

# NOTICE OF ORDINARY MEETING

## 28 MAY 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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## **BUSINESS**

1) Opening meeting.

2) Acknowledgement of Country

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

3) Prayer

We recognise the rich cultural and religious diversity in Port Stephens and pay respect to the beliefs of all members of our community, regardless of creed or faith.

4) Apologies and applications for a leave of absence by Councillors.

5) Disclosures of interests.

6) Confirmation of minutes Ordinary Meeting of 14 May 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 - 28 MAY 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 \_\_\_\_\_

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

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

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

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

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

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



# MOTIONS TO CLOSE



ITEM NO. 1

FILE NO: 24/111174  
EDRMS NO: PSC2009-02366

**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 or Lease of 528 Hunter Street, Newcastle**.
  - 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: 24/111295  
EDRMS NO: PSC2017-00104

**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) (d)ii of the Local Government Act 1993, the Committee and Council resolve to close to the public that part of its meetings to discuss Confidential Item 2 on the Ordinary agenda namely **Port Stephens Koala Sanctuary - Land Manager Appointment**.
  - 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 competitor of the council.
  - 3) That the report remain confidential and the minute be released in accordance with Council's resolution.
-



# COUNCIL REPORTS



ITEM NO. 1

FILE NO: 24/76010  
EDRMS NO: 16-2023-658-1

**DEVELOPMENT APPLICATION 16-2023-658-1 FOR A 3 STOREY DWELLING AT 3 TAREEBIN 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. 16-2023-658-1 for a 3 storey dwelling and associated land clearing, driveway, retaining walls, and earthworks at 3 Tareebin Road, Nelson Bay, Lot 615 DP 9165, subject to the conditions contained in **(ATTACHMENT 1)**.
- 2) Support the Clause 4.6 variation to the building height for the reasons outline within this report.

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**BACKGROUND**

The purpose of this report is to present Development Application (DA) 16-2023-658-1 for a 3 storey dwelling and associated land clearing, driveway, retaining walls, and earthworks to Council for determination.

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

Subject Land:	3 Tareebin Road, Nelson Bay (Lot: 615 DP: 1061399)
Total Area:	1,427m <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 2.37m (or 26.39%). The slope of the site is 26 degrees.

The DA has been reported to Council in accordance with 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 26.39% (2.37m).

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



### Proposal

The DA seeks consent for the removal of existing vegetation on the site, the construction of a 3 storey (split-level) dwelling and driveway, with associated earthworks and retaining walls. The dwelling is accessed by stairs and an internal lift, and will contain 3 bedrooms, 2 bathrooms (including 1 ensuite), and open plan living and dining spaces. A new driveway will be constructed to provide vehicular access from Tareebin Road, which will include hardstand areas for uncovered parking.

### Site Description and History

The subject site is legally identified as Lot 615 DP9165 and is generally known as 3 Tareebin Road, Nelson Bay. The site has a significant fall from the north-west to the south-east, and is currently vacant of any structures. The site is largely surrounded by low density residential development, and is a short distance from 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 Planners Assessment Report (**ATTACHMENT 3**).

### Building Height

The proposed dwelling exceeds the maximum allowable building height for the site prescribed under Clause 4.3 of the Port Stephens Local Environmental Plan 2013 (LEP). The dwelling proposes a maximum building height of 11.37m, which exceeds the 9m height limit by 2.37m, representing a 26.39% 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 on the following grounds:

- (a) The proposed development is considered to be appropriate of the context of the area in that many dwellings located on similarly steep sites in the surrounding area have been designed in a similar manner that responds to the slope of the land (Cl.4.6(3)(b)).
- (b) The height variation is restricted to the corner roof components of the proposed dwelling and will not result in adverse amenity, privacy, or overshadowing impacts to neighbouring properties (Cl.4.6(3)(b)).
- (c) The proposed development exceeds the maximum height of building limit due to the steep topography of the land. The dwelling steps down with the topography of the land to reduce the scale and overall height of the development, which is consistent with other developments in the locality and is therefore consistent with the objective of the zone (Cl.4.6(3)(a)).



- (d) 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 consistent with the objective (cl.4.6(3)(a)).

The proposed dwelling will appear consistent with the low-density residential built form in the locality, which typically have 2 or 3 storeys. The building height variation is considered appropriate, noting that a number of new dwellings along Tareebin Road are constructed or approved over the 9m LEP height limit, which informs the existing and establishing built form character in this locality. This includes an approved dwelling at 21 Tareebin Road (north of the site) that has an approved height of 11.23m, and 2 semi-detached dwellings at 23 Tareebin Road (north of the site) that has an approved height of 11.03m. The height variations on these approved dwellings were also attributed to the steep topography of the immediate locality.

The proposed development is considered to satisfy the objectives of Clause 4.6, as the design will achieve a better outcome in these particular circumstances, noting the objectives of the development standard are achieved notwithstanding the non-compliance. The proposed building is considered to be appropriate in the context of the site.

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 the Clause 4.6 Assessment Report (**ATTACHMENT 4**).

#### Vegetation Removal

Approximately 0.1ha of vegetation clearing will be required for the construction of the proposed dwelling and driveway. No koala habitat or activity was identified on the site through field surveys. No other environmentally sensitive areas or threatened species have been identified on the site.

A Flora and Fauna Assessment was submitted with the DA. As part of the Flora and Fauna Assessment, detailed site surveys were undertaken, which found no significant impact to threatened species, Endangered Ecological Communities, or koala habitat was likely to occur as a result of the proposed development.

Council's Environmental Planner surveyed the site and endorsed the findings of the Flora and Fauna Assessment.

#### Conclusion

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



The proposed development is consistent with Council's Local Housing Strategy in that it provides 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 within 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 significant 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**

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

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

The 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 variation of 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 is contained within the Planners Assessment Report contained at **(ATTACHMENT 3)**.



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

## SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

### Social and Economic Impacts

The proposed development represents a modern dwelling and will provide additional housing to service the needs of the community. The dwelling will allow for the use of existing services and facilities in the locality without requiring upgrades. The construction of the proposed dwelling will provide employment opportunities in the locality and support the local building and development industries. This will have direct monetary input to the local economy, and the increased number of residents in the locality will provide ongoing economic input through daily living activities. There are no anticipated adverse social or economic impacts as a result of the proposed development.

### Impacts on the Built Environment

The proposed development will reinforce the residential nature of the locality and is characteristic of other developments in both the local and wider community. The dwelling includes relevant construction methods and services such as an on-site stormwater management system that will prevent adverse impacts on adjoining properties. The proposal addresses the street and provides logical and convenient connections to the road network and pedestrian facilities in the locality. There are no anticipated adverse impacts on the built environment from the proposed development.

### Impacts on the Natural Environment

The proposed development will not adversely impact the natural environment of the area. Appropriate service management, water quality requirements, and nest boxes have been conditioned for to ensure potential impacts are mitigated. In addition, a



condition of consent is recommended that requires the installation and maintenance of erosion and sedimentation controls and tree protection measures for the duration of construction and tree removal works. It is noted that no extensive vegetation that is environmentally sensitive is proposed to be removed and that the development incorporates a landscaping scheme that utilises native species.

## **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 and Natural Systems teams. The referral comments from these Officers have been considered as part of the Planners Assessment Report (**ATTACHMENT 3**). The internal referral officers supported the DA, subject to the recommended conditions of consent (**ATTACHMENT 1**).

### External

Consultation was undertaken with Ausgrid. Ausgrid supported the development, and has provided recommendations which are discussed within the Planners Assessment Report (**ATTACHMENT 3**).

### Public exhibition

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 4 December 2023 to 18 December 2023. No submissions were received during the exhibition period.

## **OPTIONS**

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

## **ATTACHMENTS**

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



**COUNCILLORS' ROOM/DASHBOARD**

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

**TABLED DOCUMENTS**

Nil.



## ITEM 1 - ATTACHMENT 1 CONDITIONS OF CONSENT.

## 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
38057 TS		Topographical Survey	North Point Survey	17.01.2024
23E163-05C, Drawing 1 of 4		Tree Location Plan	Port Stephens Design	01.03.2024
23E163-05A, Drawing 2 of 4		Landscape Concept Plan	Port Stephens Design	31.01.2024
23E163-05A, Drawing 3 of 4		Stormwater Concept Plan	Port Stephens Design	31.01.2024
23E048, Drawing 1 of 3		Site Plan & Perspective	Port Stephens Design	06.11.2023
23E048, Drawing 2 of 3		Driveway Plan	Port Stephens Design	06.11.2023
23E048, Drawing 3 of 3		Driveway Profiles	Port Stephens Design	06.11.2023
23E163-02, Drawing 1 of 5		Subfloor Access Plan	Port Stephens Design	28.09.2023
23E163-02, Drawing 2 of 5		Lower Floor Plan	Port Stephens Design	28.09.2023
23E163-02, Drawing 3 of 5		Upper Floor Plan 1	Port Stephens Design	28.09.2023
23E163-02, Drawing 4 of 5		Upper Floor Plan 2	Port Stephens Design	28.09.2023
23E163-02, Drawing 5 of 5		Part Site / Roof Plan	Port Stephens Design	28.09.2023
400	K	Rear & Right Elevation	Imagine by Design	09.10.2023
500	K	Front & Left Elevation	Imagine by Design	09.10.2023
600	K	Sections	Imagine by Design	09.10.2023

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

**Building Code of Australia**



## ITEM 1 - ATTACHMENT 1 CONDITIONS OF CONSENT.

	<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>
3	<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>
4	<p><b>Habitat Tree Removal</b></p> <p>Approved trees and vegetation for removal must be inspected by a suitably qualified and experienced fauna ecologist immediately prior to clearing. All habitat trees and feature must be marked by the ecologist. Removal of all habitat trees must be supervised by the ecologist.</p> <p>If the ecologist identifies any threatened species inhabiting a tree flagged for removal, all clearing works shall cease and the animal given 24 hours to vacate. If the animal has not vacated within this time, a plan for the relocation of the animal shall be developed by the ecologist.</p> <p>Clearing of hollow bearing trees shall involve soft-felling techniques, which are to be implemented under the guidance of the ecologist. The ecologist shall be responsible for any fauna handling and relocations required.</p> <p>Documentary evidence of the clearance supervision works shall be provided to Council's Natural Systems Section prior to issuing of the Occupation Certificate.</p> <p><b>Condition reason:</b> To ensure that a development is providing supervisions of habitat tree removal.</p>
5	<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 area 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> </ul>



## ITEM 1 - ATTACHMENT 1 CONDITIONS OF CONSENT.

	<p>c) Temporary site structures must be maintained in a clean, tidy, and safe conditions at all times;</p> <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, and</p> <p>f) 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>
6	<p><b>Tree Removal/Pruning</b></p> <p>Trees 1-3, 5, 6, 12, 15, 22-25, 27-33, 39, 40, and 'xx' identified on Drawing 1 of 4 'Tree Location Plan', prepared by Port Stephens Design, dated 01.03.2024 are approved for removal.</p> <p><b>Condition reason:</b> To ensure that the development retains/prunes and replaces specific tree plantings.</p>
7	<p><b>Protect Existing Vegetation and Natural Landscape Features</b></p> <p>Removal of existing vegetation approved for removal by this consent is not to occur until the issue of the Construction Certificate.</p> <p>Trees 7-9, 17-21, 34-38, and 41-43 identified on Drawing 1 of 4 'Tree Location Plan', prepared by Port Stephens Design, dated 01.03.2024 must be retained.</p> <p>Trees 4, 10, 11, 13, 14, and 16 identified on Drawing 1 of 4 'Tree Location Plan', prepared by Port Stephens Design, dated 01.03.2024 must be retained where possible, subject to the following:</p> <ul style="list-style-type: none"> <li>Any works within the Tree Protection Zone (TPZ) of these trees must be carried out under the supervisions of an appropriately qualified (AQF 5) Arborist.</li> <li>All trees must be retained if, in the opinion of the supervising Arborist, it is feasible to do so.</li> </ul> <p>If at any point during works the supervising (AQF 5) Arborist determines that retention of any of these trees is unfeasible, the tree is approved for removal.</p> <p><b>Condition reason:</b> To ensure that vegetation is protected during works.</p>
8	<p><b>Koala friendly fencing</b></p> <p>Fencing must not compromise the potential for safe movement of koalas across the site. Where fencing is required, fencing must be:</p> <p>a) Open post and rail or post and wire (no barbed wire on the bottom strand); or</p>



## ITEM 1 - ATTACHMENT 1 CONDITIONS OF CONSENT.

	b) A suitable alternative as approved by Council's Natural Systems Team
	<b>Condition reason:</b> To facilitate safe movement of koalas in accordance with Council's Comprehensive Koala Plan of Management (CKPoM).
9	<b>Implementation of BASIX commitments</b>
	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.
	<b>Condition reason:</b> To ensure that while building work is being carried out, the development strictly in accordance with the commitments listed in the BASIX certificate(s) approved by this consent.

**Building Work****Before issue of a construction certificate**

10	<b>Erosion and sediment controls 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: <ul 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> </ul>
	<b>Condition reason:</b> To ensure no substance other than rainwater enters the stormwater system and waterways.
11	<b>Waste Management Plan requirements</b>
	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: <ul style="list-style-type: none"> <li>a. in accordance with <ul 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> </ul> </li> <li>b. include the following information— <ul style="list-style-type: none"> <li>i. the contact details of the person removing waste;</li> </ul> </li> </ul>



## ITEM 1 - ATTACHMENT 1 CONDITIONS OF CONSENT.

	<ul style="list-style-type: none"> <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>
12	<p><b>Long Service Levy</b></p> <p>Before the issue of a Construction Certificate, the long service levy of \$2,050 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>
13	<p><b>Civil engineering plans</b></p> <p>Civil engineering plans prepared by a qualified Engineer, indicating drainage, accessways, earthworks, pavement design, water quality and quantity facilities including stormwater detention and disposal, must be prepared in accordance with the approved plans, Council's Infrastructure Specifications, and the provided geotechnical report, prepared by SQS Consulting Engineers, reference number 231024, and dated 1 February 2024.</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>
14	<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>
15	<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>



## ITEM 1 - ATTACHMENT 1 CONDITIONS OF CONSENT.

	<p>The stormwater drainage plan is to ensure overland flows from upstream lots are appropriately managed, and are collected and piped to the public networks system so as to avoid any erosion of the site.</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>
16	<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>
17	<p><b>Footings and Excavation near Council Property</b></p> <p>All works proposed within the zone of influence of Council's asset/s are to be designed and certified by a qualified Geotechnical or Structural Engineer.</p>



## ITEM 1 - ATTACHMENT 1 CONDITIONS OF CONSENT.

	Plans and specifications demonstrating compliance with this requirement must be submitted to the Certifying Authority.																
	<b>Condition reason:</b> To ensure works proposed within the zone of influence of a Council asset are designed and certified by a qualified Geotechnical or Structural Engineer.																
18	<b>Nest Boxes</b>  Prior to the removal of vegetation, the following nest boxes must be installed on retained trees within Lot 615, DP 9165. The nest boxes shall be constructed to a standard consistent with Councils 'Technical Specification - Nest Boxes' and positioned at a suitable height off the ground as per the individual species habitat preferences. The nest boxes are to be installed by a suitably qualified and experienced consultant and maintained for a period of 5 years. <table><tr><th>Nest box type / size</th><th>Species suitability</th><th>Number required</th><th>Installation height above ground (minimum)</th></tr><tr><td>45cm H x 30cm W x 25cm D (approx. 10cm opening)</td><td>Brushtail Possum</td><td>1</td><td>4m</td></tr><tr><td>55cm H x 20cm W x 20cm D (approx. 7cm opening)</td><td>Medium Parrots</td><td>2</td><td>4m</td></tr><tr><td>100cm H x 40cm W x 30cm D (approx. 18cm opening, vertical orientation)</td><td>Cockatoos</td><td>1</td><td>10m</td></tr></table> Prior to the issue of a Construction Certificate, documentary evidence of nest box installation must be provided to and approved by Council's Natural Systems Section. <b>Condition reason:</b> To ensure that nest boxes are suitably positioned as per the individual species habitat preferences and are installed by a suitably qualified and experienced consultant and maintained for a period of at least 5 years.	Nest box type / size	Species suitability	Number required	Installation height above ground (minimum)	45cm H x 30cm W x 25cm D (approx. 10cm opening)	Brushtail Possum	1	4m	55cm H x 20cm W x 20cm D (approx. 7cm opening)	Medium Parrots	2	4m	100cm H x 40cm W x 30cm D (approx. 18cm opening, vertical orientation)	Cockatoos	1	10m
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19	<b>Retaining walls</b>  All retaining walls within 1m of a boundary and/or exceeding 600mm in height must be designed and certified by a suitably qualified Structural Engineer, and are to be of masonry construction. Details demonstrating compliance must be provided to the Certifying Authority  <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.																
20	<b>Roads Act Approval</b>  For construction/reconstruction of Council infrastructure, including vehicular crossings, footpath, kerb and gutter, stormwater drainage, an application must be made for a Roadworks Permit under Section 138B of the Roads Act 1993																



## ITEM 1 - ATTACHMENT 1 CONDITIONS OF CONSENT.

	<b>Condition reason:</b> To ensure that works within the road reserve are approved by a Section 138B Approval of the Roads Act 1993.
21	<b>Driveway Gradients and Design</b>  For all driveways that relate to development for the purposes of a dwelling house, the driveway gradient and design must comply with AS 2890.1 'Off street Car Parking' and: <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 specifications
22	<b>Car parking details</b>  Before the issue of the relevant construction certificate, a suitably qualified engineer must review the plans which relate to parking facilities and provide written evidence, to the certifier's satisfaction, that it complies with the relevant parts of AS 2890 Parking Facilities – Off-Street Car Parking and Council's development control plan.
	<b>Condition reason:</b> To ensure that all proposed parking spaces are compliant with AS 2890.

**Before building work commences**

23	<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.
24	<b>All Weather Access</b>  A 3m wide all-weather vehicle access is to be provided from the kerb and gutter to the building under construction for the delivery of materials and use by trades people.  No materials, waste or the like are to be stored on the all-weather access at any time.



## ITEM 1 - ATTACHMENT 1 CONDITIONS OF CONSENT.

	<b>Condition reason:</b> To ensure that adequate vehicular access is provided to and from the site, prior to the commencement of works.
25	<p><b>Construction Certificate Required</b></p> <p>In accordance with the provisions of Section 6.7 of the <i>Environmental Planning &amp; Assessment Act 1979 (EP&amp;A Act 1979)</i>, 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>
26	<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 <i>Environmental Planning and Assessment Act 1979</i> and Section 59 of the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i>. 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 <i>Environmental Planning and Assessment Act 1979</i> and Section 59 of the <i>Environmental Planning and Assessment (Development Certificate and Fire Safety) Regulation 2021</i>.</p>
27	<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</p>



## ITEM 1 - ATTACHMENT 1 CONDITIONS OF CONSENT.

	<p><i>Environmental Planning and Assessment Act 1979</i> and Section 57 of the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i>. 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 <i>Environmental Planning and Assessment Act 1979</i>.</p>
28	<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>
29	<p><b>Home Building Act requirements</b></p> <p>Residential building work within the meaning of the <i>Home Building Act 1989</i> 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 – <ul style="list-style-type: none"> <li>i) The name of the owner-builder, and</li> <li>ii) If the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.</li> </ul> </li> </ul> <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>



## ITEM 1 - ATTACHMENT 1 CONDITIONS OF CONSENT.

	<p><b>Condition reason:</b> To ensure compliance with the <i>Home Building Act 1989</i> and to verify that the certifying principal authority for the development has given appropriate written notice to council.</p>
30	<p><b>Compliance with Home Building Act (if applicable)</b></p> <p>In the case of residential building work for which the <i>Home building Act 1989</i> 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 the <i>Home Building Act 1989</i> before any building work authorised to be carried out by the consent commences.</p>
31	<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>
32	<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>
33	<p><b>Bushfire asset protection zones</b></p> <p>Before any site work commences, the boundaries of asset protection zone must be surveyed and marked on the ground by a registered surveyor.</p> <p><b>Condition reason:</b> To provide a buffer to protect life and property from bush fire attack.</p>
34	<p><b>Nest Box Certification</b></p> <p>Prior to the removal of vegetation, documentary evidence of nest box installation, as required under condition 18 of this consent, must be provided to and approved by Council's Natural Systems Section.</p>



## ITEM 1 - ATTACHMENT 1 CONDITIONS OF CONSENT.

	<b>Condition reason:</b> To ensure that documentary evidence of nest box installation is provided to Council's Natural Systems Team.
35	<b>Tree protection measures</b>  Before any site work commences, the principal certifier, or council where a principal certifier is not required, must be satisfied the measures for tree protection detailed in the construction site management plan are in place.  <b>Condition reason:</b> To protect and retain trees.
36	<b>Protection of trees / existing street trees</b>  Protection of trees to be retained must be in accordance with AS490 'Protection of Trees on Development Sites' and the following:  a) No existing nature strip(s), street tree(s), tree guard(s), protective bollard(s), garden bed surrounds or root barrier installation(s) must be disturbed, relocated, removed or damaged during earthworks, demolition, excavation (including any driveway installation), construction, maintenance and/or establishment works applicable to this consent, without Council agreement and/or consent.  <b>Condition reason:</b> To protect and retain trees.
37	<b>Weed Management</b>  Weed removal and suppression must be undertaken in accordance with the requirements of the <i>NSW Biosecurity Act 2015</i> , associated Regulations and NSW Weed Control Handbook.  <b>Condition reason:</b> To ensure weed removal and management is carried out in accordance with the relevant regulations.

## During building work

38	<b>Discovery of relics and Aboriginal objects</b>  While site works is being carried out, if a person reasonably suspects a relic or Aboriginal object is discovered:  a. The work in the area of the discovery must cease immediately; b. The following must be notified – i. For a relic – the Heritage Council; or 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.  Site works may recommence at a time conformed in writing by:  a. For a relic – the Heritage Council; or
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## ITEM 1 - ATTACHMENT 1 CONDITIONS OF CONSENT.

	<p>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</p> <p><b>Condition reason:</b> To ensure the protection of objects of potential significance during works.</p>
39	<p><b>Responsibility for changes to public infrastructure</b></p> <p>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.</p> <p><b>Condition reason:</b> To ensure payment of approved changes to public infrastructure.</p>
40	<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>
41	<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>
42	<p><b>Unexpected Finds Contingency (General)</b></p>



## ITEM 1 - ATTACHMENT 1 CONDITIONS OF CONSENT.

	<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>
43	<p><b>Potential Acid Sulfate Soils</b></p> <p>Should Acid Sulfate Soils (ASS) be encountered within the zone of works, an ASS Management Plan is to be prepared by a suitably qualified Geotechnical Engineer and submitted to the Certifying Authority.</p> <p>The recommendations and/or mitigation measures contained within the ASS Management Plan must be complied with during works.</p> <p><b>Condition reason:</b> To ensure that any Acid Sulfate Soils encountered during works are suitably managed.</p>
44	<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>



## ITEM 1 - ATTACHMENT 1 CONDITIONS OF CONSENT.

	<b>Condition reason:</b> To ensure that any Acid Sulfate Soils encountered during works are suitably managed.
45	<b>Compliance with the Building Code of Australia</b>  Building work must be carried out in accordance with the requirements of the Building Code of Australia.  <b>Condition reason:</b> To ensure that the development is undertaken in accordance with the Building Code of Australia.
46	<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.
47	<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 on site are compliant with the consent and in accordance with the approved plans.
48	<b>Bush Fire Safety – Dwellings</b>  The site is located within a bushfire prone area and must comply with the NSW Rural Fire Service document “Planning for Bushfire Protection 2019” (PBP2019). In this regard, the following is required: <ul style="list-style-type: none"> <li>a) The proposed dwelling must comply with the construction requirements of Planning for Bushfire Protection of each elevation for a Bushfire Attack Level (BAL) of: BAL-40</li> <li>b) The APZ as identified on the Tree Location Plan, prepared by Port Stephens Design, and dated 01.03.2024 is to be consistent with the requirements within the PBP2019.</li> <li>c) Compliance with Appendix 3 of PBP2019.</li> <li>d) Compliance with the specific requirements of Chapter 7 of PBP2019.</li> </ul> Details demonstrating compliance must be provided to the Certifying Authority.  <b>Condition reason:</b> To ensure that dwellings within bushfire prone areas are adequately constructed to the relevant standard and vegetation is managed to the required level in accordance with the Planning for Bushfire Protection 2019.
49	<b>Clearing for asset protection zones (APZ)</b>



## ITEM 1 - ATTACHMENT 1 CONDITIONS OF CONSENT.

	<p>While site work is being carried out, clearing or modifying vegetation to establish the APZ must be confined within the marked APZ boundary in accordance with the supporting documentation approved under this consent, to the satisfaction of the principal certifier.</p> <p><b>Condition reason:</b> To ensure vegetation clearance or modification during construction is confined within the APZ</p>
50	<p><b>Cut and fill (if applicable)</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>
51	<p><b>Delivery Register</b></p> <p>The applicant must maintain a register of deliveries which includes date, time, truck registration number, quantity of fill, origin of fill and type of fill delivered.</p> <p>This register must be made available to Council officers on request and be provided to the Council at the completion of the development.</p> <p><b>Condition reason:</b> To ensure that all deliveries of fill are appropriately recorded.</p>
52	<p><b>Disposal of Stormwater</b></p> <p>Following the installation of any roof of structure, collected stormwater runoff from the structure must be conveyed to an on-site detention system before discharging to an existing street as follows:</p> <p>a) Stormwater/drainage plans prepared and certified by a suitably qualified professional are to be submitted which provides for an on-site detention system.</p> <p>OR</p> <p>b) Detention / storage tanks in accordance with BASIX requirements are to be provided, and</p> <p>c) For every 100m<sup>2</sup> of roof or impervious area collected an additional 2,000 litres detention / storage is to be provided.</p> <p>OR</p>



## ITEM 1 - ATTACHMENT 1 CONDITIONS OF CONSENT.

	<p>d) A 6,000 litre detention tank (in addition to any BASIX requirements) provided for each dwelling.</p> <p><b>Condition reason:</b> To ensure that stormwater is adequately managed in accordance with Council's requirements.</p>
53	<p><b>Placement of Fill</b></p> <p>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.</p> <p>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.</p> <p><b>Condition reason:</b> To ensure that fill required for a development is managed in accordance with Council requirements.</p>
54	<p><b>Stormwater Disposal</b></p> <p>Following the installation of any roof, collected stormwater runoff from the structure must be:</p> <p>a) Diverted through a first flush system or leaf/debris prevention system before being connected to an existing stormwater easement/system/street.</p> <p><b>Condition reason:</b> To ensure that stormwater is adequately managed in accordance with Council's requirements.</p>
55	<p><b>Surveys by a registered surveyor</b></p> <p>While building work is being carried out, the positions of the following must be measured and marked by a registered surveyor and provided to the principal certifier:</p> <p>a) All footings / foundations in relation to the site boundaries and any registered and proposed easements</p> <p>b) At other stages of construction – any marks that are required by the principal certifier.</p> <p><b>Condition reason:</b> To ensure buildings are sited and positioned in the approved location.</p>
56	<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> <p>a) The construction site management plan required under this consent,</p> <p>b) The relevant requirements of AS 4970 Protection of trees on developments sites,</p> <p>c) Any arborist's report approved under this consent.</p> <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>



## ITEM 1 - ATTACHMENT 1 CONDITIONS OF CONSENT.

57	<b>Tree Removal/Pruning</b>
	All approved tree removal/Pruning is subject to all pruning works being undertaken by a qualified arborist with minimum Australian Qualification Framework Level 3 qualifications or higher. All works are to be undertaken in accordance with the relevant provisions of AS 4373 'Pruning of Amenity trees'.
	<b>Condition reason:</b> To ensure that vegetation removal/pruning is undertaken by a qualified arborist and in accordance with the Australian Standard.
58	<b>Weed Management</b>
	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 by the <i>NSW Biosecurity Act 2015</i> . Cleaning must include the removal of all mud and plant matter, followed by washing with high pressure water.
	An area for storage contaminated spoil that is separate from clean material shall be provided during construction.
	<b>Condition reason:</b> To prevent the spread of priority weeds.
59	<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> To ensure all construction traffic management procedures and systems identified in the CMP are followed throughout construction.

**Before issue of an occupation certificate**

60	<b>Occupation Certificate Required</b>
	An Occupation Certificate must be obtained prior to any use or occupation of the development.
	The Principal Certifying Authority must be satisfied that the development has been constructed in accordance with approved plans, specifications and conditions of this consent.
	<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
61	<b>Repair of infrastructure</b>
	Before the issue of an Occupation Certificate:



## ITEM 1 - ATTACHMENT 1 CONDITIONS OF CONSENT.

	<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>
	<b>Condition reason:</b> To ensure that approved works within the road reserve have been completed to the satisfaction of the Council.
62	<b>Completion of landscape and tree works</b>
	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.
	<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.
63	<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.
64	<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.
65	<b>Stormwater/drainage works</b>
	All stormwater and drainage works required to be undertaken in accordance with this consent must be completed.



## ITEM 1 - ATTACHMENT 1 CONDITIONS OF CONSENT.

	<p>The certification/verification must be provided to the satisfaction of the Principal Certifying Authority.</p> <p><b>Condition reason:</b> To ensure stormwater and drainage works have been undertaken in accordance with the approved plans.</p>
66	<p><b>Water authority certification</b></p> <p>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.</p> <p><b>Condition reason:</b> To ensure compliance with the water supply authority's requirements.</p>
67	<p><b>Smoke Alarms</b></p> <p>In accordance with Part 13 of the <i>Environmental Planning and Assessment (Development Certification and Fire Safety Regulation) 2021</i>. Details demonstrating compliance must be provided to the Certifying Authority.</p> <p><b>Condition reason:</b> To ensure compliance and with the <i>Environmental Planning and Assessment (Development Certification and Fire Safety Regulation) 2021</i>.</p>
68	<p><b>Services</b></p> <p>Evidence is to be provided to Council demonstrating that the following reticulated services are available to the dwelling:</p> <ul style="list-style-type: none"> <li>a. Electricity;</li> <li>b. Water;</li> <li>c. Sewer.</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 verify that reticulated services are provided to the dwelling.</p>
69	<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>



## ITEM 1 - ATTACHMENT 1 CONDITIONS OF CONSENT.

70	<b>Waste Disposal</b>
	The building owner must ensure that there is a contract with a licensed contractor for the removal of all waste. No garbage is to be placed on public land (e.g. footpaths, roadways, plazas, reserves) at any time.
	<b>Condition reason:</b> To ensure that all waste is appropriately removed from the site.

**Occupation and ongoing use**

71	<b>Maintenance of Landscaping</b>
	Landscaping must be maintained in accordance with the approved landscape plan and conditions of this development consent. All landscape areas must be kept free of parked vehicles, stored goods, garbage or waste material at all times.
	If any of the vegetation dies or is removed, it is to be replaced with vegetation of the same species and similar maturity as the vegetation which has died or was removed.
	<b>Condition reason:</b> To ensure that landscaping is maintained in accordance with the approved landscape plan and the relevant development consent.
72	<b>Residential air conditioning units</b>
	During occupation and ongoing use of the building, the applicant must ensure all subsequently installed noise generating mechanical ventilation system(s) or other plant and equipment that generates noise are in an appropriate location on the site (including a soundproofed area where necessary) to ensure the noise generated does not exceed 5dBa at the boundary adjacent to any habitable room of an adjoining residential premises.
	<b>Condition reason:</b> To ensure that air conditioning units and/or ventilation units do not cause adverse impacts to adjoining properties.



