

# NOTICE OF ORDINARY MEETING

## 9 JULY 2024



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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4.	ACQUISITION OF PART OF 1194 AND 1210 NEWLINE ROAD, EAST SEAHAM FOR ROAD WIDENING PURPOSES

## **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 25 June 2024.

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** – An accessible and welcoming community respecting diversity, heritage and culture.

**OUR PLACE** – A liveable and connected place supporting community wellbeing and local economic growth.

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

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

## BUSINESS EXCELLENCE

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

These outcomes align with the following Business Excellence principles:

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

## MEETING PROCEDURES SUMMARY

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

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

### **Declarations of Interest**

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

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

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

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

### **Motions and Amendments**

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

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

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

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

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

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

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

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

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

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

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

A Point of Order can be raised where:

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

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

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

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

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

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



## Form of Special Disclosure of Pecuniary Interest

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

### Important information

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

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

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

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

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

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

**ORDINARY COUNCIL - 9 JULY 2024**

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 \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

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

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

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

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

# MOTIONS TO CLOSE

ITEM NO. 1

FILE NO: 24/154277  
EDRMS NO: PSC2023-04009

**MOTION TO CLOSE**

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

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**RECOMMENDATION:**

- 1) That pursuant to section 10A(2) (d)i of the Local Government Act 1993, the Committee and Council resolve to close to the public that part of its meetings to discuss Confidential Item 1 on the Ordinary agenda namely **Proposed Sale of Land - 8 Jura Street, Heatherbrae**.
  - 2) That the reasons for closing the meeting to the public to consider this item is that the discussion will include information containing:
    - commercial information of a confidential nature that would, if disclosed prejudice the commercial position of the person who supplied it.
  - 3) That the report remain confidential and the minute be released in accordance with Council's resolution.
-

ITEM NO. 2

FILE NO: 24/111299  
EDRMS NO: PSC2012-00104

**MOTION TO CLOSE**

REPORT OF: TIMOTHY CROSDALE - GENERAL MANAGER  
DIRECTORATE: 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 **Exemption from Tender - IT Licencing**.
  - 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: 24/141450  
EDRMS NO: PSC2024-01548

**MOTION TO CLOSE**

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

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**RECOMMENDATION:**

- 1) That pursuant to section 10A(2) (a) and (d)i 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 **Proposed Acquisition of Various Partial Properties in Brandy Hill for the purpose of Footpath Construction.**
  - 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. 4

FILE NO: 24/149793  
EDRMS NO: PSC2023-01747

**MOTION TO CLOSE**

REPORT OF: TIMOTHY CROSDALE - GENERAL MANAGER  
DIRECTORATE: 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 4 on the Ordinary agenda namely **Acquisition of Part 1194 Newline Road, East Seaham for Road Widening Purposes**.
  - 2) That the reasons for closing the meeting to the public to consider this item is that the discussion will include information containing:
    - information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business.
  - 3) That the report remain confidential and the minute be released in accordance with Council's resolution.
-

# COUNCIL REPORTS

**ITEM NO. 1****FILE NO: 24/125055  
EDRMS NO: 16-2023-571-1****DEVELOPMENT APPLICATION 16-2023-571-1 FOR DWELLINGS AT 62A  
GOVERNMENT ROAD, NELSON BAY**

REPORT OF: EVERT GROBBELAAR - DEVELOPMENT AND COMPLIANCE  
SECTION MANAGER  
DIRECTORATE: COMMUNITY FUTURES

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Approve Development Application DA No. 16-2023-571-1 for semi-detached dwellings and associated swimming pools, fencing, retaining walls, and 1 into 2 lot Torrens title subdivision at 62A Government Road, Nelson Bay, Lot 76 DP 27081, subject to the conditions contained in **(ATTACHMENT 1)**.
- 2) Support the Clause 4.6 variation to the building height for the reasons outlined within this report.

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**BACKGROUND**

The purpose of this report is to present Development Application (DA) 16-2023-571-1 for semi-detached dwellings and associated swimming pools, fencing, retaining walls, and 1 into 2 lot Torrens title subdivision to Council for determination.

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

Subject Land:	62A Government Road, Nelson Bay (Lot: 76 DP: 27081)
Total Area:	929.34m <sup>2</sup>
Zoning:	R2 Low Density Residential
Submissions:	0
Key Issues:	The key issues identified throughout the assessment of the development relate to building height. The extent of the building height variation is 0.94m (or 10.44%). The slope of the site across the building envelope is 14.46 degrees.

The DA has been reported to Council in accordance with the Council's 'Council Related Planning Matters Policy' as the DA includes a request to vary a development standard by greater than 10%. The subject development standard is Clause 4.3 – Height of Buildings and the extent of the variation is 10.44% (0.94m).

A locality plan is provided at **(ATTACHMENT 2)**.



### Proposal

The DA seeks consent for the construction of 2 x 3 storey semi-detached dwellings, each with a pool, a shared driveway, associated earthworks, retaining walls, and a 1 into 2 lot Torrens title subdivision. Each of the proposed lots will contain a single semi-detached dwelling. Due to the topography of the site, the dwellings will appear as a single storey development from the streetscape and as a 3 storey development from the rear. No vegetation removal or tree clearing is proposed as part of the development.

### Site Description and History

The subject site is legally identified as Lot 76 DP 27081, and is generally known as 62A Government Road, Nelson Bay. The site has a significant fall from the south to the north with a slope of 12.53 degrees across the whole site, and is currently vacant of any structures or significant vegetation. The site is largely surrounded by low density residential development, and is a short distance from the Nelson Bay town centre.

### Key Issues

The key issues identified throughout the assessment of the DA relate to the proposed exceedance of the building height. A detailed assessment is contained within the Planner's Assessment Report (**ATTACHMENT 3**).

### Building Height

The proposed development exceeds the maximum allowable building height for the site prescribed under Clause 4.3 of the Port Stephens Local Environmental Plan 2013 (PSLEP). The development proposes a maximum building height of 9.94m, which exceeds the PSLEP 9m building height limit by 0.94m, representing a 10.44% variation to the development standard.

A request to vary the building height development standard has been submitted by the applicant in accordance with the provisions of Clause 4.6 of the PSLEP. The proposed height variation is considered acceptable in the following grounds:

- The height non-compliance does not result in the building being out of scale in the context of surrounding development and is not likely to have an adverse impact on local amenity, and therefore is consistent with the objectives of the development standard (Cl.4.6(3)(a)).
- The proposed development exceeds the maximum height of building limit due to the steep topography of the land. The development steps down with the topography of the site, and includes a split-level design and earthworks to reduce the scale and overall height of the development, which is consistent with other developments in the locality and is consistent with the objective of the zone (Cl.4.6(3)(a)).

- The proposed development is not expected to have an adverse impact on view obstruction or view corridors, solar access, privacy, breezes, or visual dominance despite the proposed height variation (Cl.4.6(3)(b)).
- The proposed height variation is considered to be negligible in terms of bulk, scale, and visual dominance (Cl.4.6(3)(b)).
- The height variation is restricted to a small section of the roof at the rear of the development, and will not result in adverse amenity, privacy, or overshadowing impacts to neighbouring properties (Cl.4.6(3)(b)).

The proposed development is considered to satisfy the objectives of Clause 4.6, noting the objectives of the development standard are achieved notwithstanding the non-compliance. The proposed dwellings are considered to be appropriate in the context of the site.

Overall, it is considered that the applicant's Clause 4.6 variation request adequately demonstrates that there are sufficient environmental planning grounds to justify varying the height of buildings standard, and the objectives of the zone and height standard are still achieved. A detailed assessment against Clause 4.6 is contained within Planner's Assessment Report (**ATTACHMENT 3**).

### Conclusion

The proposed development is considered to be consistent with the aims and objectives of the relevant planning instruments and Council policies applicable to the subject site. There are no expected adverse impacts to the natural or built environment as detailed in the Planner's Assessment Report (**ATTACHMENT 3**).

The proposed development is consistent with Council's Local Housing Strategy in that it provides additional infill housing within the Tomaree area and increases diversity of housing choice. The provision of infill housing is also consistent with the Greater Newcastle Metropolitan Plan (GNMP), which has a target for 60% of new dwellings with Greater Newcastle to be infill housing by 2036.

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

### **COMMUNITY STRATEGIC PLAN**

<b>Strategic Direction</b>	<b>Delivery Program 2022-2026</b>
Thriving and safe place to live	Program to develop and implement Council's key planning documents

**FINANCIAL/RESOURCE IMPLICATIONS**

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

**LEGAL, POLICY AND RISK IMPLICATIONS**

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

The variations to the Port Stephens LEP 2013 and the Port Stephens Development Control Plan (DCP 2014) are considered acceptable and consistent with the relevant control objectives. A detailed assessment against the environmental planning instruments and policies is contained within the Planner's Assessment Report contained at **(ATTACHMENT 3)**.

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

## **SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

### Social and Economic Impacts

The proposed development represents a modern infill residential development that will provide additional housing to service the needs of the community. The construction process will provide short-term 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 will reinforce the residential nature of the locality and is characteristic of other developments in both the local and wider locality. The dwellings include contemporary design measures to prevent adverse impacts on adjoining properties. The proposal addresses the street and provides logical connections to the road network and pedestrian facilities in the locality. There are no anticipated adverse impacts on the built environment as a result of the proposed development.

### Impacts on the Natural Environment

The proposed development does not adversely impact the natural environment of the area. There is no vegetation removal required and water management and water quality requirements have been satisfied. Conditions have been recommended that require the installation and maintenance of erosion and sedimentation controls and tree protection measures for the duration of construction works. The proposal adopts a landscaping scheme that utilises native species and retained vegetation.

## **CONSULTATION**

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

### Internal

Consultation was undertaken with Council's Development Engineering, Natural Systems, and Development Contributions sections. The referral comments from these Officers have been considered as part of the Planner's Assessment Report **(ATTACHMENT 3)**. The internal referral officers have supported the DA, subject to the recommended conditions of consent within **(ATTACHMENT 1)**.

### External

The DA was referred to Ausgrid for comment, who raised no objection to the development subject to conditions **(ATTACHMENT 1)**.

The DA was notified in accordance with the requirements of the Port Stephens Council Community Engagement Strategy. The application was exhibited for a period of 14 days from 31 October 2023 to 14 November 2023. No submissions were received during the exhibition period.

### **OPTIONS**

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

### **ATTACHMENTS**

- 1) Recommended Conditions of Consent.
- 2) Locality Plan.
- 3) Planner's Assessment Report.
- 4) Clause 4.6 Assessment Report.

### **COUNCILLORS' ROOM/DASHBOARD**

All information relating to this development application (DA) is available on the Councillors' Dashboard.

### **TABLED DOCUMENTS**

Nil.

**Terms and Reasons for Conditions**

Under section 88(1)(c) of the EP&A Regulation, the consent authority must provide the terms of all conditions and reasons for imposing the conditions other than the conditions prescribed under section 4.17(11) of the EP&A Act. The terms of the conditions and reasons are set out below.

**General Conditions**

1

Approved plans and supporting documentation

Development must be carried out in accordance with the following approved plans and documents, except where the conditions of this consent expressly require otherwise.

Approved plans				
Plan number	Revision number	Plan title	Drawn by	Date of plan
YHD-643, DA.1 – DA.6, DA.9 – DA.17	C2	Architectural Plans	Your Home Design	08.05.2024
L01 – L06	A	Landscape Plan	Green Space Planning Co.	28.02.2024
Sheet 1 of 1		Proposed Plan of Subdivision of Lot 76 DP27081	Duggan Mather Surveyors	21.02.2024
01 & 02 of 11	2	Stormwater Plan	Stride Consulting Engineers	02.05.2024
09-11 of 11	2	Retaining Wall plan & detail	Stride Consulting Engineers	02.05.2024

In the event of any inconsistency with the approved plans and a condition of this consent, the condition prevails.

Condition reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development

2

Protection of existing vegetation and natural landscape features

No vegetation or natural landscape features other than that authorized 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.

The trees identified on the stamped ‘Retaining Wall Plan’, prepared by Stride Consulting Engineers, dated 02.05.2024 must be retained.

Condition reason: To ensure that vegetation is protected during works

3

Building Code of Australia

	<p>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.</p> <p><b>Condition reason:</b> To ensure that all building works are completed in accordance with the Building Code of Australia.</p>
4	<p><b>Sign on Building</b></p> <p>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.</p> <p>The sign must be maintained while the work is being carried out and is to be removed when the work is completed.</p> <p><b>Condition reason:</b> To require signage that details the relevant contacts of a development during construction</p>
5	<p><b>Tree removal and protection of existing vegetation</b></p> <p>No vegetation or natural landscape features other than that authorised for removal by this consent is to be disturbed, damaged or removed. No additional works or access/parking routes transecting the protected vegetation must be undertaken without Council Approval.</p> <p><b>Condition reason:</b> To ensure that vegetation is protected during works.</p>
6	<p><b>Implementation of BASIX commitments</b></p> <p>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.</p> <p><b>Condition reason:</b> To ensure that the development is constructed in accordance with the commitments listed in the BASIX certificate(s) approved by this consent.</p>
7	<p><b>Temporary Site Structures</b></p> <p>The installation of temporary site structures must comply with the following requirements:</p> <ul style="list-style-type: none"> <li>a) Temporary site structures are to be installed in accordance with the Work Health Safety Act 2011, Work Health and Safety Regulation 2017, relevant Australian Standard, requirements of SafeWork NSW, and any other applicable legislation;</li> <li>b) No third party advertising is permitted to be displayed on temporary site structures at any time;</li> <li>c) Temporary site structures must be maintained in a clean, tidy, and safe conditions at all times;</li> </ul>

<p>d) Removal of all graffiti from temporary site structures must occur within 2 business days of its application;</p> <p>e) The person having the benefit of this consent must submit a 'Works on Public Infrastructure (Roads, Drainage, Driveways)' application to Council and obtain approval prior to the installation of any temporary site structures over Council footways or road reserves</p> <p>Temporary site structures must be removed as soon as practicable after they are no longer required for public safety and/or work purposes.</p> <p><b>Condition reason:</b> To enable a temporary site structure in accordance with the <i>Work Health and Safety Act 2011</i>; <i>Work Health and Safety Regulation 2017</i>; and any other applicable legislation.</p>
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### Building Work

#### Before issue of a construction certificate

A Construction Certificate is required prior to the commencement of any building work approved by this consent

8	<p><b>Erosion and sediment controls plan</b></p> <p>Before the issue of a Construction Certificate, an erosion and sediment control plan must be prepared by a suitably qualified person in accordance with the following documents and provided to the certifier:</p> <ol style="list-style-type: none"> <li>1. Council's relevant development control plan,</li> <li>2. the guidelines set out in 'Managing Urban Stormwater: Soils and Construction' prepared by Landcom (the Blue Book) (as amended from time to time), and</li> <li>3. 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) (as amended from time to time).</li> </ol> <p><b>Condition reason:</b> To ensure no substance other than rainwater enters the stormwater system and waterways.</p>
9	<p><b>Waste Management Plan requirements</b></p> <p>Before the issue of a Construction Certificate, a waste management plan for the development must be prepared and provided to the certifier. The plan must be prepared:</p> <ol style="list-style-type: none"> <li>a. in accordance with             <ol style="list-style-type: none"> <li>i. the Environment Protection Authority's Waste Classification Guidelines as in force from time to time; and</li> <li>ii. a development control plan that provides for waste management that applies to the land on which the work or the clearing of vegetation is carried out; and</li> </ol> </li> <li>b. include the following information—</li> </ol>



	<ul style="list-style-type: none"><li>i. the contact details of the person removing waste;</li><li>ii. an estimate of the type and quantity of waste;</li><li>iii. whether waste is expected to be reused, recycled or sent to landfill;</li><li>iv. the address of the disposal location for waste.</li></ul> <p>A copy of the waste management plan must be kept on-site at all times while work approved under the development consent is being carried out.</p> <p><b>Condition reason:</b> To ensure resource recovery is promoted and local amenity protected during construction.</p>																																										
10	<p><b>Section 7.11 development contributions</b></p> <p>A monetary contribution is to be paid to Council for the provision of one additional lot/dwelling, pursuant to Section 7.11 of the <i>Environmental Planning &amp; Assessment Act 1979</i> and the Port Stephens Local Infrastructure Contributions Plan 2020 towards the provision of the following public facilities:</p> <table><tr><th>Facility</th><th>Per Lot/Dwelling</th><th>Total \$</th></tr><tr><td>Civic Administration – Plan Management</td><td>\$655</td><td>\$655</td></tr><tr><td>Civic Administration – Works Depot</td><td>\$1,266</td><td>\$1,266</td></tr><tr><td>Town Centre Upgrades</td><td>\$3,412</td><td>\$3,412</td></tr><tr><td>Public Open Space, parks and reserves</td><td>\$2,085</td><td>\$2,085</td></tr><tr><td>Sports and Leisure facilities</td><td>\$1,961</td><td>\$1,961</td></tr><tr><td>Cultural and Community Facilities</td><td>\$1,332</td><td>\$1,332</td></tr><tr><td>Road Works</td><td>\$3,570</td><td>\$3,570</td></tr><tr><td>Shared Paths</td><td>\$3,286</td><td>\$3,286</td></tr><tr><td>Bus Facilities</td><td>\$9</td><td>\$9</td></tr><tr><td>Fire and Emergency Services</td><td>\$245</td><td>\$245</td></tr><tr><td>Flood &amp; Drainage</td><td>\$1,877</td><td>\$1,877</td></tr><tr><td>Kings Hill Urban Release Area</td><td>\$302</td><td>\$302</td></tr><tr><td><b>Total</b></td><td></td><td><b>\$20,000</b></td></tr></table> <p>Payment of the above must apply to the Development Application as follows:</p> <ul style="list-style-type: none"><li>a) Building work or subdivision – prior to the issue of the Construction Certificate or Subdivision Certificate, whichever comes first.</li></ul> <p>The total amount payable may be adjusted at the time the payment is made, in accordance with the provisions of the Port Stephens Local Infrastructure Contributions Plan 2020. A copy of the Plan is available for inspection on Council’s website at <a href="https://www.portstephens.nsw.gov.au/">https://www.portstephens.nsw.gov.au/</a>, alternatively contact Council on 02 9228 055.</p> <p><b>Condition reason:</b> To ensure that a monetary contribution as specified is paid to Council in accordance with Section 7.11 of the EP&amp;A Act 1979, and the Port Stephens Council Local Infrastructure Contributions Plan 2020.</p>	Facility	Per Lot/Dwelling	Total \$	Civic Administration – Plan Management	\$655	\$655	Civic Administration – Works Depot	\$1,266	\$1,266	Town Centre Upgrades	\$3,412	\$3,412	Public Open Space, parks and reserves	\$2,085	\$2,085	Sports and Leisure facilities	\$1,961	\$1,961	Cultural and Community Facilities	\$1,332	\$1,332	Road Works	\$3,570	\$3,570	Shared Paths	\$3,286	\$3,286	Bus Facilities	\$9	\$9	Fire and Emergency Services	\$245	\$245	Flood & Drainage	\$1,877	\$1,877	Kings Hill Urban Release Area	\$302	\$302	<b>Total</b>		<b>\$20,000</b>
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11	<p><b>Long Service Levy</b></p> <p>Before the issue of a Construction Certificate, the long service levy of \$4,231.00, as calculated at the date of this consent, must be paid to the Long Service Corporation under the <i>Building and Construction industry Long Service Payments Act 1986</i>, section 34, and evidence of the payment is to be provided to the principal certifier</p> <p><b>Condition reason:</b> To ensure the Long Service Levy is paid.</p>
12	<p><b>Civil engineering plans</b></p> <p>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.</p> <p>Details demonstrating compliance must be provided to the Certifying Authority.</p> <p>Note: Under the <i>Roads Act 1993</i>, only the Roads Authority can approve commencement of works within an existing road reserve.</p> <p><b>Condition reason:</b> To ensure that civil engineering plans have been prepared by a qualified engineers prior to the issue of the Construction Certificate.</p>
13	<p><b>Roads Act Approval</b></p> <p>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 <i>Roads Act 1993</i>.</p> <p><b>Condition reason:</b> To ensure that works within the road reserve are approved by a Section 138B Approval of the <i>Roads Act 1993</i>.</p>
14	<p><b>Stormwater/Drainage Plans</b></p> <p>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).</p> <p>Details demonstrating compliance must be provided to the Certifying Authority.</p> <p>Note: Under the <i>Roads Act 1993</i>, only the Roads Authority can approve commencement of works within an existing road reserve.</p> <p><b>Condition reason:</b> To ensure that the development is carried out in accordance with the Port Stephens Development Control Plan 2014.</p>

15	<p><b>Construction Site Management Plan</b></p> <p>Before the issue of a Construction Certificate, a construction site management plan must be prepared, and provided to the principal certifier. The plan must include the following matters:</p> <ul style="list-style-type: none"> <li>a. The location and materials for protective fencing and hoardings on the perimeter of the site;</li> <li>b. Provisions for public safety;</li> <li>c. Pedestrian and vehicular site access points and construction activity zones;</li> <li>d. Details of construction traffic management including: <ul style="list-style-type: none"> <li>i. Proposed truck movements to and from the site;</li> <li>ii. Estimated frequency of truck movements; and</li> <li>iii. Measures to ensure pedestrian safety near the site;</li> </ul> </li> <li>e. Details of bulk earthworks to be carried out;</li> <li>f. The location of site storage areas and sheds;</li> <li>g. The equipment used to carry out works;</li> <li>h. The location of a garbage container with a tight-fitting lid;</li> <li>i. Dust, noise and vibration control measures;</li> <li>j. The location of temporary toilets;</li> <li>k. The protective measures for the preservation of trees on-site and in adjoining public areas including measures in accordance with: <ul style="list-style-type: none"> <li>i. AS 4970 – Protection of trees on development sites;</li> <li>ii. An applicable Development Control Plan;</li> <li>iii. An arborist's report approved as part of this consent</li> </ul> </li> </ul> <p>A copy of the construction site management plan must be kept on site at all times while work is being carried out.</p> <p><b>Condition reason:</b> To require details of measures to be undertaken that will protect the public, and the surrounding environment, during site works and construction.</p>
16	<p><b>Retaining Walls</b></p> <p>All retaining walls within 1m of a boundary and exceeding 600mm in height must be designed and certified by a suitably qualified Structural Engineer. All retaining walls, including associated footings, are to be wholly within the subject site.</p> <p>Details demonstrating compliance must be provided to the Certifying Authority.</p> <p><b>Condition reason:</b> To ensure that retaining walls in proximity to the boundary and over a height are designed and certified by a suitably qualified engineer.</p>
17	<p><b>Driveway Gradients and Design</b></p> <p>For all driveways that relate to development for the purposes of a dwelling house, the driveway gradient and design must comply with AS2890.1 'Off Street Car Parking' and:</p> <ul style="list-style-type: none"> <li>a) The driveway must be at least 1m from any street tree, stormwater pit or service infrastructure; and</li> <li>b) A Works on Public Infrastructure (Driveway) approval must be obtained prior to the commencement of any works.</li> </ul>

	Details demonstrating compliance must be provided to the Certifying Authority.
	<b>Condition reason:</b> To ensure that all driveways that relate to a development for the purposes of a dwelling house comply with AS2890.1 'Off Street Car Parking' and the relevant Council specification
18	<b>Privacy – Screening</b>
	Permanently fixed 1.8m high privacy screen(s) must be provided, as shown on the stamped Elevation Plan, plan number DA.12, revision C2, provided by Your Home Designs, and dated 08.05.2024. These privacy screens to be as follows: <ul style="list-style-type: none"> <li>a) The screens must not have openings more than 30mm wide; and</li> <li>b) The total area of all openings must be less than 30% of the surface area of the screen when viewed in elevation.</li> </ul> Details demonstrating compliance must be provided to the Certifying Authority.
	<b>Condition reason:</b> To mitigate privacy issues to adjoining properties.

#### Before building work commences

19	<b>Erosion and sediment controls in place</b>
	Before any site work commences, the certifier must be satisfied the erosion and sediment controls in the erosion and sediment control plan are in place. These controls must remain in place until any bare earth has been re-stabilized in accordance with 'Managing Urban Stormwater: Soils and Construction' prepared by Landcom (the Blue Book) (as amended from time to time).
	<b>Condition reason:</b> To ensure sediment laden runoff and site debris do not impact local stormwater systems and waterways.
20	<b>Tree protection measures</b>
	Protection of trees to be retained must be in accordance with AS490 'Protection of Trees on Development Sites' and the following: <ul style="list-style-type: none"> <li>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, evacuation (including any driveway installation), construction, maintenance and/or establishment works applicable to this consent, without Council agreement and/or consent.</li> <li>b) No works may be conducted within 3m of the trees identified on the stamped 'Retaining Wall Plan', prepared by Stride Consulting Engineers, dated 02.05.2024.</li> </ul> Before the commencement of any site or building work, the principle certifier must ensure the measures for tree protection detailed in the construction site management plan are in place.
	<b>Condition reason:</b> To protect and retain trees during works.

21	<p><b>All Weather Access</b></p> <p>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.</p> <p>No materials, waste or the like are to be stored on the all-weather access at any time.</p> <p><b>Condition reason:</b> To ensure that adequate vehicular access is provided to and from the site, prior to the commencement of works.</p>
22	<p><b>Construction Certificate Required</b></p> <p>In accordance with the provisions of Section 6.7 of the Environmental Planning &amp; Assessment Act 1979 (EP&amp;A Act 1979), construction or subdivision works approved by this consent must not commence until the following has been satisfied:</p> <ul style="list-style-type: none"> <li>a) A Construction Certificate has been issued by a Consent Authority;</li> <li>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&amp;A Act 1979; and</li> <li>c) The PCA is notified in writing of the name and contractor license number of the owner/building intending to carry out the approved work.</li> </ul> <p><b>Condition reason:</b> To ensure that a Construction Certificate has been issued for the building works prior to the commencement of work.</p>
23	<p><b>Notice Commencement of Work</b></p> <p>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:</p> <ul style="list-style-type: none"> <li>a) The name and address of the person;</li> <li>b) A description of the work to be carried out;</li> <li>c) The address of the land on which the work is to be carried out;</li> <li>d) The Registered numbers and date of issue of the development consent and construction certificate;</li> <li>e) A statement signed by or on behalf of the principal certifier that all conditions of the consent that must be satisfied before work commences have been satisfied; and</li> <li>f) The date on which the work is intended to commence.</li> </ul> <p>The notice must be lodged on the NSW Planning Portal.</p> <p><b>Condition reason:</b> To ensure that the Principal Certifier has given notice to the Consent Authority and Council at least two days prior to subdivision and/or building works commencing in accordance with S6.6(2)(a) of the Environmental Planning and Assessment Act</p>

	1979 and Section 59 of the Environmental Planning and Assessment (Development Certificate and Fire Safety) Regulation 2021.
24	<p><b>Notice of Principal Certifying Authority Appointment</b></p> <p>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:</p> <ul style="list-style-type: none"> <li>a) A description of the work to be carried out;</li> <li>b) The address of the land on which the work is to be carried out;</li> <li>c) The Registered number and date of issue of the relevant development consent;</li> <li>d) The name and address of the Principal Certifier and the person who appointed the principal certifier;</li> <li>e) If the principal certifier is a registered certifier <ul style="list-style-type: none"> <li>i) The certifier's registration number, and</li> <li>ii) A statement signed by the registered certifier to the effect that the certifier consents to be appointed as principal certifier, and</li> <li>iii) A telephone number on which the certifier may be contacted for business purposes.</li> </ul> </li> </ul> <p>The notice must be lodged on the NSW Planning Portal.</p> <p><b>Condition reason:</b> To ensure that the Principal Certifier has given notice that they will be the Principal Certifier to the Consent Authority and Council at least two days prior to subdivision and/or building works commencing in accordance with S6.6(2)(a) of the Environmental Planning and Assessment Act 1979</p>
25	<p><b>Damage report – Public Infrastructure</b></p> <p>The applicant is required to notify Council in writing of any existing damage to public infrastructure (including landscaping) within the vicinity of the development, the absence of such notification signifies that no damage exists</p> <p><b>Condition reason:</b> Small-scale development - Where the development is in close proximity to Council infrastructure.</p>
26	<p><b>Home Building Act requirements</b></p> <p>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 related (not being the council) has given the council written notice of the following information –</p> <ul style="list-style-type: none"> <li>a) In the case of work for which a principal contractor is required to be appointed – <ul style="list-style-type: none"> <li>i) The name and license number of the principal contractor, and</li> <li>ii) The name of the insurer by which the work is insured under Part 6 of that Act,</li> </ul> </li> <li>b) In the case of work to be done by an owner-builder –</li> </ul>

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

	<p>i) The name of the owner-builder, and</p> <p>ii) If the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.</p> <p>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 certifier) has given the Council written notice of the updated information.</p> <p><b>Condition reason:</b> To ensure compliance with the Home Building Act 1989 and to verify that the certifying principal authority for the development has given appropriate written notice to council.</p>
27	<p><b>Compliance with Home Building Act (if applicable)</b></p> <p>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, and that such a contract of insurance is in force before any building work authorised to be carried out by this consent commences.</p> <p><b>Condition reason:</b> To ensure that a contract of insurance is in force in accordance with Part 6 of that Act before any building work authorised to be carried out by the consent commences.</p>
28	<p><b>Rubbish Generated from the Development</b></p> <p>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.</p> <p>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.</p> <p><b>Condition reason:</b> To ensure that construction waste is appropriately stockpiled and removed from the site.</p>
29	<p><b>Site is to be secured</b></p> <p>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.</p> <p><b>Condition reason:</b> To restrict access to the site by the public and ensure that the site is adequately secured prior to the commencement of works.</p>
30	<p><b>Weed management</b></p> <p>Weed removal and suppression must be undertaken using approved bush regeneration techniques under the supervision of a suitably qualified and approved bush regenerator and in accordance with the requirements of the NSW Biosecurity Act 2015, associated Regulations and the NSW Weed Control Handbook.</p>

	The site is to be inspected by a representative of Council's Invasive Species team one week prior to works commencing.
	<b>Condition reason:</b> To ensure that weeds are appropriately contained and removed from the site where a Flora and Fauna/Vegetation/Biodiversity Management Plan has not been provided.

#### During building work

31	<b>Discovery of relics and Aboriginal objects</b>
	While site works are being carried out, if a person reasonably suspects a relic or Aboriginal object is discovered: <ul style="list-style-type: none"> <li>a. The work in the area of the discovery must cease immediately;</li> <li>b. The following must be notified – <ul style="list-style-type: none"> <li>i. For a relic – the Heritage Council; or</li> <li>ii. For an Aboriginal object – the person who is the authority for the protection of Aboriginal objects and Aboriginal places in New South Wales under the National Parks and Wildlife Act 1974, Section 85.</li> </ul> </li> </ul> <p>Site works may recommence at a time confirmed in writing by:</p> <ul style="list-style-type: none"> <li>a. For a relic – the Heritage Council; or</li> <li>b. For an Aboriginal object – the person who is the authority for the protection of Aboriginal objects and Aboriginal places in New South Wales under the National Parks and Wildlife Act 1974, section 85</li> </ul>
	<b>Condition reason:</b> To ensure the protection of objects of potential significance during works.
32	<b>Responsibility for changes to public infrastructure</b>
	While site work is being carried out, any costs incurred as a result of the approved removal, relocation or reconstruction of infrastructure (including ramps, footpaths, kerb and gutter, light poles, kerb inlet pits, service provider pits, street trees or any other infrastructure in the street footpath area) must be paid as directed by the consent authority.
	<b>Condition reason:</b> To ensure payment of approved changes to public infrastructure
33	<b>Tree protection during work</b>
	While site work is being carried out, all required tree protection measures must be maintained in good condition in accordance with: <ul style="list-style-type: none"> <li>a) The construction site management plan approved under this consent,</li> <li>b) the relevant requirements of AS 4970 Protection of trees on development sites;</li> <li>c) Section B1 of Council's relevant development control plan (in force as at the date of determination of this consent); and</li> <li>d) Any arborist's report approved under this consent.</li> </ul>



	<p>This includes maintaining adequate soil grades and ensuring all machinery, builders refuse, spoil and materials remain outside tree protection zones</p> <p><b>Condition reason:</b> To protect trees during the carrying out of site work</p>
34	<p><b>Waste management</b></p> <p>While site work is being carried out:</p> <ol style="list-style-type: none"> <li>1. all waste management must be undertaken in accordance with the waste management plan; and</li> <li>2. upon disposal of waste, records of the disposal must be compiled and provided to the certifying authority, detailing the following: <ol style="list-style-type: none"> <li>a. The contact details of the person(s) who removed the waste;</li> <li>b. The waste carrier vehicle registration;</li> <li>c. The date and time of waste collection;</li> <li>d. A description of the waste (type of waste and estimated quantity) and whether the waste is to be reused, recycled or go to landfill;</li> <li>e. The address of the disposal location(s) where the waste was taken;</li> <li>f. The corresponding tip docket/receipt from the site(s) to which the waste is transferred, noting date and time of delivery, description (type and quantity) of waste.</li> </ol> </li> </ol> <p>If waste has been removed from the site under an EPA Resource Recovery Order or Exemption, records in relation to that Order or Exemption must be maintained and provided to the principal certifier and Council.</p> <p><b>Condition reason:</b> To require records to be provided, during site work, documenting the lawful disposal of waste</p>
35	<p><b>Hours of work</b></p> <p>Site work must only be carried out between the following times –</p> <p>7:00am to 5:00pm on Monday to Saturday</p> <p>Site work is not to be carried out outside of these times except where there is an emergency, or for urgent work directed by a police officer or a public authority.</p> <p><b>Condition reason:</b> To protect the amenity of the surrounding area</p>
36	<p><b>Toilet facilities</b></p> <p>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.</p> <p>The temporary toilet is to be either connected to the sewerage system or as approved septic tank or otherwise may be a chemical toilet supplied by a licensed contractor.</p> <p><b>Condition reason:</b> To ensure adequate amenity facilities are provided to the site during construction.</p>

37	<p><b>Unexpected Finds Contingency (General)</b></p> <p>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.</p> <p>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.</p> <p>Where remediation work is required, the applicant will be required to obtain consent for the remediation works.</p> <p><b>Condition reason:</b> To ensure that works relating to a development are to cease if any suspect materials are identified and remediated in accordance with Council requirements</p>
38	<p><b>Excavations and Backfilling</b></p> <p>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.</p> <p>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:</p> <ul style="list-style-type: none"> <li>a) preserve and protect the building from damage; and</li> <li>b) if necessary, underpin and support the building in an approved manner; and</li> <li>c) give at least seven days' notice to the adjoining owners before excavating, or of the intention to excavate.</li> </ul> <p>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.</p> <p>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.</p> <p><b>Condition reason:</b> To ensure that any Acid Sulfate Soils encountered during works are suitably managed</p>
39	<p><b>Compliance with the Building Code of Australia</b></p> <p>Building work must be carried out in accordance with the requirements of the Building Code of Australia.</p>

	<b>Condition reason:</b> To ensure that the development is undertaken in accordance with the Building Code of Australia.
40	<b>Offensive noise, dust, odour, and vibration</b>  No work must not give rise to offensive noise, odour, or vibration as defined in the Protection of the Environment Operations Act 1997 when measured at the nearest property boundary.  <b>Condition reason:</b> To ensure that developments do not give rise to offensive noise, dust, odour, or vibration.
41	<b>Construction Management Plan</b>  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.  <b>Condition reason:</b> Where a CMP is deemed required.
42	<b>Building Height</b>  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.  <b>Condition reason:</b> To ensure that the maximum building height of the structures are compliant with the consent and in accordance with the approved plans.
43	<b>Placement of Fill</b>  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.  <b>Condition reason:</b> To ensure that fill required for a development is managed in accordance with Council requirements.
44	<b>Swimming Pools and Spas</b>  The swimming pool/spa must comply with: <ul style="list-style-type: none"> <li>a) The Swimming Pools Act 1992;</li> <li>b) The Swimming Pools Regulation 2018;</li> <li>c) AS 1926.1 'Swimming Pool Safety' Part 1: Safety barriers for swimming pools;</li> <li>d) AS 3500.2 'Plumbing and Drainage' – Sanitary plumbing and drainage';</li> <li>e) AS 1926.3 'Water Recirculation Systems'; and</li> <li>f) The Building Code of Australia</li> </ul>

	<p><b>Condition reason:</b> To ensure that a development including a swimming pool is compliant with the relevant legislation.</p>
45	<p><b>Surface Water Collection from Swimming Pools and Spas</b></p> <p>Swimming pool surrounds and/or paving must be constructed to as to ensure water from the pool overflow or surge does not discharge onto neighbouring properties. Details demonstrating compliance must be provided to the Certifying Authority.</p> <p><b>Condition reason:</b> To ensure that the development for a swimming pool and/or spa satisfied Council requirements.</p>
46	<p><b>Swimming Pool Fence Design</b></p> <p>The swimming pool or spa must be fenced so that the pool is effectively isolated from the dwelling and adjoining lands. The swimming pool fence &amp; gate must:</p> <ul style="list-style-type: none"> <li>a) Strictly adhere to the design and location approved with the development consent, and any conditions of the development consent.</li> <li>b) Strictly comply with AS1926 'Swimming Pool Safety' – Part 1: Safety barriers for swimming pools.</li> <li>c) Have a minimum effective height of 1.2m.</li> <li>d) Be self-closing and self-latching. All gates must open outwards from the swimming pool enclosure.</li> <li>e) The filtration equipment including any cover, housing or pipe work, must not be located within a distance of 900mm from the outside face of the swimming pool safety fencing enclosure, nor within 300mm from the inside of the swimming pool safety fencing enclosure (where footholds are possible).</li> <li>f) Boundary fencing forms part of the swimming pool safety fencing must maintain a minimum effective height of 1.8m and a 0.9m non-climbable zone (measured from the top of the inside of the barrier).</li> </ul> <p>The swimming pool safety fencing must be installed prior to the swimming pool being filled with water. The Principal Certifying Authority, or an accredited certifier must inspect the swimming pool safety fencing.</p> <p><b>Condition reason:</b> To ensure that the development for a swimming pool and/or spa satisfies the Australian Standard and Council requirements.</p>
47	<p><b>Waste Water from Swimming Pools and Spas</b></p> <p>All swimming pool waste water must be disposed of as follows:</p> <ul style="list-style-type: none"> <li>a) Where a Hunter Water sewer is available – waste water must be drained or pumped to the sewer</li> <li>b) Where a Hunter Water sewer is not available (such as rural areas) – waste water must be disposed of as follows:</li> </ul> <p>Chlorinated pool waste water:</p> <ul style="list-style-type: none"> <li>i) Discharging to a rubble pit measured 600mm wide x 600mm deep x 3m long, located not less than 3m from any structure or property boundary; or</li> </ul>

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	<p>ii) Discharging to a tail out drain to disperse the water over a large grassed area or paddock, provided that the land fall does not direct water to buildings over the subject site or adjoining properties, or create a nuisance to an adjoining property owner.</p> <p>Saltwater pool waste water:</p> <p>iii) Discharging as per point ii) above.</p> <p>All pool types:</p> <p>iv) Must not be discharged to a septic tank or an on-site sewage management installation or disposal area;</p> <p>v) Must not be discharged into a reserve, watercourse, easement, or storm water drainage system</p> <p><b>Condition reason:</b> To ensure that the development for a swimming pool and/or spa satisfies Council requirements.</p>
48	<p><b>Cut and fill</b></p> <p>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:</p> <p>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.</p> <p>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.</p> <p><b>Condition reason:</b> To ensure that all imported and/or exported fill is Virgin Excavated Natural Material.</p>
49	<p><b>Location of Stockpiles</b></p> <p>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 waterbodies. All stockpiles of contaminated materials must be suitably covered to prevent dust and odour nuisance.</p> <p><b>Conditions reason:</b> To ensure that stockpiles required for a development are managed in accordance with Council requirements.</p>
50	<p><b>Weed Management</b></p> <p>All machinery that has operated in affected areas shall be cleaned thoroughly prior to leaving the site. A wash down area shall be established, and monitored for priority weeds as defined</p>

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	<p>by the NSW Biosecurity Act 2015. Cleaning must include the removal of all mud and plant matter, followed by washing with high pressure water.</p> <p>An area for storage of contaminated spoil that is separate from clean material shall be provided during construction.</p>
	<p><b>Condition reason:</b> To ensure that all machinery that has operated in affected areas shall be cleaned prior to leaving the site and wash down areas are maintained in accordance with the NSW Biosecurity Act 2015.</p>

**Before issue of an occupation certificate**

51	<p><b>Occupation Certificate Required</b></p> <p>An Occupation Certificate must be obtained prior to any use or occupation of the development.</p> <p>The Principal Certifying Authority must be satisfied that the development has been constructed in accordance with approved plans, specifications and conditions of this consent.</p> <p><b>Condition reason:</b> To ensure that an Occupation Certificate relating to the development is obtained from the Principal Certifying Authority prior to occupation or use</p>
52	<p><b>Repair of infrastructure</b></p> <p>Before the issue of an Occupation Certificate:</p> <ol style="list-style-type: none"> <li>any public infrastructure damaged as a result of the carrying out of work approved under this consent (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub-contractors, concreting vehicles) must be fully repaired to the written satisfaction of Council, and at no cost to Council; or</li> <li>if the works in (a) are not carried out to Council's satisfaction, Council may carry out the works required and the costs of any such works must be paid as directed by Council and in the first instance will be paid using the security deposit required to be paid under this consent.</li> </ol> <p><b>Condition reason:</b> To ensure that approved works within the road reserve have been completed to the satisfaction of the Council.</p>
53	<p><b>Completion of landscape and tree works</b></p> <p>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.</p>

	<b>Condition reason:</b> To ensure that landscape and tree works have been completed in accordance with the approved plans prior to the issue of an Occupation Certificate.
54	<b>Completion of Roads Act Approval works</b>
	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.
	<b>Condition reason:</b> To ensure that approved works within the road reserve have been completed to the satisfaction of the Council.
55	<b>Removal of waste upon completion</b>
	Before the issue of an occupation certificate, the principal certifier must ensure all refuse, spoil and material unsuitable for use on-site is removed from the site and disposed of in accordance with the approved waste management plan. Written evidence of the removal must be supplied to the satisfaction of the principal certifier.
	Before the issue of a partial occupation certificate, the applicant must ensure the temporary storage of any waste is carried out in accordance with the approved waste management plan to the principal certifier's satisfaction.
	<b>Condition reason:</b> To ensure that all waste is appropriately removed from the subject site prior to the issue of an Occupation Certificate.
56	<b>Stormwater/drainage works</b>
	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.
	<b>Condition reason:</b> To ensure stormwater and drainage works have been undertaken in accordance with the approved plans.
57	<b>Water authority certification</b>
	A Section 50 Application under the Hunter Water Act 1991 must be lodged with the Hunter Water Corporation (HWC) and details of the Notice of Compliance from HWC must be provided to the Certifying Authority.
	<b>Condition reason:</b> To ensure compliance with the water supply authority's requirements
58	<b>Smoke Alarms</b>

	<p>In accordance with Part 13 of the Environmental Planning and Assessment (Development Certification and Fire Safety Regulation) 2021. Details demonstrating compliance must be provided to the Certifying Authority.</p> <p><b>Condition reason:</b> To ensure compliance and with the Environmental Planning and Assessment (Development Certification and Fire Safety Regulation) 2021.</p>
59	<p><b>Survey Certificate</b></p> <p>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.</p> <p><b>Condition reason:</b> To ensure that the building is located in accordance with the approved plans and evidence from a Registered Surveyor is provided to the Principal Certifying Authority.</p>
60	<p><b>Swimming Pool Register</b></p> <p>In accordance with Part 3A of the Swimming Pools Act 1992, all swimming pools (including spas) are required to be Registered on the NSW Swimming Pools Register.</p> <p>Prior to the issue of an Occupation Certificate, you are required to provide evidence in the form of the Certificate of Registration to the Principal Certifying Authority.</p> <p><b>Condition reason:</b> To ensure that the development for a swimming pool and/or spa satisfies Council requirements prior to the issue of the Occupation Certificate.</p>
61	<p><b>Warning Notice</b></p> <p>A warning notice complying with the provisions of the Swimming Pools Regulation 2018 must be displayed and maintained in a prominent position in the immediate vicinity of the swimming pool, in accordance with Section 17 of the Swimming Pools Act 1992.</p> <p>The Principal Certifying Authority must ensure that this warning notice is provided and displayed prior to the issue of the Occupation Certificate.</p> <p>Council also recommends that all owners and/or users of swimming pools obtain a copy of the 'Cardiopulmonary Resuscitation Guideline' known as "Guideline 7: Cardiopulmonary Resuscitation" published by the Australian Resuscitation Council.</p> <p><b>Condition reason:</b> To ensure that the development for a swimming pool and/or spa satisfies the Swimming Pools Act 1992, and Council requirements.</p>

#### Occupation and ongoing use

62	<b>Driveways to be maintained</b>
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## ITEM 1 - ATTACHMENT 1 RECOMMENDED CONDITIONS OF CONSENT.

