade types are an attractive addition to the elevations and sympathetic to the overall architectural design.</p>

Control / Requirement	Compliance/Comment
<p><i>4E-4 Private Open Space and Balconies</i></p> <p>Private open space and balcony design maximises safety.</p>	<p>The design does not incorporate features that would encourage climbing of balconies.</p>
<p><i>4F-1 Common Circulation and Spaces</i></p> <p>Common circulation spaces achieve good amenity and properly service the number of apartments.</p> <p>Numerical design criteria:</p> <ul style="list-style-type: none"> <li>For buildings less than ten storeys in height the maximum number of apartments off a circulation core on a single level is eight.</li> </ul>	<p>There are two separate lift cores, one servicing the south half of the building and the other the north half.</p> <p>The maximum amount of units serviced by one lift on each floor is 8.</p>
<p><i>4F-2 Common Circulation and Spaces</i></p> <p>Common circulation spaces promote safety and provide for social interaction between residents.</p>	<p>There are two main entrances into the building. Each has a lobby area, which has the lifts in easy view.</p> <p>When exiting the lift there is a short sight line before the corner to the main corridor. Doors are easily visible and no areas of concealment are throughout.</p>
<p><i>4G-1 Common Circulation and Spaces</i></p> <p>Adequate, well designed storage is provided in each apartment.</p> <p>Numerical design criteria –in addition to storage in kitchens, bathrooms and bedrooms the following storage is provided:</p> <ul style="list-style-type: none"> <li>Studio apartments – 4m<sup>2</sup>.</li> <li>One bedroom apartments – 6m<sup>2</sup>.</li> <li>Two bedroom apartments – 8m<sup>2</sup>.</li> <li>Three + bedroom apartments – 10m<sup>2</sup>.</li> <li>At least 50% of the required storage is to be located within the apartment.</li> </ul>	<p>Each unit includes built in or walk-in robes in each bedroom. There is storage within the kitchen, with some kitchens having additional pantry storage. Many units have studies or walk in storage rooms.</p> <p>The proposed internal storage is adequate for the size of each unit.</p>
<p><i>4G-2 Common Circulation and Spaces</i></p> <p>Additional storage is conveniently located, accessible and nominated for individual apartments.</p>	<p>There is some storage proposed within the private car garages in the basements levels.</p> <p>There is communal storage provided on each level, ranging from 8.96m<sup>2</sup> to 30.10m<sup>2</sup>.</p>

Control / Requirement	Compliance/Comment												
<p><i>4H-1 Acoustic Privacy</i></p> <p>Noise transfer is minimised through the siting of buildings and building layout.</p>	<p>The building is adequately separated from the adjoining neighbours, reducing the transmission of noise emission between units.</p> <p>The car park is located in the basement, which may reduce the sound transmission compared to open air car parking. There are bedrooms located above the north western car park entrance, notwithstanding however, the design and materials used should mitigate nuisance noise from cars entering and exiting via that access.</p>												
<p><i>4H-2 Acoustic Privacy</i></p> <p>Noise impacts are mitigated within apartments through layouts and acoustic treatments.</p>	<p>Each unit concentrates the living and main trafficable areas together and the bedrooms and less trafficked areas together. This provides separation between the noisier and quieter areas of the home.</p>												
<p><i>4J-1 Noise and Pollution</i></p> <p>In noisy or hostile environments the impacts of external noise and pollution are minimised through the careful siting and layout of buildings.</p>	<p>The locality is primarily residential and commercial, and experiences higher traffic through the seasonal peaks due to its location near Nelson Bay Town Centre. However, the area is not considered a noisy or hostile environment and no additional treatment is considered necessary to mitigate against external noise impacts outside of the proposed building setbacks.</p>												
<p><i>4J-2 Noise and Pollution</i></p> <p>Appropriate noise shielding or attenuation techniques for the building design, construction and choice of materials are used to mitigate noise transmission.</p>	<p>The development is not located in an environment that causes adverse noise impacts, which need to be mitigated through further attenuation.</p>												
<p><i>4K-1 Apartment Mix</i></p> <p>A range of apartment types and sizes is provided to cater for different household types now and into the future.</p>	<p>The building proposes the following unit mix to cater for a range of household sizes:</p> <table border="1"> <thead> <tr> <th>Bedrooms</th><th>Quantity</th></tr> </thead> <tbody> <tr> <td>One bedroom units</td><td>5</td></tr> <tr> <td>Two bedrooms units</td><td>46</td></tr> <tr> <td>Three bedroom units</td><td>25</td></tr> <tr> <td>Four bedroom units</td><td>5</td></tr> <tr> <td><b>Total</b></td><td><b>81</b></td></tr> </tbody> </table>	Bedrooms	Quantity	One bedroom units	5	Two bedrooms units	46	Three bedroom units	25	Four bedroom units	5	<b>Total</b>	<b>81</b>
Bedrooms	Quantity												
One bedroom units	5												
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<b>Total</b>	<b>81</b>												
<p><i>4K-2 Apartment Mix</i></p> <p>The apartment mix is distributed to suitable locations within the building.</p>	<p>The larger units are concentrated towards the top of the building, with the one, two and three bedroom units primarily on the lower floors.</p>												

## ITEM 2 - ATTACHMENT 3 ORIGINAL PLANNERS ASSESSMENT REPORT.

Control / Requirement	Compliance/Comment
<p><i>4L-1 Ground Floor Apartments</i></p> <p>Street frontage is maximised where ground floor apartments are located.</p>	The ground floor unit is raised to provide more privacy.
<p><i>4L-2 Ground Floor Apartments</i></p> <p>Design of ground floor apartments delivers amenity and safety for residents.</p>	The ground floor unit is raised to provide privacy to the residents, but still provides ample opportunity for passive surveillance.
<p><i>4M-1 Facades</i></p> <p>Building facades provide visual interest along the street while respecting the character of the local area.</p>	<p>The building has been thoughtfully designed to include visual interest on all elevations. The western façade to Church Street has been designed to provide an inviting entrance with an indented forecourt, range of landscaping and mixture of materials.</p> <p>The other elevations all use a combination of materials and stepping in of building.</p> <p>Councils UDP were supportive of the aesthetic design of the facades.</p>
<p><i>4M-2 Facades</i></p> <p>Building functions are expressed by the façade.</p>	The pedestrian entry and vehicle entry are both clearly defined along the frontage of Church Street.
<p><i>4N-1 Roof Design</i></p> <p>Roof treatments are integrated into the building designed and positive respond to the streets.</p>	The roof structure is a flat form with overhang elements. It allows the roof to be setback in from the elevations reducing height and bulk.
<p><i>4N-2 Roof Design</i></p> <p>Opportunities to use roof space for residential accommodation and open space are maximised.</p>	Ample undercover and open communal space is provided on the roof.
<p><i>4N-3 Roof Design</i></p> <p><i>Roof design incorporates sustainability features.</i></p>	The roof design does not hinder the solar access to the units.



Control / Requirement	Compliance/Comment
<p><i>4O-1 Landscape Design</i></p> <p>Landscape design is viable and sustainable.</p>	<p>A Landscape Plan has been provided, which incorporates an environmentally sustainable and maintainable design.</p>
<p><i>4O-2 Landscape Design</i></p> <p>Landscape design contributes to the streetscape and amenity.</p>	<p>The landscaping will contribute to the natural environment along Church Street. The planting will be a positive addition to the streetscape, which is currently underutilised.</p>
<p><i>4P-1 Planting on Structures</i></p> <p>Appropriate soil profiles are provided.</p>	<p>The planting proposed was assessed as adequate by the UDP.</p>
<p><i>4P-2 Planting on Structures</i></p> <p>Plant growth is optimized with appropriate selection and maintenance.</p>	<p>The planting proposed was assessed as adequate by the UDP.</p>
<p><i>4P-3 Planting on Structures</i></p> <p>Planting on structures contributes to the quality and amenity of communal and public open spaces.</p>	<p>The planting proposed will create a quality environment for the public and private spaces.</p>
<p><i>4Q-1 Universal Design</i></p> <p>Universal design features are included in apartment design to promote flexible housing for all community members.</p> <p>Numerical design criteria:</p> <ul style="list-style-type: none"> <li>• A benchmark of 20% of the total apartments incorporate the Liveable Housing Guidelines silver level universal design features.</li> </ul>	<p>Every apartment (100%) will incorporate the Liveable Housing Guideline's silver level universal design features.</p>
<p><i>4Q-2 Universal Design</i></p> <p>A variety of apartments with adaptable designed are provided.</p>	<p>Every apartment (100%) will incorporate the Liveable Housing Guideline's silver level universal design features.</p>

Control / Requirement	Compliance/Comment
<p><i>4Q-3 Universal Design</i></p> <p>Apartment layouts are flexible and accommodate a range of lifestyle needs.</p>	<p>Every apartment (100%) will incorporate the Liveable Housing Guideline's silver level universal design features.</p>
<p><i>4R-1 Adaptive Reuse</i></p> <p>New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.</p>	<p>Not applicable.</p>
<p><i>4R-2 Adaptive Reuse</i></p> <p>Adapted buildings provide residential amenity while not precluding future adaptive reuse.</p>	<p>Not applicable.</p>
<p><i>4S-1 Mixed Use</i></p> <p>Mixed use developments are provided in appropriate locations and provide active street frontages that encourage pedestrian movement.</p>	<p>The forecourt design clearly defines the location of the neighbourhood shop and public space and where the private space begins at the residential entries.</p>
<p><i>4S-2 Mixed Use</i></p> <p>Residential levels of the building are integrated within the development, and safety and amenity is maximised for residents.</p>	<p>The ground level is designed to clearly define the area of the neighbourhood shop from the resident entries.</p>
<p><i>4T-1 Awnings and Signage</i></p> <p>Awnings are well located and complement and integrate with the building design.</p>	<p>No awnings are proposed.</p>
<p><i>4T-2 Awnings and Signage</i></p> <p>Signage responds to the context and desired streetscape character.</p>	<p>No signage is proposed.</p>
<p><i>4U-1 Energy Efficiency</i></p> <p>Development incorporates passive environmental design.</p>	<p>Adequate natural light and ventilation is provided to each unit.</p>

## ITEM 2 - ATTACHMENT 3 ORIGINAL PLANNERS ASSESSMENT REPORT.

Control / Requirement	Compliance/Comment
<b>4U-2 Energy Efficiency</b>  Development incorporates passive solar design to optimise heat storage in winter and reduce heat transfer in summer.	The development will comply with the BASIX requirements as required.
<b>4U-3 Energy Efficiency</b>  Adequate natural ventilation minimises the need for mechanical ventilation.	Natural ventilation is ample throughout all units due to the openable windows, door location and aspect orientation of units.
<b>4V-1 Water Management and Conservation</b>  Potable water use is minimised.	Water fixtures complying with BASIX requirements will be installed.
<b>4V-2 Water Management and Conservation</b>  Urban stormwater is treated on site before being discharged to receiving waters.	A stormwater drainage plan has been provided which provides for water re-use.
<b>4V-3 Water Management and Conservation</b>  Flood management systems are integrated into the site design.	The site is not flood affected.
<b>4W-1 Waste Management</b>  Waste storage facilities are designed to minimise impacts on the streetscape, building entry and amenity of residents.	A bin storage area is located in the basement and out of view of the street. A private contractor will collect waste from within the car park and lot along the street.
<b>4W-2 Waste Management</b>  Domestic waste is minimised by providing safe and convenient source separation and recycling.	Each kitchen has a waste storage area to be used prior to placing in the council bins in the basement carpark.
<b>4X-1 Building Maintenance</b>  Building design detail provides protection from weathering.	The designer has used materials that are durable and easily maintained or can be replaced if required.

Control / Requirement	Compliance/Comment
<b>4X-2 Building Maintenance</b>  Systems and access enable ease of maintenance.	Windows and glass doors can be cleaned from the balconies or internally where required.  External scaffolding should not be required to carry out general upkeep of the building.
<b>4X-3 Building Maintenance</b>  Material selection reduces ongoing maintenance costs.	The building uses render and cladding as the primarily external materials. These can be easily maintained and should stand the general wear and tear the building will receive.

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

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

The proposed development is defined as a Residential Flat Building and Neighbourhood Shop with ancillary café.

The residential flat building and neighbourhood shop are permissible in the R3 zone. Cafes, which are defined as food and drinks premises are prohibited in the zone.

The applicant proposes that the café is considered an ancillary use to the neighbourhood shop. The definition of a neighbourhood shop is defined as:

*‘means premises used for the purposes of selling general merchandise such as foodstuffs, personal care products, newspapers and the like to provide for the day-to-day needs of people who live or work in the local area, and may include ancillary services such as a post office, bank or dry cleaning, but does not include neighbourhood supermarkets or restricted premises’.*

It is considered that the café can be considered an ‘ancillary service’ as it does assist in meeting the day to day needs of people who live in the building.

The café will be restricted to operate in the same hours of the neighbourhood shop to ensure that it remains ancillary.

The proposed gym within the building is considered ancillary to the residential flat building. It will be used only by the residents as a communal facility, similar to the outdoor equipment. It will be conditioned that this space is only to be used only by the building residents and cannot be for commercial use.

Considering the above, the development is permissible in the zone.

The development addresses the objectives of the zone as it provides for the housing needs of the community by providing 81 additional homes.

The units vary in size, which caters for several household types in a medium density setting. The neighbourhood shop with ancillary café will assist in providing a desirable service to meet the day to day needs of residents.

Due to this, the development is consistent with the objectives of the zone.

#### **Clause 2.7 – Demolition requiring development consent**

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

No demolition is proposed. The applicant proposes to utilise the existing basement and foundations existing on site.

#### **Clause 4.1 – Minimum Subdivision Lot Size**

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

This clause does not apply in relation to the subdivision of any land by the registration of a strata plan or strata plan of subdivision under the Strata Schemes Development Act 2015.

The lot is also proposed to be consolidated which can occur without consent as it will be above the minimum lot size.

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

Clause 4.1B specifies the minimum lot size required to facilitate development for the purposes of dual occupancies, multi dwelling housing and residential flat buildings in order to achieve planned residential density in certain zones. The site is zoned R3 and requires a minimum lot size of 450m<sup>2</sup>.

The subject site has a total area of approximately 4628.79m<sup>2</sup>, which provides sufficient area to facilitate the proposed development, in accordance with the requirements of this clause.

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

The site has a mapped maximum building height of 28m. The proposed development is 32.18m. This represents a variation of 4.18m or 14.9% above the maximum building height.

The applicant submitted a Clause 4.6 exception to development standard request, to support the variation. A detailed assessment is contained within the Clause 4.6 Assessment Report attached to this report.

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

The applicant submitted a Clause 4.6 exception to development standard request, to support the variation for an increase in the building height proposed on site. The building height proposed is 32.18 m, which is 4.18m above the maximum 28m mapped onsite.

An assessment of the applicant Clause 4.6 request was conducted and is included in **Attachment 1** of this report. The assessment concluded that there is merit in applying flexibility to this development standard in this instance and the proposed height variation is supported.

#### **Clause 5.4 Controls relating to miscellaneous permissible uses**

The floor area of a neighbourhood shop under this plan must not include a retail area, which exceeds 100m<sup>2</sup>. The proposed neighbourhood shop is 99.7m<sup>2</sup>.

#### **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 works within 500m of adjacent Class 1, 2, 3 or 4 land that is below 5m Australian Height Datum and by which the water table is likely to be lowered. Most of the excavation has already occurred on site and there are no known issues of acid sulfate soil exposure.

#### **Clause 7.2 – Earthworks**

The development incorporates earthworks (cut) to a depth of 3.8m below ground level to establish the basement car park. The large amount of earthworks have already been commenced under DA 16-2016-631-1 through the existing foundations on site. The earthworks are not anticipated to result in any negative impacts on the subject or adjoining land, or any public place, noting that all

boundaries will be suitably stabilised by structurally designed walls with adequate drainage during and at completion of the works.

#### **Clause 7.6 – Essential Services**

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

There is no tree removal proposed as part of the application.

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

The subject site is not on land or is within 500m of land that contains items of environmental significance; such as threatened species or communities, listed migratory species, wildlife corridors, wetlands or riparian corridors and has the potential to affect biodiversity. It also is not seeking to use biodiversity offsets; or located on land containing noxious weeds; or located on or is in proximity to land that contains koala habitat.

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

##### **Acid Sulfate Soils**

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

##### **Noise**

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

##### **Earthworks**

As discussed at clause 7.2 above, the proposed development involves 3.8m of additional cut on site. The impacts of the proposed earthworks can be mitigated through conditions of consent. The proposal is therefore consistent with requirements outlined in Councils DCP relating to earthworks.

#### **Chapter B4 – Drainage and Water Quality**

A stormwater management plan was submitted with the application and includes adequate quality and quantity controls as required by Councils infrastructure technical specifications and DCP requirements. The stormwater drainage plan has been assessed as being consistent with the

Infrastructure Specification and a condition of consent has been included in the consent requiring the provision of detailed engineering plans, prior to the issue of a construction certificate.

#### **Chapter B5 – Flooding**

The site is not flood prone.

#### **Chapter B8 – Road Network and Parking**

The development provides a total of 159 car parking spaces.

#### **Residential Parking**

The following table outlines the required car parking under the DCP and the proposed parking.

<b>Bedrooms</b>	<b>DCP required car parking total</b>	<b>Provided car parking</b>
One bedroom x 5	5	5 (min)
Two bedroom x 46	46	46 (min)
Three bedroom x 25	50	50 (min)
Four bedroom x 5	10	16 (some have 4 spaces per unit)
Visitor parking (1 per 3 dwellings)	27	27
	<b>Total - 138</b>	<b>Total – 144</b>

#### **Gymnasium Parking**

The gym will only be for the use of the residents and not be open to the public. Considering this, parking is not required for the gym as residents are already provided with parking per unit allocation.

#### **Neighbourhood Shop & ancillary café parking**

The proposed neighbourhood shop and café tenancy is approximately 100m<sup>2</sup>.

Under Figure BU of the DCP, a neighbourhood shop requires 1 car space per 20m<sup>2</sup>. Cafes outside of commercial premises require 15 car spaces per 100m<sup>2</sup> of floor area and one must be an accessible space.

The shop is the dominate use on site and the café is ancillary. It is expected the café component will likely attract residents and staff from the building and pedestrian traffic from the area, more so than specific trips via car to the premises. Accordingly, a total of 5 car spaces are required to be dedicated to the neighbourhood shop with one needing to be an accessible space.

The proposal provides for 15 car spaces, including 2 accessible spaces dedicated to the neighbourhood shop and café. The parking provision for the neighbourhood shop and café is considered acceptable with regard to the DCP parking rates.

#### **Electric Vehicles**

There is one car park dedicated to electric vehicle charging shown in space '159' on the Ground Level.

Overall, the 159 car spaces the development provides is a sufficient amount of parking to service the residents and neighbourhood shop.

#### **Traffic Network**

The development has two main vehicle entries. It is proposed that all traffic will enter left (from the north) to the site and exit left (to the south) from the site along Church Street. This removes the ability for cars to queue along Church Street northbound to turn right into the development, potentially blocking traffic into Nelson Bay Centre. Signage will be conditioned to make it clear to motorists that entry and exit is to accord with this configuration.

SIDRA analysis was conducted as part of the Traffic Impact Assessment (TIA) prepared by Intersect Traffic, on the capacity of the road network to cater for the development. The main intersections impacted by the development will be the Nelson Bay Road / Stockton Street / Church Street roundabout intersection, the Church Street / Donald Street priority controlled give way sign T-intersection and the Government Road / Church Street roundabout intersection.

The modelling included a 1.5% background growth rate and assessed the intersections at their current design (as no upgrades are currently proposed). The modelling showed that all intersections are currently operating well within capacity and will continue to do so post development, at least through to 2031. There is no overall deterioration in level of service (LoS), with all remaining at LoS A, well within the acceptable criteria set by TfNSW. Average delays and 95 % back of queue lengths are only increased by less than 1 second and less than 2 vehicles through to 2031. It is therefore considered reasonable to conclude the development on the site will not adversely impact on these intersections nor on any other surrounding local and State road intersections.

On consideration of this analysis, the existing road network is capable of catering to the traffic increase generated from the development. Councils Traffic Engineer supported the analysis and findings of the TIA.

### Chapter C – Development Types

The proposed development is that of a residential flat building. As such, the assessment of the development is contained above in the SEPP 65 section of the report.

### Chapter D5 – Nelson Bay Centre

The development site is located within the land identified in Figure DI as Nelson Bay Centre. The site is specifically located in the Town Living and Commercial Precinct. Figure 8 shows the location of the site.

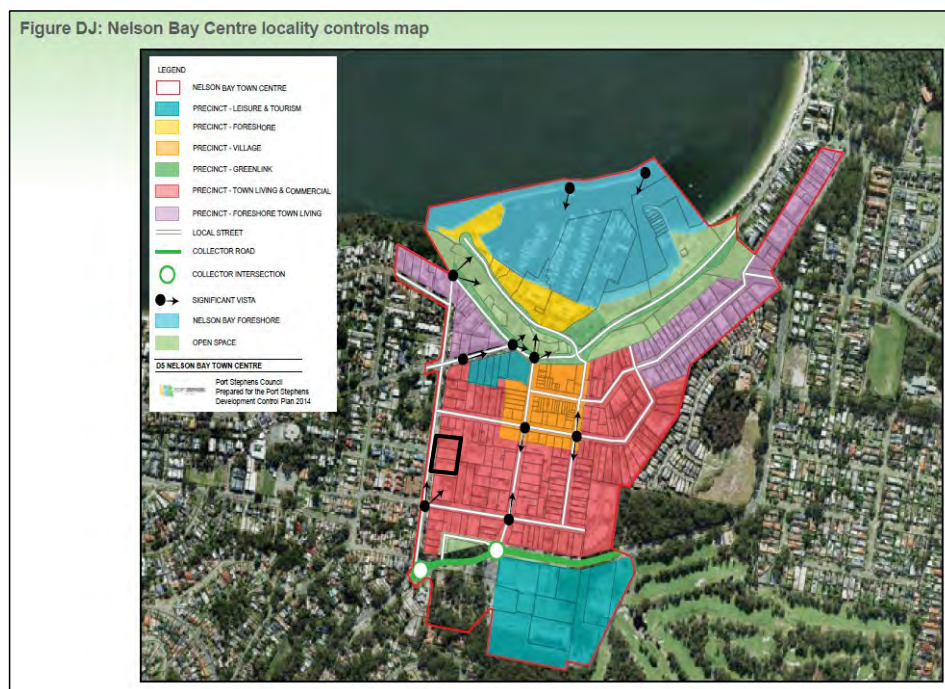


Figure 8: Site outlined in black.



Table 4: General Controls

Development Control	Requirement	Comment
D5.1 Significant vistas	Development preserves the important vistas identified by Figure DJ  Note: C1.13 requires street layout to respond to the topographical features of the site	The building does not block the significant vista outlined as running northbound along Church Street, Stockton Street or Yacaaba Street.
D5.2 Street layout	The street layout is consistent with Figure DJ  Note: C1.13 requires the street network to be interconnected to provide a grid-like structure	The development proposes no changes to the street network.
D5.3 Roof design	Development is to ensure that roof tops do not adversely impact on the public domain when: <ul style="list-style-type: none"> <li>• Viewed from buildings at higher elevations</li> <li>• When approaching the town centre</li> <li>• Viewed from the street</li> </ul> Note: C2.1 requires building height to be in accordance with the Local Environmental Plan clauses 4.3 and 5.6	The roof area is stepped back from the street wall of the building, removing any potential to dominate the skyline when approaching the town centre.
D5.4 NSW Coastal planning guidelines	Building materials are reflective of existing buildings with reference made to the Coastal Design Guidelines for NSW12  Note: C2.17 requires building facades to use materials, colours and architectural elements to reduce bulk and scale	The proposed building is a modern design, which will increase the quality and aesthetics of the streetscape. The existing surrounding built form is comprised of simple block forms with plain colours that do not add to the aesthetic quality of the street.  The proposed building includes a variety of materials and variation in wall setbacks and heights to create visual interest on each elevation. The materials are considered to be compatible in the coastal context. Moreover, the UDP supported the selected materials and finishes of the building.
D5.5 Design excellence	Development is to demonstrate design excellence, including:	An assessment of the development against the

Development Control	Requirement	Comment
	<ul style="list-style-type: none"> <li>Consistency with the desired character statements set out in this Part;</li> <li>Consideration of impacts on the public domain including views, overshadowing and the scale of the streetscape; and</li> <li>Architectural merit, for example by addressing local topography, the surrounding natural environment and waterways, green spaces, or vegetated ridgelines in the design of the development.</li> </ul> <p>Development in a prominent location and of a prominent scale, or where Council deems necessary, will be referred to the Urban Design Panel.</p> <p>Note: Applicants will be encouraged to consult with the Urban Design Panel prior to lodgement.</p>	<p>character statement is contained in Section D5.7.</p> <p>The development was reviewed by the UDP as outlined in previous sections of this report and endorsement provided for the designed.</p>

#### D5.C Desired character - Town Living and Commercial Precinct

The objectives of this section of the DCP are to:

- To provide character statements that were identified through the Nelson Bay Town Centre and Foreshore Strategy to guide development within the Town Living and Commercial Precinct as identified by Figure DJ
- To encourage a diversity of residential accommodation types to provide critical mass to support the role of the Village Precinct

#### D5.7 Desired character - Town Living and Commercial Precinct

Development within the Town Living and Commercial Precinct as identified on Figure DJ has regard for the following desired character statements:

**Table 5: Town Living and Commercial Precinct Controls**

Requirement	Comment
<ul style="list-style-type: none"> <li>A wide range of uses including residential, retail and business development will occur in the precinct. This will attract a range of housing types including residential flat buildings, multi dwelling housing and shop top housing</li> </ul>	<p>The proposal is a mixed-use development, which contains retail on the ground level in the form of the neighbourhood shop and ancillary café to cater to the public and buildings residents.</p> <p>The residential component is comprised of unit types varying from one bedroom to four bedrooms, catering for a range of household types and sizes.</p>

Requirement	Comment
<ul style="list-style-type: none"> <li>The precinct is appropriate for larger scale developments, with large footprints, that may not be suitable for the Village Precinct</li> </ul>	<p>The proposal is over two parcels of land, which provides a better composition of land for larger scale developments, in comparison to the design outcomes related to residential flat buildings on smaller sites. The larger footprint has enabled large communal spaces to be provided to residents and the design of a large high quality landscaped forecourt fronting Church Street, which will positively add to the streetscape.</p> <p>The density on site will support the housing required in the area without impacting on the desired scale of the Village Precinct.</p>
<ul style="list-style-type: none"> <li>The mix of uses may encourage residential living with live-work opportunities and boutique commercial office space</li> </ul>	<p>The size of the units, some which incorporate studies in addition to the one to four bedrooms, may encourage or cater to those wishing to have flexible work from home arrangements. This can aide in retaining residents within the Nelson Bay Centre increasing the opportunity for day to day spending at local cafes and retail premises, in comparison to existing housing options which may not grant that opportunity, requiring workers to leave the Nelson Bay area throughout the work day.</p>
<ul style="list-style-type: none"> <li>Development will have regard for adjacent precincts that provide a change in scale</li> </ul>	<p>The site abuts the Nelson Bay West Foreshore Precinct, and is surrounded by the Town Living and Commercial Precinct to the north, east and south.</p> <p>The proposal will provide a transition in building scale along Church Street and in this western area of the Precinct. The building is higher than the adjacent buildings to the north and south, noting the proposal presents as a compatible built form along the streetscape and is aligned with the desired scale of buildings in this area under the 'Nelson Bay Town Centre and Foreshore Strategy'.</p> <p>The design of the frontage along Church Street, which includes a landscaped forecourt on ground level, an articulated four storey street wall with setbacks at the upper storeys, creates a compatible interface with the lower scale development to the west.</p>
<ul style="list-style-type: none"> <li>Mature street plantings are to assist in enclosing the street for pedestrians and reducing the scale of large style buildings located in this area</li> </ul> <p>Note: C1.5 requires that street trees be provided in accordance with the tree technical specification 1</p>	<p>The Church Street frontage is landscaped with several large street trees on the public verge and within the forecourt area. These trees along with other low shrubs and the pedestrian layout in the frontage, provide elements at a human scale which can mitigate the visual scale and bulk of the building in the immediate vicinity.</p>

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

There are no other regulations applicable to the development.

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

The proposed development will contribute to the housing supply in Nelson Bay and is considered a positive social impact as it will provide for 81 new homes, which comprise a range of housing sizes to meet the needs of the community. The development includes communal areas on the Ground Level and Level 8, which will provide the opportunity for social interaction between residents.

During the construction phase, the development will generate more jobs in the locality and wider LGA. The neighbourhood shop and ancillary café will be staffed at an ongoing capacity, which will generate jobs, as may the strata management, waste collection and maintenance of the building.

**Impacts on the Built Environment**

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

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

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

**Impacts on the Natural Environment**

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

There are weeds present on site, which will be removed once construction commences. On these grounds, the development will not have an adverse impact on the natural environment.

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

The subject site is an abandoned building site currently underutilised within the Nelson Bay Centre.

The development provides for 81 new dwellings in addition to a neighbourhood shop which satisfies the objectives of the R3 Medium Density zone. The location is within an area identified for high density residential development, and will provide a development consistent the objectives of the LEP and Nelson Bay Centre as outlined in the DCP and 'Nelson Bay Town Centre and Foreshore Strategy'.

It is therefore considered that this site is suitable for the proposed development.

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

The application was exhibited from 7 September 2021 to 21 September 2022, in accordance with the provisions of the Port Stephens Council Community Engagement Strategy. There were 108 submissions received during this period.

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


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

**Table 6: Summary of public submissions**

No	Issue	Council Response
1	Building Height - Non-compliance with LEP height	<p>The proposed building is 4.18m over the maximum building height.</p> <p>Clause 4.6 is a mandatory development standard required in all LEPs in NSW. The existence of this clause is to ensure that flexibility can be applied to development standards where the proposed variation can provide a better outcome than remaining compliant with the development standard based on environmental planning grounds.</p> <p>The proposed design results in a better planning outcome on-site despite the variation, with increased setbacks and improved amenity and urban design impacts, thus the development is appropriate for the context and character of the area. All other design principles and FSR controls have generally been complied with. On these grounds, Council staff and the UDP have recommended approval of the development.</p> <p>A more detailed assessment with regard to building height can be found in Attachment 1 – Clause 4.6 Assessment Report.</p>
2	Overshadowing	<p>The architect was requested to provide detailed 3D modelling of the overshadowing impact in the form of a cross-analysis between the currently approved buildings on site that could be constructed under the existing consent and the proposed building under this application. The critical overshadowing considerations related to the overshadowing of the Oaks Lure site to the south, 18 Tomaree Street and 61 Donald Street to the east and the public domain (Church Street) to the west.</p> <p>Moreover, plans were also provided which showed the overshadowing of the existing approved buildings on 11-17 Church Street, to enable a comparison between the difference of impact under previously approved buildings and that proposed under this application.</p> <p>Considering the overshadowing documentation provided, the increase of overshadowing on the surrounding properties and public domain is resulting from the proposed development is considered acceptable. The documentation has demonstrated that these buildings already overshadow respective internal site areas, including communal open spaces and pools. Reducing the height of the building to the maximum LEP height of 28m would have minimal to no change on the existing state of overshadowing as the portion of the proposed building that overshadows the Oaks Lure is compliant with the LEP height and</p>

No	Issue	Council Response
		<p>setback controls. As the Level 8 internal space/roof is setback considerably, these elements do not cast a shadow that extends onto the Oaks Lure site.</p> <p>The proposal will however increase the overshadowing of the Oaks Lure in winter, noting however, the summer months are only impacted to a minor extent. It is unlikely the pool area would be as well utilised in the mid-winter due to seasonal conditions and existing overshadowing occurring.</p> <p>It is therefore considered that the overshadowing impact and the proposal can be supported.</p> <p>A detailed assessment of overshadowing is contained in Table 3 in this report.</p>
3	View Loss - View loss impact business and owner returns	<p>View loss from the Oaks Lure was raised as an issue and has been addressed below this table with regard to the Land and Environment Court view sharing planning principles.</p> <p>View loss was also raised by some other residents to the west of the building.</p> <p>As outlined in the view sharing assessment below, view loss will occur and impact certain dwellings more than others, however this impact is reasonable considering compliance with the setback controls and view sharing principles is achieved. The height of the building is not an issue with regard to view loss as a compliant building 28m height would still obstruct the views to the water.</p>
4	Visual impact on locality	<p>The applicant's Visual Impact Assessment (VIA) assessed the view impact of the proposal on the broader locality.</p> <p>The Urban Design Analysis that accompanied the Nelson Bay Town Centre Strategy, identified that a primary view corridor exists from the water, looking south along Stockton Street towards Kurrara Hill. The proposed development has no impact on that view corridor remaining.</p> <p>At a human scale, when pedestrians are traversing the Nelson Bay Centre, primarily the village area bound by Stockton Street, Victoria parade, Yacaaba Street and Tomaree Street, the existing buildings will block the view towards the proposed development when viewed from people on the ground. This is represented in the VIA.</p> <p>The main visibility of the building from pedestrians and in the local context is along Church Street, and the view lines between buildings on Donald Street and Government Road. The building will blend into the scale of built form in those views and not obstruct identified vistas towards Kurrara Hill.</p>

No	Issue	Council Response
		 <p><b>View 1:</b> View from carpark on Government Road next to Little Nel Café towards the site. Crane indicates sites location.</p>  <p><b>View 2:</b> View from Donald Street. In forefront is Seaview Apartments and to the rear is Oaks Lure. Crane indicates sites location.</p> <p>The proposed building will be visible from the water (on boats or from the marinas wharf) as the distance provides an expansive view of the headlands and the town centre. Notwithstanding, a compliant building height would still be perceptible from the water, as are other buildings that exist in the Nelson Bay Town Centre.</p>

No	Issue	Council Response
		 <p><b>View 3:</b> View from marina. Red box shows the render of the building in the context.</p> <p>As can be observed from View 3, multiple existing high rise buildings are visible from the water viewpoint, and the proposal does not detract or remove the ability to view Kurrara Hill.</p> <p>Accordingly, the scale of the building does not detract from the existing visual quality or scenic amenity of Nelson Bay to a greater extent than the existing built form.</p>
5	<p>Bulk and scale</p> <ul style="list-style-type: none"> <li>- Excessive bulk on lower levels</li> <li>- Overall scale and impacts creating overshadowing</li> </ul>	<p>Veloshin v Randwick Council [2007] NSWLEC 428 is the established planning principle in the assessment of height, bulk and scale. The principle states:</p> <p><i>“While bulk and scale tend to be used interchangeably, strictly speaking, bulk refers to the mass of a building and scale is properly used only when referring to the relative size of two or more things. When scale is used to mean apparent size, it is better to use those words. When scale is used to denote the character of an area, it is better to use that word. All the above are highly subjective terms, since a building that one person perceives as too big, another person finds appropriately sized”.</i></p> <p>There are six questions posed to guide whether the bulk and scale of a development are appropriate:</p> <ul style="list-style-type: none"> <li>• Are the impacts consistent with impacts that may be reasonably expected under the controls?</li> <li>• How does the proposal's height and bulk relate to the height and bulk desired under the relevant controls?</li> <li>• Does the area have a predominant existing character and are the planning controls likely to maintain it?</li> <li>• Does the proposal fit into the existing character of the area?</li> <li>• Is the proposal consistent with the bulk and character intended by the planning controls?</li> <li>• Does the proposal look appropriate in its context?</li> </ul> <p>The development is largely compliant with the LEP and DCP controls applying to it. The variations proposed are the height and setbacks on the western interface at the south and northern boundaries.</p> <p>It is reasonable to expect that the building will cast a degree of overshadowing on neighbouring properties when considering the 28m</p>



No	Issue	Council Response
		<p>height limit, the 3.1:1 Floor Space Ratio (FSR) controls, and the required setbacks.</p> <p>When considering the scale or size of the building, the proposed building represents a large development and will be highly visible. In order to ensure the building does not have a negative impact, the architect has adequately articulated the building form. These include:</p> <ul style="list-style-type: none"> <li>• Tapering the sides of the building down to be a similar height to the adjoining northern and southern neighbours to assist in providing a transition of height and scale,</li> <li>• Indenting the forecourt and centre of the building along Church Street,</li> <li>• Placing the building on an angle which reduces any box like shapes, whilst also providing better solar access, and</li> <li>• Setting the top level covered communal space in further from the sides so it is not visually dominate above the height limit.</li> </ul> <p>These design elements provide a building that whilst large in scale, provides a compatible connection to the adjacent neighbours and will improve the architectural quality that exists within the locality. The objectives of the height controls are to achieve buildings with appropriate heights for the character on context whilst reflecting the hierarchy of centres and the land use structure. The objectives of the FSR control is to achieve a building compatible with the bulk and scale of the desired future character of the locality, a balance between built form and landscaping and to minimise the effects of bulk and scale.</p> <p>The design does achieve a height suitable for the area and desired hierarchy of buildings in accordance with the Nelson Bay Town Centre Strategy. It also achieves the desired built form character, as it is a modern building that will improve the aesthetic quality of the existing area. The design also provides ample landscaping and communal space to residents whilst remaining below the FSR.</p> <p>Considering the above, the bulk and scale is considered acceptable and will provide a building that achieves many of the desired outcomes intended by the applicable controls and strategies.</p>
6	Traffic and Parking	<p>The development provides parking that is compliant with the DCP rates.</p> <p>The building will be restricted to a left in and left out arrangement. This will mean that vehicles can only turn in and out of the development from the southbound lane along Church Street. This will limit cars backing up the northbound lane on Church Street to turn across the southbound lane. This arrangement has been accepted by the Council's Traffic Engineer.</p>

**View Loss Assessment**

When assessing the impact development will have on views, *Tenacity Consulting v Warringah* [2004] NSWLEC 140 is the established planning principle adopted by the Land and Environment Court (LEC).

The Commissioner states at [25] "The notion of view sharing is invoked when a property enjoys existing views and a proposed development would share that view by taking some of it away for its own enjoyment. (Taking it all away cannot be called view sharing, although it may, in some circumstances, be quite reasonable.) To decide whether or not view sharing is reasonable, I have adopted a four-step assessment".

Each of the four steps is listed below with an assessment of the developments impact.

1. [26] *The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (eg of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, eg a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.*

**Oaks Lure**

Views are held in some capacity by units facing north towards Nelson Bay, Karuah River and Tea Gardens. The units facing east hold views towards Tomaree and side views, depending on the standing positioning whilst on the balcony, towards Nelson Bay (Images 9, 10, 11 and 12).

**Western properties**

Some properties to the west on the upslope from the site have views towards Nelson Bay and the headlands. The views to the east towards the proposal are predominately held over side boundaries (Image 13).



Image 9: Location of Oaks Lure Unit 47.

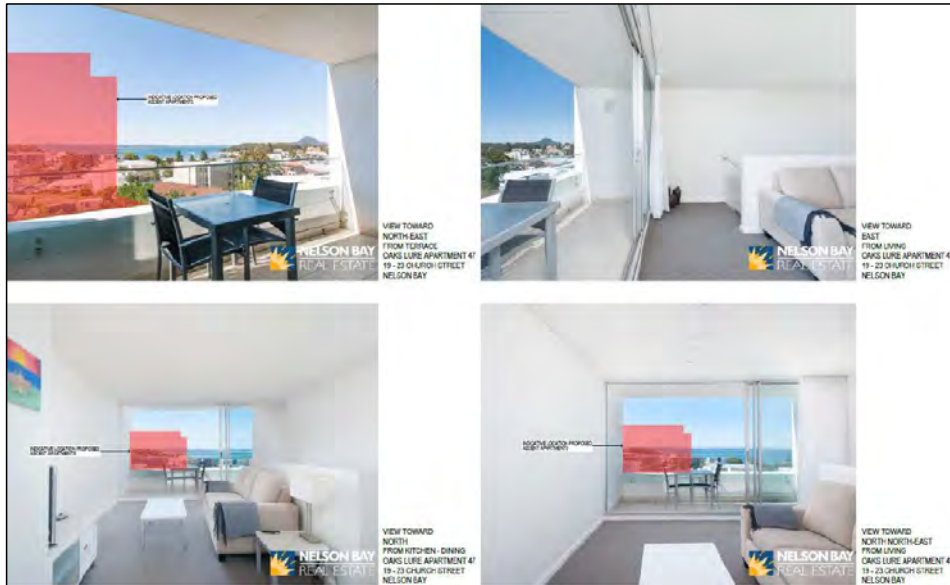


Image 10: View from Unit 47 of the Oaks Lure.



Image 11: View from Oaks Lure Unit 39.



Image 12: View from Oaks Lure east facing unit.



Image 13: View from a western property on Moorrooba Crescent.

2. [27] *The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.*

#### Oaks Lure Northern facing units

The northern facing units do enjoy an expansive view from sitting or standing on the top levels. On the lower levels, the view is more obstructed by the rooflines of existing buildings to the north as indicated in Image 11.

#### Oaks Lure Eastern facing units

The eastern facing units get a direct view over the side boundary. To have a view of the water from the images provided, occupants need to stand or sit on an angle towards the north to gain the view towards the water.

#### Western properties

Side boundary views are not as valuable as front and rear views. The orientation of many lots to the west are on a north-south axis, so views towards the west are not from the front or rear of the site. Considering this, it is unreasonable to reduce the bulk of the building to benefit a view that is obtained from a less valuable position.

3. [28] *The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.*

#### Oaks Lure Northern facing units

The building envelope does not remove the view for all the units. As demonstrated in Image 10, approximately half the view is obstructed for Unit 47. The view loss ranges from moderate to severe, as it is towards a body of water and not an icon or view, which can only be enjoyed when viewing its 'entire' form. The view loss from the most north-eastern units is likely to be minor, as the angle of the proposed development will allow them to retain the majority or entirety of their view.

#### Oaks Lure Eastern facing units

These views are held from an angled position from a window or balcony. It is unrealistic to maintain these views as they already require the occupant to stand in a certain direction to obtain them. These units however, may retain a partial view of the water towards Tomaree headlands.

4. [29] *The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is*

*no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.*

The development is compliant with the rear setback (to the east). The building height is not complaint, but when modelled, the portion of the proposed building obstructing the views is within the complaint height limit. If the whole building was reduced to 28m in height, it would not change the view impact to the water from the Oaks Lure. The building would need to need lower than the height of the Oaks Lure for apartments to retain the same or similar views, which is unreasonable and will not consistent the objectives of the zone, height limit or the desired built form character under Nelson Bay Town Centre Strategy. It would result in an underdevelopment of the site.

Changes to the form of the building are unlikely to warrant a better outcome on views as it would result in a bulkier design spanning across the site, rather than the proposed angle, which provides better solar access for the site.

The existing topography and current subdivision pattern results in the Oaks Lure losing views in most instances, noting the Oaks is not built to its full height potential under current planning controls and has so far benefitted from being adjacent to undeveloped lots.

With consideration to the assessment above, the submitted VIA and public submissions, the proposed development is considered to be supportable in terms of its impact on view loss based on the Tenacity planning principles.

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

The proposed development is considered suitable for the site and the broader locality. The proposal will have a positive impact by providing 81 additional homes in the Port Stephens area, which will likely result in an increase of spending in the local economy and stimulate job growth, particularly during the construction phase.

The design of the building has been assessed in detail and is considered to be a positive addition to the developing character of Nelson Bay by both Council staff and the UDP.

On these grounds, the proposed development is considered to be in the public's interest.

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

Section 7.11 contributions apply to the residential portion of the development.

Under DA 16-2000-1014-1, contributions were paid on 15 February 2006 for 19 additional dwellings over two lots (21 units in total). This proposal is over two lots, and therefore, a 22 lot credit has been applied to reflect this and contributions apply for an additional 59 dwellings.

In total, the proposal will generate a monetary contribution of \$1,139,703 to be paid to Council for the provision of 59 additional dwellings.

### **DETERMINATION**

The application is recommended to be approved by Council, subject to conditions of consent.

EMILY ALLEN

Senior Development Planner



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## 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 Clause 4.3 Height of Building is not excluded from the operation of clause 4.6 (Refer to 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 a development standard in the *Port Stephens Local Environmental Plan 2013* (PSLEP).

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

Development Standard	Proposed Variation	Extent of Variation (%)
Clause 4.3 Height of Building of the PSLEP 2013	4.18m	14.9%

The height of building mapped on site under the PSLEP 2013 is 28m. The proposed development is 32.18m in height.