## ITEM 1 - ATTACHMENT 1 CONDITIONS OF CONSENT.

**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](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. **Weed Management** – The site has been identified as being affected by Biosecurity matters – Crofton Weed and Asparagus Fern. Any soil or waste being transported offsite must be disposed of at an appropriately licensed waste facility. Failure to do so may constitute an offence under Section 23 of the NSW Biosecurity Act 2015. A Biosecurity Permit issued by Council in accordance with Section 333 of the NSW Biosecurity Act 2015 is required prior to removal from the site.



6. **Dividing Fences** – The erection of dividing fences under this consent does not affect the provisions of the Dividing Fences Act 1991. Under this Act, all relevant parties must be in agreement prior to the erection of any approved fence/s under this consent or the exempt provisions of the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.

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

7. **Requirements of PCA – Issuing of OC** – Prior to the issue of any Occupation Certificate, the Principal Certifying Authority shall be satisfied that the development has been constructed in accordance with approved plans, specifications and conditions of this consent. No occupational use is permitted until the Principal Certifying Authority issues an Occupation Certificate. Note: The Principal Certifying Authority must submit a copy of the Occupation Certificate to Council, with all associated documentation, within two days of it being issued.
8. **Ausgrid requirements** – This application was referred to Ausgrid for comment under section 2.48 of the State Environmental Planning Policy (Transport and Infrastructure) 2021. The response from Ausgrid, reference number 1900125622, and dated 4/12/2023, can be found on the NSW Planning Portal, and all recommendations and requirements should be complied with.



## 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.



ITEM 1 - ATTACHMENT 1      CONDITIONS OF CONSENT.

**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.





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




**PORT STEPHENS COUNCIL**

# DEVELOPMENT ASSESSMENT REPORT

**APPLICATION REFERENCES**

<b>Application Number</b>	16-2023-658-1
<b>Development Description</b>	Dwelling with associated driveways, hard stand spaces, earthworks, retaining walls, and structural support
<b>Applicant</b>	MR D BROWN
<b>Land owner</b>	MR R W Bluff & MS W A LEWIS
<b>Date of Lodgement</b>	23/11/2023
<b>Value of Works</b>	\$820,000.00
<b>Submissions</b>	0

**PROPERTY DETAILS**

<b>Property Address</b>	3 Tareebin Road NELSON BAY
<b>Lot and DP</b>	LOT: 615 DP: 9165
<b>88B Restrictions on Title</b>	N/A
<b>Current Use</b>	Vacant
<b>Zoning</b>	R2 LOW DENSITY RESIDENTIAL
<b>Site Constraints</b>	Bushfire Prone Land – Vegetation Buffer, category 1; Acid Sulfate Soils – Class 5; Consolidated Koala Habitat Map – Preferred Koala Habitat, Preferred Koala Habitat Buffer over Marginal; Land Slip Areas; Combined Corridor Map;
<b>State Environmental Planning Policies</b>	<i>State Environmental Planning Policy (Sustainable Buildings) 2022</i> <i>State Environmental Planning Policy (Biodiversity and Conservation) 2021</i> <i>State Environmental Planning Policy (Planning Systems) 2021</i> <i>State Environmental Planning Policy (Resilience and Hazards) 2021</i>



16-2023-658-1

PLANNERS PRE-ASSESSMENT CHECKLIST		
<b>OWNERS CONSENT</b>	<b>YES</b>	<b>N/A</b>
Land owners consent	<input checked="" type="checkbox"/>	<input type="checkbox"/>
If the land owned by a corporation/company, relevant signatures have been provided (sole director, or director/director / director/company secretary).	<input type="checkbox"/>	<input checked="" type="checkbox"/>
For works occurring outside property, neighbouring consent provided.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
For works occurring on common property within Strata, owner's consent from Strata body provided (common seal).	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>DA FORM AND AUTHORITY</b>		
Applicant's description of proposal consistent with DA plans.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DA description correct in Authority (i.e. LEP definition).	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DA lodged over all affected properties and Authority correct.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Satisfactory cost of works.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>NOTIFICATION</b>		
Application notified correctly (i.e. check properties notified).	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>REFERRALS</b>		
Check referrals are correct and identify if additional required: i.e. Integrated Development (send within 14 days section 42 (2) EPA Regs 2021	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Call applicant and send email acknowledgement.	<input checked="" type="checkbox"/>	<input type="checkbox"/>



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### PROPOSAL

The proposed development seeks approval for a three-storey dwelling and associated land clearing, driveway, retaining walls, and earthworks. Due to the slope of the subject site, the house has been raised using stilts to limit the extent of cut and fill, although it is noted that earthworks and the construction of retaining walls will be required for the proposed driveway (see figure 1). The proposal includes the removal of 0.1ha of vegetation, which comprises a mix of native vegetation, exotic and weed species. No koala habitat trees are proposed to be removed.

The proposed dwelling will have three storeys, and is accessible by external stairs along the southern side of the dwelling and a lift at the front of the dwelling. The lower floor will contain two bedrooms, lounge room, bathroom, and front deck. The middle floor will contain the open plan kitchen/living area, walk in pantry, laundry, and rear and front decks and the upper floor will contain the main bedroom, ensuite, and rear deck.

The site has a significant fall from the north-west to the south-east, which is a fall of approximately 32m (or approximately 26° slope). To respond to the topography, the proposed dwelling has a stepped design to be compatible with the fall of the site. The proposal will require earthworks and the construction of a retaining walls given the topography of the land.

It is noted that under the Port Stephens Local Environmental Plan 2013 (PSLEP), the maximum height of buildings is 9m. The proposed dwelling will have a maximum height of 11.375m, which is a 2.375m or 26.39% variation to the height limit (see figure 1). The development is required to be reported to Council for determination in accordance with the 'Planning Matters reported to Council' Policy given a variation to the height limit greater than 10% is proposed.



Figure 1: Elevation plan of the proposed dwelling, with the yellow area indicating the area above the 9m height limit





**Figure 2:** Site plan showing the proposed dwelling, driveway, and landscape planting

## SITE DESCRIPTION

The subject site is legally identified as Lot 615 DP 9165, and generally known as 3 Tareebin Road, Nelson Bay. The site has a significant slope, which has a fall of approximately 32m (or 26°) from the north-west to the south-east. There is an informal driveway on the site that connects to Tareebin



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Road, but is too steep in its current form to be used and will need to be reconstructed. The site is vegetated, and does not contain any structures.

The site is largely surrounded by low density residential development, and is a short distance from the Nelson Bay town centre.

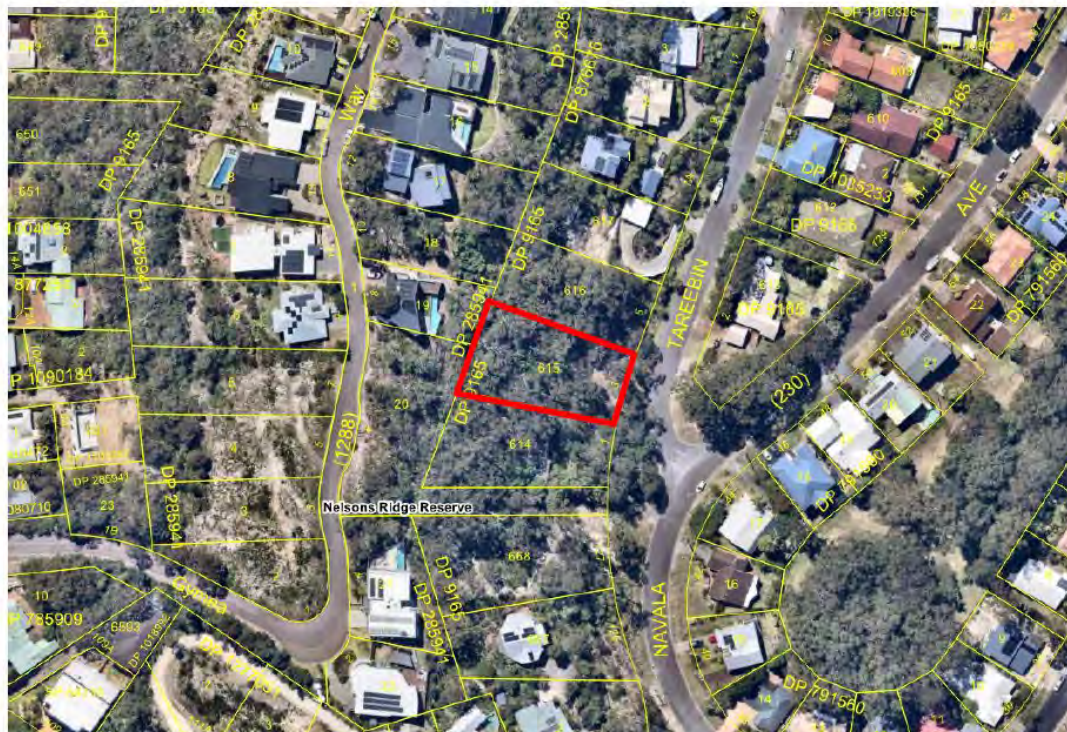


Figure 3: Aerial image of the subject site (outlined in red) and the surrounding area.

#### SITE HISTORY

There are no records of historical applications lodged over the subject site, and no records of contamination.

#### SITE INSPECTION

A site inspection was carried out on 25 March 2024.

The subject site can be seen in Figure 4 & 5 below:



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**Figure 4:** View of the subject site from across the road



**Figure 5:** View of the subject site

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### 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

##### Development Engineering

<b>Comment:</b>	<p>The proposal was referred to Council's Development Engineers to review the proposed access arrangement and stormwater design. Their comments are summarized as follows:</p> <p><i>Stormwater</i></p> <ul style="list-style-type: none"> <li>• The site is identified as a drainage requirement area requiring onsite infiltration up to and including the 1% AEP. Site coverage is approximately 35%.</li> <li>• The stormwater strategy for the site will detail all roof water is to be detained via a 3kl rainwater tanks and alternative 5kl rainwater tank to be connected as per BASIX requirements. Tank overflows are proposed to be piped into an approved infiltration / detention system with discharge directed to the Tareebin Road kerb and gutter.</li> <li>• The provided stormwater plan also provides an appropriate strategy for managing stormwater flows from upstream catchments.</li> <li>• A Geotech Report has been provided due to the risk of the landslip which demonstrates that the site and stormwater design is appropriate for this design.</li> <li>• Conditions of consent were recommended requiring detailed stormwater designs prior to issue of a Construction Certificate and for overland flows from upstream catchments to be controlled and piped to the public network to avoid erosion will be included in the determination.</li> </ul> <p><i>Access</i></p> <ul style="list-style-type: none"> <li>• The proposed driveway has been designed to respond appropriately to the slope of the site.</li> <li>• A condition requiring compliance with Australian Standards (AS) 2890 for offstreet parking facilities has been recommended.</li> </ul>
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##### Natural Resources

<b>Comment:</b>	<p>Council's Environmental Planner conducted a site inspection on 30/11/2023 and noted that there were no signs of koala activity or threatened flora species. It was observed however that 3 trees (4, 5, and 11 on the plans), which are all located on adjoining properties, may be adversely impacted by the driveway construction. On this basis, owner's consent for their removal was provided by the adjoining properties. A tree retention plan was also provided by the applicant.</p> <p>Council's Environmental Planner ultimately supported the proposed development, with recommended conditions of consent provided relating to the installation of nest boxes, tree removal, tree protection measures, and weed management strategies.</p>
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#### External

#### Ausgrid



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<b>Comment:</b>	<p>The proposed development was referred to Ausgrid for comment under section 2.48 of the <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i>.</p> <p>No objections or to the development, and recommendations provided regarding the location of, and connection to, the existing electricity network.</p>
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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 approvals are required.

#### Section 4.14 – Consultation and development consent (certain bushfire prone land)

The proposed development is mapped as bushfire prone land, Vegetation category 1 and Category 3 (buffer), and as such triggers assessment under the NSW Planning for Bushfire Protection 2019.

A Bushfire Threat Assessment Report (BTAR) prepared by a Bushfire Planning and Design (BPAD) Level 3 accredited practitioner has been provided with the application to support the proposal. The BTAR has identified a BAL rating of BAL-40 for the proposed dwelling, and also recommending the establishment of an Asset Protection (APZ) within the site as identified in Figure 6 below. The BTAR outlines that the proposal is capable of complying with the relevant requirements of the Planning for Bushfire Protection 2019 (PBP2019) and Australian Standards, noting access, water, and utilities are available to the subject site.

A condition of consent requiring the construction of the dwelling and associated access, utilities, and landscaping to be in compliance with the BAL-40 requirements of the PBP2019 has been recommended.



**Figure 6:** Plan of the site, showing the area of bushfire threat in green and the proposed dwelling and driveway in yellow, with the proposed APZ being identified by the black hatched area

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**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),*
- (b) *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.*

**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 (Sustainable Buildings) 2022**

State Environmental Planning Policy (Sustainable Buildings) 2022 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.

**Chapter 2 – Residential Development**

Chapter 2 requires that a development application for BASIX development be accompanied by a BASIX certificate and comply with energy design criteria outlined in Schedule 1. 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 Sustainable Buildings 2022.

**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



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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 seeks consent for the removal of 0.1ha of vegetation to facilitate the development and the required APZs. This has been supported by a Flora and Fauna Assessment which has identified that there are no endangered ecological communities or preferred koala habitat identified on the subject site, and provided a number of recommendations regarding tree protection measures, tree removal techniques, weed managed, and sediment controls to be implemented so as to mitigate any potential adverse impacts. The findings of this report has been supported by Council's Natural Systems team, and recommended conditions of consent regarding tree protection measures, tree removal techniques to be utilised, and nest boxes required will be included in the determination.

It is noted that there are three trees located on adjoining properties which are expected to be adversely impacted due to proposed driveway and retaining works being located within the structural root zone, and therefore will likely need to be removed. These trees are identified on the provided Tree Location Plan as tree 4 and 5 on Lot 614 DP 9165 (south of the subject site) and tree 11 on Lot 616 DP 9165 (north of the subject site). Owner's consent from both landowners for the tree removal has been provided. Council's Natural Systems team have provided recommended conditions approving the removal of tree 5, and requiring tree 4 and 11 to be retained where possible unless a suitably qualified arborist determines that the retention of these trees is unfeasible, at which point they may be removed.

#### **Chapter 4 – Koala Habitat Protection 2021**

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

Chapter 4 applies to all zones other than RU1 (Primary Production), RU2 (Rural Landscape) and RU3 (Forestry) in the Port Stephens Local Government Area. Section 4.8 requires that the application must be consistent with the approved koala plan of management that applies to the site. In Port Stephens, the relevant plan is the Comprehensive Koala Plan of Management (CKPoM).

The southern half of the site is mapped as preferred koala habitat, while the northern half is preferred habitat link over marginal koala habitat. The provided Flora and Fauna Assessment Report prepared by Peak Land Management did not identify any koala habitat on the site during field surveys, and has noted that the proposal does not require the removal of any preferred koala species or habitat. Council's Environmental Planner conducted a site inspection which confirmed the adequacy of the surveys and supported the findings from the Flora and Fauna Assessment Report, and provided conditions of consent regarding the use of koala friendly fencing. As such, the proposed development is considered to be consistent with the CKPoM as no habitat will be removed or adverse impact to the long-term survival of the local koala population.

#### **State Environmental Planning Policy (Resilience and Hazards) 2021**

#### **Chapter 4 – Remediation of Land**

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

It is noted that the NSW list of contaminated sites and list of notified sites published by the EPA does not identify the site as being contaminated, nor has previous record of contamination in Council's system. The land is not within an investigation area and there are no records of potentially contaminating activities occurring on the site under Table 1 of the Guidelines. On this basis, the proposed development satisfies the requirements of Chapter 4 of this SEPP.

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

The proposed development is defined as a dwelling, 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 and is of a design and scale appropriate for the surrounding residential character and amenity of the area.

**Clause 4.3 – Height of Buildings**

The objectives of this clause are to ensure the height of buildings is 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 11.375 metres, which is above the maximum permissible building height of 9 metres specified on the Height of Buildings Map. This represents a 26.39% variation to the height limit. A request to vary the standard has been supported by a Clause 4.6 Assessment Report, which is discussed in further detail below.

**Clause 4.6 – Exceptions to development standards**

The proposal exceeds the maximum allowable building height for the site prescribed under Clause 4.3 of the LEP. The dwelling proposes a maximum building height of 11.375m, which exceeds the 9m height limit and represents a 2.375m (26.39%) variation to the development standard.

A request to vary the building height development standard has been submitted by the applicant in accordance with Clause 4.6 of the PSLEP. The grounds for varying the standard are outlined below:

- The proposal is compliant with the objectives of the R2 Low Density Residential zone as it provides additional low density housing and is consistent with the residential character and amenity of the area;
- The proposed design is appropriate for the context of the site and the residential character of the area and reflects the hierarchy of centres, and is therefore consistent with the objectives of Clause 4.3 Height of Buildings;
- The height non-compliance is attributed to the steep topography of the site.

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

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

**Clause 5.10 – Heritage conservation**

The objectives of this clause are as follows—

- (a) *to conserve the environmental heritage of Port Stephens,*
- (b) *to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,*
- (c) *to conserve archaeological sites,*
- (d) *to conserve Aboriginal objects and Aboriginal places of heritage significance.*



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In accordance with Clause 5.10.(4) the consent authority must, before granting consent under this clause in respect of a heritage item or heritage conservation area, consider the effect of the proposed development on the heritage significance of the item or area concerned.

The proposed development is not located within or in proximity to any local or state listed heritage items or conservation areas. A search of the Aboriginal Heritage Management Systems did not reveal any previously recorded Aboriginal sites in proximity to the proposed development. The site is not located within 200m of any Aboriginal sensitive landscape features.

#### 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 3.13m metres and is not within 500m of Class 1, 2, 3, or 4 ASS, and therefore it is not expected that acid sulfate soils would be encountered during works. No ASS were identified during test excavations on the site as part of the Geotechnical Report.

#### 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,*
- (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 development proposes earthworks on the site to achieve a level building platform for the dwelling and to provide suitable access and parking areas. It is noted that the proposed dwelling is largely situated on stilts due to the slope of the site and to reduce the amount of earthworks required. However, the construction of the driveway will require a cut of up to 3.2m and fill of up to 2.8m, with associated retaining walls, to ensure that the driveway grades comply with the Australian Standards.

The proposal has been supported by a Geotechnical Report, which has included recommendations for footings, excavations, retaining walls, and site drainage to reduce the potential risk of landslip. The findings of the Geotechnical Report has been supported by Council's Development Engineer, who recommended that the recommended detailed guidelines and

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designs be conditioned for prior to issue of the Construction Certificate to ensure risk is suitably mitigated throughout construction.

Earthworks are not anticipated to result in any negative impacts on the subject or adjoining land, or any public place in terms of drainage, erosion or amenity. As outlined in the assessment against Clause 5.10 above, the likelihood of disturbing relics is low.

Conditions of consent have been recommended relating to sediment and erosion control, stockpiling of materials, dewatering, and quality of imported/exported fill materials and disposal of excavated materials in accordance with the EPA's Waste Classification Guidelines.

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,*
- (e) *suitable vehicular access.*

The subject site is serviced by reticulated water, electricity and sewer. The stormwater management strategy has demonstrated that stormwater drainage resulting from roof and hard stand areas can be catered for in accordance with Councils DCP and Infrastructure Specification requirements. The subject land also maintains direct access to Tareebin 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**

#### **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.

Council approval is required for the proposed removal of 21 trees, and is therefore considered under this chapter. The applicant has provided a tree retention and removal plan and Flora and Fauna Assessment to support the proposed tree removal. As discussed above, the proposed development does not require the removal of any preferred koala habitat and is not expected to have an adverse impact on any endangered ecological communities or threatened species. No replacement planting is required in accordance with Council's Biodiversity Technical Specification,

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however, due to the removal of two hollow bearing trees (containing at least three hollows) supplementary nest boxes are required to be installed. A condition of consent requiring the installation of four nest boxes has been recommended in the determination to ensure compliance with Council's Technical Specifications.

As such, the proposed development is consistent with this Chapter subject to conditions.

### **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 mapped as containing core koala habitat, however no koala habitat has been identified on the site through field surveys. No other environmentally sensitive areas or threatened species have been identified on the site.

The provided Flora and Fauna Assessment Report has identified Crofton weed and Asparagus Fern on the subject site. As such, conditions of consent relating to weed suppression and management will be included in the determination.

On this basis, the proposal is consistent with this Chapter subject to conditions.

### **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 properties. The impacts of the development during construction will be managed 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 development 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 during the operational phase of the development.

#### **Earthworks**

As discussed at Clause 7.2 above, the proposed development involves a cut of up to 3.2m, and fill of up to 2.8m. It is noted that the majority of the earthworks required are to facilitate the construction of the driveway and parking areas. A smaller quantum of cut is required for the construction of the dwelling due to the incorporation of stilts which raise the dwelling up above the

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ground level. The proposed earthworks have been supported by a detailed cut and fill plan and Geotechnical Report.

The impacts of the proposed earthworks can be suitably mitigated through conditions of consent regarding erosion and sediment controls, stockpiling of fill, use of clean fill, and detailed engineering plans for the retaining wall and driveway. The proposal is therefore consistent with requirements outlined in the 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.

#### **B5 – FLOODING**

This section applies to all development on flood prone land. The subject land is not mapped as being within the Flood Planning Area.

#### **B7 – HERITAGE**

This section applies to development that is situated on land that contains a heritage item or within a heritage conservation area.

The site is not located on land that contains any local or state listed heritage items and therefore the provisions of this section do not apply. In addition, the proposed development is not located within, or in proximity to, any local or state listed heritage items or conservation areas. A search of the Aboriginal Heritage Management Systems did not reveal any previously recorded Aboriginal sites in proximity to the proposed development. The site is not located within 200m of any Aboriginal sensitive landscape features.

#### **B8 – ROAD NETWORK AND PARKING**

This Chapter 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 an adverse impact on the road network, as Tareebin Road has been designed to cater for residential development such as the proposed dwelling.

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

The dwelling includes two parking spaces, both of which are uncovered. This complies with the requirement for a minimum of two parking spaces for a dwelling with three or more bedrooms. A condition of consent requiring detailed engineering drawings for the driveway and parking areas to demonstrate compliance with the relevant Australian Standards to be provided prior to issue of the Construction Certificate.

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

The driveway plan demonstrates that there is sufficient parking space on the driveway which will not interfere with vehicles entering and exiting the site. The driveway is of an appropriate width and gradient, and provides clear access to the dwelling via the proposed stairway or lift. The proposal is therefore compliant with the requirements of this Chapter.

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**CHAPTER C – DEVELOPMENT TYPES**

The proposed development includes construction of a dwelling and therefore Section C4 is applicable.

C4 – Dwelling House, Secondary Dwelling, or Dual Occupancy																						
C4.A – Height																						
<b>Objectives</b> <ul style="list-style-type: none"><li>• To ensure the height of buildings is appropriate for the context and character of the area</li><li>• To ensure building height reflects the hierarchy of centres and land use structure</li></ul>																						
Control	<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  <b>Note:</b> C2.4 requires a minimum first floor and above ceiling height for residential accommodation in a commercial zone of 2.7m																					
	Assessment As there is a height limit specified under the PSELP, this requirement is not applicable to this proposal.																					
C4.B – Setbacks																						
<b>Objectives</b> <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>																						
Control	<b>C4.2 – Setback requirements</b> Development is to be setback from the subject property boundary, in accordance with the provisions outlined in Figure C1.																					
	Assessment The dwelling complies with the requirements of C4.2. The proposed development has the following setbacks: <table><tr><th colspan="3">Figure C1</th></tr><tr><th>Setback</th><th>Residential or RU5 zone requirement</th><th>Proposed</th></tr><tr><td>Front</td><td>4.5m or average building line (whichever is greater)</td><td>25.7m</td></tr><tr><td>Side setback (ground floor)</td><td>0.9m</td><td>7m (south side) 7.9m (north side)</td></tr><tr><td>Side setback (upper floor)</td><td>2m</td><td>7m (south side) 7.9m (north side)</td></tr><tr><td>Rear setback (ground floor)</td><td>2m</td><td>10.016m</td></tr><tr><td>Rear setback (upper floor)</td><td>6m</td><td>10.016m</td></tr></table>		Figure C1			Setback	Residential or RU5 zone requirement	Proposed	Front	4.5m or average building line (whichever is greater)	25.7m	Side setback (ground floor)	0.9m	7m (south side) 7.9m (north side)	Side setback (upper floor)	2m	7m (south side) 7.9m (north side)	Rear setback (ground floor)	2m	10.016m	Rear setback (upper floor)	6m
Figure C1																						
Setback	Residential or RU5 zone requirement	Proposed																				
Front	4.5m or average building line (whichever is greater)	25.7m																				
Side setback (ground floor)	0.9m	7m (south side) 7.9m (north side)																				
Side setback (upper floor)	2m	7m (south side) 7.9m (north side)																				
Rear setback (ground floor)	2m	10.016m																				
Rear setback (upper floor)	6m	10.016m																				
Control	<b>C4.3 – Front setback encroachment</b> Development for a secondary dwelling must be located behind the building line of the principal dwelling it is in conjunction with.																					



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<b>C4 – Dwelling House, Secondary Dwelling, or Dual Occupancy</b>	
<b>Assessment</b>	N/A
<b>Control</b>	<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.
<b>Assessment</b>	N/A
<b>Control</b>	<b>C4.5 – Secondary setback encroachment</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>	Garage is screened and imperceptible from the streetscape.
<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>

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<b>C4 – Dwelling House, Secondary Dwelling, or Dual Occupancy</b>	
	<b>Note:</b> B2.1 requires a suitable buffer on the land which is the subject of development to items of environmental significance
<b>Assessment</b>	N/A – not located in proximity to rural activities.
<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>C4.12 – Passive surveillance</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 proposal includes habitable rooms, such as bedrooms and living rooms, facing towards the street, which provides suitable passive surveillance and complies with this requirement.
<b>Control</b>	<b>C4.13 – Passive surveillance</b> Development on corner lots is to address both street frontages by having habitable rooms face both streets.
<b>Assessment</b>	N/A – not located on a corner lot.
<b>Control</b>	<b>C4.14 – Streetscape character</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 dwelling has been designed to remain consistent with the existing residential character of the area by utilising the split level design and the stilts to respond to the slope of the land. Additionally, the materials and the bulk of the dwelling are consistent with other existing residential development in the area, and will maintain the low-density residential character of the area.
<b>Control</b>	<b>C4.15 – Privacy and two-storey development</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 proposed dwelling includes a deck facing towards the street on each level except for the second storey.
<b>Control</b>	<b>C4.16 – Privacy and two-storey development</b> Balconies are to be located to minimise overlooking of adjoining properties.
<b>Assessment</b>	Both proposed front decks extend along the front elevation, then wrap around the side (northern) elevation, which would face towards the northern adjacent property. While this lot is currently vacant with no active (or proposed) consent for residential development, it is noted that this lot could be developed in the future and the location of the front decks could create a privacy impact.

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<b>C4 – Dwelling House, Secondary Dwelling, or Dual Occupancy</b>	
	<p>The proposed decks are located 10.061m from the lot boundary, which provides a significant buffer that reduces potential privacy impacts. Additionally, the applicant has provided a privacy plan which identifies the direction of the main views of the decks (confirming that these are not located over the adjoining property), and identified existing vegetation which provides privacy screening. It is also noted that the retained vegetation along this boundary is predominantly comprised of 10-15m tall Eucalyptus trees, with the landscape plan showing Callistemons (max height of approx. 3-4m), Gynea Lillies &amp; Bush Peas (max height of approx. 2m), and native shrubs (max height approx. 0.3-1m) to be planted in this area. Given that the proposed decks will have a finished floor level between 0.5m and 9.3m above ground level, these trees and shrubs are considered to be of an appropriate height to provide some privacy screening.</p> <p>As such, despite sections of the proposed decks facing adjoining properties, the proposed setback and vegetation screening is considered to be sufficient to address potential privacy concerns and suitably minimise overlooking of adjoining properties. To ensure this landscaping is maintained for the life of the development, a condition of consent requiring ongoing maintenance and the replacement of any vegetation which dies will be included in the determination.</p> <p>It is noted that no deck above ground level faces towards the adjoining lots to the south or west, so there are no expected privacy impacts to these properties.</p>
<b>Control</b>	<p><b>C4.17 – Privacy and two-storey development</b></p> <p>Privacy screens are required for balconies and patios, which result in unreasonable privacy impacts to properties.</p>
<b>Assessment</b>	<p>Privacy screens have not been provided for the proposed balconies, however, as discussed above, the proposed setback of the deck and proposed landscaping is considered sufficient to mitigate potential privacy impacts and the proposal is therefore considered to be consistent with the objectives of this Chapter.</p>
<b>Control</b>	<p><b>C4.18 – Privacy and two-storey development</b></p> <p>Privacy screens, high-light windows or opaque glass is to be used for windows of habitable rooms (other than bedrooms) which overlook adjoining properties.</p>
<b>Assessment</b>	<p>It is noted that the windows of the second floor (which includes bedroom 1, walk-in-robe, and ensuite), face towards the northern adjoining property, with no privacy screens, high-light windows, or opaque glass to address included in the design to address potential privacy impacts.</p> <p>The second floor is setback 7.981m from the adjoining property, which reduces potential privacy impacts through separation. Due to the slope of the land, the second floor is at ground level to the north, while the front of this floor will have a finished floor level of 4.8m above ground level, meaning that there are limited privacy impacts expected from windows placement. In addition to this, the applicant has provided a privacy plan and a Landscape Plan which details a number of existing trees and proposed trees and shrubs along this lot boundary to provide vegetation screening. This vegetation screening will include eucalyptus (current height 10-15m), Callistemons (max height approx. 3-4m)</p>



<b>C4 – Dwelling House, Secondary Dwelling, or Dual Occupancy</b>	
	<p>and Gynea Lillies (max height 3m), which is of an appropriate height to provide privacy screening for these windows.</p> <p>It is noted that there are limited windows along the first floor and lower floor which face the southern adjoining lot, and the proposal is setback a minimum of 7m from this lot boundary, so there are no privacy impacts at this elevation. Additionally, the proposed landscaping will include the same species within this side setback as for the northern side setback, and will therefore also provide privacy screening along this elevation.</p> <p>The proposed development is considered to be consistent with the objectives of this Chapter, and the specific requirements for privacy screens, high-light windows, or opaque glazing are not considered to be necessary in this instance. To ensure landscaping is maintained for the life of the development, a condition of consent requiring ongoing maintenance and the replacement of any vegetation which dies will be included in the determination.</p>
<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>C4.19 – Private open space dimensions</b>	
<b>Control</b>	<p>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:</p> <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>	There is sufficient private open space provided for the dwelling.
<b>C4.20 – Private open space dimensions</b>	
<b>Control</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>	Sufficient private open space can be provided on the ground floor, noting there is also ample private open space on the proposed balconies.
<b>C4.21 – Solar access</b>	
<b>Control</b>	Minimum of 2 hours sunlight to the principal private open space area between the hours of 9am-3pm midwinter.
<b>Assessment</b>	PoS is provided 2 hours of sunlight mid-winter in accordance with this control.
<b>C4.22 – Solar access</b>	
<b>Control</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>	No adverse overshadowing on adjoining properties. The adjoining properties will retain 30% solar access to their respective private open space areas.
<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>C4.23 – Driveway width</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>	Complies – min. 3.6m provided.
<b>Control</b>	<b>C4.24 – Garage dimensions</b>
	Maximum garage door width of 6m for residential lots or 50% of the building frontage, whichever is less.
<b>Assessment</b>	N/A
<b>Control</b>	<b>C2.25 – Garage dimensions</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>C4.26 – Dwelling house</b>
	Development located on land that slopes at more than 18 degrees to the horizontal or that is within 50m of land that contains: <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> Must provide landscaping that:

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<b>C4 – Dwelling House, Secondary Dwelling, or Dual Occupancy</b>	
	<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>constrains turf areas within the inner protection area of the APZ identified by a bushfire report.</li> </ul>
<b>Assessment</b>	<p>N/A – No identified coastal wetlands, koala habitat, or species listed within the BC Act 2016 on the subject site.</p> <p>The applicant has provided a Landscape Plan which includes the retained trees, proposed planting species, and planting location. This Landscape Plan uses predominantly native species and is considered to be appropriate for the proposed development. To ensure compliance with the Planning of Bushfire Protection 2019 (PBP) requirements, a condition of consent will be imposed requiring the landscape plan to be consistent with the APZ requirements, with evidence to be provided to the certifier prior to issue of the Construction Certificate.</p>
<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>	<p><b>C4.31 – Waste storage</b></p> <p>An adequately screened waste storage and recycling area is to be provided behind the building line.</p>
<b>Assessment</b>	<p>While this has not been specifically identified on the provided plans, it is noted that there is sufficient space to provide appropriate waste storage facilities, which leaves a number of options for future residents. As such, the proposal is supported despite no specific waste storage area having been identified on the provided plans.</p>
<b>Control</b>	<p><b>C4.32 – Clothes drying</b></p> <p>A suitable open-air area for clothes drying is to be provided for each dwelling behind the building line with a northerly aspect.</p>
<b>Assessment</b>	<p>While this has not been specifically identified on the provided plans, it is noted that there is sufficient space to provide appropriate clothes facilities, which leaves a number of options for future residents. As such, the proposal is supported despite no specific clothes drying facilities having been identified on the provided plans.</p>
<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> </ul>	

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C8 – ANCILLARY STRUCTURES	
<ul style="list-style-type: none"> <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>C8.22 – Retaining walls</b> Maximum height of 1m.
<b>Assessment</b>	<p>There are a number of retaining walls proposed to facilitate the dwelling and driveway construction. Most of these will be between 0.1m and 1m, however in a few sections the height will increase to 2.3-3m (top of driveway at northern end) or 1.8m (first corner of driveway from road connection point). While these do not comply with this requirement, given the extreme slope of the land and the driveway gradient requirements within the Australian Standards, there is no alternative to reduce the retaining wall height whilst still providing a suitable grade access to the dwelling. Given the separation distances to neighbouring properties and retained vegetation, the retaining walls are not considered to adversely impact on neighbouring amenity or the surrounding area.</p> <p>As such, the variation to the retaining wall height is supported in this instance, and a condition of consent requiring structural engineering certification for retaining walls has been recommended.</p>
<b>Control</b>	<b>C8.23 – Retaining walls</b> Masonry construction is required for retaining walls within 0.9m of the property boundary when greater than 0.6m in height.
<b>Assessment</b>	Masonry construction has been proposed for all retaining walls.
<b>Control</b>	<b>C8.24 – Retaining walls</b> Retaining walls are wholly contained within the site.
<b>Assessment</b>	All proposed retaining walls are wholly within the subject site.