	<p>All access crossings and driveways must be maintained in good order for the life of the development</p> <p><b>Condition reason:</b> To ensure that access and driveways are maintained for the life of the development.</p>
63	<p><b>Maintenance of Landscaping</b></p> <p>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.</p> <p>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.</p> <p><b>Condition reason:</b> To ensure that landscaping is maintained in accordance with the approved landscape plan and the relevant development consent.</p>
64	<p><b>Maintenance of wastewater and stormwater treatment device/s</b></p> <p>During occupation and ongoing use of the development, the applicant must ensure all wastewater and stormwater treatment devices (including drainage systems, sumps and traps, and on-site detention) are regularly maintained to remain effective and in accordance with any positive covenant (if applicable).</p> <p><b>Condition reason:</b> to ensure wastewater and stormwater systems are maintained</p>
65	<p><b>Privacy Screen</b></p> <p>Any privacy screen/s must be permanently maintained in accordance with the approved plans for the life of the development.</p> <p><b>Condition reason:</b> To mitigate and privacy impacts and ensure compliance with the approved plans.</p>
66	<p><b>Prohibitions Within Swimming Pool Enclosure</b></p> <p>The area contained within the swimming pool safety fencing enclosure must not be used for other non-related activities or equipment, such as the installation of children's play equipment or clothes drying lines.</p> <p><b>Condition reason:</b> To ensure that the area contained within a swimming pool safety fence enclosure must not be used for the other non-related activities or equipment.</p>
67	<p><b>Noise Nuisance Prevention</b></p> <p>The motor, filter, pump, and all sound producing equipment associated with or forming part of the swimming pool filtration system must be located so as not to cause a nuisance to adjoining property owners.</p>

	The location of equipment that cause offensive noise may require the equipment to be located within a suitable acoustic enclosure, or the relocation of such equipment.
	<b>Condition reason:</b> To ensure that all sound producing equipment associated with or forming part of a swimming pool filtration system are located appropriately.

### Subdivision Work

#### Before issue of a subdivision works certificate

A Subdivision Works Certificate is required prior to the commencement of any works associated with the subdivision approved by this consent, such as interallotment drainage or access works.

68	<b>Subdivision Works Certificate Required</b>  In accordance with the provisions of Section 6.13 of the Environmental Planning & Assessment Act 1979 (EP&A Act 1979), subdivision works approved by this consent must not commence until the following has been satisfied: <ul style="list-style-type: none"> <li>a) a Subdivision Works Certificate has been issued by a Consent Authority;</li> <li>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&amp;A Act 1979; and</li> <li>c) the PCA is notified in writing of the name and contractor licence number of the owner/building intending to carry out the approved works.</li> </ul> <b>Condition reasons:</b> To confirm that a Subdivision Works Certificate is required.
69	<b>Driveway Gradients and Design</b>  For all driveways that relate to the development for the purposes of a dwelling house, the driveway gradient and design must comply with AS 2890.1 'Off street Car Parking' and: <ul style="list-style-type: none"> <li>a) the driveway must be at least 1m from any street tree, stormwater pit or service infrastructure; and</li> <li>b) a Works on Public Infrastructure (Driveway) approval must be obtained prior to the commencement of any works</li> </ul> Details demonstrating compliance must be provided to the Certifying Authority. <b>Condition reason:</b> To ensure that a driveway constructed for a dwelling house seeks appropriate approval and does not impact infrastructure or trees.
70	<b>Erosion and sediment control plan</b>  Before the issue of a construction certificate, an erosion and sediment control plan must be prepared by a suitably qualified person in accordance with the following documents and provided to the certifier: <ol style="list-style-type: none"> <li>1. Council's relevant development control plan,</li> </ol>

	<p>2. the guidelines set out in 'Managing Urban Stormwater: Soils and Construction' prepared by Landcom (the Blue Book) (as amended from time to time), and</p> <p>3. 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) (as amended from time to time).</p>
	<p><b>Condition reason:</b> To ensure no substance other than rainwater enters the stormwater system and waterways.</p>
71	<p><b>Roads Act Approval</b></p> <p>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 <i>Roads Act 1993</i>.</p> <p><b>Condition reason:</b> To ensure that works within the road reserve are approved by a Section 138B Approval of the <i>Roads Act 1993</i>.</p>
72	<p><b>Stormwater/Drainage Plans</b></p> <p>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).</p> <p>Details demonstrating compliance must be provided to the Certifying Authority.</p> <p>Note: Under the <i>Roads Act 1993</i>, only the Roads Authority can approve commencement of works within an existing road reserve.</p> <p><b>Condition reason:</b> To ensure that the development is carried out in accordance with the Port Stephens Development Control Plan 2014.</p>

#### Before subdivision work commences

73	<p><b>All Weather Access</b></p> <p>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.</p> <p>No materials, waste or the like are to be stored on the all-weather access at any time.</p> <p><b>Condition reason:</b> To ensure that adequate vehicular access is provided to and from the site, prior to the commencement of works.</p>
74	<p><b>Erosion and sediment controls in place</b></p>

	<p>Before any site work commences, the certifier must be satisfied the erosion and sediment controls in the erosion and sediment control plan are in place. These controls must remain in place until any bare earth has been re-stabilized in accordance with 'Managing Urban Stormwater: Soils and Construction' prepared by Landcom (the Blue Book) (as amended from time to time).</p> <p><b>Condition reason:</b> To ensure sediment laden runoff and site debris do not impact local stormwater systems and waterways.</p>
75	<p><b>Tree protection measures</b></p> <p>While site work is being carried out, all required tree protection measures must be maintained in good condition in accordance with:</p> <ul style="list-style-type: none"> <li>a) The construction site management plan approved under this consent,</li> <li>b) the relevant requirements of AS 4970 Protection of trees on development sites;</li> <li>c) Section B1 of Council's relevant development control plan (in force as at the date of determination of this consent); and</li> <li>d) Any arborist's report approved under this consent.</li> </ul> <p>This includes maintaining adequate soil grades and ensuring all machinery, builders refuse, spoil and materials remain outside tree protection zones</p> <p><b>Condition reason:</b> To protect trees during the carrying out of site work</p>

#### During subdivision works

76	<p><b>Offensive Noise, Dust, Odour, and Vibration</b></p> <p>No work must not give rise to offensive noise, odour, or vibration as defined in the Protection of the Environment Operations Act 1997 when measured at the nearest property boundary.</p> <p><b>Condition reason:</b> To ensure that developments do not give rise to offensive noise, dust, odour, or vibration.</p>
77	<p><b>Disposal of Stormwater</b></p> <p>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.</p> <p><b>Condition reason:</b> To ensure that stormwater disposal from a development is managed in accordance with Council requirements.</p>
78	<p><b>Hours of work</b></p> <p>Site work must only be carried out between the following times –</p>

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	<p>7:00am to 5:00pm on Monday to Saturday</p> <p>Site work is not to be carried out outside of these times except where there is an emergency, or for urgent work directed by a police officer or a public authority.</p> <p><b>Condition reason:</b> To protect the amenity of the surrounding area</p>
79	<p><b>Tree protection during work</b></p> <p>While site work is being carried out, all required tree protection measures must be maintained in good condition in accordance with:</p> <ul style="list-style-type: none"> <li>a) The construction site management plan approved under this consent,</li> <li>b) the relevant requirements of AS 4970 Protection of trees on development sites;</li> <li>c) Section B1 of Council's relevant development control plan (in force as at the date of determination of this consent); and</li> <li>d) Any arborist's report approved under this consent.</li> </ul> <p>This includes maintaining adequate soil grades and ensuring all machinery, builders refuse, spoil and materials remain outside tree protection zones</p> <p><b>Condition reason:</b> To protect trees during the carrying out of site work</p>
80	<p><b>Unexpected Finds Contingency (General)</b></p> <p>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.</p> <p>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.</p> <p>Where remediation work is required, the applicant will be required to obtain consent for the remediation works.</p> <p><b>Condition reason:</b> To ensure that works relating to a development are to cease if any suspect materials are identified and remediated in accordance with Council requirements</p>

**Before issue of a subdivision certificate**

81	<p><b>Requirement for a Subdivision Certificate</b></p> <p>The application for a Subdivision Certificate(s) must be made in accordance with the requirements of Section 54 of the Environmental Planning and Assessment (Development</p>
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	<p>Certification and Fire Safety) Regulation 2021 and Section 6.33(1) Environmental Planning and Assessment Act 1979.</p> <p>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 [16-2023-571-1], and of compliance with the relevant conditions, prior to the issuing of a Torrens Plan of Subdivision.</p> <p>In addition, signed original copy of the original plans and/or documents, and final plan of survey/title, must be submitted to Council. A USB containing an electronic copy of all relevant documents must also be provided.</p> <p><b>Condition reason:</b> To enable the subdivision, boundary adjustment or lot consolidation of land and ensure compliance with the relevant development consent.</p>
82	<p><b>Services</b></p> <p>Evidence is to be provided to Council demonstrating that the following reticulated services are available to each lot:</p> <ul style="list-style-type: none"> <li>a) Electricity.</li> <li>b) Water.</li> <li>c) Sewer.</li> <li>d) Gas (where available).</li> </ul> <p>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.</p> <p><b>Condition reason:</b> To ensure that evidence of connection of services is provided to Council.</p>
83	<p><b>Dwellings and Subdivision</b></p> <p>Prior to the issue of the subdivision certificate the following is to occur:</p> <ul style="list-style-type: none"> <li>a) The dwellings shall have a satisfactory frame inspection undertaken; and</li> <li>b) A report/plan shall be provided from a Registered Surveyor showing that: <ul style="list-style-type: none"> <li>i) The setback of the buildings from the adjacent and proposed boundaries meets the requirements of the BCA; and</li> <li>ii) All service lines are wholly contained within their respective lots, or an appropriate Easement or Easements have been shown on the plan of survey and suitably described in the 88B instrument.</li> </ul> </li> </ul> <p><b>Condition reason:</b> To ensure the orderly development of a dual occupancy where Torrens title subdivision is sought in accordance with Council requirements.</p>
84	<p><b>Hunter Water Corporation approval</b></p>

	<p>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.</p> <p><b>Condition reason:</b> To ensure appropriate Hunter Water Corporation approval is received prior to issue of the Subdivision Certificate</p>
85	<p><b>Surveyor's Report</b></p> <p>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.</p> <p>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.</p> <p><b>Condition reason:</b> To confirm location of drainage lines and ensure that no services or access ways encroach the lot boundaries, unless suitability provided for by easements.</p>
86	<p><b>Subdivision Certificate</b></p> <p>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.</p> <p>Works As Executed Plans must be prepared and provided to the Principal Certifying Authority in accordance with Council's Infrastructure Specifications and approved plans.</p> <p><b>Condition reason:</b> To ensure the development has satisfied the required conditions of consent in the relevant development consent to release the subdivision certificate.</p>
87	<p><b>Show Easements / Restriction on the Plan of Subdivision</b></p> <p>The developer must acknowledge all existing easements and/or restrictions on the use of the land on the final plan of subdivision.</p> <p><b>Condition reason:</b> To ensure that all existing easements and/or restrictions on the use of land are shown on the final plan of subdivision.</p>
88	<p><b>Burdened lots to be identified</b></p> <p>Any lots subsequently identified during construction of the subdivision as requiring restrictions must also be suitably burdened.</p> <p><b>Condition reason:</b> To ensure that all lots which have been identified as requiring restrictions or easements are suitably burdened.</p>
89	<p><b>Section 88B Instrument</b></p>

	<p>The applicant must prepare a Section 88B Instrument which incorporates the following easements, positive covenants and restrictions to user where necessary:</p> <p>a) Reciprocal right of carriageway (the owners of the subject properties burdened by the right of carriageway must be responsible for ongoing maintenance and the Public Liability of the right of carriageway)</p>				
	<p><b>Condition reason:</b> To ensure that specific easements and/or restrictions are imposed on the Section 88B instrument in accordance with the relevant consent.</p>				
90	<p><b>Housing and Productivity Contribution</b></p> <p>A housing and productivity contribution is to be made, subject to:</p> <p>a. Any exclusion of the application of Subdivision 4 of Division 7.1 of the Act to the development by a planning agreement; and</p> <p>b. Any exemption or reduction provided by the Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2023 (the Order).</p> <p>In this respect –</p> <p>a. The housing and productivity contribution (HPC) set out in the table below, but as adjusted in accordance within this condition, is required to be made:</p> <table border="1"> <thead> <tr> <th>Housing and Productivity Contribution</th><th>Amount</th></tr> </thead> <tbody> <tr> <td>Housing and Productivity Contribution – Lower Hunter Region</td><td>\$8,214.65</td></tr> </tbody> </table> <p>b. The time by which the housing and productivity contribution must be made is before the issue of the Subdivision Certificate.</p> <p>c. The payment of the contributions must be made using the NSW Planning Portal.</p> <p>d. If an agreement is entered into as referred to in Clause 19 of the Order, the housing and productivity contribution may be made wholly or partly as a non-monetary contribution.</p> <p>The amount payable at the time of payment is the amount shown in the table above as the total housing and productivity contribution, adjusted by multiplying it in the following fraction:</p> $\frac{\text{Highest PPI number}}{\text{Consent PPI number}}$ <p>Where –</p> <p><b>Highest PPI</b> number is the highest PPI number for a quarter following the June quarter 2023 and up to and including the 2<sup>nd</sup> last quarter before the quarter in which the payment is made; and</p> <p><b>Consent PPI</b> is the PPI number last used to adjust the base component amount, SBC amount or TPC amount when consent was granted.</p>	Housing and Productivity Contribution	Amount	Housing and Productivity Contribution – Lower Hunter Region	\$8,214.65
Housing and Productivity Contribution	Amount				
Housing and Productivity Contribution – Lower Hunter Region	\$8,214.65				



**June quarter 2023** is the quarter commencing on and including 1 April 2023 and ending on and including 30 June 2023; and

**PPI** is the Producer Price Index (Road and Bridge Construction (NSW)) published by the Australian Bureau of Statistics.

If the amount adjusted in accordance with this condition is less than the amount at the time consent is granted, the higher amount must be paid instead.

**Condition reason:** To achieve compliance with the Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2023, as made by the NSW Minister for Planning and Public Spaces.

**General advisory notes**

This consent contains the conditions imposed by the consent authority which are to be complied with when carrying out the approved development. However, this consent is not an exhaustive list of all obligations which may relate to the carrying out of the development under the EP&A Act, EP&A Regulation and other legislation. Some of these additional obligations are set out in the *Conditions of development consent: advisory notes*: <https://www.planning.nsw.gov.au/sites/default/files/2023-07/condition-of-consent-advisory-note.pdf>. The consent should be read together with the *Conditions of development consent: advisory notes* to ensure the development is carried out lawfully.

The approved development must be carried out in accordance with the conditions of this consent. It is an offence under the EP&A Act to carry out development that is not in accordance with this consent.

Building work or subdivision work must not be carried out until a construction certificate or subdivision works certificate, respectively, has been issued and a principal certifier has been appointed.

A document referred to in this consent is taken to be a reference to the version of that document which applies at the date the consent is issued, unless otherwise stated in the conditions of this consent.

**Council advisory notes**

1. **'Dial Before you Dig Australia'** – Before any excavation work starts, contractors and others should phone the "Dial Before You Dig Australia" 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 applicant's 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** – 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. **Addressing** – Prior to occupying the development or Subdivision Certificate Release, (whichever occurs first) 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.
7. **Weed management** – This property has had priority weed as defined by the NSW Biosecurity Act 2015 identified growing on site. As the applicant dealing with this property you are advised that under the Biosecurity Act 2015 you have a legal obligation to prevent, eliminate, and minimise the impact caused by weeds. As the applicant you also have an obligation to ensure you advise other persons dealing with this site of the Biosecurity risk. For more information on the identification, control, and management of weeds on site please contact Port Stephens Councils' Invasive Species Team on (02) 4988 0392.
8. **Construction Certificate** – A Construction Certificate (CC) is required before building work approved under the development consent can lawfully start. A CC confirms your detailed plans comply with the Building Code of Australia and are consistent with the approved plans, documents, and conditions of consent in accordance with EP&A Regulation. Private certifiers and local councils can issue Construction Certificates.
9. **Subdivision Works Certificate** – A Subdivision Works Certificate (SWC) is required before the commencement of works relating to subdivision. While there may be some similarities with a required CC, a CC only relates to building work and therefore does not negate the need for an SWC where subdivision works are required. Local councils or appropriately accredited private certifiers can issue a Subdivision Works Certificate.
10. **Subdivision Work Certificate (SWC)** – Council's Development Engineering Team offer a prior to lodgement meeting for SWCs. This is an elective meeting to discuss relevant conditions of the Development Consent. An opportunity for clarifying any queries on Council requirements or construction level detail requirements for the development prior to the lodgement of the SWC with Council. For any subdivision work enquiries or to organise a pre-lodgement meeting by calling 4988 0255.
11. **Ausgrid** – The proposed development should be designed and constructed in accordance with Ausgrid's requirements. These requirements can be found in the letter from Ausgrid uploaded to the NSW Planning Portal, reference number 1900125063, dated 08.11.2023

## Dictionary

The following terms have the following meanings for the purpose of this determination (except where the context clearly indicates otherwise):

**Approved plans and documents** means the plans and documents endorsed by the consent authority, a copy of which is included in this notice of determination.

**AS** means Australian Standard published by Standards Australia International Limited and means the current standard which applies at the time the consent is issued.

**Building work** means any physical activity involved in the erection of a building.

**Certifier** means a council or a person that is registered to carry out certification work under the *Building and Development Certifiers Act 2018*.

**Construction certificate** means a certificate to the effect that building work completed in accordance with specified plans and specifications or standards will comply with the requirements of the EP&A Regulation and *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*.

**Council** means Port Stephens Council.

**Court** means the Land and Environment Court of NSW.

**EPA** means the NSW Environment Protection Authority.

**EP&A Act** means the *Environmental Planning and Assessment Act 1979*.

**EP&A Regulation** means the *Environmental Planning and Assessment Regulation 2021*.

**Independent Planning Commission** means Independent Planning Commission of New South Wales constituted by section 2.7 of the EP&A Act.

**Local planning panel** means Hunter Central Coast Regional Planning Panel.

**Occupation certificate** means a certificate that authorises the occupation and use of a new building or a change of building use for an existing building in accordance with this consent.

**Principal certifier** means the certifier appointed as the principal certifier for building work or subdivision work under section 6.6(1) or 6.12(1) of the EP&A Act respectively.

**Site work** means any work that is physically carried out on the land to which the development the subject of this development consent is to be carried out, including but not limited to building work, subdivision work, demolition work, clearing of vegetation or remediation work.

**Stormwater drainage system** means all works and facilities relating to:

- the collection of stormwater,
- the reuse of stormwater,
- the detention of stormwater,
- the controlled release of stormwater, and
- connections to easements and public stormwater systems.

**Strata certificate** means a certificate in the approved form issued under Part 4 of the *Strata Schemes Development Act 2015* that authorises the registration of a strata plan, strata plan of subdivision or notice of conversion.

**Subdivision certificate** means a certificate that authorises the registration of a plan of subdivision under Part 23 of the *Conveyancing Act 1919*.

**Subdivision works certificate** means a certificate to the effect that subdivision work completed in accordance with specified plans and specifications will comply with the requirements of the EP&A Regulation.





116 Adelaide Street, Raymond Terrace NSW 2324. Phone: (02) 49800253 Fax: (02) 49873612 Email: [council@portstephens.nsw.gov.au](mailto:council@portstephens.nsw.gov.au)





## APPLICATION REFERENCES

<b>Application Number</b>	16-2023-571-1
<b>Development Description</b>	Semi-detached dwellings with associated swimming pools, fencing, retaining walls, and 1 into 2 lot Torrens title subdivision
<b>Applicant</b>	YOUR HOME DESIGNS PTY LTD
<b>Land owner</b>	MR K Ghamrawi
<b>Date of Lodgement</b>	24/10/2023
<b>Value of Works</b>	\$1,692,630.00
<b>Submissions</b>	0

## PROPERTY DETAILS

<b>Property Address</b>	62A Government Road NELSON BAY
<b>Lot and DP</b>	LOT: 76 DP: 27081
<b>88B Restrictions on Title</b>	N/A
<b>Current Use</b>	Vacant
<b>Zoning</b>	R2 LOW DENSITY RESIDENTIAL
<b>Site Constraints</b>	Weed Infestations – Chinese Violet; Acid Sulfate Soils – Class 5; Consolidation Koala Map – Mainly Cleared Land; SEPP (Resilience and Hazard) Coastal Management – Coastal Environment Area and Coastal Use Area;
<b>State Environmental Planning Policies</b>	<i>State Environmental Planning Policy (Biodiversity and Conservation) 2021</i> <i>State Environmental Planning Policy (Resilience and Hazards) 2021</i> <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i>

**PROPOSAL**

The proposed development seeks approval for semi-detached dwellings, each with pool, a one into two lot Torrens title subdivision, retaining walls, and associated earthworks. As the site is currently vacant, no demolition or tree removal is required.

The proposed dwellings will be a three storey form, although it will present as a single storey development from the streetscape. The lower ground floor of each dwelling will contain two bedrooms, a rumpus room, bathrooms, and laundry. The first floor will contain three bedrooms, office space, two bathrooms (incl. one ensuite), walk-in-linen, storage space, and a rear-facing balcony, while the second floor will contain the main entry and double car garage, an open plan kitchen/living/dining area, and small bathroom, and a rear-facing balcony. Vehicular and pedestrian access is via the second floor, which despite being the uppermost storey is at ground level at the front of the site. The proposed pools are located at the rear of the dwellings, with internal access obtained via the lower ground floor.

The dwellings will share a single driveway to Government Road, which will have a reciprocal right of carriageway.

The proposed subdivision will result in the following lots:

- Lot A: will have an area of 452.76m<sup>2</sup>, has frontage to Government Road, and will contain dwelling one
- Lot B: will have an area of 477.97m<sup>2</sup>, has frontage to Government Road, and will contain dwelling two

The site has a significant slope to the rear of the site, which has been calculated at 14.46° across the building envelope and 31.24° at the steepest section (see figure 3 below). In response to the topography of the site, the proposed dwellings have a multi-level design that appears as a single storey development from the streetscape, but will present as a three storey development from the rear of the site. The proposal will require earthworks and the construction of retaining walls to facilitate the development.

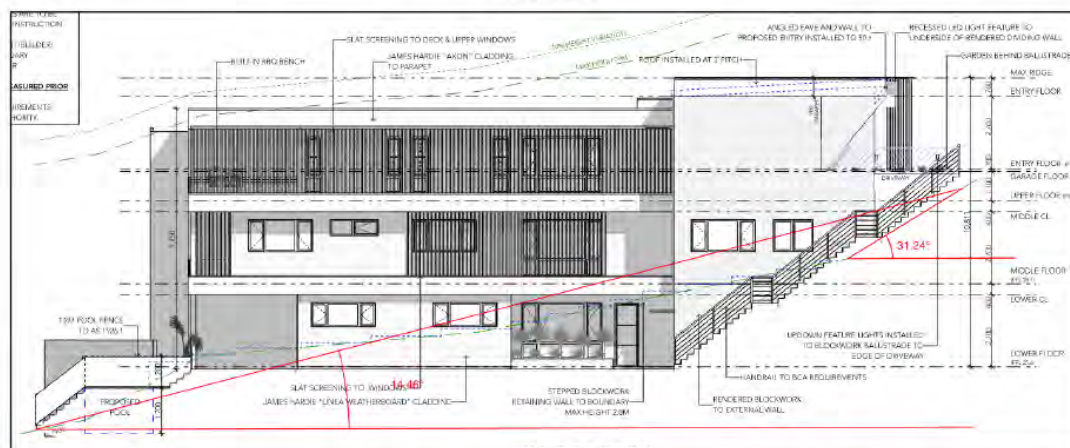
It is noted that under the Port Stephens Local Environmental Plan 2013 (PSLEP), the maximum height of buildings is 9m. The proposed dwellings have a maximum height of 9.94m, which is a 0.94m or 10.44% variation to the height limit (see figure 3). The development is therefore required to be reported to Council for determination in accordance with the 'Council related Planning Matters' policy given a variation to the height limit of greater than 10% is proposed.



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**Figure 1:** Elevation plans showing the dwellings and the proposed height exceedance, with the natural ground level and corresponding height limit shown by a green dashed line and the proposed retaining walls shown by the blue dashed line



**Figure 2:** Elevation plan showing the slope of the site across the building envelope (14.46°) and the slope of the steepest section (31.24°)

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### SITE DESCRIPTION

The subject site is legally identified as Lot 76 DP 27081, and is generally known as 62A Government Road, Nelson Bay. The site has been cleared of any structures or vegetation, and has slopes down away from the road frontage, with the steepest area being closest to the road (see figure 3 above).

The surrounding properties contain a variety of residential developments, which predominantly includes low density residential development alongside some small scale unit development. The subject site is a short distance from the Nelson Bay town centre.



Figure 3: Aerial image of the subject site (in red) and the surrounding area

### SITE HISTORY

There have been a number of applications lodged over the site which are summarised in the following table.

Application No.	Proposal Description	Determination	Date Determined
7-1982-1422-1	4 Units	Application Withdrawn	10/06/1982
16-2022-85-1	Three storey dwelling and swimming pool	Approved with Conditions	10/03/2022
16-2023-557-1	Dual occupancy (attached), erection of a new structure, subdivision	Application withdrawn with	18/09/2023
16-2023-560-1	Dual occupancy (attached), erection of a new structure, subdivision	Application rejected	20/09/2023

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### SITE INSPECTION

A site inspection was carried out on 25 March 2024. The subject site can be seen in the image below:



**Figure 1:** View of the subject site from the road

### PLANNING ASSESSMENT

The proposed development was referred to the following internal specialists and external agencies. The comments provided by the special staff and external agencies have been used to carry out the assessment against the S4.15 Matters for Consideration below:

Internal	
Natural Resources	
<b>Comment:</b>	Initial concerns were raised by Council's Environmental Planner that the location of the rear retaining walls (and associated earthworks) were located in close proximity to trees on the adjoining property. Amended plans and details of the trees were provided to demonstrate that the retaining walls are located outside of the Tree Protection Zone. No further issues were identified, and the proposal was supported with standard conditions.
Development Engineering	
<b>Comment:</b>	Initial concerns were raised relating to vehicular access to the site, noting that no reciprocal right of carriageway has been provided despite a shared driveway being proposed. Additionally, the provided stormwater plan failed to identify any stormwater quality improvement device/s and no drainage easement to cater for any overflows from the proposed on-site detention system.  The applicant provided additional information, including swept paths and an updated stormwater plan. However, no drainage easement was provided as the

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	proposed stormwater system directed all stormwater collected from the roof to the street with all other stormwater directed to an infiltration tank at the rear of the dwelling. Council's Development Engineering Officer reviewed the additional drainage information, and supported the proposed development with recommended conditions of consent. This includes conditions of consent requiring a reciprocal right of carriageway to be shown on the plans of subdivision prior to issue of the subdivision certificate, and detailed stormwater plans to be provided prior to the issue of a construction certificate.
<b>Development Contributions</b>	
<b>Comment:</b>	S7.11 developer contributions are applicable to the proposal, and a recommended condition of consent to this effect has been provided.

**External****Ausgrid/Transgrid**

<b>Comment:</b>	No objections raised by Ausgrid, and the application is supported with recommendations regarding best construction practices which will be included in the determination.
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**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 considered to be integrated development as no external agency approvals are required, and therefore this section does not apply.

**Section 4.15 - Matters for consideration**

When determining a development application, the consent authority must take into consideration the matters outlined in Section 4.15(1) of the EP&A Act. The matters of relevance to the development application include the following:

- (a) *the provisions of any environmental planning instrument, proposed instrument, development control plan, planning agreement and the regulations*
  - (i) *any environmental planning instrument, and*
  - (ii) *any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*
  - (iii) *any development control plan, and*
  - (iiia) *any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and*
  - (iv) *the regulations (to the extent that they prescribe matters for the purposes of this paragraph), that apply to the land to which the development application relates,*
- (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,*
- (c) *the suitability of the site for the development,*
- (d) *any submissions made in accordance with this Act or the regulations,*
- (e) *the public interest.*



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

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

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

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

Section 6(1) requires that a development application for BASIX affected development be accompanied by a BASIX certificate. A valid BASIX certificate has been submitted with the development application which demonstrates that the water, thermal comfort and energy requirements for the proposal have been achieved. The proposal is considered to satisfy the relevant provisions of SEPP BASIX.

Date: 8 September 2023

Certificate Number: 1420530M

The recently adopted State Environmental Planning Policy (Sustainable Buildings) 2022 is not applicable to this proposal through savings and transitional provisions as the BASIX certificate was issued on 8 September 2023, prior to the commencement of this SEPP on 1 October 2023.

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

Chapter 2 Vegetation in Non-Rural Areas of the Biodiversity and Conservation SEPP aims to protect the biodiversity values and preserve the amenity and other vegetation in non-rural areas of the State. The chapter works in conjunction with the Biodiversity Conservation Act 2016 and the Local Land Services Amendment Act 2016 to create a framework for the regulation of clearing of native vegetation in NSW.

Part 2.3 of the chapter contains provisions similar to those contained in the former (now repealed) clause 5.9 of Port Stephens Local Environmental Plan 2013 and provides that Council's Development Control Plan can make declarations with regards to certain matters. The chapter further provides that Council may issue a permit for tree removal.

The development application does not seek consent for the removal of any trees. However, it is noted that there are two trees on the adjoining site (being 64 Government Road), which were initially within close proximity to proposed retaining walls on the subject site. Updated plans were provided demonstrating that the proposed retaining walls are located outside of the tree protection zone, and is therefore not expected to have an adverse impact on neighbouring trees.

It is noted that the subject site has already been cleared.

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

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

As per Section 2.10 of Chapter 2 of the RH 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.

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The proposed development is located some distance from the Port Stephens Bay area, which is the closest waterbody to the subject site. It is noted that there are no expected adverse impacts from the development to the integrity of the biophysical and ecological environment, the vales and natural coastal processes, marine vegetation, native vegetation and fauna and existing open space. In addition, access to the foreshore remains unimpeded.

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

The proposed development is an appropriate form and design for the coastal location. The proposed use of the site for infill residential development purposes in conjunction with a sustainable built form, will ensure that the visual amenity and scenic qualities of the coast are preserved. The building envelope and size of the development is also compatible with the natural setting and will not adversely impact views. No adverse impacts to heritage values are expected, as outlined elsewhere in this report.

Section 2.12 of Chapter 2 of the SEPP requires consideration to whether the development would increase the risk of coastal hazards. The proposed development is suitably designed and located some distance from the foreshore to not increase risk to coastal hazards.

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

#### **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 and there are no records of potentially contaminating activities occurring on the site, 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**

Section 2.48(2) requires consultation with the local power authority – Ausgrid, where a development involves works in proximity to electrical utility infrastructure. The application was referred to Ausgrid, requesting comments about potential safety risks from nearby power assets. In response, Ausgrid raised no objections to the proposed development, and provided some recommendations regarding applications for connection to the Ausgrid system and Workcover Code of Practice.

#### **Port Stephens Local Environmental Plan 2013 (PSLEP 2013)**

##### **Clause 2.3 – Zone Objectives and Land Use Table**

The proposed development is defined as semi-detached dwellings which is permissible with consent in the R2 Low Density Residential zone. The development addresses the objectives of the zone by providing additional housing opportunities for the local community which is consistent with the existing residential character and existing residential amenity of the area.

##### **Clause 2.6 – Subdivision—consent requirements**

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Land to which this Plan applies may be subdivided, but only with development consent. The proposed development involves Torrens title subdivision which is permitted by this clause.

#### **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.

The subject site includes a minimum lot size of 500m<sup>2</sup>, and proposes a one into two lot subdivision. The proposed allotments as a result of the subdivision are as follows:

- Proposed lot A – 452.76m<sup>2</sup>
- Proposed lot B – 477.97m<sup>2</sup>

The proposed subdivision seeks to create allotments of which do not the minimum lot size specified on the Minimum Lot Size Map, however, undersized residential lots are permitted under the provisions in Cl.4.1C below.

#### **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 subject site has a total area of approximately 929.34m<sup>2</sup>, which provides sufficient area to facilitate the proposed development, in accordance with the requirements of this clause.

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

The objectives of this clause is to encourage housing diversity without adversely impacting on residential amenity.

The proposed development includes the subdivision of land into two lots, with one semi-detached dwelling to be located on each lot. As each of the proposed lots exceed 250m<sup>2</sup> and will contain a single dwelling, this development is consistent with the requirements of this clause. A condition of consent will be imposed on the determination which requiring the dwellings to be constructed to frame stage prior to the release of a subdivision certificate.

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

The objectives of this clause are to ensure buildings heights are appropriate for the context and character of the area and to ensure building heights reflect the hierarchy of centres and land use structure.

Clause 4.3(2) provides that the height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

The proposed development has a maximum height of 9.875 metres, which is above the maximum permissible building height of 9 metres specified on the Height of Buildings Map in the PSLEP. Given the departure from this development standard, a Clause 4.6 exception request has been provided, which is discussed further below.

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

The proposed dwellings exceeds the maximum allowable building height for the site prescribed under Clause 4.3 of the LEP. The dwellings have a maximum building height of 9.94m, which exceeds the 9m height limit and represents a 10.44% variation to the height development standard.

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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 variation is largely attributed to the topography of the site, which slopes steeply down from Government Road.
- The built form area that exceeds the height limit is a small section of the roof at the rear of the dwellings and will not be visible from the streetscape or public domain;
- The proposed development is of an appropriate scale and compliant with the relevant solar access and privacy requirements within the DCP.
- The proposed development has used cut and fill works to reduce the height and bulk of the dwellings where possible to recess the development into the site.
- The dwelling design is generally consistent with similar residential developments in the area, noting that a significant number of developments in the surrounding area have a 2-3 storey form which step down with the topography and utilise split-level designs.
- The proposed development has utilised similar design measures to comparable development in the locality, and therefore appears consistent with the surrounding built form.

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

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

#### Clause 7.1 – Acid Sulfate Soils

The objective of this clause is to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage.

The subject land is mapped as containing potential Class 5 acid sulfate soils. The proposed development is not anticipated to entail excavations below 2.8 metres or to impact on ground water levels, and therefore it is not expected that acid sulfate soils would be encountered during works.

#### Clause 7.2 – Earthworks

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

In accordance with Clause 7.2(3) before granting development consent for earthworks (or for development involving ancillary earthworks), the consent authority must consider the following matters—

- (a) *the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,*
- (b) *the effect of the development on the likely future use or redevelopment of the land,*
- (c) *the quality of the fill or the soil to be excavated, or both,*
- (d) *the effect of the development on the existing and likely amenity of adjoining properties,*
- (e) *the source of any fill material and the destination of any excavated material,*
- (f) *the likelihood of disturbing relics,*

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*(g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,*

*(h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

The proposed development includes a maximum 3m cut to facilitate works at the lower ground level, and fill of up to 2.5m to allow for a garage to front Government Road. Due to the steep slope of the ground, particularly at the front of the site, earthworks and retaining walls are required to provide a level building platform. The dwelling design has included a larger floor area for the upper level, and reduced floor area at the lower ground floor to reduce earthworks where possible.

The proposed stormwater design will ensure the development and earthworks will not have a detrimental effect on drainage patterns or compromise future redevelopment of adjoining lands.