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 by demonstrating that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

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.



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## Clause 4.6 ASSESSMENT REPORT

The Clause 4.6 request notes that the objectives of the standard are achieved notwithstanding non-compliance with the standard in 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 development and to the wider locality.
- The proposed development does not contravene the objectives of the zone and is considered a good use of the site.
- It provides contemporary designed medium density residential development, which provides for the housing needs of the community whilst also protecting the amenity of residents and recognising the desirable elements of the existing streetscape and built form.
- It would not result in a reduced visual impact, when compared to the proposed height of building.
- The height and scale of the proposal provides an appropriate response for the Nelson Bay Town Centre, although above the permissible building envelope in terms of height.

### *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 outlined that there is sufficient environmental planning grounds to contravene the development standard as:

- The development provides eighty-one (81) residential units within the Nelson Bay area, which is identified for this type and scale of development to provide for the housing needs of the locality, including a range of bedrooms and layouts to cater for varying demographics.
- The development addresses Church Street and provides visual interest within three defined sections of the building, in contrast to existing buildings that have not been designed to address or activate the street frontage.
- The additional height over 28m will have negligible effect on shadows cast by the building on adjoining properties.
- The additional height will not impact on the privacy of adjoining residents.
- The additional height will not materially impact on view sharing due to the topography of the site and its location on the outer western edge of the Town Centre as further evidenced and detailed within the Visual Impact Assessment submitted with the



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## Clause 4.6 ASSESSMENT REPORT

application. The building above 28m is architecturally designed and appropriately articulated to provide visual interest and prominence within the Gateway of Nelson Bay, and is setback further from the boundaries to ensure it is not a visually dominating feature.

- The proposed development results in a high quality architectural design that will positively contribute to the locality.
- The proposed development will result in a large capital investment value (CIV) within the local economy, with construction providing employment opportunities in the locality and support to the local building and development industries. In addition to this, will provide direct monetary input to the local economy, the increased number of residents in the locality will provide ongoing economic input through daily living activities via shopping, working, living and recreational activities within the Town Centre and surrounds. The increase in housing within the area will directly influence and enhance business and employment opportunities within the area.

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.

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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.

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 building height is considered to be appropriate for the context and character of the area. The 'Nelson Bay Town Centre Strategy and Delivery Program', within which this site is located, outline that the ridgelines that surround the Nelson Bay Town Centre create a natural amphitheatre. This amphitheatre shape allows for views from the north of the town to maintain strong landscape character and setting. The topography of Nelson Bay along with vegetation, frames the core town centre.

In order to maintain the natural setting, taller buildings were encouraged as they would reinforce the amphitheatre and the town centre, if placed towards the outside of the town centre. The view lines between Kurrara Hill and the Nelson Bay Marina form an axis for the main street of the town centre, which should be maintained. The proposed development does not obstruct these view corridors as assessed in the VIA provided.

The applicant submits that the proposed design provides a balanced composition of elements including well-defined base/podium, middle and top sections. The form is described as:

- The base/podium is envisaged as a solid form anchoring the building to the site.
- The middle or body of the building is conceived as a screened element which extends to the ground fronting Church Street to the west. The buildings two cores and lobbies to the west are expressed as vertical elements with hanging gardens between, defining the residential entry points.
- To the east the body of the building is a horizontal expression although carefully articulated with landscape planter recesses, balconies and materiality to break down the length of the building.
- The top of the building provides primary communal areas and private open space for the penthouse apartments.

The design is considered to be well designed and articulated to reduce bulk and integrate into the adjoining neighbouring buildings. The majority of the building bulk is centralised, tapering down to the sides. This majority of the building is within the 28m height limit. This is shown in **Figure 1**.

The open and covered communal and private open space on Level 8 is the area above the 28m height limit. This space benefits all residents of the building, by providing useable communal outdoor space above ground level. Also noting the building has not used the FSR to its full potential, which would allow a much larger footprint of the building to occur on site. Instead, the



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## Clause 4.6 ASSESSMENT REPORT

building has focussed its FSR distribution vertically, resulting in only a relatively small part of the overall form exceeding the height limit. The portion that exceeds the height limit is used primarily for communal space and private open space, not as habitable floor area for units. If the space was not enclosed and roofed in the centre, the space would not be desirable for use as it would be exposed to the elements. Providing a covered portion central to this floor, indents the built form reducing its visibility from the street and various view points.

By designing the building in this manner, the form becomes less imposing and ties into the adjacent northern and southern properties. This is demonstrated in **Figure 2**. This also meets the vision of the 'Nelson Bay Town Centre Strategy' as the exceedance does not block any important view corridors, and aides in establishing the built form hierarchy.

The modulation and floor plate composition also reduces potential overshadowing occurring from the development for the portions above 28m, as the area above 28m is setback central to the building. This results in the communal area roof shadowing its own Level 8 communal area, not the neighbouring properties. This results in the overshadowing of neighbours being caused by the portion of the building that is compliant and under the 28m height limit.

By incorporating these elements into the design, the proposal is able to fit into the existing context and reflect the building height hierarchy desired in the area without adversely impacting the amenity of adjoining neighbours. On this basis, the objectives of Clause 4.3 are achieved, notwithstanding the non-compliance with the standard, and therefore compliance with the standard is unnecessary in this instance.



**Figure 1:** The blue plane is 28m above ground. The area above exceeds the height limit, which consists mainly of the covered communal and private open space for residents.

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**Figure 2: View of building along Church Street (western elevation). The sides of the building taper down to meet the height of the adjoining buildings, and centralise the main bulk of the building to the centre of the site.**

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

- In regard to the second test, it is not considered that the compliance with the standard is unnecessary. Clause 4.6 provides a mechanism to vary development standards when assessing site specific constraints. In some instances, compliance with the height control should be upheld if the outcome is not better than what non-compliance would otherwise achieve. In this instance, the amount of the building above the 28m height limit is not considered to have an adverse impact when assessing the sites constraints, and non-compliance will result in a positive outcome that is to the benefit of all the residents, without taking away from the broader community. It is unreasonable to uphold the development standard, but not unnecessary.
- 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.

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

- In regard to the fourth test, 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.
- In regard to the fifth test, the underlying purpose and objective of the maximum building height standard are still relevant to the development.

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- 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, is permissible with consent in the R3 Medium Density Residential zone, 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 development 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 because the objectives of the development standard are achieved notwithstanding non-compliance and the proposal is considered to be appropriate in the context of the site.





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## 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 Clause 4.3 Height of Building is not excluded from the operation of clause 4.6 (Refer to 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 a development standard in the *Port Stephens Local Environmental Plan 2013* (PSLEP).

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


Development Standard	Proposed Variation	Extent of Variation (%)
Clause 4.3 Height of Building of the PSLEP 2013	2.79m	9.9%

The height of building mapped on site under the PSLEP 2013 is 28m. The proposed development encompasses a maximum building height of 30.79m. The previous design proposed a building height of 32.18m with the proposed variation greater than 10%, accordingly the development application was reported to be determined by the elected Council. Whilst the amended design encompasses a reduced building height of 30.79m (9.9%) that is less than 10%, the application has been called to Council for determination in accordance with the 'Planning Matters to be Reported to Council Policy'.

**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 by demonstrating that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

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

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# CLAUSE 4.6 ASSESSMENT REPORT

unnecessary, which should generally be started by showing the proposal can meet the objectives of the development standard.

The applicant's Clause 4.6 request notes that the objectives of the standard are achieved notwithstanding non-compliance with the standard in 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 development and to the wider locality.
- The proposed development does not contravene the objectives of the development standard or zone.
- Compliance with the building height standard would not result in an improved visual impact, when compared to the proposed height of building.
- The proposed development includes visually compatible elements within the streetscape and results in a positive impact to the 'gateway' location of the Town Centre. Given the number of taller buildings and density in the Town Centre, the proposed development is not out of character and does not create any perceived dominance. The building is not found to dominate the skyline and respects the scale and setting of the natural environment in which it is located. The impact of tall buildings on the edge of the Town Centre, inclusive of this site and associated proposal reinforces the amphitheatre and the Town Centre, as desired by Council's Planning Strategies for the Nelson Bay Town Centre.
- The proposed height exceedance is primarily limited to an architectural roof feature of quality design, which occupies only 644.9m<sup>2</sup> within a site of 4,628.79m<sup>2</sup>, or 13.9% of the site. This element provides cover to expansive internal and external communal spaces for the occupants, as well as the private open space for the penthouse apartments, and crowns the development in a visually interesting manner.
- Whilst the proposed building will be higher than the existing buildings surrounding the site, the development is consistent with the desired future character of the Town Centre and adjoining sites being tall in nature to frame the central portion of the Town Centre. The proposed development is complementary to the preferred context of the locality. The proposed building does not detract from or impact on the existing area nor the associated view corridors associated with the topography of the land on the outer periphery of the Town Centre. The proposed development is considered appropriate for the existing and future character of the neighbourhood and consequently provides a building that is consistent with the objectives of the standard.
- The height and scale of the proposal provides an appropriate response for the Nelson Bay Town Centre, although above the permissible building envelope in terms of height.



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*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 outlined that there is sufficient environmental planning grounds to contravene the development standard as:

- The development provides eighty-one (81) residential units within the Nelson Bay area, which is identified for this type and scale of development to provide for the housing needs of the locality, including a range of bedrooms and layouts to cater for varying demographics.
- The development addresses Church Street and provides visual interest within three defined sections of the building, in contrast to existing buildings that have not been designed to address or activate the street frontage.
- The additional height over 28m will have negligible effect on shadows cast by the building on adjoining properties.
- The additional height will not impact on the privacy of adjoining residents.
- The additional height will not materially impact on view sharing due to the topography of the site and its location on the outer western edge of the Town Centre as further evidenced and detailed within the Visual Impact Assessment and Town Centre Model submitted with the application. The building elements above 28m have been architecturally designed and appropriately articulated to provide visual interest and prominence within the Gateway of Nelson Bay, and is setback further from the boundaries to ensure it is not a visually dominating feature.
- The proposed development results in a high quality architectural design that will positively contribute to the locality.
- The proposed development will result in a significant capital investment value (CIV) within the local economy, with construction providing employment opportunities in the locality and support to the local building and development industries. In addition to this, will provide direct monetary input to the local economy, the increased number of residents in the locality will provide ongoing economic input through daily living activities via shopping, working, living and recreational activities within the Town Centre and surrounds. The increase in housing within the area will directly influence and enhance business and employment opportunities within the area.

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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.

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 building height is considered to be appropriate for the context and character of the area. The 'Nelson Bay Town Centre Strategy and Delivery Program' (The Strategy) outlines that the ridgelines that surround the Nelson Bay Town Centre create a natural amphitheatre. This amphitheatre shape allows for views from the north of the town to maintain strong landscape character and setting. The topography of Nelson Bay along with vegetation, frames the core Town Centre.


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In order to maintain the natural setting, the strategy encourages taller buildings on the subject site and adjoining properties as they would reinforce the amphitheatre of the Town Centre. The view lines between Kurrara Hill and the Nelson Bay Marina form an axis for the main street of the Town Centre, which should be maintained. The proposed development does not obstruct these sensitive view corridors as considered in the Visual Impact Assessment and Town Centre Model submitted with the revised development plans.

The applicant submits that the proposed design provides a balanced composition of elements including well-defined base/podium, middle and top sections. The form is described as:

- The base/podium is envisaged as a solid form anchoring the building to the site.
- The middle or body of the building is conceived as a screened element, which extends to the ground fronting Church Street to the west. The buildings two cores and lobbies to the west are expressed as vertical elements with hanging gardens between, defining the residential entry points.
- To the east, the body of the building is a horizontal expression although carefully articulated with landscape planter recesses, balconies and materiality to break down the length of the building.
- The top of the building provides primary communal areas and private open space for the penthouse apartments.

The design is considered to be well designed and articulated to reduce bulk and integrate into the adjoining neighbouring buildings. The majority of the building bulk is centralised, tapering down to the sides. This majority of the building is within the 28m height limit. This is shown in **Figure 1**.

The open and covered communal and private open space on Level 8 forms the building components above the 28m height limit. This feature benefits all residents of the building, by providing useable communal outdoor space above ground level. Rather than utilising the permitted FSR to full capacity, which would create a much larger footprint of the building to occur on site, the design has instead focussed massing distribution vertically, which has still resulted in only a relatively small part of the overall building exceeding the height limit. The portion that exceeds the height limit is primarily for communal and private open space, not for the purpose of habitable floor area. If the rooftop space was not enclosed and roofed in the centre, the space would not be desirable or functional for use, given there would be no protection from the elements. Providing a covered useable open space area in a centralised location on the roof level indents the built form, consequently reducing visibility from the street at a human scale and various view points.

By designing the building in this manner, the form becomes less imposing and integrates with the adjoining built form, as demonstrated in **Figure 2**. The proposed building form is consistent with the vision of the 'Nelson Bay Town Centre Strategy' as the exceedance is not obstructing

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any important view corridors, remains compatible with the coastal landscape and contributes to establishing the built form hierarchy.

The design adopts a significant urban gesture mid-block to Church Street in the form of a large activated landscaped forecourt (set up to 22.184m in from the street boundary). This approach combined with the constraints imposed by the 5-6 storey Cote Dazur Apartments being built less than 1.5m from the east boundary, have resulted in the built form exceeding the prescribed height limit centrally within the site, in the aim of providing quality communal spaces at Ground, Level 1 and rooftop. This exceedance of built form is limited primarily to a roof feature of quality design, which occupies only 625m<sup>2</sup> of area situated centrally within a site of 4,628.79m<sup>2</sup>, or 13.5% of the site area. This element provides cover to expansive internal and external communal spaces for the occupants, as well as the private open space for the four penthouse apartments, and crowns the development in a visually interesting and well considered form.

Moreover, the applicant's submission notes that the roof feature/communal space is on average 6.35% above 28.0m height limit or 1.778m. The main body of the building containing apartment floor area is marginally 1.9% (0.53m) above the PSLEP height at the northern extent, although well below the PSLEP height limit by 12.86% (3.6m below) at the southern extent. On average, the main building form containing Level 7 apartment floor area is on average below the PSLEP height limit by 7.38%.

The modulation and floor plate composition also reduces potential overshadowing occurring from the proposed development for the portions above 28m, as the area above 28m is well setback and centralised within the building. This results in the rooftop area overshadowing its own Level 8 communal area, not the neighbouring properties. The design results in the overshadowing of neighbours by the portion of the building that is compliant and under the 28m height limit, not the components above the height limit.

By incorporating these elements into the design, the proposed building integrates with the existing context and reflects the building height hierarchy desired in the area without adversely impacting the amenity of adjoining neighbours. On this basis, the objectives of Clause 4.3 are achieved, notwithstanding the non-compliance with the standard, and therefore compliance with the standard is unreasonable in this instance.



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Figure 1: The blue plane represents the 28m LEP height standard. The area above exceeds the height limit, which consists mainly of the covered communal and private open space for residents, primarily at the northern portion due to the cross fall of the site.



Figure 2: View of building along Church Street (western elevation). The sides of the building taper down to integrate with the height of the adjoining buildings, and centralise the main bulk of the building to the centre of the site.

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

- In regard to the second test, it is not considered that compliance with the standard is unnecessary. Clause 4.6 provides a mechanism to vary development standards when assessing site specific considerations. In some circumstances, compliance with the height control should be upheld if the outcome is not an improvement from what non-compliance would otherwise achieve. In this instance, the portion of the building above the 28m height limit is not considered to have an adverse effect when considering environmental planning grounds, compatibility with the coastal landscape and desired future character. The proposed height non-compliance has merits and exhibits public benefit, without detracting from the built form. It is unreasonable to uphold the development standard in this instance, but not unnecessary given the underlying objective are still relevant to the development.
- 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.

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

- In regard to the fourth test, it is considered that the development standard has not been abandoned as the objectives of the standard are still relevant notwithstanding non-compliance with the numerical standard.
- In regard to the fifth test, 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 as 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, despite the non-compliance with the standard, the objectives of Clause 4.3 are still achieved noting that the proposed development is considered to be suitable for the character of the area, is permissible with consent in the R3 Medium Density Residential zone, and will not result in adverse impacts to neighbouring properties, the coastal landscape or Town Centre.

*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).





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## **CLAUSE 4.6 ASSESSMENT REPORT**

### **CONCLUSION**

Council staff are satisfied with the proposed height variation on the following grounds:

- (a) the proposal is consistent and compatible with the desired future character of the area consistently with the objective of the controls and therefore in the public interest (cl 4.6(4)(a)(ii));
- (b) the proposal minimises its visual intrusion consistently with the objective of the controls and therefore in the public interest (cl 4.6(4)(a)(ii));
- (c) the visual intrusion of the proposal is compatible with the amenity of the surrounding residential area and therefore consistent with the objective of the zone and in the public interest (cl 4.6(4)(a)(ii));
- (d) the proposal is of a height and scale the achieves the desired future character of the neighbourhood and therefore consistent with the objective of the zone and in the public interest (cl 4.6(4)(a)(ii)).

The proposed development is considered to be consistent with the objectives of Clause 4.6, as the design will achieve better outcomes for and from the development in these particular circumstances, noting the objectives of the development standard are achieved notwithstanding the non-compliance. The proposed building is considered to be appropriate in the context of the site.

**ITEM NO. 3****FILE NO: 23/12673  
EDRMS NO: 16-2022-223-1****DEVELOPMENT APPLICATION (DA) 16-2022-223-1 FOR A RESIDENTIAL FLAT BUILDING AT 18 TO 20 SOLDIERS POINT ROAD, SOLDIERS POINT**REPORT OF: KATE DRINAN - DEVELOPMENT AND COMPLIANCE SECTION  
MANAGER

GROUP: DEVELOPMENT SERVICES

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Approve Development Application DA No. 16-2022-223-1 for a residential flat building comprising 18 units, ground floor café, basement parking and strata subdivision at 18 to 20 Soldiers Point Road, Soldiers Point (Lot 8 DP 26597, Lot 92 DP 577122), subject to the conditions contained in **(ATTACHMENT 1)**.
- 2) Support the Clause 4.6 variation request to the building height for the reasons outlined within this report.

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**BACKGROUND**

The purpose of this report is to present a Development Application (DA) 16-2022-223-1 for a residential flat building comprising 18 units, ground floor café, basement parking and strata subdivision at 18 to 20 Soldiers Point Road, Soldiers Point, to Council for determination.

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

Subject Land:	18 and 20 Soldiers Point Road, Soldiers Point (Lot 8 DP 26597, Lot 92 DP 577122)
Total Area:	1,339.4m <sup>2</sup>
Zoning:	B1 Neighbourhood Centre
Submissions:	First notification - 8 in objection of development and 1 in support. Second notification – 2 in objection of development and 2 in support.
Key Issues:	The key issues identified throughout the assessment of the DA relate to building height, overshadowing, traffic and parking.  The proposed development at its highest point is 17.4m which exceeds the 15m height limit and represents a 16% (2.4m) variation to the development standard.



A locality plan is provided at **(ATTACHMENT 2)**.

### Proposal

The application seeks consent for the construction of a 5 storey residential flat building (RFB) comprising 18 apartments, ground floor café, demolition of an existing dwelling and shed, associated landscaping, civil works, car parking and 19 lot strata subdivision. Specific details of the proposal include:

- 1 x café tenancy with internal and external seating (located on ground level)
- 4 x 2-bedroom units, 11 x 3-bedroom units and 3 x 4-bedroom units (located throughout levels 1-4)
- Car parking area containing 47 spaces (located on ground level and basement level)
- Communal area (located on Level 1)
- Ground level foyer, lobby, lift and pedestrian entrance.

The entry and exit point to the car parking area is provided via Soldiers Point Road. Landscaping has been provided in the front and rear setback to provide visual screening from the street frontage and adjoining properties and to increase the amenity qualities of the development for future occupants and the streetscape.

### Site Description and History

The subject site is located at 18 and 20 Soldiers Point Road, Soldiers Point which will be consolidated to form an irregular shaped lot with a relatively flat topography and a total area of 1,339.4m<sup>2</sup>. The site is located on the corner of Soldiers Point Road and Bennett Lane, within a well-established residential and commercial area. The site has an eastern frontage of 20.57m to Soldiers Point Road and a northern frontage of 50.935m to Bennett Lane. The site is largely undeveloped with a double storey brick dwelling and ancillary metal shed located over the south west corner of the site.

Soldiers Point Road is an established urban centre, undergoing a transition from low density residential to medium rise multi-dwelling and apartment type developments. The character of the area is typified by medium and low density developments, comprising older apartment stock in the form of 3 and 4 storey walk-up residential flat buildings, single dwellings and modern high density infill developments.

The site benefits from an existing development consent (16-2002-1220-1) for a similar development (4 Level Residential/Commercial Building and Carpark) on 18 Soldiers Point Road, which utilised Bennett Laneway for 2 car access points/driveways. Physical works have commenced on this development consent, and the consent is active.

### Key Issues

The key issues identified throughout the assessment of the DA relate to the proposed exceedance of the building height development standard, overshadowing, traffic and

parking. A detailed assessment of the DA is contained within the Planners Assessment Report (**ATTACHMENT 3**).

### Building Height

The proposal exceeds the maximum allowable building height for the site prescribed under Clause 4.3 of the Port Stephens LEP 2013 (PSLEP). The proposed development at its highest point is 17.4m which exceeds the 15m height limit and represents a 16% (2.4m) variation to the development standard. The building design has undergone multiple iterations from the pre-lodgement concept stage through consultation with Council staff and the Urban Design Panel (UDP) to the final design presented to Council in this DA. Through consultation with Council staff and the UDP, the architect has reduced the overall building height by removing the rooftop communal area and associated lift and stair access. Despite the removal of the rooftop communal area, the building still exceeds the LEP height limit by 2.4m.

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

- The proposed height of the development is consistent with the high density infill developments located north of the site. It is noted two comparable mixed-use residential flat buildings located north of the site at 12-14 Soldiers Point Road (17.15m) and 6-8 Soldiers Point Road (18.8m) exceed the 15m height controls prescribed for the B1 Neighbourhood Centre Zone;
- Strict compliance with the standard would result in an inferior built form and planning outcome for the subject site, exposing the lift overrun and plant equipment creating unsightly visual impacts on the surrounds as is typical with older style high rise and unit blocks;
- The existing and approved development along the Soldiers Point Road commercial strip demonstrates a higher density transition in the context and character of the locality, in which the proposal is consistent with. Moreover, the existing residential development in its current form is out of context with the character of the area having regard to the existing and approved shop top housing developments to the north;
- Despite the proposed height variation, the proposal results in negligible off site impacts including visual and amenity impacts, overshadowing and view loss as demonstrated by shadow diagrams prepared by the applicant;
- The proposal is generally compliant with the Apartment Design Guidelines and the Port Stephens Council Development Control Plan (DCP) controls;
- The objectives of Clause 4.3 are achieved despite the non-compliance with the numerical standard.

### Overshadowing

A shadow diagram analysis was submitted with the application. Due to the orientation of the lot, overshadowing is primarily concentrated to the neighbouring single storey buildings (20A and 22 Soldiers Point Road) to the south. Some overshadowing would

also occur in the morning to the dwellings at 21, 23 and 25 Sunset Boulevard to the west.

It is noted there will be solar access impact to the private open space (POS) of neighbouring sites to the south, however the POS of 22 Soldiers Point Road is already constrained by solar access in that it is located on the southern aspect and already impacted by the existing dwelling on the subject site and neighbouring dwelling on 20A Soldiers Point Road. Notwithstanding, most north facing windows of the affected buildings would receive direct sunlight during mid-winter. The overshadowing is considered reasonably unavoidable given the orientation of the lot is such that overshadowing of this extent is inevitable from any development that achieves the 15m height limit. The site is also characterised by being the southernmost landholding located within the B1 zoned precinct in Soldiers Point, therefore any building height above 9m is likely to result in some form of overshadowing to 22 Soldiers Point Road.

Some overshadowing of the dwellings at 21, 23 and 25 Sunset Boulevard to the west of the site would occur between the hours of 9:00am to 11:00am mid-winter. However, all POS, open space and living areas would maintain a minimum of 2 hours solar access, in accordance with ADG requirements.

#### Traffic Impact and Parking

The potential impacts from the proposed development to the local road network have been assessed as being satisfactory. The applicant submitted a Traffic Impact Assessment (TIA) report to assess the proposal with respect to access, parking, traffic generation and infrastructure capacity.

With regard to traffic generation, the TIA report calculated the additional traffic generated by the development will be up to 15 vehicle trips per hour (vtpH) in the AM and 12 vtpH in the PM peak periods. The local and state road network has sufficient spare capacity to cater for the additional traffic without adversely impacting on the traffic flow levels of service (LoS) experienced by motorists on the road network. The minimal amount of traffic generated by the development will not adversely impact on intersections on the local and state road network. The new access onto Soldiers Point Road will operate with uninterrupted flow conditions. The TIA has been reviewed by Council's Traffic Engineer who endorsed the conclusions. To manage traffic during construction, a condition is recommended requiring that a traffic management plan be prepared prior to the issue of a Construction Certificate.

Car parking provision for the proposed development comprises 47 on-site car parking spaces to cater for the residential apartments and café tenancy with access provided via Soldiers Point Road. The parking provision complies with the Port Stephens DCP 2014 Section B8 – Road Network and Parking. Furthermore, the proposed on-site car park layout and dimensions comply with the Australian Standard AS2890.1-2004 Parking facilities – Off-street car parking. Council's Development Engineers have reviewed and endorsed car parking layout plans, subject to conditions of consent.

### Conclusion

As detailed in the Planners Assessment Report (**ATTACHMENT 3**), the DA 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 despite the variation to the building height development standard, will not result in unreasonable overshadowing, privacy or adverse visual impacts.

### **COMMUNITY STRATEGIC PLAN**

<b>Strategic Direction</b>	<b>Delivery Program 2022-2026</b>
Strong Economy, Vibrant Businesses, Active Investment	Support sustainable business development in Port Stephens.

### **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 (S7.11)	Yes		Should Council determine to approve the DA, s.7.11 development contributions amounting to \$360,000.00 would be applicable, and would be levied in accordance with conditions of consent
External Grants	No		
Other	No		

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

The development application is consistent with relevant planning instruments including the EP&A Act, LEP 2013 and DCP 2014.

Detailed assessments against these requirements are contained within the Planners Assessment Report provided at (**ATTACHMENT 3**).

<b>Risk</b>	<b><a href="#">Risk Ranking</a></b>	<b>Proposed Treatments</b>	<b>Within Existing Resources?</b>
There is a risk that if the DA is approved, a third party may appeal the determination.	Low	Accept the recommendation.	Yes
There is a risk that if the DA is refused, Council will be held liable for damage or consequences.	Medium	Accept the recommendation.	Yes

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

**Social and Economic Impacts**

The proposed development represents a mixed use development that will provide additional infill housing opportunities in the area as well as the provision of a new commercial premises, which will provide employment opportunities and contribute to the commercial viability of Soldiers Point.

The proposal will allow for the use of existing services and facilities in the locality without requiring upgrades that burden the public. The construction of the proposed development will provide employment opportunities in the locality and support the local building and development industries. This will have direct monetary input to the local economy, and the increased number of residents in the locality will provide ongoing economic input through daily living activities. There are no anticipated adverse social or economic impacts as a result of the proposed development.

**Impacts on the Built Environment**

The proposed development is considered to result in a positive contribution to the built environment by providing a modern architecturally designed building within the Soldiers Point commercial centre. The proposal is considered to be compatible and appropriate for the context and character of the area as existing development along Soldiers Point Road is characterised by 4 and 5 storey developments in the form of 'shop top housing' similar to the proposal.

**Impacts on the Natural Environment**

The proposed development is not considered to impact upon the natural environment as it does not contain any significant vegetation, koala habitat or threatened species habitat. The stormwater management has been appropriately designed to reduce potential impacts on the natural environment.

## **CONSULTATION**

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

### Internal

Internal Consultation was undertaken with Council's Development Engineering, Building Surveying, Development Contributions, Spatial Services teams and Councils Urban Design Panel (UDP). The referral comments from these officers have been considered as part of the Planners Assessment Report (**ATTACHMENT 3**). The internal referral officers supported the DA, subject to the recommended conditions of consent (**ATTACHMENT 1**).

### External

External Consultation was undertaken with Ausgrid due to the sites proximity to overhead power lines. In response, no objection to the DA was made. The comments provided by Ausgrid were considered during the detailed assessment and are discussed within the Planners Assessment Report (**ATTACHMENT 3**).

### Public Exhibition

The application was exhibited from 10 May 2022 to 24 May 2022, in accordance with the provisions of the Port Stephens Council Community Engagement Strategy. There were 9 submissions received during this period.

The application was re-notified after the submission of amended plans and documentation from the applicant from 11 November 2022 to 24 November 2022, with notification extended for a further 14 days. During this notification period, 2 submissions in support of the amended design and 2 submissions opposing the amended design were received by Council.

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

## **OPTIONS**

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

## **ATTACHMENTS**

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

**COUNCILLORS ROOM**

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

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

**TABLED DOCUMENTS**

Nil.



### RECOMMENDED CONDITIONS OF CONSENT

#### 1.0 - General Conditions of Consent

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

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

Plan No.	Revision No.	Plan Title.	Drawn By.	Dated.
2070-DA1 -1	I	Site and Roof Plan	OA+D	21/10/2022
2070-DA1 - 07	I	Basement	OA+D	21/10/2022
2070-DA1 - 08	I	Ground	OA+D	21/10/2022
2070-DA1 - 09	I	Level 1	OA+D	21/10/2022
2070-DA1 – 10	I	Level 2	OA+D	21/10/2022
2070-DA1 - 11	I	Level 3	OA+D	21/10/2022
2070-DA1 - 12	I	Level 4	OA+D	21/10/2022
2070-DA1 - 13	I	Level 5	OA+D	21/10/2022
2070-DA1 - 14	I	Section	OA+D	21/10/2022
2070-DA1 – 15	I	Elevations	OA+D	21/10/2022
2070-DA1 – 16	G	Elevations	OA+D	21/10/2022
6689-HYDRO-2 1	B	Stormwater Management Plan	Land Development Solutions	2/08/2022
6689-HYDRO-2 2	B	Stormwater Management Plan	Land Development Solutions	2/08/2022
6689-SEDIMENT-1.dwg 1 of 2	A	Erosion and Sediment Control Plan	Land Development Solutions	17/02/2022
6689-SEDIMENT-1.dwg 2 of 2	A	Erosion and Sediment Control Plan	Land Development Solutions	17/02/2022

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6689-REGRADING -1.dwg 1 of 2	A	Site Regrading Plan	Land Development Solutions	17/02/2022
6689-SP1 – Sheets 1-8	-	Draft Strata Subdivision Plans	Jason Lee Harman	-
2109 DA02	B	Landscape Concept Plan – Groundlevel	The Garden Craftsman	16/02/2022
2109 DA03	B	Planting Plan – Groundlevel	The Garden Craftsman	16/02/2022
2109 DA04	B	Concept & Planting Plan – Level 1	The Garden Craftsman	16/02/2022
2109 DA05	B	Concept & Planting Plan – Level 2	The Garden Craftsman	16/02/2022
2109 DA06	B	Concept & Planting Plan – Level 3	The Garden Craftsman	16/02/2022
2109 DA07	B	Concept & Planting Plan – Level 4	The Garden Craftsman	16/02/2022
2109 DA09	B	Site Construction Details	The Garden Craftsman	16/02/2022
2109 DA10	B	Public Domain Construction Details – Street Trees	The Garden Craftsman	16/02/2022

Document Title.	Prepared By.	Dated.
Arborist Report Impact Assessment	Area Tree Vet	23 August 2022

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

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

- (2) **Surrender of Development Consent** – The applicant must surrender the consent relating to **DA No. 16-2002-1220-1** for a 4 Storey Mixed Use Development (Residential/Commercial Building and Carpark) by submitting an application for



'Surrender of a Consent' to Port Stephens Council in accordance with *Clause 68 of the Environmental Planning & Assessment Regulation 2021*. This must be done prior to the issue of the first Construction Certificate.

- (3) **Limits of consent** – This consent does not approve:

- a) The fit out or hours of operation of the café tenancy.
- b) Signage.

The above must be approved under a separate development application.

- (4) **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.

- (5) **Excavation for residential building works** – If the approved development involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the consent must, at the person's own expense:

- a) protect and support the adjoining premises from possible damage from the excavation; and
- b) where necessary, underpin the adjoining premises to prevent any such damage.

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

- (6) **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.

- (7) **Outdoor lighting** - All lighting must comply with AS 1158 'Lighting for Roads and Public Spaces' and AS 4282 'Control of Obtrusive Effects of Outdoor Lighting'.

- (8) **Roof mounted equipment** – All roof mounted equipment such as air conditioning units, service pipes and vents etc., required to be installed must be concealed within the external walls of the development or adequately screened so as not to be visible from a public place.

- (9) **Design quality of development** - The approved design (including an element or detail of that design) or materials finish or colours of the building must not be changed so as to affect the internal layout or external appearance of the building without the approval of Council.



- (10) **Separate approval for signs** – A separate development application for any proposed signage, must be provide to, and approved by, the Consent Authority or under the provision of the State Environmental Planning Policy (Exempt and Complying Codes) 2008 if applicable prior to the erection or display of any such signs.
- (11) **External agency approvals** – The requirements from the Ausgrid Referral (dated 7 December 2021. Reference 1900111251 must be complied with prior to, during, and at the completion of the development.

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

## 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) **Design amendments** – Before the issue of a construction certificate, the applicant must submit, to the satisfaction of Council, construction certificate plans (and specifications) detailing the following amendments to the approved plans and supporting documentation stamped by Council.
  - a) Swept paths are to be updated taking into consideration the location of columns and any other obstructions.
  - b) Swept path for MRV vehicle to be provided showing forward entry and exit.
  - c) Calculations to be provided showing that that the post-development flow rate and volume is less than the predevelopment flow rate and volume for all storm events up to and including the 1% annual exceedance probability (AEP) storm event. Any top up system volume is not to be included in the volume for OSD.
  - d) The driveway ramp long-section to provide dimensions. Ramp to be in accordance with AS2890.1
  - e) The awning area is bypassing any water quality or detention and discharges directly to the kerb. The awning area is to be incorporated into the MUSIC model to ensure water quality targets are achieved.
- (2) **Driveway Gradients and Design** – For all driveways that relate to development for the purposes of a dwelling house, the driveway gradient and design must comply with AS 2890.1 'Off street Car Parking' and:
  - a) the driveway must be at least 1m from any street tree, stormwater pit or service infrastructure; and
  - b) a Works on Public Infrastructure (Driveway) approval must be obtained prior to the commencement of any works.

Details demonstrating compliance must be provided to the Certifying Authority.



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

Details demonstrating compliance must be provided to the Certifying Authority.

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

- (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) **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.

- (6) **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.

**Note.** Condition only applies to developments in a high slip area, significant topography with close nearby properties and building works proposed on boundaries.

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

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

- (8) **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.

- (9) **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.
- (10) **Landscape plan / street tree plan** – Street trees must be planted at no cost to Council and in the location(s) specified on the Landscape Plan prepared by The Garden Craftsman, dated 16 February 2022 Rev B.  
Details demonstrating compliance must be provided to the Certifying Authority.
- (11) **Design verification – SEPP 65** – A design verification statement from a qualified NSW Registered Architect must be submitted to the Certifying Authority confirming the Construction Certificate plans and specifications are consistent with the Development Application approval.
- (12) **Garbage room** – Rooms used for the storage of garbage, and rooms used for the washing and storage of garbage receptacles, must be constructed in accordance with the approved plans and the following:
- a) The room must be constructed of solid material, cement rendered and trowelled to a smooth even surface;
  - b) The floor must be impervious material coved at the intersection with the walls, graded and drained to an approved floor waste within the room; and
  - c) Garbage rooms must be vented to the external air by natural or mechanical ventilation.
- Details demonstrating compliance must be provided to the Certifying Authority.
- (13) **Car parking details** – Before the issue of the relevant construction certificate, a suitably qualified engineer must review the plans, which relate to parking facilities and provide written evidence, to the certifier's satisfaction, that it complies with the relevant parts of AS 2890 Parking Facilities- Off- Street Carparking and Council's development control plan.
- (14) **Construction site management plan** - Before the issue of a construction certificate, the applicant must ensure a construction site management plan is prepared before it is provided to and approved by the certifier. The plan must include the following matters:
- a) location and materials for protective fencing and hoardings to the perimeter on the site
  - b) provisions for public safety

## ITEM 3 - ATTACHMENT 1 RECOMMENDED CONDITIONS OF CONSENT.



- c) pedestrian and vehicular site access points and construction activity zones
- d) details of construction traffic management, including proposed truck movements to and from the site and estimated frequency of those movements, and measures to preserve pedestrian safety in the vicinity of the site
- e) protective measures for on-site tree preservation (including in accordance with AS 4970-2009 Protection of trees on development sites and Council's DCP, if applicable) and trees in adjoining public domain (if applicable)
- f) details of any bulk earthworks to be carried out
- g) location of site storage areas and sheds
- h) equipment used to carry out all works
- i) a garbage container with a tight-fitting lid
- j) dust, noise and vibration control measures
- k) location of temporary toilets.

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

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

- (15) **Section 7.11 Development contributions** – A monetary contribution is to be paid to Council for the provision of 18 additional lots, 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	\$655	\$11,790
Civic Administration – Works Depot	\$1,266	\$22,788
Town Centre Upgrades	\$3,412	\$61,416
Public Open Space, Parks and Reserves	\$2,085	\$37,530
Sports & Leisure Facilities	\$1,961	\$35,298
Cultural & Community Facilities	\$1,332	\$23,976
Road Works	\$3,570	\$64,260
Shared Paths	\$3,286	\$59,148
Bus Facilities	\$9	\$162
Fire & Emergency Services	\$245	\$4,410
Flood & Drainage	\$1,877	\$33,786
Kings Hill Urban Release Area	\$302	\$5,436
<b>TOTAL</b>		<b>\$360,000</b>

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



- a) 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.

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

### 3.0 - Prior to Commencement of Works

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

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

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

- (2) **Home Building Act – Insurance** - In the case of residential building work for which the *Home Building Act 1989* requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.
- (3) **Notice of Principal Certifying Authority appointment** – The Principal Certifier for this development must give notice must be given to the consent authority and Council, where the Council is not the consent authority, at least two days prior to subdivision and/or building works commencing in accordance with Section 6.6 (2) (a) of the Environmental Planning and Assessment Act 1979 and Section 57 of the



Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021. The notice must include:

- a) a description of the work to be carried out;
- b) the address of the land on which the work is to be carried out;
- c) the Registered number and date of issue of the relevant development consent;
- d) the name and address of the Principal Certifier and the person who appointed the principal certifier;
- e) if the principal certifier is a registered certifier
  - i) the certifier's registration number, and
  - ii) a statement signed by the registered certifier to the effect that the certifier consents to being appointed as principal certifier, and
  - iii) a telephone number on which the certifier may be contacted for business purposes.

The notice must be lodged on the NSW planning portal.

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

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

The notice must be lodged on the NSW planning portal.

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

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

Any such sign is to be maintained while the building work or demolition work is being





carried out, but must be removed when the work has been completed.

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

- (6) **Construction Certificate Required** – In accordance with the provisions of Section 6.7 of the Environmental Planning & Assessment Act 1979 (EP&A Act 1979), construction or subdivision works approved by this consent must not commence until the following has been satisfied:
  - a) a Construction Certificate has been issued by a Consent Authority;
  - b) a Principal Certifying Authority (PCA) has been appointed by the person having benefit of the development consent in accordance with Section 6.5 of the EP&A Act 1979; and
  - c) the PCA is notified in writing of the name and contractor licence number of the owner/builder intending to carry out the approved works.
- (7) **Site is to be secured** – The site must be secured and fenced to the satisfaction of the Principal Certifying Authority. All hoarding, fencing or awnings (associated with securing the site during construction) is to be removed upon the completion of works.  
 An awning is to be erected that would sufficiently prevent any substance from the construction work falling onto public property. The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons on public property.
- (8) **Demolition work** – All demolition works are to be carried out in accordance with Australian Standard AS 2601 'The demolition of Structures'. All waste materials are to be either recycled or disposed of to a licensed waste facility.  
 Any asbestos containing material encountered during demolition or works, is to be removed in accordance with the requirements of Safe Work NSW and disposed of to an appropriately licenced waste facility.  
 Evidence is to be provided to the Certifying Authority demonstrating that asbestos waste has been disposed of in accordance with this condition.
- (9) **Erosion and sediment controls in place** – Before the commencement of any site or building work, the principal certifier must be satisfied the erosion and sediment controls in the erosion and sediment control plan, (as approved by the principal certifier) are in place until the site is rectified (at least 70% ground cover achieved over any bare ground on site).
- (10) **All weather access** – A 3m wide all-weather vehicle access is to be provided from the kerb and gutter to the building under construction for the delivery of materials and use by trades people.  
 No materials, waste or the like are to be stored on the all-weather access at any time.
- (11) **Rubbish generated from the development** – Where not already available, a waste containment facility is to be established on site. The facility is to be regularly emptied and maintained for the duration of works.



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

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

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

- (13) **Public liability insurance** – The owner or contractor must take out a Public Liability Insurance Policy with a minimum cover of \$20 million in relation to the occupation of, and works within, public property (i.e. kerbs, gutters, footpaths, walkways, reserves, etc.) for the full duration of the proposed works.

Evidence of this Policy must be provided to Council and the Certifying Authority.

#### 4.0 - During Works

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

- (1) **Implementation of BASIX commitments** - While building work is being carried out, the applicant must undertake the development strictly in accordance with the commitments listed in the BASIX certificate(s) approved by this consent, for the development to which the consent applies.
- (2) **Shoring and adequacy of adjoining property (if applicable)**- If the development involves an excavation that extends below the level of the base of the footings of a building, structure or work on adjoining land (including any structure or work within a road or rail corridor), the person having the benefit of the development consent must, at the person's own expense —
- Protect and support the building, structure or work from possible damage from the excavation, and
  - Where necessary, underpin the building, structure or work to prevent any such damage.

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

- (3) **Hours of work** – The principal certifier must ensure that building work, demolition or vegetation removal is only carried out between:
- 7.00am to 5.00pm on Monday to Saturday



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

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

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

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

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

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

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

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

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

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

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

- (7) **Location of stockpiles** – Stockpiles of soil must not be located on / near any drainage lines or easements, natural watercourses or water bodies, footpath or roadway without first providing suitable protective measures adequate to protect these water bodies. All stockpiles of contaminated materials must be suitably covered to prevent dust and odour nuisance.

- (8) **Surveys by a registered surveyor** – While building work is being carried out, a registered surveyor is to measure and mark the positions of the following and provide them to the principal certifier —

## ITEM 3 - ATTACHMENT 1 RECOMMENDED CONDITIONS OF CONSENT.



- a) All footings/ foundations
  - b) At other stages of construction – any marks that are required by the principal certifier.
- (9) **Construction Management Plan implementation** - All construction management procedures and systems identified in the approved Construction Management Plan must be introduced during construction of the development.
- (10) **Traffic Management Plan implementation** - All construction traffic management procedures and systems identified in the approved Construction Traffic Management Plan must be introduced during construction of the development to ensure safety and to minimise the effect on adjoining pedestrian and traffic systems.
- (11) **Stormwater disposal** – Following the installation of any roof, collected stormwater runoff from the structure must be:
- a) Connected to an approved stormwater management system.
- (12) **Disposal of stormwater** - Water seeping into any site excavations is not to be pumped into the stormwater system unless it complies with relevant Environmental Protection Agency and Australian and New Zealand Environment and Conservation Council standards for water quality discharge.
- (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) **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.
- (16) **Construction noise** – While building work is being carried out and where no noise and vibration management plan is approved under this consent, the applicant is to ensure that any noise caused by demolition, vegetation removal or construction does not exceed an LAeq (15 min) of 5dB(A) above background noise, when measured at any lot boundary of the property where the construction is being carried out.



- (17) **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.

- (18) **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.

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

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

- (20) **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.

## 5.0 - Prior to Issue of a Subdivision Certificate



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

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

The applicant will be required to submit documentary evidence that the property has been developed in accordance with the plans approved by this development consent 16-2022-223-1 and of compliance with the relevant conditions of consent, prior to the issuing of a Strata Plan of Subdivision.

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

- (2) **Restriction on issue of Strata Plan of Subdivision** – An Occupation Certificate for the building must be issued by the PCA prior to the issue of any Strata Plan of subdivision associated with this development consent 16-2022-223-1.