## CHAPTER D – SPECIFIC AREAS

The proposed development is located within the Hill Tops precinct within the D6 Nelson Bay West area, and therefore this chapter applies.

D6 – NELSON BAY WEST	
<b>D6.A – Setbacks</b>	
<b>Objectives</b>	
<ul style="list-style-type: none"> <li>To ensure development provides continuity and consistency to the public domain</li> </ul>	
<b>Control</b>	<b>D6.1 – Front setback</b> Minimum front setback of 6m
<b>Assessment</b>	Complies – 25.7m
<b>Control</b>	<b>D6.2 – Secondary setback</b> Minimum secondary setback of 3m



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D6 – NELSON BAY WEST											
Assessment	N/A										
Control	<b>D6.4 – Side setback</b>										
	Minimum side setback of 3m for Upper Slopes and Hill Tops										
	<b>Note:</b> Figure CI requires a minimum ground level (finished) side setback of 0.9m										
Assessment	Complies – 7m										
<b>D6.B – On-site detention</b>											
<b>Objectives</b>											
• To regulate the impacts on the capacity of the public drainage system											
Control	<b>D6.5 – Impervious surfaces</b>										
	On-site detention is required where impervious surfaces exceed the listed percentage of site area:										
	• Upper Slopes and Hill Tops – 50%										
	<b>Note:</b> B4.2 requires on-site detention where impervious surfaces exceed the total percentage of site area as listed under Figure BC.										
Assessment	The proposal does not exceed the 50% impervious surface requirement, therefore on-site detention is not required.										
<b>D6.C – Landscaping</b>											
<b>Objective</b>											
• To ensure landscaping is within context through the appropriate selection of species and site coverage											
Control	<b>D6.6 – Landscape coverage</b>										
	A landscape plan within Nelson bay West achieves site area percentage coverage targets in accordance with the below:										
	<table><tr><td>Location</td><td>Landscape area</td><td>Endemic Species</td><td>Native vegetation</td></tr><tr><td>Hill Tops</td><td>50%</td><td>35%</td><td>90%</td></tr></table>				Location	Landscape area	Endemic Species	Native vegetation	Hill Tops	50%	35%
Location	Landscape area	Endemic Species	Native vegetation								
Hill Tops	50%	35%	90%								
Assessment	The proposed landscaped area is 67%, which is greater than the minimum of 50% required. All proposed species are endemic or native.										

**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

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**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 dwelling and will provide additional housing to service the needs of the community. The dwelling will allow for the use of existing services and facilities in the locality without requiring upgrades. The construction of the proposed dwelling will provide employment opportunities in the locality and support the local building and development industries. This will have direct monetary input to the local economy, and the increased number of residents in the locality will provide ongoing economic input through daily living activities. There are no anticipated adverse social or economic impacts as a result of the proposed development.

**Impacts on the Built Environment**

The proposed development will reinforce the residential nature of the locality and is characteristic of other developments in both the local and wider community. The dwelling includes relevant construction methods and services such as an on-site stormwater management system that will prevent adverse impacts on adjoining properties. The proposal addresses the street and provides logical and convenient 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. Appropriate service management, water quality requirements, and nest boxes have been conditioned for to ensure potential impacts are mitigated. In addition, a condition of consent is recommended that requires the installation and maintenance of erosion and sedimentation controls and tree protection measures for the duration of construction and tree removal works. It is noted that no significant vegetation is proposed to be removed and that 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 the available 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 4 December 2023 to 18 December 2023 in accordance with the provisions of the Port Stephens Council Community Engagement Strategy. No submissions were received with relation to the subject development proposal.

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

The proposed development is considered to be in the public interest as it involves the construction of a new dwelling within a residential area, which provides additional accommodation in the locality to service the 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)**

No development contributions are applicable to this proposal.



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**DETERMINATION**

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

SAMANTHA KROSSMAN

Development Planner  
(Community Futures Directorate)




**PORT STEPHENS COUNCIL**

# CLAUSE 4.6 ASSESSMENT REPORT

## 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.*

#### 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 imposed by 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) in 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	11.375m (2.375m variation)	26.39%

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.





## PORT STEPHENS COUNCIL

# CLAUSE 4.6 ASSESSMENT REPORT

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 applicant's Clause 4.6 request makes reference to reasons 1, 3, and 4 from the *Wehbe v Pittwater Council* judgement, which are discussed in more detail below.

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

- The proposed dwelling will not be out of scale or character with surrounding residential development, noting height variations of a similar scale have been approved by Council.
- The proposed development is unlikely to have any adverse impact on views from north-western neighbours as the western elevation is compliant with the prescribed height control.
- The setback from Tareebin Road and from neighbouring properties provides separation from the neighbouring dwellings and streetscape, which reduces the bulk and presentation of the development to the streetscape.
- The dwelling exceeds the height limit due to the steep topography of the site. It has been designed with different levels that step down with the land so as to reduce the scale of the dwelling and to remain consistent with surrounding residential development.
- Only a small portion of the proposed dwelling exceeds the height limit, being limited to the eastern corner of the dwelling.
- The design, including the height variation, provides articulation in addition to shade and weather protection.
- The retention of large mature trees and installation of landscaping will mitigate the visual bulk and scale of the development.
- The proposed height exceedance will have negligible amenity impacts, so strict compliance is unreasonable and unnecessary.




**PORT STEPHENS COUNCIL**

## CLAUSE 4.6 ASSESSMENT REPORT

In addition to the first test from Wehbe judgement, the applicant's Clause 4.6 Variation request also argues that the third test applies, being that compliance with the development standard is unreasonable or unnecessary as the objective or purpose of the development standard would be defeated or thwarted if compliance was required for the following reasons:

- The objective is not achievable if compliance with the development standard is adhered to.
- Compliance with the height requirement would require the roof level to be lowered to the extent that indoor and outdoor living spaces of the upper floor would be unusable and non-compliant with the BCA. Alternatively, the ceiling height of each level would need to be lowered, which would reduce internal amenity and accessibility via the lift.
- Given there are dwellings with comparable designs and height variations in the locality, compliance with the standard would establish inconsistencies with the existing built form context and establishing character.

The provided Clause 4.6 Variation request also relies on the fourth test, being that the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard for the following reasons:

- A number of properties in the surrounding area have had height variations approved. A sample of four properties were provided (though no details on the approved heights were given):
  - 23 Tareebin Road, Nelson Bay
  - 37 Canomii Close, Nelson Bay
  - 10 Tingara Road, Nelson Bay
  - 3 Gynea Way, Nelson Bay
- The number of approved height variations shows that there is precedence in the local area for building heights greater than the prescribed standard, generally due to the topography of the site.

### Council Assessment

Regarding the first test, it is agreed that the objectives of the development standard are achieved notwithstanding the non-compliance with the standard. The proposed development is a single dwelling, which contains three split-levels that responds to the steep slope of the site (see figure 1). This design results in only a small section of the roof area being above the height limit (see figure 1 & 2). It is also noted that most of the residential developments in the area are single dwellings or dual occupancies, and include a similar split-level design due to the slope of the area. The proposed dwelling will appear largely consistent with other low-density residential built form in the area, which typically have two or three storeys. As such, the proposed height of the building is considered to be consistent with the context and character of the area, and reflects the hierarchy of centres and land use structures.




**PORT STEPHENS COUNCIL**

## CLAUSE 4.6 ASSESSMENT REPORT

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

- In regards to the third test, it is considered that the objective or purpose of the development standard would not be defeated or thwarted if compliance was required.
- In regards to the fourth test, it is considered that the development standard has not been abandoned or destroyed as the objectives of the standard are still relevant notwithstanding non-compliance with the numerical standard. The applicant's variation request also made reference to nearby developments that have exceeded the height limit to justify that the fourth test is relevant. It is noted that the height of buildings on each development and any variations where proposed are assessed on merit on a site by site basis. Accordingly, there is not sufficient evidence to demonstrate an overwhelming pattern of abandonment. The objectives of the standard are still relevant even when numerical non-compliance is proposed. Additionally, the 9m height control is standardised across the LGA for all R2 Low Density Residential zoned land.

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

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

### **Clause 4.6(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 proposal 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 exceedance 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.



**PORT STEPHENS  
COUNCIL**

## CLAUSE 4.6 ASSESSMENT REPORT

The applicant has expanded on these points in more detail within the Wehbe test framework as summarized in the section above, and that there are sufficient environmental planning benefits to justify the contravention of the development standard.

It is agreed that the proposal is consistent with the objectives of the R2 Low Density Residential zone, as it provides additional housing for the community that is consistent the low density character and enhances the residential amenity of the area. Additionally, it is agreed that the proposal is consistent with the objectives of clause 4.3 Height of buildings despite the non-compliance due to its multi-storey design responding appropriately to the steep topography of the site, and the overall design being consistent with the residential character of the surrounding area.

The applicant has also provided detailed plans to demonstrate that the proposal is compliant with the relevant requirements of the DCP, particularly in regards to solar access and privacy. It is also noted that the proposed dwelling exceeds the minimum setback requirements, and has been situated within the central portion of the site and towards the rear. As such, the proposal is not expected to dominate the streetscape or visually overwhelm neighbouring lots. Shadow diagrams have been provided which demonstrate that adjoining lots, including the southern adjoining lot, will maintain sufficient solar access to private open space and dwelling between 9am and 3pm in midwinter as required by the DCP (see figure 3). Moreover, it is not expected that the proposal will result in an adverse privacy impact as a result of the height. The dwelling has been situated a minimum of 7m from the side boundaries, with the landscape plan and privacy plan provided showing a range of trees and shrubs planted within this setback to provide vegetation screening.





# PORT STEPHENS COUNCIL

## CLAUSE 4.6 ASSESSMENT REPORT

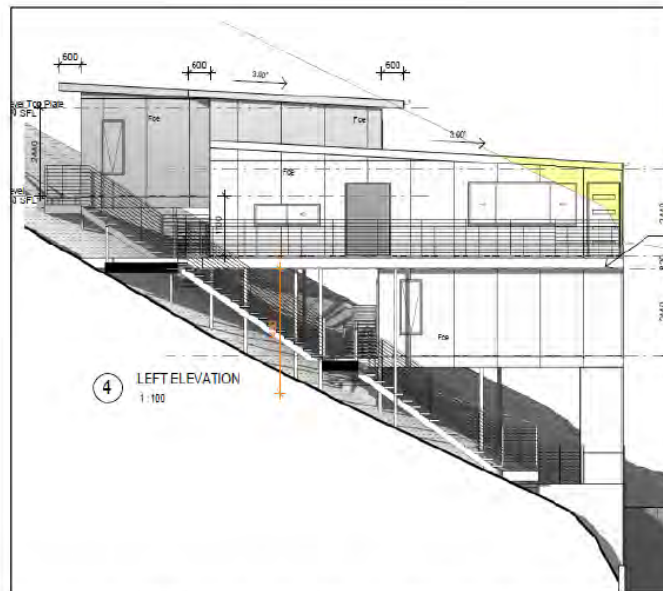


Figure 1: Southern elevation plan, with the yellow area identifying the area above the 9m height limit

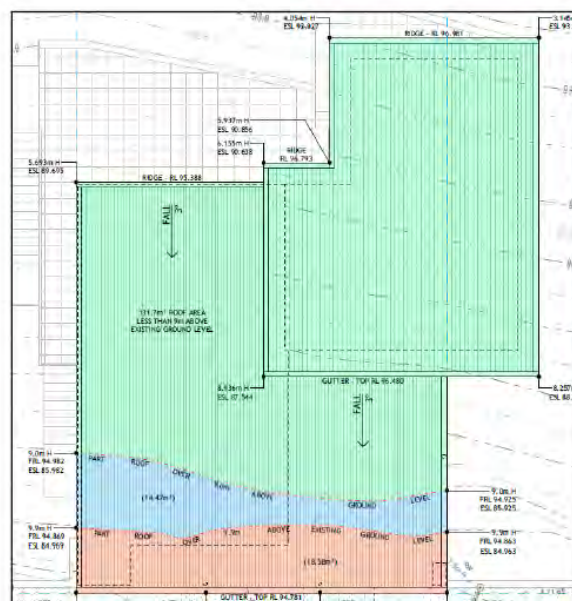


Figure 2: Roof plan identified the area above the 9m height limit. The green area is below the 9m height limit, the blue area is between 9m and 9.9m in height, and the orange area is above 9.9m.





# PORT STEPHENS COUNCIL

## CLAUSE 4.6 ASSESSMENT REPORT

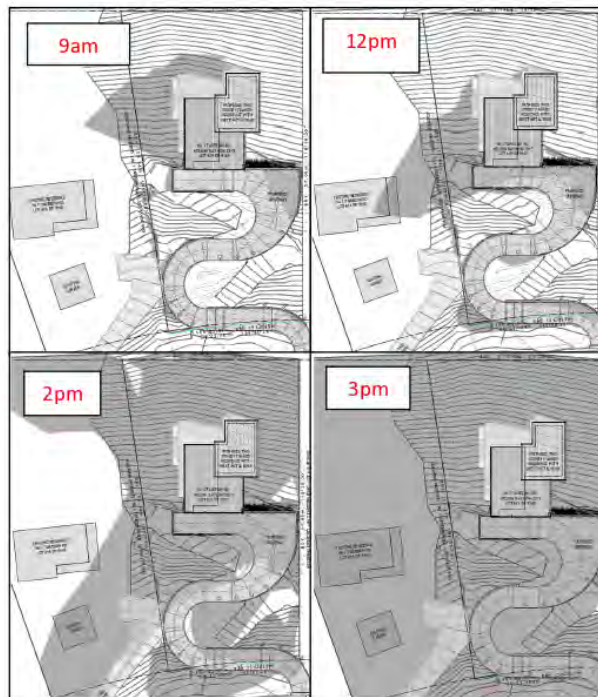


Figure 3: Snap shot of the shadow diagrams provided.

### 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.

MS S KROSSMAN  
**Development Planner**  
 (Community Futures Directorate)



**ITEM NO. 2****FILE NO: 24/76121  
EDRMS NO: 16-2023-514-3****DEVELOPMENT APPLICATION 16-2023-514-3 FOR A DWELLING AT 111E  
WALLAWA 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 Modification Application DA No. 16-2023-514-3 for a dwelling at 111E Wallawa Road, Nelson Bay subject to the conditions contained in **(ATTACHMENT 1)**.
- 

**BACKGROUND**

The purpose of this report is to present a Modification Application DA No. 16-2023-514-3, for internal and external configuration and layout changes to the original approved dwelling to Council for determination.

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

Subject Land:	111E Wallawa Road, Nelson Bay (Lot: 6 DP: 1277051)
Total Area:	1,147m <sup>2</sup>
Zoning:	R2 Low Density Residential Zone
Submissions:	Nil
Key Issues:	<ul style="list-style-type: none"><li>• The key issue identified throughout the assessment of the development relate to building height</li><li>• The dwelling proposes a maximum building height of 10.96m, which exceeds the 9m height limit by 1.96m, representing a 21.81% variation to the development standard</li><li>• The current approved building height is 9.9m (16-2023-514-2). Therefore, the increase to the current approved building height is 1.06m (10.74%)</li><li>• Land slope is 14 degrees.</li></ul>

The modification has been reported to Council in accordance with Council's 'Council Related Planning Matters Policy' as the application 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 21.81% (1.96m).



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

#### Original Proposal

The original development application sought approval for a 2 storey dwelling house and associated site works. The dwelling included a master bedroom with ensuite, 2 bedrooms with built in robes, sitting room, study, bathrooms, laundry, open plan living/dining spaces, double garage, and decking.

#### Modification Proposal

This modification application seeks approval to include a roof over the approved upper floor deck, along with minor internal and external configuration changes, including:

- Internal configuration/layout changes
- External window and door opening configuration changes, including sizing and selection
- Minor changes to finished floor levels
- Increase to overall all building height.

#### Site Description and History

The subject site is legally identified as Lot: 6, Deposited Plan: 1277051, and generally known as 111E Wallawa Road, Nelson Bay. The subject site is accessed via a Right of Accessway (from Wallawa Road). The site features a steep fall in topography down to the southern side of the site. The site is mapped as bushfire prone land and the proposed development will require BAL-FZ construction requirements. The site is cleared of any significant native vegetation that would be impacted by the proposed development. The site is located within an R2 Low Density Residential Zone, and is adjoined by dwelling houses and vacant residential sites.

#### Key Issues

##### Building Height

Whilst the dwelling exceeds the maximum building height limit, the development is considered to be appropriate for the context of the area which is characterised by dwellings of a similar bulk and scale. The height exceedance is generally located in the middle of the proposed dwelling with increased setbacks from the allotment boundaries.

It is considered the design provides adequate separation between the proposed and adjoining dwellings. The design includes significant articulation including areas of increased side setbacks that exceed the minimum requirement as stipulated in the Port Stephens Development Control Plan (PSDCP). The provided articulation



minimises the presentation of bulk as viewed from the public domain and neighbouring properties.

- The dwelling proposes a maximum building height of 10.96m, which exceeds the 9m height limit by 1.96m, representing a 21.81% variation to the development standard
- The current approved building height is 9.9m (16-2023-514-2). Therefore, the increase to the current approved building height is 1.06m (10.74%)
- The proposed development is considered to be appropriate of the context of the area in that many dwellings located on similarly steep sites in the surrounding area have been designed in a similar manner, that respond to the slope of the land
- The height exceedance is generally located in the middle of the proposed dwelling with increased setbacks from the allotment boundaries
- The proposed development does not contravene the objectives of the zone and is considered a good use of the site
- The upper level has been strategically set back and concealed to the centre of the proposed building. Subsequently limiting the visibility from the public domain, and reducing potential impacts on neighbouring properties
- The portion of the building above the height limit is roof area only, not habitable space
- The proposed development is considered to be appropriate for the context of the area which is characterised by dwellings of a similar bulk and scale.

#### Clause 4.6 Consideration

The original application and assessment gave consideration to the Clause 4.6 Variation, and as per established planning principles, a section 4.55 modification application can be approved even though it would contravene a development standard, and no clause 4.6 variation is required to be submitted with the modification application.

#### Conclusion

As detailed in the Planners Assessment Report (**ATTACHMENT 3**), the application is considered to be consistent with the aims and objectives of the relevant environmental planning instruments and Council policies applicable to the subject site. There will be no adverse impact to the natural or built environment. It is considered that the proposal has been suitably designed to address the site constraints and despite the variation to the building height development standard, will not result in significant overshadowing, privacy or adverse visual impacts.

Council staff are satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted, and that the proposed modification is of minimal environmental impact.



## 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 development application is consistent/inconsistent with Council's Policy.

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



## **SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

### Social and Economic Impacts

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

The proposed development has been designed to reduce potential adverse impacts to neighbouring properties from an amenity perspective.

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

### Impacts on the Built Environment

The development is considered to be appropriate for the context of the area which is characterised by dwellings of a similar bulk and scale.

It is considered the design provides adequate separation between the proposed and adjoining dwellings. The design includes significant articulation including areas of increased side setbacks that exceed the minimum requirement as stipulated in the PSDCP. The setbacks are consistent with the locality and neighbouring properties (where existing). The provided articulation minimises the presentation of bulk as viewed from the public domain and neighbouring properties.

Overall, the proposed development is considered suitable for the surrounding built environment.

### Impacts on the Natural Environment

The proposed development is not expected to negatively impact the natural environment.

## **CONSULTATION**

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

### Internal

Nil.



### Public Notification

The modification application was notified in accordance with the provisions of the Port Stephens Council Community Engagement Strategy. The notification period was from 18 March 2024 to 1 April 2024. No submissions were received.

### **OPTIONS**

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

### **ATTACHMENTS**

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

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

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

### **TABLED DOCUMENTS**

Nil.



## RECOMMENDED CONDITIONS OF CONSENT

## General Conditions

1	<p><b>Compliance with Building Code of Australia and insurance requirements under Home Building Act 1989</b></p> <ol style="list-style-type: none"> <li>1. It is a condition of a development consent for development that involves building work that the work must be carried out in accordance with the requirements of the Building Code of Australia.</li> <li>2. It is a condition of a development consent for development that involves residential building work for which a contract of insurance is required under the Home Building Act 1989, Part 6 that a contract of insurance is in force before building work authorised to be carried out by the consent commences.</li> <li>3. It is a condition of a development consent for a temporary structure used as an entertainment venue that the temporary structure must comply with Part B1 and NSW Part H102 in Volume 1 of the Building Code of Australia.</li> <li>4. In subsection (1), a reference to the Building Code of Australia is a reference to the Building Code of Australia as in force on the day on which the application for the construction certificate was made.</li> <li>5. In subsection (3), a reference to the Building Code of Australia is a reference to the Building Code of Australia as in force on the day on which the application for development consent was made.</li> <li>6. This section does not apply— <ol style="list-style-type: none"> <li>a. to the extent to which an exemption from a provision of the Building Code of Australia or a fire safety standard is in force under the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021, or</li> <li>b. to the erection of a temporary building, other than a temporary structure to which subsection (3) applies.</li> </ol> </li> </ol> <p><b>Condition reason:</b> Prescribed condition under section 69 of the Environmental Planning and Assessment Regulation 2021.</p>
2	<p><b>Fulfilment of BASIX commitments</b></p> <p>It is a condition of a development consent for the following that each commitment listed in a relevant BASIX certificate is fulfilled—</p> <ol style="list-style-type: none"> <li>1. BASIX development,</li> <li>2. BASIX optional development, if the development application was accompanied by a BASIX certificate.</li> </ol> <p><b>Condition reason:</b> Prescribed condition under section 75 of the Environmental Planning and Assessment Regulation 2021.</p>
3	<p><b>Notification of Home Building Act 1989 requirements</b></p>



## ITEM 2 - ATTACHMENT 1 RECOMMENDED CONDITIONS OF CONSENT.

	<ol style="list-style-type: none"><li>1. This section applies to a development consent for development involving residential building work if the principal certifier is not the council.</li><li>2. It is a condition of the development consent that residential building work must not be carried out unless the principal certifier for the development to which the work relates has given the council written notice of the following—<ol style="list-style-type: none"><li>a. for work that requires a principal contractor to be appointed—<ol style="list-style-type: none"><li>i. the name and licence number of the principal contractor, and</li><li>ii. the name of the insurer of the work under the Home Building Act 1989, Part 6,</li></ol></li><li>b. for work to be carried out by an owner-builder—<ol style="list-style-type: none"><li>i. the name of the owner-builder, and</li><li>ii. if the owner-builder is required to hold an owner-builder permit under the Home Building Act 1989—the number of the owner-builder permit.</li></ol></li></ol></li><li>3. If the information notified under subsection (2) is no longer correct, it is a condition of the development consent that further work must not be carried out unless the principal certifier has given the council written notice of the updated information.</li><li>4. This section does not apply in relation to Crown building work certified to comply with the Building Code of Australia under the Act, Part 6.</li></ol>															
	<b>Condition reason:</b> Prescribed condition under section 71 of the Environmental Planning and Assessment Regulation 2021.															
4	<b>Approved plans and supporting documentation</b>  Development must be carried out in accordance with the following approved plans and documents, except where the conditions of this consent expressly require otherwise. <table border="1"><thead><tr><th colspan="5">Approved plans</th></tr><tr><th>Plan number</th><th>Revision number</th><th>Plan title</th><th>Drawn by</th><th>Date of plan</th></tr></thead><tbody><tr><td>2303456F</td><td>Rev F</td><td>Architectural Sheets 1 - 18</td><td>Sorensen Design &amp; Planning</td><td>09/11/2023</td></tr></tbody></table> <p>In the event of any inconsistency between the approved plans and documents, the approved Plans prevail.</p> <p>In the event of any inconsistency with the approved plans and a condition of this consent, the condition prevails.</p> <p>(PAN-414842 (approval date) Condition was amended)</p>	Approved plans					Plan number	Revision number	Plan title	Drawn by	Date of plan	2303456F	Rev F	Architectural Sheets 1 - 18	Sorensen Design & Planning	09/11/2023
Approved plans																
Plan number	Revision number	Plan title	Drawn by	Date of plan												
2303456F	Rev F	Architectural Sheets 1 - 18	Sorensen Design & Planning	09/11/2023												
	<b>Condition reason:</b> To ensure all parties are aware of the approved plans and supporting documentation that applies to the development															
5	<b>Completion of Roads Act Approval works</b>															



	<p>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.</p> <p><b>Condition reason:</b> To ensure that all works within the road reserve are completed in accordance with S149 of the Roads Act.</p>
6	<p><b>Excavation for Residential Building Works</b></p> <p>If the approved development involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the consent must, at the person's own expense:</p> <ul style="list-style-type: none"> <li>a) protect and support the adjoining premises from possible damage from the excavation;</li> <li>b) where necessary, underpin the adjoining premises to prevent any such damage.</li> </ul> <p>This condition does not apply if the person having the benefit of the consent owns the adjoining land or the owner of the adjoining land has given consent in writing to that condition not applying, and a copy of that written consent is provided to the PCA prior to the excavation commencing.</p> <p><b>Condition reason:</b> To ensure development that involves excavation that extends below the base of the footings of a building on adjoining land will not result in adverse impacts to adjoining lots.</p>
7	<p><b>Footpath Crossing Construction</b></p> <p>A footpath crossing and driveway must be constructed in accordance with this consent and the approved Construction Certificate prior to use or occupation of the development.</p> <p>Note: A Works on Public Infrastructure (Driveway) approval must be obtained prior to the commencement of such works.</p> <p><b>Condition reason:</b> To ensure that the developer constructs a footpath crossing with the relevant S149 Approval.</p>
8	<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</p>



**Building Work****Before issue of a construction certificate**

9	<b>Slope Stability</b>
	A Slope Stability Analysis Assessment, prepared by a suitably qualified geotechnical engineer/ engineering geologist, shall be submitted to the Principal Certifying authority prior to the issue of the Construction Certificate.
	<b>Condition reason:</b> To address slope stability.

**Before building work commences**

10	<b>All Weather Access</b>
	A 3m wide all-weather vehicle access is to be provided from the kerb and gutter to the building under construction for the delivery of materials and use by trades people.
	No materials, waste or the like are to be stored on the all-weather access at any time.
	<b>Condition reason:</b> To ensure that adequate vehicular access is provided to and from the site, prior to the commencement of works.
11	<b>Damage report – Public Infrastructure</b>
	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
	<b>Condition reason:</b> Small-scale development - Where the development is in close proximity to Council infrastructure.
12	<b>Notice Commencement of Work</b>
	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:
	<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> </ul>



	<p>c) the address of the land on which the work is to be carried out;</p> <p>d) the Registered numbers and date of issue of the development consent and construction certificate;</p> <p>e) a statement signed by or on behalf of the principal certifier that all conditions of the consent that must be satisfied before the work commences have been satisfied; and</p> <p>f) the date on which the work is intended to commence.</p> <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 1979 and Sec</p>
13	<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> <p>a) a description of the work to be carried out;</p> <p>b) the address of the land on which the work is to be carried out;</p> <p>c) the Registered number and date of issue of the relevant development consent;</p> <p>d) the name and address of the Principal Certifier and the person who appointed the principal certifier;</p> <p>e) if the principal certifier is a registered certifier</p> <p>i) the certifier's registration number, and</p> <p>ii) a statement signed by the registered certifier to the effect that the certifier consents to being appointed as principal certifier, and</p> <p>iii) a telephone number on which the certifier may be contacted for business purposes.</p> <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</p>
14	<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 Roads Act 1993</p>



## ITEM 2 - ATTACHMENT 1 RECOMMENDED CONDITIONS OF CONSENT.

	<b>Condition reason:</b> To ensure that works within the road reserve are approved by a Section 138B Approval of the Roads Act 1993.
15	<b>Rubbish Generated from the Development</b>
	Where not already available, a waste containment facility is to be established on site. The facility is to be regularly emptied and maintained for the duration of works.
	No rubbish must be stockpiled in a manner which facilitates the rubbish to be blown or washed off site. The site must be cleared of all building refuse and spoil immediately upon completion of the development.
	<b>Condition reason:</b> To ensure that construction waste is appropriately stockpiled and removed from site.