The proposed development includes retaining walls along each side of the property, and two retaining walls within the rear yard. The retaining walls along the side of the property have a stepped design to reduce the overall height (see figure 2 above). Along the western side, the retaining wall will have a maximum height of 2.9m, while the eastern side retaining wall will have a maximum height of 1.8m. These retaining walls are along the lot boundary, but will be contained wholly within the subject site. These retaining walls are due to a cut on the subject site, which result in overshadowing impacts for the subject site and minimal visual or amenity impacts for neighbouring properties. As the retaining walls follow the slope of the natural ground level, minimal impacts to neighbouring properties are expected. Both of the retaining walls within the rear yard will have a height of 1m each and have been located so as to reduce potential impact on any trees on neighbouring properties. These rear retaining walls are located 3.5m and 13.4m from the rear boundary, and are therefore not expected to have an adverse visual and amenity impacts on neighbouring properties.

To ensure potential adverse impacts are suitably mitigated, conditions of consent have been recommended regarding erosion and sedimentation control measures, quality of any imported or exported fill, disposal of excavated materials in accordance with the EPA's guidelines, and engineering details for retaining walls.

Due to the proximity of the proposed excavations to buildings on the adjoining allotment, a condition of consent has been recommended requiring the persons undertaking the excavations to:

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

Subject to the above conditions of consent, the development accords with the requirements of this clause.

#### **Clause 7.6 – Essential Services**

Cause 7.6 provides that development consent must not be granted to development unless the consent authority is satisfied that services that are essential for the development are available or that adequate arrangements have been made to make them available when required. The essential services include the following:

- (a) the supply of water,*
- (b) the supply of electricity,*
- (c) the disposal and management of sewage,*
- (d) stormwater drainage or on-site conservation,*

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(e) *suitable vehicular access.*

The subject site is serviced by reticulated water, electricity and sewer. Further, 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 Government Road, 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 (PSDCP 2014)**

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

#### **CHAPTER B – GENERAL PROVISIONS**

The proposed development includes construction of semi-detached dwellings with associated earthworks and driveway works and therefore the below sections are applicable.

#### **B1 – TREE MANAGEMENT**

This chapter applies to the removal or pruning of trees or other vegetation within non-rural areas and gives effect to SEPP (Biodiversity and Conservation) 2021 by listing those trees or other vegetation that require approval.

No tree removal is proposed, and it is noted that the development has been designed so as to avoid potential adverse impacts to neighbouring trees.

#### **B2 – NATURAL RESOURCES**

This chapter applies to development located within 500m of environmentally sensitive areas, development that contains koala habitat, noxious weeds or development that is seeking to use biodiversity credits.

The subject site is not located in close proximity to any items of environmental significance, and does not contain koala habitat or other significant/endangered flora or fauna species.

The subject site is mapped as containing Chinese Violets at the rear of the site. While there are minimal works proposed in this area, weed management conditions will be included in the determination to ensure there is no further spread of noxious weeds.

#### **B3 – ENVIRONMENTAL MANAGEMENT**

Chapter B3 contains provisions relating to acid sulfate soils, noise, air quality and earthworks, as outlined in the following sections.

#### **Acid Sulfate Soils**

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

#### **Noise**

The separation distances incorporated into the development will limit any adverse impacts on the adjoining development. The impacts of the development during construction could be mitigated



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

#### **Air Quality**

Dust generated during construction is expected to be minimal, subject to conditions of consent requiring erosion and sediment control be carried out in accordance with the guidelines set out in the NSW Department of Housing manual 'Managing Urban Stormwater: Soils and Construction Certificate' (the Blue Book) 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 proposed residential land use would not cause any ongoing air quality impacts.

#### **Earthworks**

As discussed at Clause 7.2 above, the proposed development involves cut and fill, and the construction of a number of retaining walls. The impacts of the proposed earthworks can be suitably mitigated through conditions of consent regarding an erosion and sediment control plan, detailed engineering plans for retaining walls, and shoring works for adjoining properties. The proposal is therefore consistent with requirements outlined in Councils DCP relating to earthworks.

### **B4 – DRAINAGE AND WATER QUALITY**

This section applies to development that:

- Increases impervious surfaces; or
- Drains to the public drainage system; or
- Involves a controlled activity within 40m of waterfront land.

A stormwater management plan was submitted with the application and includes adequate quality and quantity controls in accordance with the requirements of this section. The stormwater drainage plan has been assessed as being consistent with Council's Infrastructure Specification and recommended conditions of consent have been provided requiring the provision of detailed engineering plans. Subject to these conditions, the proposal is considered to be consistent with the requirements of this section.

### **B8 – ROAD NETWORK AND PARKING**

This section applies to development with the potential to impact on the existing road network or create demand for on-site parking.

#### **Traffic Impacts**

The proposed development is not expected to have any adverse impacts on the local road network, noting that the proposal will provide suitable connection to Government Road, internal parking areas and will not result in a significant increase in traffic generation.

#### **On-site Parking Provisions**

Each dwelling will provide a two car garage, which meets the requirement for two car parking spaces per dwelling with three or more bedrooms.

#### **On-site Parking Access**

Access to identified parking areas for the proposed dwellings will be provided through a shared driveway from Government Road. It is noted that due to Government Road being a local thoroughfare, a reciprocal right of carriageway will be required over the proposed driveway to allow all vehicles to enter and exit the site in a forward direction, and a condition of consent to this effect has been recommended.

## **CHAPTER C – DEVELOPMENT TYPES**

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## ITEM 1 - ATTACHMENT 3 PLANNER'S ASSESSMENT REPORT.

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The proposed development includes a subdivision, and therefore Chapter C1 and C4 are applicable.

<b>C1 – SUBDIVISION</b>	
<b>C1.A – All Subdivision – Lot Size and Dimensions</b>	
<b>Objective</b> <ul style="list-style-type: none"> <li>To ensure all new lots have a size and shape appropriate to their proposed use, and to allow for the provisions of necessary services and other requirements</li> </ul>	
<b>Control</b>	<b>C1.1 – Lot size</b> Subdivision adheres with <i>Local Environmental Plan Part 4</i> .
<b>Assessment</b>	The proposed subdivision will result in two lots which complies with the relevant requirements of the LEP.
<b>Control</b>	<b>C1.2 – Rectangular footprint</b> A residential lot is capable of supporting a rectangular building footprint of 15m x 8m or 10m x 12m as illustrated by Figure CA.
<b>Assessment</b>	The proposed subdivision is capable of supporting a compliant building envelope, as evidenced by the accompanying architectural plans showing the proposed dwellings.
<b>Control</b>	<b>C1.3 – Battle-axe lots</b> All lots provide direct street frontage. <ul style="list-style-type: none"> <li>Battle-axe lots are only considered when there is no practical way to provide direct street frontage.</li> <li>Right of carriageway is constructed prior to the issuing of subdivision certificate and is provided in accordance with Figure CB.               <ul style="list-style-type: none"> <li>Alternative solutions are to be considered to lots created prior to the Local Environmental Plan, but only where safety is not impeded.</li> </ul> </li> </ul>
<b>Assessment</b>	N/A
<b>Control</b>	<b>C1.4 – Splay corners</b> Splay corners are provided for corner lots and must be a minimum of: <ul style="list-style-type: none"> <li>4m x 4m for residential zones;</li> <li>8m x 8m for commercial and industrial zones;</li> <li>6m x 6m or merit-based approach for other zones.</li> </ul>
<b>Assessment</b>	N/A
<b>C1.B – All Subdivision – Street Trees</b>	
<b>Objective</b> <ul style="list-style-type: none"> <li>To ensure street tree planting is of an appropriate species and undertaken in accordance with Council's guidelines</li> </ul>	
<b>Control</b>	<b>C1.5 – Street tree requirements</b> Street trees are required as a component of the road reserve for the following: <ul style="list-style-type: none"> <li>Residential subdivisions;</li> <li>Commercial subdivisions;</li> <li>Industrial subdivisions creating 10 or more lots.</li> </ul>

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C1 – SUBDIVISION	
	<ul style="list-style-type: none"> <li>- Street trees are provided in accordance with the tree technical specification.</li> <li>- Tree Planting Guidelines of the tree technical specification provides guidance to the application of the tree technical specification to determine the total number of trees to be provided.</li> </ul>
<b>Assessment</b>	No street tree plantings are proposed. Given the location and size of the driveway, and the steep road reserve, there is limited space for any street trees to be planted without comprising sightlines and safe ingress. As such, street trees will not be required for this proposal.
<b>Control</b>	<p><b>C1.6 – Street tree replacement</b></p> <p>Where street trees are required to be removed to facilitate development, they must be replaced in a practical location, in accordance with Section 4.6 of the tree technical specification.</p>
<b>Assessment</b>	N/A.
C1.C – All Subdivision – Solar Access	
<p><b>Objective</b></p> <ul style="list-style-type: none"> <li>• To maximise solar access for residential dwellings</li> </ul>	
<b>Control</b>	<p><b>C1.7 – Solar access</b></p> <p>Residential subdivision addresses the following guidelines for solar access. Any inconsistency clearly justifies how alternative energy efficiency is achieved.</p> <ul style="list-style-type: none"> <li>• Where possible, lots should be oriented to provide one axis within 30 degrees east and 20 west of true solar north;</li> <li>• Where a northern orientation of the long axis is not possible, lots should be wider to allow private open space on the northern side of the dwelling;</li> <li>• Topography and landform should inform the subdivision layout in order to maximise solar access opportunities.</li> </ul>
<b>Assessment</b>	The provided shadow diagrams demonstrate that the proposed lots receive sufficient solar access.
C1.D – All Subdivision – Public Scale Drainage	
<p><b>Objective</b></p> <ul style="list-style-type: none"> <li>• To ensure further guidance is provided for subdivision that is consistent with B4 Drainage and Water Quality and the Infrastructure Specification (where relevant)</li> </ul>	
<b>Control</b>	<p><b>C1.8 – Inter-allotment drainage</b></p> <p>Each lot must be able to be gravity drained through the drainage system to public drainage.</p>
<b>Assessment</b>	The provided stormwater plan demonstrates all stormwater collected from roof areas can be directed to the public drainage system along Government Road. All stormwater collected from other hardstand areas are to be directed to an on-site stormwater infiltration system. Due to the slope of the site, not all stormwater is not able to be gravity drained to Government Road and will therefore be infiltrated on site. Infiltration modelling and factor of safety methods have been

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<b>C1 – SUBDIVISION</b>	
	applied to ensure there will be no nuisance flows from the development site to downstream properties.
<b>Control</b>	<b><u>C1.9 – Inter-allotment drainage</u></b> Inter-allotment drainage may be required for subdivision where a lot does not drain directly to the road kerb.
<b>Assessment</b>	No interallotment drainage has been proposed or is required based on the stormwater management design.
<b>Control</b>	<b><u>C1.10 – Drainage reserves</u></b> An overland flow path is provided for the 1% Annual Exceedance Probability (AEP) storm event and is a drainage reserve dedicated to Council as operational land.
<b>Assessment</b>	No drainage reserves are required due to the minor nature of the proposed subdivision.
<b>C1.E – Major Subdivision – Block and Street Layout</b>	
<b>Objectives</b>	
<ul style="list-style-type: none"> <li>• To ensure local streets are well-connected to the street network with obvious pedestrian and cycle links to higher order streets</li> <li>• To ensure priority is provided to residents needs when designing local streets to encourage usability</li> <li>• To ensure pathways follow desire lines</li> </ul>	
<b>Control</b>	<b><u>C1.11 – Block dimensions</u></b> A block seeks to achieve the dimensions identified in Figure CC.
<b>Assessment</b>	N/A – the proposal is not a major subdivision
<b>Control</b>	<b><u>C1.12 – Technical Specifications</u></b> Street layout complies with the road network specifications in the Infrastructure Specification.
<b>Assessment</b>	N/A – the proposal is not a major subdivision
<b>Control</b>	<b><u>C1.13 – Street layout attributes</u></b> The street layout addresses the following: <ul style="list-style-type: none"> <li>• All street components are integrated, such as kerbing, pavement type, width, street tree planting, footpaths, on road cycleway, shared paths, lighting and seating are provided as specified in infrastructure specific – design;</li> <li>• Road widths accommodate the necessary movements of service and emergency vehicles;</li> <li>• Driveways and footpaths are provided at subdivision as a part of the subdivision works;</li> <li>• Footpaths and shared paths follow desire lines;</li> <li>• Street layout is interconnected to provide a grid-like structure;</li> <li>• Street layout is informed by street connection for future subdivision on adjacent lands;</li> </ul>

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C1 – SUBDIVISION	
	<ul style="list-style-type: none"> <li>Street layout seeks to provide a perimeter road between residential dwellings and;               <ul style="list-style-type: none"> <li>Bush fire prone land</li> <li>Open space defined as a regional park, district park, or local park</li> </ul> </li> <li>Street layout ensures public access to public open space is maintained and encouraged.</li> </ul> <p><b>Note:</b> Development should have consideration for the Port Stephens Pathways Plan.</p>
<b>Assessment</b>	N/A – the proposal is not a major subdivision
<b>Control</b>	<p><b>C1.14 – Cul-de-sacs</b> Cul-de-sacs are generally only supported where:</p> <ul style="list-style-type: none"> <li>The existing street layout does not permit a through street;</li> <li>Connectivity to an adjoining street is not required;</li> <li>The cul-de-sac has a maximum length of 75m;</li> <li>Access is provided to no more than 10 allotments;</li> <li>Clear line of sight is provided from the nearest intersection.</li> </ul>
<b>Assessment</b>	N/A – the proposal is not a major subdivision
C1.F – Major Subdivision – Public Open Space	
Objectives	
<ul style="list-style-type: none"> <li>To provide a hierarchy of public open space in accordance with public open space hierarchy</li> <li>To provide parks that are multi-functional</li> <li>To ensure parks achieve centrality by being located near transport nodes, public building, waterfronts, libraries or places of public worship</li> <li>To ensure public open space meets the demands of the local community to encourage usability and critical mass</li> </ul>	
<b>Control</b>	<p><b>C1.15 – Open space hierarchy</b></p> <ul style="list-style-type: none"> <li>Council may require the provision of public open space in accordance with Figure CD.</li> </ul>
<b>Assessment</b>	N/A – the proposal is not a major subdivision
<b>Control</b>	<p><b>C1.16 – Open space reduction</b> The quantity of public open space may be reduced if:</p> <ul style="list-style-type: none"> <li>Accessibility is improved through such measures as providing extended connections to the wider pedestrian network; or</li> <li>Value of open space is improved through such measures as an increased amount and/or quality of park furniture, amenities, play equipment, sports infrastructure.</li> </ul>
<b>Assessment</b>	N/A – the proposal is not a major subdivision
<b>Control</b>	<p><b>C1.17 – Open space attributes</b> Public open space for the purpose of a local park, district park, or regional park must:</p>

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C1 – SUBDIVISION	
	<ul style="list-style-type: none"> <li>Be of regular shape (rectangle/square) to maximise recreation opportunities.</li> </ul> <p><b>Note:</b> Long narrow open spaces are not acceptable unless used for linkages.</p> <ul style="list-style-type: none"> <li>Be generally flat and centrally located near transport nodes, public buildings, waterfronts, libraries or places of public worship to maximise accessibility for all members of the public;</li> <li>Provide for safe and convenient access by being located on pedestrian cycle routes;</li> <li>Clearly demonstrate that is a public space and be bounded by a street and faced by lots zoned or used for residential or commercial purposes;</li> <li>Be designed with consideration to crime prevention through environmental design (CPTED) principles;</li> <li>Include access for services (e.g. garbage collection, maintenance, water, sewerage, and electricity).</li> </ul> <p><b>Note:</b> The provision of playgrounds is assessed on a case by case basis by primarily considering proximity to other community and recreation facilities.</p> <p><b>Note:</b> Further attributes specific to a local park, district park, and regional park are provided in Part E1 of the DCP.</p>
Assessment	N/A – the proposal is not a major subdivision
Control	<p><b>C1.18 – Open space attributes</b> Land that may be deemed unsuitable as public open space for the purposes of a local park, district park, or regional park includes:</p> <ul style="list-style-type: none"> <li>Contaminated land;</li> <li>Land primarily used for stormwater management or drainage control purposes;</li> <li>Land identifies as an asset protection zone (APZ).</li> </ul>
Assessment	N/A – the proposal is not a major subdivision
Control	<p><b>C1.19 – Open space attributes</b> Corridor open spaces are drainage reserves classified as operational land under the <i>Local Government Act 1993</i>.</p>
Assessment	N/A – the proposal is not a major subdivision
C1.G Major Subdivision – Infrastructure	
	<p><b>Objective</b></p> <ul style="list-style-type: none"> <li>To ensure detailed consideration is provided to the provision of integrated and quality public infrastructure</li> </ul>
Control	<p><b>C1.20 – Technical specifications</b> Infrastructure in accordance with the Infrastructure Specification is identified on the concept utility plans or more detailed preliminary engineering plans.</p>
Assessment	N/A – the proposal is not a major subdivision

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C1 – SUBDIVISION	
<b>Control</b>	<p><b>C1.21 – Public infrastructure</b> Subdivision provides public infrastructure within the adjoining road or public land, including kerb/gutter, stormwater drainage, footpaths, street lighting, street trees and bus shelters, excluding:</p> <ul style="list-style-type: none"> <li>Public utilities, such as water and electricity, are kept within private lot boundaries and are not located within the road reserve.</li> </ul>
<b>Assessment</b>	N/A – the proposal is not a major subdivision
<b>Control</b>	<p><b>C1.22 – Lifecycle and maintenance</b> Lifecycle and maintenance costs are a key determinant when considering alternative methods, products and manufacturers to those specification in the Infrastructure Specification.</p> <ul style="list-style-type: none"> <li>Council will request life cycle costing and maintenance manual details for infrastructure to assist in ongoing maintenance.</li> </ul>
<b>Assessment</b>	N/A – the proposal is not a major subdivision

C4 – Dwelling House, Secondary Dwelling, or Dual Occupancy	
<b>C4.A – Height</b>	
<p><b>Objectives</b></p> <ul style="list-style-type: none"> <li>To ensure the height of buildings is appropriate for the context and character of the area</li> <li>To ensure building height reflects the hierarchy of centres and land use structure</li> </ul>	
<b>Control</b>	<p><b>C4.1 – Building height</b> Maximum height limit of 8m or a merit-based approach is taken where no height limit is specified under the Local Environmental Plan clause 4.3</p> <p><b>Note:</b> C2.4 requires a minimum first floor and above ceiling height for residential accommodation in a commercial zone of 2.7m</p>
<b>Assessment</b>	Exceeds the 9m height limit as required by the PSLEP, and has been discussed against Cl. 4.6 above.
<b>C4.B – Setbacks</b>	
<p><b>Objectives</b></p> <ul style="list-style-type: none"> <li>To ensure development provides continuity and consistency to the public domain</li> <li>To ensure development contributes to the streetscape and does not detract from the amenity of the area</li> </ul>	
<b>Control</b>	<p><b>C4.2 – Setback requirements</b> Development is to be setback from the subject property boundary, in accordance with the provisions outlined in Figure Cl.</p>
<b>Assessment</b>	<p><b>Side Setbacks:</b> <u>Ground Floor:</u> Side Setback Requirement: 0.9m (ground floor) Eastern side: 1m – 3.2m (subfloor at 1.2m)</p>

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C4 – Dwelling House, Secondary Dwelling, or Dual Occupancy	
	<p>Western side: 1.10m – 3.2m (subfloor at 1.3m)</p> <p>Ground floor setbacks are compliant with the DCP.</p> <p><u>First Floor:</u>  <i>Side Setback Requirement: 2m (upper floor) or 0.9m (ground floor)</i></p> <p>Eastern side: Rear section: 1.8m – 3.1m and Front Section: 1.2m – 1.7m</p> <p>Western side: Rear section: 1.3m – 3.2m and Front Section: 1.3m – 1.9m</p> <p><u>Minor Variation</u>          Due to the slope of the land and design of the building, the rear section of this floor is considered to be an upper floor and the front section is a ground floor for the purposes of the setback assessment (see figure 2).</p> <p>The front section is compliant with the DCP ground floor side setback requirement. However, a variation to the upper floor setback requirement of 0.2m on the eastern side and 0.7m to the western side is proposed. It is noted that the cadastral shape of the site, which splays to the rear of the site, results in the rear corner on each side not complying with the setback requirement despite the rest of each elevation complying. Furthermore, the only section which proposes a variation is the balcony element, which proposes a privacy screen across the side elevation. The majority of the dwelling built form is compliant with the setback requirements. Privacy screening has also been provided for large windows adjoining hallways and stairways along this floor. The proposed variation is considered to be acceptable in this instance as the development achieves the objectives of the control through alternate design measures.</p> <p><u>Second Floor:</u>  <i>Side Setback Requirement: 2m (upper floor) or 0.9m (ground floor)</i></p> <p>Eastern side: Rear section: 1.8m – 3.1m and Front section: 1.2m – 1.8m</p> <p>Western side: Rear section: 1.95m – 3.2m and Front section: 1.3m – 1.9m</p> <p><u>Minor Variation</u>          Due to the slope of the land and design of the building, the rear section of this floor is considered to be an upper floor and the front section is a ground floor for the purposes of the setback assessment (see figure 2).</p> <p>The front section is compliant with the ground floor side setback requirement. However, a variation to the upper floor setback requirement of 0.2m to the eastern side and 0.05m to the western side is proposed. This variation is only along a small section of the alfresco area, with the rest of the side elevations being compliant with the setback requirements due to the splayed angle of the site. Privacy screening is provided along the entire side elevation of both dwelling alfresco areas, and large windows adjoining hallways and stairways to mitigate any potential privacy impacts from reduced setbacks. The proposed variation is considered to be acceptable in this instance as the development achieves the objectives of the control through alternate design measures.</p>



C4 – Dwelling House, Secondary Dwelling, or Dual Occupancy	
	<p><b>Rear Setbacks:</b>  <i>Rear Setback Requirement: 2m (ground floor), 6m (upper floor)</i></p> <p>All floors: 29m – 33m</p> <p>Setback is compliant.</p> <p><b>Front Setbacks:</b>  <i>Front Setbacks Requirement: 4.5m or average building line (whichever is less)</i></p> <p>Second floor: 3m – 4.4m.</p> <p><u>Minor Variation</u>  The proposal seeks a variation of 1.5m to the front setback requirement. It is noted that the building line of neighbouring properties varies between approximately 8.5m and 0.7m, meaning the average building line is approximately 5.4m. As such, the 4.5m front setback requirement applies to this proposal.</p> <p>The subject site slopes steeply away from Government Road at the front of the site, meaning that extensive fill is required to achieve a suitable driveway access. Strict compliance with this requirement would require extensive additional fill to achieve a greater front setback and still allow for a suitably graded driveway access.</p> <p>While the average building line is greater than 5m in the immediate area, it is noted that at least three properties in the immediate area also have a variation to the front setback associated with the slope of the land. This includes 70, 68, &amp; 66A Government Road. Each of these properties also have parking areas (such as a garage or carport) within the front setback. As such, the proposed development will remain consistent with the streetscape and character of Government Road, despite the front setback variation.</p> <p>On these grounds, the proposed front setback variation is considered to be acceptable in this instance having regard to the DCP control objectives.</p>
<b>Control</b>	<p><b>C4.3 – Front setback encroachment</b>  Maximum 1.5m encroachment of front setback for architectural features, such as an entry porch or front desk.</p>
<b>Assessment</b>	<p>The front setback encroachment is predominantly due to the garage and not for architectural features, and therefore this requirement does not apply.</p>
<b>Control</b>	<p><b>C4.4 – Secondary dwelling setback</b>  Development for a secondary dwelling must be located behind the building line of the principal dwelling it is in conjunction with.</p>
<b>Assessment</b>	<p>N/A</p>
<b>Control</b>	<p><b>C4.5 – Secondary setback encroachment</b></p>

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<b>C4 – Dwelling House, Secondary Dwelling, or Dual Occupancy</b>	
	Maximum 1m encroachment to secondary setback for architectural features, such as an entry porch or deck.
<b>Assessment</b>	N/A
<b>Control</b>	<b>C4.6 – Garage setback</b> Garage setback minimum 1m behind the building line or setback.
<b>Assessment</b>	The proposed garages are level with the entry porch due to the site terrain and therefore do not comply with this requirement. It is noted that due to the slope of the site, locating the garage further back would require significant additional fill or result in a steep driveway which is unlikely to comply with Australian and Council standards. Furthermore, a number of residential developments in the immediate area have parking areas within the front setback meaning this proposal will be compatible with the existing streetscape. As such, this variation is considered to be acceptable.
<b>Control</b>	<b>C4.7 – Public reserve and waterfront setback</b> Minimum 3m setback from a public reserve boundary.
<b>Assessment</b>	N/A
<b>Control</b>	<b>C4.8 – Public reserve and waterfront setback</b> Minimum 4.5m setback from a waterfront reserve boundary.
<b>Assessment</b>	N/A
<b>Control</b>	<b>C4.9 – Public reserve and waterfront setback</b> Minimum 1m setback from waterfront land from the access boundary.
<b>Assessment</b>	N/A
<b>Control</b>	<b>C4.10 – Battle-axe lot handle</b> Minimum 1m setback from a battle-axe lot handle, access corridor or easement that is required for access  <b>Note:</b> C1.3 details when battle-axe lots are provided
<b>Assessment</b>	N/A
<b>Control</b>	<b>C4.11 – Adjoining agricultural buffers</b> An agricultural buffer of 150m or greater should be provided between a rural dwelling house, secondary dwelling or an ancillary structure for habitable purposes to adjoining land in separate ownership that is used or capable of being used for agricultural purposes <ul style="list-style-type: none"> <li>Where the 150m buffer or greater cannot be achieved the planting of a 30m wide native vegetation strip is to be provided between the proposed development building envelope and the adjacent agricultural land</li> </ul> <b>Note:</b> B2.1 requires a suitable buffer on the land which is the subject of

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<b>C4 – Dwelling House, Secondary Dwelling, or Dual Occupancy</b>	
	development to items of environmental significance
<b>Assessment</b>	N/A
<b>C4.C – Streetscape and privacy</b>	
<b>Objective</b>	
<ul style="list-style-type: none"> <li>To ensure development activates the streetscape to provide passive surveillance and privacy.</li> </ul>	
<b>Control</b>	<b><u>C4.12 – Passive surveillance</u></b> Development is to address the street by having at least one habitable room front the street and/or adjoining public spaces.
<b>Assessment</b>	The topography of the site and narrow street frontage provides little opportunity for passive surveillance to be provided through habitable rooms, and therefore this non-compliance is considered to be acceptable in the context of the site.
<b>Control</b>	<b><u>C4.13 – Passive surveillance</u></b> Development on corner lots is to address both street frontages by having habitable rooms face both streets.
<b>Assessment</b>	N/A
<b>Control</b>	<b><u>C4.14 – Streetscape character</u></b> To be sympathetic to the existing landscape character and built-form with regard to design, bulk, scale, form, materials and roof configuration.
<b>Assessment</b>	The proposal is consistent with the streetscape character of the area, noting that the materials, scale, and design of parking areas is consistent with a number of residential developments in the surrounding area. Additionally, it is noted that the steep topography of the area has resulted in a number of developments utilising a similar multi-storey design that steps down with the slope.
<b>Control</b>	<b><u>C4.15 – Privacy and two-storey development</u></b> Two storey development is to include a balcony or deck facing the street on the upper floor at least 1.5m deep across 25% of the dwelling frontage.
<b>Assessment</b>	The proposal presents as a single storey dwelling to the streetscape, and therefore a deck or balcony facing the street is not considered necessary.
<b>Control</b>	<b><u>C4.16 – Privacy and two-storey development</u></b> Balconies are to be located to minimise overlooking of adjoining properties.
<b>Assessment</b>	Balconies have been provided at the rear, with privacy screens provided along the eastern and western side elevations, and are a significant distance from the rear boundary. As such, the location and the design of the balconies is considered provide limited overlooking opportunities for adjoining properties.
<b>Control</b>	<b><u>C4.17 – Privacy and two-storey development</u></b> Privacy screens are required for balconies and patios, which result in unreasonable privacy impacts to properties.

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<b>C4 – Dwelling House, Secondary Dwelling, or Dual Occupancy</b>	
<b>Assessment</b>	Privacy screens have been provided along the side elevations of all proposed balconies to mitigate potential privacy impacts. No privacy screens have been provided along the rear elevation, although it is noted that the rear balconies are located a minimum of 29m from the rear boundary and have been designed to look towards the bay, over the top of residential developments to the north of the subject site. As such, privacy impacts from the balconies are considered to be suitably minimal.
<b>Control</b>	<b>C4.18 – Privacy and two-storey development</b> Privacy screens, high-light windows or opaque glass is to be used for windows of habitable rooms (other than bedrooms) which overlook adjoining properties.
<b>Assessment</b>	Privacy screening has been provided along windows for habitable rooms on the eastern and western elevation of the upper floors to mitigate privacy impacts to adjoining properties. The only windows along these elevations without privacy screens are those for the ground floor or for non-habitable rooms (i.e. stairwells or hallways) which are not expected to have unreasonable privacy impacts.
<b>C4.D – Private open space</b>	
<b>Objective</b>	
<ul style="list-style-type: none"> <li>To ensure private open space with solar access is provided to allow opportunity for passive and active outdoor recreation</li> </ul>	
<b>Control</b>	<b>C4.19 – Private open space dimensions</b> Minimum of 50m <sup>2</sup> of ground floor private open space comprising a minimum of 35m <sup>2</sup> that is usable. Private open space is considered usable if it: <ul style="list-style-type: none"> <li>has minimum dimensions of 4m x 4m;</li> <li>has direct access from internal living areas;</li> <li>is not located within a front setback; and</li> <li>has a northerly aspect.</li> </ul>
<b>Assessment</b>	Sufficient private open space has been provided for both dwellings.
<b>Control</b>	<b>C4.20 – Private open space dimensions</b> Where development cannot provide private open space on the ground floor, provisions shall be made for a balcony of not less than 20m <sup>2</sup> with a minimum width of 3m for the use as private open space.
<b>Assessment</b>	N/A
<b>Control</b>	<b>C4.21 – Solar access</b> Minimum of 2 hours sunlight to the principal private open space area between the hours of 9am-3pm midwinter.
<b>Assessment</b>	Compliant – suitable solar access provided to PoS areas.
<b>Control</b>	<b>C4.22 – Solar access</b> Minimum of 30% of private open space of adjoining dwellings must remain unaffected by any shadow for a minimum of 3 hours between 9am-3pm midwinter.

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<b>C4 – Dwelling House, Secondary Dwelling, or Dual Occupancy</b>	
<b>Assessment</b>	Compliant – suitable solar access will still be provided to neighbouring properties.
<b>C4.E – Car parking and garages</b>	
<b>Objective</b>	
<ul style="list-style-type: none"> <li>To ensure car parking caters for anticipated vehicle movements to and from the development and does not adversely impact on building articulation</li> </ul>	
<b>Control</b>	<b><u>C4.23 – Driveway width</u></b> A driveway should have a minimum width of 3m  <b>Note:</b> B8.12 requires ingress/egress widths to provide the listed dimensions
<b>Assessment</b>	The proposed driveway exceeds the minimum width and is therefore compliant.
<b>Control</b>	<b><u>C4.24 – Garage dimensions</u></b> Maximum garage door width of 6m for residential lots or 50% of the building frontage, whichever is less.
<b>Assessment</b>	Each garage door will have a width of 5.5m, however it will exceed 50% of the building frontage. The proposal will remain consistent with the streetscape, noting that a number of surrounding dwellings have garage, carport, or other parking areas within the front setback. Additionally, a reduction in the number of carparking spaces would result in non-compliances with Chapter B8 of the DCP, and the narrow width of the lot prevents alternative design options. As such, this variation is considered to be acceptable in this instance.
<b>Control</b>	<b><u>C2.25 – Garage dimensions</u></b> Maximum garage width of 9m for lots exceeding 1,500m <sup>2</sup> .
<b>Assessment</b>	N/A
<b>C4.F – Landscaping</b>	
<b>Objectives</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 add value and quality of life for residents and occupants within a development in terms of privacy, outlook, views and recreational opportunities</li> <li>To create and enhance vegetation links between natural areas and reduce weed potential to environmentally sensitive areas</li> <li>To reduce energy consumption through microclimate regulation</li> <li>To reduce air borne pollution by reducing the heat island effect</li> <li>To intercept stormwater to reduce stormwater runoff</li> </ul>	
<b>Control</b>	<b><u>C4.26 – Dwelling house</u></b>

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<b>C4 – Dwelling House, Secondary Dwelling, or Dual Occupancy</b>	
	<p>Development located on land that slopes at more than 18 degrees to the horizontal or that is within 50m of land that contains:</p> <ul style="list-style-type: none"> <li>• a Coastal Wetland identified in SEPP (Biodiversity and Conservation) 2021; or</li> <li>• koala habitat; or</li> <li>• species or communities listed within the Biodiversity Conservation Act 2016</li> </ul> <p>must provide landscaping that:</p> <ul style="list-style-type: none"> <li>• will enhance the environmental constraints of the site;</li> <li>• retains trees within the outer protection area of the APZ identified by a bushfire report; and</li> <li>• Contains turf areas within the inner protection area of the APZ identified by a bushfire report.</li> </ul>
<b>Assessment</b>	N/A
<b>Control</b>	<p><b><u>C4.27 – Dual occupancy landscaping coverage</u></b></p> <p>Landscaping is provided as follows:</p> <ul style="list-style-type: none"> <li>• 20% of the site area; or</li> <li>• 40% of the site area where development is located within 50m of: <ul style="list-style-type: none"> <li>- a Coastal Wetland identified in SEPP (Biodiversity and Conservation) 2021; or</li> <li>- koala habitat; or</li> <li>- species or communities listed within the Biodiversity Conservation Act 2016; or</li> <li>- a public reserve; and</li> </ul> </li> <li>• 30% shading over uncovered car park areas</li> </ul>
<b>Assessment</b>	A landscape plan has been provided, which demonstrates that each lot will exceed the minimum landscaping area of 20%. Proposed lot 1 landscaping is 37% of the site area, and proposed lot 2 landscaping is 39% of the site area.
<b>Control</b>	<p><b><u>C4.28 – Dual occupancy landscaping dimensions</u></b></p> <p>To be counted as part of the total landscaping coverage, the landscaped area must be at least 1.5m wide and 3m long.</p>
<b>Assessment</b>	Complies
<b>Control</b>	<p><b><u>C4.29 – Dual occupancy landscaping qualities</u></b></p> <p>Landscaping is in accordance with the following:</p> <ul style="list-style-type: none"> <li>• Landscape works incorporate adequate screening from the street and adjacent neighbours.</li> <li>• Corner lots provide landscaping to both street frontages.</li> <li>• Front boundary structures (e.g. fencing and retaining walls) provide visual relief with the use of landscape planting.</li> <li>• Street trees are to be within the footpath, verge or in the parking lane and be consistent with the Port Stephens Council tree technical specification<sup>1</sup></li> <li>• Landscape planting must provide adequate shading to the eastern and western aspects of private open space</li> <li>• Structural soil and/or structural cells should be used to reduce competition between specimen trees and infrastructure</li> </ul>

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<b>C4 – Dwelling House, Secondary Dwelling, or Dual Occupancy</b>	
	<b>Note:</b> The canopy coverage of specimen trees can be used to calculate deep soil landscaping
<b>Assessment</b>	The landscaped areas are predominantly at the rear of the site, noting that the slope of the site and the location of the dwellings means that there is limited space for landscaping within the front setback. Landscaping is provided along the entry of dwelling 2 and between the garages of both dwellings, which provides some screening and visual interest to the structure from the streetscape. Landscape plantings have been located within the rear yard, courtyards, and pool area which provide for screening and shading. As such, the proposed development is consistent with these requirements.
<b>Control</b>	<b>C4.30 – Species selection</b> Landscape species are to be selected in accordance with the landscape technical specification.
<b>Assessment</b>	A detailed landscape plan has been provided, which includes landscape species in accordance with the landscape technical specification.
<b>C4.G – Site facilities and services</b>	
<b>Objective</b>	
<ul style="list-style-type: none"> <li>To ensure development provides appropriate facilities and services in the most appropriate site location</li> </ul>	
<b>Control</b>	<b>C4.31 – Waste storage</b> An adequately screened waste storage and recycling area is to be provided behind the building line.
<b>Assessment</b>	Compliant – bin storage can be provided in garage area.
<b>Control</b>	<b>C4.32 – Clothes drying</b> A suitable open-air area for clothes drying is to be provided for each dwelling behind the building line with a northerly aspect.
<b>Assessment</b>	A clothes drying area has been identified within the courtyard of both dwellings as required.
<b>C8 – ANCILLARY STRUCTURES</b>	
<b>C8.A – Ancillary Structures</b>	
<b>Objectives</b>	
<ul style="list-style-type: none"> <li>To provide further guidance for ancillary structures to ensure consistent and desired amenity is attained</li> <li>To ensure ancillary structures do not adversely impact upon the amenity of the surrounding area</li> <li>To ensure ancillary structures are consistent in terms of height, bulk and scale with the surrounding area</li> </ul>	
<b>Control</b>	<b>C8.1 – Sheds (residential)</b>

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<b>C8 – ANCILLARY STRUCTURES</b>	
	<p>Except as provided for in C8.2, development in a residential zone (except R5 Large Lot Residential) adheres to a:</p> <ul style="list-style-type: none"> <li>• Maximum gross floor area of 72m<sup>2</sup>;</li> <li>• Maximum height of 3.6m;</li> <li>• Minimum side and rear setback of 0.9m; and</li> <li>• Minimum 1m behind the building line or setback.</li> </ul>
<b>Assessment</b>	N/A
<b>Control</b>	<p><b><u>C8.2 – Exceptions for residential sheds (except on land zoned R5 Large Lot Residential)</u></b></p> <p>Development for the purposes of a shed in a residential zone (except R5 Large Lot Residential) may exceed the limits in C8.1 where the following can be demonstrated:</p> <ul style="list-style-type: none"> <li>• The shed does not unreasonably impact the amenity of an adjoining property, such as by reason of bulk and scale, privacy or overshadowing;</li> <li>• The shed is not located within 1.8m of a dwelling on an adjacent lot;</li> <li>• The shed does not exceed 5% site coverage of the lot;</li> <li>• The shed height considers the change in topography from neighbouring allotments;</li> <li>• The shed is located so that it does not detract from the dwelling being the primary use of the land;</li> <li>• The shed uses colours and materials consistent with the dwelling on the land;</li> <li>• The shed is of a similar bulk and scale to surrounding sheds;</li> <li>• The shed is consistent with the context and character of the area;</li> <li>• Must not be a shipping container.</li> </ul>
<b>Assessment</b>	N/A
<b>Control</b>	<p><b><u>C8.3 – Sheds (R5 Large Lot Residential)</u></b></p> <p>Except as provided for in C8.4, development in the R5 Large Lot Residential zone, adheres to Figure CO.</p>
<b>Assessment</b>	N/A
<b>Control</b>	<p><b><u>C8.4 – Exceptions for sheds (R5 Large Lot Residential)</u></b></p> <p>Development for the purposes of a shed on land zoned R5 Large Lot Residential may exceed the limits in C8.3 where the following can be demonstrated:</p> <ul style="list-style-type: none"> <li>• The shed does not unreasonably impact the amenity of an adjoining property, such as by reason of bulk and scale, privacy or overshadowing;</li> <li>• The shed is not located within 10m of a dwelling on an adjacent lot;</li> <li>• The shed does not exceed 5% site coverage of the lot;</li> <li>• The shed does not result in the combined site coverage of all ancillary structures on the land exceeding 7.5% site coverage;</li> <li>• The shed is located so that it does not detract from the dwelling being the primary use of the land;</li> <li>• The shed uses colours and materials consistent with the dwelling on the land;</li> <li>• The shed is of a similar bulk and scale to surrounding sheds;</li> </ul>

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C8 – ANCILLARY STRUCTURES	
	<ul style="list-style-type: none"> <li>The shed is consistent with the context and character of the area;</li> <li>Must not be a shipping container.</li> </ul>
Assessment	N/A
Control	<b>C8.5 – Sheds (rural)</b> Development in a rural zone adheres to a: <ul style="list-style-type: none"> <li>Minimum 10m side boundary and rear setback;</li> <li>Minimum 5m setback from another building; and</li> <li>Colour scheme consistent with the existing character of the area.</li> </ul>
Assessment	N/A
Control	<b>C8.6 – Carports</b> Except as provided for in C8.12, carports should be located a minimum of 1m behind the building line.
Assessment	N/A
Control	<b>C8.7 – Carports</b> Minimum side and rear setback of 0.9m.  <b>Note:</b> Carports may be located within 0.9m of the boundary where they do not unreasonably impact the amenity of an adjoining property, such as by reason of bulk and scale or overshadowing.
Assessment	N/A
Control	<b>C8.8 – Carports</b> Maximum height of 3.6m, or if attached to a single storey dwelling, be no higher than the roof gutter line.
Assessment	N/A
Control	<b>C8.9 – Carports</b> If the carport fronts the street, the opening must not exceed more than 6m or 50% of the building frontage, whichever is less.
Assessment	N/A
Control	<b>C8.10 – Carports</b> The design of carport must be integrated with the existing dwelling.
Assessment	N/A
Control	<b>C8.10 – Carports</b> Minimum 3m secondary setback, except for an open veranda, porch, or deck which must be setback a minimum of 2m.
Assessment	N/A