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

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

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

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

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

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

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

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

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



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

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

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

- (1) **Occupation Certificate required** - An Occupation Certificate must be obtained prior to any use or occupation of the development.  
The Principal Certifying Authority must be satisfied that the development has been constructed in accordance with approved plans, specifications and conditions of this consent.
- (2) **Survey Certificate** – A Registered Surveyor must prepare a Survey Certificate to certify that the location of the building in relation to the allotment boundaries complies with the approved plans or as specified by this consent. The Survey Certificate must be provided to the satisfaction of the Principal Certifying Authority.
- (3) **Footpath crossing construction** – A footpath crossing and driveway must be constructed in accordance with this consent and the approved Construction Certificate prior to use or occupation of the development.  
**Note:** A Works on Public Infrastructure (Driveway) approval must be obtained prior to the commencement of such works.
- (4) **Services** – Evidence is to be provided to Council demonstrating that the following reticulated services are available to each lot:
  - Electricity;





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

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

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

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

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

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

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

- (8) **Works as Executed Plans and any other documentary evidence** - Before the issue of the relevant occupation certificate, the applicant must submit, to the satisfaction of the principal certifier, works-as-executed plans, any compliance certificates and any other evidence confirming the following completed works:

- (a) All stormwater drainage systems and storage systems

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

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

This certificate must accompany the Works as Executed plans.

- (10) **Completion of landscape and tree works** – Before the issue of any occupation certificate, the principal certifier must be satisfied that all landscape and tree-works, including pruning in accordance with *AS 4373-2007 Pruning of amenity trees* and the removal of all noxious weed species, have been completed in accordance with the approved plans and any relevant conditions of this consent.





- (11) **Car parking requirements** – A minimum of 9 car parking spaces including 2 disabled car parking spaces are to be dedicated to the Commercial Premises (café). Parking must be permanently marked on the pavement surface.

There are to be a minimum 6 parking spaces marked for visitors, which must be signposted as “visitor parking”.

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

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

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

There are to be 2 motorcycle parking spaces provided in accordance with the approved plans.

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

- (12) **Car Parking Design** - Before the issue of any occupation certificate, Council's Development Engineer must be satisfied height clearance warnings and safety devices such as safety mirrors, have been incorporated into the car parking area.
- (13) **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.
- (14) **Roof Design** – The roof design must include the installation of PV Solar Panels.
- (15) **Lot Consolidation** - Before the issue of any occupation certificate, Lot 8 DP 26597 and Lot 92 DP 577122 are to be consolidated.

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

## 6.0 – Ongoing Use

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

- (1) **Maneuvering of vehicles** – All vehicles must enter and exit the site in a forward direction.
- (2) **Removal of graffiti** – The owner/manager of the site is responsible for the removal of all graffiti from the building and fences within 48 hours of its application.
- (3) **Parking areas to be kept clear** – At all times, the loading, car parking spaces, driveways and footpaths must be kept clear of goods and must not be used for storage purposes.



- (4) **Privacy screen** – Any privacy screen/s must be permanently maintained in accordance with the approved plans for the life of the development.
- (5) **Residential air conditioning units** – During occupation and ongoing use of the building, the applicant must ensure all subsequently installed noise generating mechanical ventilation system(s) or other plant and equipment that generates noise are in an appropriate location on the site (including a soundproofed area where necessary) to ensure the noise generated does not exceed 5dBA at the boundary adjacent to any habitable room of an adjoining residential premises.
- (6) **Fire Safety Schedule** – At all times, a copy of the Fire Safety Schedule and Fire Safety Certificate must be prominently displayed in the building and a copy forwarded to the Commissioner of Fire and Rescue NSW in accordance with the *Environmental Planning & Assessment Regulations 2000*.
- (7) **Maintenance of landscaping** – Landscaping must be maintained in accordance with the approved landscape plan and conditions of this development consent. All landscape areas must be kept free of parked vehicles, stored goods, garbage or waste material at all times.  
  
If any of the vegetation dies or is removed, it is to be replaced with vegetation of the same species and similar maturity as the vegetation which has died or was removed.
- (8) **Waste management and collection** – The building owner must ensure that there is a contract with a licensed contractor for the removal of all waste. No garbage is to be placed on public land (e.g. footpaths, roadways, plazas, reserves) at any time.
- (9) **Communal Area Access** – All residents of the development are to have access to all communal areas, including the open communal area on Level 1.

**Advice Note(s):**

- (1) **Aboriginal archaeological deposit** – In the event of any Aboriginal artefact, object or structure being unearthed, all work must cease immediately in the affected area, and the Heritage NSW shall be informed of the discovery. Work must not recommence until the material has been inspected and permission has been given by HNSW to proceed.
- (2) **'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.
- (3) **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.

- (4) **Disability Discrimination Act** – The Commonwealth Disability Discrimination Act makes it an offence to discriminate against people on the grounds of disability, in the provision of access to premises, accommodation, or services. It is the owner/applicants responsibility to ensure compliance with the requirements of this Act.
- (5) **Premise standard** – It is the Applicants responsibility to ensure compliance with the requirements of the Disability Discrimination Act 1992 (DDA).  
**Note:** Compliance with the Building Code of Australia does not necessarily meet the requirements of the DDA.
- (6) **Responsibility for damage for tree removal/pruning** – The applicant is responsible for any damage caused to existing public utilities, footpaths or public roads during the cutting down, grinding, removal and disposal of the timber and roots. Care must also be taken by the applicant and the applicant's agents to prevent any damage to adjoining properties. The applicant or the applicants' agent may be liable to pay compensation to any adjoining owner if, due to tree works, damage is caused to such adjoining property.
- (7) **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.
- (8) **Street Addressing** - Prior to occupying the development or release of subdivision certificate (whichever occurs first) the approved dwellings are to be identified as follows:

CP – 20 Soldiers Point Road, SOLDIERS POINT  
 PT 1 – 101/20 Soldiers Point Road, SOLDIERS POINT  
 PT 2 – 102/20 Soldiers Point Road, SOLDIERS POINT  
 PT3 – 103/20 Soldiers Point Road, SOLDIERS POINT  
 PT 4 – 104/20 Soldiers Point Road, SOLDIERS POINT  
 PT 5 – 105/20 Soldiers Point Road, SOLDIERS POINT  
 PT 6 – 106/20 Soldiers Point Road, SOLDIERS POINT  
 PT 7 - 201/20 Soldiers Point Road, SOLDIERS POINT  
 PT 8 - 202/20 Soldiers Point Road, SOLDIERS POINT  
 PT 9 - 203/20 Soldiers Point Road, SOLDIERS POINT  
 PT 10 - 204/20 Soldiers Point Road, SOLDIERS POINT  
 PT 11 - 301/20 Soldiers Point Road, SOLDIERS POINT



- PT 12 – 302/20 Soldiers Point Road, SOLDIERS POINT
- PT 13 – 303 /20 Soldiers Point Road, SOLDIERS POINT
- PT 14 - 304/20 Soldiers Point Road, SOLDIERS POINT
- PT 15 – 401/20 Soldiers Point Road, SOLDIERS POINT
- PT 16 - 402/20 Soldiers Point Road, SOLDIERS POINT
- PT 17 – 403/20 Soldiers Point Road, SOLDIERS POINT
- PT 18 - 404/20 Soldiers Point Road, SOLDIERS POINT
- PT 19 – G01/20 Soldiers Point Road, SOLDIERS POINT

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.

- (9) **Signage** – You are advised that any proposed advertising signs that are not shown on the approved plans, or classified as exempt development, are subject to a separate Development Application to Council.

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

The determination decision was reached for the following reasons:

- The proposed development, subject to the recommended conditions, is consistent with the objectives of the applicable environmental planning instruments, being; Port Stephens Local Environmental Plan 2013 (PSLEP), State Environmental Planning (Resilience and Hazards) 2021, State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004, State Environmental Planning Policy (Biodiversity and Conservation) 2021 and State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development.
- The proposed development is, subject to the recommended conditions, consistent with the objectives of the Port Stephens Council Development Control Plan 2014 (PSDCP).
- Subject to the recommended conditions the proposed development will be provided with adequate essential services required under the PSLEP.
- The proposed development is considered to be of an appropriate scale and form for the site and the character of the locality.
- The proposed development, subject to the recommended conditions, will not result in unacceptable adverse impacts upon the natural or built environments.
- The proposed development is a suitable and planned use of the site and its approval is within the public interest.
- Any submission issues raised have been taken into account in the assessment report and where appropriate conditions of consent have been included in the determination. Council has given due consideration to community views when making the decision to determine the application.

**REASONS WHY THE CONDITIONS HAVE BEEN IMPOSED**

The following conditions are applied to:

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

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

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



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

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

#### **RIGHT OF REVIEW**

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

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

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





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**ITEM NO. 4****FILE NO: 22/241877  
EDRMS NO: 16-2022-626-1****DEVELOPMENT APPLICATION (DA) 16-2022-626-1 - SOLAR ENERGY SYSTEM  
AT 8 LEISURE WAY, RAYMOND TERRACE**

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

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Approve Development Application DA No. 16-2022-626-1 for a solar energy system at 8 Leisure Way, Raymond Terrace (Lot 2 DP 1006266) subject to the conditions contained in **(ATTACHMENT 1)**.

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**BACKGROUND**

The purpose of this report is to present Development Application (DA) 16-2022-626-1 for a solar energy system to Council for determination.

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

Subject Land:	8 Leisure Way, Raymond Terrace (Lot 2 DP 1006266)
Total Area:	20,036m <sup>2</sup>
Zoning:	RE1 Public Recreation
Submissions:	0
Key Issues:	The key issues identified throughout the assessment of the DA relate to tree removal, visual impacts and glare impacts to aircraft.

The DA has been reported in accordance with Council's 'Planning Matters to be Reported to Council Policy' as the DA is proposed on Council owned land with a cost of works over \$250,000.

A Locality Plan is provided at **(ATTACHMENT 2)**.

Proposal

The DA is for the installation of a 202.4kW solar energy system to support the Lakeside Leisure Centre at Raymond Terrace. The DA includes the following key aspects:

- 150 solar panels flush mounted on the roof of the existing Lakeside Leisure Centre with an area of 387.65m<sup>2</sup>



- 310 ground mount panels located towards the southern side boundary (behind the building) with an area of 801.15m<sup>2</sup>
- Individual solar panels measure 2.279m (L) x 1.134m (W) x 0.34m (H) and 2.58m<sup>2</sup> in area
- Associated trenching for cable installation and fencing to exclude public access.

#### Site Description and History

The site comprises a single lot with a total area of 20,036m<sup>2</sup>. The topography of the site has a slight cross fall from the northern side of the lot to the south-eastern side. The site is mostly clear of vegetation, comprising exotic grasses with some native vegetation scattered throughout. The site is zoned RE1 Public Recreation.

The site contains the Lakeside Leisure Centre including swimming pool, and a driveway for access. Residential development is located to the north, south, and west of the site. A commercial premise (Ten Pin Bowling), two sports fields (Lakeside Sports Complex and Lakeside Rugby Field), and a car park are to the east of the site with the Grahamstown Dam further to the north-east.

#### Key Issues

The key issues identified throughout the assessment of the DA relate to the proposed tree removal, glare and visual impacts. A detailed assessment of the DA is contained within the Planners Assessment Report (**ATTACHMENT 3**).

#### Tree Removal

The development requires the removal of 5 trees to install the ground-mounted panel bank. Two trees marked for removal are koala feed trees, which require off-set planting in accordance with the Port Stephens Comprehensive Koala Plan of Management (CKPoM). The proposed tree removal has been assessed by Council's Environmental Planner and found to be acceptable for the following reasons:

- The 2 koala feed trees marked for removal are young, do not contain any evidence of habitation and appear to be saplings from a row of trees located in the adjoining vegetated land to the south
- The site is identified as clear on the Koala Habitat Planning Map and therefore, there is no expectation of koalas traversing or habituating the subject site or areas adjoining the site
- The planting of 12 koala feed trees as replacement plantings is recommended as a condition of consent
- The ground-mounted panel bank has been located away from the heavily vegetated area to the south of the site.

As a result, the DA is consistent with the CKPoM and no adverse impacts would occur to koalas.

### Visual Impacts

The ground-mounted panel bank and fencing will be partially visible from west-bound traffic along Richardson road, and from the adjoining carpark/sports fields to the east.

A condition requiring the installation of landscape screening around the ground-mounted panels has been recommended to screen the development and soften the interface with the existing landscape.

### Glare Impacts to Aircraft

The DA was referred to the Department of Defence given the proximity of the site to the Williamstown RAAF Base. The Department of Defence requested that a condition of consent be imposed to ensure that solar panels do not comprise reflective materials and note that Defence may request modification to the panels should the panels be found to cause glare. A condition of consent reflecting these requirements has been included in the recommended conditions at **(ATTACHMENT 1)**.

### Conclusion

As detailed in the Planners Assessment Report **(ATTACHMENT 3)**, the DA is consistent with the aims and objectives of the relevant environmental planning instruments and Council policies applicable to the subject site. Subject to the recommended conditions, there will be no adverse impact on the natural or built environment.

The DA has been suitably designed to address the site constraints and will not result in hazardous or offensive development.

## **COMMUNITY STRATEGIC PLAN**

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

## **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		N/A
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.

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

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

**Social and Economic Impacts**

The DA provides a renewable energy source that will service the energy demands of the Lakeside Leisure Centre, therefore assisting in the transition toward cleaner electricity generation. Furthermore, the proposal will generate direct employment opportunities during construction, therefore having a positive impact on the local economy. Overall, there are no anticipated adverse social or economic impacts as a result of the DA.

**Impacts on the Built Environment**

The solar panels are significantly setback from the road frontage and are located primarily out of public view. Landscape screening will further mitigate any adverse impacts to the built environment. Fencing is proposed to be provided to protect the panels and inverters from public access and potential vandalism. Overall, the DA is compatible with the surrounding built environment. The proposed solar panels are located over the proposed Stage 2 upgrade works associated with the Leisure Centre. The solar panels are of a construction material that can be relocated in the event Council receives funding to undertake the Stage 2 upgrade works at the Leisure Centre.

### Impacts on the Natural Environment

The DA is not expected to adversely impact the natural environment. The proposed removal of 2 koala feed trees has been found to be acceptable by Council's Natural Systems Section, subject to offset planting of 12 trees. Overall, the DA has been found to have minimal impacts on the natural environment.

## **CONSULTATION**

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

### Internal

Consultation was undertaken with Council's Local Infrastructure Contributions and Natural Systems Sections. The referral comments have been considered as part of the Planners Assessment Report (**ATTACHMENT 3**). All internal referral officers supported the DA subject to the recommended conditions of consent (**ATTACHMENT 1**).

### External

Consultation was undertaken with the Department of Defence and Ausgrid. The referral comments have been considered as part of the Planners Assessment Report (**ATTACHMENT 3**). Both external agency's supported the DA, subject to the recommended conditions of consent (**ATTACHMENT 1**).

### Public Notification

The DA was notified in accordance with the requirements of the Port Stephens Council Community Participation Plan. The notification period was from 22 August 2022 to 6 September 2022. No submissions were received during this period.

## **OPTIONS**

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

## **ATTACHMENTS**

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

**COUNCILLORS ROOM**

1) Development Plans.

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

**TABLED DOCUMENTS**

Nil.



## RECOMMENDED CONDITIONS OF CONSENT DA 16-2022-626-1

**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.
PV100	A	Site Plan	The Green Guys Group	20/06/2022

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

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

- (2) **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) **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.
- (4) **Protect existing vegetation and natural landscape features** – No vegetation or natural landscape features other than that authorised for removal, pruning by this Consent must be disturbed, damaged or removed. No additional works or access/parking routes transecting the protected vegetation must be undertaken without Council Approval.
- (5) **Supply of Electricity** - Satisfactory arrangements are to be made with Ausgrid with respect to the proposed solar energy system which will form part of the development. It is the Applicant's responsibility to enter into the required connection contract. Information on how to apply for a connection to the network is provided on Ausgrid's website <https://www.ausgrid.com.au/Connections/Get-connected>
- (6) **Bushfire safety** – The site is located within a bushfire prone area and must comply

## PORT STEPHENS COUNCIL

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with NSW Rural Fire Service document "Planning for Bushfire Protection 2019" (PBP2019). In this regard the following is required:

- a) A 10m asset protection zone is to be established and maintained as an inner protection area for the life of the development.
- b) A Bushfire Emergency Management and Operations Plan is to be prepared that identifies all relevant risks and mitigation measures associated with the construction and operation of the solar farm. The Bushfire Emergency Management and Operations Plan is to include:
  - Detailed measures to prevent or mitigate fires igniting;
  - Work that should not be carried out during total fire bans;
  - Availability of fire-suppression equipment, access and water; storage and maintenance of fuels and other flammable materials;
  - Notification of the local NSW RFS Fire Control Centre for any works that have the potential to ignite surrounding vegetation, proposed to be carried out during a bush-fire fire danger period to ensure weather conditions are appropriate; and
  - Appropriate bush fire emergency management planning.

(7) **Non-reflective material** – Solar panels are to comprise non-reflective materials.

- (8) **Tree Removal/Pruning** – Removal of two Swamp Mahogany at the northwest corner of the 'Ground Mounted Panel Bank' as shown on the 'Site plan', drawing number PV100, prepared by The Green Guys Group, dated 20/06/2022 and below are approved for removal/pruning:
- 3 x *Acacia terminalis*
  - 2 x *Eucalyptus robusta* (Swamp Mahogany)

- (9) **Protect Existing Vegetation and Natural Landscaping Features** – Approval to remove existing vegetation is not to occur until the issue of the Construction Certificate.

No Vegetation or natural landscape features other than that authorised for removal, pruning by this Consent must be disturbed, damaged or removed. No additional works or access/parking routes transecting the protected vegetation must be undertaken without Council Approval.

- (10) **Roof Mounted Equipment** – All roof mounted equipment such as solar panels, air conditioning units, service pipes and vents etc., required to be installed must be concealed within the external walls of the development or adequately screened so as not to be visible from a public place.

## 2.0 – Prior to Issue of a Construction Certificate

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



- (1) **Construction Certificate** – The following information must be provided to the Certifying Authority with the Construction Certificate application:
  - a) Detailed Landscape Plan detailing screening for the highlighted area on the site plan that complies with PBP 2019 and Council's Tree Technical Specifications.
- (2) **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.

### 3.0 - Prior to Commencement of Works

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

- (1) **Public liability insurance** – The owner or contractor must take out a Public Liability Insurance Policy with a minimum cover of \$20 million in relation to the occupation of, and works within, public property (i.e. kerbs, gutters, footpaths, walkways, reserves, etc.) for the full duration of the proposed works.  
Evidence of this Policy must be provided to Council and the Certifying Authority.
- (2) **Notice of Principal Certifying Authority appointment** – The Principal Certifier for this development must give notice must be given to the consent authority and Council, where the Council is not the consent authority, at least two days prior to subdivision and/or building works commencing in accordance with Section 6.6 (2) (a) of the Environmental Planning and Assessment Act 1979 and Section 57 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021. The notice must include:
  - a) a description of the work to be carried out;
  - b) the address of the land on which the work is to be carried out;
  - c) the Registered number and date of issue of the relevant development consent;
  - d) the name and address of the Principal Certifier and the person who appointed the principal certifier;
  - e) if the principal certifier is a registered certifier
    - i) the certifier's registration number, and
    - ii) a statement signed by the registered certifier to the effect that the certifier consents to being appointed as principal certifier, and
    - iii) a telephone number on which the certifier may be contacted for business purposes.

The notice must be lodged on the NSW planning portal.

- (3) **Notice commencement of work** – Notice must be given to Council and the Principal Certifier, if not the Council, of the person's intention to commence the erection of the building or undertake subdivision work at least two days prior to subdivision and/or building works commencing in accordance with Sections 6.6 (2) and 6.12 (2) (c) of





the Environmental Planning and Assessment Act 1979 and Section 59 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021. The notice must include:

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

The notice must be lodged on the NSW planning portal.

- (4) **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).

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

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

- (6) **Construction Certificate Required** – In accordance with the provisions of Section 6.7 of the *Environmental Planning & Assessment Act 1979 (EP&A Act 1979)*, construction or subdivision works approved by this consent must not commence until the following has been satisfied:

- a) a Construction Certificate has been issued by a Consent Authority;
- b) a Principal Certifying Authority (PCA) has been appointed by the person having benefit of the development consent in accordance with Section 6.5 of the *EP&A Act 1979*; and
- c) the PCA is notified in writing of the name and contractor licence number of the owner/builder intending to carry out the approved works.

- (7) **Tree protection measures** - Before the commencement of any site or building work, the PCA must ensure the measures for tree protection are in place.

- (8) **Fencing** – Before the commencement of any site or building work, the PCA must ensure that all fencing approved within this DA are a transparent type (e.g. chain link/mesh).



#### 4.0 - During Works

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

- (1) **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.

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

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

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

- (4) **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.

- (5) **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.

- (6) **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.

- (7) **Protection of Trees /Existing Street Trees** - Protection of trees to be retained must be in accordance with AS490 'Protection of Trees on Development Sites' and the following:
- a) No existing nature strip(s), street tree(s), tree guard(s), protective bollard(s), garden bed surrounds or root barrier installation(s) must be disturbed, relocated, removed or damaged during earthworks, demolition, excavation (including any driveway installation), construction, maintenance and/or establishment works applicable to this consent, without Council agreement and/or consent.
- (8) **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'.

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

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

- (1) **Occupation Certificate required** - An Occupation Certificate must be obtained prior to any use or occupation of the development. The Principal Certifying Authority must be satisfied that the development has been constructed in accordance with approved plans, specifications and conditions of this consent.
- (2) **Completion of landscape works** – All landscape works are to be undertaken in accordance with the approved landscape plan and conditions of this Development Consent.
- (3) **Completion of landscape and tree works** - Before the issue of an occupation certificate, the principal certifier must be satisfied that all landscape and tree-works, including pruning in accordance with AS 4373-2007 and the removal of all noxious



weed species, have been completed in accordance with the approved plans and any relevant conditions of this consent.

- (4) **Landscape Plan / Street Tree Plan** - The following tree species must be planted where there is sufficient land within Lot 2 DP 1006266, or a portion of the replacement trees may be replanted on receiving land as approved by Council:

a) 12 x *Eucalyptus robusta* Swamp Mahogany ≥ 10L pot size

The planting must be installed on the subject lot and/or land approved by Council prior to the operation of the development.

## 6.0 – Ongoing Use

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

- (1) **Maintenance of landscaping** – Landscaping must be maintained in accordance with the approved landscape plan and conditions of this development consent. All landscape areas must be kept free of parked vehicles, stored goods, garbage or waste material at all times.

If any of the vegetation dies or is removed, it is to be replaced with vegetation of the same species and similar maturity as the vegetation which has died or was removed.

- (2) **Asset Protection Zones** – The 10m Asset Protection Zone (APZ) must be maintained to the standard of an Inner Protection Area (IPA) for the life of the development.

- (3) **Maintenance of Replacement Plantings / Revegetation** - Replacement trees are to be maintained (e.g. through the use of mulch and watering) until maturity, or for a period of 5 years from planting.

If any of the vegetation dies or is removed, it is to be replaced with vegetation of the same species and similar maturity as the vegetation which has died or was removed.

- (4) **Glare** – It is advised that during operation, should the solar panels be found to cause glare problems for pilots, the Department of Defence (DoD) may request that the panels be suitably modified to extinguish glare as necessary.

## Advice Note(s):

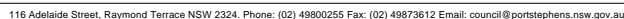
- (1) **'Dial Before you Dig'** – Before any excavation work starts, contractors and others should phone the "Dial Before You Dig" service to access plans/information for underground pipes and cables.
- (2) **Responsibility for damage for tree removal/pruning** – The applicant is responsible for any 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.

- (3) **Approved Plans to be on-site** – A copy of the approved and certified plans, specifications and documents incorporating conditions of approval and certification shall be kept on the Site at all times and shall be readily available for perusal by any officer of Council or the Principal Certifying Authority.
- (4) **Council as PCA, PCA sign** – It is the responsibility of the applicant to erect a PCA sign. Where Council is the PCA, the sign is available free of charge, from Council's Administration Building at Raymond Terrace or the Tomaree Library at Salamander Bay. The applicant is to ensure the PCA sign remains in position for the duration of works.
- (5) **Hunter Water Infrastructure - Hunter Water stamped plans – Prior to the commencement of works**, the person having the benefit of this consent shall contact Hunter Water Corporation (HWC) to ensure that the approved works do not impact upon existing or proposed HWC infrastructure. A copy of the information received by HWC shall be provided to Council within 10 days of receipt. Should HWC require modification to the approved development a Section 4.55 Modification Application and/or modified Construction Certificate Application should be lodged.
- (6) **Requirements of PCA - Issuing of OC – Prior to the issue of any Occupation Certificate**, the Principal Certifying Authority shall be satisfied that the development has been constructed in accordance with approved plans, specifications and conditions of this consent. No occupational use is permitted until the Principal Certifying Authority issues an Occupation Certificate.  
**Note:** The Principal Certifying Authority must submit a copy of the Occupation Certificate to Council, with all associated documentation, within two days of it being issued.
- (7) **Works near/adjoining electricity network assets** – There are electricity network assets adjacent to the proposed development as per the easement identified on the deposited plan for the sites. Workcover Document "Code of Practice - Work Near Overhead Powerlines" outlines the minimum safety separation requirements between overhead power lines to plant, equipment and scaffolding within the development during construction. It is a statutory requirement that this document is followed at all times throughout the construction phase.
- (8) **Bird Strike Advice** – As the subject site is located in an area mapped by the Department of Defence as "Birdstrike Group B", organic waste and/or the storage of bins associated with any future development must be covered and/or enclosed and limited on-site.







## DEVELOPMENT ASSESSMENT REPORT

### APPLICATION REFERENCES

<b>Application Number</b>	16-2022-626-1
<b>Development Description</b>	Installation of solar energy system
<b>Applicant</b>	PORT STEPHENS COUNCIL
<b>Land owner</b>	PORT STEPHENS COUNCIL
<b>Date of Lodgement</b>	11/08/2022
<b>Value of Works</b>	\$334,479.00
<b>Submissions</b>	0

### PROPERTY DETAILS

<b>Property Address</b>	8 Leisure Way RAYMOND TERRACE
<b>Lot and DP</b>	LOT: 2 DP: 1006266
<b>88B Restrictions on Title</b>	Nil
<b>Current Use</b>	Community Facility
<b>Zoning</b>	RE1 PUBLIC RECREATION
<b>Site Constraints</b>	Bush Fire Prone Land – Vegetation Buffer; Stormwater Drainage Requirement Area - Infiltration; Combined Corridor Map – Stepping Stone; NSW Wild Life Atlas – Fauna; Acid Sulfate Soil – Class 5, 4; Koala Habitat Planning Map – Clear; ANEF2025 – 25-30; RAAF Height Trigger Map – Runway centre-line, 15m; RAAF Bird Strike – Group B; Flood Prone Land.
<b>State Environmental Planning Policies</b>	State Environmental Planning Policy (Biodiversity and Conservation) 2021 – Chapter 4 Koala Habitat Protection; State Environmental Planning Policy (Resilience and

Hazards) 2021 – Chapter 2 Remediation of Land;  
State Environmental Planning Policy (Transport and Infrastructure) 2021 – Chapter 2 Infrastructure.

## PROPOSAL

The proposed development seeks consent to install a 202.4kW solar energy system at the Lakeside Sports Complex. This large-scale system consists of 150 solar panels flush mounted on the roof of the existing Lakeside Leisure Centre with an area of 387.65m<sup>2</sup> and a separate bank of 310 ground mount panels located towards the southern side boundary (behind the building) with an area of 801.15m<sup>2</sup>. The individual solar panels measure 2.279m (L) x 1.134m (W) x 0.34m (H) and 2.58m<sup>2</sup> in area. The ground-mounted panel bank will be installed on raised concrete piers that are anchored into an S-Rack mounting device that will be 670mm (L) x 670mm (W) x 760mm (H) and 801.15m<sup>2</sup> in area. Associated works include trenching for cable installation and fencing to restrict access. The proposed site plan is shown in Figure 1 below. Port Stephens Council is the landowner and proponent of the project.



Figure 1: Proposed site plan

## SITE DESCRIPTION

The subject site is legally identified as Lot 2 DP 1006266 at 8 Leisure Way, Raymond Terrace (the 'site'). The topography of the site has a slight cross fall from the northern side of the lot to the south eastern side. The site contains the Council owned Lakeside Leisure Centre, a swimming pool, and a driveway for access as shown in Figure 2 below. Residential development is located to the north, south, and west of the site. A commercial premise (Ten Pin Bowling), two sports fields (Lakeside Sports Complex and Lakeside Rugby Field), and a car park are to the east of the site with the Grahamstown Dam further to the east.





**Figure 2:** Aerial GIS imagery of the subject site shaded in blue

#### SITE HISTORY

The site has a number of applications on Council's digital records. These are detailed below:

File Number	Description	Outcome	Date
16-1998-1786-1	Leisure and Aquatic Centre	A	01/03/1999
16-2000-862-1	Amenities Building	AC	06/07/2000
16-2003-1192-1	Aluminium Awnings – Additions to Existing Recreation Facility	AC	04/09/2003
16-2012-415-1	2012 Annual NSW Aboriginal Rugby League Knockout Event	AC	25/09/2012

There is no history of contamination or previous approvals that would impact the proposed development.

#### SITE INSPECTION

A site inspection was carried out on 08/09/2022. The subject site can be seen in the images below:



**Image 1:** Proposed location of the ground mounted panel bank



**Image 2:** View towards the leisure centre carpark and location of the ground mounted panels



**Image 3:** View towards buildings proposed for roof mounted panels



**Image 4:** View towards the entrance of the leisure centre and buildings proposed for roof-mounted panels





**Image 5:** View from the existing pedestrian path to buildings proposed for roof mounted panels and section of ground mounted panels



**Image 6:** Swamp Mahogany tree proposed for removal



**Image 7:** Proposed location for replacement tree planting



**Image 8:** Second Swamp Mahogany tree proposed for removal

## ITEM 4 - ATTACHMENT 3 PLANNERS ASSESSMENT REPORT.

**PLANNING ASSESSMENT**

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

**Internal**

Local Infrastructure Contributions – The application was referred to the Local Infrastructure Contributions section to calculate any applicable development contributions. The referral notes that in accordance with the Port Stephens Local Infrastructure Contributions Plan, S7.12 contributions are not applicable to public infrastructure carried out by or on behalf of Council.

Natural Systems – The application was referred to the Natural Systems Section to assess the proposed tree removal. Councils Environmental Planner conducted a site inspection on 21 September 2022. Five trees are proposed for removal to facilitate the proposal. The five tree species include:

- 3 x *Acacia terminalis*
- 2 x *Eucalyptus robusta* (Swamp Mahogany)

*Eucalyptus robusta* is a preferred Koala feed tree, as such, 12 replacement trees must be planted in accordance with the Port Stephens Tree Technical Specification. No hollows or nests were observed in the above trees. Subject to conditions of consent, the application is supported by the Natural Systems Section.

Comment: All referral officers have supported the application.

**External**

Department of Defence – The application was referred to the Department of Defence given the sites proximity to the Williamstown RAAF Base. The initial referral response raised concern regarding potential glare impacts resulting from the proposed solar panels. Defence requested that an appropriate condition to ensure that potential glare impacts are mitigated and monitored during and following installation to ensure that aircraft safety for operations from RAAF Base Williamstown are not compromised, be included in any approval. As a result, a condition of consent has been recommended to address the Department of Defence's concerns.

Ausgrid – The application was referred to Ausgrid for comment due to the proximity of the development to overhead power lines and a connection application. Ausgrid raised no objection to the proposal. Advice was provided noting minimum clearances to Ausgrid assets appear to not be encroached by the development. Advice was also provided regarding a connection application. An advisory note reflecting the Ausgrid comments has been included in the recommended conditions of consent.

**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 does not require any of the approvals listed under S.4.46 and therefore is not integrated development.

**Section 4.14 – Consultation and development consent (certain bushfire prone land)**

The site is mapped as bushfire prone land - vegetation buffer and as such triggers assessment under the NSW RFS Planning for Bushfire Protection 2019 (PBP 2019).



## ITEM 4 - ATTACHMENT 3 PLANNERS ASSESSMENT REPORT.

Section 8.3.5 of PBP 2019 applies to wind and solar farms. While the PBP does not specifically mention solar energy systems, it is deemed appropriate to apply the development criteria to this development for the following reasons:

- The Transport and Infrastructure SEPP was brought into effect in 2022 and included a new definition of Solar Energy System, the PBP however, was last updated in 2019 before the creation of the definition for a Solar Energy System. Under the previous SEPP, the application would have been defined as a Solar Farm, which is consistent with the PBP 2019 definition.
- Given the Solar Energy System is of a comparable size in power generation as Solar Farms that have been approved recently in the LGA, it is considered that the provisions for a wind and solar farms are applicable to the development.
- There is sufficient vegetation in the surrounding area of the proposed ground mounted panel bank that warrants consideration of potential bushfire risks to the proposal.

PBP 2019 states that the following should be provided for wind and solar farms:

- A minimum 10m APZ for the structures and associated buildings/infrastructure; and
- The APZ must be maintained to the standard of an IPA for the life of the development. Infrastructure for the purposes of requiring APZ excludes:
  - Road access to the site; and
  - Power or other services to the site and associated fencing.

Due to the development requiring vegetation management for the creation of the APZ, it is recommended that a condition of consent be imposed requiring the preparation of a Vegetation Management Plan, and a Bushfire Emergency Management and Operations Plan.

Through the establishment and maintenance of a 10m APZ and the recommended conditions requiring compliance with PBP 2019, the proposal conforms to the requirements of PBP 2019.

#### **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 (Biodiversity and Conservation) 2021

#### Chapter 4 Koala Habitat Protection 2021

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

The site has been identified as 'clear' on the koala habitat mapping, however it was noted on a site inspection that two of the trees are preferred koala habitat. The development proposes to remove five trees of the following varieties:

- 3 x *Acacia terminalis*
- 2 x *Eucalyptus robusta* (Swamp Mahogany)

*Eucalyptus robusta* is a preferred Koala feed tree, as such, 12 replacement trees with a ≥ 10L pot size must be planted as per the Port Stephens Tree Technical Specification. A condition of consent has been recommended to this effect.

## ITEM 4 - ATTACHMENT 3 PLANNERS ASSESSMENT REPORT.

Additionally, conditions have been recommended relating to the retention of all trees not marked for removal on the Site Plan, the planting of landscaping, and the on-going maintenance of the landscaping.

Subject to the recommended conditions of consent, the proposed development will not result in any adverse impacts to koala habitat and the proposal is consistent with the requirements of the SEPP.

State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 4 Remediation of Land

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

It is noted that the NSW list of contaminated sites and list of notified sites published by the EPA does not identify the site as being contaminated, nor has previous record of contamination in Council's system. The land is not within an investigation area, there are no records of potentially contaminating activities occurring on the site, and the Solar Energy System is not listed as a possible contaminating use, per Table 1 of the Guidelines. Noting this, the proposed development satisfies the requirements of Chapter 4 of this SEPP.

State Environmental Planning Policy (Transport and Infrastructure) 2021

Chapter 2 Infrastructure

The aim of the *State Environmental Planning Policy (Transport and Infrastructure) 2021* is to facilitate the effective delivery of infrastructure across the State by –

- (a) *improving regulatory certainty and efficiency through a consistent planning regime for infrastructure and the provision of services, and*
- (b) *providing greater flexibility in the location of infrastructure and service facilities, and*
- (c) *allowing for the efficient development, redevelopment or disposal of surplus government owned land, and*
- (d) *identifying the environmental assessment category into which different types of infrastructure and services development fall (including identifying certain development of minimal environmental impact as exempt development), and*
- (e) *identifying matters to be considered in the assessment of development adjacent to particular types of infrastructure development, and*
- (f) *providing for consultation with relevant public authorities about certain development during the assessment process or prior to development commencing, and*
- (g) *providing opportunities for infrastructure to demonstrate good design outcomes.*

Pursuant to Division 4 of the SEPP, the proposal is a 'solar energy system', which is defined as:

**Solar energy system** means any of the following systems—

- (a) *a photovoltaic electricity generating system used for the primary purpose of generating electricity for a land use—*
  - i. *carried out on the land on which the system is located, or*
  - ii. *carried out by the owner of the system on adjoining land,*
- (b) *a solar hot water system,*
- (c) *a solar air heating system.*



In accordance with Clause 2.36, development for the purpose of a solar energy system may be carried out by any person with consent on any land. The subject site is zoned RE1 Public Recreation. Therefore, in accordance with Clause 2.36, the proposed solar farm energy system is permissible with consent.

As per Clause 2.122 of the SEPP, the proposal is not classed as a traffic-generating development under Schedule 3. A referral under this Clause to Transport for NSW is therefore not required.

Port Stephens Local Environmental Plan 2013 (LEP)

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

The proposed development is defined as a 'solar energy system' which is not permissible with consent in the RE1 Public Recreation zone under the PSLEP 2013. Notwithstanding, in accordance with Clause 2.36 of the Transport and Infrastructure SEPP, development for the purpose of solar energy system may be carried out by any person with consent on prescribed non-residential zone (including RE1 Public Recreation). The Transport and Infrastructure SEPP prevails over the land use permissibility of the PSLEP 2013 under the overriding provisions of Section 2.7 of the SEPP.

The objectives of the RE1 Public Recreation zone are:

- To enable land to be used for public open space or recreational purposes.
- To provide a range of recreational settings and activities and compatible land uses.
- To protect and enhance the natural environment for recreational purposes.

The development addresses the objectives of the zone by facilitating a compatible land use whilst continuing to maintain the public recreation character of the land. The site would still be able to be utilised for public recreation, with the solar farm providing electricity generation for the existing facilities. On this basis, the proposal aligns with the objectives of the zone.

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

The site is not identified on the Height of Buildings map. The solar panels are to be located flush on the roof of the existing building, and therefore will not result in any significant increase to the building height. The ground-mounted solar panels will have a maximum height of 0.76m, which is less than the height of existing structures on the subject site and will the ground-mounted panel bank will surrounded by a 2.1m chain-link fence that is screened with compliant landscaping. The ground-mounted panel bank is also primarily out of view of any residential housing to the south or west of the site and it is considered unlikely to cause adverse impacts to the amenity or character of the area. Given this, the height of the proposed development is considered to be consistent with the character of the area, and will reflect the hierarchy of centres and land use structures. The existing buildings will remain unchanged and is compliant with this clause.

In addition, the building height definition within the PSLEP 2013 means:

- (a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or
- (b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

In accordance with part (b) of the definition, the roof mounted solar energy panels are considered to be of a similar characterisation to communication devices and therefore excluded from the building height calculation.

**Clause 5.21 – Flood Planning**

The subject site is located on land mapped as being Flood Prone land, however, the proposed development is positioned outside the affected areas. As a result, the development does not require any flood controls.

**Clause 7.1 – Acid Sulfate Soils**

The subject land is mapped as containing potential Class 5 and 4 acid sulfate soils. The proposed development is not anticipated to entail excavations below 1 metre and therefore it is not expected that acid sulfate soils would be encountered during works. It is noted that the ground-mounted solar panel bank is installed above the existing ground level (EGL) into an S-PACK mounting system and is considered unlikely to disturb ASS.

**Clause 7.2 – Earthworks**

The proposal includes minor earthworks that will not extend below 1m from EGL. The works proposed include the construction of footings for the fencing and a trench to connect the wires from the ground-mounted panel bank to the wall-mounted inverter. The works are unlikely to disrupt drainage patterns, adversely impact neighbouring amenity or environmentally sensitive areas, subject to recommended conditions relating to sediment and erosion control.

**Clause 7.5 – Areas Subject to Aircraft Noise**

The proposed development is located on land identified as being within the 20-25 Australian Noise Exposure Forecast (ANEF) contour, however, the proposed development does not increase human exposure to aircraft noise. A referral was sent to the Department of Defence (DoD), and in response, no objection was made to the proposal regarding the impacts of aircraft noise.

**Clause 7.6 – Essential Services**

The subject site is serviced by reticulated water, electricity and sewer. In addition, the application has demonstrated that stormwater drainage resulting from hard stand areas can be catered for in accordance with Councils requirements. The subject land also maintains direct access to Leisure Way, meeting the requirements of this clause.

A referral was sent to Ausgrid, to which they raised no major concerns with the proposal but noted the developments proximity to Ausgrids assets and that the Workcover Code of Practice 2006 – Work Near Overhead Powerlines must be complied with during works. Advice was also provided regarding the need for a connection application. As a result, all essential services are available to the site and the proposal is compliant with the requirements of this clause.

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

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

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

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

**Chapter B1 – Tree Management**

The proposed development seeks to remove five trees and disturb exotic grassland and therefore the provisions of this Chapter apply. The five tree species include:

- 3 x *Acacia terminalis*
- 2 x *Eucalyptus robusta* (Swamp Mahogany)

## ITEM 4 - ATTACHMENT 3 PLANNERS ASSESSMENT REPORT.

*Eucalyptus robusta* is a preferred Koala feed tree, as such, 12 replacement trees with a pot size that is equal to or greater than 10L must be planted as per the Port Stephens Tree Technical Specification. No hollows or nests were observed in the above trees.

Subject to the recommended conditions of consent, the proposed tree removal satisfies the requirements of this chapter.

#### Chapter B2 – Natural Resources

The site contains environmentally sensitive features including koala habitat and therefore the requirements of this Chapter apply. The proposed development would result in no adverse environmental impacts and is therefore consistent with this Chapter, in that:

- A site inspection was conducted on 21 September 2022 that identified more than 5 *Eucalyptus robusta* (Swamp Mahogany) trees on the site, with 2 located inside the footprint of the ground mounded solar bank and are proposed for removal.
- The two (2) Swamp Mahogany trees marked for removal were young, fragmented from established patches of vegetation, not containing any habitat, and appeared to be saplings from a set of Swamp Mahogany trees located in the vegetated land directly to the south.
- The site is identified as 'clear' on the koala Habitat Planning Map and therefore, there is no expectation of koalas traversing or habituating the subject site or areas adjoining the site.
- The site contains minimal native vegetation, with much of the vegetation being disturbed and consisting of exotic grassland which provides limited habitat for threatened flora and fauna species.
- The planting of 12 Swamp Mahogany trees as a replacement for the 2 Swamp Mahogany trees that are approved for removal is recommended as a condition of consent.
- The ground-mounted panel bank has been located away from the heavily vegetated area to the south of the site.

As a result, the development is considered to be consistent with the CKPoM in that where possible impacts to significant vegetation have been avoided, and the provision of 12 offset plantings will ensure that there is no adverse impacts to the koala habitat of the local area.

#### 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 the clause 7.1 PSLEP 2013 discussion above, the proposed development could be undertaken, subject to conditions of consent, without resulting in adverse impact to ASS. In this regard, the development is consistent with the objective and requirements of the DCP.

##### Noise

The separation distances incorporated into the development will limit any significant impacts on the adjoining residential development. The impacts of the development during construction could be limited through conditions of consent which limit construction work hours and mitigate noise derived from ventilation and air conditioning systems. Additionally, it is not expected that ongoing use of the solar panels will have adverse noise impacts as any inverters have been appropriately located away from residential areas. Subject to conditions, the application is satisfactory in regards to noise management.

##### Earthworks

As discussed at clause 7.2 of the PSLEP 2013 above, the proposed development involves minor earthworks. The impacts of the proposed earthworks can be mitigated through conditions of consent. The proposal is therefore consistent with requirements outlined in Councils DCP relating to earthworks.

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Waste

To ensure waste is managed responsibly during construction, a condition of consent has been recommended requiring a rubbish containment area to be established prior to the commencement of works on site.

**Chapter B4 – Drainage and Water Quality**

The proposal does not create any additional impervious area and does not trigger the requirement for any additional water quality or detention measures. Any run-off from the panels will either be captured by the existing approved stormwater management system of the Lakeside Leisure Centre, or fall directly to the ground as it currently does. Subject to conditions of consent, the development is compliant with the objectives of this control.

**Chapter B5 – Flooding**

The subject land is mapped as being within the Flood Planning Area. Following from the discussion against clause 5.21 of the PSLEP 2013 above, the proposed development is outside the flood affected area and therefore no specific flood controls apply.

**Chapter B6 – Williamstown RAAF Base - Aircraft Noise and Safety**

The impact of aircraft noise on the proposed development has been assessed in the discussion against clause 7.5 of the PSLEP 2013 above, and found to be acceptable in this instance.