**During building work**

16	<b>Compliance with the Building Code of Australia</b>
	Building work must be carried out in accordance with the requirements of the Building Code of Australia.
	<b>Condition reason:</b> To ensure that the development is undertaken in accordance with the Building Code of Australia.
17	<b>Discovery of relics and Aboriginal objects</b>
	While site work is being carried out, if a person reasonably suspects a relic of 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>
	Site work may recommence at a time confirmed in writing by:
	<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



18	<b>Hours of work</b>
	Site work must only be carried out between the following times –  7:00am to 5:00pm on Monday to Saturday  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.
	<b>Condition reason:</b> To protect the amenity of the surrounding area
19	<b>Noise and vibration – an approved document of this consent</b>
	While site work is being carried out, noise generated from the site must be controlled in accordance with the requirements of the approved noise and vibration management plan.
	<b>Condition reason:</b> To protect the amenity of the neighbourhood during construction
20	<b>Offensive Noise, Dust, Odour and Vibration</b>
	All work must not give rise to offensive noise, dust, odour or vibration as defined in the Protection of the Environment Operations Act 1997 when measured at the nearest property boundary.
	<b>Condition reason:</b> To ensure that developments do not give rise to offensive noise, dust, odour, or vibration.
21	<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.
22	<b>Stormwater Disposal</b>
	Following the installation of any roof, collected stormwater runoff from the structure must be:  a) Diverted through a first flush system before being connected to an existing stormwater easement/system/street.



	<b>Condition reason:</b> All applications.
23	<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 an 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>
24	<p><b>Bushfire Construction Requirements</b></p> <p><b>Asset Protection Zones</b></p> <p>The intent of measure is to provide sufficient space and maintain reduced fuel loads to ensure radiant heat levels at the buildings are below critical limits and prevent direct flame contact.</p> <p>1. At the commencement of building works and in perpetuity, the entire site must be maintained as an inner protection area in accordance with the requirements of Appendix 4 of Planning for Bush Fire Protection 2019. When establishing and maintaining an inner protection area, the following requirements apply:</p> <ul style="list-style-type: none"> <li>• tree canopy cover should be less than 15% at maturity;</li> <li>• trees at maturity should not touch or overhang the building;</li> <li>• lower limbs should be removed up to a height of 2 m above the ground;</li> <li>• tree canopies should be separated by 2 to 5 m;</li> <li>• preference should be given to smooth-barked and evergreen trees;</li> <li>• large discontinuities or gaps in the shrubs layer should be provided to slow down or break the progress of fire towards buildings;</li> <li>• shrubs should not be located under trees;</li> <li>• shrubs should not form more than 10% ground cover;</li> <li>• clumps of shrubs should be separated from exposed windows and doors by a distance of at least twice the height of the vegetation;</li> <li>• grass should be kept mown (as a guide, grass should be kept to no more than 100mm in height); and</li> <li>• leaves and vegetation debris should be removed regularly.</li> </ul> <p><b>Construction Standards</b></p> <p>The intent of measure is to minimise the risk of bush fire attack and provide protection for emergency services personnel, residents and others assisting firefighting activities.</p>



2(a). New construction of southern and eastern elevations must comply with Section 3 (excluding section 3.5) and Section 9 (BAL FZ) of Australian Standard AS3959-2018 Construction of buildings in bushfire-prone areas or the relevant requirements of the NASH Standard - Steel Framed Construction in Bushfire Areas (incorporating amendment A - 2015). New construction must also comply with the construction requirements in Section 7.5 of Planning for Bush Fire Protection 2019.

2(b). New construction of the north and western elevation, carport deck and the windows facing south on the second story facing the roof garden must comply with section 3 and section 8 (BAL 40) Australian Standard AS3959-2018 Construction of buildings in bush fire-prone areas or NASH Standard National Standard Steel Framed Construction in Bushfire Areas – 2021 as appropriate and section 7.5 of Planning for Bush Fire Protection 2019.

Note: It is recommended that specific details within the construction and site layout plans is dedicated to Bushfire Construction standards together with the landscaping plan to ensure bushfire requirements are clearly understood and applied throughout the project and beyond.

#### **Water and Utility Services**

The intent of measure is to provide adequate services of water for the protection of building during and after the passage of bush fire, and to minimise the risk of bush fire attack and provide protection for emergency services personnel, residents and others assisting firefighting activities.

4. The provision of water must comply with the following in accordance with Table 7.4a of Planning for Bush Fire Protection 2019:

- a 10,000 litre static water supply, tank, pool, dam or the like, must be provided on-site for the new dwelling,
- an outlet for firefighting purposes is located within the IPA or non-hazard side and away from the structure,
- 65mm Storz connection with a ball valve is fitted to the outlet,
- the ball valve, pipes and tank penetration are adequate for the full 50mm inner diameter water flow through the Storz fitting and are constructed of a metal material,
- underground tanks have an access hole of 200mm to allow tankers to refill, direct from the tank,
- a hardened ground surface for truck access is supplied within 4m of the water outlet or access hole,
- new above-ground tanks are manufactured from concrete or metal,
- raised tanks have their stands constructed from non combustible material or bush fire resisting timber. - - The bush fire-resisting timbers are Silvertop Ash, Blackbutt, Red or River Gum, Spotted Gum, Red Ironbark, Kwila (Merbau) or Turpentine,
- unobstructed access can be provided at all times,
- underground tanks are clearly marked,
- tanks on the hazard side of a building are provided with adequate shielding for the protection of firefighters,



- all exposed water pipes external to the building are metal, including any fittings,
- where pumps are provided, they are a minimum 5hp or 3kW petrol or diesel-powered pump, and are shielded against bush fire attack,
- any hose and reel for firefighting connected to the pump must be 19mm internal diameter,
- fire hose reels are constructed in accordance with AS/NZS 1221:1997, and installed in accordance with the relevant clauses of AS 2441:2005,
- A Static Water Supply (SWS) sign must be obtained from the local NSW Rural Fire Service (RFS) and positioned for ease of identification by RFS personnel and other users of the SWS. In this regard:
  - Markers must be fixed in a suitable location to be highly visible, and
  - Markers should be positioned adjacent to the most appropriate access for the water supply.

The intent of measure is to locate gas and electricity so as not to contribute to the risk of fire to a building and to provide protection for emergency services personnel, residents and others assisting firefighting activities.

5. The provision of electricity and gas must comply with the following in accordance with Table 5.3c of Planning for Bush Fire Protection 2019:

- where practicable, electrical transmission lines are underground;
- where overhead, electrical transmission lines are proposed as follows:
  - lines are installed with short pole spacing (30m), unless crossing gullies, gorges or riparian areas; and
  - no part of a tree is closer to a power line than the distance set out in accordance with the specifications in ISSC3 Guideline for Managing Vegetation Near Power Lines.
- reticulated or bottled gas is installed and maintained in accordance with AS/NZS 1596:2014 and the requirements of relevant authorities, and metal piping is used;
- all fixed gas cylinders are kept clear of all flammable materials to a distance of 10m and shielded on the hazard side; connections to and from gas cylinders are metal;
- polymer sheathed flexible gas supply lines are not used; and -
- above-ground gas service pipes are metal, including and up to any outlets.

#### Landscaping Assessment

The intent of measure is to minimise the risk of bush fire attack and provide protection for emergency services personnel, residents and others assisting firefighting activities.

6. Landscaping within the required asset protection zone must comply with Appendix 4 of Planning for Bush Fire Protection 2019. In this regard, the following principles are to be incorporated:

- Compliance with APZ standards within Appendix 4 of PBP 2019,



## ITEM 2 - ATTACHMENT 1 RECOMMENDED CONDITIONS OF CONSENT.

	<ul style="list-style-type: none"> <li>• If fencing, retaining wall, garden/path edging is within 6m of a building or in areas of BAL-29 or greater shall illustrate constructed of non-combustible materials;</li> <li>• A minimum 1 metre wide area (or to the property boundary where the setbacks are less than 1 metre), suitable for pedestrian traffic, must be provided around the immediate curtilage of the building;</li> <li>• Planting is limited in the immediate vicinity of the building;</li> <li>• Planting does not provide a continuous canopy to the building (i.e. trees or shrubs are isolated or located in small clusters);</li> <li>• Landscape species are chosen to ensure tree canopy cover is less than 15% (IPA), and less than 30% (OPA) at maturity and trees do not touch or overhang buildings;</li> <li>• Avoid species with rough fibrous bark, or which retain/shed bark in long strips or retain dead material in their canopies;</li> <li>• Use smooth bark species of trees species which generally do not carry a fire up the bark into the crown;</li> <li>• Avoid planting of deciduous species that may increase fuel at surface/ground level (i.e. leaf litter);</li> <li>• Avoid climbing species to walls and pergolas;</li> <li>• Locate combustible materials such as woodchips/mulch, flammable fuel stores away from the building;</li> <li>• Locate combustible structures such as garden sheds, pergolas and materials such as timber garden furniture away from the building; and</li> <li>• Low flammability vegetation species are used.</li> </ul>
	<b>Condition reason:</b> To conform with the provisions of s4.14 of the EP&A Act 1979

**Before issue of an occupation certificate**

25	<b>Occupation Certificate Required</b>
	<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 has been provided to the Principal Certifying Authority.</p>
26	<b>Repair of infrastructure</b>
	<p>Before the issue of an occupation certificate, the applicant must ensure any public infrastructure damaged as a result of the carrying out of building works (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub-contractors, concreting vehicles) is fully repaired to the written satisfaction of Council, and</p>



	<p>at no cost to Council.</p> <p>Note: If the council is not satisfied, the whole or part of the bond submitted will be used to cover the rectification work.</p>
	<p><b>Condition reason:</b> To ensure that any damage resulting to public infrastructure is appropriately rectified at no cost to the Council.</p>
27	<p><b>Stormwater/Drainage Works</b></p> <p>All stormwater and drainage works required to be undertaken in accordance with this consent must be completed.</p> <p>The certification/verification must be provided to the satisfaction of the Principal Certifying Authority.</p> <p><b>Condition reason:</b> To ensure stormwater and drainage works have been undertaken in accordance with the approved plans.</p>


**Occupation and ongoing use**

No additional conditions have been applied to this stage of development.







 <b>PORT STEPHENS COUNCIL</b>		MODIFICATION ASSESSMENT AND PCA ADVICE (Only when Council appointed PCA)
<b>APPLICATION DETAILS</b>		
<b>Application Number</b>	16-2023-514-3	
<b>Modification Description</b> Is the development description correct <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	S4.55 (1A) Two storey dwelling - internal and external configuration and layout changes to the original approved dwelling	
<b>Applicant</b>	SORENSEN DESIGN & PLANNING	
<b>Land owner</b>	MR J G Marshall & MS M J Sorensen	
<b>Date of Lodgement</b>	26/02/2024	
<b>Value of Works</b> Is the estimated cost of works suitable? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	\$500,000.00	
<b>Building Classification</b> <i>If Applicable</i>	Class 1a	
<b>Application Type</b>	<input checked="" type="checkbox"/> DA <input type="checkbox"/> CC	
<b>Is Notification Required</b>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
<b>PROPERTY DETAILS</b>		
<b>Property Address</b>	111E Wallawa Road NELSON BAY	
<b>Lot and DP</b>	LOT: 6 DP: 1277051	
<b>88B Restrictions on Title</b> Council imposed that aren't suspended under cl 1.9A LEP?	Easement for batter (A). The proposed development is considered to align with the requirements as outlined in Schedule 8 (Part 6) of the Conveyancing Act 1919.	
<b>Current Use</b>	Vacant site. Dwelling house approved.	
<b>Zoning</b>	R2 LOW DENSITY RESIDENTIAL	
<b>Site Constraints</b>	Bushfire Prone Land, Acid Sulfate Soils (Class 5), SEPP Biodiversity (Chapter 2 and Chapter 4), Koala Habitat, Land Slip (Slope >20%).	



**MODIFICATION DETAILS**

This modification application seeks approval to include a roof over the approved upper floor deck, along with minor internal and external configuration changes, including:

- Internal configuration/layout changes.
- External window and door opening configuration changes, including sizing and selection.
- Minor changes to finished floor levels.
- Increase to overall all building height.

The amendments will result in an exceedance of the maximum height limit by greater than 10%, subsequently this triggers Council's Council Related Planning Matters Policy. Clause 5.1 (j) of that policy requires any DA which seeks to vary a development standard by greater than 10%, to be reported to Council for determination.

Whilst the dwelling exceeds the maximum building height limit, the development is considered to be appropriate for the context of the area which is characterised by dwellings of a similar bulk and scale. The height exceedance is generally located in the middle of proposed dwelling with increased setbacks from the allotment boundaries.

It is considered the design provides adequate separation between the proposed and adjoining dwellings. The design includes significant articulation including areas of increased side setbacks that exceed the minimum requirement as stipulated in the PSDCP. The provided articulation minimises the presentation of bulk as viewed from the public domain and neighbouring properties.

- The proposed overall building height is 10.963m, which results in a 21.81% variation to Clause 4.3.
- Further to the above, the current approved building height is 9.9m (16-2023-514-2). Therefore, the increase to the current approved building height is 1.063m or a 10.74% increase.
- The localised topography upon the land results in a height limit that constrains a reasonable architectural outcome upon the premise. The proposal will have a superior design outcome rather than including variation to the roof form for the sake of compliance.
- The height exceedance is generally located in the middle of proposed dwelling with increased setbacks from the allotment boundaries.
- The proposed development does not contravene the objectives of the zone and is considered a good use of the site.
- The upper level has been strategically set back and concealed to the centre of the proposed building. Subsequently limiting the visibility from the public domain, and reducing potential impacts on neighbouring properties.
- The portion of the building above the height limit is roof area, not habitable space.
- The proposed development is considered to be appropriate for the context of the area which is characterised by dwellings of a similar bulk and scale

**Clause 4.6 Consideration**

The original application and assessment gave consideration to the Clause 4.6 Variation, and as per established planning principles, a section 4.55 modification application can be approved even though it would contravene a development standard, and no clause 4.6 variation is required to be submitted with the modification application. The relevant judgements (originating with *North Sydney Council v Michael Standley & Associates Pty Ltd* [1998] NSWSC 163) say that section 96



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(now s4.55) is a 'free-standing provision', meaning that "a modification application may be approved notwithstanding the development would be in breach of an applicable development standard were it the subject of an original development application". What this means is that it is section 96 (now s4.55) itself which authorises the development to be approved notwithstanding any breach of development standards. Section 96 (now s4.55) is a broad power to approve, subject to its own stand-alone tests (such as the "substantially the same" test, and a requirement to consider all relevant s.79C matters (now s4.15). Section 96 (now s4.55) does not rely upon having clause 4.6 variation on order to enliven that power to approve.

Council staff are satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted, and that the proposed modification is of minimal environmental impact.

### SITE DESCRIPTION

The subject site is legally identified as Lot: 6, Deposited Plan: 1277051 (6/-/DP1277051), and generally known as 111E Wallawa Road NELSON BAY. The subject site is accessed via a Right of Accessway (from Wallawa Road). The site features a steep fall in topography down to the southern side of the site. The site is mapped as bushfire prone land and the proposed development will require BAL-FZ construction requirements. The site is cleared of any significant native vegetation that would be impacted by the proposed development. The site is located within an R2 Low Density Residential Zone, and is adjoined by dwelling houses and vacant residential sites.



Figure 1 – Site Aerial



SITE PHOTOS



Figure 2 – Site Photograph



Figure 3 – Site Photograph





Figure 4 – Site Photograph

#### **ASSESSMENT NOTES**

Council staff are satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted, and that the proposed modification is of minimal environmental impact. The post consent provisions as outlined under s4.55 of the Environmental Planning and Assessment Act 1979 have been reviewed, and it is considered the development is remains suitable for the subject land.

#### **REQUESTS FOR FURTHER INFORMATION (RFIs)**

Nil

#### **PEER REVIEWS**

Officer: Ryan Bridges

Date: 10/4/2024

#### **REFERRALS**

Nil required for modification.

Advice/concurrence was received from the NSW Rural Fire Service regarding bush fire protection for the original development application in accordance with section 4.14 of the Environmental



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Planning and Assessment Act 1979. No further consultation is required for this subject modification application, and the original recommend conditions provided the NSW Rural Fire Service will remain imposed on the modified consent.

## ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

**S4.12 - APPROVALS (SEC 68 LGA)**

Sub-Clause	Compliant	Notes – Application type
3	<input type="checkbox"/> A application has been made under Section 68 of the Local Government Act 1990 for the following:  <input type="checkbox"/> An application is required under the Local Government Act 1990 for the following:  ie. Manufactures Home or OSMS approval	<input checked="" type="checkbox"/> N/A

**S4.14 - Consultation and development consent (certain bushfire prone land)**

Sub-Clause	Compliant	Notes (where needed or if not compliant)
1	<input checked="" type="checkbox"/> Development is within bushfire prone land and conforms to the specifications and requirements of the PBP, or; <input checked="" type="checkbox"/> A certificate has been provided by a suitability qualified bushfire consultant of which confirms the bushfire risk assessment rating and identifies relevant specifications and requirements for compliance with PBP.	<p>The proposed development was referred to the NSW Rural Fire Service for consideration in accordance with s4.14 of the Environmental Planning and Assessment Act (Consultation and development consent).</p> <p>The NSW Rural Fire Service, were supportive of the proposed development, subject to recommend conditions of consent.</p> <p>Advice/concurrence was received from the NSW Rural Fire Service regarding bush fire protection for the original development application in accordance with section 4.14 of the Environmental Planning and Assessment Act 1979. No further consultation is required for this subject modification application, and the original recommend conditions provided the NSW</p>



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		Rural Fire Service will remain imposed on the modified consent.
1A	<input type="checkbox"/> The proposal does not conform to the relevant specifications and requirements and has been referred to the NSW RFS for assessment concerning measures to be taken with respect to protection of persons, property and the environment as a result of bushfire impacts.	<input checked="" type="checkbox"/> N/A

**S4.15 – Matters for Consideration****s4.15(1)(a)(i) – The provisions of any EPI**

STATE ENVIRONMENTAL PLANNING POLICY (RESILIENCE and HARZARDS 2021) (COASTAL MANAGEMENT)		
Clause	Compliant (Check where appropriate)	Notes (where needed or if not compliant)
2.1- 2.15	<input type="checkbox"/> Development is <b>within</b> the Coastal Management Areas and the SEPP applies including (coastal wetlands, coastal vulnerability area, coastal environment area, coastal use area)  <input type="checkbox"/> The development <b>will not</b> significantly impact the biophysical, hydrological or ecological integrity of the adjacent (coastal wetlands, littoral rainforest, coastal vulnerability area, coastal environment area, coastal use area)	<input checked="" type="checkbox"/> N/A
4.6	<input type="checkbox"/> The land <b>has not</b> been identified Contaminated Lands	<input checked="" type="checkbox"/> N/A

STATE ENVIRONMENTAL PLANNING POLICY (BUILDING SUSTAINABILITY INDEX BASIX) 2004		
Clause	Compliant (Check where appropriate)	Notes (where needed or if not compliant)
6	<input checked="" type="checkbox"/> The proposed BASIX affected development, or buildings that	A BASIX Certificate has been provided for the development, and the relevant



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	become BASIX affected development (conversion of garage for example) is accompanied by a BASIX certificate	commitments have been identified on the architectural plans.
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STATE ENVIRONMENTAL PLANNING POLICY (Biodiversity and Conservation) Koala Habitat Protection		
Clause	Compliant (Check where appropriate)	Notes (where needed or if not compliant)
<b>Non-rural lands</b>		
Section 4.8	<input checked="" type="checkbox"/> The subject site contains koala habitat, however, the proposed development is consistent with Council's Comprehensive Koala Plan of Management.	<p>This policy aims to encourage the conservation and management of areas of natural vegetation that provide habitat for koalas to support a permanent free-living population over their present range and reverse the current trend of koala population decline. The Policy requires that council's determination of the development application be consistent with Council's approved koala plan of management that applies to the land. Council has an approved Comprehensive Koala Plan of Management (CKPoM), which applies to this development.</p> <p>Council's CKPoM requires that proposed development "minimise the removal of any individuals of preferred koala food trees, where ever they occur".</p> <p>The proposed development is considered to align with Council's CKPoM, and there is no foreseen negative impact on koala habitat.</p>

PORT STEPHENS LOCAL ENVIRONMENTAL PLAN 2013		
Clause	Compliant (Check where appropriate)	Notes (where needed or if not compliant)
	<input checked="" type="checkbox"/> The relevant clauses and objectives of the PSC LEP 2013 have been considered as part of the assessment.	The proposed development aligns the clauses and objectives of the PSC LEP 2013, as detailed below.
1.9A	<input type="checkbox"/> DP & 88B Instrument - There an 88B in place, where PSC is beneficiary,	Easement for batter (A). The proposed development is considered to align with the



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	which impacts on the proposed development?	requirements as outlined in Schedule 8 (Part 6) of the Conveyancing Act 1919.
2.1	<input checked="" type="checkbox"/> Permissible in zone and meets zone objectives.	The proposed development is defined as a dwelling house which is permissible with consent in the R2 – Low Density Residential Zone. The proposal is considered to be consistent with the objectives of the zone in that it will provide additional housing in an established and emerging residential area, and is compatible with surrounding development.
2.7	<input type="checkbox"/> Demolition proposed and is not included as exempt under the SEPP. <input type="checkbox"/> Potential asbestos contained with condition of consent added.	<input checked="" type="checkbox"/> N/A
4.1	<input checked="" type="checkbox"/> The proposal is consistent with the Lot Size Map;	Clause 4.1 outlines the minimum lot size applicable to the subject site, 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> . The existing site area is 1,147m <sup>2</sup> which exceeds the minimum lot size, further there is no proposed subdivision within this development application.
4.3	<input type="checkbox"/> Proposed development is under maximum building height; OR, <input type="checkbox"/> There is no maximum building height and the development satisfies the objectives of the clause.	The proposed development exceeds the maximum allowable building height, please refer to Clause 4.6 below.
4.6	<input checked="" type="checkbox"/> Proposed development proposed to vary the development standards of the LEP	<ul style="list-style-type: none"> <li>- Standard to be varied: Clause 4.3</li> <li>- Extent of variation : 21.81%</li> <li>- Overall building height: 10.963m</li> <li>- Has reasonable justification been provided to support the variation: Yes</li> </ul> <p>The original application and assessment gave consideration to the Clause 4.6 Variation, and as per established planning principles, a section 4.55 modification application can be approved even though it would contravene a development standard. Please refer to Modification Details, for further information above.</p>



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5.10	<input checked="" type="checkbox"/> There are no heritage items / archaeological sites / Aboriginal objects or places / conservation areas located on the subject site; OR <input type="checkbox"/> The proposal includes impact on a heritage item / Archaeological site / Aboriginal object or place / conservation area;	<input type="checkbox"/> N/A
5.21	<input type="checkbox"/> Development within flood planning area but no anticipated flood risk to life and property, or change in flood characteristics.	<input checked="" type="checkbox"/> N/A
7.1	<input checked="" type="checkbox"/> Potential Class 5 Acid Sulfate Soils (ASS); OR, <input type="checkbox"/> Potential Class 4 ASS with no works more than 2m below ground level; OR, <input type="checkbox"/> Potential Class 3 ASS with no works more than 1m below ground level; OR, <input type="checkbox"/> Potential Class 2 ASS with no works below ground level; OR, <input type="checkbox"/> Potential Class 1 ASS and an acceptable management plan has been submitted.	The proposal does not trigger the requirement for an Acid Sulfate Soils Management Plan or further preliminary investigation.
7.2	<input checked="" type="checkbox"/> Earthworks required, but do not have negative impacts on surrounding properties.	Earthworks are required to facilitate the construction of the dwelling. The proposed development has been appropriately designed to respond to the existing site topography, and minimising land shaping outside of the building footprint.
7.4	<input type="checkbox"/> Airspace Operation – The proposed development does not penetrate the Limitation or Operations Surface height identified on GIS mapping	<input checked="" type="checkbox"/> N/A
7.5	<input type="checkbox"/> Within ANEF 20 contour or higher but does not result in an increased number of people affected by aircraft noise.	<input checked="" type="checkbox"/> N/A
7.6	<input checked="" type="checkbox"/> Essential services are available to the site where required. <input type="checkbox"/> The development requires an Onsite Waste management System ( <b>OSMS</b> )	The subject site is serviced by reticulated water, electricity and sewer. In addition the application has demonstrated that stormwater drainage resulting from roof and hard stand areas can be catered for in accordance with Council's requirements –



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		by way of a condition being imposed on any development consent.
7.8	<input type="checkbox"/> Development is within the drinking water catchment but will not result in a significant adverse impact on water quality or flows.	<input checked="" type="checkbox"/> N/A
7.9	<input type="checkbox"/> Subject land contains mapped wetlands, but development does not result in adverse impacts on ecology or water flows.	<input checked="" type="checkbox"/> N/A

s4.15(1)(a)(ii) – Any Draft EPINILs4.15(1)(a)(iii) – Any DCP

PORT STEPHENS DEVELOPMENT CONTROL PLAN 2014		
Clause	Compliant (Check where appropriate)	Notes (where needed or if not compliant)
Part A	<input checked="" type="checkbox"/> The relevant clauses and objectives of the PSC DCP have been considered as part of the assessment.	<input type="checkbox"/> N/A
B1	<input type="checkbox"/> Trees to be removed do not require approval as outlined in B1.1.	This part applies to development to remove or prune trees or other vegetation within non-rural areas and therefore applies to the site. No significant trees or vegetation will be adversely impacted by the proposed development, or result in significant impacts on threatened species.
B2	<input checked="" type="checkbox"/> Not in proximity of items of environmental significance. <input checked="" type="checkbox"/> Land does not contain koala habitat or development is consistent with the CKPoM.	The proposed development is considered to align with Council's CKPoM, and there is no foreseen negative impact on koala habitat.
	<input type="checkbox"/> <b>Biodiversity Value Map (BDAR)</b> - The development is not within or	The site is no located within Biodiversity Values Mapped area.



	proposing any vegetation clearing in areas mapped as Biodiversity Value.											
	<div><input type="checkbox"/> The development is not clearing native vegetation over the Biodiversity Offsets Scheme Threshold:</div> <table><tr><th>Minimum lot size associated with the property</th><th>Threshold for clearing, above which the BAM and offsets scheme apply</th></tr><tr><td>Less than 1 ha</td><td>0.25 ha or more</td></tr><tr><td>1 ha to less than 40 ha</td><td>0.5 ha or more</td></tr><tr><td>40 ha to less than 1000 ha</td><td>1 ha or more</td></tr><tr><td>1000 ha or more</td><td>2 ha or more</td></tr></table>	Minimum lot size associated with the property	Threshold for clearing, above which the BAM and offsets scheme apply	Less than 1 ha	0.25 ha or more	1 ha to less than 40 ha	0.5 ha or more	40 ha to less than 1000 ha	1 ha or more	1000 ha or more	2 ha or more	<div><input checked="" type="checkbox"/> N/A</div>
Minimum lot size associated with the property	Threshold for clearing, above which the BAM and offsets scheme apply											
Less than 1 ha	0.25 ha or more											
1 ha to less than 40 ha	0.5 ha or more											
40 ha to less than 1000 ha	1 ha or more											
1000 ha or more	2 ha or more											
B3	<div><input type="checkbox"/> Earthworks would have minimal environmental impacts with conditions on VENM fill and erosion and sediment controls.</div>	Earthworks are required to facilitate the construction of the dwelling. The proposed development has been appropriately designed to respond to the existing site topography, and minimising land shaping outside of the building footprint.										
B4 Water Quality & Drainage	<div><div><input checked="" type="checkbox"/> The development meets the requirements of Figure FD for Maximum impervious surface area. Lots less than 900m<sup>2</sup> = 60% max Lots 900 - 2000m<sup>2</sup> = 40% max Lots 200 – 5000<sup>2</sup> = 30% max Lots greater than 5000m<sup>2</sup> = 7.5% max</div><div><input type="checkbox"/> The development meets the requirements of Figure FB for no water quality measure required.</div><div><input type="checkbox"/> Development is with the GIS drainage problem area.</div><div><input type="checkbox"/> Development is with the GIS drainage requirements area.</div></div>	Site Coverage 28.2%. Stormwater drainage resulting from roof and hard stand areas can be catered for in accordance with Council's requirements – by way of a condition being imposed on any development consent.										



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B5	<input type="checkbox"/> Proposed development is on flood prone land; AND, <input type="checkbox"/> A flood certificate has been submitted with the application and the finished levels are consistent with Table 2: Development Suitability Table; AND, <input type="checkbox"/> The submitted documents are consistent with Figure B1: Development Suitability Table.	<input checked="" type="checkbox"/> N/A
B6	<input type="checkbox"/> Development within noise planning area is consistent with Clause 7.5 of the LEP – Aircraft Noise; AND <input type="checkbox"/> An Acoustic report has been provided supporting the proposed development	<input checked="" type="checkbox"/> N/A
B7	<input type="checkbox"/> Development relates to a heritage item or conservation area, however is of minor nature or would not impact on the significance of the item; <input type="checkbox"/> No expected impact to Aboriginal heritage.	<input checked="" type="checkbox"/> N/A
C4	<input checked="" type="checkbox"/> Proposal ensures development provides continuity to the street and setbacks comply with C4.B <input checked="" type="checkbox"/> Development appropriately activates the street with habitable rooms where applicable. <input checked="" type="checkbox"/> The proposed development would be sympathetic to the streetscape as it is consistent with the existing development in its form, height, bulk, design and materials and does not adversely affect the amenity of neighbouring properties or the public domain. <input checked="" type="checkbox"/> The development satisfy the C4.D for private open space <input checked="" type="checkbox"/> The development satisfy the C4.E for off-street parking	<p>It is considered that the design is sympathetic to the existing landscape character and built form, and that the dwelling provides an appropriate level of passive surveillance.</p> <p>Whilst the dwelling exceeds the maximum building height limit, the development is considered to be appropriate for the context of the area which is characterised by dwellings of a similar bulk and scale. The height exceedance is generally located in the middle of proposed dwelling with increased setbacks from the allotment boundaries.</p> <p>It is considered the design provides adequate separation between the proposed and adjoining dwellings. The design includes significant articulation including areas of increased side setbacks that exceed the minimum requirement as stipulated in the PSDCP. The provided articulation minimises the presentation of bulk as viewed from the public domain and neighbouring properties.</p>



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		<p>Council staff are satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted, and that the proposed modification is of minimal environmental impact. The post consent provisions as outlined under s4.55 of the Environmental Planning and Assessment Act 1979 have been reviewed, and it is considered the development is remains suitable for the subject land.</p>
C8	<p><input type="checkbox"/> Residential Shed in a residential zone (except R5 Large Lot Residential adhered to:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Maximum gross floor area of 72m<sup>2</sup>;</li> <li><input type="checkbox"/> Maximum height of 3.6m;</li> <li><input type="checkbox"/> Minimum side and rear setback of 0.9m; and</li> <li><input type="checkbox"/> Minimum 1m behind the building line or setback; or</li> </ul> <p><input type="checkbox"/> The proposed shed exceeds the requirements of C8.1 however demonstrates consistency with the exceptions for residential sheds on Land zoned R5 Large Lot Residential.</p> <p><input type="checkbox"/> Sheds on R5 Large Lot residential achieves the requirements under Figure CO or the exceptions listed under C8.4.</p> <p><input type="checkbox"/> Rural Shed in a rural zone adheres to:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> minimum 10m side and rear boundary setback;</li> <li><input type="checkbox"/> minimum 5m setback from another building; and</li> <li><input type="checkbox"/> Colour scheme consistent with the existing character of the area.</li> </ul> <p><input type="checkbox"/> Swimming pools achieve the appropriate boundary setback and decking height requirements.</p>	<p><input checked="" type="checkbox"/> N/A</p>



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	<input type="checkbox"/> Fencing and/or retaining walls achieves the location and height requirements. <input type="checkbox"/> Shipping containers complies with C8.18 to C8.20.	
	<b>Additional Considerations</b>	
	<input type="checkbox"/> <b>Noxious Weeds</b> - The site identified as being affected by Noxious Weeds	<input checked="" type="checkbox"/> N/A
	<input checked="" type="checkbox"/> <b>Land Slip</b> - The site located with a Land Slip zone	A limited geotechnical investigation has been undertaken and supports the proposed development subject to recommendations.
	<input type="checkbox"/> <b>Driveways</b> - The proposed driveway located clear of kerb inlet pits, street trees, signage, etc?	<input checked="" type="checkbox"/> N/A
	<input type="checkbox"/> <b>Contaminated land</b> - The land is identified as contaminated lands on the PSC register	<input checked="" type="checkbox"/> N/A

**s4.15(1)(a)(iiia) – Any planning agreement or draft planning agreement entered into under section 7.4**

NIL

**s4.15(1)(a)(iv) – The regulations**

NIL

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

	Notes (where needed)
<input checked="" type="checkbox"/> <b>Social and Economic Environment:</b> There would be beneficial impacts as a result of the development.	