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C8 – ANCILLARY STRUCTURES	
<b>Control</b>	<b><u>C8.11 – Carports</u></b> Carports are to have at least two open sides and not less than one-third of its perimeter open.
<b>Assessment</b>	N/A
<b>Control</b>	<b><u>C8.12 – Carports</u></b> Carports may be located in the front setback where the following can be demonstrated: <ul style="list-style-type: none"> <li>• The carport cannot be reasonably located behind the building line;</li> <li>• The carport is set back 2m from the front boundary;</li> <li>• The design of carport is consistent with the existing dwelling;</li> <li>• The carport is connected to a driveway;</li> <li>• The carport does not impact sight lines for pedestrians or other vehicles, does not obscure any view from a habitable room to the street, and has at least 3 open sides.</li> </ul>
<b>Assessment</b>	N/A
<b>Control</b>	<b><u>C8.13 – Swimming pools</u></b> The water edge must be setback at least 1m from the side and rear boundaries.
<b>Assessment</b>	The pools for each respective dwelling are both a minimum of 2.8m from neighbouring lots. However, the each pool will only be 0.3m to the new boundary separating the proposed lots as part of the proposed subdivision. This is considered to be acceptable in this instance, noting that a privacy wall is located along the boundary to provide privacy for each lot while complying with pool fencing requirements. Additionally, this setback does not prevent access to the pool and sufficient decking area is located around the pool within the identified fenced pool area.
<b>Control</b>	<b><u>C8.14 – Swimming pools</u></b> Maximum decking height of 1.4m in height if the pool is located more than 600mm above the ground level (finished).
<b>Assessment</b>	Compliant
<b>Control</b>	<b><u>C8.15 – Front fences (including forward of the building line)</u></b> Maximum height of 1.2m and is not of solid infill construction.
<b>Assessment</b>	N/A – not proposed.
<b>Control</b>	<b><u>C8.16 – Front fences (including forward of the building line)</u></b> Maximum height of 1.5m along main roads and secondary street frontages.
<b>Assessment</b>	N/A – not proposed.
<b>Control</b>	<b><u>C8.17 – Front fences (including forward of the building line)</u></b>



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C8 – ANCILLARY STRUCTURES	
	Compatible with street facilities, such as mailboxes, and allow easy access to public utilities.
Assessment	N/A – not proposed.
Control	<b><u>C8.18 – Side and rear fences</u></b> Maximum height of 1.8m.
Assessment	N/A – not proposed.
Control	<b><u>C8.19 – Side and rear fences</u></b> Side fences must not encroach on the front setback area of any dwelling.
Assessment	N/A – not proposed.
Control	<b><u>C8.20 – Side and rear fences</u></b> Fencing materials should reflect context and character of the area.
Assessment	N/A – not proposed.
Control	<b><u>C8.21 – Side and rear fences</u></b> Fences within the root zone of an existing tree must be constructed of light weight suspended panels supported by posts with pier footings.
Assessment	N/A – not proposed.
Control	<b><u>C8.22 – Retaining walls</u></b> Maximum height of 1m.
Assessment	<p>The proposed development includes a number of retaining walls, with the maximum heights as follows:</p> <ul style="list-style-type: none"> <li>• 2.8m along the western boundary</li> <li>• 1.8m &amp; 2.5m along the eastern boundary</li> <li>• 1m for rear retaining walls</li> </ul> <p>It is noted that the retaining walls along the eastern and western boundary do not comply with the maximum height of 1m, and therefore a variation has been sought for these retaining walls.</p> <p>The 2.8m high western retaining wall and 1.8m high eastern retaining wall are the result of a cut on the subject site, with the top of the retaining walls following the approximate slope of the natural ground level, and will be wholly located within the subject site. This is to facilitate the construction of the proposed dwellings, which is to be recessed into the ground to reduce the overall bulk and scale. As such, these retaining walls are expected to result in overshadowing to the subject site, particularly to the courtyard area alongside the lower ground floor. However, sufficient solar access is provided to other private open space areas for the dwellings, and the proposal complies with the solar access requirements under C4.D. Additionally, the height exceedance of the retaining walls are located parallel to an internal hallway and stairwell, and steps down to 1m or less where parallel to proposed bedrooms, and is therefore not expected</p>

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C8 – ANCILLARY STRUCTURES	
	<p>to have an adverse impact on internal living spaces or bedrooms. As these retaining walls are due to a cut on the subject site and have a stepped design that follows the natural ground level, the retaining walls are largely not going to be visible from neighbouring properties. There are not expected to be any overshadowing or visual impacts to the adjoining properties as a result of the height exceedance to this retaining wall requirement.</p> <p>The proposed 2.5m high eastern retaining wall is located at the front of the site alongside the driveway and steps down along the side of the garage due to fill being required. The retaining wall is 0m high at the front property line, then steps up to 2.5m when level with the front of the garage, before stepping back down to 0m just before the end of the garage. The entire retaining wall is 13m long, with approximately 7.7m of this exceeding the 1m high requirement. This retaining wall is wholly within the subject site and adjoins the front yard of the neighbouring property. The provided shadow diagrams show that this retaining wall will result in some overshadowing to the front of the neighbouring property, mostly within the front yard. There are no expected adverse overshadowing impacts to the private open space of the adjoining property. There are expected to be some visual impacts as a result of the neighbouring property, however as the highest point of this retaining wall is setback 0.9m from the lot boundary, is adjacent to the landscaped front yard of the neighbouring property, and is not adjacent to the neighbouring dwelling or associated private open space, the potential visual impacts are considered to be acceptable. Additionally, as the retaining wall steps down to ground level by the front property line, there are no adverse impacts to sight lines or vehicular safety for the adjoining site.</p> <p>As such, the proposed variation to the retaining walls are supported with conditions.</p>
<b>Control</b>	<p><b><u>C8.23 – Retaining walls</u></b> Masonry construction within 0.9m of the property boundary when greater than 0.6m in height.</p>
<b>Assessment</b>	Masonry construction for retaining walls has been proposed, and a condition of consent to this effect can be imposed in the determination.
<b>Control</b>	<p><b><u>C8.24 – Retaining walls</u></b> Retaining walls are wholly contained within the site.</p>
<b>Assessment</b>	All proposed retaining walls are located within the site, however it is noted that a number go alongside the lot boundaries. A condition of consent requiring all retaining walls to be located wholly within the site can be imposed in the determination.
<b>Control</b>	<p><b><u>C8.25 – Shipping containers</u></b> Shipping containers are to be sited behind existing buildings, not be located in front of the established or proposed building line and be screened from view from any adjoining property.</p>
<b>Assessment</b>	N/A
<b>Control</b>	<b><u>C8.26 – Shipping containers</u></b>

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C8 – ANCILLARY STRUCTURES	
	The total number of shipping containers ancillary to residential development must not exceed more than 2 per lot.
Assessment	N/A
Control	<b>C8.27 – Shipping containers</b> Shipping containers are to be placed at ground level only and may not be stacked on top of another shipping container.
Assessment	N/A

## CHAPTER D – SPECIFIC AREAS

The proposed development is located within the DCP Specific Area D6 Nelson Bay West and this chapter applies.

D6 – Nelson Bay West			
Clause	Requirement	Compliant	N/A
D6.A	<b>Clause D6.1 – Front Setback</b> Minimum front setback of 6m		
	<b>Clause D6.2 – Secondary Setback</b> Minimum secondary setback of 3m		
	<b>Clause D6.3 – Side Setbacks</b> Minimum side setback of 3m for the Foreshore area (as identified in Figure DL) <i>Note: Figure C1 requires a minimum ground level (finished) side setback of 0.9m</i>		
Comment:	<p>The proposed development has the following front and side setbacks:</p> <p><b>Front setback:</b>  <i>Front Setbacks Requirement: 6m</i>            Second floor: 3m – 4.4m</p> <p>The proposed front setback does not comply with the 6m front setback requirement. As discussed against C4.2 above, the variation is considered to be acceptable as the proposal is consistent with dwelling setbacks, and the steep slope of the site means that opportunities to redesign are limited without significant additional earthworks being required.</p> <p><b>Side setbacks:</b>  <b>Ground Floor:</b>  <i>Side Setback Requirement: 0.9m (under section C4.2)</i></p> <p>Eastern side: 1m – 3.2m (subfloor at 1.2m)            Western side: 1.10m – 3.2m (subfloor at 1.3m)</p> <p>Side setbacks are compliant at Ground Floor.</p> <p><b>First Floor:</b>  <i>Side Setback Requirement: 3m for upper floors, or 0.9m for the ground level (as per C4.2)</i></p>		

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	<p>Eastern side: Rear section: 1.8m – 3.1m and Front Section: 1.2m – 1.7m</p> <p>Western side: Rear section: 1.3m – 3.2m and Front Section: 1.3m – 1.9m <i>Noting that the front section is considered to be at ground level</i></p> <p><u>Second Floor:</u> <i>Side Setback Requirement: 3m for upper floors, or 0.9m for the ground level (as per C4.2)</i></p> <p>Eastern side: Rear section: 1.8m – 3.1m and Front Section: 1.2m – 1.8m</p> <p>Western side: Rear section: 1.95m – 3.2m and Front Section: 1.3m – 1.9m <i>Noting that the front section is considered to be at ground level</i></p> <p>The proposed ground floor side setbacks are compliant, however, variations have been sought for all upper floor side setbacks against the D6 controls. Due to the cadastral shape of the lot, the variations are confined only to the northern end of the side setbacks, while the southern end remains compliant with the D6 controls. Privacy screening has been provided for all side elevations of proposed balconies and large windows to mitigate potential adverse impacts. Additionally, the shadow diagrams provided demonstrate that the proposal is compliant with solar access requirements, and the proposed setback variations will have negligible additional impacts on solar access for adjoining properties. As such, strict compliance with this setback requirement is not considered necessary in this instance, and the variation is supported based on consistency with the control objectives and other environmental planning grounds.</p>								
<b>D6.B</b>	<p><u>Clause D6.5 – Impervious Surfaces</u> On-site detention is required where impervious surfaces exceed the listed percentage of site area: Foreshore – 60%</p>								
<b>Comment:</b>	The proposed development has an impervious area of 62%, and on-site detention and infiltration has been provided complying with this control.								
<b>D6.C</b>	<p><u>Clause D6.6 – Landscaping</u> The landscape plan is to demonstrate compliance with Figure DK.</p> <table><tr><th>Location</th><th>Landscape area</th><th>Endemic Species</th><th>Native Vegetation</th></tr><tr><td>Foreshore</td><td>40%</td><td>20%</td><td>N/A</td></tr></table>	Location	Landscape area	Endemic Species	Native Vegetation	Foreshore	40%	20%	N/A
Location	Landscape area	Endemic Species	Native Vegetation						
Foreshore	40%	20%	N/A						
<b>Comment:</b>	The proposed landscaped area is 37% for Lot 1 and 39% for Lot 2, which is a minor variation to the required 40% and considered acceptable in this instance noting that it is not out of character with the surrounding area in terms of site coverage. Landscape species have been provided, which include at least 20% endemic species.								

**Section 4.15(1)(a)(iiia) – Any planning agreement or draft planning agreement entered into under section 7.4**

Nil



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

Nil

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

**Social and Economic Impacts**

The proposed development represents a modern infill residential development that will provide additional housing to service the needs of the community. The construction process will provide short-term 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 will reinforce the residential nature of the locality and is characteristic of other developments in both the local and wider locality. The dwellings include contemporary design measures to prevent adverse impacts on adjoining properties. The proposal addresses the street and provides logical connections to the road network and pedestrian facilities in the locality. There are no anticipated adverse impacts on the built environment as a result of the proposed development.

**Impacts on the Natural Environment**

The proposed development does not adversely impact the natural environment of the area. There is no vegetation removal required and water management and water quality requirements have been satisfied. Condition have been recommended that require the installation and maintenance of erosion and sedimentation controls and tree protection measures for the duration of construction works. The proposal adopts a landscaping scheme that utilises native species and retained vegetation.

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

The subject site is located within an existing residential area and has access to all relevant services. The proposed development makes good use of vacant land while responding appropriately to the topography and site constraints. The dwelling design addresses all elements required under the relevant planning instruments and policies and there are no anticipated negative impacts on the locality as a result of the development.

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

**Public Submissions**

The application was exhibited from 31 October 2023 to 14 November 2023 in accordance with the provisions of the Port Stephens Council Community Engagement Strategy. No submissions were received during this period objecting to the development proposal.

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

The proposed development is considered to be in the public interest as it involves the construction of two semi-detached dwellings within a residential area, which provides additional accommodation in the locality to service the housing needs of the community. Further, the development is not anticipated to have any significant adverse impacts on surrounding properties or the amenity of the locality. On these grounds, the development is in the public interest.

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

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S7.11 Contributions are applicable, and a condition of consent to this effect will be included in the determination.

**DETERMINATION**

The application is recommended to be approved, subject to conditions of consent.

SAMANTHA KROSSMAN

Development Planner

(Community Futures Directorate)

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### CLAUSE OBJECTIVES AND EXCLUSIONS

#### Clause 4.6 – Exceptions to Development Standards

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

Clause 4.6 provides a mechanism to vary development standards prescribed within Port Stephens Local Environmental Plan (PSLEP) 2013.

The objectives of the clause are as follows:

- a) *To provide an appropriate degree of flexibility applying certain development standards to particular development.*
- b) *To achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

The proposed development has been considered against Clause 4.6 as in force at the time of lodgement.

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

Development consent may be granted even though the development would contravene a development standard under the PSLEP 2013, unless the standard is expressly excluded under Clause 4.6(8). Clause 4.3 Height of Buildings is not excluded from the operation of Clause 4.6, and therefore the proposed variation can be varied through Clause 4.6 provisions.

### PROPOSED VARIATION REQUEST

The development application includes a written request to vary a development standard(s) under the PSLEP 2013. The written request is made in accordance with Section 35B of the Environmental Planning and Assessment regulation 2021.

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

Development Standard	Proposed Variation	Extent of Variation (%)
Cl.4.3 Height of Buildings – 9m height limit	9.94m (0.94m variation)	10.44%

As the proposed variation is greater than 10%, the development application must be determined by the elected Council in accordance with the 'Planning Matters to be reported to Council' Policy.

### ASSESSMENT

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

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





Clause 4.6(3)(a) provides that development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances.

In *Wehbe v Pittwater Council* (2007) LEC 827 (*Wehbe*), Chief Justice Preston 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 provided Clause 4.6 written request does not make any specific mention of the *Wehbe* case, however the request still seeks to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case. It is noted that the planning grounds put forward by the applicant are consistent with Reason 1 of the *Wehbe* case, being that the objectives of the development standard are still achieved notwithstanding non-compliance with the standard.

The key reasons provided by the applicant have been summarised below:

- The proposed development is consistent with the objectives of the R2 Low Density Residential zone and clause 4.3 Height of Buildings despite the height variation proposed.
- The proposed variation is due to the topography of the site, which slopes down from the road
- The area of the proposed variation comes from the parapets and architectural eaves at the rear of the dwelling. The total area above the height limit is only a small section of the total roof area.
- The proposed height variation is considered to be negligible in terms of bulk, scale, and visual dominance.
- The proposed development is not expected to have an adverse impact on view obstruction or view corridors, solar access, privacy, breezes, or visual dominance despite the proposed height variation. This is due to the inclusion of privacy screening, articulation, and building separation in the design.
- The proposal is consistent with other architecturally designed homes in the area, and has


**PORT STEPHENS COUNCIL**

## CLAUSE 4.6 ASSESSMENT REPORT

been designed to respond to the topography of the site.

- The proposed development has utilised significant cut and fill to recess the design into the land and to reduce the overall height where possible, while still maintaining appropriate internal floor to ceiling heights, sufficient ventilation and internal solar access.
- The proposed development does not have not an adverse impact on solar access to neighbouring properties as demonstrated by the provided shadow diagrams.

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

Clause 4.6(3)(b) provides that development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that there are sufficient environmental planning grounds to justify the contravention of the development standard.

The applicant's Clause 4.6 request notes that there is sufficient environmental planning grounds to contravene the development standard as:

- The proposed development is consistent with the zone and height objectives despite the height exceedance.
- The proposal appropriately responds to the topography and site constraints of the subject site.
- The height exceedances does not result in unreasonable overshadowing to neighbouring properties, and the proposal remains compliant with the solar access requirements of the DCP.
- There are no unreasonable or adverse privacy impacts expected as a result of this proposal.

The applicant has expected on these points in more detail within the Wehbe test framework as summaries in the section above.

### Assessment of request to vary development standards

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.*

As mentioned above, the applicant's Clause 4.6 request did not make specific mention of this case, however it sought to demonstrate that compliance with the development standard is unreasonable or unnecessary in this instance due to the objectives of the development standard still being achieved notwithstanding the proposed non-compliance with the standard, which is consistent with the first reason outlined in Wehbe.

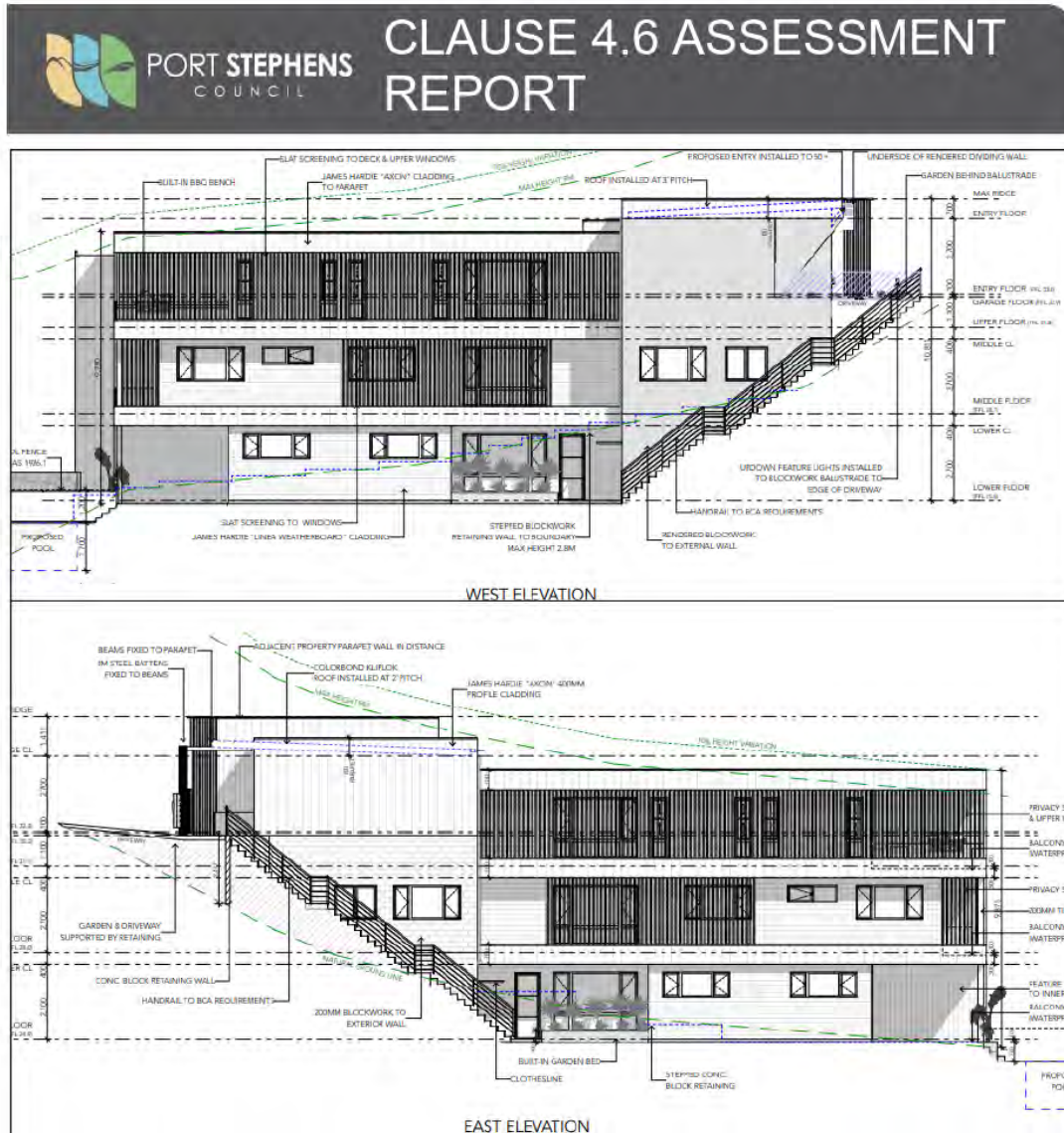
Having regard to the first test set down in Wehbe, it is noted that the objectives of Clause 4.3 Height of Buildings are achieved as the development is appropriate for the context and character of the area, and that the proposed building heights reflect the hierarchy of centres and land use structures.

Due to the topography of the surrounding area, residential developments have incorporated similar design forms to mitigate height, bulk, and scale. These design forms have included two or three storey designs, which often step down with the slope of the land, combined with cut and fill to level the building platform and recess the developments into the land to mitigate height, bulk and scale. The proposed development includes similar design measures, noting that the dwellings have a split level design for the second floor and has a multi-level design that appears as a single storey development from the streetscape (see figures 1 and 2), but as a three storey development from the rear. The multi-storey design will not have an adverse privacy or overshadowing impact despite the proposed height variation. Shadow diagrams have been provided demonstrating that both the proposed dwelling and neighbouring properties comply with the solar access requirements within Chapter C4 of the Port Stephens Development Control Plan 2014 (PSDCP). Privacy screens have also been provided along the side elevations of the proposed balconies and over large windows along the upper floors to mitigate potential privacy impacts, and a condition of consent requiring these privacy screens to be maintained for the life of the development can be included in the determination.

Additionally, cut and fill has been proposed to achieve a level building pad and mitigate the bulk and scale by recessing the lower ground floor into the site and responding to the slope of the land (see figures 3 & 4). Elevations and renders shown within the architectural plans show that the proposal has used various setbacks and material changes in the design to increase articulation, which also assists in mitigating the overall bulk and scale of the design (see figure 1 & 3 below).

The adopted design measures mean the height exceedance is only a maximum of 0.94m and is restricted to only a small section of the roof area at the rear of the site (see figure 1), and appears to be generally consistent with the built form of other similar developments in the area. As such, the proposed development is considered to be consistent with the objectives of Clause 4.3 notwithstanding the height variation requested.





**Figure 1:** Elevation plans showing the sides of the proposal, with the natural ground level and corresponding 9m height limit and 9m+10% variation by a green dashed line



PORT STEPHENS  
COUNCIL

## CLAUSE 4.6 ASSESSMENT REPORT

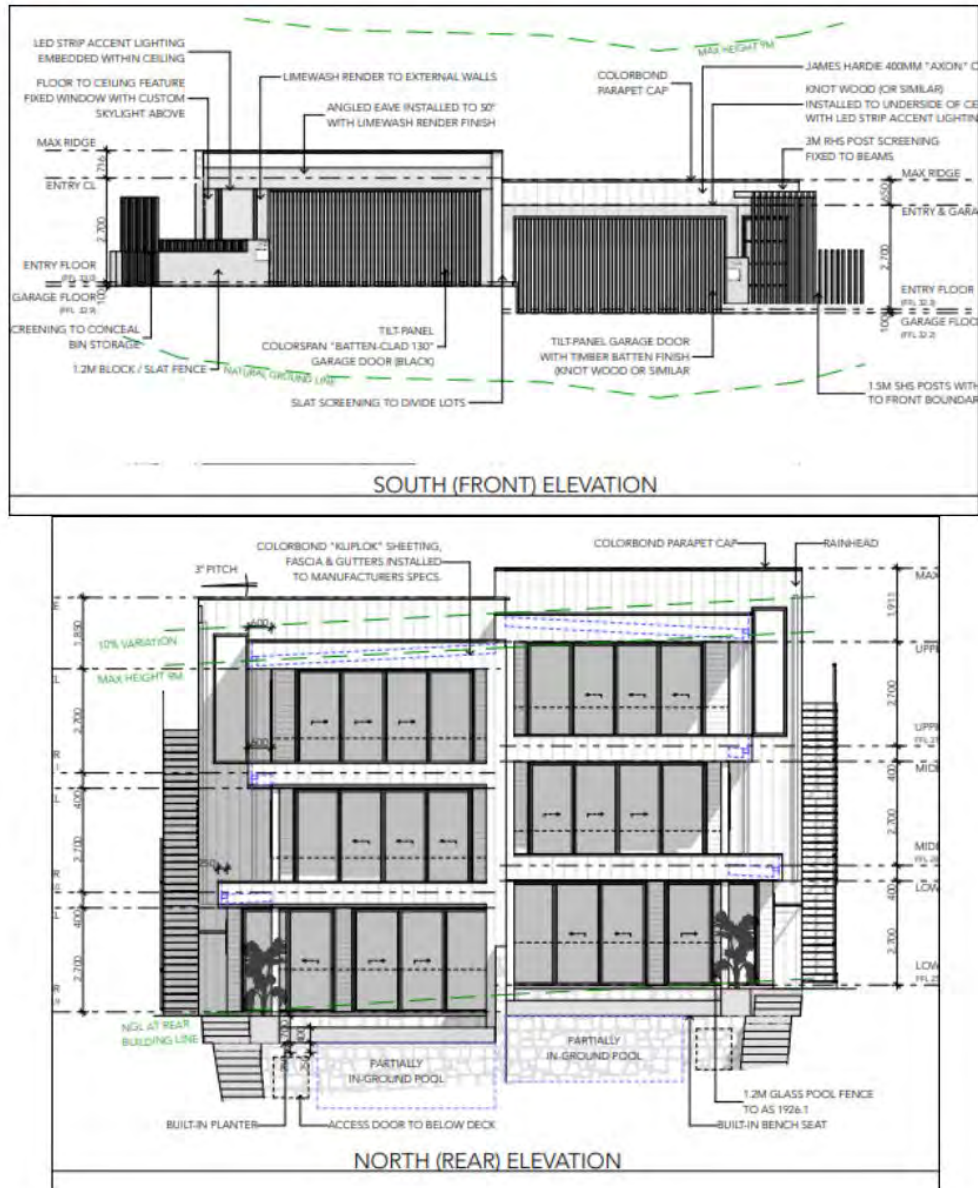
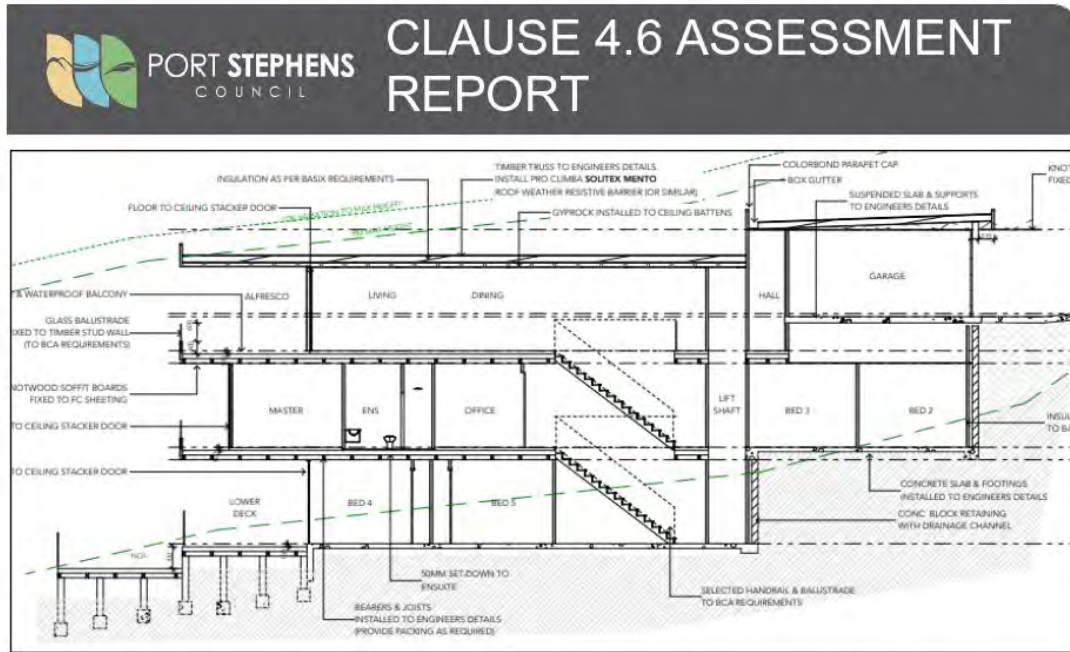


Figure 2: Front and rear elevation plan



**Figure 3:** Section plan, with the natural ground level and corresponding 9m height limit and 9m+10% variation shown by a green dashed line



**Figure 4:** 3D model of the proposed development with the natural ground level and 9m height limit shown by the green plan to identify areas of the height exceedance



**Public interest – consistency with objectives of the standard and objectives of the zone**

The proposed development is considered to be in the public interest despite the requested variation as it is consistent with the objectives of the development standard as discussed above, and is consistent with the objectives of the R2 Low Density Residential zone.

The objectives of the R2 Low Density Residential zone are:

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

The proposed development provides infill housing opportunities for the locality, and has been designed to be consistent with the low density residential character of the area through the design. The proposed development has incorporated appropriate privacy measures and has provided articulation through the materials and changes to setbacks to ensure it is consistent with the surrounding area and is not expected to have an adverse impact on the amenity of the area. As such, it is considered to be consistent with the objectives of the R2 zone, and is considered to be in the public interest.

**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, noting that the proposed design is consistent with the objectives of the R2 Low Density Residential zone and Clause 4.3 Height of Buildings despite the proposed non-compliance.

ITEM NO. 2

FILE NO: 24/108640  
EDRMS NO: PSC2023-01018

**DRAFT PORT STEPHENS DEVELOPMENT CONTROL PLAN 2014 CHAPTER B1  
TREE MANAGEMENT AND B2 FLORA AND FAUNA**

REPORT OF: BROCK LAMONT - STRATEGY & ENVIRONMENT SECTION  
MANAGER  
DIRECTORATE: COMMUNITY FUTURES

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Receives and note the submissions received during the exhibition period **(ATTACHMENT 1)**.
- 2) Approve the Port Stephens Development Control Plan 2014 (DCP) Chapter B1 Tree Management and B2 Flora and Fauna **(ATTACHMENT 2)**.
- 3) Provide public notice that the amendment to the Port Stephens Development Control Plan 2014 (DCP) Chapter B1 Tree Management and B2 Flora and Fauna has been approved in accordance with the Environmental Planning and Assessment Regulation 2021.

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**BACKGROUND**

The purpose of this report is to advise Council of the outcomes of the consultation undertaken on the draft amendment to Port Stephens Development Control Plan 2014 (DCP) Chapter B1 Tree Management and B2 Flora and Fauna **(ATTACHMENT 2)** (the amendment) and to seek Council approval to make the amendment.

The amendment seeks to update the DCP to align with requirements in other documentation, provide greater clarity for community members in relation to tree management, as well as improved guidance to address ecological impacts in development applications.

The amendment improves the functionality of the DCP by updating references and streamlining the location of development application requirements. The amendment incorporates information from technical specifications and plans, delivering a clear and comprehensive guide to tree management and flora and fauna matters. This report recommends the DCP be amended to:

- Reflect current legislative controls.
- Provide greater detail on tree/vegetation pruning and removal approval requirements.
- Rename Chapter B2 Natural Resources to Flora and Fauna and Chapter B2 sub-chapters: B.A from Environmental Significance to Ecological Impact, B2.B from

Koalas to Koala Habitat and B2.C from Biodiversity Offsets to Compensatory Requirements to more accurately reflect their contents.

- Provide greater detail on technical information required to support an application to remove trees and vegetation.
- Clarify the assessment requirements of the Port Stephens Comprehensive Koala Plan of Management (CKPoM).
- Provided greater detail on the compensatory requirements to replace trees and vegetation which was previously specified in the Tree Technical Specification.

A detailed explanation of the exhibited amendments is provided within **(ATTACHMENT 3)**.

At its meeting on 26 March 2024, Minute No. 044 **(ATTACHMENT 4)**, Council endorsed the draft amendment for exhibition.

The draft was publicly exhibited for 28 days from Tuesday 2 April 2024 to Tuesday 30 April 2024, in accordance with the Environmental Planning and Assessment Regulations 2021 (NSW). A total of 3 submissions were received during the exhibition period and have been summarised and addressed within **(ATTACHMENT 1)**.

In response to submissions, minor amendments were made to DCP chapters B1 and B2 for clarification and explanatory purposes. Post exhibition amendments are outlined in the submissions table **(ATTACHMENT 1)**.

## **COMMUNITY STRATEGIC PLAN**

<b>Strategic Direction</b>	<b>Delivery Program 2022-2026</b>
Thriving and safe place to live	Program to develop and implement Council's key planning documents

## **FINANCIAL/RESOURCE IMPLICATIONS**

There are no known financial or resource implications for Council as a consequence of the proposed recommendations.

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

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

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

Division 2 of Part 3 of the EP&A Regulations specifies the requirements for public participation. The recommendation is in accordance with the provisions of the EP&A Regulations.

State Environmental Planning Policy (Biodiversity and Conservation) 2021 (Biodiversity and Conservation SEPP)

Chapters 3 and 4 of the Biodiversity and Conservation SEPP outline planning provisions for Koala Habitat Protection in NSW, and enact approved Koala Plans of Management in NSW, including the Port Stephens Comprehensive Koala Plan of Management (CKPoM). The proposed DCP amendments align with the approved CKPoM, clarify its provisions and ensure Council's compliance with Chapters 3 and 4 of the Biodiversity and Conservation SEPP.

Port Stephens Development Control Plan 2014 (DCP)

This report recommends the endorsement of the proposed amendments to the DCP to provide clearer guidance for community members in preparing development applications. They also provide stronger development controls to support the assessment process for applications, including ensuring adequate information is provided. Together these changes will streamline the assessment of future development applications where ecological impacts are proposed.

<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 DCP will contain outdated and incorrect information if the amendment is not made.	Medium	Adopt the recommendations.	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 ecological impacts are not adequately addressed through the development assessment process if the amendment is not made.	Medium	Adopt the recommendations.	Yes

### **SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

The proposed amendments are considered to have positive social, environmental and economic implications. The amendment will improve access to information for the community and provide clearer approval and assessment requirements.

The proposed amendments can improve the consideration of ecological constraints during the preparation of development and vegetation removal applications. This can lead to improved assessment of ecological constraints and ultimately deliver enhanced environmental outcomes.

The proposed amendments can also streamline the assessment process by reducing the time taken to prepare and respond to requests for further information. The changes would result in clearer expectations of requirements prior to lodgement and shorter assessment timeframes once received.

### **CONSULTATION**

Consultation with key stakeholders has been undertaken by the Strategy and Environment Section to identify and consider any issues prior to exhibition.

#### Internal

- Strategy and Environment Section.
- Development and Compliance Section.
- Public Domain and Services Section.

#### External

The amendment was publicly exhibited for 28 days from Tuesday 2 April 2024 to Tuesday 30 April 2024 in accordance with the Environmental Planning and Assessment Regulations 2021.

During the public exhibition period, 3 submissions were received. The submissions noted several technical recommendations for the amended DCP for clarification and explanatory purposes. The submissions are summarised and addressed in **(ATTACHMENT 1)**.

Council's Environmental Advisory Panel was engaged through discussions on the amendments to the DCP Chapter B1 Tree Management and B2 Flora and Fauna. The discussion covered the matters raised in the submissions.

### **OPTIONS**

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

### **ATTACHMENTS**

- 1) Submission summary table.
- 2) Draft DCP 2014 - Chapter B1 and Chapter B2.
- 3) Explanation of Amendments.
- 4) Minute No. 44 - 26 March 2024.

### **COUNCILLORS' ROOM/DASHBOARD**

- 1) Unredacted Submissions.

### **TABLED DOCUMENTS**

Nil.

## ITEM 2 - ATTACHMENT 1 SUBMISSION SUMMARY TABLE.

No.	Author of submission	Comment	Council's response
1	Tomaree Ratepayers and Residents Association Inc. and ECONetwork Port Stephens	The submission notes that whilst the amendments to the Port Stephens 2014 Development Control Plan (DCP) is clearer to some extent, there are complex details that may be confusing for those using the DCP.	There are supplementary guides and documents to support users when viewing the DCP.
		The submission notes that Council is relying on self-assessment and people using the decision trees correctly. It suggests that the guidance should assume that the removal of any mature tree may need approval and encourage application for permits.	To address the submission, the DCP has been amended to include the following note at the end of 'Council approval not required':  'Note: Prior to the removal of a tree, a Council notification must be provided by completing the tree pruning and removal assessment form available on Council's website'.
		The submission notes that there could be a clearer distinction between non-rural areas and rural areas, especially in regards to Local Environmental Plan zoning. The submission suggests that a map outlining where the chapters apply would be beneficial. Noting that there is no reference to whether Chapter B2 applies to rural/non-rural land.	The definitions in the State Environmental Planning Policy (Biodiversity and Conservation) 2021 (SEPP) for rural and non-rural land apply to the DCP because the DCP is made under Chapter 2 of that SEPP. B2 – Applies to all land zones, the same way some other chapters in the DCP apply to all zones.
		The submission has the following technical recommendations for Chapter B1: 1) The document should direct people to the fact sheets and assessment form to support their understanding. 2) It is implied that this chapter only applies to	1) To address the submission, the following note is included at the beginning of B1: 'The tree pruning and removal assessment form is available on Council's website can be used to determine what type of Council issued approval (if any) is required prior to tree removal or pruning.'