**Chapter B8 – Road Network and Parking**

The proposal is not considered likely to result in adverse traffic impacts to the surrounding road network. The solar energy system will be accessed via the existing crossover from Leisure Way, which does not require any upgrade to support the proposal. There is sufficient parking supply available in the existing car park during construction and ongoing maintenance.

**Chapter C – Development Types**

The proposed development is defined as 'solar energy system'. The PSDCP 2014 does not contain controls that are applicable to the proposed use of the land and the subject site is zoned as RE1 Public Recreation which does not have a specific chapter in the DCP. Notwithstanding, a merits based assessment against the controls identified in Chapter C3 is considered to be the most appropriate as the nature of the Solar Energy System is a large scale energy production system that will act in an equivalent manner to industrial development such as Solar Farms.

**Chapter C3 – Industrial**

Reference	Control	Assessment
Objective C3.A  Requirement C3.1	<b>Building Height</b> <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 heights reflect the hierarchy of centres and land use structure</li> </ul>	No changes to the existing buildings are proposed. The installation of the roof panels will be flush on the roof. It is considered to have an insignificant impact on the height of the building.
Objective C3.B  Requirement C3.2-C3.5	<b>Building Siting and Design</b> <ul style="list-style-type: none"> <li>To ensure development is situated within an appropriate building envelope</li> </ul>	No changes to the form, bulk, or style of the existing buildings are proposed. The proposed panels are located partially away from public view.  The solar energy system does not detract from the amenity of the area and

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Reference	Control	Assessment
		the minor removal of vegetation is appropriate with offset planting to be imposed as a condition of consent. As a result, the development is considered to meet the objectives of this control.
Objective C3.D  Requirement C3.9-C3.11	<b>Fencing</b> <ul style="list-style-type: none"> <li>To avoid the dominance of fences on the streetscape and similar hostile design, and to soften the built environment in industrial areas</li> </ul>	The proposed security fencing is 2.1m from the existing ground level (EGL) and located 0.9m from the ground-mounted panel bank and connecting to the existing fencing and structures on site.  The fencing is appropriately located to ensure that public access to the panels and inverters is restricted.
Objective C3.E  Requirement C3.12-C.19	<b>Facades and Articulation</b> <ul style="list-style-type: none"> <li>To ensure facades consist of appropriate materials and colours that contribute to streetscape amenity</li> <li>To ensure weather protection is provided at building entrances</li> </ul>	The panel and fencing colours will be conditioned to use materials that are sympathetic to the natural environment and existing site context.
Objective C3.F  Requirements C3.20-C3.23	<b>Landscaping</b> <ul style="list-style-type: none"> <li>To enhance the appearance and amenity of developments through the retention and/or planting of large and medium sized trees.</li> <li>To encourage landscaping between buildings for screening.</li> <li>To ensure landscaped areas are consolidated and maintainable spaces that contribute to the open space structure of the area.</li> <li>To minimise the visual impact and noise pollution generated by development on nearby residential areas and road contours</li> <li>To use land efficiently and minimise disturbance to the local natural environment</li> <li>To integrate existing landscape features and/or architecture into development</li> <li>To reduce energy consumption through microclimate regulation</li> <li>To reduce air borne pollution by reducing the heat island effect</li> <li>To intercept stormwater to reduce stormwater runoff</li> </ul>	The proposed fencing will be visible from the public areas surrounding the site and requires landscaping to soften the visual impact.  Requirements for landscaping have been included as a recommended condition of consent, including compliance with the PBP 2019 and the PSC Tree specification guide.

Reference	Control	Assessment
Objective C3.G Requirement C3.24	<ul style="list-style-type: none"> <li>To ensure signage is complimentary to its surroundings</li> </ul>	No signage is 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 clauses of the regulations applicable to the proposed development

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

Social and Economic Impacts

The proposal will result in both positive social and economic impacts. The proposal will provide renewable energy sources that will service the Lakeside leisure Centre, therefore assisting in the transition towards cleaner electricity generation. Furthermore, the proposal will generate direct employment opportunities during both construction and operation, therefore having a positive impact on the local economy.

Impacts on the Built Environment

The proposed development is considered to be compatible with the public recreational context of the area. The solar panels are significantly setback from the road frontage or located on existing buildings, and have been designed and located so as to avoid adverse impacts on the use of or access to existing structures and facilities on the site. Appropriate fencing and landscaping will also be provided to protect the panels and inverters from public access and reduce visual impacts. Therefore, the proposal is not considered likely to result in adverse impacts to the built environment.

Impacts on the Natural Environment

The proposed development has been found to have minimal impacts on the natural environmental as detailed in throughout this report because:

- The site is identified as 'clear' koala habitat on the Koala Habitat Planning Map and therefore, there is no expectation of koalas traversing or habituating the subject site or areas adjoining the site;
- The proposed removal of 2 Swamp Mahogany trees will be offset by the planting of 12 Swamp Mahogany trees at an alternative location on site.
- The trees to be removed are young and do not contain any hollows or signs of habitation.

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

The subject site is suitable for the proposed development based on the site being suitably zoned (RE1 Public Recreation), and will not contribute to or result in land use conflict with surrounding development. The site also has sufficient space to allow for the proposal without restricting the current recreational use of existing facilities. The proposal is considered unlikely to have adverse environmental impacts on the subject site or surrounding areas.

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

The application was exhibited from 22 August 2022 to 6 September 2022 in accordance with the provisions of the Port Stephens Council Community Engagement Strategy. No submissions were received with relation to the subject development proposal.

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

The proposal is considered to be in the public interest for the following reasons:

- The proposed development is consistent with the objectives of the RE1 Public Recreation zone under the PSLEP 2013 and is also permissible with consent under the Transport and Infrastructure SEPP 2021;
- The on-going development of renewable energy is considered to be of social and economic importance to the wider LGA and will provide benefits to the local economy during construction and on completion;
- The proposal has been designed and sited to minimise its environmental impacts and conditions recommended to offset the proposed tree removal.

***Section 7.12 – Fixed development consent levies***

In accordance with the Local Infrastructure Contributions Plan, Section 7.12 contributions are not applicable to the proposed development as it is for Council-related development on Council owned land.

**DETERMINATION**

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



ITEM NO. 5

FILE NO: 22/333955  
EDRMS NO: 58-2022-5-1

**PLANNING PROPOSAL FOR SUNRISE LIFESTYLE VILLAGE, 4011, 4029 AND 4045 NELSON BAY ROAD, BOBS FARM**

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

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Adopt the planning proposal (**ATTACHMENT 1**) to amend the Port Stephens Local Environmental Plan 2013 to:
  - a. Regularise the existing approved use of a caravan park at Lot 51 DP 1175028, 4011 Nelson Bay Road, Bobs Farm.
  - b. Enable the extension of the use to adjoining land (subject to development consent) at Lot 3622 DP 622485, 4029 Nelson Bay Road, Bobs Farm and Lot 2 DP 622229, 4045 Nelson Bay Road, Bobs Farm.
  - c. Rezone part of the site from RU2 Rural Landscape to C2 Environmental Conservation.
- 2) Forward the planning proposal to the NSW Department of Planning and Environment for a Gateway determination and request authority to make the plan.

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**BACKGROUND**

The purpose of this report is for Council to adopt the planning proposal (**ATTACHMENT 1**) to amend the Port Stephens Local Environmental Plan 2013 (PSLEP 2013). The proposal seeks to regularise the existing approved use of land at 4011 Nelson Bay Road, Bobs Farm, enable the extension of that use (subject to development consent) to adjoining land at 4029 and 4045 Nelson Bay Road, Bobs Farm and rezone part of the subject land from RU2 Rural Landscape to C2 Environmental Conservation.

Should Council resolve to adopt the planning proposal, it will be forwarded to the NSW Department of Planning and Environment (DPE) requesting a Gateway determination, and for Council to be made the plan making authority. Following issue of a Gateway determination, the planning proposal would be publicly exhibited in accordance with any gateway conditions, before being reported to Council to determine the proposal.

A locality map of the land the subject of the planning proposal is available at (**ATTACHMENT 2**). A Strategic Planning Assessment Report (SPAR) for this planning proposal is available at (**ATTACHMENT 3**).

The existing caravan park (Sunrise Lifestyle Village) was approved under previous Port Stephens Local Environmental Plan 2000 and is permissible under existing use rights. The planning proposal would reduce confusion by amending Schedule 1 of the PSLEP 2013 to include 'caravan park' as an additional permitted use over the subject land. This additional permitted use would apply to the subject site only and does not apply to other similar style developments or locations throughout Port Stephens.

The planning proposal would also extend the additional permitted use to the 2 lots adjoining Sunrise Lifestyle Village (Lot 3622 DP 622485 and Lot 2 DP 622229, known as 4029 and 4045 Nelson Bay Road, Bobs Farm) which are currently used for residential purposes. These lots form the land bounded by Nelson Bay Road, Trotter Road and the existing Sunrise Lifestyle Village. It is intended to extend the development over part of these lots, for which a separate future development application would be required.

The remaining parts of the adjoining lots are proposed to be rezoned from RU2 Rural Landscape to C2 Environmental Conservation. This is for the purposes of retaining a vegetation corridor connecting vegetation to the north and south of the site. An existing wildlife crossing is located approximately 10m from the site's eastern boundary. The fauna crossing underpasses Nelson Bay Road and was previously installed by Transport for NSW.

A summary of the planning proposal and property details are provided below:

<b>Date lodged:</b>	6 December 2022
<b>Proponent:</b>	Hometown Australia C/- ADW Johnson
<b>Subject property:</b>	Lot 51 DP 1175028, 4011 Nelson Bay Road, Bobs Farm Lot 3622 DP 622485, 4029 Nelson Bay Road, Bobs Farm Lot 2 DP 622229, 4045 Nelson Bay Road, Bobs Farm
<b>Total area:</b>	Total site area (all lots combined) is approximately 13.72ha, comprised of: Lot 51            10.18 Lot 3622        2.04 Lot 2             1.49
<b>Current zoning:</b>	RU2 Rural Landscape
<b>Current use:</b>	Lot 51 comprises of an approved caravan park, comprising of 193 manufactured homes and community facilities approved under historic zoning, and currently operating under existing use rights.  Lot 3622 and Lot 2 each contain a single dwelling and associated outbuildings.
<b>Proposed changes:</b>	Inclusion of the subject land within Schedule 1 of PSLEP as an additional permitted use to permit a Caravan Park.  Rezone part of site to C2 Environmental Conservation.

<b>Lot yield:</b>	<p>The planning proposal has potential for approximately 62 additional dwellings on the Subject Land.</p> <p>The existing approved caravan park comprises 193 dwelling sites.</p>
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### 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 additional lots (Lot 3622 and Lot 2) that would accommodate an extension of the Sunrise Lifestyle Village (subject to development consent) are relatively unconstrained.

The proposal is supported by a Streamlined Biodiversity Development Assessment Report (SBDAR). Council's Natural System Team advised that the SBDAR confirms that the site does not contain any koala feed trees and is not suitable habitat for koalas. Notwithstanding, maintaining north-south habitat connectivity is a critical component to this planning proposal and the future development of the site. Transport for NSW has undertaken extensive studies within this location in association with the road upgrade works that were completed in 2015. These works resulted in fauna fencing, fauna grids and fauna crossing structures being installed in the locality.

With the development of the current Sunrise Estate and the proposed future expansion, habitat connectivity through the eastern portion of 4045 Nelson Bay Road is critical to fauna (including koalas) that occur within the area. In order to secure the Eastern portion of the site as fauna connectivity tunnel, a C2 Environmental Conservation Zone is proposed.

Unlike typical residential developments, the development already includes a number of on-site community facilities and services, including a regular private bus service which connects residents with nearby town centres.

### Servicing

Ausgrid and Hunter Water have advised that there is sufficient capacity in the existing network to support the proposed development.

### AHIMS

A search of the Aboriginal Heritage Information Management System identified 1 Aboriginal site recorded near the subject land. The Aboriginal site is located south of Nelson Bay Road, within the Worimi National Park.

Due to the proximity of this site, a Due Diligence Aboriginal Heritage Assessment was prepared and concludes that the site does not contain any sites or potential archaeological deposits (PADs) of Aboriginal heritage significance, and as a result,

an Aboriginal Heritage Impact Permit (AHIP) would not be required for the future development.

## COMMUNITY STRATEGIC PLAN

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

## FINANCIAL/RESOURCE IMPLICATIONS

Financial and resourcing implications for Council as a consequence of the recommendation of this report are outlined below.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes		The planning proposal would change the highest and best use permitted on the land, which is likely to increase the land value. Consequently, rate income from the land is expected to increase.
Reserve Funds	No		
Developer Contributions (\$7.11)	No		Development contributions are payable subject to an approved DA.
External Grants	No		
Other	Yes		Stage 1 Planning Proposal fees of \$13,860 (incl. GST) have been paid.

## 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	<a href="#">Risk Ranking</a>	Proposed Treatments	Within Existing Resources?
There is a risk that DPE will refuse the planning proposal at Gateway.	Low	Accept the recommendation.	Yes

**ORDINARY COUNCIL - 28 FEBRUARY 2023**

There is a risk that the housing needs in Port Stephens are not met.	Medium	Accept the recommendation.	Yes.
There is a risk that without the proposed C2 Environmental Conservation zone, the wildlife corridor will not be secured into the future.	Low	Accept the recommendation.	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 DPE for a Gateway determination, including a request for Council to be made the Plan Making Authority.

State Environmental Planning Policy (Housing) 2021

Provisions in the Housing SEPP relating to caravan parks are applicable to development of the site. These provisions include matters for consideration when assessing a future development application for a caravan park, including a caravan park that comprises of manufactured homes. These matters include site suitability, location and character, and whether necessary community facilities and services are available.

Further, the planning proposal is consistent with the overarching principles of the Housing SEPP, as it would:

- Offer housing diversity
- Provide housing to meet the needs of more vulnerable members of the community (such as seniors)
- Provides a high level of amenity
- Promotes housing in a location where it would use existing and planned infrastructure and services
- Minimises environmental impacts through the use of largely disturbed land.

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 use rights to operate. An extension of that use to the adjoining parcel would not be permissible under the current zoning.

The planning proposal would amend Schedule 1 of PSLEP 2013 to include 'caravan park' as a permissible form of development on the subject land, other than the land

proposed to be zoned C2 Environmental Conservation. This additional permitted use would apply to the subject site only and does not apply to other similar style developments or locations throughout Port Stephens.

#### Hunter Regional Plan 2041 (HRP)

The HRP outlines considerations for lifestyle villages, including that they should be located if possible within 800m of local and strategic centres or key transit corridors. Where lifestyle villages are proposed outside these locations, the village or community should be on unconstrained sites and have:

- Reticulated water and sewer
- Indoor and outdoor recreation facilities adequate for the number of proposed residents such as bowling greens, tennis courts, golf course, swimming pool, or off-leash dog park
- Community facilities that promote gathering and social connections such as a restaurant, community hall, or community garden
- Access to bus services providing frequent trips to local centres and shops.

The planning proposal is generally consistent with the visions and goals of the HRP. The proposal would 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 the lifestyle village. Furthermore, it is located on a major transit corridor and provides a regular bus service to transport residents to town centres.

#### Local Strategic Planning Statement 2020 (LSPS)

The LSPS identifies the 20-year vision for land use in Port Stephens and sets out social, economic and environmental planning priorities for the future. The planning proposal is considered to be consistent with, and would give effect to, the following planning priorities from the LSPS:

##### Priority 4: Ensure suitable land supply (for housing)

This priority identifies the need to prepare and implement a local housing strategy to ensure suitable land supply and other planning priorities for housing identified in the LSPS. The planning proposal would contribute towards the provision of suitable land for additional housing in the LGA.

##### Priority 5: Increase diversity of housing choice

This priority identifies that, based on what people value, planning is required for a range of housing types, sizes, tenures and price points to suit different lifestyles.

Housing choices in the Port Stephens LGA cover a wide range of options, including homes in retirement villages and lifestyle communities.

The planning proposal is consistent with the LSPS as it would 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, particularly surrounding the aging community.

Port Stephens Local Housing Strategy (Live Port Stephens) 2020

The planning proposal is consistent with the Port Stephens Local Housing Strategy (Live Port Stephens). It responds directly to a number of priorities as it ensures adequate supply of new housing, responds to housing stress, and encourages a range of housing types and sizes. The site is consistent with the Greenfield Housing Criteria.

**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 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.

With respect to housing choice, this form of housing continues to be highly sort after within the Port Stephens LGA. Sunrise and similar developments provide for a relatively compact form of housing supported by a range of community facilities and services. This is well suited to the aging demographic on Tomaree Peninsula.

The Port Stephens Housing Preference Study (2020) found that there is a gap between housing supply and housing preferences, and identified a need for more affordable, adaptable and smaller housing types than are currently supplied by the market, particularly for the older demographic. Market trends show a preference for lifestyle villages that enable higher density housing with significant incentives for owners, such as retaining Commonwealth rental assistance.

Since 2020, Port Stephens has experienced noticeable changes in housing demand. Impacts from COVID-19 have seen a growing desire for people to relocate from highly populated cities. This combined with rapidly changing working conditions such as remote working opportunities, have significantly increased demand for housing.

Although lifestyle villages have limited impact on housing affordability, uptake of these forms of housing has the benefit of seeing larger homes in established areas being on sold to accommodate other sectors of the community.



Environmental

It is likely that future proposed development can be undertaken without resulting in unreasonable adverse environmental impacts. The protection of an important fauna corridor through the site under a C2 Environmental Conservation zone is likely to have long-term benefits to biodiversity conservation.

**CONSULTATION**

Internal

Internal consultation was undertaken with the Natural Systems, Development Engineering and Development Planning teams. The planning proposal reflects the advice received during this internal consultation.

Councillors were invited by the proponent to undertake a site visit on Friday, 9 December 2022 and Saturday, 10 December 2022.

External

In December 2022, the NSW Government introduced a new process for amending Local Environmental Plans (LEPs). In the Stage 1 Pre-lodgement phase, planning proposals are reviewed by Council and State agencies prior to formal lodgement on the NSW Planning Portal, and prior to seeking a Gateway determination.

Consultation with the following agencies was undertaken as part of the scoping assessment:

- Department of Planning and Environment
- Transport for NSW
- Rural Fire Service NSW
- Department of Primary Industries – Agriculture
- Biodiversity Conservation Division.

None of the agencies objected to the proposal. They did, however, request additional information, which has been provided and addressed throughout the planning proposal. Further consultation or referral of the planning proposal to authorities and government agencies is anticipated after Gateway determination, as set out under Section 9.1 of the EP&A Act, a Gateway condition and / or where an authority or agency has an interest in the proposal.

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

**OPTIONS**

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

3) Reject the recommendations.

**ATTACHMENTS**

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

**COUNCILLORS ROOM**

Nil.

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

**TABLED DOCUMENTS**

Nil.



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## STRATEGIC PLANNING ASSESSMENT REPORT (SPAR)

Application No.	58-2022-5-1
Applicant Name	Hometown Australia/ADW Johnson
Applicant Address	Level 9/28 Margaret St, Sydney NSW 2000
Site Location Details	4011, 4029 & 4045 Nelson Bay Road, Bobs Farm Extension to the Sunrise Lifestyle Village (4011 Nelson Bay Rd, Bobs Farm), by including the properties within Schedule 1 as an additional permitted to permit a Caravan Park and rezone part of site to C2 Environmental Conservation.
Proposal Summary	



## Version History

	Date	Detail	Assessed by	Reviewed by
1.	September 2021	SPAR Part 1	Mia Galloway	Brett Gardiner
2.	November 2022	SPAR Part 2	Sarah Connell	Brett Gardiner
3.	December 2022	SPAR Part 3	Sarah Connell	Brett Gardiner
4.	December 2022	SPAR Part 4	Sarah Connell	Brett Gardiner

## PART 1 – Rezoning Request Meeting

Form lodged: 16/09/2021

Consideration	Response Received	Assessment
'Rezoning request meeting' form received?	Yes	The information on the form is sufficient for meeting to proceed
Describe the intended outcome	Yes	The information lodged for the rezoning request meeting does include details of the objectives of the intended outcome.
Describe the proposed amendment	Yes	The information lodged for the rezoning request meeting adequately describes the proposed amendment
Describe the benefits of the amendment	Yes	The information lodged for the rezoning request meeting adequately describes

Consideration	Response Received	Assessment
		the benefits of the amendment
Can the intended outcome be achieved through alternative mechanisms?	Yes	The form does include consideration of appropriate alternative mechanisms
What are the relevant land based constraints?	Yes	The relevant land based constraints are adequately described
Are there other relevant matters to be considered?	Yes	The rezoning request meeting form does not need to address additional matters
Will the proposal give effect to the objectives and actions of the HRP or GNMP?	Yes	The proposal will give effect to the objectives and actions of the HRP and GNMP
Will the planning proposal give effect to the LSPS or a local area strategy?	Yes	The proposal does give effect to the LSPS or a local area strategy
Is there any other strategic report to consider?	Yes, consistency with LHS to be confirmed (to determine whether the proposal has to have Council resolution before sending to Gateway).	Information on other relevant strategic reports are adequately considered
Strategic Merit Test	Assessment	
Does the proposal seek to amend LEP controls that are less than 5 years old? If yes the proposal must answer 'yes' to one of the following questions	The proposal does not seek to amend controls that are less than 5 years old	

Consideration	Response Received	Assessment
Will the proposal give effect to the objectives and actions of the HRP or GNMP?	The proposal gives effect to the objections and actions of the HRP or GNMP	
Will the proposal give effect to a local strategy?	The proposal will give effect to a local strategy	
Is the proposal responding to a change in circumstances?	Yes - circumstances have changed and proposal is warranted	
Does the proposal have site-specific merit, having regard to the <ul style="list-style-type: none"> <li>natural environment</li> <li>existing/approved and likely future uses of land in the vicinity of the proposal, and</li> <li>services and infrastructure that are or will be available to meet the demands arising from the proposal and any proposed financial arrangements for infrastructure provision.</li> </ul>	Yes - these merits are adequately addressed	

Supporting plans and studies	Required with draft PP	Risk assessment
Site specific DCP	N/A	N/A
Traffic impact assessment	Yes, TIA required to also address cumulative impacts of development at 16 Trotters Lane.	Low
Bushfire hazard assessment	N/A	Low
Air quality assessment	N/A	N/A
Flora and fauna assessment	Yes, BAM Stage 1 is required at this stage.	Low
Geotechnical assessment	N/A	N/A
Stormwater management analysis	N/A	N/A
Flood impact assessment	No	N/A

Supporting plans and studies	Required with draft PP	Risk assessment
Contamination assessment	No	N/A
Economic sensitivity analysis	No	N/A
Heritage impact assessment	No	Low
Social impact assessment	No	N/A
Infrastructure capacity analysis	Proposal should demonstrate evidence of servicing.	Low
Other?	No	N/A

Note: High risk indicates that the issue is unlikely to be resolved quickly or cheaply

#### RECOMMENDATION

The proposal has strategic merit and should proceed



**PART 2 – Draft Planning Proposal Lodgement Check**

Draft planning proposal lodged: 10/11/22

Information	Applicable	Lodged
<b>Port Stephens Rezoning Request Guide</b>		
Draft planning proposal in PSC template	Yes	Yes
<b>Rezoning Request Meeting matters to be addressed</b>		
1. Traffic Impact Assessment required at lodgement.	Yes	Yes
2. Stage 1 BAM Assessment required at lodgement.	Yes	Yes
3. Evidence of servicing capability required.	Yes	Yes
<b>Department of Planning Guide to preparing planning proposals</b>		
Part 1 – Objectives or intended outcomes	Yes	Yes
Part 2 – Explanation of the provisions	Yes	Yes
Part 3 – Justification of strategic merit and site specific merit		
Section A – Need for the planning proposal		
Q1. Is the planning proposal a result of an endorsed local strategic planning statement, strategic study or report?	Yes	N/A
Q2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?	Yes	Yes
Section B – Relationship to strategic planning framework		
Q3. Will the planning proposal give effect to the objectives and actions of the applicable regional, or district plan or strategy (including any exhibited draft plans or strategies)?		
Assessment of consistency with the Hunter Regional Plan	Yes	Yes
Assessment of consistency with the Greater Newcastle Metropolitan Plan	Yes	Yes
b) Does the proposal have site-specific merit, having regard to the:		
Natural environment (including known significant environmental values, resources or hazards)	Yes	Yes
Existing uses, approved uses, and likely future uses of land in the vicinity of the proposal	Yes	Yes
Services and infrastructure that are or will be available to meet the demands arising from the proposal and any proposed financial arrangements for infrastructure provision	Yes	Yes

Q4. Is the planning proposal consistent with a council LSPS or another endorsed local strategy or strategic plan?			
Assessment of consistency with relevant precinct/structure/master plans		Yes	Yes
Assessment of consistency with the Port Stephens Local Strategic Planning Statement.		Yes	Yes
Assessment of consistency with the Port Stephens Local Housing Strategy.		Yes	Yes
Assessment of consistency with Anna Bay Strategy and Town Plan		Yes	Yes
Q5. Is the planning proposal consistent with any other applicable State and regional studies or strategies?		Yes	Yes
Q6. Is the planning proposal consistent with applicable State Environmental Planning Policies?		Yes	Yes
SEPP (Biodiversity and Conservation) 2021			
Chapter 2	Vegetation in non-rural areas	N/A	N/A
Chapter 3	Koala habitat protection 2020	Yes	Yes
Chapter 4	Koala habitat protection 2021	N/A	N/A
SEPP (Housing) 2021			
Chapter 3	Diverse housing	Yes	Yes
SEPP (Planning Systems) 2021			
Chapter 2	State and regional development	N/A	Yes
Chapter 3	Aboriginal land	N/A	N/A
SEPP (Precincts – Regional) 2021			
Chapter 2	State significant precincts	N/A	N/A
Chapter 3	Activation precincts	N/A	N/A
SEPP (Primary Production) 2021			
Chapter 2	Primary production and rural development	N/A	N/A
SEPP (Resilience and Hazards) 2021			
Chapter 2	Coastal management	Yes	Yes
Chapter 4	Remediation of land	Yes	Yes
SEPP (Resources and Energy) 2021			
Chapter 2	Mining, petroleum production and extractive industries	N/A	N/A
SEPP (Transport and Infrastructure) 2021			
Chapter 2	Infrastructure	Yes	Yes

Chapter 3	Educational establishments and child care facilities	N/A	N/A
Q6. Is the planning proposal consistent with applicable Ministerial Directions (s.9.1(2) directions)?			
<b>Focus area 1: Planning Systems</b>			
1.1 Implementation of Regional Plans		Yes	Yes
1.2 Development of Aboriginal Land Council land		N/A	N/A
1.3 Approval and Referral Requirements		Yes	Yes
<b>Focus Area 3: Biodiversity and Conservation</b>			
3.1 Conservation Zones		Yes	Yes
3.2 Heritage Conservation		Yes	Yes
3.5 Recreation Vehicle Areas		N/A	N/A
<b>Focus area 4: Resilience and Hazards</b>			
4.1 Flooding		Yes	Yes
4.2 Coastal Management		Yes	Yes
4.3 Planning for Bushfire Protection		Yes	Yes
4.4 Remediation of Contaminated Land		Yes	Yes
4.5 Acid Sulfate Soils		Yes	Yes
4.6 Mine Subsidence and Unstable Land		N/A	N/A
<b>Focus area 5: Transport and Infrastructure</b>			
5.1 Integrating Land Use and Transport		Yes	Yes
5.2 Reserving Land for Public Purposes		N/A	N/A
5.3 Development Near Regulated Airports and Defence Airfields		N/A	N/A
5.4 Shooting Ranges		N/A	N/A
<b>Focus area 6: Housing</b>			
6.1 Residential Zones		Yes	Yes
6.2 Caravan Parks and Manufactured Home Estates		Yes	Yes
<b>Focus area 7: Industry and Employment</b>			
7.1 Business and Industrial Zones		N/A	N/A
7.3 Commercial and Retail Development along the Pacific Highway, North Coast		N/A	N/A
<b>Focus area 8: Resources and Energy</b>			
8.1 Mining, Petroleum Production and Extractive Industries		Yes	Yes
<b>Focus area 9: Primary Production</b>			
9.1 Rural Zones		Yes	Yes
9.2 Rural Land		Yes	Yes
9.3 Oyster Aquaculture		N/A	N/A
<b>Section C – Environmental, social and economic impact</b>			

Q8. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?	Yes	Yes
Q9. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?	Yes	Yes
Q10. Has the planning proposal adequately addressed any social and economic effects?	Yes	Yes
<b>Section D – Infrastructure (Local, State and Commonwealth)</b>		
Q11. Is there adequate public infrastructure for the planning proposal?	Yes	Yes
<b>Section E - State and Commonwealth interests</b>		
Q11. What are the views of state and Commonwealth public authorities consulted at scoping proposal?	Yes	Yes
Part 4 – Mapping	Yes	Yes
Part 5 – Community consultation	Yes	Yes
Part 6 – Project timeline	Yes	Yes

Supporting plans and studies	Lodged
Site specific DCP	No
Traffic impact assessment	Yes
Bushfire hazard assessment	Yes
Air quality assessment	N/A
Flora and fauna assessment	Yes
Geotechnical assessment	No
Stormwater management analysis	Yes
Flood impact assessment	N/A
Contamination assessment	Yes
Economic sensitivity analysis	No
Heritage impact assessment	Yes
Social impact assessment	No
Infrastructure capacity analysis	Yes
Other?	No

**RECOMMENDATION**

The information lodged is complete.

It is recommended that the planning proposal be lodged.

## PART 3 – Draft Planning Proposal Assessment

Information	Assessment
<b>Rezoning Request Meeting matters to be addressed</b>	
1. Traffic Impact Assessment	Adequate
2. Stage 1 BAM	Adequate
3. Servicing capacity assessment	Adequate
<b>Internal referrals</b>	<b>Received</b>
Development Engineering	12/08/22 21/11/22
Natural Systems	25/01/22 18/11/22
<b>State agency referrals – scoping proposal</b>	<b>Sent</b> <b>Received</b>
Department of Planning and Environment	3/08/22 30/08/22
Transport for NSW	3/08/22 29/08/22
Rural Fire Service	3/08/22 17/08/22
Department of Primary Industries	3/08/22 2/09/22
Biodiversity Conservation Division	3/08/22 15/08/22

Information	Assessment
<b>Department of Planning Guide to preparing planning proposals</b>	
<b>Part 1</b> – Statement of objectives or intended outcomes of the proposed instrument	The statement of objectives or intended outcomes of the proposed instrument is adequate
<b>Part 2</b> – Explanation of the provisions that are to be included in the proposed instrument	The planning proposal adequately explains the provisions that are proposed to be included in the draft instrument.
<b>Part 3</b> – Justification of strategic and site-specific merit	The justification provided for the objectives, outcomes and provisions of the proposed

Information	Assessment
	instrument, and whether it will give effect to, or is a product of, the local planning statement, is considered to be appropriate.
<b>Section A – Need for the planning proposal</b>	
Q1 Is the planning proposal a result of an endorsed local strategic planning statement, strategic study or report?	The planning proposal is the result of an endorsed local strategic planning statement, strategic study or report
Q2 Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?	The planning proposal is the best means of achieving the objectives or intended outcomes
<b>Section B – Relationship to strategic planning framework</b>	
Q3. Will the planning proposal give effect to the objectives and actions of the applicable regional, or district plan or strategy (including any exhibited draft plans or strategies)?	The planning proposal does give effect to applicable regional, or district plan or strategy
Assessment of consistency with the Hunter Regional Plan.	The planning proposal is consistent with the HRP.
Assessment of consistency with the Greater Newcastle Metropolitan Plan.	The planning proposal is consistent with the GNMP
Give effect to a relevant local strategic planning statement or endorsed local strategy	The planning proposal does give effect to the relevant LSPS or endorsed local strategy
Responding to a change in circumstances	The planning proposal is responding to a change in circumstances and is an appropriate response.
Q4. Is the planning proposal consistent with a council LSPS, or another endorsed local strategy or strategic plan?	The planning proposal does give effect to the relevant LSPS or endorsed local strategy
Is the planning proposal consistent with relevant precinct plan(s) (including structure plans and master plans and any exhibited draft plan(s))	There are no applicable precinct plans.

Information	Assessment
Is the planning proposal consistent with relevant Council strategy, including an endorsed local strategic planning statement.	The planning proposal is consistent with the relevant council strategy.
Is the planning proposal consistent with the Local Housing Strategy?	The planning proposal is consistent with the relevant council strategy.
Is the planning proposal consistent with a relevant local area strategy	There is no applicable local area strategy.
Q5. Is the planning proposal consistent with any other applicable State and regional studies or strategies?	Yes.

**SEPP ASSESSMENT**

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

SEPP	Overview	Assessment
<b>SEPP (Biodiversity and Conservation) 2021</b>		
Chapter 2 - Vegetation in non-rural areas	Aims to protect the biodiversity values of trees and other vegetation in non-rural areas of NSW and preserve the amenity of such areas through the preservation of trees and other vegetation.	<p>The site does not contain native vegetation</p> <p>The information lodged for the proposal demonstrates consistency with the SEPP.</p>
Chapter 3 - Koala habitat protection 2020	(Applies to land zoned RU1, RU2, or RU3 only) Encourages the conservation and management of natural vegetation areas that provide habitat for koalas to ensure permanent free-living populations will be maintained over their present range.	<p>The site contains established vegetation and may contain potential koala habitat.</p> <p>The information lodged for the proposal demonstrates consistency with the SEPP.</p>
Chapter 4 - Koala habitat protection 2021	(Applies to all land in Port Stephens except that zoned RU1, RU2, or RU3) Aims to help reverse the decline of koala populations by ensuring koala habitat is properly considered during the	The site contains established vegetation and may contain potential koala habitat.

SEPP	Overview	Assessment
	development assessment process, and to provide a process for councils to strategically manage koala habitat through the development of koala plans of management.	The information lodged for the proposal demonstrates consistency with the SEPP.
<b>SEPP (Housing) 2021</b>		
Chapter 3 – Diverse housing	To enable the development of diverse housing types, to encourage housing that will meet the needs of more vulnerable members of the community, to promote the planning and delivery of housing in locations to make use of existing and planned infrastructure, to minimise adverse climate and environmental impacts of new housing development, to support short-term rental accommodation as a home-sharing activity while managing the social and environmental impacts from this use, and to mitigate the loss of existing affordable rental housing.	<p>The LEP amendment proposal relates to housing for seniors.</p> <p>The information lodged for the proposal demonstrates consistency with the SEPP.</p>
<b>SEPP (Planning Systems) 2021</b>		
Chapter 2 – State and regional development	<p>Aims to identify development that is:</p> <ul style="list-style-type: none"> <li>a. state significant development</li> <li>b. State significant infrastructure and critical State significant infrastructure</li> <li>c. Regionally significant development</li> </ul>	<p>The LEP amendment proposal does not relate to land within an existing or proposed State significant precinct.</p> <p>Consistency with the SEPP is not relevant.</p>
Chapter 3 – Aboriginal land	Provides for development delivery plans for areas of land owned by Local Aboriginal Land Councils to be considered when development applications are considered and enables the declaration of specified development carried	<p>The planning proposal does not relate to land owned by a LALC</p> <p>Consistency with the SEPP is not relevant to the planning proposal.</p>



SEPP	Overview	Assessment
	out on land owned by Local Aboriginal Land Councils to be regionally significant development.	
<b>SEPP (Precincts – Regional) 2021</b>		
Chapter 2 - State significant precincts	Facilitates the development, redevelopment and protection of important urban, coastal and regional sites of economic, environmental or social significance to the State, so as to facilitate the orderly use, development or conservation of those State significant precincts for the benefit of the State.	<p>The LEP amendment proposal does not relate to land within an existing or proposed State significant precinct.</p> <p>Consistency with the SEPP is not relevant.</p>
Chapter 3 – Activation precincts	Aims to identify Activation Precincts in order to promote economic development, industry investment and innovation and to create employment, and facilitate strategic and efficient development of land and infrastructure in those Precincts, and protect and enhance and in those Precincts that has natural and cultural heritage.	<p>The LEP amendment proposal does not relate to land within an existing or proposed activation precinct.</p> <p>Consistency with the SEPP is not relevant.</p>
<b>SEPP (Primary Production) 2021</b>		
Chapter 2 – Primary production and rural development	Aims to support sustainable agriculture and aquaculture by facilitating the orderly, environmentally sustainable, and economic use and development of land for primary production and rural development	<p>The LEP amendment proposal relates to land within an existing rural zone.</p> <p>The planning proposal demonstrates consistency with the SEPP.</p>
<b>SEPP (Resilience and Hazards) 2021</b>		
Chapter 2 – Coastal Management	Promotes an integrated and co-ordinated approach to land use planning in the coastal zone consistent with the objects of the <i>Coastal Management Act 2016</i> .	<p>The LEP amendment proposal relates to land identified within the Coastal Wetlands and Littoral Rainforests Area.</p> <p>The information lodged for the proposal demonstrates consistency with the SEPP.</p>

SEPP	Overview	Assessment
Chapter 3 – Hazardous and offensive development	Requires specified matters to be considered for proposals that are 'potentially hazardous' or 'potentially offensive' as defined in the SEPP.	The LEP amendment proposal does not relate to 'potentially hazardous' or 'potentially offensive' development.  Consistency with the SEPP is not relevant to the proposal.
Chapter 4 – Remediation of land	Contains state-wide planning controls for the remediation of contaminated land. The policy requires councils to be notified of all remediation proposals and requires lodgement of information for rezoning proposals where the history of use of land is unknown or knowledge incomplete.	According to the study information for the LEP amendment proposal, the site contains contaminated land/potentially contaminated land.  The information lodged for the proposal demonstrates consistency with the SEPP.
<b>SEPP (Resources and Energy) 2021</b>		
Chapter 2 - Mining, petroleum production and extractive industries	Provides for the proper management and development of mineral, petroleum and extractive material resources for the social and economic welfare of the State.	The LEP amendment proposal does not relate to an extractive industry proposal.  The information lodged for the proposal demonstrates consistency with the SEPP.
<b>SEPP (Transport and Infrastructure) 2021</b>		
Chapter 2 – Infrastructure	Provides greater flexibility in the location of infrastructure and service facilities along with improved regulatory certainty and efficiency.	The LEP amendment proposal would affect implementation of the Infrastructure SEPP.  The information lodged for the proposal demonstrates consistency with the SEPP.
Chapter 3 - Educational establishments and child care facilities	The policy aims to facilitate the effective delivery of educational establishments and early education and care facilities.	The LEP amendment proposal does not relate to educational establishments or child care facilities.

SEPP	Overview	Assessment
		Consistency with the SEPP is not relevant to the proposal
Chapter 4 – Major infrastructure corridors	The policy aims to to identify land that is intended to be used in the future as an infrastructure corridor, to establish appropriate planning controls for the land to allow the ongoing use and development of the land until it is needed for the future infrastructure corridor, and to protect the land from development that would adversely impact on or prevent the land from being used as an infrastructure corridor in the future.	<p>The LEP amendment proposal does not relate to land identified in an infrastructure corridor</p> <p>Consistency with the SEPP is not relevant to the proposal.</p>

#### MINISTERIAL DIRECTION ASSESSMENT

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

Ministerial Direction	Overview	Assessment
<b>Focus area 1: Planning Systems</b>		
1.1 Implementation of Regional Plans	Requires that planning proposals be consistent with relevant regional strategies released by the Minister for Planning, except where, in the opinion of the Secretary of the NSW Department of Planning and Environment (or nominated delegate); the inconsistency is considered to be of minor significance and the intent of the strategy is not undermined.	<p>The Hunter Regional Plan 2041 (HRP) applies to the LEP amendment proposal.</p> <p>The information lodged for the proposal demonstrates consistency with the direction.</p>
1.2 Development of Aboriginal Land Council land	Seeks to provide for the consideration of development delivery plans prepared under State Environmental Planning Policy (Aboriginal Land) 2019 when planning proposals are	<p>The LEP amendment proposal does affect land to which this direction applies</p> <p>Consistency with the direction is not relevant to the proposal.</p>

Ministerial Direction	Overview	Assessment
	prepared by a planning proposal authority.	
1.3 Approval and Referral Requirements	Applies requirements for planning proposals, which seek to incorporate provisions into a Local Environmental Plan (LEP) that require concurrence, consultation or development application referral to a minister or public authority.	<p>The LEP amendment proposal does not seek to incorporate provisions into the instrument that require concurrence, consultation or development application referral to a minister or public authority.</p> <p>Consistency with the direction is not relevant to the proposal.</p>
1.4 Site Specific Provisions	Applies requirements for planning proposals seeking to incorporate provisions into an environmental planning instrument so as to amend another environmental planning instrument.	<p>The LEP amendment proposal does not seek to incorporate provisions into the instrument that would amend another environmental planning instrument.</p> <p>Consistency with the direction is not relevant to the proposal.</p>
<b>Focus area 3: Biodiversity and Conservation</b>		
3.1 Conservation Zones	Applies to all planning proposals. Provides for the protection and conservation of environmentally sensitive areas, by ensuring that planning proposals do not reduce the environmental protection standards applying to such land unless it is suitably justified by a relevant strategy or study or is of minor significance in the opinion of the Secretary of the NSW Department of Planning and Environment (or nominated delegate).	<p>The LEP amendment proposal relates to land within a proposed environmental protection zone.</p> <p>The information lodged for the proposal demonstrates consistency with the direction.</p>
3.2 Heritage Conservation	Requires relevant planning proposals to contain provisions to facilitate the conservation of items, areas, objects and places of environmental heritage significance and	There is the potential for the site to contain heritage items/places.

Ministerial Direction		Overview	Assessment
		indigenous heritage significance.	The information lodged for the proposal demonstrates consistency with the direction.
3.5	Recreation Vehicle Areas	Seeks to protect land with significant conservation values and other sensitive land from being developed for the purposes of recreation vehicle areas, unless they are suitably justified under a relevant strategy or study or considered to be of minor significance in the opinion of the Secretary of the NSW Department of Planning and Environment (or nominated delegate).	The LEP amendment proposal does not seek to enable land to be developed for the purposes of a recreational vehicle area. Consistency with the direction is not relevant to the proposal.
<b>Focus area 4: Resilience and Hazards</b>			
4.1	Flooding	Applies requirements for planning proposals that seek to create, remove or alter a zone or a provision that affects flood prone land except where non-compliance is of minor significance in the opinion of the Secretary of the NSW Department of Planning and Environment (or nominated delegate).	The LEP amendment proposal does not relate to flood prone land within the meaning of the NSW Government's 'Floodplain Development Manual 2005'.  The information lodged for the proposal demonstrates consistency with the direction.
4.2	Coastal Management	The objective of this direction is to protect and manage coastal areas of NSW. This direction applies to land within the coastal zone.	The LEP amendment does relate to land within the coastal zone as defined by the Coastal Management Act 2016  The information lodged for the proposal demonstrates consistency with the direction.
4.3	Planning for Bushfire Protection	Applies requirements for planning proposals affecting land mapped as being bushfire prone land (or land in proximity to such land); except where the Commissioner of the NSW Rural Fire Service has issued written advice to Council that, notwithstanding the noncompliance with the requirements; the NSW Rural Fire Service does not object to	The LEP amendment proposal relates to bushfire prone land.  The information lodged for the proposal demonstrates consistency with the direction.