## ITEM 2 - ATTACHMENT 3 PLANNER'S ASSESSMENT REPORT.

<input checked="" type="checkbox"/> <b>Built Environment:</b> The proposed development would not cause harm to the existing character.	
<input checked="" type="checkbox"/> <b>Natural Environment:</b> There are no adverse impacts expected as a result of the proposed development and appropriate conditions have been added.	

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

The suitability of the site is detailed above in the assessment report notes.

The matters for consideration under s4.15 of the Environmental Planning and Assessment Act 1979 have been reviewed, and it is considered the development is suitable for the subject land.

**s4.15(1)(d) – Any submissions**

☒ The modification application was exhibited in accordance with the provisions of the Port Stephens Council Community Engagement Strategy. No submissions were received with relation to the subject development proposal

**s4.15(1)(e) – The public interest**

- The proposed development, subject to the recommended conditions, is consistent with the objectives of the applicable environmental planning instruments, being; Port Stephens Local Environmental Plan 2013 (PSLEP).
- The proposed development is, subject to the recommended conditions, consistent with the objectives of the Port Stephens Council Development Control Plan 2014 (PSDCP).
- Subject to the recommended conditions the proposed development will be provided with adequate essential services required under the PSLEP.
- The proposed development is considered to be of an appropriate scale and form for the site and the character of the locality.
- The proposed development, subject to the recommended conditions, will not result in unacceptable adverse impacts upon the natural or built environments.
- The proposed development is a suitable and planned use of the site and its approval is within the public interest.
- Any submission issues raised have been taken into account in the assessment report and where appropriate conditions of consent have been included in the determination. Council has



given due consideration to community views when making the decision to determine the application.

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

Not applicable

**DETERMINATION**

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

MICHAEL JACOBSON  
Principal Building Surveyor



ITEM NO. 3

FILE NO: 24/90326  
EDRMS NO: 16-2024-45-1

**DEVELOPMENT APPLICATION 16-2024-45-1 AT 226 SANDY POINT ROAD,  
SALAMANDER BAY**

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

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Approves Development Application DA No. 16-2024-45-1, for a 1 into 2 lot Torrens title subdivision and construction of a dwelling and swimming pool, subject to conditions contained in **(ATTACHMENT 1)**.

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**BACKGROUND**

The purpose of this report is to present Development Application (DA) 16-2024-45-1 for a 1 into 2 lot Torrens title subdivision and additional dwelling at 226 Sandy Point Road, Salamander Bay to Council for determination.

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

Subject Land:	226 Sandy Point Road, Salamander Bay (Lot 256 DP 730353)
Total Area:	797.8m <sup>2</sup>
Zoning:	R2 Low Density Residential
Submissions:	3 - Objections
Key Issues	The key issues relating to the proposed development include bushfire risk, site suitability and public interest.

The development application has been reported in accordance with Council's 'Planning Matters to be Reported to Council Policy' as it has been called up by Councillor Arnott and Councillor Anderson **(ATTACHMENT 2)**.

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

Proposal

The proposed development seeks consent for a staged development involving the removal of existing vegetation on the site, a 1 into 2 lot Torrens title subdivision, the construction of a detached 2 storey dwelling (1 existing), and construction of a swimming pool. The proposed staging of the development is as follows:



- Stage 1: 1 into 2 lot Torrens title subdivision creating the following lots:
  - Lot 1: 297.7m<sup>2</sup> containing the existing dwelling on site.
  - Lot 2: 500.1m<sup>2</sup> to be vacant for the construction of the proposed detached dwelling.
- Stage 2: Construction of the detached dwelling and swimming pool on Lot 2.

The detached dwelling proposed consists of 4 bedrooms, 1 with an ensuite, 1 bathroom and water closet, open plan living, kitchen and dining area, a rumpus room, office, outdoor alfresco and attached double car garage. Access to the proposed dwelling will be via a battle-axe handle from Sandy Point Road while the dwelling retained on Lot 1 will utilise the existing driveway from Sandy Point Road.

#### Site Description and History

The subject site (the site) is located at 226 Sandy Point Road, Salamander Bay, legally identified as Lot 256 DP 730353. The site is a regular shaped rectangular lot 19m wide and 34m deep with an area totalling 797.8m<sup>2</sup>. The site features a generally flat topography, with a slight fall from east to west within the front portion of the site.

The site is located within an established residential area and has direct street frontage to Sandy Point Road. Mambo Wetlands Reserve (Council managed community land) is located immediately to the west of the site and similar low density residential developments are located to the north, east and south. The site has historically been used for residential purposes and currently contains an existing residential dwelling and minor landscaped vegetation.

A previous development application (DA16-2023-29-1) which proposed the same development was refused by Council on 26 September 2023 as a Bushfire Safety Authority had not been issued by the Rural Fire Service (RFS) and for matters relating to registering an 88B restriction on the Mambo Wetlands. In response to the refusal, an amended Bushfire Threat Assessment (BTA) was prepared and submitted to the RFS on behalf of the applicant. On 11 March 2024, a Bush Fire Safety Authority was issued by the RFS and the key reasons for refusal outlined in the previous DA have been satisfactorily addressed.

#### Key Issues

The key issues identified throughout the assessment of the development relate to bushfire risk, site suitability and public interest.

A detailed assessment of the proposed development and there matters is contained within the Planners Assessment Report (**ATTACHMENT 4**).



Bushfire Risk

The proposed development required integrated referral under s100B of the Rural Fires Act 1997 as the development includes the subdivision of bushfire-prone land that could lawfully be used for residential purposes.

The proposed development had previously been refused on 26 September 2023 as the DA had not satisfactorily demonstrated that the development could comply with the specifications and requirements of the Planning for Bushfire Protection 2019 (PBP 2019). Subsequently, the NSW Rural Fire Service (RFS) did not issue a Bushfire Safety Authority.

The main point of contention raised under the previous DA was the reliance on the establishment of an Asset Protection Zone (APZ) on Council owned community land. This presented a variation to the PBP 2019, which specifies under Section 3.2 that APZs are contained within the development site and not on adjoining land.

While it was acknowledged that Council manages the adjoining land within the Mambo Wetlands for bushfire protection purposes, the previous Bushfire Threat Assessment (BTA) and RFS referral advice required Council to enter a legally binding agreement under Section 88B of the Conveyancing Act 1919 to formalise this APZ to the benefit of the subject site. The creation of this easement was rejected by Council on various grounds, including on the basis that the land was not suitable for the creation of easements, in that it is classified as community land under the Local Government Act 1993.

In response to the refusal, an amended Bushfire Threat Assessment (BTA) was prepared by the applicant and submitted with the new DA. The revised BTA included radiant heat shielding measures and the completion of additional vegetation surveys to better inform the fire danger index.

Also of importance for the subject DA is a recent Land and Environment Court decision. *Easters Development Pty Ltd v Shoalhaven City Council* (2023) NSWLEC considered whether it was appropriate to rely upon land within a Council reserve for bushfire protection and whether this land can be considered managed for the life of the development. The Court found that the land in this instance had evidence of a clear history of management and there was no documentation or evidence to suggest that the respective Council would not continue to manage the land for bushfire protection purposes. Furthermore, a Plan of Management (PoM) or easement was not required as there was already a PoM for the community land. On this basis, the Court determined that the existing APZ on Council land will remain for the life of the development. Therefore, the land in this case could be considered managed land and it was not necessary to apply for an easement or other legal mechanism for ongoing maintenance. The decision in the Easter Developments LEC matter was issued on 5 December 2023, after the refusal of the previous DA by Council.



The BTA prepared for this application was provided to the RFS as part of the integrated referral. The RFS undertook an independent review of the BTA which found the conclusions and findings were accurate and the development was subsequently supported with GTAs and a Bush Fire Safety Authority was issued. The RFS also attended the site to specifically review the bushfire risk associated with the development associated with Mambo Wetlands.

On the above grounds, the legislative requirements under Section 4.47 of the Environmental Planning and Assessment Act 1979 have been satisfied. The development is considered to be compatible with the bushfire risk of the site and consistent with the specifications and requirements of the PBP 2019. On this basis, the grounds for refusal under the previous DA are now deemed to have been satisfied.

#### Site Suitability

As detailed under the former DA (DA16-2023-29-1), the site had previously been considered unsuitable for the proposed development due to the bushfire hazard presented from the Mambo Wetlands and requirement for an 88B restriction to be registered on community land. This decision was based upon the information available at the time, which required an easement or other legal mechanism over a buffer of Council land for bushfire protection purposes.

The adjoining Council owned land is now taken to be managed and fuel reduced for bushfire protection purposes as outlined in this report. Based upon the amended BTA and advice from RFS, the bushfire hazard is now considered to be acceptable for the proposed development. As such, the site suitability concerns raised under the previous DA are considered to have been satisfactorily addressed.

Furthermore, the development has been designed to be compatible with other site constraints such as flooding and stormwater management. As such, the site is now considered suitable for the proposed development.

#### Public Interest

Under the previous DA (DA16-2023-29-1), the development was not considered to be in the public interest due to inconsistencies with the strategic principles and objectives of PBP 2019 and Local Government Act. In particular, it relied upon the establishment of an APZ on adjoining Council owned to obtain support from the RFS.

As detailed above, the creation of an easement over Council owned community land is no longer required, therefore there is no contravention of the Local Government Act. Therefore, the concerns from the previous DA relating to public interest have been resolved.

By virtue of addressing the previous bushfire matters, the merits of the proposed development are considered to be in the public interest. The development will provide



infill housing to service the needs of the community and increasing the diversity of housing stock in the locality.

### Conclusion

As detailed in the Planners Assessment Report (**ATTACHMENT 4**), the development is considered to be consistent with the aims and objectives of the relevant Environmental Planning Instruments and Council policies applicable to the subject site. There will be no adverse impact to the natural or built environment.

The application has provided sufficient information to demonstrate the proposal can be constructed in a manner which is compatible with the constraints of the site, namely bushfire and flooding. The development is consistent with the aims and objectives of PBP 2019 and the development has been supported by the RFS.

Moreover, the proposed development is consistent with Council's Local Housing Strategy in that it provides 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 within 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 significant privacy, overshadowing or amenity issues.

### **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 (S7.11)	Yes		Should Council determine to approve the development, S.7.11 development contributions would be applicable and would be levied in accordance with conditions of consent.
External Grants	No		
Other	No		



## LEGAL, POLICY AND RISK IMPLICATIONS

The proposed development is consistent with the relevant planning instruments including the Environmental Planning and Assessment Act 1979 (EP&A Act), the PSLEP 2013, PSDCP 2014 and associated State Environmental Planning Policies. A detailed assessment against these environmental planning instruments is contained within the Planners Assessment Report contained at **(ATTACHMENT 4)**.

Risk	<a href="#">Risk Ranking</a>	Proposed Treatments	Within Existing Resources?
There is a risk that if the application is refused the determination of the DA may be challenged by the applicant in the Land and Environment Court. If the application was successful in the appeal, Council may be required to pay the applicants legal costs.	High	Accept the recommendation.	Yes
There is a risk that the determination of the DA may be challenged by a third party in the Land and Environment Court.	Low	Accept the recommendation.	Yes

## SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

### Social and Economic Impacts

The proposed development represents a modern residential development which will provide additional housing to service the needs of the community. The dwelling and subdivision will enable infill housing within an established residential area. The construction of the dwelling will provide employment opportunities in the locality during the short term, helping to support the local building and development industries. This will have direct and indirect monetary inputs into the local economy. Furthermore, the increase in residents will provide ongoing direct and indirect monetary inputs.

As assessed throughout this report, the proposed development has been designed to respond to the constraints of the site. Design elements have been incorporated in the design to minimise any adverse impacts to adjoining properties and the public



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

#### Impacts on the Built Environment

The proposed development would reinforce the residential nature of the locality and is characteristic of other developments both in the local and wider community. The development includes relevant construction methods and built form design measures such as opaque glazing and an on-site stormwater management system to minimise any potential adverse impacts to adjoining properties.

#### Impacts on the Natural Environment

The proposed development will involve the removal of minor vegetation which has limited ecological value, noting the vegetation does not contain any hollows, koala feed trees, and does not provide any habitat for threatened species. As such, removal of the tree is not expected to adversely impact the biodiversity of the locality. Furthermore, compensatory planting will be provided in the form of street tree plantings.

### **CONSULTATION**

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

#### Internal

Internal consultation was undertaken with Council's Development Engineer and Development Contributions Officer. The referral comments for these officers have been considered as part of the Planners Assessment Report (**ATTACHMENT 4**). The internal officers supported the DA subject to the recommended conditions of consent (**ATTACHMENT 1**).

#### External

Consultation was undertaken with the RFS under S.100B of the Rural Fires Act 1997 as the development involves the subdivision of bushfire prone land that can lawfully be used for residential purposes. In response, the development was supported with General Terms of Approval and a Bush Fire Safety Authority issued in accordance with S.4.47 of the Environmental Planning and Assessment Act 1979. The comments provide by the RFS were considered during the detailed assessment and are discussed within the Planners Assessment Report (**ATTACHMENT 4**).

#### Public Submissions

The application was publicly exhibited from 20 February 2024 to 5 March 2024, in accordance with the Port Stephens Council Community Engagement Strategy.



During the exhibition period 3 submissions, 2 of which were unique, were received opposing the development were received. A detailed report to these submissions is provided in the Planners Assessment Report in **(ATTACHMENT 4)**.

### **OPTIONS**

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

### **ATTACHMENTS**

- 1) Recommended Conditions of Consent.
- 2) Call to Council Form.
- 3) Locality Plan.
- 4) Planner's Assessment Report.

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

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

### **TABLED DOCUMENTS**

Nil.



## ITEM 3 - ATTACHMENT 1 RECOMMENDED CONDITIONS OF CONSENT.

**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
150334	-	Concept Subdivision Plan	Earth Surveying Consulting Surveyors	09/05/2022
A100	F	Site Analysis Plan	RIZ Design Office	April 2023
A100.1	F	Site Plan - Demolition	RIZ Design Office	April 2023
A101	F	Ground Floor Plan	RIZ Design Office	April 2023
A102	F	Upper Floor Plan	RIZ Design Office	April 2023
A103	F	Elevations	RIZ Design Office	April 2023
A104	F	Elevations	RIZ Design Office	April 2023
A116	F	Section/BASIX	RIZ Design Office	April 2023
CIV-11	E	Civil Works Plan	DRB Consulting Engineers	18/04/2023
CIV-21	E	Civil Details	DRB Consulting Engineers	18/04/2023

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

**Building Code of Australia**

All building work must be carried out in accordance with the BCA. In this clause, a reference to the BCA is a reference to that Code as in force on the date the application for the relevant Construction Certificate is made.



## ITEM 3 - ATTACHMENT 1 RECOMMENDED CONDITIONS OF CONSENT.

	<b>Condition reason:</b> To ensure that all building works are completed in accordance with the Building Code of Australia
3	<b>Driveway Gradients and Design</b>  For all driveways that relate to development for the purposes of a dwelling house, the driveway gradient and design must comply with AS 2890.1 'Off street Car Parking', with the exception of the driveway width and: <ol style="list-style-type: none"> <li>1. the driveway must be at least 1m from any street tree, stormwater pit or service infrastructure;</li> <li>2. a Works on Public Infrastructure (Driveway) approval must be obtained prior to the commencement of any works;</li> <li>3. 100mm kerb to extend the full length of the driveway; and</li> <li>4. Access from the building envelope to the public road is to have a minimum finished access level of the current 1% AEP (4.5m AHD) flood event level for the site</li> </ol> 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
4	<b>Excavation for Residential Building Works</b>  If the approved development involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the consent must, at the person's own expense: <ol style="list-style-type: none"> <li>1. protect and support the adjoining premises from possible damage from the excavation;</li> <li>2. where necessary, underpin the adjoining premises to prevent any such damage.</li> </ol> This condition does not apply if the person having the benefit of the consent owns the adjoining land or the owner of the adjoining land has given consent in writing to that condition not applying, and a copy of that written consent is provided to the PCA prior to the excavation commencing.
	<b>Condition reason:</b> To ensure development that involves excavation that extends below the base of the footings of a building on adjoining land will not result in adverse impacts to adjoining lots.
5	<b>General Terms of Approval</b>  The General Terms of Approval from state authorities must be complied with prior to, during, and at the completion of the development.           The General Terms of Approval are: <ol style="list-style-type: none"> <li>1. NSW Rural Fire Service, referenced DA20240213000582-CL55-1 and dated 11 March 2024.</li> </ol>



## ITEM 3 - ATTACHMENT 1 RECOMMENDED CONDITIONS OF CONSENT.

	<p>A copy of the General Terms of Approval is attached to this determination notice.</p> <p><b>Condition reason:</b> To ensure that the development is carried out in accordance with the General Terms of Approval issued by Integrated Development / Concurrence Agencies</p>
6	<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</p>
7	<p><b>Tree Removal/Pruning</b></p> <p>The trees/vegetation identified on <b>Plan A100.1 (Site Plan – Demolition Plan)</b>, prepared by <b>RIZ Design Office</b>, dated <b>April 2023</b> below are approved for removal.</p> <p>The following replacement trees must be planted along Sandy Point Road:</p> <ol style="list-style-type: none"> <li>1. 2x <i>Cupaniopsis anacardioides</i> 'Tuckeroo', pot size ≥ 45L</li> </ol> <p>The planting must be installed prior to the issue of the Occupation Certificate and in accordance with Council's Biodiversity Technical Specification.</p> <p>Details demonstrating compliance must be provided to the <b>Certifying Authority</b>.</p> <p><b>Condition reason:</b> To ensure that the development retains/prunes and replaces specific tree plantings.</p>
8	<p><b>Swimming Pools and Spas</b></p> <p>The swimming pool/spa must comply with:</p> <ol style="list-style-type: none"> <li>1. the Swimming Pools Act 1992;</li> <li>2. the Swimming Pools Regulation 2018;</li> <li>3. AS 1926.1 'Swimming Pool Safety' Part 1: Safety barriers for swimming pools;</li> <li>4. AS 3500.2 'Plumbing and Drainage' – Sanitary plumbing and drainage';</li> <li>5. AS1926.3 'Water Recirculation Systems'; and</li> <li>6. the BCA.</li> </ol> <p><b>Condition reason:</b> To require signage that details the relevant contacts of a development</p>
9	<p><b>Demolition Work</b></p>



## ITEM 3 - ATTACHMENT 1 RECOMMENDED CONDITIONS OF CONSENT.

Any demolition works are to be carried out in accordance with Australian Standard AS 2601 'The demolition of Structures'. All waste materials are to be either recycled or disposed of to a licensed waste facility.
Any asbestos containing material encountered during demolition or works, is to be removed in accordance with the requirements of Safe Work NSW and disposed of to an appropriately licenced waste facility.
Evidence is to be provided to the Certifying Authority demonstrating that asbestos waste has been disposed of in accordance with this condition.
<b>Condition reason:</b> To ensure demolition work is undertaken in accordance with the relevant Australian Standards and waste is appropriately managed.

**SUBDIVISION WORK  
BEFORE ISSUE OF A SUBDIVISION WORKS CERTIFICATE**

10	<b>Construction Site Management Plan</b>
	<p><b>Before the issue of the subdivision works certificate,</b> a construction site management plan must be prepared, and provided <b>the principal certifier</b>.</p> <p>If applicable, the plan must include the following matters:</p> <ol style="list-style-type: none"> <li>1. The location and materials for protective fencing and hoardings on the perimeter of the site;</li> <li>2. Provisions for public safety;</li> <li>3. Pedestrian and vehicular site access points and construction activity zones;</li> <li>4. Details of construction traffic management including: <ol style="list-style-type: none"> <li>a. Proposed truck movements to and from the site;</li> <li>b. Estimated frequency of truck movements; and</li> </ol> </li> <li>5. Details of bulk earthworks to be carried out;</li> <li>6. The location of site storage areas and sheds;</li> <li>7. The equipment used to carry out works;</li> <li>8. The location of a garbage container with a tight-fitting lid;</li> <li>9. Dust, noise and vibration control measures;</li> <li>10. The location of temporary toilets;</li> <li>11. The protective measures for the preservation of trees on-site and in adjoining public areas including measures in accordance with: <ol style="list-style-type: none"> <li>a. AS 4970 – Protection of trees on development sites;</li> <li>b. An applicable Development Control Plan;</li> <li>c. An arborist's report approved as part of this consent</li> </ol> </li> </ol> <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 that will protect the public, and the surrounding environment, during site works and construction</p>
11	<b>Erosion and sediment control plan</b>



## ITEM 3 - ATTACHMENT 1 RECOMMENDED CONDITIONS OF CONSENT.

	<p><b>Before the issue of the subdivision works certificate</b>, an erosion and sediment control plan must be prepared by a suitably qualified person in accordance with the following documents and provided to <b>the certifier</b>:</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>
12	<p><b>Waste Management Plan requirements</b></p> <p><b>Before the issue of the subdivision works certificate</b>, a waste management plan for the development must be prepared and provided to <b>the principal certifier</b>. The plan must be prepared in accordance with</p> <ol style="list-style-type: none"> <li>1. the Environment Protection Authority's Waste Classification Guidelines as in force from time to time, and</li> <li>2. 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> <li>3. include the following information— <ol style="list-style-type: none"> <li>a. the contact details of the person removing waste,</li> <li>b. an estimate of the type and quantity of waste,</li> <li>c. whether waste is expected to be reused, recycled or sent to landfill,</li> <li>d. the address of the disposal location for waste.</li> </ol> </li> </ol> <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>

## BEFORE SUBDIVISION WORK COMMENCES

13	<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>
14	<p><b>Damage report – Public Infrastructure</b></p>



## ITEM 3 - ATTACHMENT 1 RECOMMENDED CONDITIONS OF CONSENT.

	<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>
15	<p><b>Erosion and sediment controls in place</b></p> <p>Before any site work commences, <b>the principal certifier</b>, 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 restabilised 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>
16	<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 Roads Act 1993</p> <p><b>Condition reason:</b> To ensure that works within the road reserve are approved by a Section 138B Approval of the Roads Act 1993.</p>
17	<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 site.</p>
18	<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>
19	<p><b>Subdivision Works Certificate Required</b></p>



## ITEM 3 - ATTACHMENT 1 RECOMMENDED CONDITIONS OF CONSENT.

	<p>In accordance with the provisions of Section 6.13 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> <p>a) a Subdivision Works Certificate has been issued by a Consent Authority;</p> <p>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</p> <p>c) the PCA is notified in writing of the name and contractor licence number of the owner/builder intending to carry out the approved works.</p>
	<b>Condition reason:</b> To clarify that a Subdivision Works Certificate is required.

## DURING SUBDIVISION WORK

20	<p><b>Construction Management Plan</b></p> <p>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.</p> <p><b>Condition reason:</b> Where a CMP is deemed required.</p>
21	<p><b>Cut and fill (if applicable)</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> <ol style="list-style-type: none"> <li>1. 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; and</li> <li>2. 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.</li> </ol> <p><b>Condition reason:</b> To ensure that all imported and/or exported fill is Virgin Excavated Natural Material.</p>
22	<p><b>Discovery of relics and Aboriginal objects</b></p> <p>While site work is being carried out, if a person reasonably suspects a relic of Aboriginal object is discovered:</p> <ol 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 <ol style="list-style-type: none"> <li>a. for a relic – the Heritage Council; or</li> </ol> </li> </ol>



	<p>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.</p> <p>Site work may recommence at a time confirmed in writing by:</p> <ol style="list-style-type: none"> <li>1. for a relic – the Heritage Council; or</li> <li>2. 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> </ol> <p><b>Condition reason:</b> To ensure the protection of objects of potential significance during works</p>
23	<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>
24	<p><b>Hours of work</b></p> <p>Site work must only be carried out between the following times –</p> <p>For <b>subdivision work</b> from 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>
25	<p><b>Implementation of the site management plans</b></p> <p>While site work is being carried out:</p> <ol style="list-style-type: none"> <li>1. the measures required by the construction site management plan and the erosion and sediment control plan (plans) must be implemented at all times, and</li> <li>2. a copy of these plans must be kept on site at all times and made available to council officers upon request.</li> </ol> <p><b>Condition reason:</b> To ensure site management measures are implemented during the carrying out of site work</p>
26	<p><b>Offensive Noise, Dust, Odour and Vibration</b></p> <p>All work must not give rise to offensive noise, dust, odour or vibration as defined in the Protection of the Environment Operations Act 1997 when measured at the nearest property boundary.</p>



## ITEM 3 - ATTACHMENT 1 RECOMMENDED CONDITIONS OF CONSENT.

	<b>Condition reason:</b> To ensure that developments do not give rise to offensive noise, dust, odour, or vibration.
27	<b>Toilet facilities</b>  Temporary toilet(s) must be provided and maintained on site from the time of commencement of building work to completion. The number of toilets provided must be one toilet per 20 persons or part thereof employed on the site at any one time.  The temporary toilet is to be either connected to the sewerage system or an approved septic tank or otherwise may be a chemical toilet supplied by a licensed contractor.  <b>Condition reason:</b> To ensure adequate amenity facilities are provided to the site during construction.
28	<b>Tree Removal/Pruning</b>  All approved tree removal/Pruning is subject to all pruning works being undertaken by a qualified arborist with minimum Australian Qualification Framework Level 3 qualifications or higher. All works are to be undertaken in accordance with the relevant provisions of AS 4373 'Pruning of Amenity trees'.  <b>Condition reason:</b> To ensure that vegetation removal/pruning is undertaken by a qualified arborist and in accordance with the Australian Standard.
29	<b>Unexpected Finds Contingency (General)</b>  Should any suspect materials (identified by unusual staining, odour, discolouration or inclusions such as building rubble, asbestos, ash material, etc.) be encountered during any stage of works (including earthworks, site preparation or construction works, etc.), such works must cease immediately until a qualified environmental specialist has been contacted and conducted a thorough assessment.  In the event that contamination is identified as a result of this assessment and if remediation is required, all works must cease in the vicinity of the contamination and Council must be notified immediately.  Where remediation work is required, the applicant will be required to obtain consent for the remediation works.  <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.

## BEFORE ISSUE OF A SUBDIVISION CERTIFICATE

30	<b>Section 7.11 Development contributions</b>  A monetary contribution is to be paid to Council for the provision of <b>one additional lot</b> , pursuant to Section 7.11 of the Environmental Planning & Assessment Act 1979 and the
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Port Stephens Council Local Infrastructure Contributions Plan 2020 towards the provision of the following public facilities:

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>

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

1. Prior to the issue of the Subdivision Certificate or Construction Certificate, whichever occurs first.

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

**Condition reason:** To ensure that a monetary contribution as specified is paid to Council in accordance with Section 7.11 of the EP&A Act 1979, and the Port Stephens Council Local Infrastructure Contributions Plan 2020.

**31 Housing and Productivity Contribution**

A housing and productivity contribution is to be made, subject to:

- a) Any exclusion of the application of Subdivision 4 of Division 7.1 of the Act to the development by a planning agreement; and
- b) Any exemption or reduction provided by the Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2023 (the Order).

In this respect -

- a) The housing and productivity contribution (HPC) set out in the table below, but as adjusted in accordance with this condition, is required to be made:

Housing and Productivity Contribution	Amount
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## ITEM 3 - ATTACHMENT 1 RECOMMENDED CONDITIONS OF CONSENT.

	<table border="1"> <tr> <td>Housing and Productivity Contribution – Lower Hunter Region</td><td>8,214.65</td></tr> </table> <p>b) The time by which the housing and productivity contribution must be made is before the issue of the subdivision certificate or construction certificate, whichever occurs first.</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 by the following fraction:</p> $\frac{\text{highest PPI number}}{\text{consent PPI number}}$ <p>Where –</p> <p><b>highest PPI number</b> 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> <p><b>June quarter 2023</b> is the quarter commencing on and including 1 April 2023 and ending on and including 30 June 2023; and</p> <p><b>PPI</b> is the Producer Price Index (Road and Bridge Construction (NSW)) published by the Australian Bureau of Statistics).</p> <p>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.</p> <p><b>Condition reason:</b> 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.</p>	Housing and Productivity Contribution – Lower Hunter Region	8,214.65
Housing and Productivity Contribution – Lower Hunter Region	8,214.65		
32	<p><b>Requirement for a Subdivision Certificate</b></p> <p>The application for Subdivision Certificate(s) must be made in accordance with the requirements of Section 54 of the Environmental Planning and Assessment (Development 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 [DA 16-2024-45-1], and of compliance with the applicable conditions of consent, prior to the issuing of a Torrens Plan of Subdivision.</p> <p>In addition, one signed original copy of the original plans and/or documents, and final plan of survey/title, must be submitted to Council.</p>		



## ITEM 3 - ATTACHMENT 1 RECOMMENDED CONDITIONS OF CONSENT.

	<b>Condition reason:</b> To enable the subdivision, boundary adjustment, or lot consolidation of land and ensure compliance with the relevant development consent.
33	<b>Show Easements/Restrictions in the Plan of Subdivision</b>  The developer must acknowledge all existing easements and/or restrictions on the use of the land on the final plan of subdivision.  <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.
34	<b>Burdened Lots to be Identified</b>  Any lots subsequently identified during construction of the subdivision as requiring restrictions must also be suitably burdened.  <b>Condition reason:</b> To ensure that all lots which have been identified as requiring restrictions or easements are suitably burdened.
35	<b>Subdivision Certificate</b>  The issue of a Subdivision Certificate is not to occur until all applicable conditions of this development consent have been satisfactorily addressed and all applicable engineering works are complete including construction of the battle-axe handle for Lot 2, installation of services and stormwater works required for the access handle.  <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.
36	<b>Surveyor's Report</b>  A certificate from a Registered Surveyor must be provided to the Principal Certifying Authority, certifying that all drainage lines have been laid within their proposed easements.  Certification is also to be provided stating that no services or accessways encroach over the proposed boundary other than as provided for by easements as created by the final plan of subdivision.  <b>Condition reason:</b> To confirm location of drainage lines and ensure that no services or access ways encroach the lot boundaries, unless suitably provided for by easements.
37	<b>Dwellings and Subdivision</b>  Prior to the issue of the subdivision certificate the following is to occur: <ol style="list-style-type: none"> <li>1. The dwellings shall have a satisfactory frame inspection undertaken; and</li> <li>2. A report/plan shall be provided from a Registered Surveyor showing that: <ol style="list-style-type: none"> <li>a. The setback of the buildings from the adjacent and proposed boundaries meets the requirements of the BCA; and</li> </ol> </li> </ol>



## ITEM 3 - ATTACHMENT 1 RECOMMENDED CONDITIONS OF CONSENT.

	<p>b. 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</p> <p><b>OR</b></p> <p>1. A restriction on the title of Lot 2, under Section 88B of the Conveyancing Act, shall be created which restricts the development of land to that which is approved within this consent (DA 16-2024-45-1).</p>
	<p><b>Condition reason:</b> To ensure that the development is completed in accordance with clause 4.1C of the Port Stephens Local Environmental Plan 2013.</p>
38	<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>• Electricity.</li> <li>• Water.</li> <li>• Sewer.</li> <li>• 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>
39	<p><b>Water Authority Certification</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 compliance with the water supply authority's requirements</p>
40	<p><b>Completion of Tree Works and Demolition</b></p> <p>Prior to the issue of the subdivision certificate, all vegetation/tree removal approved under this consent are to be complete and all existing structures, including any ancillary sheds, carports, or garages, are to be removed from Lot 2.</p> <p><b>Condition reason:</b> To ensure that the new lot is clear of any trees approved for removal and any ancillary structures to the existing dwelling are removed.</p>



## ITEM 3 - ATTACHMENT 1 RECOMMENDED CONDITIONS OF CONSENT.

## ONGOING USE

41	<b>Driveways to be Maintained</b>
	All access crossings and driveways must be maintained in good order for the life of the development
	<b>Condition reason:</b> To ensure that access and driveways are maintained for the life of the development.