## ITEM 2 - ATTACHMENT 1 SUBMISSION SUMMARY TABLE.

No.	Author of submission	Comment	Council's response
		<p>private land, so it should be stated explicitly.</p> <p>3) Under 'Council approval not required' it is not clear whether this applies when the land is mapped as a 'Biodiversity Values Area'.</p> <p>4) Reword '...or is used as habitat for native animals' as it relies on self-assessment.</p> <p>5) Under 'Council approval not required' the definition of 'an approved structure' should clarify that people should not assume that a structure such as a garden wall or shed will qualify.</p> <p>6) In B1.4, rewording 'assessment...has no regard for...' to clearly state that the listed factors will not be taken as justification for removal or pruning.</p> <p>7) In B1.5, a definition of 'Tree Protection Zone' should be included.</p>	<p>2) Chapter B1 applies to all land – both public and private land, which is also the case for other chapters in the DCP.</p> <p>3) The DCP states that approval is required for removal of trees or vegetation on Biodiversity Values mapped land (Figure BA, Column 2, point 4).</p> <p>4) To address the submission, the DCP has been amended to include 'such as hollow bearing trees'.</p> <p>5) The note clarifies that an approved structure is an item that requires development consent and excludes items that are exempt or complying development.</p> <p>6) The text in the draft DCP is sufficient and consistent with the wording of the existing DCP.</p> <p>7) To address the submission, the DCP has been amended to include a definition of 'Tree Protection Zone' in the glossary.</p>
		The submission notes that the changes to sections B2.A Ecological Impact and B2.B Koalas Habitat, are helpful and welcome.	Noted.
		<p>The submission has the following technical recommendations for Chapter B2:</p> <p>1) Not removing the description 'land which contains items of environmental significance such as threatened</p>	<p>1) The existing wording in the DCP 'impacts upon native flora and/or fauna' is a broad inclusive statement which encompasses items of environmental significance and as such the suggested addition is not necessary.</p>

## ITEM 2 - ATTACHMENT 1 SUBMISSION SUMMARY TABLE.

No.	Author of submission	Comment	Council's response
		<p>species or communities, listed migratory species, wildlife corridors' as development that this chapter applies to.</p> <p>2) Specify other important habitat features, not just 'hollow bearing trees'.</p> <p>3) In B2.2, the Council document 'Ecological Impact Assessment Guideline' is incorrectly referenced the DCP.</p> <p>4) After 'high value ecological features', 'see Glossary' should be included.</p> <p>5) In B2.3, delete 'where possible'.</p> <p>6) In B2.3, provide further guidance around the buffer width and how this should be determined.</p> <p>7) In B2.3, replace 'should be' with 'are to be'.</p> <p>8) In B2.B, the objective should be extended to include '...and corridors that link the identified koala habitats to enable koala movement and gene flow' and include a requirement for subdivisions over a specific size to retain or provide a biodiversity corridor.</p> <p>9) Edit B2.8(e) to remove duplication of 'by minimising barriers'.</p> <p>10) The default replacement ratio in B2.11 should be increased, noting that the ratio in the guidance from</p>	<p>2) The 'Ecological Impact Assessment Guideline' specifies the full scope of ecological values required for assessment and consideration by Council.</p> <p>3) To address the submission, the DCP has been amended to state 'Ecological Impact Assessment Guideline'.</p> <p>4) All terms that are defined in the glossary are in bold within the text of the DCP. The DCP includes guidance on how to read the document (see Section A - Introduction).</p> <p>5) To address the submission, the DCP has been amended to incorporate this change.</p> <p>6) Buffer widths will be determined on a case by case basis and on merit. There are currently no guidelines or requirements for Council to define and apply a minimum corridor width for developments.</p> <p>7) The language in B2.3 is consistent with other existing controls within the DCP and provides flexibility when applying the DCP to developments.</p> <p>8) This DCP chapter enhances the provisions of the CKPoM including controls that require consideration of corridors for habitat and gene flow. The objective of Chapter B2 is to implement the provisions of Council's adopted Comprehensive</p>

## ITEM 2 - ATTACHMENT 1 SUBMISSION SUMMARY TABLE.

No.	Author of submission	Comment	Council's response
		<p>Transport for NSW is higher.</p> <p>11) In figure BC, consideration could be given to include 'potential hollows'.</p> <p>12) Reword the technical specifications in B2.D to 'Biodiversity Technical Specifications' not Biosecurity Technical Specifications'.</p>	<p>Koala Plan of Management (CKPoM). The controls provided in Chapter B2 are consistent with those required by the CKPoM, including provisions related to biodiversity corridors, specifically satisfied by DCP control B2.8 (a). In addition, the location of corridors is site dependent. Corridors are best identified at the planning proposal stage rather than at development application (DA) stage.</p> <p>9) To address the submission, the DCP has been amended to incorporate this change.</p> <p>10) Replacement ratios are benchmarked against other councils and are considered appropriate. The replacement ratio may be varied depending on the circumstances of the site. Transport for NSW ratios are not appropriate for residential sites.</p> <p>11) 'Potential hollows' are difficult to determine and it can be difficult to calculate an offset. Potential hollows are also currently not included in State government best practice assessment methods such as the Biodiversity Assessment Method 2020.</p> <p>12) To address the submission, the DCP has been amended to reference the correct naming 'Noxious Weed Technical Specification'.</p>

## ITEM 2 - ATTACHMENT 1 SUBMISSION SUMMARY TABLE.

No.	Author of submission	Comment	Council's response
		The submission supports the language change from 'Biodiversity offsets' to 'Compensatory planting' and the inclusion of these controls in the DCP.	Noted.
		The submission notes that there is reliance on compensatory planting, noting that replace trees take time to grow which leave gaps in habitat.	Noted.
		The submission notes that the changes to the Glossary are helpful, noting that a definition of 'non-rural' areas should be included.	To address the submission, the DCP has been amended to incorporate this change.
		The submission seeks to clarify if the 'Biodiversity Technical Specification' had any changes, in addition to the content that was moved into the DCP.	The 'Biodiversity Technical Specification' and associated 'Ecological Impact Assessment Guideline' were updated separately to this DCP amendment, but are consistent and reflect the information and requirements of this DCP amendment. Changes included restructuring the specification for a more logical flow of information, simplification of text and clearer requirements for tree planting. The 'Biodiversity Technical Specification' and associated 'Ecological Impact Assessment Guideline' can be found on Council's website.
		The submission notes several other suggestions, not relevant to the DCP including: 1) Greater emphasis on, and resourcing for, compliance monitoring and enforcement.	The suggestions are not applicable to the DCP amendment. Separate consultation will be completed with the submitter.



## ITEM 2 - ATTACHMENT 1 SUBMISSION SUMMARY TABLE.

No.	Author of submission	Comment	Council's response
		2) Sufficient staff numbers to respond to non-compliance alerts. 3) Increased penalties for non-compliance. 4) Stronger remedial action when trees have been removed without authority and the culprit cannot be identified. 5) Notification of private tree removal applications and proposed removal on public land. 6) Regular public reporting of tree removal permits and post removal notifications. 7) Better promotion and use of the significant tree register. 8) Progressive implementation of an improved street tree strategy. 9) Expanded tree planting by Council.	
2	Koala Coalition	The submission suggests that hyperlinks should be included in the documents to facilitate cross-referencing, for example the 'Tree pruning and removal assessment form' and Biodiversity Values Map.	Council may consider incorporating this change in the future.
		The submission notes the 'Tree Removal and Assessment form' provides information about the NSW spatial mapping, however, the list of zonings has not been updated with the new zones.	Noted for action by Council. This comment is in relation to Council's 'Tree Pruning and removal Assessment Form'.
		In the 'Tree pruning and removal assessment form' there is a clause 'Throughout	To address the submission, the DCP has been amended to incorporate this change.

## ITEM 2 - ATTACHMENT 1 SUBMISSION SUMMARY TABLE.

No.	Author of submission	Comment	Council's response
		this form, the term "tree" is used to refer to trees, shrubs and vegetation', the submission suggests that this explanatory clause should be included in the introduction to the DCP Chapter B1.	
		The submission supports the inclusion of further criteria for determining trees that do need a Council Permit.	Noted.
		The submission suggests hyperlinking or providing more information to assist people when looking for the 'Biodiversity Technical Specification'.	Council may consider incorporating this change in the future.
		The submission suggests providing definitions for 'Tree protection zone' and 'tree bond'.	To address the submission, the DCP has been amended to include a definition of 'Tree Protection Zone' and 'tree bond' in the glossary.
		The submission supports the amendments to simplify Chapter B2 Flora and Fauna.	Noted.
		The submission supports the updated objectives and development controls in B2.A.	Noted.
		<p>The submission has the following technical recommendations:</p> <ol style="list-style-type: none"> <li>1. Add 'combined' to B2.2 '...in accordance with Council's Ecological Assessment Guideline including cumulative, direct and indirect impacts...' as defined in the 'Cumulative Impact Assessment Guidelines for State Significant Projects'.</li> <li>2. Include noise and air pollution in B2.7.</li> </ol>	<ol style="list-style-type: none"> <li>1. The term 'development likely to impact' would include direct, indirect and cumulative impacts and any other impacts. The wording has not been changed so that the DCP continues to require the broadest possible consideration of development impacts on habitat etc.</li> <li>2. There are no formal guidelines to reference with respect to managing noise</li> </ol>

## ITEM 2 - ATTACHMENT 1 SUBMISSION SUMMARY TABLE.

No.	Author of submission	Comment	Council's response
		<p>3. In B2.8, add additional assessment methods such as koala scat detection dogs and drone.</p> <p>4. Amend B2.8(a) by replacing 'or' with 'and'.</p> <p>5. Include links and tips for living with Koalas in B2.8(g).</p> <p>6. In B2.8(g), expand 'mitigating threats by motor vehicles' to include suggested measures.</p> <p>7. Amend 'Koala Feed Trees' to 'Koala Habitat and Shelter Trees' in B2.9.</p> <p>8. Add 'and hybrids of any of these species. An additional list of tree species that may be important to Koalas is included in Appendix 8 of the CKPoM' to B2.10 to align with B2.8(c).</p>	<p>and air pollution impacts on fauna.</p> <p>3. B2.8 relates to the demonstration of a development's compliance against the CKPoM performance criteria. These performance criteria were extracted from the CKPoM and are provided in the DCP under B2.8. A 'koala habitat assessment' is to be prepared in accordance with the 'Koala habitat assessment' process detailed in Appendix 6 of the CKPoM. Appendix 6 does not currently specify suitable or required koala survey methods. Council is unable to update the CKPoM to add these methods, however, there is a flow chart of the process on Council's website which can be amended to include these additional methods available.</p> <p>4. The criteria is taken from Council's adopted Comprehensive Koala Plan of Management (CKPoM). Council would take a purposive approach to the interpretation of the DCP. This means if there was a property with both Preferred Koala Habitat and Habitat Buffers, Council would require the assessment to address both.</p>

## ITEM 2 - ATTACHMENT 1 SUBMISSION SUMMARY TABLE.

No.	Author of submission	Comment	Council's response
			<p>5. The DCP sets out development principles that support the implementation of the Local Environmental Plan during development assessment. The purpose is not to provide links and tips for residents.</p> <p>6. To address the submission, the DCP has been amended to incorporate this change. Mitigation measures have been added as per the CKPoM.</p> <p>7. It is acknowledged that these preferred species provide habitat, sheltering and feed values to Koalas, the identification of these species as "Koala feed tree" species enables consistency with the language used in both the CKPoM and Council's supporting documentation.</p> <p>8. The DCP has been amended to incorporate hybrid species. The DCP cannot list additional species for offsetting in this clause that are inconsistent with the CKPoM's performance criteria. Council has however implemented an additional offsetting measures under B2.11 which will capture a number of species which may also be of importance to Koalas (and other species), including those species listed</p>



## ITEM 2 - ATTACHMENT 1 SUBMISSION SUMMARY TABLE.

No.	Author of submission	Comment	Council's response
			under Appendix 8 of the CKPoM.
		The submission suggests that the document 'Koala Trees Port Stephens' (a Koala Coalition document) should be referenced in the DCP to support the user's understanding of koala feed trees and koala shelter trees.	The submitter may contact the CKPoM Committee to discuss publishing a factsheet on koala trees.
		The submission supports the updated title of B2.C.	Noted.
		The submission suggests that a range of external guides and references should be included to assist users with selecting appropriate plants completing compensatory planting.	The DCP is not the appropriate instrument for guides and reference documents. A list of suitable species for planting are provided in the 'Biodiversity Technical Specifications'.
		The submission seeks clarification around how the ratios for compensatory planting were determined.	Compensatory ratios were transferred from the former 'Tree Technical specification'. They were benchmarked against other similar NSW councils and considered appropriate. Discretion is provided to allow ratios to be varied where appropriate.
		The submission notes that terminology in figure BB is outdated.	The DCP has been amended to remove Figure BB.
		The submission notes that there should be greater emphasis on wildlife corridor connection in the DCP.	This is noted for consideration in a future DCP revision.
		The submission notes the importance of the understorey/underbrush and suggests that greater consideration is required.	This is noted for consideration in a future DCP revision.
		The submission concludes by noting overall support for the	Noted.

**ITEM 2 - ATTACHMENT 1 SUBMISSION SUMMARY TABLE.**

No.	Author of submission	Comment	Council's response
		proposed amendments to the DCP chapters.	
3	Resident	The submission suggests that the DCP should be referred to the CEAG for review to ensure the document is user friendly.	The DCP is a document for applicants proposing to undertake new development. Users of the DCP in the development industry will be included in any future stakeholder consultation on amendments.

## B1 Tree Management

B1

### Application

This Part applies to the removal or pruning of trees or other vegetation within **non-rural areas**

Note: Clearing of native vegetation in **rural areas** is regulated by the *Local Land Services Amendment Act 2016*

### B1.A Non-rural areas

#### Objective

To give effect to *State Environmental Planning Policy (SEPP) (Biodiversity and Conservation) 2021* by listing those trees or other vegetation that require approval **for removal or pruning**.

#### Development controls

B1.1 Where any activity specified in Column 2 is proposed, an applicant must attain the corresponding approval type specified in Column 1

Note: The tree pruning and removal assessment form available on Council's website can be used to determine what type of Council issued approval (if any) is required prior to tree removal or pruning.

Note: The term 'trees' refers to trees, shrubs and vegetation.

Figure BA: Approval requirements thresholds

Column 1 – Approval type required	Column 2 – Tree management activity
Council issued development consent	<p><b>Development consent</b> from Council is required for the removal or pruning of a tree or other vegetation that forms part of a <b>heritage item, heritage conservation area</b>, Aboriginal object or Aboriginal place of significance, which Council is not satisfied:</p> <ul style="list-style-type: none"> <li>is of a minor nature or is for the maintenance of that item, area, object or place; and</li> <li>will not adversely affect the significance of that item, area, object or place</li> </ul> <p>Note: A <b>development application</b> will need to be lodged.</p>
Threatened Species Licence	<p>Removal or pruning of vegetation that poses no risk to life or property and is likely to result in:</p> <ul style="list-style-type: none"> <li>harm to an animal that is a threatened species or part of a threatened ecological community; or</li> <li>picking a plant that is a threatened species or part of a threatened ecological community; or</li> <li>damage to the habitat of a threatened species or threatened ecological community; or</li> <li>damage to a declared area of outstanding biodiversity value.</li> </ul>

B1

Column 1 – Approval type required	Column 2 – Tree management activity
Fisheries and Marine Park Permits	Removal or pruning of any <b>Mangrove</b> and marine vegetation (such as saltmarsh, mangroves, seagrasses, and macroalgae (seaweeds), as specified in Part 7 of the <i>Fisheries Management Act 1994</i> , irrespective of the size, location or risk.
Native vegetation panel approval	Clearing of <b>native vegetation</b> that is subject to the biodiversity offset scheme as specified in the <i>Biodiversity Conservation Act 2016</i>
Council issued permit	<p>A tree permit is required for the removal or pruning over 10% of a tree or other vegetation where height exceeds 3m or diameter exceeds 300mm (measured 1.3m from the ground) and poses no risk to life or property</p> <p>A tree permit is required for the removal or pruning of a tree or other vegetation, irrespective of the location or risk that is:</p> <ul style="list-style-type: none"> <li>a preferred Koala Feed Tree species identified in Council's Comprehensive Koala Plan of Management (CKPoM), being: Forest Red Gum (<i>Eucalyptus tereticornis</i>), Swamp Mahogany (<i>Eucalyptus robusta</i>) or Paramatta Red Gum (<i>Eucalyptus parramattensis</i>), or a NSW Christmas Bush (<i>Ceratopetalum gummiferum</i>); or</li> <li>a Cabbage Tree Palm (<i>Livistona australis</i>); or</li> <li>situated on land that is Biodiversity Values Mapped or is used as habitat for native animals; or</li> <li>identified for retention under a previous development consent or Tree Permit; or</li> <li>listed under the <b>register of significant trees</b><sup>3</sup>; or</li> <li>part of a <b>heritage item, heritage conservation area</b>, Aboriginal object or Aboriginal place of significance, which Council is satisfied: <ul style="list-style-type: none"> <li>is of a minor nature or is for the maintenance of that item, area, object or place; and</li> <li>will not adversely affect the significance of that item, area, object or place</li> </ul> </li> </ul> <p>Note: A tree permit can be requested by completing the tree pruning and removal assessment form available on Council's website.</p> <p>Note: A tree removal permit is not separately required if the tree removal forms part of works requiring development consent.</p>
Notification to Council	<p>Removal or pruning of a tree, not otherwise listed as requiring Council approval, can occur in instances where Council is satisfied that:</p> <ul style="list-style-type: none"> <li>there is a risk to human life or property not related to leaf/flower/fruit drop; or</li> <li>the tree(s) are dead or dying and it is not required as the habitat of native animals.</li> </ul> <p>Note: where urgent removal or pruning over 10% of a tree is required due to risk of immediate failure, Council requires a tree removal notification within 10 days of the removal.</p> <p>Note: notification must be provided by completing the tree pruning and removal assessment form available on Council's website.</p>
Council approval not required	<p>No approvals are required for the removal of a tree(s) or other vegetation that is:</p> <ul style="list-style-type: none"> <li>authorised under other legislation, such as vegetation clearing authorised under the <i>Rural Fires Act 1997</i>; or</li> <li>clearing <b>approved</b> as part of an <b>approved</b> construction certificate or approved subdivision certificate; or</li> <li>trees and shrubs under 3m in height <b>and</b> diameter is less than 300mm (measured 1.3m from the ground); or</li> </ul>



## ITEM 2 - ATTACHMENT 2 DRAFT DCP 2014 - CHAPTER B1 AND CHAPTER B2.

B1

Column 1 – Approval type required	Column 2 – Tree management activity
Council approval not required	<ul style="list-style-type: none"> <li>where height exceeds 3m or diameter exceeds 300mm (measured 1.3m from the ground), that is:               <ul style="list-style-type: none"> <li>within 5m of the wall of an approved structure measured from the wall to the trunk of the tree (excluding driveways); unless it is identified for protection within conditions of a development consent or tree permit, or it is located on land that is Biodiversity Values mapped or is used as habitat for native animals, such as hollow bearing trees; or,</li> <li>a tree species grown for fruit or nut production; or,</li> <li>a species listed in <b>NSW Weedwise</b> that is not otherwise listed as requiring Council approval.</li> </ul> </li> </ul> <p><b>Note:</b> Prior to the removal of a tree, a Council notification must be provided by completing the Tree pruning and removal assessment form available on Council's website.</p> <p><b>Note:</b> No approvals are required when pruning less than 10% foliage of a tree or other vegetation within a 12 month period when completed in accordance with Australian Standard (AS) 4373– Pruning of amenity trees.</p> <p><b>Note:</b> An approved structure is development such as a dwelling, garage, pool or retaining wall that required development consent (that is not exempt or complying development).</p>

Note: Applicants for tree clearing and removals will also need to consider the provisions of other legislation including but not limited to the following:

- Biodiversity Conservation Act 2016 (NSW)* - A licence may be required if tree removal would also harm the animals listed in this Act. Contact NSW Environment, Energy and Science.
- Biosecurity Act 2015 (NSW)* - clearing of weeds. Contact Port Stephens Council's Invasive Species Team.
- Environment Protection and Biodiversity Conservation Act 1999 (Cth)* - protect and manage nationally and internationally important flora, fauna, ecological communities and heritage places. Contact the Commonwealth Department of the Environment.
- Fisheries Management Act 1994 (NSW)* - prohibits **harm to any marine vegetation and issues permits for harvesting of mangroves**. Contact the NSW Department of Primary Industries (DPI).
- Heritage Act 1977 (NSW)* - sites under conservation orders, relics, etc. Contact NSW Environment, Energy and Science.
- Local Land Services Act 2013 (NSW)* - clearing of native vegetation, regional vegetation management plans, property agreements. Contact NSW Local Land Services (LLS) - Hunter.
- National Parks and Wildlife Act 1974 (NSW)* - Regulates works in Aboriginal places or impacting Aboriginal objects. Contact the National Parks and Wildlife Service at NSW Environment, Energy and Science.
- Rural Fires Act 1997 (NSW)* - '10/50 Vegetation Clearing Code of Practice for NSW', and authorised removal of fire hazards. Contact the NSW Rural Fire Service.

B1

## B1.B Assessment requirements

## Objective

To ensure adequate consideration is provided to the relevant matters for the removal or pruning of trees or other vegetation

## Development controls

- B1.2 Council assessment of tree notifications to remove or prune trees or other vegetation has regard for:
- the level and likelihood of risk posed by the vegetation based on current arboricultural practices
  - whether the tree is dead and provides habitat
- B1.3 Council assessment of permits and development applications to remove or prune trees or other vegetation has regard for:
- the level and likelihood of risk posed by the vegetation based on current arboricultural practices
  - damage to an existing structure or utility service substantiated by a qualified person
  - impacts resulting from the approval of the development
  - impact on threatened species, populations or ecological communities and their habitats
  - retention value under the **biodiversity tree technical specification\***
  - other relevant circumstances, as per the **biodiversity tree technical specification\***
- B1.4 Council assessment of applications to remove or prune trees or other vegetation has no regard for the removal or pruning of trees:
- due to leaf/flower/fruit drop
  - to enhance view
  - interfering with a solar photovoltaic/hot water system
- Note: the **biodiversity tree technical specification\*** details circumstances where the removal or pruning of trees for the installation of solar photovoltaic/hot water systems may be considered
- interfering with the amenity of a dwelling
  - located further than 3m from a driveway. Any trees located closer to driveways must be shown to be interfering, or likely to interfere with the integrity of a driveway by a suitably qualified person



## B1

## B1.C Supporting information

## Objective

To ensure adequate information is provided to determine the application for the removal of trees or vegetation

## Development controls

- B1.5 An **arborist report** consistent with **biodiversity tree technical specification\*** is required:
- for a tree or other vegetation listed under **Council's register of significant trees<sup>3</sup>**
  - to assess the impact on existing trees as part of a **development application or driveway application** as per AS 4970 – Protection of trees on development sites, where they are within 5m of the development footprint, (including any ancillary development, **driveways, stormwater, connections to services** or associated excavation), or are likely to be impacted by the development (10% or greater encroachment within the **Tree Protection Zone**) or otherwise proposed to be removed
  - to support reassessment of applications for tree removal on a technical basis
  - to support the release of a tree bond

Note: The size of a Tree Protection Zone is calculated by multiplying the Tree's trunk diameter (measured at 1.4m above ground level) by 12.

- B1.6 A request to remove 10 or more trees requires a clearing method statement to be **vegetation management plan** prepared by a suitably qualified professional in accordance with the **biodiversity technical specification\***.

Note: An application to remove 10 or more trees, where tree height exceeds 3m or diameter exceeds 300mm (measured 1.3m from the ground), may require a referral to be provided to Hunter Water by the assessing officer in accordance with the 'Guidelines for developments in the drinking water catchments'

- B1.7 **Compensatory planting** consistent with **B2.C the tree technical specification\*** may be required when council approval to remove trees is provided

- B1.8 Where hollow bearing trees occur on site and are proposed for removal, a Hollow Bearing Tree Schedule is to be provided identifying the species, number, size and location of hollows and hollow bearing trees for removal and retention on the site.

Replacement hollows consistent with B2.C may be required when Council approval to remove hollow bearing trees is provided.

A **hollow tree assessment** is required to remove hollow bearing trees:

- Two replacement hollows are provided for each hollow tree identified by the **tree technical specification<sup>1</sup>**
- Salvaged hollows are preferred over nest boxes, which are consistent with the **tree technical specification<sup>1</sup>**

Note: B2.1 requires a **hollow tree assessment** and replacement or salvaged hollows if a **flora and fauna survey** report proposes their removal

## B2

## B2 Natural Resources Flora and Fauna

## Application

This Part applies to **development** that:

- **Has the potential to impact upon native flora and/or fauna; or**
- **Is located 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, any LEP or State mapped **wetlands** or watercourses, **riparian corridors** and has the potential to impact these areas biodiversity; or
- **Is seeking to use biodiversity offsets; or**
- **Is located on land containing biosecurity risks; or**
- **Is located on or is in proximity to land that contains mapped as Koala habitat identified by Council's Comprehensive Koala Plan of Management (CKPoM)**

Note: where the biodiversity impacts exceed the Biodiversity Offset Scheme Thresholds defined in accordance with the *Biodiversity Conservation Act 2016*, a **Biodiversity Development Assessment Report** (BDAR) will be required. *The Biodiversity Conservation Act 2016* was enacted on the 25 August 2017 which repealed the provisions of *Threatened Species Conservation Act 1995 (TSC Act)*. Transitional arrangements for developments have been put in place to ensure a smooth transition to the new legislation. These are set out in the *Biodiversity Conservation (Savings and Transitional) Regulation 2017*.

## B2.A Environmental significance Ecological Impact

## Objectives

- **To avoid and minimise impacts on native flora and fauna.**
- **To protect and enhance native flora and fauna, vegetation communities, and significant habitat on the site.**

To ensure adequate consideration is provided to the protection and conservation of items of **environmental significance**

## Development controls

- B2.1 Where existing trees on site are proposed to be removed and retained, a tree removal and retention plan is required.

Note: Where hollow bearing trees are located on the site they are to be identified in the tree removal and retention plan with a Hollow Bearing Tree Schedule which identifies the species, number, size and location of hollows and hollow bearing trees for removal and retention on the site.



## B2

## Development controls

**Development** located 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 impact biodiversity provides:

- a **flora and fauna survey** to inform the **assessment of significance**;
  - The **flora and fauna survey** is in accordance with:
    - NSW Department of Environment and Conservation, 2004, "Threatened Species Survey and Assessment: Guidelines for development and activities";<sup>8</sup>
    - Hunter and Central Coast Regional Environmental Management Systems, 2002, "Lower Hunter and Central Coast Regional Fauna and Flora Guidelines";<sup>9</sup>
    - If **development** poses a **significant effect** under 5A of the **EP&A Act** or if development is on land which is, or is part of, critical habitat then a **species impact statement (SIS)** is required
    - If **development** does not pose a **significant effect** under 5A of the **EP&A Act**, but proposes unavoidable vegetation impacts then a **vegetation management plan (VMP)** that is consistent with the **tree technical specification**<sup>1</sup> is required

Note: Under section 5.5 of the **EP&A Act** the determining authority has a duty to consider the environmental impact of proposed activities

- If the **flora and fauna survey** proposes the removal of hollow bearing trees then a **hollow tree assessment** is required:
  - Two replacement hollows are provided for each hollow tree identified by the **hollow tree assessment**
  - Salvaged hollows are preferred over nest boxes that are consistent with the **tree technical specification**<sup>1</sup>

Note: This is consistent with B1.8 that requires a **hollow tree assessment** to remove hollow bearing trees on land to which B1 applies:

- A proposed **buffer** on the land subject to the **development** is provided to items of **environmental significance**. The width of the **buffer** is recommended by the **flora and fauna survey** report based and is based on taking into account the following parameters:
  - The condition of the item of **environmental significance**
  - Proposed methods of mitigating adverse impact
  - Possible external effects, such as weed encroachment or domestic animals and their potential to cause impact
  - Where the vegetation of **buffers** are proposed, the vegetation is established along the relevant boundaries prior to the issuing of the relevant **subdivision** or **occupation certificate**

Note: C4.11 nominates a suitable buffer for residential accommodation adjoining land used for agricultural purposes

## B2

## Development controls

**B2.2** Where the proposed development is likely to impact upon threatened species habitat, threatened ecological communities or important habitat features such as hollow bearing trees, an Ecological Impact Assessment is required to be submitted with the development application.

The Ecological Impact Assessment is to adequately identify and assess the impacts of the proposed development in accordance with Council's **Ecological Impact Assessment Guideline** including cumulative, direct and indirect impacts and any other clearing required to facilitate the development.

Note: If the Ecological Impact Assessment identifies potential threatened species habitat, additional targeted surveys may be required, which must be undertaken in accordance with the relevant approved State or Federal guidelines.

**B2.3** Development should be designed to avoid impacts on **high value ecological features**, minimise any unavoidable impacts, and where applicable implement compensatory measures in accordance with (B2.C)

- Native vegetation buffers should be provided between development and environmentally zoned land or areas containing threatened flora and fauna species or their habitat and threatened vegetation communities. The width of the buffer should be determined with reference to the function of the habitat and the type of development proposed.
- Buildings and structures, roads, driveways, fences, dams, infrastructure, drainage and asset protection zones should be located outside of areas with significant flora and fauna or ecological communities, native vegetation buffers, biodiversity corridors or environmentally zoned lands.
- The width of any retained or proposed biodiversity corridors should be determined with reference having regard to the function of the habitat and the type of development proposed.

**B2.4** Where retention or rehabilitation of native vegetation and/or habitat is required, a Vegetation Management Plan must be prepared in accordance with the **Biodiversity Technical Specification**<sup>4</sup> and must detail how vegetation is to be protected, rehabilitated and managed before, during and after construction, and include progress reporting/monitoring.

**B2.5** An Arborist Report may be required in accordance with B1.5.

**B2.6** A subdivision development application must consider the total clearing that is required or likely to be required for the purpose for with the land is to be subdivided. This includes but is not limited to building envelopes, bushfire asset protection zones, access roads, driveways, services, effluent disposal areas, ancillary buildings and new boundary fence lines.

**B2.7** Where a proposed commercial, industrial, subdivision or seniors housing development is located adjacent to an area of threatened fauna habitat, a fauna-friendly lighting design plan is to be provided in accordance with the objectives and design principles detailed in the **DCCEEW 2023 National Light Pollution Guidelines for Wildlife**<sup>4</sup>



## B2

## B2.BB Koalas Habitat

## Objective

To encourage the proper identification, conservation and management and conservation of areas of natural vegetation that provide Koala habitat in accordance with Council's Comprehensive Koala Plan of Management (CKPoM) to ensure a permanent free-living population over their present range and reverse the current trend of koala population decline

## Development control

B2.84 **Development** located on or in proximity to land identified as **Koala habitat** or requires an ecological assessment or **BDAR** must prepare a Koala Habitat Assessment, complies with the *Port Stephens Comprehensive Koala Plan of Management*<sup>10</sup> through consideration to the performance criteria, being:

The Koala Habitat Assessment must be prepared in accordance with Appendix 6 of the CKPoM as summarised in the Port Stephens Koala Habitat Assessment Process on Council's website and include a Koala Performance Criteria Assessment.

The Koala Performance Criteria Assessment must be prepared in accordance with Appendix 4 of the CKPoM and is to demonstrate that the development:

- Minimises the removal or degradation of **native vegetation** within **preferred Koala habitat** or **habitat buffers**; **supplementary Koala habitat**
- Maximises the retention and minimising degradation of **native vegetation** within **supplementary Koala habitat**, **habitat buffers** and **habitat linking areas**;
- Minimising removal of any individual. Maximises the retention of any preferred Koala feed tree individuals on a development site. Koala feed tree species include Swamp Mahogany (*Eucalyptus robusta*), Parramatta Red Gum (*Eucalyptus parramattensis*), and Forest Red Gum (*Eucalyptus tereticornis*), and hybrids of any of these species. An additional list of tree species that may be important to Koalas is included in Appendix 8 of the CKPoM;
- Includes restoration or rehabilitation of areas identified as Koala Habitat (including buffers and habitat linking areas), with the target of resulting in a net gain of **Koala habitat**. Where appropriate, restore and rehabilitate **Koala habitat**, buffers and linking areas
  - Removal of **Koala habitat** is off-set by a net gain of **koala habitat** on-site or adjacent
- Make provision for Includes the long-term management and protection of both existing and restored **Koala habitat** that:
  - Not compromise Ensures the safe movement of Koalas across site by minimising barriers to Koala movement, such as retaining native vegetation and using suitable **Koala-friendly fencing**; through:
  - Maximisation of tree retention
  - Minimising barriers for movement, such as fences
- Fences which are intended to preclude Koalas should be located away from any trees which could allow Koalas to cross the fence
  - Restrict **development** to defined building envelopes

## B2

## Development control

- B2.84 g. Minimising the threats posed to Koalas from dogs, motor vehicles and **swimming pools** for example by:
- Installation of Koala-proof or Koala-friendly fencing for either restricting or enabling Koala access to/from a threat such as pool areas and dog enclosures.
  - Where appropriate, restriction of motor vehicle speeds to 40km/ph, installation of suitable driver safety signage and installation of Koala proof fencing
  - Development** demonstrates consideration to the performance criteria within the **statement of environmental effects (SEE)** by providing the following:
    - Assessment of **koala habitat** in accordance with Appendix 6 – Guidelines for Koala Habitat Assessment of the *Port Stephens Comprehensive Koala Plan of Management*<sup>10</sup>
      - Site analysis plan** indicates vegetation to be disturbed, cleared or retained
      - Illustration of the **Asset Protection Zone (APZ)**
      - Proposed measures for the safe movement of koalas, such as fencing or traffic control measures
      - Details of any programs to monitor koala populations

Note: The *Port Stephens Comprehensive Koala Plan of Management*<sup>11</sup> applies through the application of the **SEPP (Biodiversity and Conservation) 2021**

- B2.9 Where preferred Koala Feed Trees are proposed to be removed, compensatory planting may be required in accordance with B2.C.

## B2.BC Compensatory Requirements Biodiversity offsets

## Objective

To facilitate the compensatory replacement of important biodiversity features which cannot be avoided and are proposed to be removed under a tree permit or development consent provide further guidance for the use of **biodiversity offsets** within the Port Stephens local government area

## Development control

- B2.10 Any Preferred Koala Feed Tree species listed in Council's CKPoM that is to be removed as a result of a development consent or the issue of a Tree Permit, must be replaced in accordance with the compensatory planting ratios detailed in Figure BB, unless Council imposes an amended requirement in consideration of specific and unique site factors.

Note: Preferred Koala Feed Tree species listed in Council's CKPoM include Forest Red Gum (*Eucalyptus tereticornis*), Swamp Mahogany (*Eucalyptus robusta*), and Parramatta Red Gum (*Eucalyptus parramattensis*) and any hybrids of these species.

If **biodiversity offsets** are employed as a suitable compensatory measure under the **TSC Act** then they are:

- calculated in accordance with the **bio-metric terrestrial biodiversity assessment tool**
- consistent with the **tree technical specification**<sup>1</sup>.
- in a secure tenure ownership
- located on land to which this Plan applies



## B2

Figure BB: Compensatory Koala Feed Tree planting ratios for preferred Koala feed trees

Preferred Koala Food Tree species size class (Diameter at Breast Height)	Replacement Ratio (Loss:Gain)
<100mm	1:6
100-300mm	1:8
>300mm	1:10

## Development controls

- B2.11** Any native tree (other than a Koala Feed Tree species) with a height of greater than 3m and a diameter greater than 300mm (measured 1.3m from the ground) that is to be removed as a result of development or the issue of a Tree Permit is to be replaced at a ratio of 1:2 unless Council imposes an amended requirement in consideration of specific and unique site factors.
- B2.12** Any street tree to be removed as a result of a development or the issue of a Tree Permit is to be replaced at a ratio of 1:1 along the same street frontage unless Council imposes an amended requirement in consideration of specific and unique site factors.
- B2.13** Where the removal of a hollow or a hollow-bearing tree is required, compensatory hollows are to be provided. The compensatory arboreal hollow size and type must be appropriate for the species being managed on the site or the hollow being removed. The number of compensatory arboreal hollows must meet the relevant ratios identifies in Figure BC unless Council imposes an amended requirement in consideration of specific and unique site factors.

Figure BC: Compensatory hollow type

Preference of use	Compensatory hollow type	Replacement ratio (loss : gain)
1st	Natural hollow salvaged from felled hollow-bearing tree and installed within retained trees on site	1:1 hollow replacement
2nd	Artificial hollows including hollow hog hollows	1:2 hollow replacement
3rd	Nest boxes	1:2 hollow replacement

## Development controls

- B2.14** Compensatory trees are to be native species and are to be planted in accordance with the Biodiversity Technical Specification.

## B2

## B2.GD Biosecurity risks (weeds)

## Objective

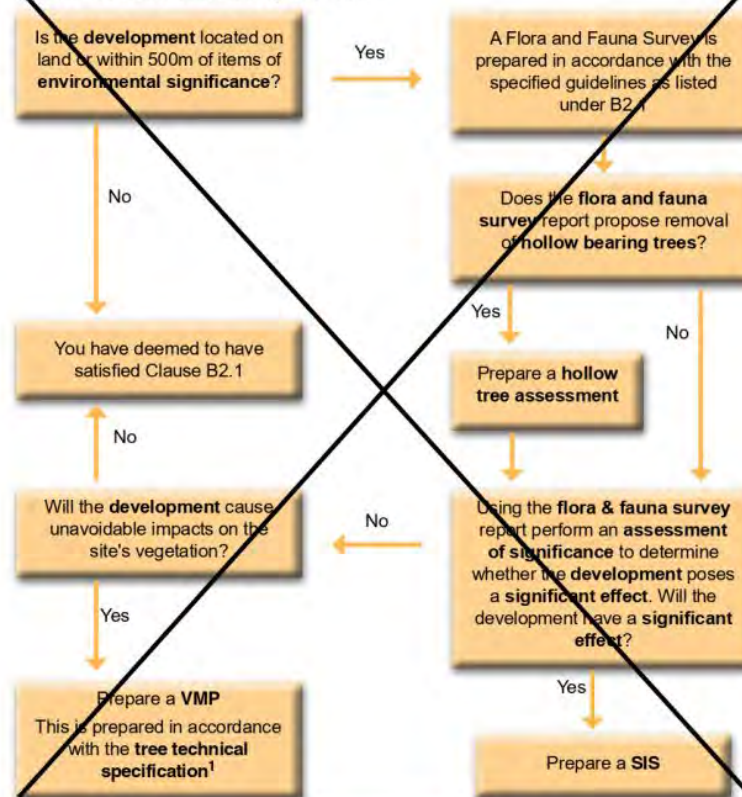
To reduce the negative impact of **biosecurity risks (weeds)** on the economy, community and environment by eliminating or restricting their geographical spread

## Development control

- B2.3** **Development** situated on land that contains **weeds**, will seek to prevent, eliminate or restrict the spread of **weeds** in accordance with the **biosecurity technical specification<sup>2</sup> Noxious weed Technical Specification**

Note: NSW Weedwise is an online tool to identify weeds available on the Department of Primary Industries website

Figure BB: Flora &amp; fauna survey flow-chart





## E1

## E1 Glossary

This **DCP** adopts the terms and definitions of the Standard Instrument - Principal **Local Environmental Plan**, unless otherwise defined in the Glossary.

**Biodiversity Development Assessment Report (BDAR)** means a report required under the *Biodiversity Conservation Act*. It identifies the highest value ecological features on a site including threatened species habitat, and applies the hierarchy of avoid, minimise and then offset.

**high value ecological features** means the natural features in the landscape which provide habitat for native flora or fauna species; such as Biodiversity Values Mapped areas, hollow bearing trees, nest trees, large old growth trees, large fallen timber, caves, rocky outcrops/ bush-rock, waterbodies, drainage lines and wetlands.

**Koala-friendly fencing** means:

- fences where the bottom of the fence is a minimum of 200 mm above ground level that would allow Koalas to move underneath;
- fences that facilitate easy climbing by Koalas; for example, sturdy chain mesh fences, or solid style fences with timber posts on both sides at regular intervals of approximately 20m; or
- open post and rail or post and wire (not barbed wire on the bottom strand).

**Tree bond** means a monetary bond received by council from the proponent to compensate for the loss or damage of the tree should it occur during the term of the agreement.

**Tree Tree Protection Zone (TPZ)** means an area surrounding a tree that is designated for protection during construction or development. The purpose of the TPZ is to minimize and prevent damage to the tree's roots, trunk and branches.

## Explanation of Amendments

### Draft Development Control Plan 2014 – B1 Tree Management and B2 Flora and Fauna

#### NO. EXPLANATION OF AMENDMENTS

##### 1 B1 Tree Management

1. Amend Figure BA Approval requirements thresholds
2. Update Section B1.C Supporting information

##### Explanation:

Figure BA, which identifies the approval requirement thresholds for the removal of trees, has been updated to provide greater detail on approval requirements.

Section B1.C Supporting information was updated to provide additional requirements that were previously located in the Tree Technical Specification. These requirements have been moved into the Development Control Plan (DCP) to streamline information for community members.

The Tree Technical Specification has been renamed the Biodiversity Technical Specification and referenced accordingly throughout the chapter.

##### 2 B2 Flora and Fauna - Application

1. Amend title and application of the Part

##### Explanation:

Title of this chapter has been amended from Natural Resources to Flora and Fauna to more accurately reflect its contents. The application of the Part has been updated to reflect changes in legislation.

##### 3 B2.A Ecological impact

1. Amend title and objectives
2. Update ecological assessment requirements
3. Add requirement for a tree removal and retention plan
4. Add environmental design considerations.
5. Add requirement for a vegetation management plan
6. Add subdivision environmental considerations.

##### Explanation:

This Part has been renamed to Ecological Impact from Environmental Significance to more accurately reflect its contents. The objectives have been amended to align with the intent of existing environmental legislation, that being to minimise ecological impacts.

## ITEM 2 - ATTACHMENT 3 EXPLANATION OF AMENDMENTS.

The controls have been updated to be consistent with Council practices and to provide more guidance on the requirements to address ecological impacts in development applications.

Design considerations for development to address ecological impacts have been consolidated and updated to improve clarity and accuracy.

Any references to old legislation have been updated.

#### 4 B2.B Koala habitat

1. Amend title and objectives
2. Insert Port Stephens Comprehensive Koala Plan of Management (CKPoM) Koala Performance Criteria Assessment Requirements
3. Insert reference to compensatory planting requirements

##### Explanation:

Section B2.B has been renamed to Koala Habitat from Koalas to more accurately reflect its contents. The objectives have been amended to align with the CKPoM.