Ministerial Direction		Overview	Assessment
		progression of the planning proposal.	
4.4	Remediation of Contaminated Land	Seeks to reduce the risk of harm to human health and the environment by ensuring that contamination and remediation are considered by planning proposal authorities	<p>The LEP amendment proposal affects land to which this direction applies</p> <p>The information lodged for the proposal demonstrates consistency with the direction.</p>
4.5	Acid Sulfate Soils	Requires the provisions of planning proposals must be consistent with the Acid Sulfate Soils Planning Guidelines and other such relevant provisions provided by the Director-General of the Department of Planning, except where the proposal is suitably justified under a relevant strategy or study or where non-compliance is of minor significance in the opinion of the Secretary of the NSW Department of Planning and Environment (or nominated delegate).	<p>The site is mapped as containing Acid Sulfate Soils however the proposed LEP amendment is not likely to affect Acid Sulfate Soils.</p> <p>The information lodged for the proposal demonstrates consistency with the direction.</p>
4.6	Mine Subsidence and Unstable Land	Applies requirements to planning proposals that would have the effect of permitting development on land within a proclaimed Mine Subsidence District, except where the proposal is suitably justified under a relevant strategy or study or where non-compliance is of minor significance in the opinion of the Secretary of the NSW Department of Planning and Environment (or nominated delegate).	<p>The LEP amendment proposal does not relate to land identified as being unstable by a known study, strategy or other assessment. The site is not within a designated mine subsidence district.</p> <p>Consistency with the direction is not relevant to the proposal.</p>
Focus area 5: Transport and Infrastructure			

Ministerial Direction	Overview	Assessment
5.1 Integrating Land Use and Transport	Requires planning proposals, which seek to create, alter or remove a zone or provision relating to urban land (including land zoned for residential, business, industrial, village or tourist purposes), to be consistent with the aims, objectives and principles of 'Improving Transport Choice – Guidelines for planning and development' and 'The Right Place for Business and Services – Planning Policy' or that they be suitably justified under a relevant strategy or study or be of minor significance in the opinion of the Secretary of the NSW Department of Planning and Environment (or nominated delegate).	<p>The planning proposal does propose to create, alter or remove a zone or provision relating to urban land</p> <p>The information lodged for the proposal demonstrates consistency with the direction.</p>
5.2 Reserving Land for Public Purposes	Applies requirements to planning proposals which seek to create, alter or reduce existing zonings or reservations of land for public purposes.	<p>The LEP amendment proposal does not seek to create, alter or reduce existing zonings or reservations of land for public purposes.</p> <p>Consistency with the direction is not relevant to the proposal.</p>
5.3 Development Near Regulated Airports and Defence Airfields	Applies development criteria and consultation requirements to planning proposals that seek to create, alter or remove a zone or a provision relating to land in the vicinity of a licensed aerodrome. Inconsistency with the development criteria and/or consultation requirements can be considered if the inconsistency is suitably justified under a relevant strategy or study or is of minor significance in the opinion of the Secretary of the NSW Department of Planning and Environment (or nominated delegate).	<p>The LEP amendment proposal does not relate to land in the vicinity of the Newcastle-Williamstown Airport and RAAF base.</p> <p>Consistency with the direction is not relevant to the proposal.</p>

Ministerial Direction		Overview	Assessment
5.4	Shooting Ranges	Requires planning that proposals not rezone land adjacent to and/ or adjoining to an existing shooting range where it would permit more intensive land uses than those that are permitted under the existing zone or land uses that are incompatible with the noise emitted by the existing shooting, except where the proposal is suitably justified under a relevant strategy or study or where non-compliance is of minor significance in the opinion of the Secretary of the NSW Department of Planning and Environment (or nominated delegate).	<p>The LEP amendment proposal does not relate to land adjoining or adjacent to a shooting range.</p> <p>Consistency with the direction is not relevant to the proposal.</p>
Focus area 6: Housing			
6.1	Residential Zones	<p>Applies to planning proposals affecting existing or proposed residential zoned land or other zoned land upon, which significant residential development is or will be permitted.</p> <p>Requires relevant planning proposals to include provisions that encourage housing development, ensures satisfactory arrangements for servicing infrastructure and will not reduce the permissible residential density of land; unless it is suitably justified under a relevant strategy or study or is of minor significance in the opinion of the Secretary of the NSW Department of Planning and Environment (or nominated delegate).</p>	<p>The LEP amendment proposal does not relate to land within an existing or proposed residential zone or land upon which significant residential development is or will be permitted.</p> <p>Consistency with the direction is not relevant to the proposal.</p>
6.2	Caravan Parks and Manufactured Home Estates	Applies to planning proposals that seek to identify suitable zones and/or locations and/or provisions for caravan parks or manufactured home estates (excludes certain land reserved or dedicated under the <i>Crown</i>	The LEP amendment proposal seeks to introduce provisions into the instrument relating to caravan parks.



Ministerial Direction		Overview	Assessment
		<p><i>Lands Act 1989 and National Parks and Wildlife Act 1974).</i></p> <p>Provides for a variety of housing types and opportunities for caravan parks and manufactured home estates, through application of requirements for relevant planning proposals.</p>	The information lodged for the proposal demonstrates consistency with the direction.
<b>Focus area 7: Industry and Employment</b>			
7.1	Business and Industrial Zones	<p>Applies to planning proposals affecting existing or proposed business or industrial zone land.</p> <p>By requiring consistency with the objectives of the direction, retention of areas of business and industrial zoned land, protection of floor space potential, and/or justification under a relevant strategy/study; the direction seeks to protect employment land in business and industrial zones, encourage employment growth in suitable locations and support the viability of identified centres.</p>	<p>The LEP amendment proposal does not relate to land within an existing or proposed business or industrial zone.</p> <p>Consistency with the direction is not relevant to the proposal.</p>
7.3	Commercial and Retail Development along the Pacific Highway, North Coast	<p>Applies requirements to planning proposals that affect land that is traversed by the Pacific Highway to (inter-alia) protect the function of the highway and manage commercial and retail development along the highway; except where, in the opinion of the Secretary of the NSW Department of Planning and Environment (or nominated delegate) non-compliance with the requirements of the direction is considered to be of minor significance.</p>	<p>The LEP amendment proposal does not relate to land in the vicinity of the existing and/or proposed alignment of the Pacific Highway.</p> <p>Consistency with the direction is not relevant to the proposal.</p>
<b>Focus area 8: Resources and Energy</b>			
8.1	Mining, Petroleum Production and	<p>Seeks to ensure that the future extraction of State or regionally significant reserves of coal,</p>	The LEP amendment proposal does not seek to implement provisions that would prohibit or

Ministerial Direction	Overview	Assessment
Extractive Industries	other minerals, petroleum and extractive materials is not compromised by inappropriate development.	restrict the potential development/mining of coal, mineral or petroleum resources or other extractive materials of State/regional significance.  Consistency with the direction is not relevant to the proposal.
<b>Focus area 9: Primary Production</b>		
9.1 Rural Zones	Provides for protection of the agricultural production value of rural land by requiring planning proposals to be justified by a relevant strategy or study if they seek to rezone rural zoned land to a residential, business, industrial, village or tourist zone or increase the permissible density of rural (except RU5) zoned land.	The LEP amendment proposal relates to land within an existing rural zone.  The information lodged for the proposal demonstrates consistency with the direction.
9.2 Rural Lands	Applies to planning proposals that will affect an existing or proposed rural or environmental protection zone or changes the existing minimum lot size within a rural or environment protection zone.  Aims to support sustainable agriculture and aquaculture by facilitating the orderly, environmentally sustainable, and economic use and development of land for primary production and rural development	The LEP amendment proposal relates to land within an existing rural zone.  The information lodged for the proposal demonstrates consistency with the direction.
9.3 Oyster Aquaculture	Provides for the protection of priority oyster aquaculture areas and surrounds from land uses that may adversely impact upon water quality and consequently, on the health of oysters and oyster consumers.	The LEP amendment proposal does not relate to land in the vicinity of a Priority Oyster Aquaculture Area or a current oyster aquaculture lease in the national parks estate.  Consistency with the direction is not relevant to the proposal.

Information	Assessment
<b>Section C – Environmental, social and economic impact</b>	
<b>Q8.</b> Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?	N/A  The proposal will have an impact on critical habitat or threatened species, populations or ecological communities or their habitats located on the site. This impact is justified.
<b>Q9.</b> Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?	There will likely be environmental effects as a result of the planning proposal. These effects are justified.
<b>Q10.</b> Has the proposal adequately addressed any social and environmental effects?	There will likely be positive social and economic effects as a result of the planning proposal.
<b>Section D – Infrastructure (Local, State and Commonwealth)</b>	
<b>Q11.</b> Is there adequate public infrastructure for the planning proposal?	There is adequate public infrastructure for the planning proposal.
<b>Section E – State and Commonwealth Interests</b>	
<b>Q12.</b> What are the views of state and federal public authorities consulted in order to inform the Gateway determination?	State and Commonwealth authorities support the planning proposal.
<b>Part 4 – Maps</b> containing sufficient detail to indicate the substantive effect of the planning proposal.	The maps included in the planning proposal adequately identify the substantive effect of the planning proposal.
<b>Part 5 – Details of the community consultation</b> that is to be undertaken before consideration is given to the making of the proposed instrument	The community consultation detailed in the planning proposal is considered appropriate.
<b>Part 6 – Projected timeline of the plan making process</b>	The projected timeline as detailed in the planning proposal is considered appropriate.

**TECHNICAL CONTENT ASSESSMENT**

Assessment of technical information

Supporting plans and studies	Assessment
Site specific DCP	N/A
Traffic impact assessment	Yes
Bushfire hazard assessment	Yes
Air quality assessment	N/A
Flora and fauna assessment	Yes
Geotechnical assessment	N/A
Stormwater management analysis	Yes
Flood impact assessment	Yes
Contamination assessment	Yes
Economic sensitivity analysis	N/A
Heritage impact assessment	Yes
Social impact assessment	N/A
Infrastructure capacity analysis	Yes
Other?	Choose an item.

**RECOMMENDATION**

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

**PART 4 – Fees and Charges Checklist**

The proposal is a:

- ☐ A. low impact and low yield development  
☒ B. locally significant urban release area or development  
☐ C. large scale urban release area or development

The proposal requires a:

- ☐ A. low level of assessment, consultation and coordination  
☒ B. medium to high level of assessment, consultation and coordination  
☐ C. high level of assessment, consultation and coordination

The number of supporting studies required is:

- ☐ A. minimal or none  
☒ B. medium  
☐ C. high

A development control plan:

- ☒ A. is not required  
☐ B. may be required  
☐ C. is required

(If applicable) the proposal for additional permitted uses is:

- ☐ A. minor  
☒ B. significant

	Category A	Category B	Category C
<b>Total</b>	1	4	0

**RECOMMENDATION**

The proposal is assessed to be in planning proposal fee Category B

**PART 4 b) – Nominate Planning Proposal Category for Departments purpose**

Planning Proposal Category	Description:	Assessment:
<b>Basic</b>	<ul style="list-style-type: none"> <li>Correct an administrative error</li> <li>Minor housekeeping amendment</li> <li>To list a local heritage item (supported by an OEH endorsed study)</li> <li>Reclassify land (where Governors approval is not required)</li> <li>Consistent with a Department endorsed/approved local strategy, such as LHS</li> <li>Is a section 3.22 Expedited Amendment</li> </ul>	
<b>Standard</b>	<ul style="list-style-type: none"> <li>Change the land use zone where the proposal is consistent with the</li> </ul>	The planning proposal is a standard LEP

	<p>objectives identified in the LEP for that proposed zone</p> <ul style="list-style-type: none"> <li>• That relates to altering the principal development standard of the LEP</li> <li>• That relates to the addition of a permissible land use or uses and/or any conditional arrangements under Schedule 1</li> <li>• That is consistent with an endorsed District/Regional Strategic Plan and/or LSPS</li> <li>• Relating to classification or reclassification of public land through the LEP</li> </ul>	amendment – Category B
<b>Complex</b>	<ul style="list-style-type: none"> <li>• Change the land use zone and/or principal development standards of the LEP, which would result in a significant increase in demand for supporting local, regional or State infrastructure and would require infrastructure funding</li> <li>• To respond to a new policy e.g. local character or new provision not in the standard instrument template</li> <li>• Inconsistent with a District/Regional Plan or council's endorsed LSPS</li> <li>• Responding to a change in circumstances, such as the investment in new infrastructure or changing demographic trends</li> <li>• That is progressed under the Aboriginal Land SEPP</li> </ul>	
<b>Principal</b>	<ul style="list-style-type: none"> <li>• To create a new LEP that applies to the whole LGA</li> <li>• To implement a change in local policy that effects the LGA</li> <li>• To consolidate one or more LEPs into a new comprehensive LEP</li> <li>• That includes multiple 'housekeeping' amendments or a combination of a number of planning proposals</li> </ul>	

**PART 5 – Determination**

The planning proposal has been prepared in accordance with section 3.33 of the Environmental Planning and Assessment Act 1979 and is considered to be consistent with relevant local and regional plans, State Environmental Planning Policies and Ministerial Directions. Where there is an inconsistency, this inconsistency is justified.

As delegate for Port Stephens Council and in accordance with the Rezoning Request Policy, I, Brett Gardiner, the Strategic Planning Coordinator at Port Stephens Council, endorse the planning proposal to include the subject land within Schedule 1 as an additional permitted use to permit a Caravan Park and rezone part of the site to C2 Environmental Conservation at 4011, 4029 & 4045 Nelson Bay Road, Bobs Farm, to be submitted to the Department of Planning & Environment, in accordance with section 3.34(1) of the Environmental Planning and Assessment Act 1979, with a request for a Gateway determination. Authorisation to make the plan under section 3.34(2)(g) of the EP&A Act is to be requested.

**SIGNATURE****DATE**

Brett Gardiner, Strategic Planning Coordinator

**ITEM NO. 6**

**FILE NO: 23/20135  
EDRMS NO: PSC2014-01592**

**ABORIGINAL PROJECTS FUND - 2022-2023**

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

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Endorses the allocation of \$3,000 to the Worimi Knowledge Holders Aboriginal Corporation from the Aboriginal Projects Fund.

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**BACKGROUND**

The purpose of this report is to seek Council's endorsement for the allocation of funding from the Aboriginal Projects Fund for the Cultural Fishing Ground project as recommended by Council's 355c Aboriginal Strategic Committee.

The purpose of the Aboriginal Projects Fund is to support projects that empower the Aboriginal community in Port Stephens through the delivery of programs, events and other activities.

Applications for the 2022-2023 round of funding are open all year round. The total amount of annual funding available is \$35,000.

The Worimi Knowledge Holders Aboriginal Corporation application was assessed and endorsed at the Aboriginal Strategic Committee meeting on 31 October 2022.

The proposed project meets the objectives of the fund. The project is focused on advocating for the Worimi people of Port Stephens to access their cultural fishing grounds, resulting in positive outcomes for the health and wellbeing of the Aboriginal community.

The recommended funding amount from the Aboriginal Strategic Committee to the Worimi Knowledge Holders Aboriginal Corporation is a total of \$3,000.

Worimi Knowledge Holders Aboriginal Corporation has successfully delivered and acquitted previously funded projects.



**COMMUNITY STRATEGIC PLAN**

<b>Strategic Direction</b>	<b>Delivery Program 2022-2026</b>
Recognised traditions and lifestyle	Implement the Yabang Gumba-Gu Agreement to recognise and support local Aboriginal and Torres Strait Islander people.

**FINANCIAL/RESOURCE IMPLICATIONS**

<b>Source of Funds</b>	<b>Yes/No</b>	<b>Funding (\$)</b>	<b>Comment</b>
Existing budget	Yes	\$3,000	Aboriginal Projects Fund.
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.

The recommendations have been made in accordance with the Local Government Act 1993 (NSW) (s356) and Council's adopted Grants and Donations Policy. The recommendations for funding also align with Council's relevant Fund Guidelines.

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.

Recipients of funding under the Aboriginal Projects Fund shall accept full responsibility for the liability of any programs or projects funded.

<b>Risk</b>	<b><a href="#">Risk Ranking</a></b>	<b>Proposed Treatments</b>	<b>Within Existing Resources?</b>
There is a risk of adverse public perception regarding projects that are funded.	Low	Accept the recommendation.	Yes

<b>Risk</b>	<b><a href="#">Risk Ranking</a></b>	<b>Proposed Treatments</b>	<b>Within Existing Resources?</b>
There is a risk that some grant recipients may fail to comply with required terms of funding, reporting and acquittal processes.	Low	Accept the recommendation.	Yes

## **SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

The Aboriginal Projects Fund directly supports organisations and groups involved in programs to empower the Aboriginal community. The proposed project aims to achieve this through the facilitation of:

- Partnerships and collaboration with Department of Primary Industry/Fisheries
- Involving Registered Traditional Owners and various government and community stakeholders in formalising Agreements for access to Aboriginal natural and traditional food.

## **CONSULTATION**

Consultation with key stakeholders has been undertaken by the Vibrant Places team with the aim of promoting the funding opportunity and explaining the guidelines and objective of the Aboriginal Projects Fund.

### Internal

Internal meetings with Council staff responsible for the administration of the financial assistance programs were held.

The application was assessed by Council's 355c Aboriginal Strategic Committee on 31 October 2022.

### External

The Communications team promotes the funding opportunity widely through social media, Council's website and notices appeared in Council pages of the Port Stephens Examiner.

## **OPTIONS**

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

**ATTACHMENTS**

Nil.

**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

Nil.

**ITEM NO. 7**

**FILE NO: 23/1379  
EDRMS NO: PSC2021-04195**

## **HOMELESSNESS IN PORT STEPHENS**

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

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### **RECOMMENDATION IS THAT COUNCIL:**

- 1) Note findings and information within the report.
- 2) Endorse the Terms of Reference for the Port Stephens Homelessness Stakeholder Advocacy Group (**ATTACHMENT 1**).

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### **BACKGROUND**

The purpose of this report is to present further information relating to the investigation of options to address homelessness presented to Council at the 13 December 2022 Ordinary Council meeting (**ATTACHMENT 2**). The report also presents the draft Terms of Reference for the endorsed Port Stephens Homelessness Stakeholder Advocacy Group (Stakeholder Advocacy Group) (**ATTACHMENT 1**).

Addressing homelessness is primarily a mandate of the NSW State Government. In 2019, the NSW Government committed to reduce street homelessness across NSW by 50% by 2025, with the target later becoming one of the NSW Premier's Priorities. The NSW Government also oversees the delivery of the NSW Homelessness Strategy.

It is recognised that Local Government is not best placed to act in the role of direct service providers, however, evidence shows that success can be achieved through collaboration at all levels of government and the community sector.

### **OUR CURRENT APPROACH**

Port Stephens Council supports the rights of all of our community members to use public spaces, including people experiencing homelessness. We work closely with service providers and the community to address concerns about homelessness and implement actions to both support the homeless and reduce homelessness across Port Stephens.

Council has implemented a number of actions across key service areas as follows:

### **Sector Support**

- Coordinate and support the delivery of actions from the monthly Interagency Network made up of key support services, including the housing sector.
- Provide support for homelessness day coordination, information sharing, grants and advocacy projects.
- Rent subsidies on Council owned buildings for eligible community organisations delivered through the Community Tenancy and Leasing Policy.
- Identified land for housing providers to situate emergency housing.
- Grant funding to support programs aimed at reducing issues related to homelessness.

### **Advocacy**

- Drive awareness around homelessness through campaigns and communications.
- Support DCJ with annual street count and other advocacy projects.

### **Regulatory Support**

- Manage community concerns and complaints about rough sleeping.
- Ensure a holistic approach to regulation by partnership with housing services.
- Clean up of sites deemed to be dangerous.

### **Local Infrastructure Contributions**

- Housing affordability is supported via reduced local infrastructure contributions for diverse housing types such as secondary dwellings and long term caravans in caravan parks. These development types attract up to a 50% discount on the contribution.
- Locations for secondary dwellings have recently being expanded via the Rural Economic Development Planning Proposal. In summary, rural zoned properties are now able to build a secondary dwelling at a reduced contributions rate.

### **Strategic Planning**

- The Port Stephens Housing Strategy aims to address housing affordability through Outcome 2 - Improve Housing Affordability. The key priorities within this focus area are responding to housing stress, providing more affordable housing near jobs and reducing the cost of new housing.
- Associated with these priorities are a number of actions that the Strategic Planning team are presently working on which are directly connected to the issues around homelessness. These include:
  - Identify and securing grant funding to create a framework that would allow for the renewal of existing social housing and the development of additional affordable housing in Raymond Terrace with NSW Land and Housing

Corporation (NSW LAHC). This may also support the growth of additional social housing across other locations in Port Stephens.

- Monthly meetings with Transport for NSW (TfNSW) to discuss projects, priorities and advocate for better transport outcomes to enable those most vulnerable to access employment and essential services.
- Identify and securing grant funding solutions to support investment in infrastructure such as drainage to encourage infill housing.

### **NSW Core and Cluster crisis accommodation grant program**

Port Stephens has recently been announced as a location for the delivery of a crisis accommodation project to support women and children experiencing domestic and family violence. Hume Housing, as the local community housing authority, will be responsible for the delivery of the project. The project will be funded under the NSW Government's Core and Cluster program.

Core and Cluster is an innovative model that allows for independent living and privacy while also providing access to support services. Under the Core and Cluster model, self-contained accommodation is located next to a 'core', which provides access to services such as counselling, legal assistance, education and employment support. The sites may contain meeting rooms, audio-visual equipment for court appearances, communal kitchens, and playgrounds.

### **PROPOSED INITIATIVES**

<b>Initiative</b>	<b>Detail and Actions taken</b>	<b>Indicative Resourcing &amp; Timeframes</b>
<b>Homelessness Stakeholder Advocacy Group</b>	<p>A Terms of Reference has been drafted for the Stakeholder Advocacy Group (<b>ATTACHMENT 1</b>).</p> <p>The role of the group will be to:</p> <ul style="list-style-type: none"> <li>• Provide Council with strategic advice on homelessness and related issues that can be dealt with at a Local Government level.</li> <li>• Work with Council to address local issues, develop options and assist in identifying preferred solutions as part of Council's decision making process.</li> <li>• Advocate community views on homelessness issues.</li> <li>• Advocate to the different levels and departments of</li> </ul>	<p>Managed within existing budgets and resourcing.</p> <p>Expected inception meeting March 2023.</p> <p>Expected timeframe to determine priority actions: 6 months.</p>

Initiative	Detail and Actions taken	Indicative Resourcing & Timeframes
	<p>Government for Homelessness action and support.</p> <p>Key stakeholders identified for membership include:</p> <ul style="list-style-type: none"> <li>• NSW Department of Communities and Justice</li> <li>• Member for Port Stephens</li> <li>• Member for Paterson</li> <li>• Hume Housing</li> <li>• Port Stephens Family and Neighbourhood Services</li> <li>• Wahroonga Aboriginal Corporation</li> <li>• Yacaaba Centre</li> <li>• Hunter Tenants Advice and Advocacy Service</li> <li>• Salvation Army</li> <li>• Centre for Hope</li> <li>• 2 community representatives</li> </ul> <p>Councillors Anderson and Kafer, and relevant staff would attend and chair meetings.</p> <p>Meetings are to be held twice a year.</p>	
<p><b>Access to Council Amenities (public)</b></p> <p>Council would open facilities outside regular usage to be used by people experiencing primary, secondary and tertiary homelessness in partnership with the community sector.</p>	<ul style="list-style-type: none"> <li>• Staff have liaised with a local homelessness support service to better understand costs involved with running the program. The service indicated an annual cost of approximately \$45,000 (per amenities site) based on:</li> <li>• 2 workers (community worker award rate)</li> <li>• 4 hours per day</li> <li>• 3 days per week</li> <li>• External cleaner at \$85 per hour.</li> </ul>	<p>Council would be required to provide annual funding for this service.</p> <p>Should this initiative be supported, Council would need to identify a funding source of approximately \$45,000 per site per annum. Additional staff on costs would also need to be calculated.</p>

<b>Initiative</b>	<b>Detail and Actions taken</b>	<b>Indicative Resourcing &amp; Timeframes</b>
		<p>Additional maintenance of facilities may also be required.</p> <p>Pending interest from a service provider and budget commitment, it would be possible to establish and management agreement within 3 months.</p>
<b>Access to Council Amenities (swimming pools)</b>	Council staff have approached Belgravia Leisure (Council's swimming pool operator) to investigate the option of opening swimming pool amenities for showering.	<p>Discussions have been positive with further investigation of options underway at the time of writing.</p> <p>Additional maintenance of facilities may also be required.</p>
<b>Targeted advocacy program</b>	This item will be discussed by the Homelessness Stakeholder Advisory Group at the first meeting.	Managed within existing budgets.
<b>Homelessness Policy</b>	This item will be discussed by the Homelessness Stakeholder Advisory Group at the first meeting.	Managed within existing budgets.
<b>Temporary accommodation constructed on Council owned land</b>	<p>The Strategic Property team have undertaken an assessment of sites that may be suitable for temporary housing. A total of 4 sites have been initially identified.</p> <p>Further investigation of suitability and feasibility is underway at the time of writing. Preliminary costings have been received for temporary accommodation (suitable only for short term emergency housing).</p>	<p>A business case would need to be prepared to further understand costs, scope and the suitability of site development.</p> <p>The project would potentially attract project costs, asset management costs, housing management costs and resourcing costs should Council operate any service.</p>



Initiative	Detail and Actions taken	Indicative Resourcing & Timeframes
	<p>Estimates range dependent on the type of accommodation and the size offered:</p> <ul style="list-style-type: none"> <li>• Basic fit out style (shed/shipping container) – \$70,000 - \$85,000</li> <li>• 1 bedroom granny flat style - \$90,000 – \$105,000</li> <li>• 2 bedroom granny flat style - \$110,000 - \$150,000</li> </ul> <p>Council is not experienced or well qualified to provide ongoing housing services. The preferred model is to partner with a housing provider who would fund construction and ongoing management.</p> <p>To understand this further, staff have met with service providers to further discuss merits of this type of initiative. Through these discussions it was agreed that the most appropriate approach was for Council to continue to work with housing providers to identify suitable Council owned sites as well as privately held sites to develop and provide housing and management services.</p>	<p>The continued collaboration with and support offered to NSW Land and Housing Corporation as well as housing providers can be resourced within existing budgets.</p> <p>This item will be discussed by the Homelessness Stakeholder Advisory Group at the first meeting.</p>
<p><b>Council Holiday Parks</b> Enable holiday parks to provide emergency housing.</p>	<p>Staff have commenced the investigation of head leasing opportunities with housing service providers. This would relate to the potential short term leasing of cabins at Thou Walla Holiday Park.</p> <p>There is no available capacity at Council's other holiday parks to facilitate this type of service.</p>	<p>Managed within existing budgets.</p> <p>Further investigation of suitability and feasibility is underway at the time of writing.</p> <p>Expected timeframe to establish scope and commence program: 6 months to 1 year.</p>

## COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2022-2026
Thriving and safe place to live	Deliver an annual program for Council to provide development services to enhance public safety, health and liveability.

## FINANCIAL/RESOURCE IMPLICATIONS

Estimated costs and resource implications are outlined above. New funding sources would need to be identified to deliver a number of the new initiatives.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes		Noting that should Council resolve to undertake programs listed within this report without a defined funding source; that a funding source would need to be identified.
Reserve Funds	No		
Developer Contributions (\$7.11)	No		
External Grants	No		
Other	No		

## LEGAL, POLICY AND RISK IMPLICATIONS

Any future actions would require an assessment of legal, policy and risk implications.

Risk	<a href="#">Risk Ranking</a>	Proposed Treatments	Within Existing Resources?
There is a risk that unless action is taken, homelessness across Port Stephens will continue to increase.	Medium	Accept the recommendation.	Yes

There is a risk that Council is deviating from its role and function in addressing issues managed by State and Federal Governments.	Low	Accept the recommendation.	Yes
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**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

People experiencing and at risk of homelessness are our most vulnerable community members. Homelessness can expose people to violence, cause long-term unemployment and lead to the development of chronic ill health.

Homelessness results in significant social and economic costs not just to individuals and their families, but also to our local towns and the broader local government area and can negatively impact the liveability and wellbeing of our community.

**CONSULTATION**

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

**Internal**

Consultation allowed for a complete understanding of the diversity of tasks Council already undertake in relation to homelessness.

Stakeholders identified a number of potential initiatives that could be adopted to increase Council's level of service in addressing impacts of homelessness. To inform this report staff engaged with:

- Assets Section
- Strategic Property
- Strategy and Environment
- Regulatory Services
- Councillors.

**External**

Council engages with external stakeholders on an ongoing and needs basis. Council hosts a monthly community sector interagency meeting, meets regularly with housing providers and liaises with state government departments as matters arise.

To inform this report Council has engaged with:

- Port Stephens Family and Neighbourhood services
- Hume Housing

## ORDINARY COUNCIL - 28 FEBRUARY 2023

- Yacaaba Centre
- Department of Communities and Justice
- Wairoonga Aboriginal Corporation
- Belgravia Leisure.

### OPTIONS

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

### ATTACHMENTS

- 1) Terms of Reference - Homelessness Stakeholder Advocacy Group. [↓](#)
- 2) Minute No. 331, 13 December 2022. [↓](#)

**ITEM 7 - ATTACHMENT 1      TERMS OF REFERENCE - HOMELESSNESS  
STAKEHOLDER ADVOCACY GROUP.**

**TERMS OF REFERENCE**



**PORT STEPHENS HOMELESSNESS STAKEHOLDER  
ADVOCACY GROUP**

**1. PURPOSE:**

The purpose of the Stakeholder Advocacy Group is to support a coordinated approach to addressing the impacts of homelessness in Port Stephens.

**2. CONTEXT/BACKGROUND:**

2.1 Council resolved in 2022 to establish a Stakeholder Advocacy Group

2.2 It is recognised that Local Government is not best placed to act in the role of direct service providers however, evidence shows that success can be achieved through collaboration at all levels of government and the community sector.

**3. SCOPE:**

3.1 The role of the Stakeholder Advocacy Group is to:

- a) Provide Council with strategic advice on homelessness and related issues that can be dealt with at a Local Government level.
- b) Work with Council to address local issues, develop options and assist in identifying preferred solutions as part of Council's decision making process
- c) Advocate community views on homelessness issues

3.2 The Stakeholder Advocacy Group is not a decision making body. Council retains the final decision making authority on final actions to be carried out.

**4. DEFINITIONS:**

4.1 An outline of the key definitions included in the Terms of Reference.

Stakeholder Advocacy Group	Port Stephens Homelessness Stakeholder Advocacy Group
Council	Port Stephens Council

# ITEM 7 - ATTACHMENT 1 TERMS OF REFERENCE - HOMELESSNESS STAKEHOLDER ADVOCACY GROUP.

## TERMS OF REFERENCE



### 5. AUTHORITY:

5.1 This Stakeholder Advocacy Group is responsible for:

- a) Provide Council with strategic advice on homelessness and related issues
- b) Provide Council with local insights and data on homelessness
- c) Advocate community priorities on homelessness issues and priorities
- d) Proposing preferred actions for Council undertake to addressing the impacts of homelessness

### 6. TERM:

6.1 Membership of the stakeholder advocacy group would remain for the term of Council. Subsequent membership would be determined within three months following a Local Government election.

### 7. MEMBERSHIP:

7.1 The Stakeholder Advocacy Group will comprise 15 core members (including 2 community members) and 1 occasional members.

Organisation	Membership type (Core or Occasional)	Role
Port Stephens Council Elected Councillor 1	Core	Chairperson
Port Stephens Council Elected Councillor 2	Core	Member
NSW Department of Communities and Justice	Core	Member
Member for Port Stephens	Core	Member
Member for Paterson	Core	Member
Hume Housing	Core	Member
Port Stephens Family and Neighbourhood Services	Core	Member
Wahroonga Aboriginal Corporation	Core	Member
Yacaaba Centre	Core	Member
Hunter Tenants Advice and Advocacy Service	Core	Member
Salvation Army	Core	Member

**ITEM 7 - ATTACHMENT 1      TERMS OF REFERENCE - HOMELESSNESS  
STAKEHOLDER ADVOCACY GROUP.****TERMS OF REFERENCE**

Organisation	Membership type (Core or Occasional)	Role
Centre for Hope	Core	Member
Community Member 1	Core	Member
Community Member 2	Core	Member
Port Stephens Council Officer	Core	Secretariat (administrative support)
NSW Department of Communities and Justice	Occasional	Guest

- 7.2 The Stakeholder Advocacy Group 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 financial year or at a time an existing member resigns from their position.
- 7.3 The Committee must call for public expressions of interest to appoint the two (2) community representatives at the start of each Council term. The community representatives must be confirmed by a Stakeholder Advocacy Group vote.
- 7.4 The Stakeholder Advocacy Group may invite others to attend meetings as required.
- 7.5 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 Stakeholder Advocacy Group on recommendation of the Chair and General Manager of Port Stephens Council.

## ITEM 7 - ATTACHMENT 1 TERMS OF REFERENCE - HOMELESSNESS STAKEHOLDER ADVOCACY GROUP.

### TERMS OF REFERENCE



#### 8. ROLES AND RESPONSIBILITIES:

8.2 The roles and responsibilities of the Stakeholder Advocacy Group members are outlined below:

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> </ul>	<ul style="list-style-type: none"> <li>Finalise minutes.</li> <li>Save a record to EDRMS.</li> <li>Maintain list of Stakeholder Advocacy Group 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>	
<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:

##### 9.2 Meeting practices and cycles

- a) The Stakeholder Advocacy Group will meet twice per year, or at an interval deemed appropriate by the Stakeholder Advocacy Group. 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.
- b) Unless otherwise specified in this Terms of Reference and in accordance with any Local Government Act requirements, the Stakeholder Advocacy Group will determine its meeting practice, processes and protocols.

##### 9.3 Secretariat

- a) The Strategy and Environment section of Port Stephens Council will provide administrative support to the Stakeholder Advocacy Group.



**ITEM 7 - ATTACHMENT 1      TERMS OF REFERENCE - HOMELESSNESS  
STAKEHOLDER ADVOCACY GROUP.**

**TERMS OF REFERENCE**



**9.4 Agenda and minutes**

- a) The Secretariat will provide the meeting agenda to all members of the Stakeholder Advocacy Group 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 Stakeholder Advocacy Group no later than ten (10) working days following the scheduled meeting date.

**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:**

- 10.2 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.

**11. INTELLECTUAL PROPERTY:**

- 11.2 The Stakeholder Advocacy Group 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) They have 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 Stakeholder Advocacy Group work.
- d) Council will acknowledge the Stakeholder Advocacy Group if publishing or reproducing copies of Stakeholder Advocacy Group research, including images and historical data.

**ITEM 7 - ATTACHMENT 1 TERMS OF REFERENCE - HOMELESSNESS  
STAKEHOLDER ADVOCACY GROUP.**

**TERMS OF REFERENCE**



11.3 The Stakeholder Advocacy Group refers to the Secretariat any questions relating to intellectual property rights or the use of another organisation's document.

**12. MEDIA:**

13. Any media liaison associated with the activities of the Stakeholder Advocacy Group shall be undertaken in accordance with Port Stephens Council protocols.

**14. REVIEW:**

14.2 The Terms of Reference will be reviewed in line with the Local Government election cycle, or on an as needs basis.

**15. MEETING CODE OF COOPERATION:**

- |   |   |
|---|---|
| <ul style="list-style-type: none"> <li>• We start on time and finish on time.</li> <li>• We focus on the strategic intent of the item.</li> <li>• We ensure that people attending meetings are provided with guidance and support.</li> <li>• We consider the risks and opportunities of each item.</li> <li>• We are prepared to have open and honest conversations about an issue even if it is uncomfortable.</li> <li>• We all participate fully and are prepared to challenge each other.</li> <li>• We use improvement tools that enhance meeting efficiency and effectiveness.</li> <li>• We actively listen to what others have to say, seeking first to understand then to be understood.</li> <li>• We consider the deployment of actions and programs through appropriate</li> </ul> | <ul style="list-style-type: none"> <li>frameworks and communicate the consensus view through appropriate channels.</li> <li>• We follow up on the actions we are assigned responsibility for and complete them on time.</li> <li>• We give and receive open and honest feedback in a constructive manner.</li> <li>• We use data to make decisions (when ever possible).</li> <li>• We determine issues arising by consensus or refer to the Chair for consideration.</li> <li>• We strive to continually improve our meeting process and build time into each agenda for reflection and learning.</li> <li>• We will promote best practice, keeping open minds, combining our experiences and shared learnings to inform our deliberations.</li> </ul> |
|---|---|

**ITEM 7 - ATTACHMENT 1      TERMS OF REFERENCE - HOMELESSNESS  
STAKEHOLDER ADVOCACY GROUP.****TERMS OF REFERENCE****16. RELATED DOCUMENTS:**

16.2 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		EDRMS record No	TBC
Audience	Staff, Councillors and the Community		
Process owner	Vibrant Places Coordinator		
Author	Vibrant Places Coordinator		
Review timeframe	3 years	Next review date	TBC
Adoption date	TBC		

**MINUTES ORDINARY COUNCIL - 13 DECEMBER 2022****ITEM NO. 5****FILE NO: 22/263140  
EDRMS NO: PSC2021-04195****HOMELESSNESS IN PORT STEPHENS**

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

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Note findings and information within the report.
  - 2) Request the General Manager to prepare a report after further investigation of the options outlined in this report.
- 

**ORDINARY COUNCIL MEETING - 13 DECEMBER 2022  
MOTION**

<b>331</b>	<b>Councillor Leah Anderson Councillor Giacomo Arnott</b>  It was resolved that Council:  <ol style="list-style-type: none"><li>1) Note findings and information within the report.</li><li>2) Request the General Manager to prepare a report after further investigation of the options outlined in this report for the Council meeting to be held on 28 February 2023.</li><li>3) Establishes the Stakeholder Advocacy Group with key community, government and industry representatives as soon as possible.</li><li>4) Councillor Leah Anderson and Councillor Peter Kafer be nominated to attend the Stakeholder Advocacy Group and extend an invitation to the Member for Port Stephens and the Member for Paterson.</li></ol>
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Cr Giacomo Arnott moved the following amendment, which was accepted by the mover and seconder and merged into the original motion:

‘That Councillor Leah Anderson and Councillor Peter Kafer be nominated to attend the Stakeholder Advocacy Group and extend an invitation to the Member for Port Stephens and the Member for Paterson.’

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

**MINUTES ORDINARY COUNCIL - 13 DECEMBER 2022**

Those against the Motion: Nil.

The motion was carried.

**BACKGROUND**

The purpose of this report is to present available local data on homelessness, the current action that Council undertakes in this space, models of service provision and potential options available to further address the impacts of homelessness. This report follows a Notice of Motion at its meeting of 23 August 2022, Minute No. 229 (**ATTACHMENT 1**).

The Australian Bureau of Statistics (ABS) definition of homelessness identifies three categories within the homeless population:

- Primary homelessness – no conventional accommodation/shelter (e.g. sleeping rough, squatting, sleeping in cars)
- Secondary homelessness – temporary accommodation/shelter (e.g. staying with friends/relatives or in emergency/transitional accommodation)
- Tertiary homelessness – medium/long term accommodation that is below the minimum community standard (e.g. no bathroom, no kitchen, lack of secure tenure, severe overcrowding).

The ABS Census of Population and Housing's 2016 report 'Estimating Homelessness' found that across Australia:

- People sleeping rough made up just 7% of homeless people
- People living in severely overcrowded dwellings (44%) people in supported accommodation (18%)
- People staying temporarily with others (15%)
- People living in boarding houses (15%) being larger sub-groups of people experiencing homelessness.

Addressing homelessness is primarily a mandate of the NSW State Government. In 2019, The NSW Government committed to reduce street homelessness across NSW by 50% by 2025, with the target later becoming one of the NSW Premier's Priorities. The NSW Government also oversees the delivery of the NSW Homelessness Strategy.

**LOCAL DATA**

Obtaining clear evidence based data relating to homelessness in Port Stephens is difficult. Council does have access to ABS data however, this data is currently dated (2016) and we are awaiting the latest 2021 census data to provide a more accurate picture of homelessness in Port Stephens post COVID-19.

Whilst awaiting this data which is expected in mid-2023, Council have engaged with local support agencies to gain insights into the current impacts of homelessness in

**MINUTES ORDINARY COUNCIL - 13 DECEMBER 2022**

Port Stephens. More detailed research is required to support a greater understanding of the specific causes of homelessness in Port Stephens, vulnerable location and local priorities.

**NSW Department of Communities and Justice (DCJ)**

DCJ conducts street counts of people experiencing street homelessness. Street counts provide a point-in-time of the number of people in a location who are observed to be experiencing street homelessness. Data has been collected for 3 years in Port Stephens:

- 2020 a total of 4 people were identified as sleeping rough
- 2021 a total of 12 people were identified as sleeping rough
- 2022 a total of 12 people were identified as sleeping rough

**Port Stephens Family and Neighbourhood Services**

Port Stephens Family and Neighbourhood Services provide early intervention and homelessness services to people experiencing or at risk of homelessness. In 2021/2022 they reported:

- 879 clients were allocated emergency housing including 337 children under 16 years of age
- 291 clients identified they are homeless directly due to domestic violence
- 202 people were identified as sleeping rough or in cars, an increase from 92 in 2019/2020.

And, in January to September 2022:

- 571 people experienced homelessness
- 54% are female
- 192 people were children under the age of 18
- 54 people were over the age of 55.

**Hume Community Housing**

Hume Community Housing provides homes and services to more than 9,000 customers across New South Wales. Hume Community Housing build new properties and project manages developments on behalf of government, provide tenancy management and maintenance and property management services.

In 2021/2022 Hume Community Housing reported that 323 households were provided with temporary accommodation. This is an increase from 86 in the previous year.

## MINUTES ORDINARY COUNCIL - 13 DECEMBER 2022

## BENCHMARKING

It is well recognised that Local Government is not best placed to act in the role of direct services providers however, evidence shows that success can be achieved through collaboration at all levels of government and the community sector.

Councils and the community sector can deliver a range of initiatives that seek to alleviate homelessness issues. The following benchmarking provides examples only of actions undertaken by others. Further reviews are required to understand the outcomes and value of these actions within their local communities.

Program	Description
<b>Mobile Service – Orange Sky</b>	<p>Orange Sky, a national organisation that provides free mobile regular laundry and shower services on a regular basis for people experiencing homelessness.</p> <p>Purpose built vans with laundry and shower services operate in locations where the homeless feel most comfortable, often co-located with existing service providers. This service also provides an outreach function directing users to other support services.</p>
<b>Integrated Service Delivery - Our Backyard Car to Home Project</b>	<p>Our Backyard Car to Home Project is a designated private car park space that allows men, couples, women or families who are sleeping in their cars a place to park and sleep, in the Newcastle and Lake Macquarie areas.</p> <p>Entry into the carpark is from 4pm each day and individuals need to be off-site by 10am the next day. Support workers assist individuals to access community support services and refer individuals to specialist homeless service providers. Security is also provided as part of this service.</p> <p>This service is run by the community sector and privately funded through Macquarie Care.</p>
<b>Rate Concessions for Housing Providers – City of Newcastle</b>	<p>In November 2021, NSW Land and Housing Corporation (LAHC) and the City of Newcastle signed a Memorandum of Understanding (MOU) aimed at increasing new social housing development in the region and create local jobs.</p> <p>The MOU sees the City of Newcastle supporting LAHC's redevelopment program through the provision of an annual payment equivalent to the rates paid to Council by LAHC in the Newcastle LGA for a period of three years. The payment will be reinvested into funding new social housing in the region during the same period.</p>
<b>Community Forum – City of Newcastle</b>	<p>In 2021 the City of Newcastle hosted two community forums inviting the community sector, socially responsible businesses</p>

**MINUTES ORDINARY COUNCIL - 13 DECEMBER 2022**

<b>Program</b>	<b>Description</b>
	and organisations to contribute to a collective Newcastle response to the affordable housing and homelessness matters.
<b>Sector Coordination – City of Coffs Harbour</b>	City of Coffs Harbour provides the backbone support to the Coffs Harbour Homelessness Sector Action Plan (HSAP). The HSAP aims to address the growing challenges relating to homelessness within the Coffs Harbour Local Government Area and work towards solutions. This involves: <ul style="list-style-type: none"><li>• Developing an evidence-based research report to identify the critical local issues and themes relating to homelessness.</li><li>• Preparing an action plan with activities to address the identified issues.</li><li>• Facilitating regular action-based meetings with sector representatives for each theme identified in the research report.</li></ul>
<b>Homelessness Plan - Lake Macquarie Council</b>	Lake Macquarie City Council adopted the draft Ending Homelessness Plan 2021-2024. The plan outlines a strategic direction for Council to support community organisations and government agencies, and will deliver on Council's commitment towards ending homelessness in Lake Macquarie.

**OUR CURRENT APPROACH**

Port Stephens Council supports the rights of all of our community members to use public spaces, including people experiencing homelessness. We work closely with service providers and the community to address concerns about homelessness and implement actions to both support the homeless and reduce homelessness across Port Stephens.

In 2021, Council hosted a community and housing sector workshop to respond to growing concerns around homelessness. The key priorities identified were as follows:

- Training and support for frontline workers
- Priority housing for women and families with children impacted by domestic violence
- Easy access to emergency accommodation
- Outreach service provision including meals, mental health support and drug and alcohol support
- Increased affordable, stable and appropriate housing supply that meet people's needs
- Coordinated engagement with stakeholders from real estates, developers and politicians
- Maintaining rental vacancy databases and/or living documents
- Increasing bulk billing services in the area through advocacy and incentives.