**BUILDING WORK  
BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE**

42	<b>Construction Site Management Plan</b>
	<b>Before the issue of a construction certificate</b> , a construction site management plan must be prepared, and provided to <b>the principal certifier</b> .
	The plan must include the following matters: <ol style="list-style-type: none"> <li>1. The location and materials for protective fencing and hoardings on the perimeter of the site;</li> <li>2. Provisions for public safety;</li> <li>3. Pedestrian and vehicular site access points and construction activity zones;</li> <li>4. Details of construction traffic management including: <ol style="list-style-type: none"> <li>a. Proposed truck movements to and from the site;</li> <li>b. Estimated frequency of truck movements; and</li> </ol> </li> <li>5. Details of bulk earthworks to be carried out;</li> <li>6. The location of site storage areas and sheds;</li> <li>7. The equipment used to carry out works;</li> <li>8. The location of a garbage container with a tight-fitting lid;</li> <li>9. Dust, noise and vibration control measures;</li> <li>10. The location of temporary toilets;</li> <li>11. The protective measures for the preservation of trees on-site and in adjoining public areas including measures in accordance with: <ol style="list-style-type: none"> <li>a. AS 4970 – Protection of trees on development sites;</li> <li>b. An applicable Development Control Plan;</li> <li>c. An arborist's report approved as part of this consent</li> </ol> </li> </ol> <p>A copy of the construction site management plan must be kept on-site at all times while work is being carried out.</p>
	<b>Condition reason:</b> To require details of measures that will protect the public, and the surrounding environment, during site works and construction
43	<b>Erosion and sediment control plan</b>
	<b>Before the issue of a construction certificate</b> , an erosion and sediment control plan must be prepared by a suitably qualified person in accordance with the following documents and provided to <b>the certifier</b> :



## ITEM 3 - ATTACHMENT 1 RECOMMENDED CONDITIONS OF CONSENT.

	<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>
	<b>Condition reason:</b> To ensure no substance other than rainwater enters the stormwater system and waterways
44	<b>Long Service Levy</b>
	<b>Before the issue of the relevant construction certificate</b> the long service levy of \$1,750, as calculated at the date of this consent, must be paid to the Long Service Corporation or Council under the Building and Construction industry Long Service Payments Act 1986, section 34, and evidence of the payment is to be provided to the certifier.
	<b>Condition reason:</b> To ensure the long service levy is paid
45	<b>Stormwater/Drainage Plans</b>
	<p>Prior to the issue of the subdivision works certificate, a detailed stormwater drainage plan is to be submitted to the certifying authority for a system capable of catering for a range of rainfall scenarios, up to and including the 1% AEP Rainfall Event. The detailed stormwater drainage plans are to be in accordance with Council's Infrastructure Specifications and the current Australian Rainfall and Runoff guidelines using the Hydrologic Soil Mapping data for Port Stephens (available from Council) and include the following information:</p> <ol style="list-style-type: none"> <li>1. On-Site Stormwater Detention / storage tanks in accordance with BASIX requirements are to be provided, and             <ol style="list-style-type: none"> <li>a. For every 100m<sup>2</sup> of roof or impervious area collected an additional 2,000 litres detention / storage is to be provided.</li> </ol> </li> <li>OR             <ol style="list-style-type: none"> <li>b. A 6000 litre detention tank (in addition to any BASIX requirements) provided for each dwelling.</li> </ol> </li> <li>2. Demonstration that post developed flows are less than or equal to pre developed flows;</li> <li>3. Detailed pavement finished surface levels, to ensure stormwater runoff catchment and its direction into the detention system; and</li> <li>4. Connected to an approved stormwater quality improvement device such as an infiltrating raingarden in accordance with Council's Standard Drawing S161 (or latest revision of this drawing). Where an infiltration garden is installed, it is to be located in the landscaped area(s) with an overflow pipe connected to the existing drainage easement/system. Supporting MUSIC and Drains modelling is to be provided.</li> </ol> <p>Following the installation of any roof, collected stormwater runoff from the structure must be:</p> <ol style="list-style-type: none"> <li>1. Directed to the onsite stormwater management system with overflow dispersed at ground level, so as to not be concentrated or create nuisance flows onto any buildings, or neighbouring properties; and</li> </ol>



## ITEM 3 - ATTACHMENT 1 RECOMMENDED CONDITIONS OF CONSENT.

	<p>2. All roof plumbing must be sized to ensure 100% capture and direction to a rainwater tank, with overflow from the rainwater tank directed to the onsite infiltration/detention system that caters for rainfall events up to and including the 1% AEP rainfall event.</p> <p>Details demonstrating compliance must be provided to the Certifying Authority.</p> <p>Note 1: Under the Roads Act 1993, only the Roads Authority can approve commencement of works within an existing road reserve.</p> <p>Note 2: Pre developed refers to prior to any development occurring on the land.</p> <p><b>Condition reason:</b> To ensure that the development is carried out in accordance with the DCP.</p>
46	<p><b>Stormwater System Operation and Maintenance Procedure Plan</b></p> <p>An Operation and Maintenance Plan for the stormwater system must be prepared by a qualified engineer detailing a regular maintenance programme for pollution control devices, covering inspection, cleaning and waste disposal.</p> <p>Details demonstrating compliance must be provided to the Certifying Authority.</p> <p><b>Condition reason:</b> To ensure that large stormwater systems have an appropriate operation and maintenance plan prepared by a qualified Engineer.</p>
47	<p><b>Waste Management Plan requirements</b></p> <p><b>Before the issue of a construction certificate</b>, a waste management plan for the development must be prepared and provided to <b>the principal certifier</b>. The plan must be prepared in accordance with:</p> <ol style="list-style-type: none"> <li>the Environment Protection Authority's Waste Classification Guidelines as in force from time to time, and</li> <li>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> <li>include the following information— <ol style="list-style-type: none"> <li>the contact details of the person removing waste,</li> <li>an estimate of the type and quantity of waste,</li> <li>whether waste is expected to be reused, recycled or sent to landfill,</li> <li>the address of the disposal location for waste.</li> </ol> </li> </ol> <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>
48	<p><b>Privacy Screening</b></p> <p>Permanently fixed, minimum 1.8m high privacy screen(s) must be provided to the northern elevation of the external alfresco/pool area/BBQ as follows:</p> <ol style="list-style-type: none"> <li>the screens must not have openings more than 30mm wide;</li> </ol>



## ITEM 3 - ATTACHMENT 1 RECOMMENDED CONDITIONS OF CONSENT.

	<p>2. The total area of all openings must be less than 30% of the surface area of the screen when viewed in elevation; and</p> <p>3. The screen must have a total length of at least 3.5m</p> <p>Details demonstrating compliance must be provided to the Certifying Authority.</p> <p><b>Condition reason:</b> To ensure that the development does not result in substantial privacy impacts to adjoining properties.</p>
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## BEFORE BUILDING WORK COMMENCES

49	<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>
50	<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, that such a contract of insurance is in force before any building work authorised to be carried out by the 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>
51	<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> <ol style="list-style-type: none"> <li>1. a Construction Certificate has been issued by a Consent Authority;</li> <li>2. 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>3. the PCA is notified in writing of the name and contractor licence number of the owner/builder intending to carry out the approved works.</li> </ol> <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>
52	<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>
53	<p><b>Erosion and sediment controls in place</b></p> <p>Before any site work commences, the principal 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 restabilised 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>
54	<p><b>Flood Design Measures</b></p> <p>Evidence of certification demonstrating that the following flood related design precautions have been adhered to in the design must be submitted to the Principal Certifying Authority:</p> <ol style="list-style-type: none"> <li>1. In sewerred areas some plumbing fixtures may be located below the Flood Planning Level (FPL). Where this occurs sanitary drainage is to be fitted with a reflux valve to protect against internal sewage surcharge;</li> <li>2. All materials stored at the site and capable of causing harm to the environment must be stored at a level not less than the FPL or suitable bunding must be placed around such materials to a minimum of the FPL;</li> <li>3. All building materials, equipment, ducting, etc., below the FPL must be flood compatible and ducting must be provided with openings for drainage and cleaning;</li> <li>4. All main power supply, heating and air conditioning service installations, including meters must be located above the FPL. All electrical equipment installed below the FPL must be capable of disconnection by a single plug from the power supply;</li> <li>5. All electrical wiring below the FPL must be suitable for continuous submergence in water. All conduits below the FPL must be self-draining. Earth core leakage systems or safety switches are to be installed;</li> <li>6. Wherever possible, the premises must be designed to ensure that plant, equipment, storage tanks or other fixtures or fittings liable to damage by floods are located above the FPL or be moveable to levels above the FPL. Should this not have the ability to occur, they shall be suitable for submergence in water and securely anchored to overcome buoyancy and movement. All storage tanks must be vented to an elevation above the FPL.</li> </ol> <p><b>Condition reason:</b> To mitigate the impacts of development within flood prone land and ensure the minimisation of risk to life and property.</p>
55	<p><b>Home Building Act requirements</b></p>



## ITEM 3 - ATTACHMENT 1 RECOMMENDED CONDITIONS OF CONSENT.

	<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 relates (not being the council) has given the council written notice of the following information —</p> <ol style="list-style-type: none"> <li>1. In the case of work for which a principal contractor is required to be appointed— <ol style="list-style-type: none"> <li>a. the name and licence number of the principal contractor, and</li> <li>b. the name of the insurer by which the work is insured under Part 6 of that Act,</li> </ol> </li> <li>2. In the case of work to be done by an owner-builder— <ol style="list-style-type: none"> <li>a. the name of the owner-builder, and</li> <li>b. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.</li> </ol> </li> </ol> <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 Council) 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>
56	<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> <ol style="list-style-type: none"> <li>1. the name and address of the person;</li> <li>2. a description of the work to be carried out;</li> <li>3. the address of the land on which the work is to be carried out;</li> <li>4. the Registered numbers and date of issue of the development consent and construction certificate;</li> <li>5. a statement signed by or on behalf of the principal certifier that all conditions of the consent that must be satisfied before the work commences have been satisfied; and</li> <li>6. the date on which the work is intended to commence.</li> </ol> <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 1979.</p>
57	<p><b>Notice of Principal Certifying Authority Appointment</b></p>



## ITEM 3 - ATTACHMENT 1 RECOMMENDED CONDITIONS OF CONSENT.

	<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> <ol style="list-style-type: none"> <li>1. a description of the work to be carried out;</li> <li>2. the address of the land on which the work is to be carried out;</li> <li>3. the Registered number and date of issue of the relevant development consent;</li> <li>4. the name and address of the Principal Certifier and the person who appointed the principal certifier;</li> <li>5. if the principal certifier is a registered certifier <ol style="list-style-type: none"> <li>a. the certifier's registration number, and</li> <li>b. a statement signed by the registered certifier to the effect that the certifier consents to being appointed as principal certifier, and</li> <li>c. a telephone number on which the certifier may be contacted for business purposes.</li> </ol> </li> </ol> <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>
58	<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 Roads Act 1993</p> <p><b>Condition reason:</b> To ensure that works within the road reserve are approved by a Section 138B Approval of the Roads Act 1993.</p>
59	<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 site.</p>
60	<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>



## ITEM 3 - ATTACHMENT 1 RECOMMENDED CONDITIONS OF CONSENT.

	<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.
61	<b>Surface Water Collection from Swimming Pools and Spas</b>
	Swimming pool surrounds and/or paving must be constructed so 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.
	<b>Condition reason:</b> To ensure the development has met council standards.

## DURING BUILDING WORK

62	<b>Compliance with the Building Code of Australia</b>
	Building work must be carried out in accordance with the requirements of the Building Code of Australia.
	<b>Condition reason:</b> To ensure that the development is undertaken in accordance with the Building Code of Australia.
63	<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.
64	<b>Cut and fill (if applicable)</b>
	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: <ul style="list-style-type: none"> <li>1. 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.</li> <li>2. 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.</li> </ul>
	<b>Condition reason:</b> To ensure that all imported and/or exported fill is Virgin Excavated Natural Material.
65	<b>Discovery of relics and Aboriginal objects</b>



## ITEM 3 - ATTACHMENT 1 RECOMMENDED CONDITIONS OF CONSENT.

	<p>While site work is being carried out, if a person reasonably suspects a relic of Aboriginal object is discovered:</p> <ol style="list-style-type: none"> <li>1. the work in the area of the discovery must cease immediately;</li> <li>2. the following must be notified <ol 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> </ol> </li> </ol> <p>Site work may recommence at a time confirmed in writing by:</p> <ol style="list-style-type: none"> <li>1. for a relic – the Heritage Council; or</li> <li>2. 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> </ol> <p><b>Condition reason:</b> To ensure the protection of objects of potential significance during works</p>
66	<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>
67	<p><b>Finished Floor Level</b></p> <p>The finished floor level of the site must be a minimum level of Reduced Level 5.7 metres Australian Height Datum (AHD) in accordance with the approved plans.</p> <p>A survey report prepared by a Registered Surveyor confirming that the finished floor level complies with the approved plans or floor levels specified by the development consent, must be provided to Principal Certifying Authority prior to the development proceeding beyond floor level stage.</p> <p><b>Condition reason:</b> To ensure that the finished floor level of the development is compliant with the relevant level and in accordance with the approved plans.</p>
68	<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>



## ITEM 3 - ATTACHMENT 1 RECOMMENDED CONDITIONS OF CONSENT.

	<b>Condition reason:</b> To protect the amenity of the surrounding area
69	<b>Implementation of BASIX commitments</b>  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.  <b>Condition reason:</b> To ensure that while building work is being carried out, the development strictly in accordance with the commitments listed in the BASIX certificate(s) approved by this consent.
70	<b>Location of Stockpiles</b>  Stockpiles of soil must not be located on / near any drainage lines or easements, natural watercourses or water bodies, footpath or roadway without first providing suitable protective measures adequate to protect these water bodies. All stockpiles of contaminated materials must be suitably covered to prevent dust and odour nuisance.  <b>Condition reason:</b> To ensure that stock piles required for a development are managed in accordance with Council requirements.
71	<b>Offensive Noise, Dust, Odour and Vibration</b>  All work must not give rise to offensive noise, dust, odour or vibration as defined in the Protection of the Environment Operations Act 1997 when measured at the nearest property boundary.  <b>Condition reason:</b> To ensure that developments do not give rise to offensive noise, dust, odour, or vibration.
72	<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
73	<b>Stormwater Disposal</b>  Following the installation of any roof, collected stormwater runoff from the structure must be: <ol style="list-style-type: none"> <li>1. Diverted through a first flush system or leaf/debris prevention system before being connected to an approved on-site stormwater system. Any stormwater collected must be connected to an approved stormwater quality improvement device to treat the water in accordance with Council's Development Control Plan. Any overflow from the stormwater system is to be connected to the</li> </ol>



	existing drainage easement/system to ensure no nuisance flows onto adjoining properties.
	<b>Condition reason:</b> All applications.
74	<b>Surface Water Collection from Swimming Pools and Spas</b>
	Swimming pool surrounds and/or paving must be constructed so 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.
	<b>Condition reason:</b> To ensure that the development for a swimming pool and/or spa satisfies Council requirements.
75	<b>Swimming Pool Fence Design</b>
	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 & gate must: <ol style="list-style-type: none"> <li>1. Strictly adhere to the design and location approved with the development consent, and any conditions of the development consent.</li> <li>2. Strictly comply with AS1926 'Swimming Pool Safety' – Part 1: Safety barriers for swimming pools.</li> <li>3. Have a minimum effective height of 1.2m.</li> <li>4. Be self-closing and self-latching. All gates must open outwards from the swimming pool enclosure.</li> <li>5. 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>6. Boundary fencing forming 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> </ol> <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>
	<b>Condition reason:</b> To ensure that the development for a swimming pool and/or spa satisfies the Australian Standard and Council requirements.
76	<b>Toilet facilities</b>
	Temporary toilet(s) must be provided and maintained on site from the time of commencement of building work to completion. The number of toilets provided must be one toilet per 20 persons or part thereof employed on the site at any one time.
	The temporary toilet is to be either connected to the sewerage system or an approved septic tank or otherwise may be a chemical toilet supplied by a licensed contractor.
	<b>Condition reason:</b> To ensure adequate amenity facilities are provided to the site during construction.



77	<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>
78	<p><b>Waste Water from Swimming Pools and Spas</b></p> <p>All swimming pool waste water must be disposed of as follows:</p> <ol style="list-style-type: none"> <li>1. Where a Hunter Water sewer is available – waste water must be drained or pumped to the sewer.</li> <li>2. Where a Hunter Water sewer is not available (such as rural areas) – waste water must be disposed of as follows:</li> </ol> <p><u>Chlorinated pool waste water:</u></p> <ol style="list-style-type: none"> <li>a. 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> <li>b. 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 on the subject or adjoining properties, or create a nuisance to an adjoining property owner.</li> </ol> <p><u>Saltwater pool waste water:</u></p> <ol style="list-style-type: none"> <li>c. Discharging as per point b) above.</li> </ol> <p><u>All pool types:</u></p> <ol style="list-style-type: none"> <li>d. Must not be discharged to a septic tank or an on-site sewage management installation or disposal area;</li> <li>e. Must not be discharged into a reserve, watercourse, easement or storm water drainage system</li> </ol> <p><b>Condition reason:</b> To ensure that the development for a swimming pool and/or spa satisfies Council requirements.</p>



## BEFORE ISSUE OF AN OCCUPATION CERTIFICATE

79	<p><b>Completion of public utility services</b></p> <p>Before the issue of the relevant occupation certificate, confirmation must be obtained from the relevant authority that any adjustment or augmentation of any public utility services including gas, water, sewer, electricity, street lighting and telecommunications, required as a result of the development, have been completed and this confirmation must be provided to the principal certifier.</p> <p><b>Condition reason:</b> To ensure required changes to public utility services are completed, in accordance with the relevant agency requirements, before occupation</p>
80	<p><b>Completion of Roads Act Approval works</b></p> <p>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.</p> <p><b>Condition reason:</b> To ensure that approved works within the road reserve have been completed to the satisfaction of the Council.</p>
81	<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 has been provided to the Principal Certifying Authority.</p>
82	<p><b>Protection and Certification of Electrical Services</b></p> <p>All power points, fittings, electrical connections and the incoming meter box are to be located above the Flood Planning Level (FPL) which is RL 5.2 metres AHD.</p> <p>Switches, light fittings and power points may be located below the FPL provided they are capable of being isolated by a single Residual Current Device (RCD) protected switch that is located above the FPL. Certification of these works are to be provided to the Principal Certifying Authority.</p> <p><b>Condition reason:</b> To ensure that flood affected development adequately mitigates risks to life and property.</p>
83	<p><b>Removal of waste upon completion</b></p> <p>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</p>



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	<p>evidence of the removal must be supplied to the satisfaction of the principal certifier.</p> <p>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.</p> <p><b>Condition reason:</b> To ensure that all waste is appropriately removed from the subject site prior to the issue of an Occupation Certificate.</p>
84	<p><b>Repair of infrastructure</b></p> <p>Before the issue of an occupation certificate, the applicant must ensure any public infrastructure damaged as a result of the carrying out of building works (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub-contractors, concreting vehicles) is fully repaired to the written satisfaction of Council, and at no cost to Council.</p> <p>Note: If the council is not satisfied, the whole or part of the bond submitted will be used to cover the rectification work.</p> <p><b>Condition reason:</b> To ensure that any damage resulting to public infrastructure is appropriately rectified at no cost to the Council.</p>
85	<p><b>Services</b></p> <p>Evidence is to be provided to Council demonstrating that the following reticulated services are available to the dwelling:</p> <ol style="list-style-type: none"> <li>1. Electricity;</li> <li>2. Water;</li> <li>3. Sewer; and</li> <li>4. Gas (where available).</li> </ol> <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 verify that reticulated services are provided to the lot/s.</p>
86	<p><b>Stormwater/Drainage Works</b></p> <p>All stormwater and drainage works required to be undertaken in accordance with this consent must be completed.</p> <p>The certification/verification must be provided to the satisfaction of the Principal Certifying Authority.</p> <p><b>Condition reason:</b> To ensure stormwater and drainage works have been undertaken in accordance with the approved plans.</p>
87	<p><b>Street Tree Planting</b></p>



## ITEM 3 - ATTACHMENT 1 RECOMMENDED CONDITIONS OF CONSENT.

	<p>All street trees must be planted in accordance with condition 7 of this consent [DA 16-2024-45-1].</p> <p><b>Condition reason:</b> To ensure the planting of street trees relevant to a Development application in accordance with the approved plans prior to the issue of an Occupation Certificate.</p>
88	<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>
89	<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 any 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>
90	<p><b>Water authority certification</b></p> <p>Before the issue of an occupation certificate, a certificate of compliance must be obtained in relation to the proposed use(s) from Hunter Water.</p> <p><b>Condition reason:</b> To ensure compliance with the water supply authority's requirements</p>
91	<p><b>Swimming Pool 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>



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	<b>Condition reason:</b> To ensure that the development for a swimming pool and/or spa satisfies Council requirements, the Swimming Pools Act and the Swimming Pools Regulation prior to the issue of the Occupation Certificate.
92	<b>Privacy Screen</b>
	Any privacy screen(s) must be permanently maintained in accordance with the approved plans and conditions of consent for the life of the development.
	<b>Condition reason:</b> To ensure that required privacy screening is not removed.

## OCCUPATION AND ONGOING USE

93	<b>Location of mechanical ventilation (if applicable)</b>
	During occupation and ongoing use of the building, the applicant must ensure all subsequently installed noise generating mechanical ventilation system(s) or other plant and equipment that generates noise are in an appropriate location on the site (including a soundproofed area where necessary) to ensure the noise generated does not exceed 5dBa at the boundary adjacent to any habitable room of an adjoining residential premises.
	<b>Condition reason:</b> For all applications requiring air conditioning units.
94	<b>Maintenance of Replacement Plantings / Revegetation</b>
	Street trees required under this consent are to be maintained (e.g. through the use of mulch and watering) until maturity, or for a period of 5 years from planting. If any of the vegetation dies or is removed, it is to be replaced with vegetation of the same species and similar maturity as the vegetation which has died or was removed.
	<b>Condition reason:</b> To ensure that replacement trees and revegetation areas are maintained until maturity, or for a period of 5 years from planting.
95	<b>Maneuvering of Vehicles</b>
	All vehicles must enter and exit the site in a forward direction.
	<b>Condition reason:</b> To ensure that vehicles enter and leave the site in a forward direction.
96	<b>Prohibitions Within Swimming Pool Enclosure</b>
	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.
	<b>Condition reason:</b> To ensure that the area contained within a swimming pool safety fence enclosure must not be used for other non-related activities or equipment.



97	<p><b>Use Limitations</b></p> <p>Garden sheds, carports, garages, outbuildings, rural sheds and the like must not be adapted, converted or used for commercial, industrial or residential purposes without the prior approval of Council.</p> <p>Note: Carports must not be enclosed in any manner, including solid gates or door, without the prior consent from Council.</p> <p><b>Condition reason:</b> To restrict the use of structures for a purpose that has not been approved by the Council.</p>
98	<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> <p>The location of equipment that causes offensive noise may require the equipment to be located within a suitable acoustic enclosure, or the relocation of such equipment.</p> <p><b>Condition reason:</b> To ensure that swimming pools filtrations system are located and/or designed to not adversely impact the amenity of adjoining properties.</p>



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**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](#). 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) **Dividing fences** – The erection of dividing fences under this consent does not affect the provisions of the Dividing Fences Act 1991. Under this Act, all relevant parties must be in agreement prior to the erection of any approved dividing fence/s under this consent.  
  
Council has no regulatory authority in this area and does not adjudicate civil disputes relating to the provision of, or payment for, the erection of dividing fences. If there is a neighbour dispute about the boundary fence and you are seeking mediation, you may contact the Community Justice Centre, or if legal advice or action is required, you may contact the Chamber Magistrate.
- (3) **Flood information is subject to change** – You are advised that flood information is subject to change if more accurate data becomes available to Council. It is the responsibility of the applicant to use the most up-to-date flood information. Prior to applying for a construction certificate, Council should be contacted to verify the currency of the flood information.
- (4) **Council must be nominated as PCA for subdivision works** – Under Section 6.5 of the Environmental Planning & Assessment Act 1979, Council shall be nominated as the Principal Certifying Authority for subdivision work and has the option of undertaking inspection of physical construction works.
- (5) **Responsibility for damage for tree removal/pruning** – The applicant is responsible for any damage caused to existing public utilities, footpaths or public roads during the cutting down, grinding, removal and disposal of the timber and roots. Care must also



be taken by the applicant and the applicant's agents to prevent any damage to adjoining properties. The applicant or the applicants' agent may be liable to pay compensation to any adjoining owner if, due to tree works, damage is caused to such adjoining property.

- (6) **Building materials not permitted on Council's footpath/road reserve** – No building materials, plant, equipment, refuse or spoil is to be deposited on or be allowed to remain on Council's footpath or outside the boundaries of the development site unless approved by Council in writing. Where building activity cannot avoid occupation of the public road reserve, (such as, for the erection of hoarding, scaffolding, partial closure) separate approval from Council for the use of the road reserve is required.
- (7) **Street Numbering– Prior to occupying the development or Release of Subdivision Certificate**, (whichever occurs first) the approved dwellings are to be identified as follows:

- a) Lot 1 – 226 Sandy Point Road, Salamander Bay
- b) Lot 2 – 226A Sandy Point Road, Salamander Bay

**Note:** any referencing on Development Application plans to house or lot numbering operates to provide identification for assessment purposes only.



### 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.

**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.




 <b>PORT STEPHENS</b> COUNCIL	<b>CALL TO COUNCIL FORM</b> <b>DEVELOPMENT APPLICATION</b>
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<b>Development application (DA) call to Council request:</b>	
I/We (Mayor/Councillor/s) <u>Arnott and Anderson</u> request that DA number <u>16-2024-45-1</u> for DA description <u>1 into 2 lot Torrens title subdivision and construction of a</u> located at <u>dwelling and swimming pool - 226 Sandy Point Rd, Salamander Bay</u> be reported to Council for determination.	
<b>Reason:</b>	
Public interest	
<b>Declaration of Interest:</b>	
I/We have considered any pecuniary or non-pecuniary conflict of interest (including political donations) associated with this DA on my part or an associated person.  I/We (Mayor/Councillor/s) _____ have a conflict of interest: <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes  If <b>yes</b> , please provide the nature of the interest and reasons why further action should be taken to bring this DA to Council:	
<b>Signed:</b> <small>Please sign or type name &amp; attached to an email.</small>	Cr Arnott - by Email
<b>Date:</b> 10 April 2024	
<b>Signed:</b> <small>Please sign or type name &amp; attached to</small>	Cr Anderson - by Email
<b>Date:</b> 10 April 2024	







 <b>PORT STEPHENS COUNCIL</b>		DEVELOPMENT ASSESSMENT REPORT
<b>APPLICATION REFERENCES</b>		
<b>Application Number</b>	16-2024-45-1	
<b>Development Description</b>	One into Two lot Torrens title Subdivision and Construction of a Dwelling and Pool	
<b>Applicant</b>	NOVI PROJECTS PTY LTD	
<b>Land owner</b>	NOVI PROJECTS PTY LTD	
<b>Date of Lodgement</b>	12/02/2024	
<b>Value of Works</b>	\$700,000.00	
<b>Submissions</b>	3 (2 Unique)	
<b>PROPERTY DETAILS</b>		
<b>Property Address</b>	226 Sandy Point Road SALAMANDER BAY	
<b>Lot and DP</b>	LOT: 256 DP: 730353	
<b>88B Restrictions on Title</b>	<ul style="list-style-type: none"> <li>Easement to drain water 2 wide</li> <li>Restriction as to user</li> </ul> <p>The proposed development does not impact the easement to drain water and will not contravene the restriction</p>	
<b>Current Use</b>	Residential Dwelling	
<b>Zoning</b>	R2 LOW DENSITY RESIDENTIAL	
<b>Site Constraints</b>	<p>Bush Fire Prone Land – Vegetation Buffer &amp; Vegetation Category 2;</p> <p>SEPP (Resilience and Hazards) – Coastal Wetlands Proximity Area;</p> <p>Acid Sulfate Soils – Class 4;</p> <p>Koala Habitat Planning Map – Preferred Koala Habitat Buffer Over Cleared Land;</p> <p>Stormwater Drainage Requirement Area – 1% AEP Infiltration;</p> <p>Property Vegetation Plan; and</p> <p>Flood Planning Area</p>	



## ITEM 3 - ATTACHMENT 4 PLANNER'S ASSESSMENT REPORT.

<b>State Environmental Planning Policies</b>	<i>State Environmental Planning Policy (Sustainable Buildings) 2022</i>
	<i>State Environmental Planning Policy (Biodiversity and Conservation) 2021</i>
	<i>State Environmental Planning Policy (Resilience and Hazards) 2021</i>
<b>PLANNERS PRE-ASSESSMENT CHECKLIST</b>	
<b>OWNERS CONSENT</b>	<b>YES</b> <b>N/A</b>
Land owners consent	<input checked="" type="checkbox"/> <input type="checkbox"/>
If the land owned by a corporation/company, relevant signatures have been provided (sole director, or director/director / director/company secretary).	<input checked="" type="checkbox"/> <input type="checkbox"/>
For works occurring outside property, neighbouring consent provided.	<input type="checkbox"/> <input checked="" type="checkbox"/>
For works occurring on common property within Strata, owner's consent from Strata body provided (common seal).	<input type="checkbox"/> <input checked="" type="checkbox"/>
<b>DA FORM AND AUTHORITY</b>	
Applicant's description of proposal consistent with DA plans.	<input checked="" type="checkbox"/> <input type="checkbox"/>
DA description correct in Authority (i.e. LEP definition).	<input checked="" type="checkbox"/> <input type="checkbox"/>
DA lodged over all affected properties and Authority correct.	<input checked="" type="checkbox"/> <input type="checkbox"/>
Satisfactory cost of works.	<input checked="" type="checkbox"/> <input type="checkbox"/>
<b>NOTIFICATION</b>	
Application notified correctly (i.e. check properties notified).	<input checked="" type="checkbox"/> <input type="checkbox"/>
<b>REFERRALS</b>	
Check referrals are correct and identify if additional required: i.e. Integrated Development (send within 14 days section 42 (2) EPA Regs 2021	<input checked="" type="checkbox"/> <input type="checkbox"/>
Call applicant and send email acknowledgement.	<input checked="" type="checkbox"/> <input type="checkbox"/>



### PROPOSAL

The proposed development is for the retention of an existing dwelling, construction of a new two storey dwelling, swimming pool and one into two lot Torrens title subdivision, as seen in **Figure 1**. The development is proposed to be undertaken in two stages as follows:

- Stage 1: One into two lot Torrens title subdivision and associated works creating the following lots:
  - Lot 1: 297.7m<sup>2</sup>
  - Lot 2: 500.1m<sup>2</sup>
- Stage 2: Construction of the new dwelling on proposed Lot 2.