Control B2.8 has been updated to incorporate a summary of the assessment requirements detailed in Appendix 4 of the CKPoM to provide greater upfront clarity on Koala assessment considerations.

Control B2.9 has been inserted to indicate compensatory planting may be required where Koala feed trees are proposed to be removed.

#### 5 B2.C Compensatory requirements

1. Amend title and objectives
2. Insert compensatory planting requirements and Figure BB: Compensatory Koala Feed Tree planting ratios for preferred Koala feed

Preferred Koala Food Tree species size class (Diameter at Breast Height)	Replacement Ratio (Loss:Gain)
<100mm	1:6
100-300mm	1:8
>300mm	1:10

3. Insert compensatory hollow requirements and Figure BC: Compensatory arboreal hollow type

Preference of use	Compensatory hollow type	Replacement ratio (loss : gain)
1st	Natural hollow salvaged from felled hollow-bearing tree and installed within retained trees on site	1:1 hollow replacement
2nd	Artificial hollows including hollow hog hollows	1:2 hollow replacement
3rd	Nest boxes	1:2 hollow replacement



**Explanation:**

Section B2.C has been renamed to Compensatory requirements from Biodiversity offsets to avoid confusion with the *Biodiversity Conservation Act* offsetting requirements. The objective has been updated to reflect this.

Section B2.C Compensatory requirements has been updated to include compensatory planting and hollow requirements to provide clearer guidance and easier access to information for community members. These were previously located in the Tree Technical Specification.

Replacement ratios, previously located in the Tree Technical Specification have been provided in Figure BB and Figure BC for Koala Feed Trees, native trees, street trees and hollows. The planting ratios for native trees (1:2) and street trees (1:1) have been simplified for a more practical application.

**6 E1 Glossary**

1. Insert a definition for BDAR as follows:

- **Biodiversity Development Assessment Report (BDAR)** means a report required under the *Biodiversity Conservation Act 2016*. It identifies the highest value ecological features on a site including threatened species habitat, and applies the hierarchy of avoid, minimise and then offset.

2. Insert a definition for high value ecological features as follows:

- **High value ecological features** means the natural Features in the landscape which provide habitat for native flora or fauna species; such as Biodiversity Values Mapped areas, hollow bearing trees, nest trees, large old growth trees, large fallen timber, caves, rocky outcrops/bush-rock, waterbodies, drainage lines and wetlands.

3. Insert a definition for Koala-friendly fencing

- **Koala-friendly fencing** means:
  - fences where the bottom of the fence is a minimum of 200 mm above ground level that would allow koalas to move underneath;
  - fences that facilitate easy climbing by koalas; for example, sturdy chain mesh fences, or solid style fences with timber posts on both sides at regular intervals of approximately 20m; or
  - open post and rail or post and wire (definitely not barbed wire on the bottom strand).

**Explanation:**

The definitions of Biodiversity Development Assessment Report, high value ecological features and Koala-friendly fencing are proposed to be inserted into the glossary to provide guidance and clarity for developers.



**MINUTES ORDINARY COUNCIL - 26 MARCH 2024**

Councillor Peter Kafer returned to the meeting at 5:50pm.  
Mayor Ryan Palmer returned to the meeting at 5:50pm and resumed the chair.  
Councillor Giacomo Arnott returned to the meeting at 5:50pm.  
Councillor Peter Francis returned to the meeting at 5:50pm.

**ITEM NO. 2**

**FILE NO: 24/34203**  
**EDRMS NO: PSC2023-01018**

**DRAFT PORT STEPHENS DEVELOPMENT CONTROL PLAN - CHAPTER B1  
TREE MANAGEMENT AND B2 FLORA AND FAUNA**

REPORT OF: BROCK LAMONT - STRATEGY & ENVIRONMENT SECTION  
MANAGER  
DIRECTORATE: COMMUNITY FUTURES

**RECOMMENDATION IS THAT COUNCIL:**

- 1) Place the draft Port Stephens Development Control Plan 2014 Chapter B1 Tree Management and B2 Flora and Fauna (**ATTACHMENT 1**) on public exhibition for a period of 28 days, and should no submissions be received, the Development Control Plan be adopted, without a further report to Council.

**ORDINARY COUNCIL MEETING - 26 MARCH 2024  
MOTION**

<b>044</b>	<b>Councillor Peter Kafer</b> <b>Councillor Leah Anderson</b>  It was resolved that Council place the draft Port Stephens Development Control Plan 2014 Chapter B1 Tree Management and B2 Flora and Fauna ( <b>ATTACHMENT 1</b> ) on public exhibition for a period of 28 days, and should no submissions be received, the Development Control Plan be adopted, without a further report to Council.
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In accordance with Section 375 (A) of the Local Government Act 1993, a division is required for this item.

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

Those against the Motion: Nil.

The motion was carried.

**MINUTES ORDINARY COUNCIL - 26 MARCH 2024****BACKGROUND**

The purpose of this report is to seek Council endorsement to place the draft amendments to the Port Stephens Development Control Plan 2014 (DCP) Chapters B1 Tree Management and B2 Flora and Fauna (**ATTACHMENT 1**) on public exhibition for a period of 28 days.

Following a review of Chapters B1 Tree Management and B2 Flora and Fauna, a number of amendments have been proposed to align requirements with other documentation, provide greater clarity for community members in relation to tree management, as well as improved guidance to address ecological impacts in development applications. A detailed explanation of the amendments as proposed is provided within (**ATTACHMENT 2**).

The proposed amendments will improve the functionality of the DCP by updating references and streamlining the location of development requirements. The amendments will incorporate information from technical specifications and plans delivering a clear and comprehensive guide to Tree Management and Flora and Fauna matters. This report recommends the DCP be amended to:

- Reflect current legislative controls
- Provide greater detail on tree pruning and removal approval requirements
- Rename Chapter B2 Natural Resources to Flora and Fauna to more accurately reflect its contents
- Provide greater detail on technical information required to support an application to remove trees and vegetation
- Provide greater detail of the assessment requirements from the Port Stephens Comprehensive Koala Plan of Management (CKPoM)
- Provided greater detail of the compensatory requirements to replace trees and vegetation which was previously specified in the Tree Technical Specification
- Insert definitions for 'Biodiversity Development Assessment Report', 'High value ecological features' and 'Koala-friendly fencing'.

**COMMUNITY STRATEGIC PLAN**

<b>Strategic Direction</b>	<b>Delivery Program 2022-2026</b>
Thriving and safe place to live	Program to develop and implement Council's key planning documents

**FINANCIAL/RESOURCE IMPLICATIONS**

There are no known financial or resource implications for Council as a consequence of the proposed recommendations. The exhibition will be managed within the existing budget.

**MINUTES ORDINARY COUNCIL - 26 MARCH 2024**

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

**LEGAL, POLICY AND RISK IMPLICATIONS**

There are no known legal, policy or risk implications resulting from the proposed recommendations.

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

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

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

Division 2 of Part 3 of the EP&A Regulations specifies the requirements for public participation. The recommendation is in accordance with the provisions of the EP&A Regulations.

Port Stephens Development Control Plan 2014 (DCP)

The proposed amendments to the DCP would provide clearer guidance for community members in preparing development applications. They would also provide stronger development controls for staff to rely on when requesting further information from applicants. Together these changes would streamline the assessment of future development applications where ecological impacts are proposed.

Risk	<a href="#">Risk Ranking</a>	Proposed Treatments	Within Existing Resources?
There is a risk that the DCP will contain outdated and incorrect information if the amendment is not made.	Medium	Adopt the recommendation.	Yes

**MINUTES ORDINARY COUNCIL - 26 MARCH 2024**

There is a risk that ecological impacts are not adequately addressed through the development assessment process if the amendment is not made.	Medium	Adopt the recommendation.	Yes
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**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

The proposed amendments are considered to have positive social, environmental and economic implications. The amendment will improve access to information for the community and provide clearer approval and assessment requirements.

The proposed amendments can improve the consideration of ecological constraints during the preparation of development applications. This can lead to improved assessment of ecological constraints and ultimately deliver enhanced environmental outcomes.

The proposed amendments can also streamline the assessment process by reducing the time taken to prepare and respond to requests for further information. The changes would result in clearer expectations of requirements prior to lodgement and shorter assessment timeframes once received.

**CONSULTATION**

Consultation with key stakeholders has been undertaken by the Strategy and Environment Section to identify and consider any issues prior to exhibition.

Internal

- Strategy and Environment Section
- Development and Compliance Section
- Public Domain and Services Section.

External

The Environmental Advisory Group was engaged through a presentation on the proposed amendments to the DCP Chapter B1 Tree Management and B2 Flora and Fauna.

If supported, the proposed amendments to DCP Chapter B1 Tree Management and B2 Flora and Fauna will be placed on public exhibition for a period of 28 days together with an Explanation of Amendments (**ATTACHMENT 2**).



**MINUTES ORDINARY COUNCIL - 26 MARCH 2024**

The amendments will be made available on Council's website in accordance with the EP&A Regulation and the Port Stephens Community Participation Plan.

Submissions on the proposed draft amendments to the DCP will be invited during the public exhibition period and, if submissions are received, they will be considered in a return report to Council including any recommended post-exhibition changes. A submission summary table will be included with the post-exhibition report to Council.

**OPTIONS**

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

**ATTACHMENTS**

- 1) Draft Development Control Plan 2014 - Chapter B1 Tree Management and Chapter B2 Flora and Fauna.
- 2) Explanation of Amendments.

**COUNCILLORS' ROOM/DASHBOARD**

Nil.

**TABLED DOCUMENTS**

Nil.

ITEM NO. 3

FILE NO: 24/161346  
EDRMS NO: PSC2023-03961-0004

**PORT STEPHENS LOCAL HOUSING STRATEGY - HOUSING SUPPLY PLAN -  
MAPPING PART 2**

REPORT OF: BROCK LAMONT - STRATEGY & ENVIRONMENT SECTION  
MANAGER  
DIRECTORATE: COMMUNITY FUTURES

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Adopt the Port Stephens Local Housing Strategy - Housing Supply Plan – Mapping Part 2 (**ATTACHMENT 1**).

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**BACKGROUND**

The purpose of this report is to advise Council of the outcome of the exhibition of the Port Stephens Local Housing Strategy - Housing Supply Plan (HSP) as it relates to properties nominated within Part 2 as well as noting the response to sites that were nominated within this area.

The report recommends that Council adopt the Port Stephens Local Housing Strategy - Housing Supply Plan – Mapping Part 2 (**ATTACHMENT 1**) which includes the following precincts:

- Mount Hall Road, Raymond Terrace
- Muree Precinct, Raymond Terrace
- The Bower, Medowie
- Precinct B, Medowie
- Ferodale Road, Medowie
- Town Centre, Medowie
- Brocklesby Road, Medowie
- The Gardens / Tallowood, Medowie
- Precinct G, Medowie
- Precinct H, Medowie
- Precinct J, Medowie
- Precinct K, Medowie
- Medowie Road, Medowie
- Karuah West, Karuah
- The Watermark Estate, Karuah
- The Timber Mill, Karuah

The Housing Supply Plan was exhibited with the Local Housing Strategy for a period of 28 days. Amendments have been made to the HSP in response to submissions received during the exhibition period. Proposed amendments are detailed in the Local Housing Strategy - Submission Table and Explanation of Post Exhibition Amendments attached to the Port Stephens Local Housing Strategy report.

## COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2022-2026
Thriving and safe place to live	Program to develop and implement Council's key planning documents

## FINANCIAL/RESOURCE IMPLICATIONS

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

## LEGAL, POLICY AND RISK IMPLICATIONS

The HSP aligns with State, regional and local planning policies, strategies and plans.

Risk	<a href="#">Risk Ranking</a>	Proposed Treatments	Within Existing Resources?
There is a risk that if the HSP is not adopted the future housing needs of the community will not be met.	High	Accept the recommendation.	Yes

## SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The HSP seeks to provide homes in locations close to employment centres and prioritises new housing around existing urban areas. The HSP is considered to have

a positive impact on housing affordability as it strives to deliver housing to meet project dwelling demand over the next 20 years.

## **CONSULTATION**

The Strategy and Environment Section has undertaken targeted consultation with key stakeholders and the community throughout the development and finalisation of the documents.

### Internal

- Development and Compliance Section
- Strategy and Environment Section
- Communications and Customer Experience Section
- Assets Section

### External

Council received a number submissions that sought to nominate additional sites for inclusion within the HSP. In some cases, Council received multiple submissions suggesting the same site / precinct.

Each site that was nominated has been reviewed to understand the known environmental constraints, alignment with Council's strategic planning and the potential delivery timeframes to 2041. In addition to this, consideration was given to whether a site had recently been the subject of a Council resolution or determination.

Inclusion in the HSP is predicated on Council being sufficiently confident that the site will be developed and the potential realised within the timeframe of the HSP and LHS of 2041.

The submissions / nominations received relating to areas within Part 2 are summarised below.

<b>Site Name/Description</b>	<b>Comment</b>	<b>Outcome</b>
Medowie Macadamia Farm (Medowie Road, Medowie)	The site identified falls within the already identified Precinct H precinct. As such, there is no need to consider this site further.	No further action.
604-616 Medowie Road, Medowie	The site is relatively constraint free and located in proximity to other nominated precincts in Medowie. The site offers an opportunity for additional housing in a high growth/ high demand area and is supported.	Include Medowie Road Precinct in the HSP.



**ORDINARY COUNCIL - 9 JULY 2024**

<b>Site Name/Description</b>	<b>Comment</b>	<b>Outcome</b>
Fairlands Road, Medowie (Precinct O in the existing Medowie Strategy)	The site is nominated as a Precinct O in the Medowie Planning Strategy for large lot residential development, which is generally consistent with its current form. No further consideration.	No further action.

**OPTIONS**

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

**ATTACHMENTS**

- 1) Port Stephens Local Housing Strategy - Housing Supply Plan - Mapping Part 2.

**COUNCILLORS' ROOM/DASHBOARD**

Nil.

**TABLED DOCUMENTS**

Nil.

## HOUSING SUPPLY PLAN – PART 2

ORDINARY COUNCIL MEETING  
25 JUNE 2024

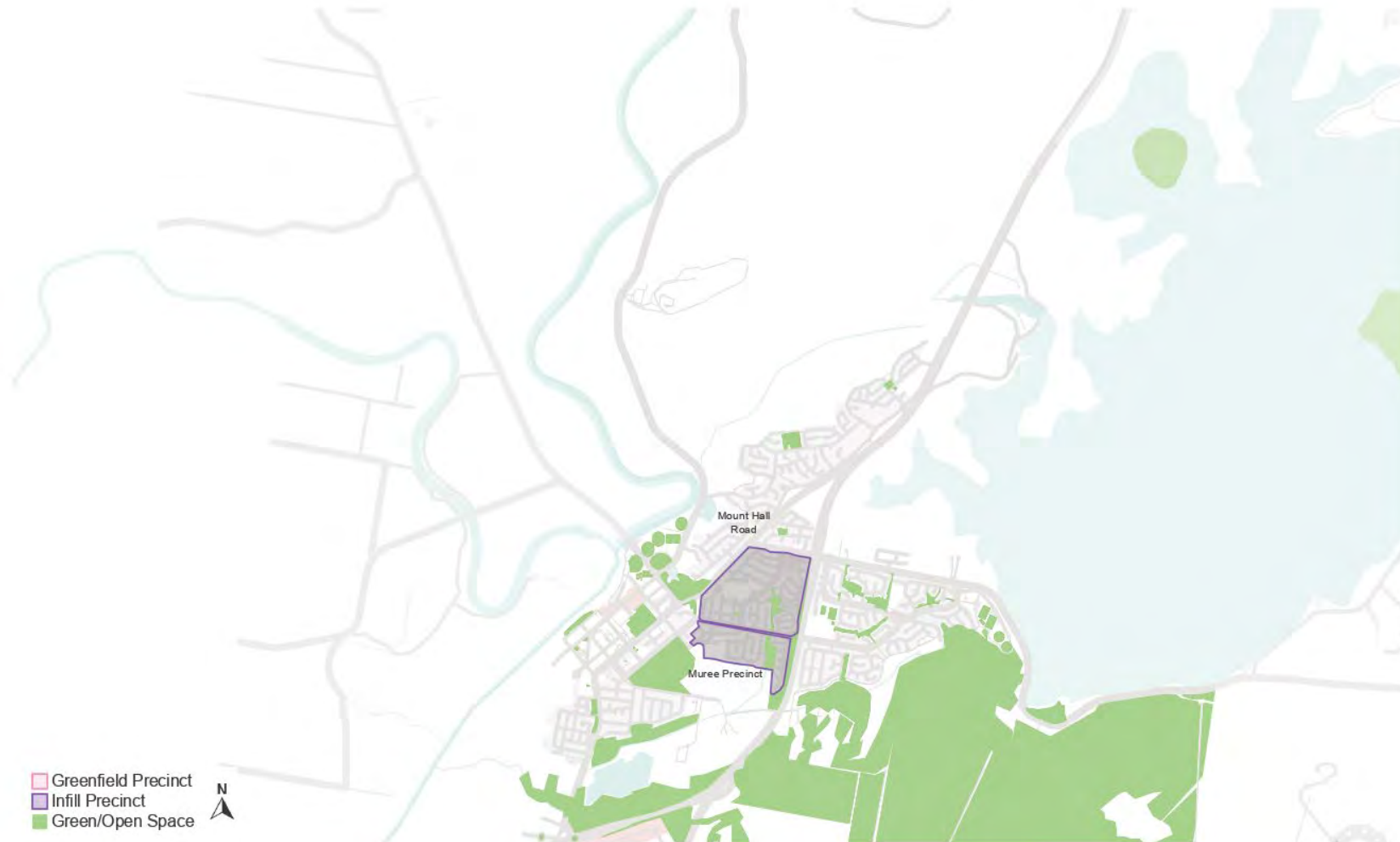


**PORT STEPHENS**  
C O U N C I L

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PORT STEPHENS COUNCIL

ITEM 3 - ATTACHMENT 1 PORT STEPHENS LOCAL HOUSING STRATEGY - HOUSING SUPPLY PLAN - MAPPING PART 2.



# Mount Hall Road

## RAYMOND TERRACE



### Development Application

The precinct is a residential precinct supported by several parks and local services. The housing in the area is characterised by older houses on traditional blocks.

In the future, the residential character would become increasingly urban as the older houses on traditional blocks are redeveloped. New housing would be in the form of small lot detached housing and low-rise housing which can be developed under the existing development controls.

Desired Density Category - General Suburban (30dw/ha).



Detached housing  
+108



1-2 Storeys  
+162



+270



3-6 Storeys  
+0



7+ Storeys  
+0



+550



# Muree Precinct

## RAYMOND TERRACE

### Development Application

The precinct is located within walking distance of the Raymond Terrace Town Centre and adjoins Boomerang Park. The housing in the area is characterised by older houses on traditional blocks.

In the future, the residential character would become increasingly urban. New housing would be in the form of small lot detached housing and low-rise housing as well as a proposed seniors living development.

Desired Density Category - General Suburban (30dw/ha).



ITEM 3 - ATTACHMENT 1 PORT STEPHENS LOCAL HOUSING STRATEGY - HOUSING SUPPLY PLAN - MAPPING PART 2.





## ITEM 3 - ATTACHMENT 1 PORT STEPHENS LOCAL HOUSING STRATEGY - HOUSING SUPPLY PLAN - MAPPING PART 2.

## Central Growth Area

The Central Growth Area includes both Medowie and Karuah. This area has historically been one of the fastest growing areas in the Hunter Valley.

The Medowie precinct has been shaped over the past 8 years through the implementation of the Medowie Planning Strategy and more recently the Medowie Place Plan. These documents provided a critical blue print to shape the development of the area. This includes highlighting the precincts planned for future rezoning and development. The benefit of this planned approach can be seen in the current growth. In the past five years over 20% of the new housing that has been provided in the LGA has been in Medowie.

This structured approach to growth has also seen new investment in the town centre, the development of a second private school and

the planning for a new public high school to be delivered before the end of the decade.

Karuah is seeing a renewed focus of development with the finalisation of the Karuah Place Plan. The Plan nominated several greenfield precincts which are now at various stages of the development cycle.

To support forecast growth, Council is continuing to work with the community and business to implement the Place Plan to facilitate more investment and growth in this area.

The growth capacity of Karuah would continue to be linked to the ability of government to support new development with infrastructure. Council would need to work with key infrastructure providers to demonstrate the need and opportunity that Karuah provides for new housing.



	2021	2026	2031	2036	2041
Dwellings	5,719	5,876	6,629	7,401	8,068
Population	15,020	15,436	17,341	19,195	20,714



## The Bower

### CENTRAL GROWTH AREA



#### Dwelling Production

The character of the Bower is now well established.

The addition of further dwellings as forecast would not impact on this as they would correspond to the existing development in terms of both the size of lots and the forms of housing.

As such the Bower would continue to provide detached housing within the precinct with the inclusion of some seniors housing.

Desired Density Category - General Suburban (15dw/ha\*).



Detached housing  
+56



1-2 Storeys  
+18



3-6 Storeys  
+0



7+ Storeys  
+0





## Precinct B

### CENTRAL GROWTH AREA



#### Dwelling Production

The precinct is already zoned/serviced and is presently under development. An approval to subdivide the precinct into 36 lots over two stages has been approved. Bulk earth works are presently being undertaken.

The character of Precinct B would be suburban in nature. While there would be a number of smaller lots the proportionally larger number of traditional lots would give this precinct a suburban feel.

Desired Density Category - General Suburban (15dw/ha\*).



## Ferodale Road

### CENTRAL GROWTH AREA



#### Rezoning

Located adjacent to the Medowie Town Centre the precinct has the capacity to provide a range of housing densities within walking distance to the facilities and services that are located within the Town Centre.

In the future, the residential character would be defined by a focus on detached and low-rise housing. This is consistent with the desire to include more compact urban housing in all future greenfield release areas.

Desired Density Category - General Suburban (30dw/ha).



ITEM 3 - ATTACHMENT 1 PORT STEPHENS LOCAL HOUSING STRATEGY - HOUSING SUPPLY PLAN - MAPPING PART 2.







## Town Centre

### CENTRAL GROWTH AREA

#### Rezoning

The Town Centre currently provides for all the day to day needs of the community. This includes access to retail and commercial services.

The intent of the precinct is to provide for a broader range of uses including housing, commercial/retail and community recreation space. The would see a range of detached and low-rise housing developed as part of the implementation of the Town Centre Masterplan.

Desired Density Category - General Suburban (30dw/ha).



Detached housing  
+30



1-2 Storeys  
+46



3-6 Storeys  
+0



7+ Storeys  
+0



# Brocklesby Road

## CENTRAL GROWTH AREA

### Rezoning

Brocklesby Road is located to the east of the Gardens Estate. This provides a natural extension to the existing subdivision and a continuance of the existing character.

In the future, the residential character would be defined by detached and low-rise housing. This is consistent with the desire to include more compact urban housing in all future greenfield release areas.

Desired Density Category - General Suburban (15dw/ha\*).







## The Gardens/Tallowood

### CENTRAL GROWTH AREA



#### Development Application

The Precinct includes two separate developments that are at various stages of completion. Tallowood (Lifestyle Village) and the Gardens (residential development).

The character of the Gardens and Tallowood are now well established. The addition of further dwellings, as forecast, would not impact this as they would correspond to the existing development in terms of lot size and form of housing.

Desired Density Category - General Suburban (15dw/ha\*).



Detached housing  
+75



1-2 Storeys  
+25



3-6 Storeys  
+0

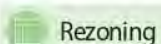


7+ Storeys  
+0



## Precinct G

### CENTRAL GROWTH AREA



Rezoning

The precinct is nominated for residential development within the Medowie Planning Strategy and Medowie Place Plan.

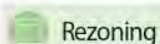
In the future, the residential character would be predominately be detached housing with some low-rise housing within the precinct. This is consistent with the desire to include more compact urban housing in all future greenfield release areas.

Desired Density Category - General Suburban (15dw/ha\*).



## Precinct H

### CENTRAL GROWTH AREA



Rezoning

The precinct is nominated for residential development within the Medowie Planning Strategy and Medowie Place Plan.

In the future, the residential character would be predominately be detached housing with some low-rise housing within the precinct. This is consistent with the desire to include more compact urban housing in all future greenfield release areas.

Desired Density Category - General Suburban (15dw/ha\*).





# Precinct J

## CENTRAL GROWTH AREA

### Rezoning

The precinct is nominated for residential development within the Medowie Planning Strategy and Medowie Place Plan.

In the future, the residential character would be predominately be detached housing with some low-rise housing within the precinct. This is consistent with the desire to include more compact urban housing in all future greenfield release areas.

Desired Density Category - General Suburban (15dw/ha\*).



## ITEM 3 - ATTACHMENT 1 PORT STEPHENS LOCAL HOUSING STRATEGY - HOUSING SUPPLY PLAN - MAPPING PART 2.



## Precinct K

### CENTRAL GROWTH AREA

#### Rezoning

The precinct is nominated for residential development within the Medowie Planning Strategy and Medowie Place Plan.

In the future, the residential character would be predominately be detached housing with some low-rise housing within the precinct. This is consistent with the desire to include more compact urban housing in all future greenfield release areas.

Desired Density Category - General Suburban (15dw/ha\*).



Detached housing  
+141



1-2 Storeys  
+47



+188



3-6 Storeys  
+0



7+ Storeys  
+0



+429



# Medowvie Road

## CENTRAL GROWTH AREA

### Precinct Identification

The precinct is nominated following consideration of the known constraints and opportunities that the site provides.

In the future, the residential character would be predominately be detached housing with some low-rise housing within the precinct. This is consistent with the desire to include more compact urban housing in all future greenfield release areas.

Desired Density Category - General Suburban (15dw/ha\*).





## Karuah West

### CENTRAL GROWTH AREA

#### Rezoning

The precinct is identified in the Karuah Place Plan as “Stage 2 Residential Land Release”.

In the future, the residential character would be defined by detached housing. Alternatively, given the location of the precinct, the potential exists for the development of a lifestyle village. This would create a more compact housing form than the traditional detached housing.

Desired Density Category - General Suburban (15dw/ha\*).



Detached housing  
+120



1-2 Storeys  
+0



3-6 Storeys  
+0



7+ Storeys  
+0





## The Watermark Estate

### CENTRAL GROWTH AREA

#### Dwelling Production

The precinct is already zoned/serviced and is presently under development. Bulk earthworks are presently being undertaken.

The character of the Watermark Estate would be urban/suburban in nature. While there may be some low-rise housing the precinct would be predominately detached housing giving the precinct a suburban feel.

Desired Density Category - General Suburban (15dw/ha\*).



## The Timber Mill

### CENTRAL GROWTH AREA

#### Rezoning

A portion of the precinct is identified as "Stage 1 Residential Land Release" in the Karuah Place Plan.

Given the size of the precinct, there is the capacity to develop the precinct in a form that is consistent with the notion of a 15 minute neighbourhood. As such precinct would provide a range of detached and low-rise housing supported by a small neighbourhood centre.

Desired Density Category - General Suburban (15dw/ha\*).



ITEM NO. 4

FILE NO: 23/368934  
EDRMS NO: 58-2023-2-1

**PLANNING PROPOSAL - ADMINISTRATIVE AMENDMENT**

REPORT OF: BROCK LAMONT - STRATEGY & ENVIRONMENT SECTION  
MANAGER  
DIRECTORATE: COMMUNITY FUTURES

---

**RECOMMENDATION IS THAT COUNCIL:**

- 1) Note the amendments to the Planning Proposal – Administrative Amendment to the Port Stephens Local Environmental Plan 2013 (**ATTACHMENT 1**).
- 2) Authorise the exercise of delegations to make the amendment to the Port Stephens Local Environmental Plan 2013 under section 3.36 of the Environmental Planning and Assessment Act 1979 (NSW).

---

**BACKGROUND**

The purpose of this report is to advise Council of the outcome of the exhibition of the Planning Proposal – Administrative Amendment to the Port Stephens Local Environmental Plan 2013 (LEP) (**ATTACHMENT 1**).

The objectives of the planning proposal are to make administrative amendments to the LEP to address minor matters that have recently been identified for improvement. The planning proposal seeks to make the following amendments:

- Adopt optional Clause 5.22 Special Flood Considerations.
- Amend Schedule 5 Environmental Heritage to correct the property address and mapping for item I79 Raymond Terrace Court House.
- Rezone land at Medowie State Conservation Area and Columbey National Park to C1 National Parks and Nature Reserves.
- Amend the Minimum Lot Size map to align with the Land Zoning Map at Kinross Estate, Heatherbrae (Lot 1401 DP 1272419).

This report seeks authorisation to exercise delegations to make the amendment to the Port Stephens Local Environmental Plan 2013.

As its meeting on 28 November 2023, Minute No. 279 (**ATTACHMENT 2**), Council resolved to adopt the above items of the planning proposal and forward to the NSW Department of Planning, Housing and Infrastructure (DPHI) to seek a Gateway determination and delegated authority to make the plan. The planning proposal was



amended in accordance with the Council resolution and forwarded to DPHI on 1 December 2023.

Four items were deferred and will be the subject of a workshop with the Mayor and Councillors to determine the future strategic direction of Council.

The Gateway determination was issued by DPHI on 28 March 2024, (**ATTACHMENT 3**) allowing the planning proposal to proceed to exhibition.

The planning proposal was placed on exhibition from 10 April to 10 May 2024 along with a community guide to summarise the proposed amendments (**ATTACHMENT 4**). No community submissions were received during the public exhibition period.

### **COMMUNITY STRATEGIC PLAN**

<b>Strategic Direction</b>	<b>Delivery Program 2022-2026</b>
Thriving and safe place to live	Program to develop and implement Council's key planning documents

### **FINANCIAL/RESOURCE IMPLICATIONS**

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

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

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

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

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

The planning proposal is being processed in accordance with Part 3 of the EP&A Act, which provides the framework for amending a local environmental plan. DPHI issued a Gateway determination under section 3.34 of the EP&A Act specifying that the

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

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

#### Hunter Regional Plan 2041 (HRP)

The planning proposal is consistent with the aims of the HRP, including protecting the biodiversity network and improving resilience to flood events. The planning proposal will give effect to the following objectives of the HRP:

- Objective 6 – Conserve heritage landscapes, environmentally sensitive areas, waterways and drinking water catchments.
- Objective 7 – Reach net zero and increase resilience and sustainable infrastructure.

#### 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 will give effect to the following planning priorities of the LSPS:

- Planning Priority 2 - Make business growth easier.
- Planning priority 7 - Conserve biodiversity values and corridors.
- Planning Priority 8 - Improve resilience to hazards and climate change.

<b>Risk</b>	<b><a href="#">Risk Ranking</a></b>	<b>Proposed Treatments</b>	<b>Within Existing Resources?</b>
There is a risk that future development in flood prone areas will not be compatible with the level of risk.	Medium	Accept the recommendations.	Yes
There is a risk that practical subdivision of industrial land at Heatherbrae cannot be undertaken.	High	Accept the recommendations.	Yes

## **SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

The proposed amendments, whilst relatively minor in nature, are expected to deliver a range of positive social, economic and environmental outcomes, including:

- Streamlined development assessment due to the correction of errors and anomalies.
- Improved consideration of flood affected land.
- Greater protection of conservation lands.
- Increased opportunities for industrial subdivision and new development in Heatherbrae.

## **CONSULTATION**

Consultation with key stakeholders has been undertaken by the Strategy and Environment Section to inform the planning proposal.

### Internal

Consultation was undertaken with the Development Planning and Compliance Section and the Assets Section to develop and review the proposed amendments. The proposed items have been supported by the relevant internal stakeholders.

### External

In accordance with the Gateway determination, the planning proposal was exhibited for 30 days, from 10 April 2024 to 10 May 2024. No community submissions were received during the public exhibition period.

Due to the minor nature of the proposed changes, the Gateway determination did not require any consultation with State agencies.

## **OPTIONS**

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

## **ATTACHMENTS**

- 1) Planning Proposal - Administrative Amendment to Port Stephens Local Environmental Plan 2013.
- 2) Council Minute No. 279 - 28 November 2023.
- 3) NSW Department of Planning, Housing and Infrastructure - Gateway Determination.
- 4) Explanation of Amendments.

**COUNCILLORS' ROOM/DASHBOARD**

Nil.

**TABLED DOCUMENTS**

Nil.



ITEM 4 - ATTACHMENT 1 PLANNING PROPOSAL - ADMINISTRATIVE  
AMENDMENT TO PORT STEPHENS LOCAL ENVIRONMENTAL PLAN 2013.



Proposed amendment to Port Stephens Local  
Environmental Plan 2013



# ITEM 4 - ATTACHMENT 1 PLANNING PROPOSAL - ADMINISTRATIVE AMENDMENT TO PORT STEPHENS LOCAL ENVIRONMENTAL PLAN 2013.

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**ITEM 4 - ATTACHMENT 1 PLANNING PROPOSAL - ADMINISTRATIVE  
AMENDMENT TO PORT STEPHENS LOCAL ENVIRONMENTAL PLAN 2013.****VERSION CONTROL**

Version	Date	Details
1	October 2023	Draft planning proposal
2	November 2023	Updated to remove items in accordance with Council resolution 28 November 2023
3	April 2024	Updated to include minimum lot size provisions for proposed C1 land in accordance with Gateway determination

**ATTACHMENTS**

- ATTACHMENT 1** – Existing and proposed Heritage Map  
**ATTACHMENT 2** – NPWS notification of Medowie State Conservation Area  
**ATTACHMENT 3** – Existing and proposed Land Zoning Map – Medowie State Conservation Area  
**ATTACHMENT 4** – Existing and proposed Lot Size Map – Medowie State Conservation Area  
**ATTACHMENT 5** – NPWS notification of Columbey National Park  
**ATTACHMENT 6** – Existing and proposed Land Zoning Map – Columbey National Park, Dunns Creek  
**ATTACHMENT 7** – Existing and proposed Lot Size Map – Columbey National Park, Dunns Creek  
**ATTACHMENT 8** – Existing and proposed Lot Size Map, Heatherbrae

**FILE NUMBERS**

**Council:** 58-2023-2-1  
**Department** PP-2023-2705

**PART 1 – Objectives or intended outcomes**

The planning proposal seeks to make administrative amendments to the *Port Stephens Local Environmental Plan 2013* (LEP) to adopt the special flood considerations clause and update mapping. The planning proposal seeks to achieve the following outcomes:

1. Adopt optional Clause 5.22 Special Flood Considerations
2. Amend Schedule 5 Environmental Heritage to correct the property address and mapping for item 179 Raymond Terrace court house
3. Rezone land at Medowie State Conservation Area and Columbey National Park to C1 National Parks and Nature Reserves
4. Amend the Minimum Lot Size map to align with the Land Zoning Map at Kinross, Estate Heatherbrae (Lot 1401 DP 1272419)

**ITEM 4 - ATTACHMENT 1 PLANNING PROPOSAL - ADMINISTRATIVE  
AMENDMENT TO PORT STEPHENS LOCAL ENVIRONMENTAL PLAN 2013.**

**PART 2 – Explanation of provisions**

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The intended outcomes of the planning proposal will be achieved by the following amendments to the *Port Stephens Local Environmental Plan 2013*:

**ITEM 1 – Clause 5.22**

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**Proposed Amendment:**

Insert optional Clause 5.22 Special Flood Considerations into the *Port Stephens Local Environmental Plan 2013* and opt into all of the allowable land uses listed in the *Standard Instrument – Principal Local Environmental Plan 2006* including:

- a) boarding houses,
- b) caravan parks,
- c) correctional centres,
- d) early education and care facilities,
- e) eco-tourist facilities,
- f) educational establishments,
- g) emergency services facilities,
- h) group homes,
- i) hazardous industries,
- j) hazardous storage establishments,
- k) hospitals,
- l) hostels,
- m) information and education facilities,
- n) respite day care centres,
- o) seniors housing,
- p) sewerage systems,
- q) tourist and visitor accommodation,
- r) water supply systems.

**Explanation:**

Council wishes to insert the optional Clause 5.22 Special Flood Considerations into the LEP to ensure flood risks for sensitive and hazardous development is appropriately considered.

Due to the presence of several large rivers, including the Hunter, Williams, Paterson, Karuah and Tilligerry, much of Port Stephens is flood affected. Consequently, significant portions of residential and employment lands are located between the flood planning area and the probable maximum flood across the LGA.

Adopting the optional clause will allow council to ensure future development in flood prone areas is compatible with the level of risk; avoid accumulative impacts, protect the capacity of emergency responses and avoid adverse effects of hazardous development during flood events.

Council wishes to opt into all allowable land uses listed in the *Standard Instrument – Principal Local Environmental Plan 2006*.



# ITEM 4 - ATTACHMENT 1 PLANNING PROPOSAL - ADMINISTRATIVE AMENDMENT TO PORT STEPHENS LOCAL ENVIRONMENTAL PLAN 2013.

## ITEM 2 – Schedule 5 Environmental Heritage

### Proposed Amendment:

Amend Schedule 5 Environmental Heritage of the *Port Stephens Local Environmental Plan 2013* to:

- Correct the address for item I79 Courthouse; and
- Update Heritage map to reflect the amalgamation of item I79 **ATTACHMENT 1**

**Table 1: Current and proposed address for Item I79**

Current address in LEP	Proposed address
59 William Street, Raymond Terrace Lot 10 Section 11 DP 758871	55 William Street, Raymond Terrace Lot 10 DP 1263525

**Figure 1: Existing and proposed Heritage Map**



### Explanation:

Item I79 of Schedule 5 Environmental Heritage is currently incorrect as it refers to a historical address. In 2020, Lot 10 and Lot 9 Section 11 DP 758871 were subject to a 2 into 2 lot subdivision that moved the boundary of the lot Item I79 resides in.

Council wishes to update Item I79 to reflect the correct address. The Heritage map also requires an amendment to reflect the new lot boundary for Item I79 as displayed in **Figure 1**.

# ITEM 4 - ATTACHMENT 1 PLANNING PROPOSAL - ADMINISTRATIVE AMENDMENT TO PORT STEPHENS LOCAL ENVIRONMENTAL PLAN 2013.

## ITEM 3 – National Parks and Nature Reserves

### Proposed Amendment:

Amend the Port Stephens Local Environmental Plan 2013 to:

- Amend Land Zoning Map to rezone the following sites to C1 National Parks and Nature Reserves (**ATTACHMENT 3** and **ATTACHMENT 6**); and
- Amend Lot Size Map to remove the identification of the sites as 40ha (**ATTACHMENT 4** and **ATTACHMENT 7**).

**Table 2: List of sites to be rezoned to C1 National Park and Nature Reserves**

Address	Current Zone	Reservation status
Lot 2 DP 1224780 139 Boundary Road, Medowie	C2 Environmental Conservation	Medowie State Conservation Area
Lot 1 DP 1192418 17 Notts Lane, Glen Oak	RU2 Rural Landscape	Columbey National Park
Lot 119 DP 752445 716A Duns Creek Road, Duns Creek	C3 Environmental Management	Columbey National Park
Lot 1 DP 1168926 716B Duns Creek Road, Duns Creek	C3 Environmental Management	Columbey National Park
Lot 2 DP 1168926 716C Duns Creek, Duns Creek	C3 Environmental Management	Columbey National Park

**Figures 2 and 3** display the proposed changes to the Land Zoning Map and the Lot size Map at the Medowie State Conservation Area.

**Figures 4 and 5** display the proposed changes to the Land Zoning Map and the Lot size Map at the Columbey National park.

**Figure 2: Existing and proposed Land Zoning Map - Medowie State Conservation Area**



ITEM 4 - ATTACHMENT 1 PLANNING PROPOSAL - ADMINISTRATIVE  
AMENDMENT TO PORT STEPHENS LOCAL ENVIRONMENTAL PLAN 2013.