**MINUTES ORDINARY COUNCIL - 13 DECEMBER 2022**

From this, Council has implemented a number of actions across key service areas as follows:

**Sector Support**

- Coordinate and support the delivery of actions from the Interagency Network made up of key support services, including the housing sector.
- Provide support for homelessness day coordination, information sharing, grants and advocacy projects.
- Rent subsidies on Council owned buildings for eligible community organisations delivered through the Community Tenancy and Leasing Policy.
- Identified land for housing providers to situate emergency housing.
- Grant funding to support programs aimed at reducing issues related to homelessness.

**Advocacy**

- Drive awareness around homelessness through campaigns and communications.
- Support DCJ with annual street count and other advocacy projects.

**Regulatory Support**

- Manage community concerns and complaints about rough sleeping.
- Ensure a holistic approach to regulation by partnership with housing services.
- Clean up of sites deemed to be dangerous.

**Local Infrastructure Contributions**

- Housing affordability is supported via reduced local infrastructure contributions for diverse housing types such as secondary dwellings and long term caravans in caravan parks. These development types attract up to a 50% discount on the contribution.
- Locations for secondary dwellings have recently being expanded via the Rural Economic Development Planning Proposal. In summary, rural zoned properties are now able to build a secondary dwelling at a reduced contributions rate.

**Strategic Planning**

- The Port Stephens Housing Strategy aims to address housing affordability through Outcome 2 - Improve Housing Affordability. The key priorities within this focus area are responding to housing stress, providing more affordable housing near jobs and reducing the cost of new housing.
- Associated with these priorities are a number of actions that the Strategic Planning team are presently working on which are directly connected to the issues around homelessness. These include:
  - Identify and securing grant funding to create a framework that would allow for the renewal of existing social housing and the development of additional

## MINUTES ORDINARY COUNCIL - 13 DECEMBER 2022

affordable housing in Raymond Terrace with NSW Land and Housing Corporation (NSW LAHC). This may also support the growth of additional social housing across other locations in Port Stephens.

- Monthly meetings with Transport for NSW (TfNSW) to discuss projects, priorities and advocate for better transport outcomes to enable those most vulnerable to access employment and essential services.
- Identify and securing grant funding solutions to support investment in infrastructure such as drainage to encourage infill housing.

**ACTIONS FOR CONSIDERATION**

When working to resolve issues relating to homelessness, Council should consider the broader needs of individuals experiencing homelessness. The community support sector are the critical link providing not only housing support but also, health services and access to other community support providers.

The following provides options for consideration that facilitate connections to social, health and community services, increase opportunities for housing supply, policy frameworks and improved advocacy.

Further review of each option would be required to determine the most suitable outcomes to address homelessness in Port Stephens.

Options for Consideration	Action Required	Indicative Resourcing & Timeframes
<b>Stakeholder Advocacy Group</b> Work in partnership with community, government and industry to determine achievable solutions to homelessness in Port Stephens.	<ul style="list-style-type: none"> <li>• Invite representatives to participate in a stakeholder group</li> <li>• Meet monthly to review opportunities, develop actions and review implementation</li> </ul>	Managed within existing operational budgets.  Expected time frame to implement the stakeholder group : 3 months  Expected timeframe to determine and deliver actions: 6 months to 2 years
<b>Access to Council Amenities</b> Council open facilities outside regular usage to be used by people experiencing primary, secondary and tertiary homelessness in partnership with the community sector.	In partnership with community sector organisations, a criteria would be developed to determine the most suitable facilities. This would include: <ul style="list-style-type: none"> <li>• amenity numbers</li> <li>• Crime Prevention Through Environmental Design (CPTED) risk</li> </ul>	Council would be required to provide annual funding for this service. Additional maintenance of facilities may also be required.  Based on one facility opened once per week it is estimated this would cost \$20,000 per annum.

## MINUTES ORDINARY COUNCIL - 13 DECEMBER 2022

Options for Consideration	Action Required	Indicative Resourcing & Timeframes
	<ul style="list-style-type: none"> <li>child safety risk</li> <li>distance to respective Central Business District</li> <li>car parking</li> <li>disability access</li> <li>key community and stakeholder input</li> </ul>	Expected time frame to delivery: 6 months to 1 year.
<b>Targeted advocacy program</b> Acknowledging the housing crisis is not something that Council can fix on its own, there are a number of key priorities for Council to advocate State and Federal governments on.	Develop an advocacy program to focus on the following priorities: <ul style="list-style-type: none"> <li>build more social housing in Port Stephens</li> <li>invest in crisis housing</li> <li>build worker housing prior to major infrastructure projects</li> </ul>	Managed within existing operational budgets  Expected timeframe to deliver advocacy program: 2 months
<b>Homelessness Policy</b> Develop a policy to establish key principles and identify council's role in addressing homelessness.	<ul style="list-style-type: none"> <li>Source data on homelessness in Port Stephens</li> <li>Engage with community and key stakeholders on the purpose and outcomes of the policy</li> <li>Develop policy and seek Council endorsement</li> </ul>	Managed within existing operational budgets  Expected timeframe to deliver a new policy: 6-12 months
<b>Review of Council owned land</b> Review Council owned land to assess sites that may be appropriate for temporary/emergency housing.	<ul style="list-style-type: none"> <li>Undertake assessment of sites through the Strategic Property team</li> <li>Determine options for temporary/emergency housing</li> <li>Partner with housing provider to assess appropriate temporary housing type for site – may include converted shipping container or modular homes</li> </ul>	Managed within existing operational budgets  Expected timeframe to deliver a report to Council: 6-12 months

## MINUTES ORDINARY COUNCIL - 13 DECEMBER 2022

<b>Council Holiday Parks</b> Enable holiday parks to provide emergency housing.	<ul style="list-style-type: none"> <li>Consult with service providers to understand needs and identify appropriate facilities.</li> <li>Establish a partnership model</li> </ul>	Costs of providing service would need to be determined following further review.  Expected timeframe to establish scope and commence program: 6 months to 1 year.
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### Affordable Housing Contribution Schemes and Local Environmental Plan (LEP) Provisions

Affordable housing contribution schemes are Council-led document which set out how, where and at what rate local infrastructure contributions can be collected by Council to reinvest in affordable housing.

To establish an affordable housing scheme a Council must:

- Establish an evidence base
- Identify areas for rezoning
- Establish an affordable housing contribution rate for the scheme
- Prepare the scheme
- Prepare a Planning Proposal to include the scheme in the LEP
- Amend the LEP
- Apply conditions of consent to applicable development applications
- Collect funds and allocate in accordance with the contribution scheme.

Funding for an affordable housing contribution scheme forms part of an additional fee paid by developers outside of the Local Infrastructure Contributions Plan (LIC). To access funds for affordable housing, a series of statutory changes is required to the LEP.

All funds collected under an affordable housing scheme must be reserved on affordable housing in what is recognised as an Accessible Area. There is currently no land in Port Stephens recognised as an Accessible Area.

In addition, any changes to the LEP are required to use standard terminology. Affordable housing is a defined term. LEP amendments which require delivery of an affordable housing outcome can only apply to locations defined as an Accessible Area.

Accessible Areas are determined by the NSW State Environmental Planning Policy (Housing). Accessible Areas must have a connection to major public transport nodes such as rail, light rail, ferries or major bus terminals or a combination of these.

**MINUTES ORDINARY COUNCIL - 13 DECEMBER 2022**

Therefore, the delivery of a scheme such as this would be very difficult. Better outcomes could be delivered by increasing our focus on advocacy for public transport connections within Port Stephens.

Council is currently working with Transport for NSW to build transport connections and service frequency with a focus on Raymond Terrace. Once this is established, there will be opportunity for further investigation of affordable housing requirements for new development.

**COMMUNITY STRATEGIC PLAN**

<b>Strategic Direction</b>	<b>Delivery Program 2022-2026</b>
Thriving and safe place to live	Deliver an annual program for Council to provide development services to enhance public safety, health and liveability.

**FINANCIAL/RESOURCE IMPLICATIONS**

Estimated costs and resource implications are outlined above. Items may require additional funding once further detail and scope has been determined.

<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**

Any future actions would require an assessment of legal, policy and risk implications.

**MINUTES ORDINARY COUNCIL - 13 DECEMBER 2022**

<b>Risk</b>	<b><a href="#">Risk Ranking</a></b>	<b>Proposed Treatments</b>	<b>Within Existing Resources?</b>
There is a risk that unless action is taken, homelessness across Port Stephens will continue to increase.	Medium	Maintain strong relationships with State and Federal government departments to ensure there is alignment.  Recognise State and Federal policy and strategy frameworks when considering actions.	Yes
There is a risk that Council is deviating from its role and function in addressing issues managed by State and Federal Governments.	Low	Maintain strong relationships with State and Federal government departments to ensure there is alignment.  Recognise State and Federal policy and strategy frameworks when considering actions.	Yes

**SUSTAINABILITY IMPLICATIONS**

People experiencing and at risk of homelessness are our most vulnerable community members. Homelessness can expose people to violence, cause long-term unemployment and lead to the development of chronic ill health.

Homelessness results in significant social and economic costs not just to individuals and their families, but also to our local towns and the broader local government area and can negatively impact the liveability and wellbeing of our community.

**CONSULTATION**

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

Internal

Consultation allowed for a complete understanding of the diversity of tasks Council already undertake in relation to homelessness. A range of opportunities were identified to expand the initiatives in responding to homelessness issues in Port Stephens.

**MINUTES ORDINARY COUNCIL - 13 DECEMBER 2022**

Stakeholders identified a number of potential initiatives that could be adopted to increase Council's level of service in addressing impacts of homelessness. To inform this report staff engaged with:

- Assets Section
- Strategic Property
- Strategy and Environment
- Regulatory Services

External

Council engages with external stakeholders on an ongoing and needs basis. Council hosts a monthly community sector interagency meeting, meets regularly with housing providers and liaises with state government departments as matters arise.

To inform this report Council has engaged with:

- Port Stephens Family and Neighbourhood services
- Hume Housing
- Yacaaba Centre
- Department of Communities and Justice

**OPTIONS**

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

**ATTACHMENTS**

- 1) Minutes of Council Meeting - 23 August 2022.

**ITEM NO. 8****FILE NO: 23/13687  
EDRMS NO: PSC2017-00180****QUARTERLY BUDGET REVIEW TO 31 DECEMBER 2022**

REPORT OF: TIM HAZELL - FINANCIAL SERVICES SECTION MANAGER  
GROUP: CORPORATE SERVICES

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Approve the discretionary changes to the adopted budget (**ATTACHMENT 1**) presented as the Quarterly Budget Review to 31 December 2022.

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**BACKGROUND**

The purpose of this report is to amend the budget by bringing to Council's attention the issues that have affected the 2022 – 2023 budget. These issues are detailed in the Quarterly Budget Review to 31 December 2022 (**ATTACHMENT 1**). The statement sets out the details of the variations between Council's original budget and the proposed budget.

The latest Quarterly Budget Review to 31 December 2022 has shown a minor improvement to the projected surplus on the September 2022 quarter. This is primarily as a result of increased grants income and interest and investment income.

Adjustments to Council income and expenditure have already been made to ensure Council maintains its financial sustainability. Ongoing conservative financial management is required for the near future.

The summary (**ATTACHMENT 1**) best represents the situation as well as it is presently known.

**COMMUNITY STRATEGIC PLAN**

<b>Strategic Direction</b>	<b>Delivery Program 2022-2026</b>
Financial Management	Manage implementation of the Long Term Financial Plan 2022 to 2032



**FINANCIAL/RESOURCE IMPLICATIONS**

Council's anticipated underlying result is as follows:

	<b>Surplus (\$)</b>	<b>Deficit (\$)</b>
Budget 2022 - 2023		\$1,137,000
September 2022 review	\$202,000	
December 2022 review	\$346,000	
March 2023 review	-	-

<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**

Council's financial position is precarious as a result of a number of economic factors. Despite an improvement seen in the underlying result for the financial year 2022 – 2023, it is prudent that Council continues to monitor the budget carefully to ensure minimal risk to the organisation and community.

<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 underlying operating result may remain in a deficit for an unforeseeable amount of time.	High	The Long Term Financial Plan will be reviewed regularly to ensure that expenditure remains sustainable and that revenue is at appropriate levels.	Yes

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

Council's budget is fundamental for operational sustainability and the provision of facilities and services to the community. The budget will continue to be carefully monitored while the financial outlook continues with a higher level of uncertainty.

## **CONSULTATION**

Consultation with key stakeholders has been undertaken by the Financial Services section to discuss the overall financial result for the quarter.

Formal communication and meetings have been held and it is recommended to submit the Quarterly Budget Review to 31 December 2022 to Council for formal adoption.

### Internal

- Executive Team.

### External

Nil.

## **OPTIONS**

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

## **ATTACHMENTS**

- 1) Quarterly Budget Review to 31 December 2022. [↓](#)

## **COUNCILLORS ROOM**

Nil.

## **TABLED DOCUMENTS**

Nil.



**"A great lifestyle in a treasured environment"**

**2022 – 2023**  
**Quarterly Budget Review Statement**  
**December 2022**

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**1) Executive Summary**

The quarterly budget review has been compiled during a period of instability, not only for Council but for the industry as a whole. While many possible scenarios have and will continue to be modelled, the following summary best represents the current situation. Financial performance is generally measured using three primary statements, each are discussed in detail in the attached report. A summary of the predicted outcomes are as follows:

**Profit & Loss Statement – operational budget**

	<b>Surplus ('000)</b>	<b>Deficit ('000)</b>
Original budget – expected result		(\$1,137k)
September 2022 review	\$202k	
December 2022 review	\$346k	

The increment of \$144k is primarily due to:

**Increased income from:**

Grants	\$724k
Interest & Investment Income	\$653k

**Decreased income from:**

User Charges & Fees (refer page 8 for details)	\$812k
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**Increased expenditure from:**

Employee costs (refer to page 10 for details)	\$124k
Grant expenses	\$653k

This document forms part of Port Stephens Council's Quarterly Budget Review Statement for the quarter ended 31/12/2022 and should be read in conjunction with other documents in the QBRS.

**ITEM 8 - ATTACHMENT 1      QUARTERLY BUDGET REVIEW TO 31 DECEMBER 2022.****Decreased expenditure from:**

Materials and contracts – RMS works \$426k

**Capital Works Program – capital budget**

	<u>Gross</u>	<u>Contribution</u>	<u>Net</u>
Original budget – total spend	\$32,377k	\$19,573k	\$12,804k
September 2022 review	\$71,847k	\$36,585k	\$35,262k
December 2022 review	\$64,692k*	\$30,838k	\$33,853k

The decrease of \$7,156k is principally due to:

Construction of Yulong Oval amenities and Birubi Interchange moved into next financial year	\$8,815k (decrease)
Increase in fleet purchasing requirements	\$750k (increase)
New capital grants being recognised - Notts Creek bridge	\$270k (increase)
Aligning budget for increased scope – Italia road & Bruce Scott Pavilion	\$400k (increase)
Other minor capital projects	\$240k (Increase)

\*Total capital works program includes \$5,140k for airport works. The capital program for Council is \$64,692k - \$5,140k = \$59,552k.

**Cash flow**

Original budget – cash projected	\$68,164k
September 2022 review	\$66,908k
December 2022 review	\$68,462k

The increase in the anticipated cash position to 30 June 2023 is principally due to the capital works as detailed above being moved to next year.

This document forms part of Port Stephens Council's Quarterly Budget Review Statement for the quarter ended 31/12/2022 and should be read in conjunction with other documents in the QBRS.

**1) Executive Summary - continued**

Categorising the changes by Group:

**Corporate Services:** The operating budget change in this group was \$506k (favourable). The operating budget changes predominately relate to increase in employee costs and increase in interest income.

Capital budget changes were \$10k (favourable) and relates to the reallocation of budget from Holiday Parks.

**Development Services:** There were no operating budget changes for this quarter.

Capital budget changes were \$2,167k (favourable) and relates to the increase in developer contributions.

**Facilities & Services:** The operating budget change in this group was \$385k (unfavourable). The operating budget changes predominately relate to the decrease in parking fees income, decrease in library fines due to council motion and decrease in RMS income due to major works adjustments for Tomago Road.

Changes in the capital budget were \$768k (unfavourable) which is mainly due to the increase in budgets for fleet as purchase requirements have been brought forward.

**General Manager's Office:** Operating budget changes for this group were \$24k (favourable). The operating budget changes predominately relate to the reallocation of subscription costs to organisational spend in Corporate services.

**Newcastle Airport:** There were no budget changes for this quarter.

**ITEM 8 - ATTACHMENT 1      QUARTERLY BUDGET REVIEW TO 31 DECEMBER 2022.**

<b>Operating Budget</b>	<b>2023 Original Budget</b>	<b>Budget revotes &amp; carry forwards</b>	<b>Budget Revision Sept Qtr</b>	<b>Budget Revision Dec Qtr</b>	<b>Budget Revision Mar Qtr</b>	<b>2023 Revised Budget</b>	<b>2023 YTD Actuals</b>
	<b>\$'000</b>	<b>\$'000</b>	<b>\$'000</b>	<b>\$'000</b>	<b>\$'000</b>	<b>\$'000</b>	<b>\$'000</b>
Corporate Services	49,437	-	389	506	-	50,331	48,203
Development Services	(8,423)	-	-	-	-	(8,423)	(2,686)
General Manager's Office	(6,958)	-	88	24	-	(6,847)	(4,383)
Facilities & Services	(32,264)	-	1,638	(385)	-	(31,011)	(3,793)
Newcastle Airport	(1,156)	-	-	-	-	(1,156)	(578)
<b>Operating Surplus/(Deficit) before capital grants</b>	<b>637</b>	<b>-</b>	<b>2,115</b>	<b>144</b>	<b>-</b>	<b>2,896</b>	<b>36,763</b>
Less: Gain on sale	(250)	-	(776)	-	-	(1,026)	-
Less: Fair value increases	(843)	-	-	-	-	(843)	-
Less: Royalties	(1,836)	-	-	-	-	(1,836)	(1,280)
Less: Newcastle Airport	1,156	-	-	-	-	1,156	578
Add: NAP Dividend	-	-	-	-	-	-	-
<b>Underlying Operating Surplus/(Deficit)</b>	<b>(1,137)</b>	<b>-</b>	<b>1,339</b>	<b>144</b>	<b>-</b>	<b>346</b>	<b>36,061</b>

<b>Capital Budget</b>	<b>2023 Original Budget</b>	<b>Budget revotes &amp; carry forwards</b>	<b>Budget Revision Sept Qtr</b>	<b>Budget Revision Dec Qtr</b>	<b>Budget Revision Mar Qtr</b>	<b>2023 Revised Budget</b>	<b>2023 YTD Actuals</b>
	<b>\$'000</b>	<b>\$'000</b>	<b>\$'000</b>	<b>\$'000</b>	<b>\$'000</b>	<b>\$'000</b>	<b>\$'000</b>
Corporate Services	(4,200)	(1,092)	614	10	-	(4,668)	(395)
Development Services	4,633	-	-	2,167	-	6,800	5,796
Facilities & Services	(8,097)	(16,160)	(5,821)	(768)	-	(30,845)	(4,406)
General Manager's Office	-	-	-	-	-	-	-
Newcastle Airport	(5,140)	-	-	-	-	(5,140)	-
<b>Total</b>	<b>(12,804)</b>	<b>(17,252)</b>	<b>(5,207)</b>	<b>1,409</b>	<b>-</b>	<b>(33,853)</b>	<b>995</b>

Note - + = inflow ( ) = outflow

This document forms part of Port Stephens Council's Quarterly Budget Review Statement for the quarter ended 31/12/2022 and should be read in conjunction with other documents in the QBRS.



## **2) Introduction**

Clause 203(1) of the *Local Government (General) Regulation 2021* requires Council's responsible accounting officer to prepare and submit a Quarterly Budget Review Statement (QBRS) to Council. The QBRS must show, by reference to the estimated income & expenditure that is set out in the operational plan, a revised estimate of income and expenditure for the year.

It also requires the QBRS to include a report by the responsible accounting officer as to whether or not the statement indicates Council to be in a satisfactory financial position, with regard to Council's original budget.

Council's operational plan sets out the achievements, goals and revenue policy, including estimates of income and expenditure. The QBRS plays an important role in monitoring Council's progress against the plan and ongoing management of the annual budget.

The QBRS is the mechanism whereby Councillors and the community are informed of Council's progress against the operational plan (original budget) and the recommended changes and reasons for major variances.

The QBRS is composed of the following components:

- Responsible Accounting Officer Statement
- Income & Expenses Budget Review Statement
- Capital Budget Review Statement
- Cash Flow Statement Review
- Budget Review Contracts and Other Expenses.

This document forms part of Port Stephens Council's Quarterly Budget Review Statement for the quarter ended 31/12/2022 and should be read in conjunction with other documents in the QBRS.

### **3) Responsible Accounting Officer's Statement**

The Regulations require that a budget review statement must include or be accompanied by a report as to whether or not the Responsible Accounting Officer (RAO) believes that the QBRS indicates that Council's financial position is satisfactory, having regard to the original estimate of income and expenditure. If Council's financial position is considered by the RAO to be unsatisfactory, then recommendations for remedial action must be included.

The following statement is made in accordance with clause 203(2) of the *Local Government (General) Regulations 2021*.

It is my opinion that the Quarterly Budget Review Statement for Port Stephens Council for the quarter end 31/12/2022 indicates that Council's projected financial position will be satisfactory at year-end, having regard to the projected estimates of income and expenditure and the original budgeted income and expenditure.

Name:    Tim Hazell

Responsible Accounting Officer, Port Stephens Council

This document forms part of Port Stephens Council's Quarterly Budget Review Statement for the quarter ended 31/12/2022 and should be read in conjunction with other documents in the QBRS.

## ITEM 8 - ATTACHMENT 1 QUARTERLY BUDGET REVIEW TO 31 DECEMBER 2022.

## 4) Income &amp; Expenses Budget Review Statement

Consolidated Income Statement	2023 Original Budget	Budget revotes & carry forwards	Budget Revision Sept Qtr	Budget Revision Dec Qtr	Budget Revision Mar Qtr	2023 Revised Budget	2023 YTD Actuals
	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000
Rates and Annual Charges	68,994	-	-	-	-	68,994	68,925
User Charges & Fees Income	47,079	-	192	(812)	-	46,459	16,357
Interest & Investment Income	1,063	-	200	653	-	1,916	1,011
Other Income	7,412	-	(611)	-	-	6,802	4,349
Grants and Cont.	12,776	-	1,041	724	-	14,540	6,392
Grants and Cont.(Capital)	19,573	12,909	4,103	(5,746)	-	30,838	19,163
Fair value gains	843	-	-	-	-	843	-
Net Gain on Sale	250	-	776	-	-	1,026	-
<b>Total Revenue</b>	<b>157,989</b>	<b>12,909</b>	<b>5,701</b>	<b>(5,181)</b>	<b>-</b>	<b>171,418</b>	<b>116,197</b>
Employee Costs	56,552	-	(73)	124	-	56,603	25,699
Borrowing Costs	1,710	-	-	-	-	1,710	288
Materials & Contracts	55,932	-	(502)	(2,876)	-	52,554	22,655
Other Expenses	4,586	-	69	3,174	-	7,829	3,743
Depreciation & Impairment	18,999	-	(10)	-	-	18,989	7,885
<b>Total Expenditure</b>	<b>137,779</b>	<b>-</b>	<b>(517)</b>	<b>422</b>	<b>-</b>	<b>137,684</b>	<b>60,270</b>
<b>Operating Surplus/(Deficit) after capital grants</b>	<b>20,210</b>	<b>12,909</b>	<b>6,218</b>	<b>(5,602)</b>	<b>-</b>	<b>33,734</b>	<b>55,927</b>
<b>Operating Surplus/(Deficit) before capital grants</b>	<b>637</b>	<b>-</b>	<b>2,115</b>	<b>144</b>	<b>-</b>	<b>2,895</b>	<b>36,764</b>
Less: Net Gain on sale	(250)	-	(776)	-	-	(1,026)	-
Less: Fair value increases	(843)	-	-	-	-	(843)	-
Less: Royalties	(1,836)	-	-	-	-	(1,836)	(1,280)
Less: Newcastle Airport	1,156	-	-	-	-	1,156	578
Add: NAP Dividend	-	-	-	-	-	-	-
<b>Underlying Operating Surplus/(Deficit)</b>	<b>(1,137)</b>	<b>-</b>	<b>1,339</b>	<b>144</b>	<b>-</b>	<b>346</b>	<b>36,061</b>

## Notes:

1. Revised Budget = Original Budget +/- approved budget changes in previous quarters.

This document forms part of Port Stephens Council's Quarterly Budget Review Statement for the quarter ended 31/12/2022 and should be read in conjunction with other documents in the QBRs.

## ITEM 8 - ATTACHMENT 1 QUARTERLY BUDGET REVIEW TO 31 DECEMBER 2022.

Council's original operating budget for 2022-2023 was incorporated as part of the Integrated Plans that were adopted by Council on 28 June 2022.

This statement sets out the details of variations between Council's original operating budget and the revised budget as part of the December Quarterly Budget Review. This has altered from an original projected underlying deficit of \$1,137,000 to a revised surplus of \$346,000.

Note that for budgetary changes: **F** = favourable budget change, **U** = unfavourable budget change.

REVENUE	Budget Change	
	\$'000	F/U
<b>Rates and Annual Charges</b>	-	-
No change.		
<b>User Charges and Fees</b>	812	U
User charges and fees has decreased due to <ul style="list-style-type: none"> <li>• Decrease in forecasted parking fees income</li> <li>• Decrease in library fees as per Council resolution</li> <li>• RMS income due to adjustment to major works which will now occur next financial year.</li> </ul>		
<b>Grants and Contributions provided for Operating Purposes</b>	724	F
Operating grants and contributions have increased due to <ul style="list-style-type: none"> <li>• Increase in forecasted development contributions for civic admin – \$67k</li> <li>• New environmental grants – \$120k</li> <li>• New transport grants - \$94k</li> <li>• Rollover of unspent grants from the prior financial year – \$443k</li> </ul>		

This document forms part of Port Stephens Council's Quarterly Budget Review Statement for the quarter ended 31/12/2022 and should be read in conjunction with other documents in the QBRS.

## ITEM 8 - ATTACHMENT 1      QUARTERLY BUDGET REVIEW TO 31 DECEMBER 2022.

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<b>Interest and Investment Revenue</b>	<b>653</b>	<b>F</b>
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Investment revenue has been reforecasted as a result of increasing interest rates.

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<b>Other Income</b>	<b>-</b>	<b>-</b>
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No change.

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<b>Grants and Contributions provided for Capital Purposes</b>	<b>5,746</b>	<b>U</b>
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Capital grants & contributions have decreased primarily due to the following projects:

- Birubi Point Tourism & Yulong Oval Amenities grants being moved to next year - \$8,163k
  - Recognition of a new grant for Notts Creek Bridge - \$270k
  - Increase in the forecasted Developer Contributions - \$2,167k
- 

<b>Net Gains from the Disposal of Assets</b>	<b>-</b>	<b>-</b>
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No change.

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This document forms part of Port Stephens Council's Quarterly Budget Review Statement for the quarter ended 31/12/2022 and should be read in conjunction with other documents in the QBRS.

## ITEM 8 - ATTACHMENT 1      QUARTERLY BUDGET REVIEW TO 31 DECEMBER 2022.

EXPENDITURE	\$'000	Budget Change F/U
<b>Borrowing Costs</b>	-	-
No change.		
<b>Depreciation, Amortisation and Impairment</b>	-	-
No change.		
<b>Employee Benefits and On-Costs</b>	<b>124</b>	<b>U</b>
Employee benefits and on-costs have increased as a result of drawing back on savings identified in the September QBR. These funds have now been returned to the Organisation Support section following a recent ADRI review.		
<b>Materials and Contracts</b>	<b>2,876</b>	<b>F</b>
Materials and contracts have decreased primarily due to:		
<ul style="list-style-type: none"> <li>• Reclassification of expenditure budgets from contracts to other expenses – \$3,178k</li> <li>• Decrease in RMS project work budgets due to major works being moved into next financial year - \$426k</li> <li>• Increase in project expenditure with the new and rolled over operating grants – \$653k</li> </ul>		
<b>Other Expenses</b>	<b>3,178</b>	<b>U</b>
Other expenses have changed due to the reallocation of costs from materials and contracts.		

This document forms part of Port Stephens Council's Quarterly Budget Review Statement for the quarter ended 31/12/2022 and should be read in conjunction with other documents in the QBRS.

## 5) Capital Budget Review Statement

Consolidated - Summary	2023 Original Budget	Budget revotes & carry forwards	Budget Revision Sept Qtr	Budget Revision Dec Qtr	Budget Revision Mar Qtr	2023 Revised Budget	2023 YTD Actuals
	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000
Grants and Cont.(Capital)	19,573	12,909	4,103	(5,746)	-	30,838	19,163
<b>Total Receipts</b>	<b>19,573</b>	<b>12,909</b>	<b>4,103</b>	<b>(5,746)</b>	<b>-</b>	<b>30,838</b>	<b>19,163</b>
Capital Equipment & Contracts	32,377	30,161	9,310	(7,156)	-	64,692	18,152
Property Acquisition & Development	-	-	-	-	-	-	16
<b>Total Payments</b>	<b>32,377</b>	<b>30,161</b>	<b>9,310</b>	<b>(7,156)</b>	<b>-</b>	<b>64,692</b>	<b>18,168</b>
<b>Capital Surplus/(Deficit)</b>	<b>(12,804)</b>	<b>(17,252)</b>	<b>(5,207)</b>	<b>1,409</b>	<b>-</b>	<b>(33,853)</b>	<b>995</b>

This statement sets out the details of variations between Council's original capital budget and revised capital budget. There are budgetary changes proposed in this quarter which result in a decrease in the capital program by the value of \$1.4m.

Note that for budgetary changes: **F** = favourable budget change, **U** = unfavourable budget change.

INCOME	\$'000	Budget Change F/U
<b>Capital Grants &amp; Contributions</b>	<b>5,746</b>	<b>U</b>

Capital grants & contributions have decreased primarily due to the following projects:

- Birubi Point Tourism & Yulong Oval Amenities grants being moved to next year - \$8,163k
- Recognition of a new grant for Notts Creek Bridge - \$270k
- Increase in the forecasted Developer Contributions - \$2,167k

This document forms part of Port Stephens Council's Quarterly Budget Review Statement for the quarter ended 31/12/2022 and should be read in conjunction with other documents in the QBRs.

## ITEM 8 - ATTACHMENT 1      QUARTERLY BUDGET REVIEW TO 31 DECEMBER 2022.

EXPENDITURE	\$'000	Budget Change F/U
Property Acquisition and Development	-	-
No change.		
Capital Equipment and Contracts	7,156	F
Capital equipment and contracts has decreased primarily due to the following projects:		
• Construction of Yulong Oval amenities and Birubi Interchange moved into next financial year		\$8,815k (decrease)
• Increase in fleet purchasing requirements		\$750k (increase)
• New capital grants being recognised - Notts Creek bridge		\$270k (increase)
• Aligning budget for increased scope – Italia road & Bruce Scott Pavilion		\$400k (increase)
• Other minor capital projects		\$240k (Increase)

This document forms part of Port Stephens Council's Quarterly Budget Review Statement for the quarter ended 31/12/2022 and should be read in conjunction with other documents in the QBRS.



## ITEM 8 - ATTACHMENT 1 QUARTERLY BUDGET REVIEW TO 31 DECEMBER 2022.

The capital works program by section is as follows:

Consolidated - Detailed	2023 Original Budget	Budget revotes & carry forwards	Budget Revision Sept Qtr	Budget Revision Dec Qtr	Budget Revision Mar Qtr	2023 Revised Budget	2023 YTD Actuals
	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000
<b>Capital Funding</b>							
Capital Grants & Contributions	19,573	12,909	4,103	(5,746)	-	30,838	19,163
<b>Total Capital Funding</b>	<b>19,573</b>	<b>12,909</b>	<b>4,103</b>	<b>(5,746)</b>	<b>-</b>	<b>30,838</b>	<b>19,163</b>
<b>Capital Expenditure</b>							
<b>Corporate Services Group</b>							
<b>Commercial Property Reserve &amp; Cluster Plan</b>							
Fingal Bay Holiday Park	904	177	(614)	75	-	542	106
Halifax Holiday Park	180	11	-	-	-	191	86
Shoal Bay Holiday park	276	6	-	(85)	-	197	56
Thou Walla Sunset Retreat	160	89	-	-	-	249	74
Koala Sanctuary	180	-	-	-	-	180	36
Property Development	-	-	-	-	-	-	16
Property Investments	1,000	-	-	-	-	1,000	-
<b>Commercial Property Total</b>	<b>2,700</b>	<b>282</b>	<b>(614)</b>	<b>(10)</b>	<b>-</b>	<b>2,358</b>	<b>374</b>
Business Improvement Technology	1,500	810	-	-	-	2,310	21
<b>Corporate Services Group Total</b>	<b>4,200</b>	<b>1,092</b>	<b>(614)</b>	<b>(10)</b>	<b>-</b>	<b>4,668</b>	<b>395</b>

This document forms part of Port Stephens Council's Quarterly Budget Review Statement for the quarter ended 31/12/2022 and should be read in conjunction with other documents in the QBRs.

## ITEM 8 - ATTACHMENT 1 QUARTERLY BUDGET REVIEW TO 31 DECEMBER 2022.

Consolidated - Detailed	2023 Original Budget	Budget revotes & carry forwards	Budget Revision Sept Qtr	Budget Revision Dec Qtr	Budget Revision Mar Qtr	2023 Revised Budget	2023 YTD Actuals
	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000
<b>General Manager's Office</b>							
Software	-	-	-	-	-	-	-
<b>General Manager's Office Total</b>	-	-	-	-	-	-	-
<b>Facilities and Services</b>							
<b>Assets</b>							
Fleet Maintenance	2,000	-	-	750	-	2,750	1,185
Drainage and Flooding	1,200	81	-	-	-	1,281	759
Corporate & Community Buildings	250	38	1,260	-	-	1,548	497
<b>Assets Total</b>	<b>3,450</b>	<b>119</b>	<b>1,260</b>	<b>750</b>	<b>-</b>	<b>5,579</b>	<b>2,441</b>
<b>Community Services</b>							
Domestic Waste Management	98	-	852	30	-	980	59
Library Services	310	60	-	-	-	370	115
<b>Community Services</b>	<b>408</b>	<b>60</b>	<b>852</b>	<b>30</b>	<b>-</b>	<b>1,350</b>	<b>174</b>
<b>Capital Works</b>							
Capital Works Construction	19,179	28,890	7,812	(7,926)	-	47,955	15,158
<b>Capital Works Total</b>	<b>19,179</b>	<b>28,890</b>	<b>7,812</b>	<b>(7,926)</b>	<b>-</b>	<b>47,955</b>	<b>15,158</b>
<b>Facilities and Services Total</b>	<b>23,037</b>	<b>29,069</b>	<b>9,924</b>	<b>(7,146)</b>	<b>-</b>	<b>54,884</b>	<b>17,773</b>
Newcastle Airport	5,140	-	-	-	-	5,140	-
<b>Total Capital Expenditure</b>	<b>32,377</b>	<b>30,161</b>	<b>9,310</b>	<b>(7,156)</b>	<b>-</b>	<b>64,692</b>	<b>18,168</b>
<b>Net Outlay</b>	<b>12,804</b>	<b>17,252</b>	<b>5,207</b>	<b>(1,409)</b>	<b>-</b>	<b>33,853</b>	<b>(995)</b>

This document forms part of Port Stephens Council's Quarterly Budget Review Statement for the quarter ended 31/12/2022 and should be read in conjunction with other documents in the QBRS.

ITEM 8 - ATTACHMENT 1 QUARTERLY BUDGET REVIEW TO 31 DECEMBER 2022.

6) Reserve Balances

This statement sets out the budgeted reserve balances and funding source change.

Reserves	Opening Balance	Rollover Transfers	Operating Transfers in / (out)	Financing Transfers in / (out)	Transfers between Reserves	Original Budget	Budget Revision Sept Qtr	Budget Revision Dec Qtr	Budget Revision Mar Qtr	Closing Balance
	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000
Administration Building Reserve	377	(38)	(59)	-	-	(250)	-	-	-	30
Asset Rehabilitation Reserve	1,704	(1,438)	4,100	(500)	-	(3,600)	(136)	-	-	129
Commercial Properties Reserve	1,986	(4,329)	2,527	(1,819)	-	(1,000)	13,253	-	-	10,619
Community Loans	-	-	200	-	-	-	-	-	-	200
Crown Reserves	1,744	(282)	2,648	(401)	-	(3,000)	664	10	-	1,383
Developer Contributions	13,928	(753)	4,924	-	-	(1,189)	(300)	2,194	-	18,804
Domestic Waste	3,335	-	2,222	-	-	(323)	(872)	-	-	4,362
Drainage Reserve	-	(81)	1,538	-	-	(1,200)	-	-	-	257
Election Reserve	-	-	258	-	-	-	-	-	-	258
Federal Assistance Grant Reserve	5,507	-	(5,507)	-	-	-	-	-	-	-
Fleet Reserve	384	(2,377)	5,131	-	-	(2,000)	-	(750)	-	388
IT Reserve	-	(810)	2,310	-	-	(1,500)	-	-	-	-
Newcastle Airport	13,144	-	4,323	-	-	(5,042)	-	-	-	12,425
Other Waste Services Reserve	250	-	(117)	-	-	-	(3)	(30)	-	100
Parking Meters Reserve	125	(20)	727	-	-	(50)	-	275	-	1,057
Repealed Funds Reserve	2,830	(1,052)	-	-	-	-	-	52	-	1,830
Roads / Environmental Reserve	358	(377)	425	-	-	(425)	18	-	-	-
Section 355C Committees	697	-	-	-	-	-	-	-	-	697
Unexpended Grants Reserve	10,162	-	(1,565)	-	-	(8,597)	-	-	-	-
Sustainable Energy and Water Reserve	-	-	217	-	-	-	-	-	-	217
Unexpended Loan Funds Reserve	269	(5,665)	397	5,000	-	-	-	-	-	-
Ward Funds Reserve	23	-	(23)	-	-	-	-	-	-	-
Natural Disaster	7,000	-	-	-	-	-	-	-	-	7,000
Grant Co Cont	3,000	-	-	-	-	-	-	-	-	3,000
Resilience	3,000	-	-	-	-	-	-	-	-	3,000
Community Halls	0	-	41.54	-	-	-	-	-	-	42
Bonds and Retentions	731	-	-	-	-	-	-	-	-	731
<b>Total</b>	<b>70,553</b>	<b>(17,222)</b>	<b>24,716</b>	<b>2,280</b>	<b>-</b>	<b>(28,176)</b>	<b>12,625</b>	<b>1,752</b>	<b>-</b>	<b>66,528</b>

This document forms part of Port Stephens Council's Quarterly Budget Review Statement for the quarter ended 31/12/2022 and should be read in conjunction with other documents in the QBRS.

## ITEM 8 - ATTACHMENT 1 QUARTERLY BUDGET REVIEW TO 31 DECEMBER 2022.

7) Cash Flow Statement (Consolidated)	Original Budget	Revotes & Carried Forward	Budget Revision Sept	Budget Revision Dec	Budget Revision Mar	Revised Budget
	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000
<b>Cash Flows from Operating Activities</b>						
<b>Receipts:</b>						
Rates and Annual Charges	66,623	-	-	-	-	66,623
User Charges & Fees Income	47,079	-	192	(812)	-	46,459
Interest & Investment Revenue Received	1,063	-	200	653	-	1,916
Other	7,427	-	(611)	-	-	6,816
Grants and Contributions	29,721	12,909	5,143	(5,022)	-	42,751
<b>Payments:</b>						
Employee Benefits & On-Costs	(57,259)	-	73	(124)	-	(57,310)
Borrowing Costs	(1,713)	-	-	-	-	(1,713)
Materials & Contracts	(55,795)	-	502	2,876	-	(52,417)
Other	(3,653)	-	(69)	(3,174)	-	(6,895)
<b>Net Cash provided (or used in) Operating Activities</b>	<b>33,493</b>	<b>12,909</b>	<b>5,431</b>	<b>(5,602)</b>	<b>-</b>	<b>46,230</b>
<b>Cash Flows from Investing Activities</b>						
<b>Receipts:</b>						
Proceeds from disposal of Property Plant & Equipment	250	-	14,875	-	-	15,125
Proceeds from development & land sales	-	-	-	-	-	-
<b>Payments:</b>						
Purchase of Real Estate, Infrastructure, Property Plant & Equipment and Intangibles	(32,377)	(30,161)	(9,310)	7,156	-	(64,692)
<b>Net Cash provided (or used in) Investing Activities</b>	<b>(32,127)</b>	<b>(30,161)</b>	<b>5,565</b>	<b>7,156</b>	<b>-</b>	<b>(49,567)</b>
<b>Cash Flows from Financing Activities</b>						
<b>Receipts:</b>						
Proceeds from borrowings	-	5,000	-	-	-	5,000
<b>Payments:</b>						
Repayment of Leases, Borrowings & Advances	(3,753)	-	-	-	-	(3,753)
<b>Net Cash provided (or used in) Financing Activities</b>	<b>(3,753)</b>	<b>5,000</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>1,247</b>
Net Increase/(Decrease) in Cash & Cash Equivalents	(2,387)	(12,252)	10,997	1,553	-	(2,089)
plus: Cash & Investments - beginning of year (*)	70,551	-	-	-	-	70,551
<b>Cash &amp; Investments - end of the year</b>	<b>68,164</b>	<b>(12,252)</b>	<b>10,997</b>	<b>1,553</b>	<b>-</b>	<b>68,462</b>

\*opening balance adjustment made to reflect 30 June 2022 actual closing balance

This document forms part of Port Stephens Council's Quarterly Budget Review Statement for the quarter ended 31/12/2022 and should be read in conjunction with other documents in the QBRS.

### **Cash Flow Statement Funding Reconciliation**

The 'Recommended Changes to Budget' in the December QBR constitute an overall increase in Council's cash flow position by \$1,554k (favourable) after the capital projects being transferred to next year and the use of internal reserves and external funding sources are factored in.

PSC is clearly solvent based on the current and estimated cash position from the review changes. PSC's current cash position as per the December investment report was \$68.2m.

### **8) Budget Review Contracts and Other Expenses**

Councillors are currently made aware of tenders of \$250,000 or more in accordance with legislation. However, Councillors should be made aware of other material contracts entered into by Council and details of other expenses that are of particular interest. To this end, a contract listing and details of legal fees and consultancy expenses are included in the QBRs.

Part A lists contracts (other than employment contracts and contracts entered into from Council's preferred suppliers list) that:

- Were entered into during the quarter ending 31/12/2022; and
- Have a value equal to or more than \$50,000.

Part B of the report shows expenditure as at 31/12/2022 for:

- Consultancies
- Legal fees

For the purposes of this report, a consultancy is defined as a person or organisation engaged under contract on a temporary basis to provide recommendation or high level specialist or professional advice to assist decision making by management.