The new two storey dwelling located on proposed Lot 2 will comprise of the following:

- four bedrooms;
- two bathrooms;
- open plan living/kitchen and dining area;
- rumpus room;
- office; and
- an attached double garage

The proposed floor plans can be seen in **Figures 2 & 3**. The removal of five trees and demolition of ancillary structures is proposed to accommodate the dwelling.

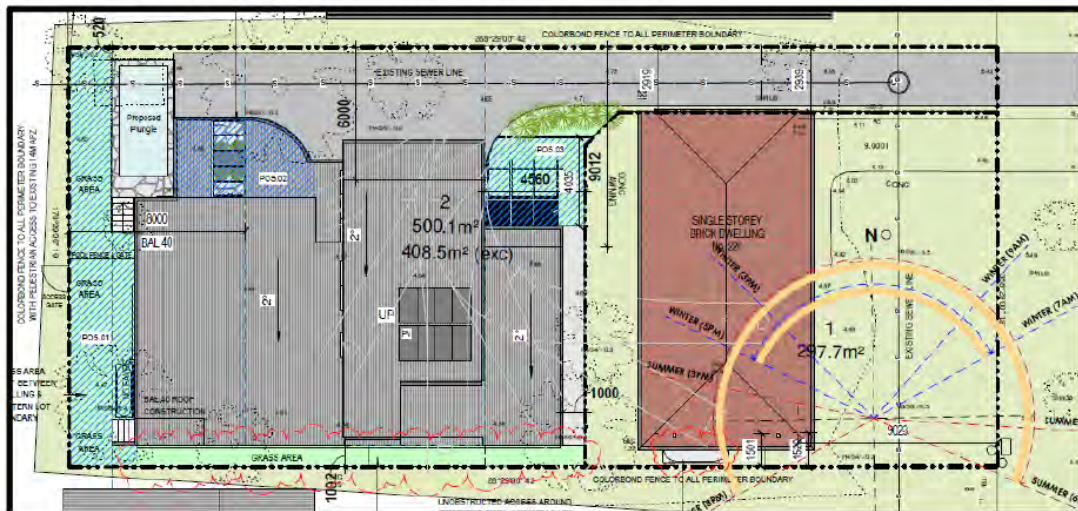


Figure 1: Proposed site plan



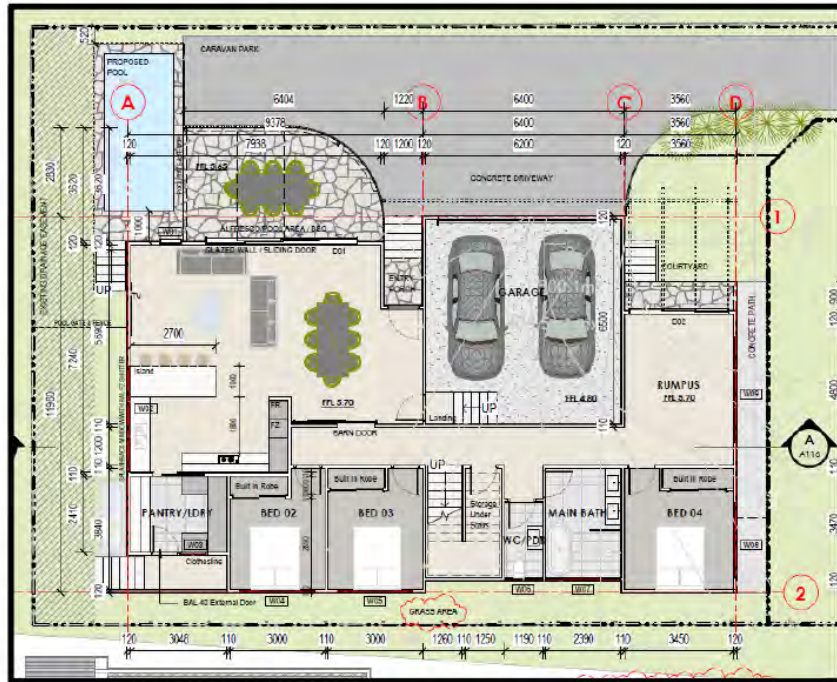


Figure 2: Proposed ground floor plan

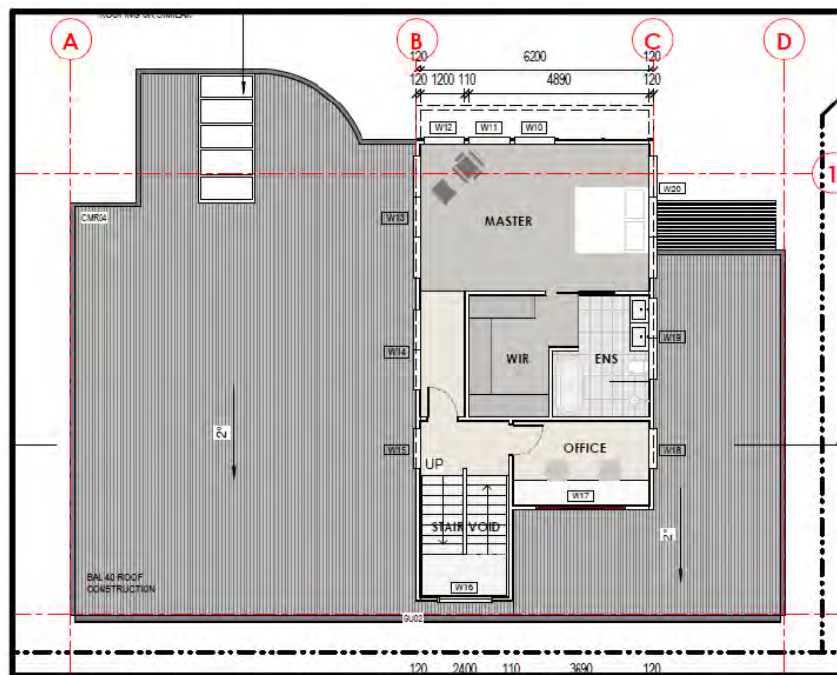


Figure 3: Proposed upper floor plan



### SITE DESCRIPTION

The subject site is a rectangular lot legally identified as Lot 256 DP 730353 with a total area of 797.8m<sup>2</sup>. The site contains an existing single storey dwelling, landscaped areas, and ancillary structures as seen in **Figure 4**. Developments to the north, east, and south comprise of similar low density residential developments with Mambo Wetlands located immediately to the west. Vehicular access to the site is available via Sandy Point Road.



Figure 4: Aerial GIS imagery of the subject site

### SITE HISTORY

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

Application #	Proposal Description	Determination	Date Determined
7-1987-60539-1	N/A	Approved	17/06/1987
16-2022-563-1	Alterations and Additions to Dwelling	Approved	01/08/2022
16-2023-29-1	One into two lot subdivision and construction of dwelling	Refused by Council	26/09/2023

DA16-2023-29-1 proposed the same development outlined in this application and was refused by Council on 26 September 2023 as a Bushfire Safety Authority had not been issued by the Rural Fire Service (RFS). The referral from the RFS at the time required Council to enter a legally binding agreement under Section 88B of the Conveyancing Act 1979 to formalise an Asset Protection Zone (APZ) on the adjoining land owned by Council, known as the Mambo Wetlands. The creation of this easement was rejected by Council on the basis that the land is not suitable for the creation of easements, in that it is classified as community land under the Local Government Act 1993. Therefore, as the easement could not be agreed to, the RFS did not issue a Bushfire Safety Authority

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and the DA was subsequently refused by Council. The RFS provided further correspondence to the applicant following the refusal, offering the potential pathways to be explored:

- Review identified effective slope, vegetation type and fuel loads to re-model radiant heat flux;  
or
- Re-site the dwelling footprint to provide for BAL on dwelling to no greater than BAL-29.

In response to the refusal, an amended Bushfire Threat Assessment (BTA) was prepared and submitted to the RFS. This report was completed by a bushfire consultant suitably qualified to develop alternate solutions and included further investigations regarding the overall bushfire hazard of the site in relation to the proposed dwelling. On 11 March 2024 a Bush Fire Safety Authority was issued by the RFS and the key reasons for refusal outlined in 16-2023-29-1 have been satisfactorily addressed.

#### **SITE INSPECTION DETAILS**

A site inspection was carried out on 10 April 2024. The subject site can be seen in the images below:



**Figure 5:** Access handle location





Figure 6: Proposed dwelling and rear lot location



Figure 7: Proposed dwelling and rear lot location





**Figure 8:** Vegetation to be removed and shed to be demolished



**Figure 9:** Vegetation to be removed



### 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

##### Development Engineering

<b>Comment:</b>	The proposed development was referred to Development Engineering to consider the proposed stormwater management plan and flood risk of the site. A request was made to consider an interallotment drainage system for the existing dwelling in place of the proposed charged system. However, it was noted that a 1.5m drainage easement would not be feasible, as it would require a significant redesign of the proposed dwelling and impact vehicle movements to and from the rear lot. As such, the charged system was supported on merit through increasing the size of on-site detention for the existing dwelling from 3,000L to 6,000L. This would reduce any risk of the charged system failing to an acceptable level. As such, the application was ultimately supported with conditions.
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##### Development Contributions

<b>Comment:</b>	Section 7.11 Development Contributions apply for the creation of one additional lot.
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#### External (non-integrated)

There are no non-integrated external referrals as part of this application. The application was referral externally to the Rural Fire Service (RFS) as an integrated development, under Section 100B of the Rural Fires Act 1997 and is discussed below.

### Environmental Planning and Assessment Act 1979

#### Section 4.14 – Consultation and development consent (certain bushfire prone land)

The development proposes residential subdivision on bushfire prone land. Therefore, under Section 4.14(1), this Section is not applicable. The development is instead assessed under Section 4.46 as integrated development, with the RFS as the relevant approval body.

#### Section 4.46 - Integrated development

Section 4.46 EP&A Act provides that development is integrated development if in order to be carried out, the development requires development consent and one or more other approvals. The proposed development is integrated as it requires approval under the following Acts:

##### Rural Fire Service

<b>Comment:</b>	<p>The proposed development triggered an integrated referral under s100B of the Rural Fires Act 1997 due to the development including the subdivision of bush fire prone land that could lawfully be used for residential purposes. Accordingly, the application was referred to RFS.</p> <p>As discussed above, a previous application was refused by Council as a Bush Fire Safety Authority was not issued by the RFS. In response, an amended Bushfire Threat Assessment (BTA) has been provided with this application to support the referral to the RFS. This BTA includes a revised Method 2 assessment to determine the radiant heat exposure presented by the bushfire risk, rather than relying on calculations presented in Table A1.12.4 in PBP 2019. This process involves a suitably qualified professional undertaking vegetation surveys to determine the maximum fuel load and subsequent bushfire risk presented by the vegetation.</p>
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Additionally, the revised BTA drew reference to a recent decision within the Land and Environment Court.

*Easters Development Pty Ltd v Shoalhaven Council* [2023] NSWLEC 1671 considered whether it was appropriate to rely upon land within a Council reserve, which was being managed to protect existing assets, for bushfire protection and whether this land can be considered managed for the life of the development. The Court decision found that it was improbable that any risk review would result in a change of treatment which would increase the bushfire risk to existing residential assets. Therefore, this land could be considered managed land and it was not necessary to apply for an easement or other legal mechanism for maintenance. The decision in the Easter Developments LEC matter was issued on 5 December 2023, after the refusal of DA16-2023-29-1 by Council.

The basis of this decision was used in the BTA to rely upon the adjoining 10m of land within the Mambo Wetlands as 'managed' and 'fuel reduced' although not managed to same APZ standards. Therefore, this land was assessed as grasslands being a reduced fire fuel source. Furthermore, the RFS draft grassland radiant heat shield policy was employed, which permits an 1800mm high radiant heat shield along the rear boundary of the property to manage the bushfire risk presented by the grassland assessed area. Therefore, the BTA concluded that the dominant bushfire hazard presented to the development is the coastal wetland forest which is >10m from the rear boundary of the site.

The BTA, as discussed above, included a Method 2 assessment for the dominant bushfire hazard to determine the vegetation classification and potential maximum fuel load. Based upon these calculations, it was determined that the radiant heat exposure to the development would require a BAL-29 construction, which is consistent with the requirements of the PBP 2019, specifically Table 5.3a. Notwithstanding, as the BTA relied upon performance based solutions, a BAL-40 construction along the western elevation and roof was recommended as a redundancy measure. The revised BTA was provided to the RFS as part of the integrated referral to allow for an independent review of the proposed alternate solutions.

The referral to the RFS found that the conclusions and findings within the BTA were accurate and subsequently supported with conditions under Division 4.8 of the Environmental Planning and Assessment Act 1979 (EP&A Act 1979).

General Terms of Approval (GTA) were issued by the RFS, dated 11 March 2024, which included conditions related to the following:

- Asset Protection Zones;
- Construction Standards; and
- Water and Utility Services.

The Bushfire Safety Authority and GTAs have been attached to the determination.

#### **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),
- (b) 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.

#### **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 (Sustainable Buildings) 2022**

State Environmental Planning Policy (Sustainable Buildings) 2022 encourages the design and construction of more sustainable buildings to meet NSW climate change targets and adapt to more extreme weather, including hotter and drier summers.

#### **Chapter 2 – Standards for Residential Development – BASIX**

##### **Section 2.1(1) – Development standards**

Section 2.1(1) requires that BASIX affected residential development be accompanied by a BASIX certificate. A valid BASIX certificate has been submitted with the development application which demonstrates that the water, thermal performance and energy requirements for the proposal have been achieved. The proposal is considered to satisfy the relevant provisions of SEPP BASIX.

##### **Section 2.1(5) – Development consent requirements**

Section 2.1(5) requires that development consent must not be granted to BASIX affected residential development unless the embodied emissions attributable to the development have been quantified. The BASIX Certificate includes an Embodied Emissions Materials Assessment which complies with Section 2.1(5).

#### **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 seeks consent for the removal of five (5) existing trees located within the proposed building envelope. The removal is supported as replacement plantings will be provided within the road reserve, which will provide additional street trees to benefit the public domain and assist in reducing the urban heat effect. Furthermore, the trees to be removed generally comprise of non-native species planted for landscape purposes and contain minimal ecological value. No koala feed trees or hollow bearing trees are proposed to be removed. As such, the removal of these trees has been supported.

#### **Chapter 4 – Koala Habitat Protection 2021**

This policy aims to encourage the conservation and management of areas of natural vegetation that provide habitat for koalas to support a permanent free-living population over their present range and reverse the current trend of koala population decline. Chapter 4 applies to all zones other than RU1 (Primary Production), RU2 (Rural Landscape) and RU3 (Forestry) in the Port Stephens Local Government Area.

#### **Section 4.8 – Development assessment process**

Section 4.8 requires that the application must be consistent with the approved koala plan of management that applies to the site. In Port Stephens, the relevant plan is the Comprehensive Koala Plan of Management (CKPoM).

The subject site is mapped as a preferred habitat buffer over cleared land on Council's Koala Habitat Planning Map. The vegetation proposed to be removed on site does not comprise of koala habitat and will therefore not adversely impact koala habitat. As such, the development is considered to be consistent with the CKPoM and this SEPP.

#### **State Environmental Planning Policy (Resilience and Hazards) 2021**

#### **Chapter 2 – Coastal Management**

The subject site is land within proximity to mapped coastal wetlands. As such, the following general matters within section 2.8 and 2.12 are required to be considered when determining an application.

#### **Section 2.8 – Development within the proximity area for coastal wetlands**

As per Section 2.8 of Chapter 2 of the SEPP, development consent must not be granted to development on land identified as 'proximity area for coastal wetlands' unless the consent authority (Council) is satisfied that the proposed development will not significantly impact the biophysical or ecological integrity of the adjacent coastal wetland of the quantity/quality of surface and ground water flows to and from the adjacent wetland.

The proposed development is not considered to impact the biophysical or ecological integrity of the adjacent wetland nor is it considered to impact the quality/quantity of the surface and ground water flows to and from said wetlands. The proposed dwelling and subdivision will not result in adverse impacts to water quality. Furthermore, vegetation proposed to be removed is located entirely within the subject site and comprises of planted landscape species. As such, removal of these trees will not have significant adverse impacts on the health of the wetlands. There is no requirement for additional clearing of vegetation within the Mambo Wetlands located to the west of the site. As such, the proposed development is considered to be consistent with this clause.



**Section 2.12 – Development within the coastal zone generally**

Section 2.12 of Chapter 2 of the SEPP requires consideration as to whether the development would increase the risk of coastal hazards. The proposed development is suitably designed and located to not increase risk to coastal hazards as the development has been designed to be compatible with the constraints of the site, including the management of stormwater drainage.

Therefore the application would generally comply with the aims of the SEPP and the other matters for consideration stipulated under sections 2.8 and 2.12, and can therefore be supported.

**Chapter 4 – Remediation of Land****Section 4.6 – Contamination and remediation to be considered**

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.

A review of Council's records and historical aerial imagery has been undertaken to determine if any potentially contaminating activities have occurred on-site. The aerial imagery and Council's records indicate the land was historically vegetated bushland before being developed for residential purposes in the 1980s. There is no indication that potentially contaminating activities have occurred on-site. Additionally, the site is not listed on the NSW list of contaminated and notified sites published by the EPA. As such, the site is considered suitable for the proposed residential use in its current state. The proposal is for a dwelling and subdivision which is not listed as a potentially contaminating land use. The development therefore accords with the provisions of Chapter 4 of SEPP Resilience and Hazards.

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

The proposed development is defined as a dwelling house and subdivision which is permissible with consent in the R2 Low Density Residential zone. The development addresses the objectives of the zone as it provides housing to service the needs of the community, supports the residential amenity of the area, and has been designed to be compatible with the natural hazards associated with the site.

**Clause 2.6 – Subdivision—consent requirements**

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 2.7 – Demolition requiring development consent**

Clause 2.7 identifies that the demolition of a building or work may be carried out only with development consent, unless identified as exempt development under an applicable environmental planning instrument.

The proposed development requires the demolition of an existing garden shed. Accordingly, conditions of consent have been included in order to mitigate potential impacts to adjoining properties and the locality during demolition works.

**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.



## ITEM 3 - ATTACHMENT 4 PLANNER'S ASSESSMENT REPORT.

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 1 – 297.7m<sup>2</sup>
- Proposed Lot 2 – 500.1m<sup>2</sup>

In accordance with the above, the proposed subdivision seeks to create allotments of which do not comply the minimum lot size specified under the Minimum Lot Size Map. Nonetheless, the proposed small lot subdivision is still permitted under Clause 4.1C which is discussed below.

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

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

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

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

The proposed development seeks to subdivide the land into 2 lots for the purposes of detached dwellings. The proposed lots exceed the minimum 250m<sup>2</sup> requirement specified in (b)(iii) above, with the proposed lots being 297.7m<sup>2</sup> (Lot 1) and 500.1m<sup>2</sup> (Lot 2). Therefore, the proposal is considered to be compliant with Clause 4.1C. Furthermore, as the vacant lot exceeds the minimum lot size stipulated under Clause 4.1, subdivision prior to the erection of the proposed dwelling will be permitted, subject to an 88B Instrument being registered with the subdivision for any future development to be in accordance with this approval.

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

The objectives of this clause are to ensure the height of buildings is 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 7.6 metres, which is below the maximum permissible building height of 9 metres specified on the Height of Buildings Map.

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

The objectives of this clause are as follows—

- (a) to conserve the environmental heritage of Port Stephens,
- (b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,
- (c) to conserve archaeological sites,
- (d) to conserve Aboriginal objects and Aboriginal places of heritage significance.

In accordance with Clause 5.10.(4) the consent authority must, before granting consent under this clause in respect of a heritage item or heritage conservation area, consider the effect of the proposed development on the heritage significance of the item or area concerned.



## ITEM 3 - ATTACHMENT 4 PLANNER'S ASSESSMENT REPORT.

The proposed development is not located within or in proximity to any local or state listed heritage items or conservation areas. A search of the Aboriginal Heritage Management Systems did not reveal any previously recorded Aboriginal sites in proximity to the proposed development. The site is not identified as being located within 200m of any Aboriginal sensitive landscape features.

#### Clause 5.21 – Flood Planning

Clause 5.21(2) provides that the consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied the development complies with the following matters—

- (a) is compatible with the flood function and behaviour on the land, and*
- (b) will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and*
- (c) will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, and*
- (d) incorporates appropriate measures to manage risk to life in the event of a flood, and*
- (e) will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses*

Clause 5.21(3) provides that in deciding whether to grant development consent on land to which this clause applies, the consent authority must consider the following matters—

- (a) the impact of the development on projected changes to flood behaviour as a result of climate change,*
- (b) the intended design and scale of buildings resulting from the development,*
- (c) whether the development incorporates measures to minimise the risk to life and ensure the safe evacuation of people in the event of a flood,*
- (d) the potential to modify, relocate or remove buildings resulting from development if the surrounding area is impacted by flooding or coastal erosion.*

The proposed development is located on land identified as being within the Flood Planning Area (FPA). The Flood Planning Level (FPL) relevant to the land is RL 5.7 metres AHD. The development plans submitted show the finished floor level (FFL) of the development at RL 5.7 meters AHD which is consistent with the FPL of the site. Furthermore, flood free access above the 1% AEP level is also available to the site. This will ensure safe egress from the site in flood events up to the current day 1% AEP. Based on these two characteristics, the proposal is considered to appropriately mitigate risk to life and property. The flood hazard category identified for the site is a low hazard flood fringe area which presents low risk hazard to life and property. As such, it is considered that there would be no adverse offsite impacts to local flooding characteristics.

#### 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 proposed development involves only minor earthworks, noting the majority of the development will be located on a drop edge beam slab due to the flood prone nature of the site. Minor excavation to a depth of approximately 1m is required for the installation of stormwater infrastructure, however, this is considered unlikely to expose ASS or lower the water table.

#### 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.



## ITEM 3 - ATTACHMENT 4 PLANNER'S ASSESSMENT REPORT.

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,*
- (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 development proposes earthworks on the site to achieve a level building platform through the establishment of a drop edge beam slab due to the flood prone nature of the site. As these earthworks are minor in nature, they are not anticipated to result in any negative impacts on the subject or adjoining land, or any public place. As outlined in the assessment against Clause 5.10 above, the likelihood of disturbing subsurface relics is low.

Conditions of consent have been imposed relating to sediment and erosion control, stockpiling of materials, quality of imported/exported fill materials and disposal of excavated materials in accordance with the EPA's Waste Classification Guidelines.

#### **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,*
- (e) suitable vehicular access.*

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

The proposal involves the removal of five (5) trees currently on-site. The trees are used for landscaping purposes and represent minimal ecological value, noting they contain no hollows and are not identified as koala feed trees. As such, the removal of these trees is supported subject to conditions.

No compensatory plantings are required noting the site is constrained by a bushfire hazard to the west and the trees proposed for removal support minimal ecological value. However, a condition has been recommended requiring the planting of 2 x street trees to serve as compensatory plantings, noting plantings in this location will also improve the amenity of Sandy Point Road and broader public domain. As such, the objectives of this Chapter are considered to have been satisfied.

**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 site is within 500m of environmental significance, being mapped as core koala habitat and coastal wetlands (Mambo Wetlands). Nonetheless, the proposed development is unlikely to result in adverse biodiversity impacts as vegetation removal is limited to landscaped plantings contained within the site and stormwater runoff is to be treated prior to discharging from the site. There is no requirement for vegetation removal or works within the Mambo Wetlands area to the west of the site. As such, the development is considered to be consistent with this section.

**B3 – ENVIRONMENTAL MANAGEMENT**

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

**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 limited through conditions of consent which limit construction work hours and mitigate noise derived from ventilation and air conditioning systems. Subject to conditions, the development 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 during the operational phase of the development.

**Earthworks**

As discussed at Clause 7.2 above, the proposed development involves minor earthworks, associated with the slab construction and installation of services. The impacts of the proposed earthworks can be mitigated through conditions of consent. The proposal is therefore consistent with requirements outlined in Councils DCP relating to earthworks.



**B4 – DRAINAGE AND WATER QUALITY**

This Chapter applies to development that:

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

The proposed development exceeds 60% impervious area and is located within a stormwater requirement area. The application has been supported with a stormwater management plan and calculations to demonstrate water can be detained on-site up to and including a 1% AEP storm event. The calculations provided demonstrate post development flows from the site are less than pre development flows. As such, the development is consistent with the requirements of this Chapter and the proposed stormwater management plan has been supported by development engineering. Council's Development Engineer supported the proposal and stormwater management design subject to conditions.

**B5 – FLOODING**

This Chapter applies to all development on flood prone land. The subject land is mapped as being within the Flood Planning Area. Following from the discussion against Clause 5.21 of the PSLEP above, the proposed development is acceptable in terms of flood risk.

The proposed development is for a dwelling house, which is nominated as a suitable land use in accordance with Figure BI of the DCP.

The Flood Planning Level (FPL) relevant to the land is RL 5.7 metres AHD. The development plans submitted with the proposal show the finished floor level of the development at RL 5.7 meters AHD which is consistent with the noted flood planning level. Flood free access above the 1% AEP level is also available to the site. Based on these two characteristics, the proposal appropriately mitigates risk to life and property. The flood hazard category identified for the site is a low hazard flood fringe area and the development comprises a minor residential development which is deemed suitable in this flood category. Therefore, it is considered there would be no adverse offsite impacts to local flooding characteristics or risk to life and property. Therefore, the proposal is consistent with requirements outlined in Council's DCP relating to flooding.

**B7 – HERITAGE**

This Chapter applies to development that is situated on land that contains a heritage item or within a heritage conservation area.

The site is not located on land that contains any local or state listed heritage items and therefore the provisions of this section do not apply. In addition, the proposed development is not located within or in proximity to any local or state listed heritage items or conservation areas. A search of the Aboriginal Heritage Management Systems did not reveal any previously recorded Aboriginal sites in proximity to the proposed development. The site is not mapped as being located within 200m of any Aboriginal sensitive landscape features.

**B8 – ROAD NETWORK AND PARKING**

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

**Traffic Impacts**

The potential impacts of the development to the local road network have been assessed as being acceptable. The development of a single dwelling on the site in a residential area will not significantly increase traffic generation for the locality or reduce the Level of Service (LoS) for major intersections.



**On-site Parking Provisions**

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

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

The proposal is compliant with the DCP car parking requirements.

**On-site Parking Access**

The proposal includes on-site access via Sandy Point Road with circulation areas available on-site to ensure vehicles can enter and exit in a forward direction.

**CHAPTER C – DEVELOPMENT TYPES**

The proposed development includes subdivision, a dwelling house, swimming pool and fencing and therefore Sections C1, C4 and C8 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 layout is consistent with the requirements of Clause 4.1C of the PSLEP 2013.
<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 plans demonstrate that the lots are able to support a rectangular building footprint as required by Figure CA.
<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>	The development proposes a battle-axe entry width of 2.959m, below the 3.6m required for a battle-axe lot. Nonetheless, this is supported being of a minor



C1 – SUBDIVISION	
	variation and consistent with the access arrangements of surrounding battle-axe developments. Moreover, the exit has suitable sight lines, entry and exit to the site is possible in a forward direction, and the width is considered suitable for the proposed residential use.
Control	<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>
Assessment	The development is not located on a corner lot and therefore splay corners are not required.
C1.B – All Subdivision – Street Trees	
<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>	
Control	<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. <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> </li> </ul>
Assessment	The application did not propose any street trees, however a condition of consent requiring the planting of 2 street trees, <i>Cupaniopsis anacardioides</i> 'Tuckeroo', along Sandy Point Road has been recommended in the determination.
Control	<b>C1.6 – Street tree replacement</b>
	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.
Assessment	No street trees are proposed to be removed and therefore this control does not apply.
C1.C – All Subdivision – Solar Access	
<b>Objective</b> <ul style="list-style-type: none"> <li>• To maximise solar access for residential dwellings</li> </ul>	
Control	<b>C1.7 – Solar access</b>
	Residential subdivision addresses the following guidelines for solar access. Any inconsistency clearly justifies how alternative energy efficiency is achieved.



C1 – SUBDIVISION	
	<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>	Appropriate solar access is provided to each lot, noting private open space will be orientated generally to the north.
C1.D – All Subdivision – Public Scale Drainage	
Objective	
<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>	
C1.8 – Inter-allotment drainage	
<b>Control</b>	Each lot must be able to be gravity drained through the drainage system to public drainage.
<b>Assessment</b>	Both lots have provided sufficient stormwater drainage and were supported by Council's Development Engineer. The existing dwelling on proposed Lot 1 will connect to a 6,000L rainwater tank with overflow directed to Sandy Point Road. Water from Lot 2 will be detained on-site up to and including a 1% AEP storm event with overflow discharged via a level spreader to the existing drainage easement at the rear of the site.
C1.9 – Inter-allotment drainage	
<b>Control</b>	Inter-allotment drainage may be required for subdivision where a lot does not drain directly to the road kerb.
<b>Assessment</b>	No inter-allotment drainage is proposed.
C1.10 – Drainage reserves	
<b>Control</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>	Not applicable.
C1.E – Major Subdivision – Block and Street Layout	
Objectives	
<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>Assessment</b>	Not applicable as the proposed development does not comprise a major subdivision.



C1 – SUBDIVISION	
C1.F – Major Subdivision – Public Open Space	
<b>Objectives</b> <ul style="list-style-type: none"> <li>To provide a hierarchy of public open space in accordance with public open space hierarchy</li> <li>To provide parks that are multi-functional</li> <li>To ensure parks achieve centrality by being located near transport nodes, public 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>Assessment</b>	Not applicable as the proposed development does not comprise a major subdivision.
C1.G Major Subdivision – Infrastructure	
<b>Objective</b> <ul style="list-style-type: none"> <li>To ensure detailed consideration is provided to the provision of integrated and quality public infrastructure</li> </ul>	
<b>Assessment</b>	Not applicable as the proposed development does not comprise a major subdivision.