Figure 3: Existing and proposed Lot Size Map - Medowie State Conservation Area



Figure 4: Existing and proposed Land Zoning Map – Columbey National Park

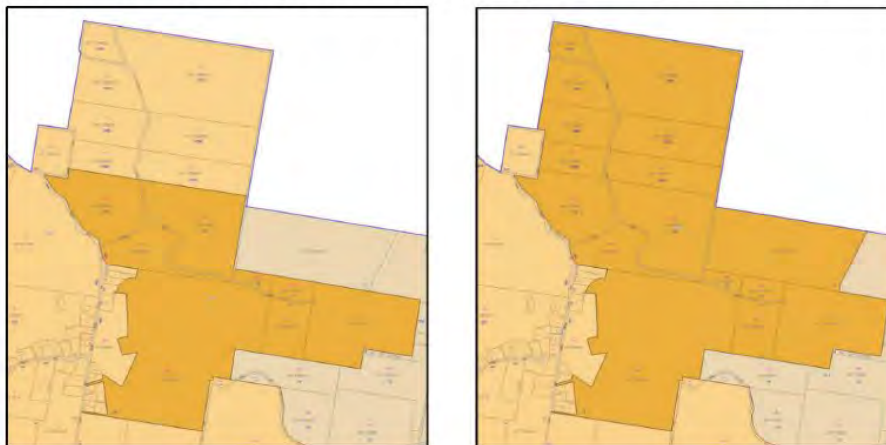
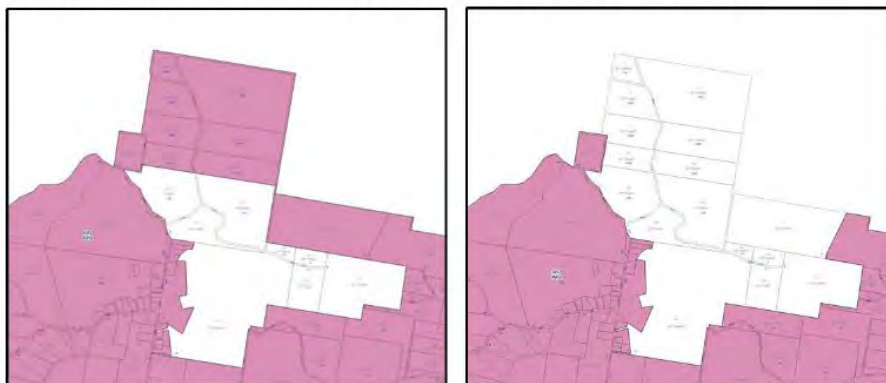


Figure 5: Existing and proposed Lot Size Map – Columbey National Park





## ITEM 4 - ATTACHMENT 1 PLANNING PROPOSAL - ADMINISTRATIVE AMENDMENT TO PORT STEPHENS LOCAL ENVIRONMENTAL PLAN 2013.

### Explanation:

The planning proposal seeks to rezone the land identified in **Table 2** to C1 National parks and Nature Reserves to reflect their reservation under the National Parks and Wildlife Act 1974.

On the 7 November 2022, the National Parks and Wildlife Service (NPWS) wrote to council to notify the reservation of and recommend the rezoning of land at Lot 2 DP 1224780, 139 Boundary Road, Medowie (**ATTACHMENT 2**). On the 4 November 2022, the land was reserved as part of the Medowie State Conservation Area, under the provisions of Section 30A(1)(c) of the *National Parks and Wildlife Act 1974* (NP&W Act). Land reserved under the NP&W Act is zoned C1 National Parks and Nature Reserves.

On the 14 February 2019, the NPWS provided a submission on a previous planning proposal relating to the rezoning of other reserved land. In the submission, the NPWS identified additional land reserved as part of the Columbe National Park with a recommendation to review the zoning (**ATTACHMENT 5**). Land reserved under the NP&W Act is zoned C1 National Parks and Nature Reserves.

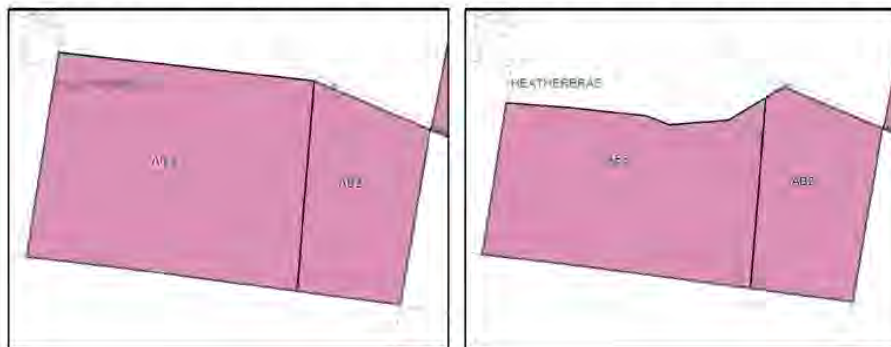
Following advice from NPWS, Council proposes to rezone the land identified in **Table 2** to C1 National Parks and Nature Reserves to reflect their reservation (**ATTACHMENT 3** and **ATTACHMENT 6**) and to remove the identification of the land as 40ha minimum lot size (**ATTACHMENT 4** and **ATTACHMENT 7**).

### ITEM 4 – Masonite Road, Heatherbrae

#### Proposed Amendment:

Amend Lot Size Map for Part of Lot 1401 DP 1272419 to remove the identification of part of the site as 20 hectares (**ATTACHMENT 8**).

**Figure 6: Current and proposed Lot size Map at 343 Masonite Road, Heatherbrae**





# ITEM 4 - ATTACHMENT 1 PLANNING PROPOSAL - ADMINISTRATIVE AMENDMENT TO PORT STEPHENS LOCAL ENVIRONMENTAL PLAN 2013.

## Explanation:

The Lot Size Map at 343 Masonite Road, Heatherbrae, Lot 1401 DP 1272419 incorrectly applies a minimum lot size of 20 hectares over land zoned SP2 Classified Road and E4 General Industrial. **Figure 6** displays the misalignment between the land zoning map and lot size map.

**Figure 7: Current Lot Size Map and current Land Zoning Map at 343 Masonite Road, Heatherbrae**



Prior to the digital LEP transition, the above site sat within the PDF Lot Size Map Sheet LSZ\_002C. This map sheet was subject to a previous planning proposal (Amendment No 30) to correct misalignments relating to the Heatherbrae bypass road corridor, zoned SP2 Classified Road.

During the finalisation stage of the planning proposal (Amendment No 30) two sets of mapping were provided. The first set provided on the 1 November 2019, Map B in **Figure 8**, was correct but due to a corrupted file a new suite of maps were provided on the 8 November 2019. The replacement maps however contained an error identified in blue in Map C in **Figure 8**.

**Figure 8: Comparison of the Lot Size Map intended for adoption against endorsed maps.** Map A - Previous Lot Size Map endorsed 17 Jun 2016 to 5 Dec 2019; Map B - Lot Size Map intended for adoption 6 Dec 2019; Map C Incorrect Lot Size Map adopted 6 Dec 2019.



**ITEM 4 - ATTACHMENT 1 PLANNING PROPOSAL - ADMINISTRATIVE  
AMENDMENT TO PORT STEPHENS LOCAL ENVIRONMENTAL PLAN 2013.**

The current misalignment between the Lot Size Map and the Land Zoning Map for Lot 1401 DP 1272419 is causing issues for the subdivision of this industrial land. Council wishes to realign the Lot Size Map with the current Land Zoning Map to correct this error and allow for the practical subdivision of the remaining industrial land (**ATTACHMENT 8**).

**PART 3 – Justification of strategic merit and site specific merit**

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**Strategic merit****Section A – Need for the planning proposal****Q1. Is the planning proposal a result of an endorsed LSPS, strategic study or report?**

The planning proposal has been prepared to address various errors or matters that have arisen over the past two years. While the planning proposal is not the result of an endorsed LSPS, strategic study or report it will enable outcomes of the LSPS and regional plans relating to managing flood risks and protecting the environment. These are addressed in detail under Questions 3 and 4.

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

The amendments to the LEP as described by this planning proposal are the best means of achieving the stated objectives.

Items 1 is necessary to improve the assessment of sensitive and hazardous development on flood prone land. Items 2 and 3 are required to reflect the land's conservation status. Item 8 is necessary to correct an error.

An amendment to the LEP is the only way to address these matters.

**Section B – Relationship to strategic planning framework****Q3. Will the planning proposal give effect to the objectives and actions of the Hunter Regional Plan and/or Greater Newcastle Metropolitan Plan (or any exhibited draft plans that have been prepared to replace these)?**

The objectives of the Hunter Regional Plan 2041 (HRP) and Greater Newcastle Metropolitan Plan 2036 (GNMP) have limited application to this planning proposal because it seeks to address general administrative matters. However, some items within the planning proposal will give effect to the objectives and actions of the HRP and GNMP which are addressed below.

# ITEM 4 - ATTACHMENT 1 PLANNING PROPOSAL - ADMINISTRATIVE AMENDMENT TO PORT STEPHENS LOCAL ENVIRONMENTAL PLAN 2013.

## Hunter Regional Plan 2041 (HRP)

The planning proposal gives effect to the following objectives and strategies of the HRP:

Strategy	Consistency
<b>Objective 6: Conserve heritage landscapes, environmentally sensitive areas, waterways and drinking water catchments</b>	
Strategy 6.3 Planning proposals will ensure the biodiversity network is protected within an appropriate conservation zone unless an alternate zone is justified following application of the avoid, minimise, offset hierarchy.	Item 3 seeks to rezone land from RU2 Rural Landscape, C3 Environmental Management and C2 Environmental Conservation to C1 National Parks and Nature Reserves to provide an appropriate level of environmental protection to these lands.
Strategy 6.6 Local strategic planning will ensure all known places, precincts, landscapes and buildings of historic, scientific, cultural, social, archaeological, architectural and aesthetic significance to the region are identified and protected in planning instruments.	Item 2 seeks to correct the property address and mapping for heritage item 179, the Raymond Terrace court house.
Strategy 6.7 Local strategic planning will identify and protect drinking water catchments and storages ensuring that incompatible land uses will not compromise future water security.	Item 1 seeks to insert optional Clause 5.22 Special Flood Considerations into the LEP to require more stringent assessment of hazardous development within the probable maximum flood (PMF). Much of the drinking water catchment in Port Stephens is within the PMF, so the clause will help prevent incompatible development within drinking water catchments.
<b>Objective 7: Reach net zero and increase resilience and sustainable infrastructure</b>	
Strategy 7.7 Local strategic planning will demonstrate alignment with the NSW Government's natural hazard management and risk mitigation policy framework including: <ul style="list-style-type: none"> <li>• Planning for Bushfire Protection 2019</li> <li>• NSW Coastal Management Framework</li> <li>• Floodplain Development Manual and the Flood Prone Land Policy</li> <li>• Planning for a more resilient NSW: A strategic guide to planning for natural hazards</li> <li>• any other natural hazards guidance that is released</li> </ul>	Item 1 seeks to insert optional Clause 5.22 Special Flood Considerations into the LEP to ensure future development in flood prone areas is compatible with the level of risk, avoids accumulative impacts, protects the capacity of emergency responses and avoids adverse effects of hazardous development during flood events.

# ITEM 4 - ATTACHMENT 1 PLANNING PROPOSAL - ADMINISTRATIVE AMENDMENT TO PORT STEPHENS LOCAL ENVIRONMENTAL PLAN 2013.

## Greater Newcastle Metropolitan Plan 2036 (GNMP)

The planning proposal gives effect to the following strategies of the GNMP:

Strategy	Consistency
Strategy 7: Respond to the changing land use needs of the new economy	Item 4 seeks to correct the minimum lot size in an existing industrial area to facilitate new development.
Strategy 12: Enhance the Blue and Green Grid and the urban tree canopy	Item 3 seeks to rezone land from RU2 Rural Landscape, C3 Environmental Management and C2 Environmental Conservation to C1 National Parks and Nature Reserves to provide an appropriate level of environmental protection to these lands.
Strategy 14: Improve resilience to natural hazards	Item 1 seeks to insert optional clause 5.22 Special Flood Considerations into the LEP to ensure flood risks for sensitive and hazardous development is appropriately considered.

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

### Port Stephens Local Strategic Planning Statement (2020)

The Port Stephens LSPS identifies the 20-year vision for land use in Port Stephens. It sets out social, economic and environmental planning priorities for the future and identifies when they will be delivered.

As the planning proposal is administrative in nature, much of the LSPS is not applicable, however the planning proposal will facilitate an economic outcome as well as environmental outcomes as identified in the table below.

Planning Priority	Consistency
Planning Priority 2: Make business growth easier	Item 4 is consistent with this priority as it seeks to correct the minimum lot size (MLS) in a growing industrial estate in Heatherbrae to facilitate subdivision. Parts of Kinross Estate in Heatherbrae are zoned E4 General Industrial but cannot be subdivided due to a MLS of 20 hectares. Removing the MLS restriction from this land will make business growth easier by permitting the subdivision of this land.
Planning Priority 7: Conserve biodiversity values and corridors	Item 3 is consistent with this priority as it seeks to rezone land from RU2 Rural Landscape, C3 Environmental Management and C2 Environmental Conservation to C1 National Parks and Nature Reserves to conserve the biodiversity values of these lands and protect corridors.



# ITEM 4 - ATTACHMENT 1 PLANNING PROPOSAL - ADMINISTRATIVE AMENDMENT TO PORT STEPHENS LOCAL ENVIRONMENTAL PLAN 2013.

Planning Priority	Consistency
Planning priority 8: Improve resilience to hazards and climate change	Item 1 is consistent with this priority as it seeks to insert optional clause 5.22 Special Flood Considerations into the LEP to ensure future development in flood prone areas is compatible with the level of risk to improve resilience to future flood events.

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

Due to the administrative nature of this planning proposal, no other State and regional studies or strategies are applicable.

## Q6. Is the planning proposal consistent with applicable SEPPs?

An assessment of the relevant applicable State Environmental Planning Policies (SEPPs) against the planning proposal is provided in the table below.

SEPP	Consistency and Implications
<b>SEPP (Primary Production) 2021</b>	
Chapter 2 Primary production and rural development	The planning proposal is consistent with this SEPP.
<b>SEPP (Resilience and Hazards) 2021</b>	
Chapter 2 Coastal Management	The planning proposal is consistent with this SEPP.
Chapter 3 Hazardous and Offensive Development	The planning proposal is consistent with this SEPP.
Chapter 4 Remediation of Land	This chapter is not applicable.
<b>SEPP (Transport and Infrastructure) 2021</b>	
Chapter 2 Infrastructure	The planning proposal is consistent with this SEPP.
Chapter 3 Educational Establishments and Child Care Facilities	This Chapter is not applicable.
<b>SEPP (Biodiversity and Conservation) 2021</b>	
Chapter 2 Vegetation in non-rural areas	The planning proposal is consistent with this SEPP.

**ITEM 4 - ATTACHMENT 1 PLANNING PROPOSAL - ADMINISTRATIVE  
AMENDMENT TO PORT STEPHENS LOCAL ENVIRONMENTAL PLAN 2013.**

SEPP	Consistency and Implications
<b>Chapter 3 Koala habitat protection 2020</b>	The planning proposal is consistent with this SEPP.
<b>Chapter 4 Koala habitat protection 2021</b>	The planning proposal is consistent with this SEPP.

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

An assessment of relevant Ministerial Directions against the planning proposal is provided in the table below.

Ministerial Direction	Consistency and Implications
<b>1. PLANNING SYSTEMS</b>	
<b>1.1 Implementation of Regional Plans</b>	Consistent. The planning proposal is consistent with the relevant directions of the HRP as demonstrated under Question 3.
<b>1.3 Approval and Referral Requirements</b>	Consistent. The planning proposal would not require any additional concurrences or referrals requirements. The proposed amendments will improve the assessment of development.
<b>3. BIODIVERSITY AND CONSERVATION</b>	
<b>3.1 Conservation Zones</b>	Consistent. The planning proposal seeks to rezone land currently zoned RU2 Rural landscape, C3 Environmental Management and C2 Environmental Conservation to C1 National Parks and Natures Reserves, which offers a higher level of protection (Item 3).
<b>3.2 Heritage Conservation</b>	Consistent. The planning proposal seeks to correct the address and mapping of heritage item 179, Raymond terrace Court House (Item 2).
<b>4. RESILIENCE AND HAZARDS</b>	
<b>4.1 Flooding</b>	Consistent. The planning proposal seeks to improve the assessment of development in flood prone land by adopting the optional Clause 5.22 Special Flood Considerations (Item 1).

**ITEM 4 - ATTACHMENT 1 PLANNING PROPOSAL - ADMINISTRATIVE  
AMENDMENT TO PORT STEPHENS LOCAL ENVIRONMENTAL PLAN 2013.**

Ministerial Direction	Consistency and Implications
<b>4.2 Coastal Management</b>	Consistent. The planning proposal seeks to improve the assessment of development in flood prone coastal areas by adopting the optional Clause 5.22 Special Flood Considerations (Item 1).
<b>4.3 Planning for Bushfire Protection</b>	Consistent. The planning proposal will not affect land mapped as bushfire prone.
<b>7: INDUSTRY AND EMPLOYMENT</b>	
<b>7.1 Employment Zones</b>	Consistent. The planning proposal is consistent with this direction as it seeks to facilitate subdivision and development of an existing E4 General Industrial zone (Item 4).
<b>9. PRIMARY PRODUCTION</b>	
<b>9.1 Rural Zones</b>	Consistent. The planning proposal does not seek to rezone rural land to a residential, employment, mixed use, SP4 Enterprise, SP5 Metropolitan Centre, W4 Working Waterfront, village or tourist zone.
<b>9.2 Rural Lands</b>	Consistent. The planning proposal seeks to rezone rural land to C1 National Parks and Wildlife to identify and protect environmental values. The Minimum Lot Size is not proposed to change.

**Site-specific merit**

**Section C – Environmental, social and economic impact**

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

Item 3 of the planning proposal seeks to rezone land currently zoned RU2 Rural landscape, C3 Environmental Management and C2 Environmental Conservation to C1 National Parks and Natures Reserves, to reflect their reservation under the *National parks and Wildlife Act 1974*.

No other items in the planning proposal relate to critical habitat or threatened species, populations or ecological communities or their habitats and the proposed amendments are unlikely to adversely impact on them.

**ITEM 4 - ATTACHMENT 1 PLANNING PROPOSAL - ADMINISTRATIVE  
AMENDMENT TO PORT STEPHENS LOCAL ENVIRONMENTAL PLAN 2013.**

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

No. There are no other likely environmental effects as a result of this planning proposal due to the administrative nature of the changes.

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

The proposed amendments are considered to result in positive social outcomes for the community. The planning proposal will address errors and remove minor anomalies in the LEP. The proposed amendments will increase opportunities for industrial development in Heatherbrae, improve biodiversity outcomes in Dunns Creek, Glen Oak and Medowie and restrict sensitive and hazardous development from occurring on flood prone land.

**Section D – Infrastructure (Local, State and Commonwealth)**

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

The planning proposal unlikely to have any impacts on infrastructure provision. The proposed amendments are unlikely to generate the need for significant public infrastructure.

**Section E – State and Commonwealth Interests**

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

Consultation with relevant State and Commonwealth agencies can be undertaken following a Gateway Determination.

**PART 4 – Mapping**

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The proposed map amendments are included as attachments to the planning proposal as follows:

- Item 2 - Existing and Proposed Heritage Maps in Raymond Terrace **ATTACHMENT 1**
- Item 7 - Existing and Proposed Land Zoning Maps in Medowie State Conservation Area **ATTACHMENT 3**
- Item 7 - Existing and Proposed Land Zoning Maps in Columbey National Park **ATTACHMENT 5**
- Item 8 - Existing and Proposed Lot size Maps in Heatherbrae **ATTACHMENT 6**



ITEM 4 - ATTACHMENT 1      PLANNING PROPOSAL - ADMINISTRATIVE  
AMENDMENT TO PORT STEPHENS LOCAL ENVIRONMENTAL PLAN 2013.

PART 5 – Community consultation

Community consultation will be undertaken in accordance with the Gateway determination. The planning proposal was publicly exhibited from 10 April 2024 to 10 May 2024.

Notice of the public exhibition period will be placed on Council's website. The exhibition material was available on Council's website and on display at the following locations during normal business hours:

- Council's Administration Building, 116 Adelaide Street, Raymond Terrace
- Raymond Terrace Library, Port Stephens Street, Raymond Terrace
- Tomaree Library, Town Centre Circuit, Salamander Bay
- Medowie Community Centre, Cnr of Medowie and Ferodale Streets, Medowie

No submissions were received.

PART 6 – Project timeline

The following timetable is proposed:

	Feb 2024	Mar 2024	Apr 2024	May 2024	Jun 2024	Jul 2024	Aug 2024	Sep 2024
Gateway Determination								
Public Exhibition								
Consider submissions								
Council Report								
Parliamentary Counsel								

**MINUTES ORDINARY COUNCIL - 28 NOVEMBER 2023****ITEM NO. 3****FILE NO: 23/272493  
EDRMS NO: 58-2023-2-1****ADMINISTRATIVE AMENDMENT TO THE PORT STEPHENS LOCAL  
ENVIRONMENTAL PLAN 2013**

REPORT OF: BROCK LAMONT - STRATEGY & ENVIRONMENT SECTION  
MANAGER  
DIRECTORATE: COMMUNITY FUTURES

**RECOMMENDATION IS THAT COUNCIL:**

- 1) Adopt the administrative planning proposal (**ATTACHMENT 1**) to amend the Port Stephens Local Environmental Plan 2013.
- 2) Forward the planning proposal to the NSW Department of Planning and Environment for a Gateway determination and request authority to make the plan.

**ORDINARY COUNCIL MEETING - 28 NOVEMBER 2023  
MOTION**

<b>279</b>	<p><b>Councillor Giacomo Arnott Mayor Ryan Palmer</b></p> <p>It was resolved that Council:</p> <ol style="list-style-type: none"><li>1) Adopt the administrative planning proposal (<b>ATTACHMENT 1</b>) to amend the Port Stephens Local Environmental Plan 2013, with the deferral of points 1, 2, 3 and 5 from the report for consideration by the Mayor and Councillors at a workshop to determine the future strategic direction of Council on these proposals.</li><li>2) Forward the planning proposal to the NSW Department of Planning and Environment for a Gateway determination and request authority to make the plan.</li></ol>
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In accordance with Section 375 (A) of the Local Government Act 1993, a division is required for this item.

Those for the Motion: Mayor Ryan Palmer, Crs Leah Anderson, Giacomo Arnott, Matthew Bailey, Peter Kafer, Steve Tucker and Jason Wells.

Those against the Motion: Nil.

The motion was carried.

**MINUTES ORDINARY COUNCIL - 28 NOVEMBER 2023****BACKGROUND**

The purpose of this report is to seek Council's endorsement to submit the administrative planning proposal (**ATTACHMENT 1**) to amend the Port Stephens Local Environmental Plan 2013 (LEP) to the NSW Department of Planning and Environment (DPE) for a Gateway determination.

The objectives of the planning proposal are to make administrative amendments to the LEP to address minor matters that have recently been identified for improvement. The planning proposal seeks to make the following amendments:

1. Amend Clause 4.1B Minimum lot sizes for dual occupancies, multi dwelling housing and residential flat buildings to:
  - Increase the minimum lot size for residential flat buildings from 450sqm to 900sqm
  - Correct an error by omitting 'despite clause 4.1' in subclause (2)
  - Expand the clause objectives.
2. Amend Clause 4.1E Boundary adjustments of land in certain rural, residential and conservation zones to limit its application to 2 lots.
3. Amend Clause 4.3 Height of buildings to expand the objectives to include considerations for:
  - Natural topography
  - Solar access
  - Privacy
  - Visual amenity
  - Disruption of views.
4. Adopt optional Clause 5.22 Special Flood Considerations.
5. Amend Clause 7.23 to no longer apply a minimum street frontage of 15m to dwellings and dual occupancies in the Nelson Bay town centre.
6. Amend Schedule 5 Environmental Heritage to correct the property address and mapping for item 179 Raymond Terrace Court House.
7. Rezone land at Medowie State Conservation Area and Cumbey National Park to C1 National Parks and Nature Reserves.
8. Amend the Minimum Lot Size map to align with the Land Zoning Map at Kinross, Estate Heatherbrae (Lot 1401 DP 1272419).

A community guide summarising the proposed amendments is provided in the Explanation of Amendments (**ATTACHMENT 2**).

**MINUTES ORDINARY COUNCIL - 28 NOVEMBER 2023**

Detailed justification for the proposed amendments is provided in the administrative planning proposal (**ATTACHMENT 1**).

Should Council resolve to endorse the planning proposal, it will be forwarded to the DPE requesting a Gateway determination. Council will be requesting to be made the Plan Making Authority for the proposal.

Following the issuing of the Gateway determination, the planning proposal would be publicly exhibited in accordance with any gateway conditions from DPE, prior to being reported to Council for determination.

**COMMUNITY STRATEGIC PLAN**

<b>Strategic Direction</b>	<b>Delivery Program 2022-2026</b>
Thriving and safe place to live	Program to develop and implement Council's key planning documents

**FINANCIAL/RESOURCE IMPLICATIONS**

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

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

**LEGAL, POLICY AND RISK IMPLICATIONS**

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

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

The planning proposal is being processed in accordance with Part 3 of the EP&A Act. Should Council resolve to endorse 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.



**MINUTES ORDINARY COUNCIL - 28 NOVEMBER 2023**Hunter Regional Plan 2041 (HRP)

The planning proposal is consistent with the aims of the HRP, including protecting the biodiversity network, improving resilience to flood events and protecting productive rural landscapes. The planning proposal will give effect to the following objectives of the HRP:

- Objective 6 – Conserve heritage landscapes, environmentally sensitive areas, waterways and drinking water catchments
- Objective 7 – Reach net zero and increase resilience and sustainable infrastructure
- Objective 9 – Sustain and balance productive rural landscapes.

Port Stephens Local Strategic Planning Statement (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 will give effect to the following planning priorities of the LSPS:

- Planning Priority 2 – Make business growth easier
- Planning priority 7 – Conserve biodiversity values and corridors
- Planning Priority 8 – Improve resilience to hazards and climate change
- Planning Priority 9 – Protect and preserve productive agricultural land.

Port Stephens Local Housing Strategy (Live Port Stephens)

The planning proposal will give effect to the following priorities and actions of Live Port Stephens:

- Priority 3.1 – Facilitate new housing within urban areas
- Priority 3.2 – Encourage a range of housing types and sizes
- Action 15 – Consider opportunities to encourage the amalgamation of sites.

<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 LEP will contain administrative errors and redundant provisions if the amendment is not made.	Medium	Accept the recommendation.	Yes

**MINUTES ORDINARY COUNCIL - 28 NOVEMBER 2023**

<b>Risk</b>	<b><a href="#">Risk Ranking</a></b>	<b>Proposed Treatments</b>	<b>Within Existing Resources?</b>
There is a risk that proposals for inappropriate development will be lodged, should the amendment not be made.	Medium	Accept the recommendation.	Yes

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

The proposed amendments, whilst relatively minor in nature, are expected to deliver a range of positive social, economic and environmental outcomes, including:

- Streamlined development assessment due to the correction of errors and anomalies
- Improved consideration of flood affected land
- Increased opportunity for new dwellings and dual occupancies in Nelson Bay due to the amendment of Clause 7.23
- Improved urban design outcomes, particularly around residential flat buildings
- Greater protection of conservation lands
- Increased opportunities for industrial subdivision and new development in Heatherbrae
- Greater protection of rural landscapes.

**CONSULTATION**

Consultation with key stakeholders has been undertaken by the Strategy and Environment Section to inform the planning proposal.

Internal

Consultation was undertaken with Development Planning and Development Engineering teams to develop and review the proposed amendments.

All of the proposed items are supported by the relevant internal stakeholders.

External

Preliminary consultation has been undertaken with the Department of Planning and Environment (DPE) with no issues raised regarding the proposed amendments. All recommendations have been incorporated into the planning proposal. Due to the nature of the planning proposal, DPE advised the undertaking of preliminary consultation with authorities and government agencies would not be required.

**MINUTES ORDINARY COUNCIL - 28 NOVEMBER 2023**

It is anticipated that consultation or referral of the planning proposal to authorities and government agencies may be required after Gateway determination. A Gateway condition may be imposed where an authority or agency has an interest in the proposal.

The draft administrative planning proposal would be publicly exhibited in accordance with the Gateway determination.

**OPTIONS**

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

**ATTACHMENTS**

- 1) Administrative Planning Proposal. (Provided under separate cover)
- 2) Explanation of Amendments.

**COUNCILLORS' ROOM**

Nil.

**TABLED DOCUMENTS**

Nil.

**ITEM 4 - ATTACHMENT 3      NSW DEPARTMENT OF PLANNING, HOUSING AND INFRASTRUCTURE - GATEWAY DETERMINATION.**

Department of Planning, Housing and Infrastructure

### **Gateway Determination**

**Planning proposal (Department Ref: PP-2023-2705):** Administrative Amendments 2023.

I, the Director at the Department of Planning, Housing and Infrastructure, as delegate of the Minister for Planning and Public Spaces, have determined under section 3.34(2) of the *Environmental Planning and Assessment Act 1979* (the Act) that an amendment to the *Port Stephens Local Environmental Plan 2013* to make administrative amendments should proceed subject to the following:

The Council as planning proposal authority is authorised to exercise the functions of the local plan-making authority under section 3.36(2) of the Act subject to the following:

- (a) the planning proposal authority has satisfied all the conditions of the gateway determination;
- (b) the planning proposal is consistent with applicable directions of the Minister under section 9.1 of the Act or the Secretary has agreed that any inconsistencies are justified; and
- (c) there are no outstanding written objections from public authorities.

#### **Gateway Conditions**

1. Prior to public exhibition update the explanation of provisions and mapping for Item 3 of the planning proposal to note that the minimum lot size development standard would be changed to show that no development standard would apply.
2. Public exhibition is required under section 3.34(2)(c) and clause 4 of Schedule 1 to the Act as follows:
  - (a) the planning proposal is categorised as standard as described in the Local Environmental Plan Making Guideline (Department of Planning and Environment, August 2023) and must be made publicly available for a minimum of 20 working days;
  - (b) the planning proposal authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in Local Environmental Plan Making Guideline (Department of Planning and Environment, August 2023); and
  - (c) public exhibition must commence within one month of the date of this Gateway determination.
3. A public hearing is not required to be held into the matter by any person or body under section 3.34(2)(e) of the Act. This does not discharge Council from any obligation it may otherwise have to conduct a public.

PP-2023-2705 (IRF23/3365)



**ITEM 4 - ATTACHMENT 3      NSW DEPARTMENT OF PLANNING, HOUSING  
AND INFRASTRUCTURE - GATEWAY DETERMINATION.**



Department of Planning, Housing and Infrastructure

4. The LEP should be completed on or before 4 November 2024.

Dated 28 March 2024



Jeremy Gray  
Director, Northern  
Planning, Land Use Strategy and  
Housing  
Department of Planning, Housing and  
Infrastructure  
  
Delegate of the Minister for Planning and  
Public Spaces

PP-2023-2705 (IRF23/3365)

## Explanation of Amendments

### Draft Port Stephens Local Environmental Plan (LEP) 2013 – Administrative Amendment

#### NO. EXPLANATION OF AMENDMENTS

##### 1 Clause 5.22 Special flood considerations

1. Adopt optional Clause 5.22 Special flood considerations

#### Explanation:

Council wishes to insert the optional Clause 5.22 Special Flood Considerations into the LEP to ensure flood risks for sensitive and hazardous development is appropriately considered. The optional clause was prepared by the Department of Planning and Environment for local government areas with flood prone land.

Adopting the optional clause will allow council to ensure future development in flood prone areas is compatible with the level of risk, avoids accumulative impacts, protects the capacity of emergency responses and avoids adverse effects of hazardous development during flood events.

##### 2 Schedule 5 Environmental Heritage

1. Amend Schedule 5 Environmental Heritage to correct the address for item 179 Courthouse, Raymond Terrace; and
2. Update the Heritage map to reflect the correct property boundary of item 179



#### Explanation:

Item 179 of Schedule 5 Environmental Heritage is currently incorrect as it refers to a historical address. In 2020, the Raymond Terrace Courthouse and Police Station were subject to a 2 into 2 subdivision that moved the property boundary and changed the residential address. The proposed amendment will correct the address and update the Heritage map.

## ITEM 4 - ATTACHMENT 4 EXPLANATION OF AMENDMENTS.

## 3 National Parks and Nature Reserves

1. Amend the Land Zoning Map to rezone the following sites to C1 National Parks and Nature Reserves; and
2. Amend the Lot Size Map to remove identification of the sites as 40 hectares

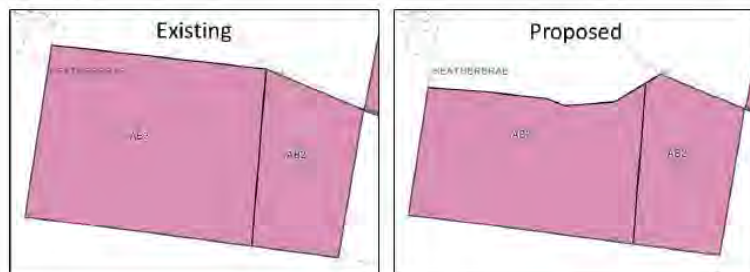
Address	Current Zone	Reservation status
Lot 2 DP 1224780 139 Boundary Road, Medowie	C2 Environmental Conservation	Medowie State Conservation Area
Lot 1 DP 1192418 17 Notts Lane, Glen Oak	RU2 Rural Landscape	Columbey National Park
Lot 119 DP 752445 716A Duns Creek Road, Duns Creek	C3 Environmental Management	Columbey National Park
Lot 1 DP 1168926 716B Duns Creek Road, Duns Creek	C3 Environmental Management	Columbey National Park
Lot 2 DP 1168926 716C Duns Creek, Duns Creek	C3 Environmental Management	Columbey National Park

## Explanation:

The above listed sites have recently been reserved under the *National Parks and Wildlife Act 1974*. Council wishes to rezone these sites to C1 National Parks and Nature Reserves to reflect their statuses as Conservation Areas and National Parks. The lot size is proposed to be amended as land zoned C1 National Parks and Nature Reserves do not have a minimum lot size.

## 4 Minimum lot size at Masonite Road, Heatherbrae

1. Correct the Lot Size Map for Part of Lot 1401 DP 1272419 (343 Masonite Road, Heatherbrae) to remove the identification of part of the site as 20 hectares



## Explanation:

The Lot Size Map at 343 Masonite Road, Heatherbrae incorrectly applies a minimum lot size of 20 hectares over land zoned SP2 Classified Road and E4 General Industrial. Land zoned E4 General Industrial typically has no minimum lot size. It is proposed to correct the Lot Size Map in this area to allow for the logical subdivision of this industrial land.

**ITEM NO. 5**

**FILE NO: 24/106154  
EDRMS NO: PSC2017-00180**

## **VEGETATION CLEARING**

REPORT OF: EVERT GROBBELAAR - DEVELOPMENT AND COMPLIANCE  
SECTION MANAGER  
DIRECTORATE: COMMUNITY FUTURES

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### **RECOMMENDATION IS THAT COUNCIL:**

- 1) Adopt a standard condition to be imposed on Development Approvals requiring landowners to notify Council of major vegetation removal 14 days prior to commencement.

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## **BACKGROUND**

The purpose of this report is to respond to Council's Resolution of 12 March 2024 Minute Number 015 (**ATTACHMENT 1**), requesting the General Manager to prepare a report outlining options to require developers to notify Council prior to major vegetation clearing. This report has been prepared in response to the Notice of Motion (NoM).

There is currently no clear mechanism by which Council are notified of the commencement of major vegetation clearing after a Development Application (DA) is approved. In some instances, there could be an extended time delay between the approval of a DA and the commencement of vegetation removal works.

There is also no specific planning statute or policy that requires a landowner to give Council notice of major clearing works. The only mechanism to allow for such notice to be given is by imposing a bespoke condition of consent under Section 4.17 of the Environmental Planning and Assessment Act 1979. Imposing a condition of this nature would serve the intended effect of the 12 March 2024 NoM.

There is no specific 'major vegetation' definition in the Port Stephens Council Local Environmental Plan (PSLEP), Development Control Plan (DCP) or Environmental Planning and Assessment Act 1979. On this basis, a specific definition and criteria needs to be formulated for major vegetation removal, to inform the relevant threshold on instances a condition would be imposed requiring Council notice.

The following criteria for major vegetation removal is recommended:

- Removal of 10 or more hollow bearing trees; or
- Removal of 10 or more koala feed trees; or
- Removal of more than 0.25ha of vegetation with high value ecological features.



The glossary section contained at E1 of the DCP defines high value ecological features as the natural features in the landscape, which provide habitat for native flora or fauna species; such as Biodiversity Values Mapped areas, hollow bearing trees, nest trees, large old growth trees, large fallen timber, caves, rocky outcrops/bush-rock, waterbodies, drainage lines and wetlands.

A 14 day notice period is recommended in the condition. This 14 day notice period will allow Council staff to ensure the requisite Management Plans and pre-clearance measures are in place.

The condition proposed to be imposed is provided below:

Notice to Council of Clearing Works – 14 days prior to the commencement of vegetation removal, the landowner must give formal written notice to Council. The notice must detail a commencement date for works and provide detail that all relevant pre-clearance conditions have been satisfied.

## **COMMUNITY STRATEGIC PLAN**

<b>Strategic Direction</b>	<b>Delivery Program 2022-2026</b>
Thriving and safe place to live	Program to develop and implement Council's key planning documents

## **FINANCIAL/RESOURCE IMPLICATIONS**

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

**LEGAL, POLICY AND RISK IMPLICATIONS**

<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 imposition of the condition could be challenged through the Land and Environment Court.	Low	Accept the recommendation.	Yes

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

The adoption of a standard condition requiring landowners to notify Council of major vegetation removal 14 days prior to commencement will have positive social, economic and environmental outcomes.

**CONSULTATION**

Consultation with Council's Natural Systems Section occurred as part of this report. Natural Systems supported the major vegetation removal criteria and the requirement for a landowner to give notice 14 days prior to works commencing.

**OPTIONS**

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

**ATTACHMENTS**

- 1) Ordinary Council Meeting Minutes - 12 March 2024.

**COUNCILLORS' ROOM/DASHBOARD**

Nil.

**TABLED DOCUMENTS**

Nil.

## ORDINARY COUNCIL - 9 JULY 2024

### ITEM 5 - ATTACHMENT 1      ORDINARY COUNCIL MEETING MINUTES - 12 MARCH 2024.

#### MINUTES ORDINARY COUNCIL - 12 MARCH 2024

#### NOTICE OF MOTION

ITEM NO. 1

FILE NO: 24/46677  
EDRMS NO: PSC2021-04195

#### NOTIFICATION FROM DEVELOPERS PRIOR TO CLEARING OF MAJOR VEGETATION

COUNCILLOR: LEAH ANDERSON

#### THAT COUNCIL:

- 1) Requests the General Manager prepare a report outlining options to require developers to notify Council prior to the commencement of clearing of major vegetation.

#### ORDINARY COUNCIL MEETING - 12 MARCH 2024 MOTION

015	<p><b>Councillor Leah Anderson</b> <b>Councillor Peter Francis</b></p> <p>It was resolved that Council requests the General Manager prepare a report outlining options to require developers to notify Council prior to the commencement of clearing of major vegetation.</p>
-----	---

Councillor Glen Dunkley left the meeting at 6:39pm.  
Councillor Glen Dunkley returned to the meeting at 6:47pm.

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

Those against the Motion: Nil.

The motion was carried.

**ORDINARY COUNCIL - 9 JULY 2024****ITEM 5 - ATTACHMENT 1      ORDINARY COUNCIL MEETING MINUTES - 12 MARCH 2024.****MINUTES ORDINARY COUNCIL - 12 MARCH 2024****BACKGROUND REPORT OF: EVERT GROBBELAAR – DEVELOPMENT AND COMPLIANCE SECTION MANAGER****BACKGROUND**

There is currently no clear and consistent mechanism by which Council Officers are notified of the commencement of vegetation clearing once a Development Application (DA) is approved. There could be a significant time delay from approval of a DA to the commencement of clearing.

Council Officers will need to develop a clear definition and criteria around the concept of “major vegetation”. This would include giving consideration to particular species, number of trees, an area of clearing and the locality.

**FINANCIAL/RESOURCE IMPLICATIONS**

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

**ATTACHMENTS**

Nil.



## ITEM NO. 6

FILE NO: 24/124721  
EDRMS NO: PSC2017-00180**2024 COMMUNITY SATISFACTION SURVEY**

REPORT OF: ZOE PATTISON - DIRECTOR CORPORATE STRATEGY AND SUPPORT  
DIRECTORATE: CORPORATE STRATEGY AND SUPPORT

**RECOMMENDATION IS THAT COUNCIL:**

- 1) Receive the Port Stephens Council 2024 Community Satisfaction Survey Report **(ATTACHMENT 1)**.