## ITEM 8 - ATTACHMENT 1 QUARTERLY BUDGET REVIEW TO 31 DECEMBER 2022.

## Part A

## Contracts Listing

Contractor	Contract Details and Purpose	Contract Value inc GST	Contract Commencement Date	Contract End Date	Budgeted (Y/N)
ATCO STRUCTURES & LOGISTICS PTY LTD	RFQ111-2022 TRANSFER STATION - ADMIN/CHANGEROOM BL	138,386	1/04/2023	1/07/2023	Y
CUBO CONSULTING PTY LTD	RFQ099-2022 NELSON BAY LAGOON - PUMP & MAIN DESIGN	107,745	7/10/2022	7/01/2023	Y
ANNA BAY SAND & EARTHMOVING	RFQ107-2022 SOLDIERS POINT RD - RETAINING WALL	74,085	7/10/2022	24/10/2022	Y
AUSTRALIA PACIFIC VALUERS PTY LTD	2023 BUILDING REVALUATION , COMPREHENSIVE METHOD, ETC	57,118	13/10/2022	13/01/2023	Y
MANNING VALLEY MOTOR HOLDINGS PTY LTD	RFQ109-2022 - QUOTE 29539 - AWARDED 27/10/202, NEW 4x4 CREW UTE	52,500	27/10/2022	27/12/2022	Y
LEVANTA PTY LTD	LEVENTA PROPOSAL 16022-0 1x BM20200 MOBILE ROLLER	184,812	17/11/2022	17/01/2023	Y
PPT INVESTMENTS PTY LTD	RFQ120-2022 - SUPPLY and DELIVERY TWO 4x4 UTILITY'S	128,173	15/11/2022	15/01/2023	Y
DATA#3 LIMITED	SOPHOS MDR ADDITION TO EXISTING LICENSE	61,558	1/12/2022	30/11/2023	Y
SGS ECONOMICS AND PLANNING PTY LTD	CENTRES AND EMPLOYMENT LAND STUDY	58,058	1/12/2022	28/02/2023	Y
BARKER RYAN STEWART PTY LIMITED	RFQ124-2022 AVENUE OF THE ALLIES - CIVIL ENG DESIGN	54,890	28/03/2023	27/06/2023	Y
DRUMDERG SERVICES AUSTRALIA PTY LIMITED	RFQ122-2022 VICTORIA PDE FOOTBRIDGE DEMOLITION	247,200	2/12/2022	9/12/2022	Y
PKF (NS) AUDIT & ASSURANCE LIMITED PARTNERSHIP	2022/23 INTERNAL AUDIT SERVICES AS PER AUDIT PLAN	55,000	1/12/2022	30/11/2023	Y
COATES HIRE OPERATIONS PTY LTD	LAGOONS ESTATE - HIRE SCHEDULE VAR TO PO 186941/188026	53,718	30/09/2022	31/10/2022	Y
ANNA BAY SAND & EARTHMOVING	BILL STRONG OVAL, NELSON BAY - GROUND	50,050	8/12/2022	19/01/2023	Y
HUNTER FAUNA & FLORA CONTROLS PTY LTD	RFQ131-2022 PEST CONTROL SERVICES - HOLIDAY PARKS	59,092	1/01/2023	31/12/2023	Y

This document forms part of Port Stephens Council's Quarterly Budget Review Statement for the quarter ended 31/12/2022 and should be read in conjunction with other documents in the QBRS.

**Part B****Consultancy & Legal Expenses**

Expense	Expenditure YTD (\$)	Budgeted (Y/N)
<b>Consultancies</b>		
Holiday Parks	33,522	Y
Engineering	51,019	Y
IT	25,235	Y
Environment	13,312	Y
Property	13,631	Y
Other	19,489	Y
<b>Total consultancies</b>	<b>156,208</b>	
<b>Legal Fees</b>		
Advice	29,945	Y
Litigation	141,768	Y
<b>Total legal fees</b>	<b>171,713</b>	

Expense - Litigation	Expenditure YTD (\$)
Local Government Law	67,328
Planning and Development Law	74,439
<b>Total</b>	<b>141,768</b>

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**ITEM NO. 9**

**FILE NO: 22/263891**  
**EDRMS NO: PSC2022-02922-0002**

## **2024 LOCAL GOVERNMENT ELECTION**

REPORT OF: TONY WICKHAM - GOVERNANCE SECTION MANAGER  
GROUP: GENERAL MANAGER'S OFFICE

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### **RECOMMENDATION IS THAT COUNCIL:**

- 1) Pursuant to s296(2) and (3) of the Local Government Act 1993 (NSW) ("the Act") that an election arrangement be entered into by contract for the Electoral Commissioner to administer all elections of the Council.
- 2) Pursuant to s296(2) and (3) of the Act, as applied and modified by s18, that a council poll arrangement be entered into by contract for the Electoral Commissioner to administer all council polls of the Council.
- 3) Pursuant to s296(2) and (3) of the Act, as applied and modified by s18, that a constitutional referendum arrangement be entered into by contract for the Electoral Commissioner to administer all constitutional referenda of the Council.

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### **BACKGROUND**

The purpose of this report is to allow Council to determine the method of conducting the 2024 local government election in Port Stephens.

The next NSW local government ordinary elections will be held in September 2024. Under the Local Government Act 1993, Council has the option of engaging the NSW Electoral Commission (NSWEC) or conducting the election 'in-house', by contract. Council conducted the 2012 local government election 'in-house', with the 2017 and 2021 local government elections conducted by the NSW Electoral Commission.

Council is required to pass a resolution 18 months from the next ordinary election (ie by 13 March 2023) should it wish to engage the NSWEC to conduct the 2024 local government election, and enter into a contract no later than 15 months from the next election.

If Council fails to pass a resolution before the abovementioned date, Council will be required to conduct the election 'in-house', by contract and seek tenders given the cost will exceed the \$250,000 threshold under the Local Government (General) Regulation 2021. Council would also be required to place a notice on its website stating that it has failed to pass a resolution on the method of conducting the election.

In 2021, 122 NSW councils (a total of 128 councils in NSW) engaged the NSWEC to conduct their elections. Of the remaining 6 councils, 4 did not hold elections and 2 engaged an alternate supplier.



It is recommended that Council engage the NSW Electoral Commission to conduct the 2024 local government election in Port Stephens, based on past experience of conducting local government elections and favourable costs.

The recommendation is worded specifically to engage the NSWEC. Whilst there is no timeframe within the recommendation, under the legislation it will not commence until the 2024 local government election and can be terminated immediately following the 2024 election should Council wish. Alternatively, it will remain in place until 18 months before the 2028 ordinary local government election and would include any by-elections should they occur.

### **COMMUNITY STRATEGIC PLAN**

<b>Strategic Direction</b>	<b>Delivery Program 2022-2026</b>
Governance	Deliver governance services and internal audit program

### **FINANCIAL/RESOURCE IMPLICATIONS**

The local government election is funded from an election reserve fund. It is anticipated the election costs will be in excess of \$730,000.

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

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

In accordance with s296 and s296AA of the Local Government Act 1993, Council is required to pass a resolution of its intention in relation to conducting the 2024 local government election for Port Stephens.

Section 55 of the Local Government Act 1993 (the Act), requires tenders to be called for certain Council activities where the value will exceed \$250,000, and also provides exemptions that may apply. Section 55(3) (p) of the Act provides an exemption to the NSWEC – therefore NSWEC is not required to tender for an election contract.

<b>Risk</b>	<b><u>Risk Ranking</u></b>	<b>Proposed Treatments</b>	<b>Within Existing Resources?</b>
There is a risk that Council will not be able to engage the NSWEC should this resolution not be passed before 13 March 2023.	Low	Adopt the recommendations.	Yes

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

Nil.

**CONSULTATION**

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

**Internal**

General Manager.

**External**

Council has consulted with the NSW Electoral Commission.

**OPTIONS**

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

**ATTACHMENTS**

Nil.

**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

Nil.

**ITEM NO. 10****FILE NO: 22/338489  
EDRMS NO: PSC2014-01845****MEMBERSHIP OF COMMITTEE: STONE RIDGE QUARRY COMMUNITY  
CONSULTATIVE COMMITTEE****REPORT OF: TONY WICKHAM - GOVERNANCE SECTION MANAGER  
GROUP: GENERAL MANAGER'S OFFICE**

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Nominate 1 delegate to represent the Port Stephens local government area on the Stone Ridge Quarry Community Consultative Committee.

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**BACKGROUND**

The purpose of this report is to inform Council that the Independent Chair of the Stone Ridge Quarry Community Consultative Committee (CCC) has requested Council to consider providing a delegate to represent the Port Stephens local government area on the Committee.

The CCC has been established and operates in accordance with the Department of Planning and Environment's (DP&E) Community Consultative Committee Guidelines for State Significant Developments, January 2019. At this time, membership consists of representatives from the proponent company, community and neighbours of the quarry.

Council can provide either a Councillor or staff member delegate to the CCC. Should Council wish to delegate this function, it would need to resolve that the General Manager or his delegate be appointed as the Port Stephens local government area representative, otherwise a Councillor delegate can be appointed.

Meetings of the CCC are held as required.

**COMMUNITY STRATEGIC PLAN**

<b>Strategic Direction</b>	<b>Delivery Program 2022-2026</b>
Governance	Deliver governance services and internal audit program

**FINANCIAL/RESOURCE IMPLICATIONS**

Any financial and/or resource implications are provided for within the existing 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**

Any Council official appointed to the CCC is required to adhere to the Code of Conduct at all times. No remuneration is payable.

<b>Risk</b>	<b><a href="#">Risk Ranking</a></b>	<b>Proposed Treatments</b>	<b>Within Existing Resources?</b>
There is a risk that without a representative on this committee, there will be limited alternate opportunities to have input into such developments.	Low	Adopt the recommendation.	Yes

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

The membership provides Council with an opportunity to be involved in an individual State significant project in the local government area. As a stakeholder, there will be opportunities for input into such developments that have social, economic and environmental implications for the area.

**CONSULTATION**

- 1) General Manager.

**OPTIONS**

- 1) Nominate a Councillor delegate to represent the local government area on the CCC.
- 2) Delegate the General Manager or his delegate to represent the local government area on the CCC.
- 3) Reject the recommendation.

**ATTACHMENTS**

Nil.

**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

Nil.

**ITEM NO. 11****FILE NO: 22/340853  
EDRMS NO: PSC2021-04211****LGNSW DESTINATION AND VISITOR ECONOMY CONFERENCE 29-31 MAY  
2023 IN MANLY****REPORT OF: TIMOTHY CROSDALE - GENERAL MANAGER  
GROUP: GENERAL MANAGER'S OFFICE**

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Nominates Council delegates to attend the 2023 Local Government NSW Destination and Visitor Economy Conference from 29-31 May 2023 in Manly.

---

**BACKGROUND**

The purpose of this report is to inform Council of the 2023 Local Government NSW Destination and Visitor Economy Conference in Manly from 29-31 May 2023.

The conference will aim to embrace not just tourism, but also a wider aspect of economic development to regional and metropolitan councils. The draft program is available at **(ATTACHMENT 1)**.

As Councillors are aware, the Payment of Expenses and Provision of Facilities to Mayor and Councillors Policy (the 'policy') requires that a resolution of Council be sought for all attendance at a conference or seminar.

The costs associated with registration, travel and accommodation will be covered from within the existing professional development budget, subject to the Mayor or any individual Councillor/s not exceeding the conference budget limits set in the policy.

Ensuring the Port Stephens local government area is well represented in all matters at the conference will benefit the Port Stephens community. Information received at the conference will be reported back to Council and will be distributed to the appropriate members of the community and relevant Council staff.

**COMMUNITY STRATEGIC PLAN**

<b>Strategic Direction</b>	<b>Delivery Program 2022-2026</b>
Governance	Implement the General Manager's work program

**FINANCIAL/RESOURCE IMPLICATIONS**

The conference costs are not known at this stage and will be made available on receipt of the conference program. The registration cost for 2022 was \$980.

The costs associated with registration, travel and accommodation will be covered from within the existing budget, subject to any individual elected member not exceeding the conference budget limits in the policy.

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

**LEGAL, POLICY AND RISK IMPLICATIONS**

The Payment of Expenses and Provision of Facilities to Mayor and Councillors Policy requires approval of a full Council meeting.

Risk	<a href="#">Risk Ranking</a>	Proposed Treatments	Within Existing Resources?
There is a risk that Port Stephens Council will not be represented on matters at the conference.	Low	That the recommendation be adopted.	Yes

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

Ensuring the local government area is well represented in all matters at the conference will benefit the Port Stephens community. Information received will be distributed to the appropriate members of the community and relevant Council staff.

**CONSULTATION**

Nil.

**OPTIONS**

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

**ATTACHMENTS**

- 1) DRAFT LGNSW Destination and Visitor Economy Conference Program. [↓](#)

**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

Nil.



# ITEM 11 - ATTACHMENT 1 DRAFT LGNSW DESTINATION AND VISITOR ECONOMY CONFERENCE PROGRAM.



Program Venue Accommodation Site Visits Location map

## Conference Program

We're still working on the program for 2023.

Here is a sneak peak/snapshot of the conference program.

Check back here often for updates.

### Monday 29 May 2023

From 1pm	Registration and exhibition open
From 2pm	Workshop sessions x 3
3.00pm	Afternoon tea
3.45pm	Workshop sessions x 3
4.45pm	Bus transfers to ICMS Manly
5.15pm	Welcome Reception at ICMS Manly
7.15pm	Delegates make their own arrangements for dinner

### Tuesday 30 May 2023

From 8.00am	Exhibition opens
9am-12.30pm	Conference sessions including morning tea
12.30pm	Lunch in exhibition area
1.30pm	Site visit programs – offsite x 5
5.30pm	Exhibition open
7.00pm	Conference Dinner and Entertainment
10.00pm	Conference Dinner concludes

### Wednesday 31 May 2023

From 8.15am	Exhibition opens
9am-3.00pm	Conference sessions including morning tea
1pm-2.00pm	Lunch in exhibition area
3.00pm	Conference concludes

**ITEM NO. 12**

**FILE NO: 23/9646  
EDRMS NO: PSC2021-04206**

**REQUEST FOR FINANCIAL ASSISTANCE**

REPORT OF: TIMOTHY CROSDALE - 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 Mayoral and Ward funds to the following:-
  - a. Masonic Holdings – Mayoral funds - \$4024.09 donation towards 2022-2023 rates.
  - b. Tomaree Community Hospital Auxiliary – Cr Leah Anderson – Rapid Response - \$250 donation towards the purchase of a new printer.

---

**BACKGROUND**

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

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

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

Council is unable to grant approval of financial assistance to individuals unless it is performed in accordance with the Local Government Act 1993. This would mean that the financial assistance would need to be included in the Operational Plan or Council would need to advertise for 28 days of its intent to grant approval. Council can make donations to community groups.

The requests for financial assistance are shown below:

**ORDINARY COUNCIL - 28 FEBRUARY 2023****MAYORAL FUNDS**

Masonic Holdings (Lodge Tomaree Freemasons)	Freemasonry is a membership for men over 18 designed to encourage members towards self- improvement.	\$4024.09	Donation towards 2022-2023 rates.
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**WARD FUNDS**

Tomaree Community Hospital Auxiliary	The Tomaree Community Hospital Auxiliary is a small group of volunteers who raise funds for the local hospital.	\$250	Donation towards purchase of a new printer.
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**COMMUNITY STRATEGIC PLAN**

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

**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 (S7.11)	No		
External Grants	No		
Other	No		

**LEGAL AND POLICY IMPLICATIONS**

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

The policy interpretation required is whether the Council believes that:

- a) applicants are carrying out a function, which it, the Council, would otherwise undertake.

- b) the funding will directly benefit the community of Port Stephens.
- c) applicants do not act for private gain.

<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. 13****FILE NO: 23/43062  
EDRMS NO: PSC2021-04203****QUESTIONS ON NOTICE / QUESTIONS WITH NOTICE****REPORT OF: STEVEN PEART - GROUP MANAGER DEVELOPMENT SERVICES  
GROUP: DEVELOPMENT SERVICES****BACKGROUND**

The purpose of this report is to provide a response to Questions taken on or with Notice in accordance with the Code of Meeting Practice.

<b>Item:</b>	2 – 11 October 2022 – Ordinary Council Meeting – Health Facilities
<b>Councillor:</b>	Cr Giacomo Arnott
<b>Date Received:</b>	14 February 2023
<b>Question with Notice:</b>	Why it has taken 7 months to prepare the report in response to the Notice of Motion – Health Facilities?
<b>Response:</b>	<p>Council has commenced consultation with health providers. This is being undertaken as part of the broader Centres and Employment Lands Study (CELS). The CELS is needed to provide up to date data to inform the ongoing Place Plan program with respect to commercial/industrial development needs in our centres across the Local Government Area (LGA).</p> <p>The CELS is being undertaken by external consultants and aims to provide Council with a report detailing the need for commercial/employment land across the LGA. This will include looking at emerging trends around growth sectors, such as health services. The report will provide recommendations with respect to both need and possible land use changes. This work will be completed in May 2023.</p> <p>In the lead-up to the 2023 State Government Election, Council has prepared a Community Advocacy Priorities document which has been distributed to relevant candidates. With respect to health services, the funding of upgrades to Tomaree Hospital was identified as the 3rd critical priority for the LGA. In addition to this, funding was sought to expand the Raymond Terrace Health Precinct and improve youth well-being and mental health.</p>

Item 3 of the resolution requested a further report to Council. This is being developed and will be presented to Council at its meeting on 11 April 2023. This will provide Council with the requested information in regard to benchmarking existing health precincts, opportunities to develop health precincts within Port Stephens and the potential to reinstate a Local Health Advisory Committee.

**ATTACHMENTS**

Nil.

**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

Nil.

**ITEM NO. 14****FILE NO: 23/43204  
EDRMS NO: PSC2022-02308****INFORMATION PAPERS****REPORT OF: TIMOTHY CROSDALE - 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 28 February 2023.

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<b>No:</b>	<b>Report Title</b>	<b>Page:</b>
1	November 2022 Cash and Investments	389
2	December 2022 Cash and Investments	393
3	January 2023 Cash and Investments	397
4	Elected Members Professional Development and Expenses Reports - 1 July 2022 to 31 December 2022	401
5	Designated Persons' Return	404
6	Delegations Report	405
7	Matter Arising from 13 December 2022	407
8	Council Resolutions	409

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# INFORMATION PAPERS



**ITEM NO. 1****FILE NO: 22/325457  
EDRMS NO: PSC2017-00180****NOVEMBER 2022 CASH AND INVESTMENTS****REPORT OF: TIM HAZELL - FINANCIAL SERVICES SECTION MANAGER  
GROUP: CORPORATE SERVICES****BACKGROUND**

The purpose of this report is to present Council's schedule of cash and investments held at 30 November 2022.

The invested funds are set aside for:

<b>Reserve</b>	<b>As at November 2022 \$'000</b>
<b>External</b>	
Deposits, retentions and bonds	779
Grants and Contributions	8,933
Developer contributions (inc Haulage)	19,452
Domestic Waste Management	8,649
Crown Reserve	6,388
<b>Internal</b>	
Asset Rehab/Reseals	2,344
Drainage	447
Commercial Property	601
Election Reserve	141
Federal Assistance Grant in Advance	0
Fleet	1,280
Resilience fund	3,000
Grants Co-contribution	3,000
Emergency & Natural Disaster	7,000
Other Waste	304
Council Parking	198
IT	1,636
Sustainable energy and water reserve	203
Unexpended loan funds	5,103
Repealed	2,742
Transport levy	464
Admin Building	397
Ward Funds	45
Community Halls	67
Community Loans	200
<b>Total</b>	<b>73,374</b>

## ORDINARY COUNCIL - 28 FEBRUARY 2023

The variance in the Cash and Investment Report (**ATTACHMENT 1**) and the table above is explained below.

Cash and Investment Report	70,285
Variance Cash Reserves to Bank Account	3,089
Variance Due to:	
Contract Asset (Outstanding Grant Payments)	(2,283)
Outstanding Natural Disaster Funding	(1,494)
	<hr/>
	(3,777)
Cash Shortfall	688
(due to timing of income and expenditure)	

### ATTACHMENTS

1) Cash and Investments - November 2022. [↓](#)

### COUNCILLORS ROOM

Nil.

### TABLED DOCUMENTS

Nil.

## ITEM 1 - ATTACHMENT 1 CASH AND INVESTMENTS - NOVEMBER 2022.

## Cash and Investments Held as at 30 November 2022

ISSUER	Broker	Rating*	Type	Investment Date	Yield (%)	Term (days)	Maturity Date	Amount Invested	Market Value
Mutual Bank	Curve	BBB	TD	2-Dec-21	1.10%	397	3-Jan-23	1,000,000	1,000,000
Westpac	Westpac	AA	TD	28-Jan-22	1.53%	732	30-Jan-24	1,000,000	1,000,000
Westpac	Westpac	AA	TD	28-Jan-22	1.53%	746	13-Feb-24	1,000,000	1,000,000
Westpac	Westpac	AA	TD	16-Feb-22	0.95%	391	14-Mar-23	1,000,000	1,000,000
Westpac	Westpac	AA	TD	16-Feb-22	1.12%	454	16-May-23	1,000,000	1,000,000
Westpac	Westpac	AA	TD	16-Feb-22	1.30%	517	18-Jul-23	1,000,000	1,000,000
Westpac	Westpac	AA	TD	16-Feb-22	1.48%	629	7-Nov-23	1,000,000	1,000,000
Westpac	Westpac	AA	TD	16-Feb-22	1.72%	741	27-Feb-24	1,000,000	1,000,000
Commonwealth Bank of Australia	CBA	AA	TD	14-Apr-22	1.57%	271	10-Jan-23	1,000,000	1,000,000
Judo Bank	IAM	BBB	TD	22-Apr-22	3.35%	732	23-Apr-24	825,000	825,000
Judo Bank	IAM	BBB	TD	22-Apr-22	3.35%	746	7-May-24	825,000	825,000
Commonwealth Bank of Australia	CBA	AA	TD	9-May-22	3.17%	365	9-May-23	1,000,000	1,000,000
Australian Unity Bank	Curve	BBB	TD	1-Jun-22	3.40%	468	12-Sep-23	1,000,000	1,000,000
Bank of Queensland	BOQ	BBB	TD	2-Jun-22	3.40%	389	26-Jun-23	1,500,000	1,500,000
Mutual Bank	Curve	BBB	TD	2-Jun-22	3.40%	438	14-Aug-23	1,000,000	1,000,000
Illawarra Credit Union	Laminar	BBB	TD	3-Jun-22	3.52%	403	11-Jul-23	1,000,000	1,000,000
Westpac	Westpac	AA	TD	3-Jun-22	3.28%	424	1-Aug-23	1,000,000	1,000,000
Commonwealth Bank of Australia	CBA	AA	TD	17-Jun-22	4.39%	467	27-Sep-23	1,000,000	1,000,000
Commonwealth Bank of Australia	CBA	AA	TD	17-Jun-22	4.41%	481	11-Oct-23	1,000,000	1,000,000
Commonwealth Bank of Australia	CBA	AA	TD	17-Jun-22	4.42%	495	25-Oct-23	1,000,000	1,000,000
Commonwealth Bank of Australia	CBA	AA	TD	17-Jun-22	4.45%	524	23-Nov-23	1,000,000	1,000,000
Commonwealth Bank of Australia	CBA	AA	TD	17-Jun-22	4.48%	552	21-Dec-23	1,000,000	1,000,000
Defence Bank	IAM	BBB	TD	21-Jun-22	4.38%	379	5-Jul-23	1,000,000	1,000,000
ING Bank	ING	A	TD	24-Jun-22	4.22%	531	7-Dec-23	1,000,000	1,000,000
ING Bank	ING	A	TD	24-Jun-22	4.33%	559	4-Jan-24	1,000,000	1,000,000
ING Bank	ING	A	TD	29-Jun-22	4.35%	566	16-Jan-24	1,000,000	1,000,000
Australian Unity Bank	Laminar	BBB	TD	8-Jul-22	3.50%	159	14-Dec-22	1,000,000	1,000,000
Australian Unity Bank	Laminar	BBB	TD	8-Jul-22	3.80%	257	22-Mar-23	1,000,000	1,000,000
Australian Unity Bank	Laminar	BBB	TD	8-Jul-22	3.80%	264	29-Mar-23	1,000,000	1,000,000
AMP Bank	Laminar	BBB	TD	29-Jul-22	4.45%	382	15-Aug-23	1,000,000	1,000,000
AMP Bank	Laminar	BBB	TD	2-Aug-22	4.20%	332	30-Jun-23	825,000	825,000
AMP Bank	Laminar	BBB	TD	2-Aug-22	4.45%	384	21-Aug-23	825,000	825,000
Commonwealth Bank of Australia	CBA	AA	TD	8-Aug-22	3.40%	169	24-Jan-23	1,000,000	1,000,000
Westpac	Westpac	AA	TD	8-Aug-22	4.00%	532	22-Jan-24	1,000,000	1,000,000
Westpac	Westpac	AA	TD	8-Aug-22	4.00%	539	29-Jan-24	1,000,000	1,000,000
Illawarra Credit Union	Laminar	BBB	TD	18-Aug-22	3.10%	123	19-Dec-22	1,000,000	1,000,000
AMP Bank	IAM	BBB	TD	18-Aug-22	4.15%	340	24-Jul-23	1,000,000	1,000,000
Westpac	Westpac	AA	TD	23-Aug-22	4.35%	685	8-Jul-24	1,000,000	1,000,000
Westpac	Westpac	AA	TD	23-Aug-22	4.35%	692	15-Jul-24	1,000,000	1,000,000
AMP Bank	IAM	BBB	TD	25-Aug-22	3.80%	230	12-Apr-23	1,000,000	1,000,000
AMP Bank	IAM	BBB	TD	25-Aug-22	3.80%	242	24-Apr-23	1,000,000	1,000,000
AMP Bank	IAM	BBB	TD	25-Aug-22	4.25%	361	21-Aug-23	500,000	500,000
Australian Military Bank	Curve	BBB	TD	25-Aug-22	4.40%	704	29-Jul-24	1,000,000	1,000,000
AMP Bank	Laminar	BBB	TD	1-Sep-22	4.25%	368	4-Sep-23	700,000	700,000

## ITEM 1 - ATTACHMENT 1 CASH AND INVESTMENTS - NOVEMBER 2022.

## Cash and Investments Held as at 30 November 2022

ISSUER	Broker	Rating*	Type	Investment Date	Yield (%)	Term (days)	Maturity Date	Amount Invested	Market Value
Westpac	Westpac	AA	TD	1-Sep-22	4.30%	557	11-Mar-24	1,000,000	1,000,000
Macquarie Bank	Curve	A	TD	1-Sep-22	4.41%	627	20-May-24	1,000,000	1,000,000
Macquarie Bank	Curve	A	TD	1-Sep-22	4.41%	649	11-Jun-24	1,000,000	1,000,000
Transport Mutual Credit Union Limited	Laminar	NR	TD	7-Sep-22	3.50%	99	15-Dec-22	1,000,000	1,000,000
Westpac	Westpac	AA	TD	14-Oct-22	4.53%	542	8-Apr-24	1,000,000	1,000,000
Macquarie Bank	IAM	A	TD	25-Oct-22	3.68%	104	6-Feb-23	1,000,000	1,000,000
Summerland Credit Union	IAM	NR	TD	27-Oct-22	4.47%	175	20-Apr-23	1,000,000	1,000,000
Westpac		AA	TD	3-Nov-22	4.90%	732	4-Nov-24	1,000,000	1,000,000
Police Credit Union	IAM	NR	TD	4-Nov-22	4.40%	174	27-Apr-23	1,000,000	1,000,000
Arab Bank	IAM	NR	TD	8-Nov-22	3.60%	97	13-Feb-23	1,000,000	1,000,000
Macquarie Bank	IAM	A	TD	9-Nov-22	3.79%	103	20-Feb-23	1,000,000	1,000,000
BNK Bank	IAM	NR	TD	10-Nov-22	3.90%	82	31-Jan-23	1,000,000	1,000,000
BNK Bank	IAM	NR	TD	15-Nov-22	3.95%	90	13-Feb-23	1,000,000	1,000,000
BNK Bank	Curve	NR	TD	23-Nov-22	4.42%	180	22-May-23	1,000,000	1,000,000
Summerland Credit Union	Curve	NR	TD	23-Nov-22	4.60%	523	29-Apr-24	1,000,000	1,000,000
Summerland Credit Union	Curve	NR	TD	23-Nov-22	4.65%	719	11-Nov-24	1,000,000	1,000,000
Summerland Credit Union	Curve	NR	TD	23-Nov-22	4.65%	726	18-Nov-24	1,000,000	1,000,000
National Australia Bank	Curve	AA	TD	28-Nov-22	4.15%	182	29-May-23	1,000,000	1,000,000
Summerland Credit Union	IAM	NR	TD	30-Nov-22	4.72%	362	27-Nov-23	1,000,000	1,000,000
<b>Total Term Deposits (\$)</b>								<b>62,000,000</b>	<b>62,000,000</b>
Macquarie Bank	Laminar	A+	At Call		3.00%			0	0
<b>Total Investments (\$)</b>								<b>62,000,000</b>	<b>62,000,000</b>
<b>Cash at Bank (\$)</b>								<b>8,284,543</b>	<b>8,284,543</b>
<b>Total Cash and Investments (\$)</b>								<b>70,284,543</b>	<b>70,284,543</b>
Cash at Bank Interest Rate 2.95%									
3 month BBSW 3.06%									
Average Investment Rate of Return on TD's 3.67%									
TD = Term Deposit									
*Standard & Poors Long Term Rating									
<b>Certificate of Responsible Accounting Officer</b>									
I hereby certify that the investments listed above have been made in accordance with Section 625 of the Local Government Act (1993), Clause 212 of the Local Government									
Tim Hazell									
Financial Services Section Manager									

**ITEM NO. 2**

**FILE NO: 22/325458**  
**EDRMS NO: PSC2017-00180**

**DECEMBER 2022 CASH AND INVESTMENTS**

REPORT OF: TIM HAZELL - FINANCIAL SERVICES SECTION MANAGER  
 GROUP: CORPORATE SERVICES

**BACKGROUND**

The purpose of this report is to present Council's schedule of cash and investments held at 31 December 2022.

The invested funds are set aside for:

<b>Reserve</b>	<b>As at December 2022 \$'000</b>
<b>External</b>	
Deposits, retentions and bonds	763
Grants and Contributions	11,943
Developer contributions (inc Haulage)	19,353
Domestic Waste Management	8,037
Crown Reserve	6,850
<b>Internal</b>	
Asset Rehab/Reseals	2,135
Drainage	484
Commercial Property	532
Election Reserve	158
Federal Assistance Grant in Advance	-
Fleet	837
Resilience fund	3,000
Grants Co-contribution	3,000
Emergency & Natural Disaster	7,000
Other Waste	327
Council Parking	256
IT	1,761
Sustainable energy and water reserve	205
Unexpended loan funds	3,326
Repealed	2,674
Transport levy	500
Admin Building	401
Ward Funds	50
Community Halls	56
Community Loans	200
<b>Total</b>	<b>73,847</b>

## ORDINARY COUNCIL - 28 FEBRUARY 2023

The variance in the Cash and Investment Report (**ATTACHMENT 1**) and the table above is explained below.

Cash and Investment Report	68,228
Variance Cash Reserves to Bank Account	(5,619)
Variance Due to:	
Contract Asset (Outstanding Grant Payments)	1,502
Outstanding Natural Disaster Funding	1,449
	<hr/>
	2,951
Cash Shortfall (due to timing of income and expenditure)	(2,668)

### ATTACHMENTS

1) Cash and Investments - December 2022. [↓](#)

### COUNCILLORS ROOM

Nil.

### TABLED DOCUMENTS

Nil.

## ITEM 2 - ATTACHMENT 1 CASH AND INVESTMENTS - DECEMBER 2022.

## Cash and Investments Held as at 31 December 2022

ISSUER	Broker	Rating*	Type	Investment Date	Yield (%)	Term (days)	Maturity Date	Amount Invested	Market Value
Mutual Bank	Curve	BBB	TD	2-Dec-21	1.10%	397	3-Jan-23	1,000,000	1,000,000
Commonwealth Bank of Australia	CBA	AA	TD	14-Apr-22	1.57%	271	10-Jan-23	1,000,000	1,000,000
Commonwealth Bank of Australia	CBA	AA	TD	8-Aug-22	3.40%	169	24-Jan-23	1,000,000	1,000,000
BNK Bank	IAM	NR	TD	10-Nov-22	3.90%	82	31-Jan-23	1,000,000	1,000,000
Macquarie Bank	IAM	A	TD	25-Oct-22	3.68%	104	6-Feb-23	1,000,000	1,000,000
Arab Bank	IAM	NR	TD	8-Nov-22	3.60%	97	13-Feb-23	1,000,000	1,000,000
BNK Bank	IAM	NR	TD	15-Nov-22	3.95%	90	13-Feb-23	1,000,000	1,000,000
Macquarie Bank	IAM	A	TD	9-Nov-22	3.79%	103	20-Feb-23	1,000,000	1,000,000
Westpac	Westpac	AA	TD	16-Feb-22	0.95%	391	14-Mar-23	1,000,000	1,000,000
Australian Unity Bank	Laminar	BBB	TD	8-Jul-22	3.80%	257	22-Mar-23	1,000,000	1,000,000
Australian Unity Bank	Laminar	BBB	TD	8-Jul-22	3.80%	264	29-Mar-23	1,000,000	1,000,000
AMP Bank	IAM	BBB	TD	25-Aug-22	3.80%	230	12-Apr-23	1,000,000	1,000,000
Summerland Credit Union	IAM	NR	TD	27-Oct-22	4.47%	175	20-Apr-23	1,000,000	1,000,000
AMP Bank	IAM	BBB	TD	25-Aug-22	3.80%	242	24-Apr-23	1,000,000	1,000,000
Police Credit Union	IAM	NR	TD	4-Nov-22	4.40%	174	27-Apr-23	1,000,000	1,000,000
Commonwealth Bank of Australia	CBA	AA	TD	9-May-22	3.17%	365	9-May-23	1,000,000	1,000,000
Westpac	Westpac	AA	TD	16-Feb-22	1.12%	454	16-May-23	1,000,000	1,000,000
BNK Bank	Curve	NR	TD	23-Nov-22	4.42%	180	22-May-23	1,000,000	1,000,000
National Australia Bank	Curve	AA	TD	28-Nov-22	4.15%	182	29-May-23	1,000,000	1,000,000
Police Credit Union	IAM	NR	TD	22-Dec-22	4.48%	181	21-Jun-23	1,000,000	1,000,000
Bank of Queensland	BOQ	BBB	TD	2-Jun-22	3.40%	389	26-Jun-23	1,500,000	1,500,000
AMP Bank	Laminar	BBB	TD	2-Aug-22	4.20%	332	30-Jun-23	825,000	825,000
Defence Bank	IAM	BBB	TD	21-Jun-22	4.38%	379	5-Jul-23	1,000,000	1,000,000
Illawarra Credit Union	Laminar	BBB	TD	3-Jun-22	3.52%	403	11-Jul-23	1,000,000	1,000,000
Westpac	Westpac	AA	TD	16-Feb-22	1.30%	517	18-Jul-23	1,000,000	1,000,000
AMP Bank	IAM	BBB	TD	18-Aug-22	4.15%	340	24-Jul-23	1,000,000	1,000,000
Westpac	Westpac	AA	TD	3-Jun-22	3.28%	424	1-Aug-23	1,000,000	1,000,000
Mutual Bank	Curve	BBB	TD	2-Jun-22	3.40%	438	14-Aug-23	1,000,000	1,000,000
AMP Bank	Laminar	BBB	TD	29-Jul-22	4.45%	382	15-Aug-23	1,000,000	1,000,000
AMP Bank	Laminar	BBB	TD	2-Aug-22	4.45%	384	21-Aug-23	825,000	825,000
AMP Bank	IAM	BBB	TD	25-Aug-22	4.25%	361	21-Aug-23	500,000	500,000
AMP Bank	Laminar	BBB	TD	1-Sep-22	4.25%	368	4-Sep-23	700,000	700,000
Australian Unity Bank	Curve	BBB	TD	1-Jun-22	3.40%	468	12-Sep-23	1,000,000	1,000,000
Commonwealth Bank of Australia	CBA	AA	TD	17-Jun-22	4.39%	467	27-Sep-23	1,000,000	1,000,000
Commonwealth Bank of Australia	CBA	AA	TD	17-Jun-22	4.41%	481	11-Oct-23	1,000,000	1,000,000
Commonwealth Bank of Australia	CBA	AA	TD	17-Jun-22	4.42%	495	25-Oct-23	1,000,000	1,000,000
Westpac	Westpac	AA	TD	16-Feb-22	1.48%	629	7-Nov-23	1,000,000	1,000,000
Commonwealth Bank of Australia	CBA	AA	TD	17-Jun-22	4.45%	524	23-Nov-23	1,000,000	1,000,000
Summerland Credit Union	IAM	NR	TD	30-Nov-22	4.72%	362	27-Nov-23	1,000,000	1,000,000
ING Bank	ING	A	TD	24-Jun-22	4.22%	531	7-Dec-23	1,000,000	1,000,000
QBANK	Ord Minnett	BBB	TD	2-Dec-22	4.70%	374	11-Dec-23	975,000	975,000
Commonwealth Bank of Australia	CBA	AA	TD	17-Jun-22	4.48%	552	21-Dec-23	1,000,000	1,000,000
ING Bank	ING	A	TD	24-Jun-22	4.33%	559	4-Jan-24	1,000,000	1,000,000
ING Bank	ING	A	TD	29-Jun-22	4.35%	566	16-Jan-24	1,000,000	1,000,000
Westpac	Westpac	AA	TD	8-Aug-22	4.00%	532	22-Jan-24	1,000,000	1,000,000
Westpac	Westpac	AA	TD	8-Aug-22	4.00%	539	29-Jan-24	1,000,000	1,000,000
Westpac	Westpac	AA	TD	28-Jan-22	1.53%	732	30-Jan-24	1,000,000	1,000,000

## ITEM 2 - ATTACHMENT 1 CASH AND INVESTMENTS - DECEMBER 2022.

## Cash and Investments Held as at 31 December 2022

ISSUER	Broker	Rating*	Type	Investment Date	Yield (%)	Term (days)	Maturity Date	Amount Invested	Market Value
Westpac	Westpac	AA	TD	28-Jan-22	1.53%	746	13-Feb-24	1,000,000	1,000,000
Westpac	Westpac	AA	TD	16-Feb-22	1.72%	741	27-Feb-24	1,000,000	1,000,000
Westpac	Westpac	AA	TD	1-Sep-22	4.30%	557	11-Mar-24	1,000,000	1,000,000
Westpac	Westpac	AA	TD	14-Oct-22	4.53%	542	8-Apr-24	1,000,000	1,000,000
Judo Bank	IAM	BBB	TD	22-Apr-22	3.35%	732	23-Apr-24	825,000	825,000
Summerland Credit Union	Curve	NR	TD	23-Nov-22	4.60%	523	29-Apr-24	1,000,000	1,000,000
Judo Bank	IAM	BBB	TD	22-Apr-22	3.35%	746	7-May-24	825,000	825,000
Macquarie Bank	Curve	A	TD	1-Sep-22	4.41%	627	20-May-24	1,000,000	1,000,000
Macquarie Bank	Curve	A	TD	1-Sep-22	4.41%	649	11-Jun-24	1,000,000	1,000,000
Westpac	Westpac	AA	TD	23-Aug-22	4.35%	685	8-Jul-24	1,000,000	1,000,000
Westpac	Westpac	AA	TD	23-Aug-22	4.35%	692	15-Jul-24	1,000,000	1,000,000
Australian Military Bank	Curve	BBB	TD	25-Aug-22	4.40%	704	29-Jul-24	1,000,000	1,000,000
ING Bank	ING	A	TD	23-Dec-22	4.68%	655	8-Oct-24	1,000,000	1,000,000
ING Bank	ING	A	TD	23-Dec-22	4.70%	661	14-Oct-24	1,000,000	1,000,000
Westpac	Westpac	AA	TD	3-Nov-22	4.90%	732	4-Nov-24	1,000,000	1,000,000
Summerland Credit Union	Curve	NR	TD	23-Nov-22	4.65%	719	11-Nov-24	1,000,000	1,000,000
Summerland Credit Union	Curve	NR	TD	23-Nov-22	4.65%	726	18-Nov-24	1,000,000	1,000,000
ING Bank	IAM	A	TD	2-Dec-22	4.50%	724	25-Nov-24	1,000,000	1,000,000
ING Bank	IAM	A	TD	2-Dec-22	4.50%	738	9-Dec-24	1,000,000	1,000,000
Commonwealth Bank of Australia	CBA	AA	TD	20-Dec-22	4.71%	731	20-Dec-24	1,000,000	1,000,000
<b>Total Term Deposits (\$)</b>								<b>65,975,000</b>	<b>65,975,000</b>
Macquarie Bank	Laminar	A	At Call		3.00%			0	0
<b>Total Investments (\$)</b>								<b>65,975,000</b>	<b>65,975,000</b>
<b>Cash at Bank (\$)</b>								<b>2,253,039</b>	<b>2,253,039</b>
<b>Total Cash and Investments (\$)</b>								<b>68,228,039</b>	<b>68,228,039</b>
Cash at Bank Interest Rate 3.20%									
3 month BBSW 3.17%									
Average Investment Rate of Return on TD's 3.78%									
TD = Term Deposit									
*Standard & Poors Long Term Rating									
<b>Certificate of Responsible Accounting Officer</b>									
I hereby certify that the investments listed above have been made in accordance with Section 625 of the Local Government Act (1993), Clause 212 of the Local Government									
Tim Hazell									
Financial Services Section Manager									



**ITEM NO. 3****FILE NO: 22/325538  
EDRMS NO: PSC2017-00180****JANUARY 2023 CASH AND INVESTMENTS**REPORT OF: TIM HAZELL - FINANCIAL SERVICES SECTION MANAGER  
GROUP: CORPORATE SERVICES**BACKGROUND**

The purpose of this report is to present Council's schedule of cash and investments held at 31 January 2023.

The invested funds are set aside for:

<b>Restricted Cash</b>	
<b>Reserve</b>	<b>As at January 2023 \$'000</b>
<b>External</b>	
Deposits, retentions and bonds	763
Grants and Contributions	12,239
Developer contributions (inc Haulage)	19,886
Domestic Waste Management	7,034
Crown Reserve	7,115
<b>Internal</b>	
Asset Rehab/Reseals	2,407
Drainage	584
Commercial Property	15,884
Election Reserve	175
Federal Assistance Grant in Advance	-
Fleet	1,047
Resilience fund	3,000
Grants Co-contribution	3,000
Emergency & Natural Disaster	7,000
Other Waste	277
Council Parking	382
IT	1,879
Sustainable energy and water reserve	207
Unexpended loan funds	3,263
Repealed	2,673
Transport levy	535
Admin Building	410
Ward Funds	55
Community Halls	49
Community Loans	200
<b>Total</b>	<b>90,063</b>

## ORDINARY COUNCIL - 28 FEBRUARY 2023

The variance in the Cash and Investment Report (**ATTACHMENT 1**) and the table above is explained below.

Cash and Investment Report	81,467
Variance Cash Reserves to Bank Account	(8,597)
Variance Due to:	
Outstanding State Roads payment	726
Loans not funded through a Reserve	272
Outstanding GST refund	231
Contract Asset (Outstanding Grant Payments)	2,863
Outstanding Natural Disaster Funding	1,549
Total Variance	5,640
Cash Shortfall (due to timing of income and expenditure)	(2,956)

### ATTACHMENTS

1) Cash and Investments - January 2023. [↓](#)

### COUNCILLORS ROOM

Nil.

### TABLED DOCUMENTS

Nil.

## ITEM 3 - ATTACHMENT 1 CASH AND INVESTMENTS - JANUARY 2023.

## Cash and Investments Held as at 31 January 2023

ISSUER	Broker	Rating*	Type	Investment Date	Yield (%)	Term (days)	Maturity Date	Amount Invested	Market Value
Macquarie Bank	IAM	A	TD	25-Oct-22	3.68%	104	6-Feb-23	1,000,000	1,000,000
Arab Bank	IAM	NR	TD	8-Nov-22	3.60%	97	13-Feb-23	1,000,000	1,000,000
BNK Bank	IAM	NR	TD	15-Nov-22	3.95%	90	13-Feb-23	1,000,000	1,000,000
Macquarie Bank	IAM	A	TD	9-Nov-22	3.79%	103	20-Feb-23	1,000,000	1,000,000
Westpac	Westpac	AA	TD	16-Feb-22	0.95%	391	14-Mar-23	1,000,000	1,000,000
Australian Unity Bank	Laminar	BBB	TD	8-Jul-22	3.80%	257	22-Mar-23	1,000,000	1,000,000
Australian Unity Bank	Laminar	BBB	TD	8-Jul-22	3.80%	264	29-Mar-23	1,000,000	1,000,000
AMP Bank	IAM	BBB	TD	25-Aug-22	3.80%	230	12-Apr-23	1,000,000	1,000,000
Summerland Credit Union	IAM	NR	TD	27-Oct-22	4.47%	175	20-Apr-23	1,000,000	1,000,000
AMP Bank	IAM	BBB	TD	25-Aug-22	3.80%	242	24-Apr-23	1,000,000	1,000,000
Transport Mutual Credit Union Limited	Laminar	NR	TD	24-Jan-23	4.35%	90	24-Apr-23	2,000,000	2,000,000
Macquarie Bank	Laminar	A	TD	24-Jan-23	4.09%	90	24-Apr-23	5,000,000	5,000,000
Commonwealth Bank of Australia	CBA	AA	TD	24-Jan-23	4.03%	90	24-Apr-23	2,750,000	2,750,000
Macquarie Bank	Laminar	A	TD	25-Jan-23	4.09%	89	24-Apr-23	5,620,604	5,620,604
Police Credit Union	IAM	NR	TD	4-Nov-22	4.40%	174	27-Apr-23	1,000,000	1,000,000
Commonwealth Bank of Australia	CBA	AA	TD	9-May-22	3.17%	365	9-May-23	1,000,000	1,000,000
Westpac	Westpac	AA	TD	16-Feb-22	1.12%	454	16-May-23	1,000,000	1,000,000
BNK Bank	Curve	NR	TD	23-Nov-22	4.42%	180	22-May-23	1,000,000	1,000,000
National Australia Bank	Curve	AA	TD	28-Nov-22	4.15%	182	29-May-23	1,000,000	1,000,000
Police Credit Union	IAM	NR	TD	22-Dec-22	4.48%	181	21-Jun-23	1,000,000	1,000,000
Bank of Queensland	BOQ	BBB	TD	2-Jun-22	3.40%	389	26-Jun-23	1,500,000	1,500,000
AMP Bank	Laminar	BBB	TD	2-Aug-22	4.20%	332	30-Jun-23	825,000	825,000
Defence Bank	IAM	BBB	TD	21-Jun-22	4.38%	379	5-Jul-23	1,000,000	1,000,000
Illawarra Credit Union	Laminar	BBB	TD	3-Jun-22	3.52%	403	11-Jul-23	1,000,000	1,000,000
Westpac	Westpac	AA	TD	16-Feb-22	1.30%	517	18-Jul-23	1,000,000	1,000,000
AMP Bank	IAM	BBB	TD	18-Aug-22	4.15%	340	24-Jul-23	1,000,000	1,000,000
Westpac	Westpac	AA	TD	3-Jun-22	3.28%	424	1-Aug-23	1,000,000	1,000,000
Mutual Bank	Curve	BBB	TD	2-Jun-22	3.40%	438	14-Aug-23	1,000,000	1,000,000
AMP Bank	Laminar	BBB	TD	29-Jul-22	4.45%	382	15-Aug-23	1,000,000	1,000,000
AMP Bank	Laminar	BBB	TD	2-Aug-22	4.45%	384	21-Aug-23	825,000	825,000
AMP Bank	IAM	BBB	TD	25-Aug-22	4.25%	361	21-Aug-23	500,000	500,000
AMP Bank	Laminar	BBB	TD	1-Sep-22	4.25%	368	4-Sep-23	700,000	700,000
Australian Unity Bank	Curve	BBB	TD	1-Jun-22	3.40%	468	12-Sep-23	1,000,000	1,000,000
Commonwealth Bank of Australia	CBA	AA	TD	17-Jun-22	4.39%	467	27-Sep-23	1,000,000	1,000,000
Commonwealth Bank of Australia	CBA	AA	TD	17-Jun-22	4.41%	481	11-Oct-23	1,000,000	1,000,000
Commonwealth Bank of Australia	CBA	AA	TD	17-Jun-22	4.42%	495	25-Oct-23	1,000,000	1,000,000
Westpac	Westpac	AA	TD	16-Feb-22	1.48%	629	7-Nov-23	1,000,000	1,000,000
Commonwealth Bank of Australia	CBA	AA	TD	17-Jun-22	4.45%	524	23-Nov-23	1,000,000	1,000,000
Summerland Credit Union	IAM	NR	TD	30-Nov-22	4.72%	362	27-Nov-23	1,000,000	1,000,000
ING Bank	ING	A	TD	24-Jun-22	4.22%	531	7-Dec-23	1,000,000	1,000,000
QBANK	Ord Minnett	BBB	TD	2-Dec-22	4.70%	374	11-Dec-23	975,000	975,000
Commonwealth Bank of Australia	CBA	AA	TD	17-Jun-22	4.48%	552	21-Dec-23	1,000,000	1,000,000
ING Bank	ING	A	TD	24-Jun-22	4.33%	559	4-Jan-24	1,000,000	1,000,000
ING Bank	ING	A	TD	29-Jun-22	4.35%	566	16-Jan-24	1,000,000	1,000,000
Westpac	Westpac	AA	TD	8-Aug-22	4.00%	532	22-Jan-24	1,000,000	1,000,000
Westpac	Westpac	AA	TD	8-Aug-22	4.00%	539	29-Jan-24	1,000,000	1,000,000
Westpac	Westpac	AA	TD	28-Jan-22	1.53%	732	30-Jan-24	1,000,000	1,000,000

## ITEM 3 - ATTACHMENT 1 CASH AND INVESTMENTS - JANUARY 2023.

## Cash and Investments Held as at 31 January 2023

ISSUER	Broker	Rating*	Type	Investment Date	Yield (%)	Term (days)	Maturity Date	Amount Invested	Market Value
Westpac	Westpac	AA	TD	28-Jan-22	1.53%	746	13-Feb-24	1,000,000	1,000,000
Westpac	Westpac	AA	TD	16-Feb-22	1.72%	741	27-Feb-24	1,000,000	1,000,000
Westpac	Westpac	AA	TD	1-Sep-22	4.30%	557	11-Mar-24	1,000,000	1,000,000
Westpac	Westpac	AA	TD	14-Oct-22	4.53%	542	8-Apr-24	1,000,000	1,000,000
Judo Bank	IAM	BBB	TD	22-Apr-22	3.35%	732	23-Apr-24	825,000	825,000
Summerland Credit Union	Curve	NR	TD	23-Nov-22	4.60%	523	29-Apr-24	1,000,000	1,000,000
Judo Bank	IAM	BBB	TD	22-Apr-22	3.35%	746	7-May-24	825,000	825,000
Macquarie Bank	Curve	A	TD	1-Sep-22	4.41%	627	20-May-24	1,000,000	1,000,000
Macquarie Bank	Curve	A	TD	1-Sep-22	4.41%	649	11-Jun-24	1,000,000	1,000,000
Westpac	Westpac	AA	TD	23-Aug-22	4.35%	685	8-Jul-24	1,000,000	1,000,000
Westpac	Westpac	AA	TD	23-Aug-22	4.35%	692	15-Jul-24	1,000,000	1,000,000
Australian Military Bank	Curve	BBB	TD	25-Aug-22	4.40%	704	29-Jul-24	1,000,000	1,000,000
ING Bank	ING	A	TD	23-Dec-22	4.68%	655	8-Oct-24	1,000,000	1,000,000
ING Bank	ING	A	TD	23-Dec-22	4.70%	661	14-Oct-24	1,000,000	1,000,000
Westpac	Westpac	AA	TD	3-Nov-22	4.90%	732	4-Nov-24	1,000,000	1,000,000
Summerland Credit Union	Curve	NR	TD	23-Nov-22	4.65%	719	11-Nov-24	1,000,000	1,000,000
Summerland Credit Union	Curve	NR	TD	23-Nov-22	4.65%	726	18-Nov-24	1,000,000	1,000,000
ING Bank	IAM	A	TD	2-Dec-22	4.50%	724	25-Nov-24	1,000,000	1,000,000
ING Bank	IAM	A	TD	2-Dec-22	4.50%	738	9-Dec-24	1,000,000	1,000,000
Commonwealth Bank of Australia	CBA	AA	TD	20-Dec-22	4.71%	731	20-Dec-24	1,000,000	1,000,000
Total Term Deposits (\$)								77,345,604	77,345,604
Macquarie Bank	Laminar	A	At Call		3.25%			0	0
Total Investments (\$)								77,345,604	77,345,604
Cash at Bank (\$)								4,120,918	4,120,918
Total Cash and Investments (\$)								81,466,522	81,466,522
Cash at Bank Interest Rate		3.20%							
3 month BBSW		3.32%							
Weighted Average Investment Rate of Return on TD's		3.91%							
TD = Term Deposit									
*Standard & Poors Long Term Rating									
Certificate of Responsible Accounting Officer									
I hereby certify that the investments listed above have been made in accordance with Section 625 of the Local Government Act (1993), Clause 212 of the Local Government									
Tim Hazell									
Financial Services Section Manager									

## ITEM NO. 4

FILE NO: 22/320529  
EDRMS NO: PSC2017-00739**ELECTED MEMBERS PROFESSIONAL DEVELOPMENT AND EXPENSES  
REPORTS - 1 JULY 2022 TO 31 DECEMBER 2022**REPORT OF: TONY WICKHAM - GOVERNANCE SECTION MANAGER  
GROUP: GENERAL MANAGER'S OFFICE**BACKGROUND****Professional Development**

The purpose of this report is to provide an account of the expenses incurred by the Elected Members in accordance with clause 5.14 of the Councillor Induction and Professional Development Policy for the period July to December 2022.

	Mayor Palmer	Cr Anderson	Cr Arnott	Cr Bailey	Cr Doohan	Cr Dunkley	Cr Francis	Cr Kafer	Cr Tucker	Cr Wells
LGNSW Annual Conference <sup>1</sup>	\$989	\$1,512	\$1,216						\$1,120	
AICD Membership <sup>2</sup>	\$620									
Institute of Local Governance Finance Course		\$1,200								
Local-e Learning – Lift Off Coaching Package		\$1,999								
Business Port Stephens event					\$41					
LGNSW Regional & Rural Summit <sup>1</sup>	\$400									
<b>Total</b>	<b>\$2,009</b>	<b>\$4,711</b>	<b>\$1,216</b>	<b>\$0</b>	<b>\$41</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$1,120</b>	<b>\$0</b>

<sup>1</sup>AICD – Australian Institute of Company Directors<sup>2</sup>LGNSW – Local Government NSW

## **Expenses**

The purpose of this report is to provide an account of the expenses incurred by the Elected Members in accordance with Clause 3.127 of the Payment of Expenses and Provision of Facilities to Mayor and Councillors Policy for the period 1 July 2022 to 31 December 2022 (**ATTACHMENT 1**).

The costs in the report are those incurred by the Elected Members that have been reconciled during this period and does not include expenses incurred that have not been submitted for reimbursement. The report also shows the total costs incurred to Council by Elected Members (including the monthly allowance) for each costing category listed.

## **ATTACHMENTS**

- 1) Elected Members Expense Report - 1 July 2022 to 31 December 2022. [↓](#)

## **COUNCILLORS ROOM**

Nil.

## **TABLED DOCUMENTS**

Nil.

ITEM 4 - ATTACHMENT 1 ELECTED MEMBERS EXPENSE REPORT - 1 JULY 2022 TO 31 DECEMBER 2022.

Elected Members Expense Report 1 July 2022 to 31 December 2022												
		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	TOTALS
Total Number of Council Meetings Attended (10 held)		9	10	10	8	5	4	8	9	8	9	
Total Number of Months Reimbursed during the period		5	6	0	5	1	2	0	0	4	0	
Description of Expense	Limits as per policy											
Councillor Mobile Rental	75% up to \$200 per month											\$0.00
Councillor Mobile Calls		\$452.00	\$120.00		\$362.00							\$934.00
Councillor Landline Phone Rental												\$0.00
Councillor Landline Phone Calls												\$0.00
Councillor Fax Rental												\$0.00
Councillor Fax Calls												
Councillor Internet	75% up to \$60 per month	\$535.00	\$120.00		\$420.00							\$1,075.00
Councillor Intrastate Travel Expenses	\$7000 per year	\$138.00	\$1,288.00		\$1,166.00	\$867.00	1,101			\$1,536.00		\$6,096.00
Councillor Interstate Travel (out of NSW)	\$2000 per year											\$0.00
Councillor Interstate Accommodation (out of NSW)												\$0.00
Councillors Intrastate Accommodation		\$1,047.00	\$463.00							\$455.00		\$1,965.00
Councillor Conferences	\$3000 per year	\$1,389.00	\$1,512.00	\$1,216.00		\$41.00				\$1,120.00		\$5,278.00
Councillor Training												\$0.00
Councillor Partner Expenses	Mayor \$1000 per year Cr\$ 500 per year (excluding LGNSW Annual Con.)					\$70.00						\$70.00
Councillor ICT Devices (incl. Mobile phones)	\$5000 per term	\$3,641.00			\$145.00		\$510.00					\$4,296.00
Councillor Stationery	\$300 per year				\$5.00		\$209.00			\$239.00		\$453.00
Councillor Awards/Ceremonies/Dinners	Mayor \$1000 per year Cr\$ 500 per year	\$218.00		\$64.00		\$134.00	\$70.00					\$486.00
Councillor Child Care Costs	\$2000 per year				\$2,078.00							\$2,078.00
Councillor Communications Bundle	75% up to \$100 per month landline 75% up to \$100 per month mobile		\$90.00			\$240.00	\$314.00			\$540.00		\$1,184.00
Councillor Professional Development	\$15,000 per term	\$620.00	\$3,199.00									\$3,819.00
Councillor Superannuation			\$1,107.00	\$1,107.00	\$1,107.00	\$1,107.00	\$1,107.00	\$886.00	\$1,107.00	\$1,107.00	\$1,107.00	\$9,742.00
TOTALS		\$8,040.00	\$7,899.00	\$2,387.00	\$5,283.00	\$2,459.00	\$3,311.00	\$886.00	\$1,107.00	\$4,997.00	\$1,107.00	\$37,476.00
Councillor Allowances	Mayor \$84,400 pa Cr\$ - \$24,320 pa	\$36,592.00	\$10,546.00	\$10,609.00	\$10,546.00	\$10,546.00	\$10,546.00	\$10,546.00	\$10,546.00	\$10,546.00	\$10,546.00	\$131,569.00
TOTALS		\$44,632.00	\$18,445.00	\$12,996.00	\$15,829.00	\$13,005.00	\$13,857.00	\$11,432.00	\$11,653.00	\$15,543.00	\$11,653.00	\$169,045.00

**ITEM NO. 5**

**FILE NO: 23/7126  
EDRMS NO: PSC2022-01241**

**DESIGNATED PERSONS' RETURN**

REPORT OF: TONY WICKHAM - GOVERNANCE SECTION MANAGER  
GROUP: GENERAL MANAGER'S OFFICE

**BACKGROUND**

The purpose of this report is to table Councillor and Designated Persons' Return/s (return) submitted.

In accordance with the Part 4 – Pecuniary Interest of the Code of Conduct, all designated persons are required to submit a return. Returns are to be tabled at the first Council meeting after the lodgement date.

The following is a list of position/s who have submitted return/s:

- Environmental Officer PSC971.
- Senior Environmental Health Officer PSC763.

**ATTACHMENTS**

Nil.

**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

- 1) Designated Persons' Return.



**ITEM NO. 6**

**FILE NO: 23/9623  
EDRMS NO: PSC2009-00965**

## **DELEGATIONS REPORT**

REPORT OF: TONY WICKHAM - GOVERNANCE SECTION MANAGER  
GROUP: GENERAL MANAGER'S OFFICE

## **BACKGROUND**

The purpose of this report is to advise Council of each occasion the Mayor and/or General Manager have exercised their delegations, other than under section 226 and 335 of the Local Government Act 1993, which are conferred on each role.

The report at **(ATTACHMENT 1)** provides details of the delegation exercised, such as the delegated authority, the date and the reason for exercising the delegation.

## **ATTACHMENTS**

1) Delegations Report. [↓](#)

## **COUNCILLORS ROOM**

Nil.

## **TABLED DOCUMENTS**

Nil.

## ITEM 6 - ATTACHMENT 1 DELEGATIONS REPORT.

**MAYOR AND GENERAL MANAGER DELEGATION REPORT**

Date exercised	Delegations exercised	Purpose	Role exercising delegation	Reported to Council
12/01/2023	Roads and Maritime Services delegations	Port Stephens Local Traffic Committee Meeting Minutes - 6 December 2022.	General Manager	28 February 2023
12/01/2023	Roads and Maritime Services delegations	Authorises the installation, display, removal or alteration of the traffic control devices for the listed items identified in the Port Stephens Local Traffic Committee report dated 6 December 2022.	General Manager	28 February 2023
12/01/2023	Clause 178 of the Local Government (General) Regulation 2022	Acceptance of tenders for Labour Hire and Recruitment Services.	General Manager	28 February 2023
17/01/2023	Clause 178 of the Local Government (General) Regulation 2022	Acceptance of tenders for Linemarking Services.	General Manager	28 February 2023
02/02/2023	Code of Meeting Practice	Approval of Public Access application for Wahroonga Women's Group and Homeless Outreach Program.	Mayor	28 February 2023
06/02/2023	Clause 178 of the Local Government (General) Regulation 2022	Acceptance of a tender for public place cleaning.	General Manager	28 February 2023
07/02/2023	Clause 178 of the Local Government (General) Regulation 2022	Acceptance of a tender for Little Beach Public Amenities and Changing Places Facility	General Manager	28 February 2023

**ITEM NO. 7**

**FILE NO: 23/42226  
EDRMS NO: PSC2021-04185**

**MATTER ARISING FROM 13 DECEMBER 2022**

REPORT OF: TONY WICKHAM - GOVERNANCE SECTION MANAGER  
GROUP: GENERAL MANAGER'S OFFICE

**BACKGROUND**

The purpose of this report is to provide Council with the correspondence forwarded to Cr Dunkley as a result of a Council resolution from its meeting of 13 December 2022.

Council at its meeting of 13 December 2022, resolved:

- 1) write to Cr Glen Dunkley through every means (email, text, WhatsApp and postal address, if known) requesting his urgent response about when he will be returning to his duties as a councillor.
- 2) seek Cr Dunkley's consideration of returning his councillor allowance for the period he has not been performing his councillor duties.
- 3) be provided with a copy of the correspondence forwarded to Cr Dunkley through an Information Paper.

**ATTACHMENTS**

- 1) Correspondence forwarded to Cr Dunkley. [↓](#)

**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

Nil.

ITEM 7 - ATTACHMENT 1  
DUNKLEY.

CORRESPONDENCE FORWARDED TO CR  
DUNKLEY.



Cr Glen Dunkley



email: [glen.dunkley@portstephens.nsw.gov.au](mailto:glen.dunkley@portstephens.nsw.gov.au)  
[glen.dunkley@\[REDACTED\].com](mailto:glen.dunkley@[REDACTED].com)

Dear Cr Dunkley

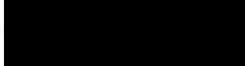
**Re: LEAVE OF ABSENCE**

Council at its meeting on 13 December 2022, resolved to:

- 1) write to Cr Glen Dunkley through every means (email, text, WhatsApp and postal address, if known) requesting his urgent response about when he will be returning to his duties as a councillor.
- 2) seek Cr Dunkley's consideration of returning his councillor allowance for the period he has not been performing his councillor duties.
- 3) be provided with a copy of the correspondence forwarded to Cr Dunkley through an Information Paper.

Accordingly, your advice is requested on items 1 and 2 above.

Yours faithfully,



**Tim Crosdale**  
**GENERAL MANAGER**

23 December 2022

Telephone enquiries  
General Manager's Office  
(02) 4988 0246  
Please quote file no: PSC2021-04201

**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)

[www.portstephens.nsw.gov.au](http://www.portstephens.nsw.gov.au)  
ABN 16 744 377 870

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**ITEM NO. 8**

**FILE NO: 23/21876  
EDRMS NO: PSC2017-00106**

## **COUNCIL RESOLUTIONS**

REPORT OF: TIMOTHY CROSDALE - GENERAL MANAGER  
GROUP: GENERAL MANAGER'S OFFICE

## **BACKGROUND**

The purpose of this report is to inform the Mayor and Councillors of the status of all matters to be dealt with arising out of the proceedings of previous meetings of the Council in accordance with the Code of Meeting Practice.

The General Manager's Office has no outstanding resolutions.

## **ATTACHMENTS**

- 1) Corporate Services Group resolutions. [↓](#)
- 2) Development Services Group resolutions. [↓](#)
- 3) Facilities & Services Group resolutions. [↓](#)

## **COUNCILLORS ROOM**

Nil.

## **TABLED DOCUMENTS**

Nil.



<b>Action Sheets Report</b>	<b>Division:</b>	Corporate Services	<b>Date From:</b>	27/08/2013
	<b>Committee:</b>		<b>Date To:</b>	14/02/2023
	<b>Officer:</b>		<b>Printed: Wednesday, 15 February 2023</b>	

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 11/10/2022	Pattison, Zoe	Policy Review: Property Investment and Development Policy	30/03/2023	12/10/2022	
1						22/273002
<b>15 Feb 2023</b>						
Public Exhibition deferred to allow for further clarification on the distribution of funds.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 11/10/2022	Pattison, Zoe	Policy Review: Acquisition and Divestment of Land	30/03/2023	12/10/2022	
2						22/273002
<b>15 Feb 2023</b>						
Public Exhibition deferred to allow for further clarification on the distribution of funds.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 8/11/2022	Hazell, Tim	Special Rate Variation - Revised Integrated Planning and Reporting Documents - Rate Rise Options Engagement	30/06/2023	9/11/2022	
1		Pattison, Zoe				22/300562
<b>15 Feb 2023</b>						
Recommendation endorsed. Council submitted an application to the Independent Pricing and Regulatory Tribunal for a Special Rate Variation in January 2023. Application pending assessment.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
	Ordinary Council 27/08/2013 243	Pattison, Zoe	Campvale Drain	30/03/2023		
<b>15 Feb 2023</b>						
Awaiting final execution of easement documentation for 2 properties. All other properties (with exception of these 2) have been finalised.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 22/09/2020	Pattison, Zoe	Newline Road, Raymond Terrace	30/06/2023		
2						20/288489
<b>15 Feb 2023</b>						
Completion of the acquisition is subject to completion of the road works, as finished levels are required to inform the survey. The road works have been substantially delayed due to continued adverse weather conditions.						



<b>Action Sheets Report</b>	<b>Division:</b>	Corporate Services	<b>Date From:</b>	27/08/2013
	<b>Committee:</b>		<b>Date To:</b>	14/02/2023
	<b>Officer:</b>		<b>Printed:</b> Wednesday, 15 February 2023	

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 13/04/2021	Pattison, Zoe	PROPOSED CLOSURE AND SALE OF PATHWAY IN BOAT HARBOUR	30/06/2023	14/04/2021	
2						21/96728
<b>15 Feb 2023</b>						
Matter progressing.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 11/05/2021	Pattison, Zoe	Car parking in Shoal Bay	30/03/2023	12/05/2021	
1						21/123694
<b>15 Feb 2023</b>						
Construction of the car park is subject to adoption of a Plan of Management for the land. The land has been added to the Plan of Management for the Shoal Bay Holiday Park, which is with Crown Lands for approval to exhibit. Once Crown Land approval is received the Plan of Management will be placed on public exhibition.						

ITEM 8 - ATTACHMENT 2 DEVELOPMENT SERVICES GROUP  
RESOLUTIONS.

<b>Action Sheets Report</b>	<b>Division:</b>	Development Services	<b>Date From:</b>	14/09/2021
	<b>Committee:</b>		<b>Date To:</b>	14/02/2023
	<b>Officer:</b>		<b>Printed: Wednesday, 15 February 2023</b>	

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 8/11/2022	Lamont, Brock	Policy Review: Environmental Policy	31/03/2023		
6		Pearl, Steven				22/300562
<b>15 Feb 2023</b> Public Exhibition ended 9 December 2022. Submissions are being reviewed and responses drafted. Report to return to Council on 14 March 2023.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 8/11/2022	Lamont, Brock	Policy Review: Climate Change Policy	31/03/2023	9/11/2022	
5		Pearl, Steven				22/300562
<b>15 Feb 2023</b> Public Exhibition ended 9 December 2022. Submissions are being reviewed and responses drafted. Report to return to Council on 14 March 2023.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 13/12/2022	Lamont, Brock	Draft Local Infrastructure Contributions Plan - Amendment 2	31/03/2023	15/12/2022	
4		Pearl, Steven				22/333678
<b>15 Feb 2023</b> Council resolved to approve the Port Stephens Local Infrastructure Contributions Plan - Amendment No. 2. The amended plan will be placed on public notice on Friday, 16 December 2022, in accordance with the Environmental Planning and Assessment Regulations 2021. Investigations have commenced into developer contributions as noted in the resolution. A report is being prepared, to return to Council on 28 March 2023.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 14/02/2023	Gardner, Janelle	Development Application Awareness Campaign	30/06/2023	15/02/2023	
1		Pearl, Steven				23/41055
<b>15 Feb 2023</b> Council extended the advertising of Development Applications lodged to the Port Stephens News of the Area as part of the Development Application Awareness Campaign for the term of the campaigns trial period.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 8/11/2022	Lamont, Brock	Draft Development Control Plan - Housekeeping	17/03/2023	9/11/2022	
2		Pearl, Steven				22/300562
<b>15 Feb 2023</b> Council endorsed to place the Draft Development Control Plan - Housekeeping on exhibition for a period of 28 days. Report due to return to Council on 14 March 2023 for adoption.						



ITEM 8 - ATTACHMENT 2 DEVELOPMENT SERVICES GROUP  
RESOLUTIONS.

<b>Action Sheets Report</b>	<b>Division:</b>	Development Services	<b>Date From:</b>	14/09/2021
	<b>Committee:</b>		<b>Date To:</b>	14/02/2023
	<b>Officer:</b>		<b>Printed: Wednesday, 15 February 2023</b>	

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 12/10/2021	Lamont, Brock	Carbon Neutrality	31/03/2023	13/10/2021	
2		Pearl, Steven				21/274186
<b>15 Feb 2023</b> The Natural Systems team has established baseline data and focus areas. Project Control Group has been established to enable an organisation wide approach, and further develop a roadmap and identify funding sources. Report is being drafted to be reported to Council on 28 March 2023.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 14/09/2021	Lamont, Brock	Port Stephens Waterway Strategy	29/12/2023	15/09/2021	
1		Pearl, Steven				21/252518
<b>15 Feb 2023</b> The Strategic Planning Team was unsuccessful in the Regional NSW - Business Case and Strategy Development Fund grant, other funding sources are currently being investigated. Funding is being sought for consultants to prepare the Port Stephens Waterways Strategy.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 27/09/2022	Lamont, Brock	NSW Electric Vehicle Strategy	31/03/2023	28/09/2022	
1		Pearl, Steven				22/262103
<b>15 Feb 2023</b> Strategic Planning are in consultation with stakeholders to identify opportunities available to Council. Report to be presented to Council at the 28 March 2023 meeting.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 25/10/2022	Lamont, Brock	Policy Review: Tree Vandalism Policy	17/03/2023	26/10/2022	
7		Pearl, Steven				22/285324
<b>15 Feb 2023</b> Public Exhibition ended 25 November 2022. Submissions are being reviewed and responses drafted. Report to return to Council on 14 March 2023.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 11/10/2022	Lamont, Brock	Health Facilities	24/05/2023	12/10/2022	
2		Pearl, Steven				22/273002
<b>15 Feb 2023</b> The Strategy and Environment team has commenced investigations to identify opportunities to further support and advocate health facilities in Port Stephens LGA, including committees. To be incorporated into the Employment land study, currently being undertaken. Preparation of the report has commenced and expected to go to Council on 23 May 2023.						



<b>Action Sheets Report</b>	<b>Division:</b>	Facilities & Services	<b>Date From:</b>	09/02/2021
	<b>Committee:</b>		<b>Date To:</b>	14/02/2023
	<b>Officer:</b>		<b>Printed: Wednesday, 15 February 2023</b>	

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 24/05/2022	Maretich, John	World Menstruation Hygiene Day	31/03/2023	27/05/2022	
1		Kable, Gregory				22/136825
<b>15 Feb 2023</b>						
This action is still under investigation. A report will be presented to Council in March 2023 with an option to provide this service to the community.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 24/05/2022	Maretich, John	Review of Dog Off Lead Areas - Boat Harbour Beach	30/06/2023	27/05/2022	
4		Kable, Gregory				22/136825
<b>15 Feb 2023</b>						
Report was endorsed by Council at its meeting held 24 May 2022, Minute No. 133. A review will be carried out in 12 months as per the Council resolution.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 8/02/2022	Maretich, John	Foreshore Reserves and Parking on Council Land	31/03/2023	14/02/2022	
5		Kable, Gregory				22/45826
<b>15 Feb 2023</b>						
Report shall be provided back to Council in March 2023.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 12/07/2022	Maretich, John	Koala Signage	31/03/2023	13/07/2022	
1		Kable, Gregory				22/186061
<b>15 Feb 2023</b>						
Council staff have been in contact and are working with this group to facilitate appropriate signs on our road network.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 14/02/2023	Gutsche, Tammy	Domestic Waste Management Service Charge	31/03/2023	15/02/2023	
1		Kable, Gregory				23/41055
<b>15 Feb 2023</b>						
Council staff will prepare a letter to be sent as detailed in the Council resolution.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 13/12/2022	Maretich, John	Potters Lane Basketball Hoop	31/03/2023	15/12/2022	
1		Kable, Gregory				22/333678
<b>15 Feb 2023</b>						
Staff will prepare a report as per Council resolution.						



<b>Action Sheets Report</b>	<b>Division:</b>	Facilities & Services	<b>Date From:</b>	09/02/2021
	<b>Committee:</b>		<b>Date To:</b>	14/02/2023
	<b>Officer:</b>		<b>Printed: Wednesday, 15 February 2023</b>	

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 26/07/2022	Maretich, John	Smart Parking	31/03/2023	27/07/2022	
2		Kable, Gregory				22/199431
<b>15 Feb 2023</b> Staff compiling details to report back to Council.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 10/08/2021	Maretich, John	Kirrang Drive, Medowie Shared Pathway	31/03/2023	13/08/2021	
8		Kable, Gregory				21/218740
<b>15 Feb 2023</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 with an option to stage the project.						

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	31/03/2023		
4		Kable, Gregory				21/218740
<b>15 Feb 2023</b> Council to enter agreement with the Community Association DP 270468 in accordance with the confidential terms as per Council report. Terms of the agreement still being discussed in alignment with the proposed engineering works.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 9/02/2021	Maretich, John	MEDOWIE REGIONAL PLAYGROUND AND TOWN CENTRE	31/03/2023		
2		Kable, Gregory				21/33235
<b>15 Feb 2023</b> The regional playground will be addressed in the Medowie Place Plan. A separate report will be prepared for Council.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 10/08/2021	Maretich, John	Raymond Terrace Seven Day Makeover	31/03/2023		
17		Kable, Gregory				21/218740
<b>15 Feb 2023</b> This will be discussed with the Councillors in the lead up to William Street, Stage 2 which funded through the Streets of Shared Spaces grant. There is the possibility to incorporate a Business Boosters Program to create great business vibrancy in Raymond Terrace.						



<b>Action Sheets Report</b>	<b>Division:</b>	Facilities & Services	<b>Date From:</b>	09/02/2021
	<b>Committee:</b>		<b>Date To:</b>	14/02/2023
	<b>Officer:</b>		<b>Printed: Wednesday, 15 February 2023</b>	

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 8/02/2022	Maretich, John	Medowie Library	31/03/2023	14/02/2022	
2		Kable, Gregory				22/45826
<b>15 Feb 2023</b>						
Investigation is still underway to determine viability as requested. Report to be provided in February 2023 as part of Councils review of services.						

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	31/03/2023	14/02/2022	
6		Kable, Gregory				22/45826
<b>15 Feb 2023</b>						
This action is still under investigation. Report to Council to be provided in March 2023 to align this policy with a proposed future hardship policy going to Council.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 12/10/2021	Gutsche, Tammy	Change to Lease Arrangements for Fingal Bay Surf Life Saving Club and Commercial Tenancies	31/03/2023	13/10/2021	
8		Kable, Gregory				21/274186
<b>15 Feb 2023</b>						
Still awaiting final response from Fingal Surf Club and Longboat Café's Solicitor. Currently working with Local Government Legal to progress as a priority once documents are returned from stakeholders.						

# NOTICES OF MOTION

**NOTICE OF MOTION**

**ITEM NO. 1**

**FILE NO: 23/27938**

**EDRMS NO: PSC2021-04195**

**CODE OF MEETING PRACTICE**

**COUNCILLOR: GIACOMO ARNOTT**

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**THAT COUNCIL:**

- 1) Agrees that the first Council meeting of the year, which is generally held 2 months after the final meeting of the year, should have special consideration when it comes to the notice of the meeting being sent out, and business papers prepared.
- 2) Agrees to change the Code of Meeting Practice, at 3.7 as follows:

“3.7 The General Manager must send to each Councillor, at least by close of business on the first Friday after the previous meeting of the Council (with the exception of the first ordinary meeting each year and where an ordinary meeting occurs on a public holiday), a notice specifying the time, date and place at which the meeting is to be held, and the business proposed to be considered at the meeting. The notice for the first ordinary meeting each year or where an ordinary meeting occurs on a public holiday is to be sent to each Councillor 18 days prior to the meeting.”
- 3) Places the revised Code of Meeting Practice, as amended, on public exhibition for a period of 42 days and should no submissions be received, the policy be adopted without a further report to Council.
- 4) Revokes the Code of Meeting Practice dated 13 September 2022, Minute No. 240 should no submissions be received.

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**BACKGROUND REPORT OF: TONY WICKHAM – GOVERNANCE SECTION MANAGER**

**BACKGROUND**

Council adopted its Code of Meeting Practice (the Code) on 13 September 2022. Clause 3.7 of the Code requires business papers to be distributed after a previous Council meeting. Clause 3.7 is shown below.

**"Notice to councillors of ordinary council meetings**

3.7 - The General Manager must send to each Councillor, at least by close of business on the first Friday after the previous meeting of the Council, a notice specifying the time, date and place at which the meeting is to be held, and the business proposed to be considered at the meeting."

In accordance with clause 3.7, the business paper for the first ordinary meeting of each calendar year requires the business paper to be distributed after the December meeting, approximately 2 months before the February meeting. There are no Council meetings held in January. This also impacts the timing for submitting a notice of motion.

Further, the same issue can arise should a public holiday fall on a scheduled Council meeting. As an example, the Council meeting scheduled for 25 April 2023 (ANZAC Day) would result in the agenda for the 9 May 2023 meeting being distributed on 14 April 2023.

**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		

**ATTACHMENTS**

Nil.

**NOTICE OF MOTION**

**ITEM NO. 2**

**FILE NO: 23/42199**

**EDRMS NO: PSC2021-04195**

**WILLIAMTOWN SPECIAL ACTIVATION PRECINCT**

**COUNCILLOR: GIACOMO ARNOTT**

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**THAT COUNCIL:**

- 1) Lodges a submission to the revised Williamtown Special Activation Precinct Masterplan.

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**BACKGROUND REPORT OF: BROCK LAMONT – STRATEGY AND ENVIRONMENT SECTION MANAGER**

**BACKGROUND**

The purpose of this report is to provide background information on the revised draft Williamtown Special Activation Precinct Masterplan (the draft SAP masterplan) which is on exhibition from 25 January 2023 to 22 February 2023.

The revised draft SAP masterplan precinct (**ATTACHMENT 1**) now covers an area of 283 hectares (originally 395 hectares), focusing on development around Newcastle Airport, the adjoining RAAF Base Williamtown and east of Leary's Drain to Nelson Bay Road, Williamtown. The revised precinct boundary is shown at (**ATTACHMENT 2**).

The NSW Department of Planning and Environment (DPE) lists the following key reasons for the reduction in the footprint:

- Economic, engineering and environmental analysis determined that the cost of the enabling earthworks and infrastructure (as per the originally exhibited masterplan) was cost prohibitive and not economically feasible.
- A smaller Precinct can provide sufficient land over the next 40 years to meet the demand for defence and aerospace related jobs.
- Detailed engineering investigation and a refined water cycle management strategy have resulted in changes to the required flood and drainage infrastructure.
- The existing approved Astra Aerolab development covering 76 hectares can meet a large proportion of the initial market demand.

A submission addressing the technical/planning aspects of the masterplan has been prepared and submitted by staff.



## ORDINARY COUNCIL - 28 FEBRUARY 2023

A request that Councillors be afforded the opportunity to submit a separate submission was raised following the DPE briefing on the masterplan. Staff have requested an extension of time for Council to consider making its own submission.

DPE has advised that, were Council to decide to make a submission, it would need to be lodged by 4 March 2023.

### 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

- 1) Map of Williamtown Special Activation Precinct. [↓](#)
- 2) Reduction in Williamtown Special Activation Precinct boundary. [↓](#)

ITEM 2 - ATTACHMENT 1  
PRECINCT.

MAP OF WILLIAMTOWN SPECIAL ACTIVATION  
PRECINCT.

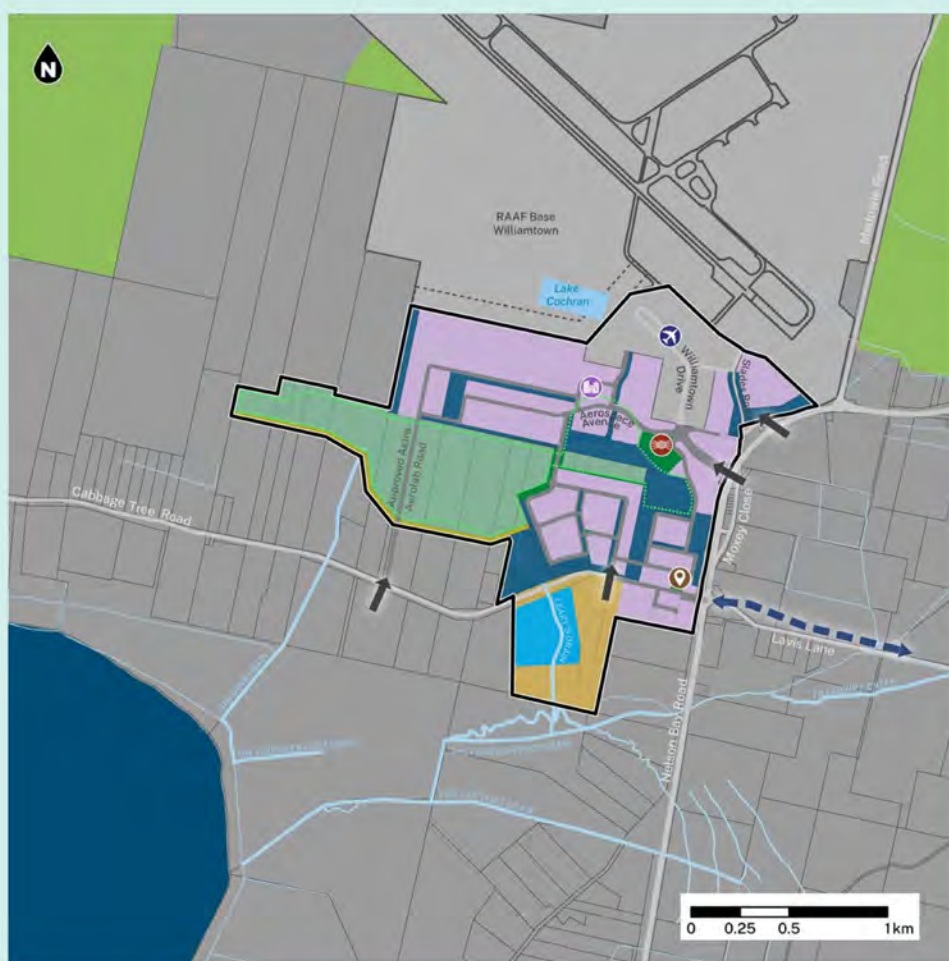
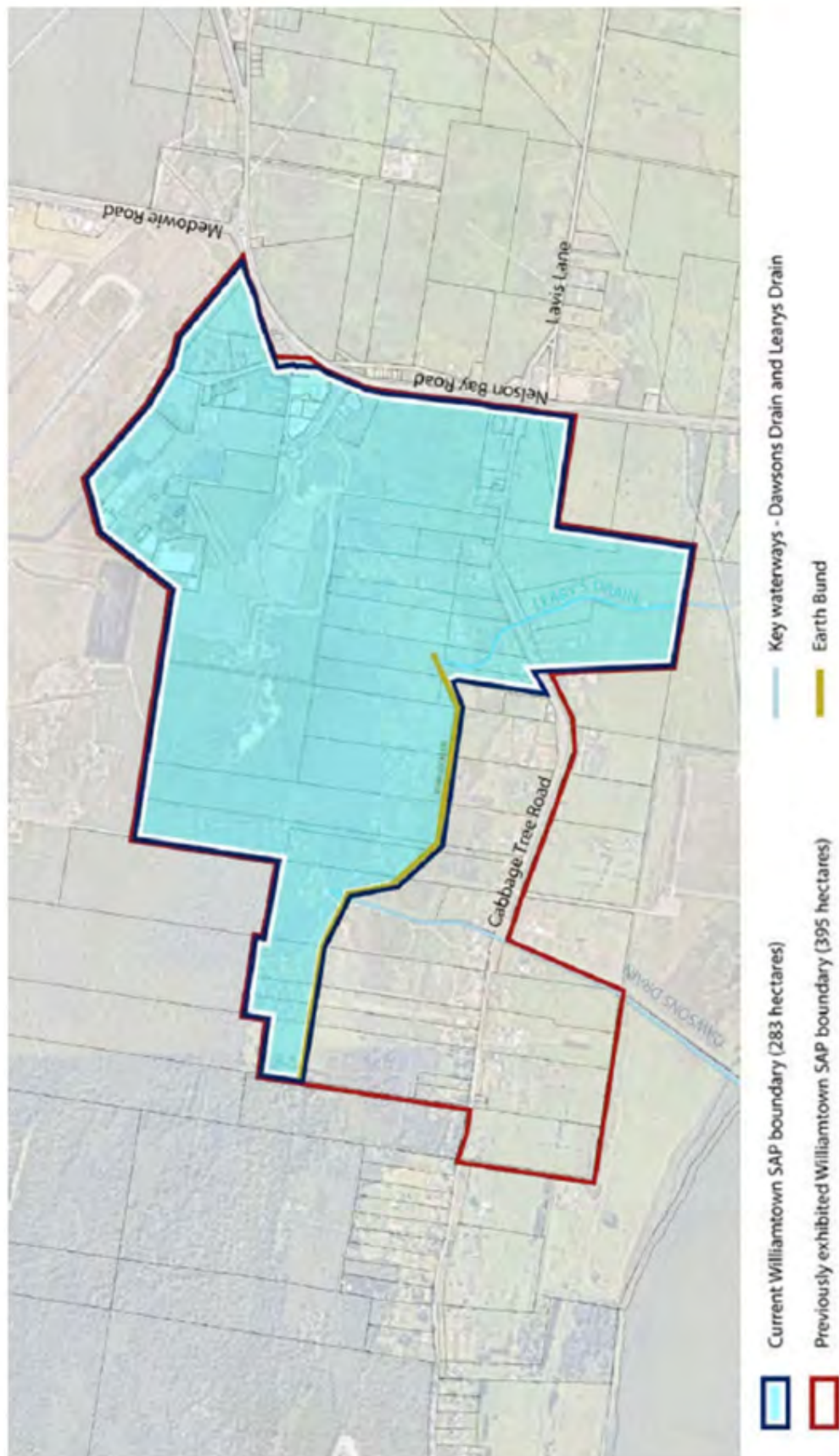


Figure 2: Map of Williamtown Special Activation Precinct (SAP)

- |   |                                     |  |
|---|-------------------------------------|--|
| Williamtown SAP boundary (283 hectares)     | Newcastle Airport                   | Regional enterprise zone                 |
| RAAF Base Williamtown and Newcastle Airport | Commercial Centre                   | Flood mitigation - shallow flood storage |
| Waterway                                    | Local heritage item                 | Drainage and wetlands                    |
| Waterbody                                   | Aboriginal Keeping Place            | Environmental protection area            |
| Roads                                       | Future alignment of Nelson Bay Road | SP2 Infrastructure                       |
| Hunter Wetlands National Park               | Access points                       | Earth Bund                               |
| Tilligerry State Conservation Area          | Proposed road                       |  |
| Heritage or green space                     | Existing runway and taxiway         |  |
|   | Proposed unapproved taxiway G       |  |
|   | Proposed health loop                |  |

ITEM 2 - ATTACHMENT 2 REDUCTION IN WILLIAMTOWN SPECIAL ACTIVATION PRECINCT BOUNDARY.



# CONFIDENTIAL ITEMS

In accordance with Section 10A, of the Local Government Act 1993, Council can close part of a meeting to the public to consider matters involving personnel, personal ratepayer hardship, commercial information, nature and location of a place or item of Aboriginal significance on community land, matters affecting the security of Council, Councillors, staff or Council property and matters that could be prejudice to the maintenance of law.

Further information on any item that is listed for consideration as a confidential item can be sought by contacting Council.