**BACKGROUND**

The purpose of this report is to provide Council with the results of the 2024 Community Satisfaction Survey as outlined in **(ATTACHMENT 1)**. This report is provided in accordance with Council's resolution of 28 November 2023 **(ATTACHMENT 2)**.

At Port Stephens Council we're committed to delivering outcomes that improve the wellbeing and liveability of our community. The Community Satisfaction Survey (the survey) is an important part of delivering these outcomes and helps us to understand what's working and what's not. Community satisfaction is also one of Council's 6 key result measures, providing community insights on:

- Council's overall performance.
- Council's core services.
- Council's user services.
- Councillors.

The 2024 survey was conducted from 15 April 2024 to 5 May 2024, with 211 responses received. With over 77,000 people calling Port Stephens home, this response sample is not statistically representative of the local government area's population.

Generally, there has been an improvement in the results from 2023 to 2024 as shown in the respondents' rating of the overall performance of Council's services.

<b>Overall Performance of Council Services (Question 13)</b>		
	<b>2023</b>	<b>2024</b>
<b>Mean Rating</b>	2.94	3.08
<b>Satisfaction %</b>	45%	51%

Further information on the survey results is provided in **(ATTACHMENT 1)** along with what Council is doing to improve.

**COMMUNITY STRATEGIC PLAN**

Strategic Direction	Delivery Program 2022-2026
Governance	Deliver the Integrated Planning and Reporting program.

**FINANCIAL/RESOURCE IMPLICATIONS**

The survey was resourced internally within the existing budget.

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**

Community satisfaction surveys are not a legislative requirement, however the Integrated Planning and Reporting (IP&R) Guidelines refer to such surveys as a method that councils can use in testing the effectiveness of various IP&R elements such as the Community Strategic Plan.

Risk	<a href="#">Risk Ranking</a>	Proposed Treatments	Within Existing Resources?
The sample size is not representative of the local government area's population.	Medium	Council undertakes a range of community engagement activities to inform Council operations.	Yes

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

Port Stephens Council conducts its operations across the spectrum of social, economic, environmental and governance indicators and measures.

The 2024 survey was designed to ensure that Council is aware of the level of community satisfaction with both its core and user services. Whilst the report demonstrates a mean rating of 3.08 for overall satisfaction, there are opportunities to enhance Council's operations and service delivery as outlined in the report.

As part of Council's commitment to continuous improvement, each section of Council will review the feedback provided by the community and will build on this as we review the Community Strategic Plan and related Council Integrated Plans over the next 12 months.

## **CONSULTATION**

### Internal

The survey questions (prior to distribution) and results were reviewed by the Executive Team and Councillors.

### External

Council's Communications Plan to raise awareness about the survey included promotion via the following channels:

- Stalls at Council held events.
- Social Media.
- Newspaper advertisement.
- Council's electronic newsletter.
- Council's website.
- Flyers and hard copy surveys at Council Libraries, Pools, Childcare Centres and the Administration Building.

## **OPTIONS**

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

## **ATTACHMENTS**

- 1) 2024 Community Satisfaction Survey Report.
- 2) Council Minutes - 28 November 2023.

## **COUNCILLORS' ROOM/DASHBOARD**

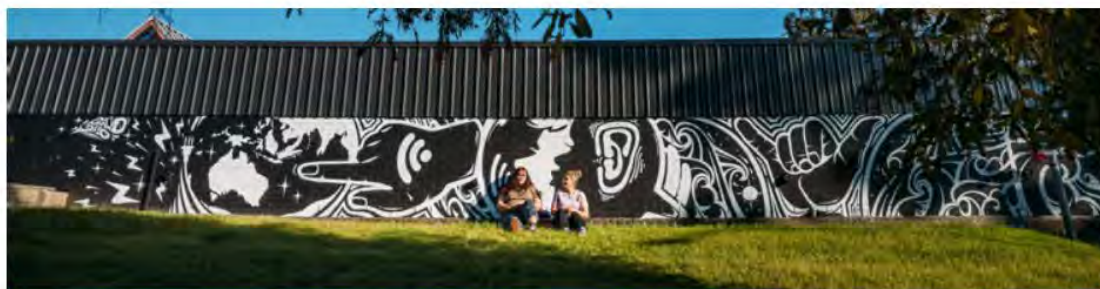
Nil.

## **TABLED DOCUMENTS**

Nil.







We asked our residents their thoughts about our core services by using a score out of 5.

### 2024 results

Resident's overall average satisfaction in 2024 rating was

**3.08**  
(out of 5)

Overall Satisfaction Score 2024



### 2023 results

Resident's overall average satisfaction in 2023 rating was

**2.94**  
(out of 5)

Overall Satisfaction Score 2023



Our highest rated services and facilities



#### Waste services

**87% satisfied** with domestic waste and recycling collection services.

**75% satisfied** with access to waste transfer station and waste depots.



#### Council Website and Managed Events

**62% satisfied** with Council's managed events and services.

**65% satisfied** with our website.



#### Clean and safe public spaces

**69% satisfied** with maintenance and cleaning of town centres.

**64% satisfied** condition and maintenance of local parks and reserves.



### Looking forward for improved satisfaction of services

Over April and May 2024, we invited residents to complete the survey and have their say. We used stalls at events, social media, newspaper advertisements, flyers, our electronic newsletter and our website to reach as many people as possible.

We received 211 responses from the community in this round regarding their level of satisfaction. With over 77,000 people calling Port Stephens home, our response sample is not statistically representative of our population.

During this period, community members completed the survey and rated their overall satisfaction with the performance of Council's services as a mean score of 3.08 out of 5.

The highest scoring service was Waste and Recycling with a mean score of 4.09 out of 5, which translates to 87% of respondents satisfied. With the Garden Organics waste service being rolled out last year, we can understand why residents have shown a continued high satisfaction with these services.

We knew that roads was still the biggest area to work on with a mean score of 2.42 out of 5. Although this is an increase in satisfaction from last year (mean score of 2.15 out of 5), we are still striving to improve in this area.

We've continued to listen to the community on this matter and are delivering more road repairs and improvements with our recent success in grant funding of \$10M for local road repairs.



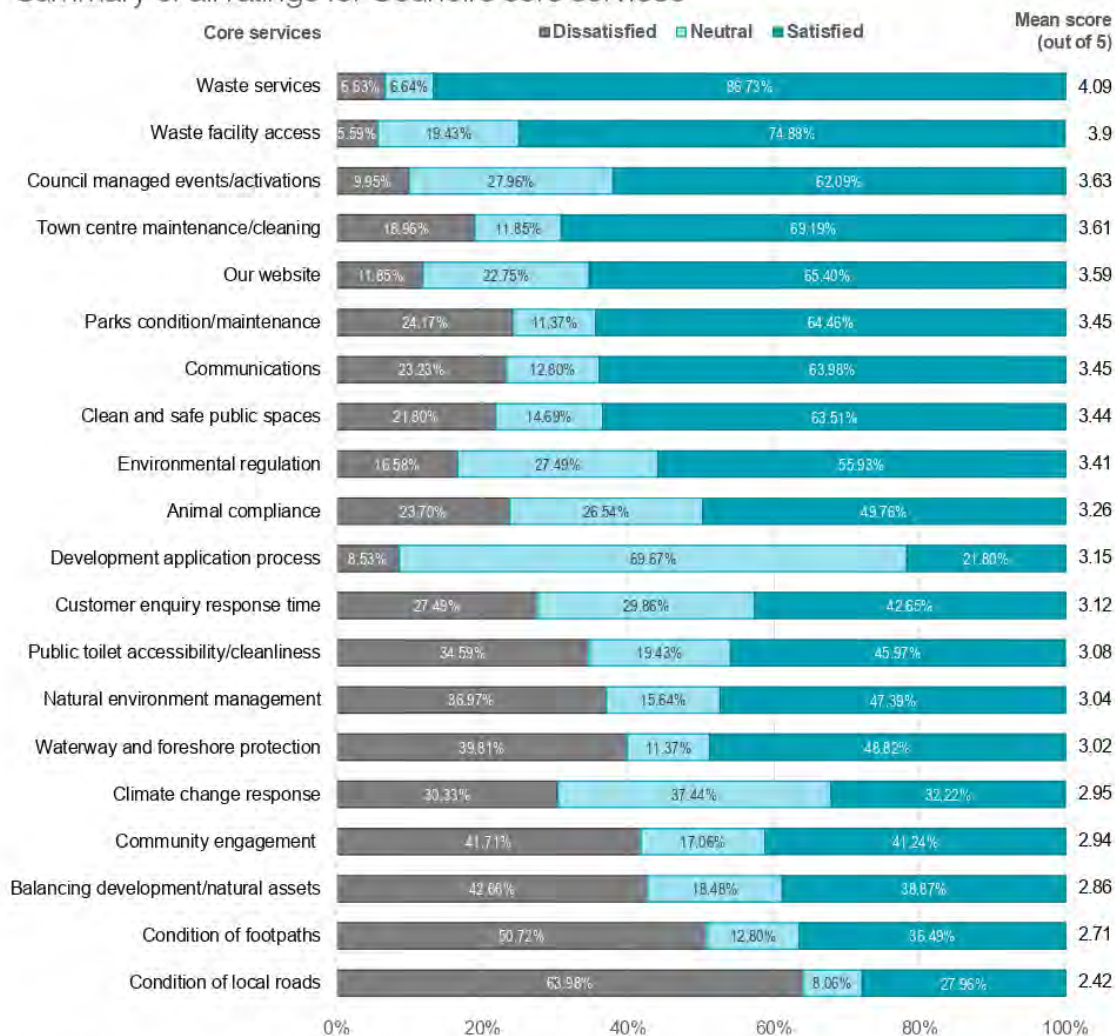
These are the average mean scores that our community rated Council's: core services, user services and Councillors.



ITEM 6 - ATTACHMENT 1  
REPORT.

## 2024 COMMUNITY SATISFACTION SURVEY

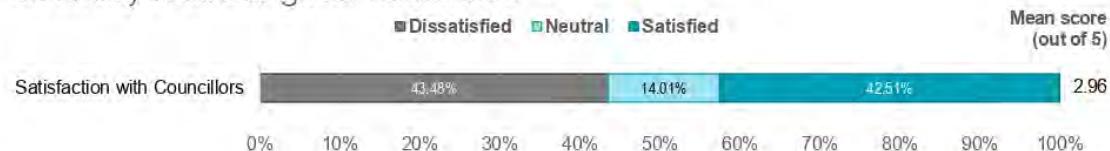
## Summary of all ratings for Council's core services



## Summary of all ratings for Council's user services



## Summary of all ratings for Councillors





### What we're doing to improve

Over the next year, we'll continue to work closely with our community, focusing on issues we know are a priority.

#### Roads and infrastructure



Utilising the \$10 million grant received from the NSW Government over the next few years for local road repairs.



Continuing to prioritise footpath and pathway connections through actively seeking grants, use of local infrastructure contributions and review our existing pathways plan.



We'll be using \$1.4 million from the Special Rate Variation to repair our roads over 2024 and 2025.

#### Growth and development while protecting our natural assets



We're finalising the Coastal Management Program and have clear priorities for actions and next steps.



We've adopted a Local Housing Strategy to assist us in meeting projected demand for housing in our LGA.

#### Involving the community in council decision making



Continued updates to our website to improve the community's experience accessing information about their place. This includes recent improvements of Report, Request and Apply and the Project and Works platform



Continue our 4 new advisory groups to provide community representation for consultation, advice and advocacy across 4 key areas:


- heritage
- homelessness
- environment
- communications and engagement.



ITEM 6 - ATTACHMENT 1      2024 COMMUNITY SATISFACTION SURVEY  
REPORT.



PORT STEPHENS  
COUNCIL

[council@portstephens.nsw.gov.au](mailto:council@portstephens.nsw.gov.au) | 02 4988 0255 | [portstephens.nsw.gov.au](http://portstephens.nsw.gov.au)    

**MINUTES ORDINARY COUNCIL - 28 NOVEMBER 2023****ITEM NO. 9****FILE NO: 23/282296  
EDRMS NO: PSC2023-02266****2022 TO 2023 ANNUAL REPORT**

REPORT OF: ZOE PATTISON - DIRECTOR CORPORATE STRATEGY AND SUPPORT  
DIRECTORATE: CORPORATE STRATEGY AND SUPPORT

**RECOMMENDATION IS THAT COUNCIL:**

- 1) Endorses the Annual Report for the Financial Year 2022 to 2023  
(ATTACHMENTS 1 & 2).

**ORDINARY COUNCIL MEETING - 28 NOVEMBER 2023  
MOTION**

<b>285</b>	<p><b>Councillor Giacomo Arnott</b> <b>Councillor Leah Anderson</b></p> <p>It was resolved that Council:</p> <ol style="list-style-type: none"><li>1) Endorses the Annual Report for the Financial Year 2022 to 2023 (ATTACHMENTS 1 &amp; 2).</li><li>2) Publishes the Community Satisfaction Survey separately to the Annual Report as its own document in the minutes of this meeting, with the Survey still being reported on in this annual report and all annual reports going forward, and for it to be reported separately in future, and for the 2024 Community Satisfaction Survey to commence in March or April 2024 to re-align the Survey with its regular timing.</li></ol>
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Councillor Giacomo Arnott left the meeting at 7:01pm.  
Councillor Giacomo Arnott returned to the meeting at 7:04pm.

Those for the Motion: Mayor Ryan Palmer, Crs Leah Anderson, Giacomo Arnott, Matthew Bailey, Peter Kafer, Steve Tucker and Jason Wells.

Those against the Motion: Nil.

The motion was carried.

**ITEM NO. 7****FILE NO: 24/143682  
EDRMS NO: PSC2006-6848****POLICY: RISK MANAGEMENT****REPORT OF: TONY WICKHAM - GOVERNANCE SECTION MANAGER  
DIRECTORATE: GENERAL MANAGER'S OFFICE**

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Endorse the revised Risk Management Policy shown at **(ATTACHMENT 1)**.
- 2) Place the revised Risk Management Policy, as amended on public exhibition for a period of 28 days and should no submissions be received, the policy be adopted, without a further report to Council.
- 3) Revoke the Risk Management Policy dated 13 April 2021, Minute No. 080 should no submissions be received.

---

**BACKGROUND**

The purpose of this report is to seek Council's endorsement of the revised Risk Management Policy ('policy'). The policy forms part of the implementation of Council's Risk Management Framework. The policy is shown at **(ATTACHMENT 1)**.

The policy establishes the commitment of Port Stephens Council to provide effective risk management culture, governance and practices to support the delivery of its Community Strategic Plan.

Council recognises the purpose of risk management is the creation and protection of value and is committed to managing risk to improve performance, encourage innovation and support the achievement of objectives.

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

**COMMUNITY STRATEGIC PLAN**

<b>Strategic Direction</b>	<b>Delivery Program 2022-2026</b>
Governance	Deliver governance services and internal audit program

**FINANCIAL/RESOURCE IMPLICATIONS**

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

**LEGAL, POLICY AND RISK IMPLICATIONS**

The policy ensures Council meets its legislative obligations in relation to the management of risk.

Risk	<a href="#">Risk Ranking</a>	Proposed Treatments	Within Existing Resources?
There is a risk that Council will not meet its legislative obligations without a method for assessing and controlling risks.	Extreme	Adopt the recommendation.	Yes

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

There are no sustainability implications associated with this policy.

**CONSULTATION**

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

The Local Government Act 1993 requires Council to conduct public consultation on policies prior to final adoption.

Internal

- The Executive Team has been consulted to seek management endorsement.
- The General Manager has been consulted to seek endorsement prior to Council consideration.



## **ORDINARY COUNCIL - 9 JULY 2024**

- The policy was considered by Council's Audit, Risk and Improvement Committee on 23 May 2024.

### External

Following Council adoption, the policy will be publicly exhibited on Council's website.

### **OPTIONS**

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

### **ATTACHMENTS**

- 1) Revised Risk Management Policy.

### **COUNCILLORS' ROOM/DASHBOARD**

Nil

### **TABLED DOCUMENTS**

Nil

## Policy



**FILE NO:** PSC2006-6848  
**TITLE:** RISK MANAGEMENT  
**OWNER:** GOVERNANCE SECTION MANAGER

### 1. PURPOSE:

- 1.1 This policy establishes the commitment of Port Stephens Council (Council) to provide effective risk management culture, governance and practices to support the delivery of its Community Strategic Plan.

### 2. CONTEXT / BACKGROUND:

- 2.1 Council has developed a Risk Management Framework consistent with Australian standard AS ISO 31000:2018 Risk Management, to assist it to identify, treat, monitor and review all risks to its operations and strategic objectives and apply appropriate internal controls.
- 2.2 Council is committed to the principles, framework and process of managing risk as outlined in AS ISO 31000:2018 and commits to fully integrating risk management within Council and applying it to all decision-making, functions, services and activities of Council in accordance with our statutory requirements.
- 2.3 Council recognises the need for risk management to feature as a key consideration in strategic and operational planning, day-to-day management and decision making at all levels in the organisation.

### 3. SCOPE:

- 3.1 This policy applies to all Council officers, employees, volunteers and contractors.
- 3.2 Council will maintain more detailed management directives and procedures to support risk management in practice. These must align with the expectations described in of this policy and provide more substance on Council's Risk Management Plan (and relevant sub-frameworks) and Risk Appetite.

### 4. DEFINITIONS:

- 4.1 Key definitions of terms relevant to this policy:

**Risk:** The effect of uncertainty on objectives.  
 (An effect is a deviation from the expected. It can be positive, negative or both, and can address, create or result in opportunities and threats)



## ITEM 7 - ATTACHMENT 1 REVISED RISK MANAGEMENT POLICY.

## Policy



Risk Management:	Coordinated activities to direct and control Council with regard to risk.
Risk Management Framework (RMF):	A set of components that support and sustain risk management throughout Council. (Outlined in Council's Risk Management Policy, Risk Appetite Statement and Risk Management Plan)
Risk Appetite:	The amount and type of risk Council is willing to pursue or retain in pursuit of its Community Strategic Plan

### 5 STATEMENT:

- 5.1 Council recognises that the purpose of risk management is the creation and protection of value and is committed to managing risk to improve performance, encourage innovation and support the achievement of objectives. This understanding is reflected in the following characteristics adopted by Council:
  - 5.1.1 Risk management practices encompass the entire organisation, creating connections to avoid silos.
  - 5.1.2 Risk management strategies address the full spectrum of risks and are appropriately scaled to reflect situational context and complexity.
  - 5.1.3 Risk management approaches do not solely consider single events, but also take into account risk scenarios and the interaction of multiple risks.
  - 5.1.4 Risk management practices are infused into business culture and practices, so that strategy and decision-making evolve out of a risk-informed process.
  - 5.1.5 Risk management philosophy focuses not solely on risk avoidance, but also on acceptable risk-taking as a means to value creation.
- 5.2 Council is committed to managing risk within Council's established appetite by identifying, analysing, evaluating and treating exposures that may impact on Council achieving its objectives and/or the continued efficiency and effectiveness of its operations.
- 5.3 Council will incorporate risk management into its planning and decision-making processes (at all levels) and subsequently in its business execution.
- 5.4 Council's risk management process will be aligned to relevant standards and best practice in a manner that aligns with the organisation's culture and maturity.
- 5.5 Council staff will implement and embed the risk management process into their business practices to reinforce their decision-making responsibilities and accountability.



## Policy



- 5.6 Council is committed to ensuring that all staff, particularly those with management, advisory and decision making responsibilities, obtain a sound understanding of the principles of risk management and the requisite skills to implement risk management effectively.
- 5.7 Council will regularly monitor and review the status of its risk culture and the effective implementation of the Risk Management Plan throughout the organisation, as a basis for continuous improvement and to ensure it meets requirements of the Local Government Act 1993 and the Local Government (General) Regulation 2021.

## 6 RESPONSIBILITIES:

- 6.1 The Executive and Senior Leadership Teams are responsible for promoting and leading effective risk management at Council, supported by the Enterprise Risk Management team.
- 6.2 All employees, contractors and volunteers are responsible for managing risk at Council and as such are responsible for compliance with this policy.
- 6.3 Detailed risk management responsibilities for key roles are documented in the Risk Management Plan.

## 7 RELATED DOCUMENTS:

- 7.1 Risk Appetite Statement
- 7.2 Risk Management Plan
- 7.3 Work Health and Safety Statement of Commitment
- 7.4 Environment Policy
- 7.5 Business Continuity Plan (and sub-plans)
- 7.6 Office of Local Government, Risk Management and Internal Audit Guidelines

## 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 intranet, **MyPort**.

<b>EDRMS container No.</b>	PSC2006-6848	<b>EDRMS record No.</b>	21/138869
<b>Audience</b>	Councillors, employees, volunteers, contractors and community		
<b>Process owner</b>	Governance Section Manager		
<b>Author</b>	Enterprise Risk Manager		





## Policy



<b>Review timeframe</b>	Three years	<b>Next review date</b>	May 2027
<b>Adoption date</b>	13 April 2021		

### VERSION HISTORY:

Version	Date	Author	Details	Minute No.
1.0	13 April 2021	Enterprise Risk Manager	New policy to replace "Enterprise Risk Management" Policy	080
1.1	May 2024	Enterprise Risk Manager	Minor adjustments to reflect all key aspects of the OLG example risk management policy, including acknowledgement of: <ul style="list-style-type: none"> <li>(2.1 / 2.2) the RMF alignment to the Australian / International standard AU ISO 31000:2018, &amp;</li> <li>(5.7) regular review considering compliance with LG Act (1993) and LG Regulation (2021).</li> <li>(7.6) Added OLG Risk Management and Internal Audit Guidelines to related documents</li> </ul>	

## Policy

WARNING: This is a controlled document. Any changes to the document may not be authorised. Should any change be required, it should be authorised by the Council or by a duly authorised person.



**ITEM NO. 8**

**FILE NO: 23/281872  
EDRMS NO: PSC2021-04206**

**REQUESTS FOR FINANCIAL ASSISTANCE**

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

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Approves provision of financial assistance under Section 356 of the Local Government Act 1993 from Ward funds to the following:-
  - a) Meals on Wheels Tomaree Branch – Cr Matthew Bailey – Rapid Response - \$500 donation towards ongoing operations.
  - b) Medowie Football Club - Cr Chris Doohan – Rapid Response - \$500 donation towards the purchase of field corner flags and club banners.
  - c) Port Stephens Australian Football Club – Cr Chris Doohan – Rapid Response - \$500 donation towards purchase of fridge and associated costs.

---

**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:

**WARD FUNDS**

Meals on Wheels – Tomaree Branch	Meals on Wheels provide delivery of nutritious meals to those who are elderly, frail or living with a disability.	\$500	Donation towards ongoing operations.
Medowie Football Club	The Medowie Football Club is a predominantly junior club with a growing number of senior members and teams.	\$500	Donation towards purchase of field corner flags and club banners.
Port Stephens Australian Football Club	The Port Stephens Power Australian Football Club is based at Ferodale Park and host Auskick through to Senior Teams.	\$500	Donation towards purchase of fridge and associated costs.

**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 (\$7.11)	No		
External Grants	No		
Other	No		

**LEGAL, POLICY AND RISK 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><a href="#">Risk Ranking</a></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 recommendations.
- 2) Vary the dollar amount before granting each or any request.
- 3) Decline to fund the request.

**ATTACHMENTS**

Nil.



**COUNCILLORS' ROOM/DASHBOARD**

Nil.

**TABLED DOCUMENTS**

Nil.

**ITEM NO. 9**

**FILE NO: 24/149853**  
**EDRMS NO: PSC2022-02308**

**INFORMATION PAPERS**

REPORT OF: TIMOTHY CROSDALE - GENERAL MANAGER  
DIRECTORATE: 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 9 July 2024.

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<b>No:</b>	<b>Report Title</b>	<b>Page:</b>
1	Delegations Report	216
2	Council Resolutions	218

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# INFORMATION PAPERS

**ITEM NO. 1**

**FILE NO: 24/27793  
EDRMS NO: PSC2009-00965**

## **DELEGATIONS REPORT**

REPORT OF: TONY WICKHAM - GOVERNANCE SECTION MANAGER  
DIRECTORATE: 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/DASHBOARD**

Nil.

## **TABLED DOCUMENTS**

Nil.



**MAYOR AND GENERAL MANAGER DELEGATION REPORT**

<b>Date exercised</b>	<b>Delegations exercised</b>	<b>Purpose</b>	<b>Role exercising delegation</b>	<b>Reported to Council</b>
21/06/2024	Roads and Maritime Services delegations	Authorises the installation, display, removal or alteration of the traffic control devices for the listed items identified in the minutes of the Port Stephens Local Traffic Committee report dated 4 June 2024.	General Manager	09/07/2024
24/06/2024	Code of Meeting Practice	Approval of Public Access Applications for the Port Stephens Local Housing Strategy and DA for 7 Gynea Way, Nelson Bay.	Mayor	9/07/2024

**ITEM NO. 2**

**FILE NO: 24/149585  
EDRMS NO: PSC2017-00106**

**COUNCIL RESOLUTIONS**

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

**BACKGROUND**

The purpose of this report is to inform the Mayor and Councillors of the status of all matters to be dealt with arising out of the proceedings of previous meetings of the Council in accordance with the Code of Meeting Practice.

**ATTACHMENTS**

- 1) Community Futures resolutions.
- 2) Corporate Strategy and Support resolutions.
- 3) Facilities and Infrastructure resolutions.
- 4) General Manager's Office resolutions.

**COUNCILLORS' ROOM/DASHBOARD**

Nil.

**TABLED DOCUMENTS**

Nil.

## ITEM 2 - ATTACHMENT 1 COMMUNITY FUTURES RESOLUTIONS.



<b>Action Sheets Report</b>	<b>Division:</b>	Community Futures	<b>Date From:</b>	10/10/2023
	<b>Committee:</b>		<b>Date To:</b>	25/06/2024
	<b>Officer:</b>		<b>Printed:</b>	Wednesday, 26 June 2024

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
	Ordinary council 10/10/2023	Lamont, Brock	URGENCY MOTION: Wind Farm Industry	30/03/2025		
		Peart, Steven				
<b>26 Jun 2024</b> The General Manager has written to the requested delegates as outlined within the motion. A Councillor briefing with DCCEEW was undertaken on 20 February 2024. Council's delegation met with the Minister on 19 March 2024. Council is working to complete all outstanding actions as endorsed.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 28/11/2023	Lamont, Brock	RAMSAR Listing for Mambo Wanda Wetlands	30/12/2025	29/11/2023	
4		Peart, Steven				23/324875
<b>26 Jun 2024</b> A briefing will be undertaken next term following receipt of responses from State and Federal Ministers.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 12/12/2023	Peart, Steven	Advertising Signs - Nelson Bay Road	26/07/2024	14/12/2023	
2		Peart, Steven				23/359154
<b>26 Jun 2024</b> Council report has been prepared and will be reported to 23 July 2024 Council Meeting.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 27/02/2024	Lamont, Brock	Draft Port Stephens Development Control Plan 2014 - Chapter D12 Richardson Road	1/12/2024	28/02/2024	
2		Peart, Steven				24/50158
<b>26 Jun 2024</b> Council resolved to defer Draft DCP - Chapter D12 Richardson Road for a Two-way conversation with the Mayor and Councillors to discuss the original motion and subsequent amendment. Council is reviewing work plans to integrate preparation and a two way to be held 16 July 2024 to facilitate further discussions.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 27/02/2024	Lamont, Brock	Draft Port Stephens Development Control Plan - Road Network and Parking (Electric Vehicles)	1/12/2024	28/02/2024	
3 014		Peart, Steven				24/50158
<b>26 Jun 2024</b> Council resolved to endorse the Port Stephens Development Control Plan 2014 Chapter B8 Road Network and Parking (electric vehicles) and provide public notice. Council is reviewing work plans to integrate outstanding actions and further report preparation.						

## ITEM 2 - ATTACHMENT 1 COMMUNITY FUTURES RESOLUTIONS.



<b>Action Sheets Report</b>	<b>Division:</b>	Community Futures	<b>Date From:</b>	10/10/2023
	<b>Committee:</b>		<b>Date To:</b>	25/06/2024
	<b>Officer:</b>		<b>Printed:</b>	Wednesday, 26 June 2024

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 14/05/2024	Grobbelaar, Evert	Planning Policies	23/07/2024		
2		Pearl, Steven				24/115689
<b>26 Jun 2024</b>						
As per Council Resolution of 14 May 2024, policies will be placed on public exhibition for a period of 28 days. Policies will be returned to the Council meeting of 23 July 2024.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Matter Arising	Ordinary Council 25/06/2024	Gardner, Janelle	Housing in Port Stephens and Water Infrastructure upgrades.	10/07/2024		
145		Pearl, Steven				
<b>26 June 2024</b>						
A letter will be written to the Ministers for Water, Housing and Planning and the Member for Port Stephens.						



## ITEM 2 - ATTACHMENT 2 CORPORATE STRATEGY AND SUPPORT RESOLUTIONS.



<b>Division:</b>	Corporate Strategy and Support	<b>Date From:</b>	27/08/2013
<b>Committee:</b>		<b>Date To:</b>	25/06/2024
<b>Officer:</b>			
<b>Action Sheets Report</b>		<b>Printed:</b>	Wednesday, 26 June 2024

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
	Ordinary Council 27/08/2013	Pattison, Zoe	Campvale Drain	30/03/2025		
		Pattison, Zoe				
<b>26 Jun 2024</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 11/10/2022	Pattison, Zoe	Policy Review: Property Investment and Development Policy	30/03/2025	12/10/2022	
1		Pattison, Zoe				22/273002
<b>26 Jun 2024</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	30/03/2025	12/10/2022	
2		Pattison, Zoe				22/273002
<b>26 Jun 2024</b> Report deferred to allow for further clarification on the distribution of funds.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 11/04/2023	Pattison, Zoe	22 Homestead Street, Salamander Bay	30/03/2025	12/04/2023	
5 088		Pattison, Zoe				23/92450
<b>26 Jun 2024</b> Council is investigating options for the rezoning of 22 Homestead Street, Salamander Bay, and the development of a Vegetation Management Plan, to provide the best opportunity to enable a successful long-term rehabilitation of the site.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 22/08/2023	Pattison, Zoe	Raymond Terrace Gateway Site Masterplan	30/03/2025		
1 193		Pattison, Zoe				23/214729
<b>26 Jun 2024</b> Following a two way conversation with Councillors in November 2023, the options presented will be included in the context of the broader Raymond Terrace town centre improvements.						

## ITEM 2 - ATTACHMENT 2 CORPORATE STRATEGY AND SUPPORT RESOLUTIONS.



<b>Action Sheets Report</b>	<b>Division:</b>	Corporate Strategy and Support	<b>Date From:</b>	27/08/2013
	<b>Committee:</b>		<b>Date To:</b>	25/06/2024
	<b>Officer:</b>		<b>Printed: Wednesday, 26 June 2024</b>	

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 28/11/2023	Pattison, Zoe	Sale of closed roads in Raymond Terrace	30/03/2025	29/11/2023	
1		Pattison, Zoe				23/324875
<b>26 Jun 2024</b>						

2 of the roads are being marketed. An Expression of Interest for the remaining road is underway.

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 14/05/2024	Pattison, Zoe	Medowie Social	31/12/2024		
1		Pattison, Zoe				24/115689

**26 Jun 2024**

A Development Application for a change of use to a Registered Club is in preparation. In addition, a community survey for feedback on potential long term options was open from 3 June 2024 to 23 June 2024. Outcomes of the community survey will be provided to Councillors via a two way conversation in July 2024.

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 28/05/2024	Peterkin, Glen	Proposed Sale or Lease of 528 Hunter Street, Newcastle	30/11/2024	29/05/2024	
1		Pattison, Zoe				24/131056

**26 Jun 2024**

Marketing underway for a sale or lease scenario. The outcome of the negotiations will be reported back to Council.

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 11/06/2024	Dodds, Melissa	Policy Review: Public Access to State Records after 20 Years Policy	30/03/2025	12/06/2024	
4		Pattison, Zoe				24/145208

**26 Jun 2024**

The policy will be on exhibition from 12 June 2024 to 9 July 2024. Noting that, regardless of any submissions being received, the policy will go back to a future Council meeting with requested amendments from Council.

## ITEM 2 - ATTACHMENT 2 CORPORATE STRATEGY AND SUPPORT RESOLUTIONS.



<b>Action Sheets Report</b>	<b>Division:</b>	Corporate Strategy and Support	<b>Date From:</b>	27/08/2013
	<b>Committee:</b>		<b>Date To:</b>	25/06/2024
	<b>Officer:</b>		<b>Printed:</b> Wednesday, 26 June 2024	

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 25/06/2024	Peterkin, Glen	Draft Financial Reserves Policy	30/03/2025	26/06/2024	
8		Pattison, Zoe				24/157809
<b>26 Jun 2024</b>						
The policy will be on public exhibition from 27 June to 26 July 2024. Noting that, regardless of any submissions being received, the policy will go back to a future Council meeting.						



## ITEM 2 - ATTACHMENT 3 FACILITIES AND INFRASTRUCTURE RESOLUTIONS.



<b>Action Sheets Report</b>	<b>Division:</b>	Facilities and Infrastructure	<b>Date From:</b>	11/04/2023
	<b>Committee:</b>		<b>Date To:</b>	25/06/2024
	<b>Officer:</b>		<b>Printed:</b>	Wednesday, 26 June 2024

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 11/04/2023	Maretich, John	Naming Recreation Precinct at Medowie after Geoff Dingle	30/06/2025	12/04/2023	
2		Kable, Gregory				23/92450
085						
<b>26 Jun 2024</b>						
Once the reserve has been subdivided as per the Medowie Place Plan, an application will be submitted to the Geographical Naming Board to name the recreation precinct after Geoff Dingle.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 23/04/2024	Maretich, John	Lakeside Sports Complex Masterplan	26/07/2024	24/04/2024	
3		Kable, Gregory				24/100180
<b>26 Jun 2024</b>						
Public exhibition has been completed and a report is being prepared for Council.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 23/04/2024	Maretich, John	Mallabula Sports Complex Masterplan	26/07/2024	24/04/2024	
4		Kable, Gregory				24/100180
<b>26 Jun 2024</b>						
Public exhibition has been completed and a report is being prepared for Council.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 28/05/2024	Maretich, John	Bus Stop Infrastructure Plan	31/03/2025	29/05/2024	
1		Kable, Gregory				24/131056
<b>26 Jun 2024</b>						
As per Council resolution a review of the Bus Stop Infrastructure will be undertaken.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 28/05/2024	Maretich, John	Pathways Review	31/03/2025	29/05/2024	
2		Kable, Gregory				24/131056
<b>26 Jun 2024</b>						
As per Council resolution, staff will undertake a review of Council's pathways plans.						





<a href="#">Action Sheets Report</a>	<a href="#">Division:</a>	General Manager's Office	<a href="#">Date From:</a>	11/04/2023
	<a href="#">Committee:</a>		<a href="#">Date To:</a>	25/06/2024
	<a href="#">Officer:</a>		<a href="#">Printed:</a>	Wednesday, 26 June 2024

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 11/04/2023	Walker, Ashley	Financial Assistance	30/06/2024	12/04/2023	
3		Crosdale, Timothy				23/92450
083						
<b>26 Jun 2024</b>						
Awaiting necessary paperwork to process payments.						

# NOTICES OF MOTION

**NOTICE OF MOTION**

**ITEM NO. 1**

**FILE NO: 24/156940**

**EDRMS NO: PSC201-04195**

**INITIATION OF A PROPOSAL TO ALTER THE PORT STEPHENS LOCAL  
GOVERNMENT BOUNDARIES**

**COUNCILLOR:** CR GIACOMO ARNOTT

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**THAT COUNCIL:**

- 1) Notes that Port Stephens Local Government Area (LGA) boundaries go all the way to the water's edge of Tea Gardens, Hawks Nest and, generally, to the north of Port Stephens water body.
- 2) Notes that Port Stephens LGA boundaries only go up to the mean high water mark on the Raymond Terrace side of the Hunter River at Raymond Terrace.
- 3) Notes that these 2 examples of Port Stephens LGA boundaries, along with other extents of the LGA boundary in water bodies, have technical implications for coastal management, levee management, consultation with Government agencies, and other administrative issues.
- 4) Agrees that its preference is for the LGA boundary in a water body to be in the middle of the water body between a neighbouring Council, to ensure each Council is responsible for its own shoreline.
- 5) Requests the General Manager commence consultation with neighbouring Local Government Areas on making a joint submission under s218E of the Local Government Act, with a view towards adjusting the boundaries of Port Stephens and all surrounding Councils, to ensure water borders are in the middle of the body of water that separates each Council area.
- 6) Requests the General Manager to, at the conclusion of that consultation, prepare a further report to Council further detailing the resources required, jointly if possible with other neighbouring Councils, to submit a case for change to the Minister for Local Government under s218E of the Local Government Act.

**BACKGROUND REPORT OF: TONY WICKHAM – GOVERNANCE SECTION  
MANAGER****BACKGROUND**

Council has the ability to initiate a proposal to alter its local government boundary (LGB) with adjoining local government areas.

A proposal to alter the LGB boundary would require the development of a comprehensive submission taking into account a number of factors such as, but not limited to:

- financial advantages/disadvantages
- the community of interest and geographic cohesion
- attitude of residents and ratepayers
- requirements of the area concerned in relation to elected representation for residents and ratepayers at the local level
- any impact on council operations and staff, and
- any impact on rural communities in the areas concerned.

Council would need to consult with its neighbouring councils.

The submission is made to the Minister for Local Government and it is then a matter for the Minister to forward to the NSW Local Government Boundaries Commission for review and report to the Minister.

Upon receipt of the Commission's report, the Minister can then make a decision on the LGB alteration.

The Minister may direct the Commission to hold a public hearing on any proposal.

**FINANCIAL/RESOURCE IMPLICATIONS**

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

**ATTACHMENTS**

Nil.



**NOTICE OF MOTION**

**ITEM NO. 2**

**FILE NO: 24/161102**

**EDRMS NO: PSC201-04195**

**MAINTENANCE OF GRAVEL ROADS**

**COUNCILLOR: CR JASON WELLS**

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**THAT COUNCIL:**

- 1) Requests the General Manager investigate ways to enhance the maintenance of gravel roads by increasing the associated budget to better match community expectations and report these findings back to Councillors at a two way briefing. This request is in consideration of the recent severe periods of wet weather experienced that have contributed to the increasing deterioration of these roads.

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**BACKGROUND REPORT OF: JOHN MARETICH – ASSET SECTION MANAGER**

**BACKGROUND**

The purpose of this background is to provide information in relation to this Notice of Motion.

There are currently 54 km of gravel roads that are owned and maintained by Port Stephens Council. The remaining gravel roads are owned privately or by the NSW State Government.

There are 2 main methods to maintain a gravel road. They are General Gravel Road Maintenance and Resheeting.

General Gravel Road Maintenance is undertaken by a grader, a roller and a water truck 'team' and together they rip-up, re-shape and compact the existing gravel surface. This method does not introduce new gravel and they only address adjacent surface drain issues that can deteriorate the gravel road quicker. The budget allocation is in the order of \$550,000 per annum.

Resheeting is the method of placing another layer of new gravel over the existing gravel road surface which is then graded, shaped and rolled. This is a form of road rehabilitation for gravel roads. While the unit rate for each gravel road differs due to location, slope, depth of material required and haulage distance (from the quarry), Council generally re-gravels up to 2 km of roads each year. The budget allocation is in the order of \$200,000 per annum.

Council has a proactive maintenance program, however, the frequency of maintenance is informed by monthly inspections of our entire gravel road network. After each inspection, the maintenance program is reprioritised based on a needs basis. While the inspection and reprioritisation considers the current condition of the road, traffic volumes, the type of traffic on the road and the road purpose (ie dead end or through road).

Gravel roads quickly deteriorate by rainfall. Following the significant rainfall over the last few years, the gravel roads can fail sometimes within days, hence the priority of maintenance changes very quickly. Due to the quick succession of rain periods, some of the higher priority roads are maintained very frequently to improve road user safety, leaving some of the lower priority roads not being maintained for very long periods of time.

Without an additional source of income, another service will need to be reduced to fund any increase in gravel road maintenance.

#### **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.

# 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.