C4 – Dwelling House, Secondary Dwelling, or Dual Occupancy	
C4.A – Height	
<b>Objectives</b> <ul style="list-style-type: none"> <li>To ensure the height of buildings is appropriate for the context and character of the area</li> <li>To ensure building height reflects the hierarchy of centres and land use structure</li> </ul>	
<b>Control</b>	<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  <b>Note:</b> C2.4 requires a minimum first floor and above ceiling height for residential accommodation in a commercial zone of 2.7m
	<b>Assessment</b> The proposed development has a total height of 7.6m, which is below the maximum building height permitted of 9m under Clause 4.3.
C4.B – Setbacks	
<b>Objectives</b> <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>	<b>C4.2 – Setback requirements</b> Development is to be setback from the subject property boundary, in accordance with the provisions outlined in Figure C1.
	<b>Assessment</b> The proposed dwelling provides the following minimum setbacks: <ul style="list-style-type: none"> <li>Front: N/A – the proposal is located on a rear battle-axe lot and therefore does not have direct frontage to the street</li> </ul>



C4 – Dwelling House, Secondary Dwelling, or Dual Occupancy	
	<ul style="list-style-type: none"> <li>Side (Ground): 1.002m</li> <li>Side (Upper): 1.34m</li> <li>Rear (Ground): 3m</li> <li>Rear (Upper): 12.37m</li> </ul> <p>The development is compliant with front, rear, and ground floor side setbacks.</p> <p>The development includes a minor variation to the upper side setback of 2m required under Figure CI. The majority of the upper floor is setback approximately 3.7m from the side boundary and compliant with the C4.2 of the DCP. A minor encroachment occurs due to the inclusion of a stairway required to access the upper floor, which is setback 1.34m from the side boundary. Noting that this variation relates to a non-habitable and low use area of the house and occurs only over a small portion of the dwelling at the side boundary, the variation is acceptable on a merits basis as it would not result in adverse privacy or overshadowing impacts and is consistent with the controls objectives.</p>
<b>Control</b>	<b>C4.3 – Front setback encroachment</b> Development for a secondary dwelling must be located behind the building line of the principal dwelling it is in conjunction with.
<b>Assessment</b>	N/A - not proposed.
<b>Control</b>	<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.
<b>Assessment</b>	Not applicable as the development does not include a secondary dwelling.
<b>Control</b>	<b>C4.5 – Secondary setback encroachment</b> Maximum 1m encroachment to secondary setback for architectural features, such as an entry porch or deck.
<b>Assessment</b>	Not applicable.
<b>Control</b>	<b>C4.6 – Garage setback</b> Garage setback minimum 1m behind the building line or setback.
<b>Assessment</b>	The proposed garage is setback more than 1m behind the building line.
<b>Control</b>	<b>C4.7 – Public reserve and waterfront setback</b> Minimum 3m setback from a public reserve boundary.
<b>Assessment</b>	Not applicable.
<b>Control</b>	<b>C4.8 – Public reserve and waterfront setback</b> Minimum 4.5m setback from a waterfront reserve boundary.
<b>Assessment</b>	Not applicable.
<b>Control</b>	<b>C4.9 – Public reserve and waterfront setback</b>



## ITEM 3 - ATTACHMENT 4 PLANNER'S ASSESSMENT REPORT.

C4 – Dwelling House, Secondary Dwelling, or Dual Occupancy	
	Minimum 1m setback from waterfront land from the access boundary.
Assessment	Not applicable.
Control	<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
Assessment	The existing dwelling on Lot 1 is not setback at least 1m from the battle-axe lot handle. Nonetheless, this is supported on a merits basis as it is consistent with the form and design of surrounding developments, will not result in adverse amenity impacts to the existing dwelling and there are no eaves overhanging the proposed access handle. The driveway will remain functional for residential use.
Control	<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 development to items of environmental significance
Assessment	Not applicable.
C4.C – Streetscape and privacy	
<p style="text-align: center;"><b>Objective</b></p> <ul style="list-style-type: none"> <li>To ensure development activates the streetscape to provide passive surveillance and privacy.</li> </ul>	
Control	<b>C4.12 – Passive surveillance</b> Development is to address the street by having at least one habitable room front the street and/or adjoining public spaces.
Assessment	The proposed dwelling is located at the rear of the site and therefore provides minimal passive surveillance. Nonetheless, passive surveillance is achieved by the existing dwelling located on Lot 1.
Control	<b>C4.13 – Passive surveillance</b> Development on corner lots is to address both street frontages by having habitable rooms face both streets.
Assessment	Not applicable as the development is not located on a corner lot.
Control	<b>C4.14 – Streetscape character</b>



<b>C4 – Dwelling House, Secondary Dwelling, or Dual Occupancy</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 proposed dwelling presents as a similar bulk, scale and design as other residential developments in the locality. The battle-axe arrangement is similar to the development located on the adjoining lot to the south and mitigation measures have been incorporated into the design to minimise any privacy impacts, as discussed below. Furthermore, developments featuring a similar two storey design can be seen along Sandy Point Road. Moreover, as the development is a battle-axe arrangement, the existing dwelling will continue to present to the street as the dominant built form on the site. As such, the proposed development will not adversely impact the streetscape character.
<b>Control</b>	<b>C4.15 – Privacy and two-storey development</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 proposed development does not include a balcony despite being a two storey development. Nonetheless, a balcony fronting the street is not feasible, noting the dwelling is located at the rear of the existing dwelling on a battle-axe lot.
<b>Control</b>	<b>C4.16 – Privacy and two-storey development</b> Balconies are to be located to minimise overlooking of adjoining properties.
<b>Assessment</b>	No balconies are proposed and therefore there will be no substantial overlooking of adjoining properties.
<b>Control</b>	<b>C4.17 – Privacy and two-storey development</b> Privacy screens are required for balconies and patios, which result in unreasonable privacy impacts to properties.
<b>Assessment</b>	It is noted that the external alfresco area is raised due to the flood prone nature of the site. As such, privacy screening has been conditioned within this area to minimise any potential overlooking.
<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>	Highlight windows and obscure glazing has been implemented on windows located on the upper floor to minimise privacy impacts to adjoining properties.
<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>



C4 – Dwelling House, Secondary Dwelling, or Dual Occupancy	
	<p>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:</p> <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>
Assessment	The development includes sufficient private open space that is consistent with the controls in this DCP section. A portion of private open space has been located within the front setback of the proposed dwelling. Nonetheless, this is supported on a merits basis as the proposal is located behind an existing dwelling, not visible from the street, and has sufficient screening as to allow it to be used as private open space.
Control	<p><b>C4.20 – Private Open Space Dimensions</b></p> <p>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.</p>
Assessment	Not applicable.
Control	<p><b>C4.21 – Solar access</b></p> <p>Minimum of 2 hours sunlight to the principal private open space area between the hours of 9am-3pm midwinter.</p>
Assessment	The principal private open space for the dwelling receives sunlight between 9:00am – 3:00pm (6 hours) between mid-winter which exceeds to the minimum 2 hour requirement
Control	<p><b>C4.22 – Solar access</b></p> <p>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.</p>
Assessment	Solar access diagrams were provided that demonstrates adjoining dwellings retain solar access to their private open space areas in accordance with the DCP.
C4.E – Car parking and garages	
<p><b>Objective</b></p> <ul style="list-style-type: none"> <li>• To ensure car parking caters for anticipated vehicle movements to and from the development and does not adversely impact on building articulation</li> </ul>	
Control	<p><b>C4.23 – Driveway width</b></p> <p>A driveway should have a minimum width of 3m</p> <p><b>Note:</b> B8.12 requires ingress/egress widths to provide the listed dimensions</p>
Assessment	The proposed driveway width is 2.919m, which does not comply with the 3m required by the DCP. This variation is supported on a merits basis as:



C4 – Dwelling House, Secondary Dwelling, or Dual Occupancy	
	<ul style="list-style-type: none"> <li>Due to existing structures on site, it is not possible to increase the driveway width;</li> <li>The variation is a minor non-compliance;</li> <li>The driveway will be suitable for the proposed use, as there are no eaves overhanging it that would present a potential risk to the vehicles entering the site; and</li> <li>Vehicles will still be able to enter and leave in a forward direction.</li> </ul>
<b>Control</b>	<b>C4.24 – Garage dimensions</b> Maximum garage door width of 6m for residential lots or 50% of the building frontage, whichever is less.
<b>Assessment</b>	The garage has a total width of 5.41m, which is less than 50% of the building frontage.
C4.F – Landscaping	
<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>C4.26 – Dwelling house</b> Development located on land that slopes at more than 18 degrees to the horizontal or that is within 50m of land that contains: <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> must provide landscaping that: <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>constrains turf areas within the inner protection area of the APZ identified by a bushfire report.</li> </ul>
<b>Assessment</b>	The application does not include landscaping that is wholly compliant with the DCP. Nonetheless this can be accepted on a merits basis as: <ul style="list-style-type: none"> <li>The site is heavily constrained by the risk of bush fire which limits the viability of landscaping; and</li> <li>Developments in the surrounding area have similar levels of landscaping; and</li> </ul>



<b>C4 – Dwelling House, Secondary Dwelling, or Dual Occupancy</b>	
	The development will still enhance the overall amenity and character of the site and a condition of consent will be included requiring 2x street trees, <i>Cupaniopsis anacardioides</i> 'Tuckeroo', to be planted along Sandy Point Road.
<b>Control</b>	<b>C4.27 – Dual occupancy landscaping coverage</b> Landscaping is provided as follows: <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>	Suitable areas for soft and deep soil planting have been provided, particularly along the front and rear site boundaries.
<b>Control</b>	<b>C4.28 – Dual occupancy landscaping dimensions</b> To be counted as part of the total landscaping coverage, the landscaped area must be at least 1.5m wide and 3m long.
<b>Assessment</b>	Noted.
<b>Control</b>	<b>C4.29 – Dual occupancy landscaping qualities</b> Landscaping is in accordance with the following: <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> <p><b>Note:</b> The canopy coverage of specimen trees can be used to calculate deep soil landscaping</p>
<b>Assessment</b>	Landscaping has been provided using endemic species and incorporates soft and deep soil landscaping along the front, side and rear boundaries respectively.
<b>Control</b>	<b>C4.30 – Species selection</b> Landscape species are to be selected in accordance with the landscape technical specification.



<b>C4 – Dwelling House, Secondary Dwelling, or Dual Occupancy</b>	
<b>Assessment</b>	Noted – landscape species will need to comply with Council's 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>	Appropriate space has been provided for a screened waste storage 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>	There is sufficient space to provide an open-air area for clothes drying behind the building line with a northerly aspect.

<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>C8.13 – Swimming pools</b> The water edge must be setback at least 1m from the side and rear boundaries.
<b>Assessment</b>	<p>The proposed pool is setback approximately 0.82m from the northern lot boundary, which is non-compliant with this DCP control. All other setbacks are compliant.</p> <p>The proposed variation is supported, noting the non-compliance is minor in nature, will not adversely impact the amenity of adjoining properties, and as the pool is located above ground, will not involve excavation that may impact adjoining properties. The pool's location is screened from neighbouring properties and the public domain. The pool design is consistent with the objectives of C8.A.</p>
<b>Control</b>	<b>C8.14 – Swimming pools</b> Maximum decking height of 1.4m in height if the pool is located more than 600mm above the ground level (finished).



## ITEM 3 - ATTACHMENT 4 PLANNER'S ASSESSMENT REPORT.

C8 – ANCILLARY STRUCTURES	
Assessment	The proposed swimming pool has a maximum decking height of 0.9m which is compliant with this control.
Control	<b>C8.15 – Front fences (including forward of the building line)</b> Maximum height of 1.2m and is not of solid infill construction.
Assessment	No front fencing is proposed.
Control	<b>C8.16 – Front fences (including forward of the building line)</b> Maximum height of 1.5m along main roads and secondary street frontages.
Assessment	No front fencing is proposed.
Control	<b>C8.17 – Front fences (including forward of the building line)</b> Compatible with street facilities, such as mailboxes, and allow easy access to public utilities.
Assessment	No front fencing is proposed.
Control	<b>C8.18 – Side and rear fences</b> Maximum height of 1.8m.
Assessment	Colourbond fencing with a height of 1.8m has been proposed along the side and rear boundary.
Control	<b>C8.19 – Side and rear fences</b> Side fences must not encroach on the front setback area of any dwelling.
Assessment	The fences noted on the plans do not encroach on the front setback area of any dwelling.
Control	<b>C8.20 – Side and rear fences</b> Fencing materials should reflect context and character of the area.
Assessment	The colorbond fencing is consistent with fencing in the immediate locality.
Control	<b>C8.21 – Side and rear fences</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	Side and rear fences are not within the root zone of any existing trees.

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

There are no planning agreements that have been entered into under section 7.4 relevant to the proposed development.

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



#### Demolition

In regard to Clause 61(1) Council has considered the Australian Standard AS 2601—2001: The Demolition of Structures in the assessment of this application with appropriate conditions being included on the consent.

#### 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 residential development which will provide additional housing to service the needs of the community. The dwelling and subdivision will enable infill housing within an established residential area. The construction of the dwelling will provide employment opportunities in the locality during the short term, helping to support the local building and development industries. This will have direct and indirect monetary inputs into the local economy. Furthermore, the increase in residents will provide ongoing direct and indirect monetary inputs through their daily living activities.

As assessed throughout this report, the proposed development has been designed to respond to the constraints of the site. Design elements have been introduced throughout the design to minimise any adverse impacts to adjoining properties and the public domain.

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

##### Impacts on the Built Environment

The proposed development would reinforce the residential nature of the locality and is characteristic of other developments both in the local and wider community. The development includes relevant construction methods and built form design such as opaque glazing and an on-site stormwater management system to minimise any potential adverse impacts to adjoining properties.

##### Impacts on the Natural Environment

The proposed development will involve the removal of minor vegetation which has limited ecological value, noting the vegetation does not contain any hollows, koala feed trees, and does not provide any habitat for threatened species. As such, removal of the tree is not expected to adversely impact the biodiversity of the locality. Furthermore, compensatory planting will be provided in the form of street tree plantings.

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

The subject site is located within a residential area and is relatively clear of vegetation. The site has access to all essential services and the proposed development makes good use of the available land. While the site features constraints, namely bushfire and flooding, the development has been designed to be compatible with these risks and will not substantially impact on, or be impacted by these constraints. Extensive investigation has been undertaken by a suitably qualified bushfire consultant to determine the overall bushfire risk of the site, and the recommendations made by the bushfire consultant have been supported by the RFS, in terms of dwelling design and mitigation measures. These investigations include a detailed Method 2 assessment to determine the vegetation characteristics of the dominant bushfire hazard and management of the area maintained by Council through an 1800mm high radiant heat shield consistent with the RFS draft grassland radiant heatshield policy. Through these measures, a BAL-29 building envelope is achievable in accordance with PBP 2019 and the site is considered suitable from a bushfire risk perspective. The development addresses all elements required under the relevant planning instruments and policies and there are no anticipated adverse 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 20 February 2024 to 5 March 2024 in accordance with the provisions of the Port Stephens Council Community Engagement Strategy. Three submission, two of which were unique, were received during this time. The matters raised during the exhibition period have been detailed in the table below.

Matter raised	Response
<b>1. Bushfire</b>	
<p>1.1 All submissions received raised concerns regarding the bushfire hazard presented by the Mambo Wetlands located to the west of the development site. In particular, the submissions raised the following matter:</p> <ul style="list-style-type: none"> <li>Frequency of bushfires in the Mambo Wetlands;</li> <li>Ongoing management of the 10m APZ located on Council owned land;</li> <li>Overall increased risk of an additional dwelling on Sandy Point Road, including emergency response costs, insurance premiums, infrastructure damage, decreased property values, environmental remediation, and liability.</li> </ul>	<p>1.1 The proposed development is identified as an integrated development, as it involves the subdivision of bushfire prone land for residential purposes. Under Section 4.47 of the <i>Environmental Planning and Assessment 1979</i>, Council must obtain approval from the relevant approval body, known as General Terms of Approval (GTAs). In this instance, the approval body is the Rural Fire Service (RFS).</p> <p>As part of the referral to the RFS, the applicant is required to provide a Bushfire Threat Assessment prepared by a suitably qualified consultant which identifies how the development complies with the Planning for Bushfire Protection 2019 (PBP 2019). A development may comply with the PBP 2019 either through acceptable solutions or performance based solutions.</p> <p>In this instance, a BTA prepared by Bushfire Environmental Management Consultancy was provided with the application. The BTA outlined performance based solutions in regards to Asset Protection Zone (APZ) and construction standards. As part of the performance based solutions, a Method 2 assessment was undertaken, which determines that radiant heat exposure presented by the bushfire risk, rather than relying upon the calculations presented in Table A1.12.4 in PBP 2019. To do so, a suitably qualified professional undertakes vegetation surveys to determine the maximum fuel load and subsequent bushfire risk presented by the vegetation. Based upon these calculations, it was determined the managed land along Mambo Wetlands can be considered fuel</p>



	<p>reduced, rather than as an APZ, and assessed as grassland. Therefore, the primary bushfire hazard is located 14m from the proposed development. The Method 2 calculations demonstrated the radiant heat exposure would require a BAL-29 construction. Noting that performance based solutions are relied upon, this has been increased to BAL-40 as a redundancy measure. The BTA was included with the referral to the RFS who undertook a thorough independent assessment, including a site inspection of the Mambo Wetlands. It was determined that the conclusions and findings found within the BTA were accurate and the application was supported and GTAs and a Bush Fire Safety Authority were issued for the development. As such, the legislative requirements under Section 4.47 of the <i>Environmental Planning and Assessment Act 1979</i> have been met and the development is considered to be compatible with the bushfire risk of the site. Applicable conditions of consent will be included in the determination to ensure compliance with all requirements are maintained for the life of the development.</p>
<b>2. Stormwater and Flooding</b>	
1.2 All submissions received raised concerns regarding adverse impacts on adjoining properties from additional stormwater discharge and localised flooding.	1.2 The proposal includes a stormwater management plan and modelling that demonstrates stormwater runoff can be detained on-site up to and including a 1% AEP storm event and post developed flows are less than pre developed flows. Additionally, a 6,000L rainwater tank is proposed to detain stormwater runoff from the existing dwelling. As such, the proposed development will not result in additional stormwater or flooding impacts on adjoining properties.
<b>3. Privacy</b>	
1.3 One submission raised concerns regarding privacy impacts to adjoining properties, noting the second storey design of the dwelling.	1.3 The proposal has implemented highlight windows and opaque glazing on all upper level windows to ensure privacy impacts are kept to a minimum. Furthermore, a condition of consent has been recommended requiring privacy screening



	along the northern elevation of the outdoor alfresco, noting its raised floor. As such, privacy impacts are considered to be suitably mitigated and the development will not result in substantial privacy impacts to adjoining properties.
<b>4. Driveway Width</b>	
1.4 One submission raised concerns regarding the driveway width and proximity to an existing street kerb inlet pit.	1.4 It is acknowledged that the proposed driveway represents a variation to the DCP and AS2890.1:2004 Parking facilities – Off-street car parking, both of which require a minimum width of 3m. The proposed development has a minimum width of 2.95m which represents a 50mm variation to these standards. Noting the infill nature of the development, a wider driveway is not feasible without costly minor changes to the existing dwelling. Furthermore, there are no eaves overhanging the proposed driveway and the proposed width is considered suitable for residential use from a risk perspective, noting vehicles will be able to enter and exit the site in a forward direction. Kerbs at a height of 100mm will be required for the length of the driveway to provide further protection to the existing dwelling and adjoining fence. The width was supported by Council's Development Engineer and has been supported on a merits basis.

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

The proposed development represents a modern dwelling to supply additional housing stock within an established residential area. This will help supply additional housing to meet the needs of the community. Furthermore, the development has been designed to be suitably compatible with the flooding and bushfire risks of the site. Through design elements and construction methods, the proposed development is not anticipated to have any significant adverse impacts on surrounding properties or the natural environment. For these reasons, the proposed development is considered to be in the public interest.

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

Section 7.11 development contributions apply for the provision of an additional lot.

**DETERMINATION**

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



CHRISTOPHER PRIMROSE

**Development Planner**

(Community Futures Directorate)



ITEM NO. 4

FILE NO: 23/277912  
EDRMS NO: PSC2017-00180

## QUARTERLY BUDGET REVIEW TO 31 MARCH 2024

REPORT OF: GLEN PETERKIN – ACTING DIRECTOR CORPORATE  
STRATEGY AND SUPPORT  
DIRECTORATE: CORPORATE STRATEGY AND SUPPORT

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### RECOMMENDATION IS THAT COUNCIL:

- 1) Approve the discretionary changes to the adopted budget (**ATTACHMENT 1**) presented as the Quarterly Budget Review to 31 March 2024.

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### BACKGROUND

The purpose of this report is to provide an update to Council on the 2023-2024 financial year budget. The Quarterly Budget Review to 31 March 2024 (**ATTACHMENT 1**) sets out the details of any variations between Council's current budget and the proposed budget.

#### Operating Budget

The Quarterly Budget Review to 31 March 2024 has shown an increase in total revenue by \$5.058 million which is largely due to \$5.033 million worth of new capital grants from the State Government. Other adjustments include revenue from the investment portfolio performance and adjustments to Smart Parking forecasts.

Further information of the changes to the budget are outlined in the Operating Statement Variations as shown in (**ATTACHMENT 1**).

#### Capital Budget

The capital expenditure budget increased by \$6.734 million largely due to the addition of the new multi-year Special Purpose Roads Grant from the State Government. The first year of funding includes Tomaree Road, Rookes Road, Swan Bay Road and Beach Road. Other projects being brought into the budget include an elevator upgrade to the Raymond Terrace Community Care Centre, field lighting for King Park and Mallabula Sports Complex and new drainage at Tomaree Sports Complex.

Further information on the changes to the budget are outlined in the Capital Statement Variations as shown in (**ATTACHMENT 1**).



**Performance Indicators**

All performance indicators are above the benchmark except for unrestricted cash levels. Council will continue to monitor and manage cash levels to ensure there is sufficient unrestricted revenue to cover internal and external reserves.

**COMMUNITY STRATEGIC PLAN**

<b>Strategic Direction</b>	<b>Delivery Program 2022-2026</b>
Financial Management	Manage implementation of the Long Term Financial Plan 2023 to 2033.

**FINANCIAL/RESOURCE IMPLICATIONS**

Council's anticipated underlying result decreased by \$17,000 to \$1.013 million. This is above the original target budget of \$769,000. The movement from the original underlying result will be shown each quarter.

	<b>Surplus (\$)</b>	<b>Deficit (\$)</b>
Budget 2023 - 2024	\$769,000	
September 2023 review	\$948,000	
December 2023 review	\$1,030,000	
March 2024 review	\$1,013,000	

<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**

Despite an improvement seen in the underlying result for the financial year 2023 – 2024, it is prudent that Council continues to monitor the budget carefully to ensure minimal risk to the organisation and community.



<b>Risk</b>	<b><a href="#">Risk Ranking</a></b>	<b>Proposed Treatments</b>	<b>Within Existing Resources?</b>
There is a risk that the underlying operating result may remain in a deficit for an unforeseeable amount of time.	High	The Long Term Financial Plan will be reviewed regularly to ensure that expenditure remains sustainable and that revenue is at appropriate levels.	Yes

## **SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

Council's budget is fundamental for operational sustainability and the provision of facilities and services to the community. The budget will continue to be carefully monitored while there is a high level of inflation and economic uncertainty.

## **CONSULTATION**

Consultation with key stakeholders has been undertaken by the Financial Services section to discuss the overall financial result for the quarter.

### Internal

- Executive Team.

### External

Nil.

## **OPTIONS**

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

## **ATTACHMENTS**

- 1) Quarterly Budget Review to 31 March 2024.

## **COUNCILLORS ROOM/DASHBOARD**

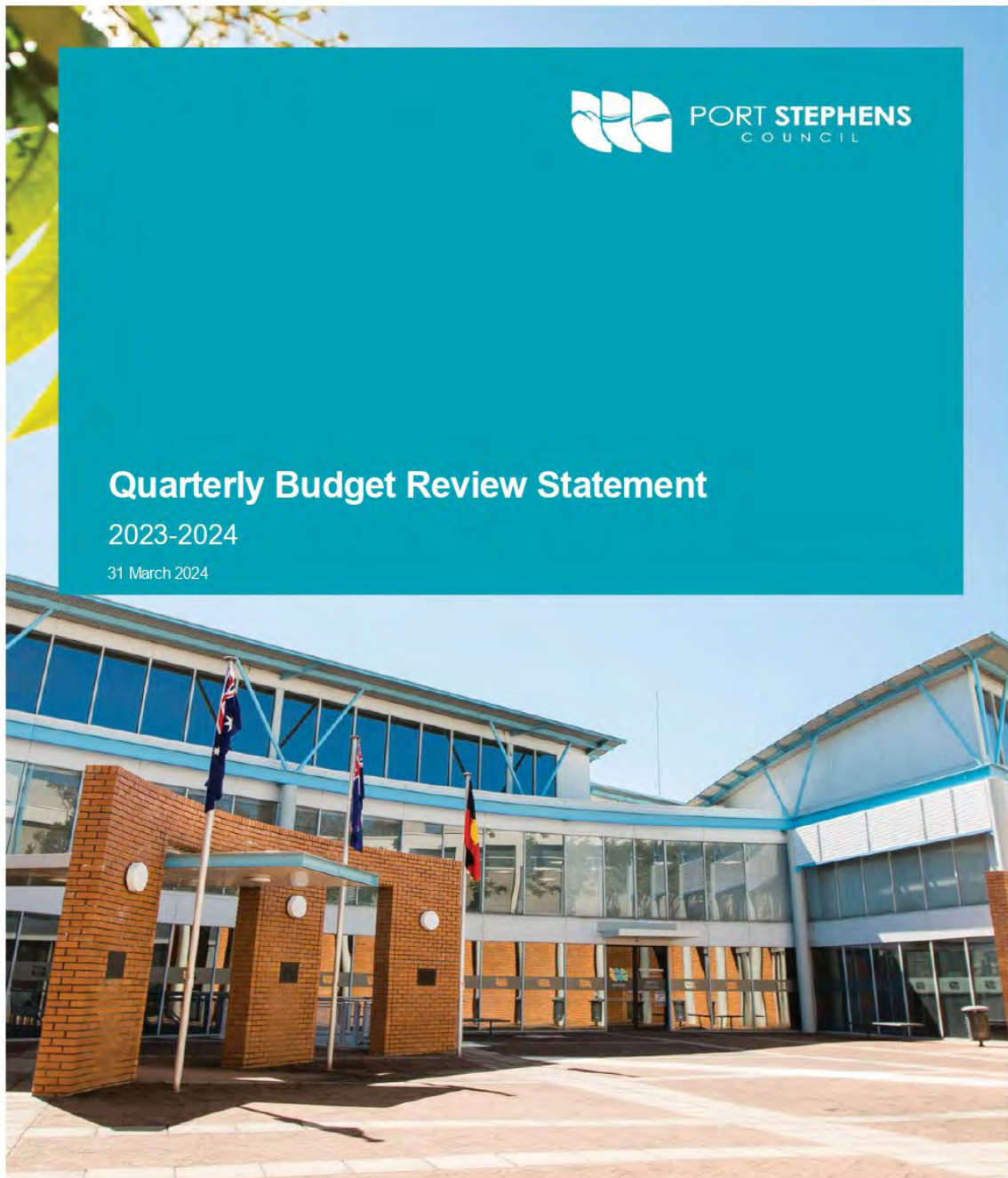
Nil.



**TABLED DOCUMENTS**

Nil.







**ITEM 4 - ATTACHMENT 1      QUARTERLY BUDGET REVIEW TO 31 MARCH 2024.**

**Report by Responsible Accounting Officer for the Quarter ending  
31 March 2024**

The following statement is made in accordance with clause 203(2) of the Local Government (General) Regulations 2021.

It is my opinion that the Quarterly Budget Review Statement for Port Stephens Council for the quarter ended 31 March 2024 indicates that Council's projected financial position at 30 June 2024 will be satisfactory at year-end, having regard to the projected estimates of income and expenditure and the original budgeted income and expenditure.

Signed:



Glen Peterkin  
Financial Services Section Manager  
Port Stephens Council

Date: 29/04/2024



ITEM 4 - ATTACHMENT 1  
2024.

## QUARTERLY BUDGET REVIEW TO 31 MARCH

**Operating Statement**

Result for the financial quarter ending 31 March 2024

	Original Budget 2023-2024 \$'000	Revotes and Rollovers \$'000	September Review \$'000	December Review \$'000	March Review \$'000	Revised Budget \$'000	Actuals YTD \$'000
<b>Income from Continuing Operations</b>							
Rates and annual charges	75,284	-	-	-	-	75,284	56,322
User charges and fees	60,216	-	(312)	-	(400)	59,504	45,085
Interest & Investment Revenue	2,263	-	800	679	425	4,167	3,309
Other Income	4,171	-	(721)	(450)	-	2,999	1,958
Grants & contributions for operating purposes	13,458	9	1,846	1,944	-	17,256	8,574
Capital Grants and Contributions	30,294	8,913	544	2,671	5,033	47,454	25,569
Other revenues	3,471	-	577	250	-	4,299	3,628
Fair value gains	872	-	-	-	1,628	2,500	-
Net gains from the disposal of assets	250	-	-	-	-	250	-
<b>Total Income from continuing operations</b>	<b>190,279</b>	<b>8,922</b>	<b>2,733</b>	<b>5,094</b>	<b>6,686</b>	<b>213,714</b>	<b>144,444</b>
<b>Expenses from continuing operations</b>							
Employee benefits and on-costs	58,713	-	(135)	-	301	58,879	43,812
Borrowing Costs	3,574	-	-	-	-	3,574	2,637
Materials & services	60,866	-	1,458	4,723	(260)	66,788	46,355
Other Expenses	10,953	9	430	(4,500)	-	6,892	5,095
Depreciation and amortisation	20,529	-	(270)	-	-	20,259	14,096
<b>Total expense from continuing operations</b>	<b>154,635</b>	<b>9</b>	<b>1,483</b>	<b>223</b>	<b>41</b>	<b>156,392</b>	<b>111,995</b>
<b>Operating Surplus/(Deficit) after capital grants</b>	<b>35,644</b>	<b>8,913</b>	<b>1,250</b>	<b>4,871</b>	<b>6,645</b>	<b>57,323</b>	<b>32,449</b>
<b>Operating Surplus/(Deficit) before capital grants</b>	<b>5,351</b>	<b>-</b>	<b>706</b>	<b>2,200</b>	<b>1,611</b>	<b>9,868</b>	<b>6,880</b>
Less: Net Gain on sale	(250)	-	-	-	-	(250)	-
Less: Fair value increases	(872)	-	-	-	(1,628)	(2,500)	-
Less: Royalties	(1,873)	-	(527)	(250)	-	(2,650)	(1,816)
Less: Local Election Allocation	(250)	-	-	-	-	(250)	(188)
Less: Unspent Regional Emergency Road Repair Fund	-	-	-	(1,868)	-	(1,868)	(1,868)
Less: Newcastle Airport	(1,336)	-	-	-	-	(1,336)	(1,002)
Add: NAP Dividend	-	-	-	-	-	-	-
<b>Underlying Operating Surplus/(Deficit)*</b>	<b>769</b>	<b>-</b>	<b>179</b>	<b>82</b>	<b>(16)</b>	<b>1,013</b>	<b>2,006</b>

\*Underlying result refers to performance measures that do not include abnormal, non-recurring events or transactions that are restricted for a capital purpose, providing a better representation of underlying financial performance without the impact of any unusual or extraordinary items.



# ITEM 4 - ATTACHMENT 1      QUARTERLY BUDGET REVIEW TO 31 MARCH 2024.

## Operating Statement Variations

Result for the financial quarter ending 31 March 2024

Income from Continuing Operations	Recommended Change \$'000	Explanation
Rates and annual charges	-	
User charges and fees	(400)	The delay in the implementation of smart parking has reduced the forecasted income from parking fees
Interest & Investment Revenue	425	Increase in forecasted investment income due to cash holdings from investment property sales and portfolio management
Other income	-	
Grants & contributions for operating purposes	-	
Capital Grants and Contributions	5,033	Council has been successful in receiving grant funds for RTCC elevator replacement, Tomaree Sports Complex Drainage and the State Government special purpose roads grant.
Other revenues	-	
Fair value gains	1,628	Recognise movement of investment property fair value as a result of the revaluation
Net gains/(loss) from the disposal of assets	-	
<b>Total recommended income change</b>	<b>6,686</b>	
<b>Expenses from continuing operations</b>		
Employee benefits and on-costs	301	A reclassification of expenditure budgets from materials and services to employee benefits
Borrowing Costs	-	
Materials & services	(260)	A reclassification of expenditure budgets from materials and services to employee benefits. This is offset by an increase for planning in relation to the 7 day make over for Raymond Terrace
Other Expenses	-	
Depreciation and amortisation	-	
<b>Total recommended expense change</b>	<b>41</b>	



ITEM 4 - ATTACHMENT 1  
2024.

## QUARTERLY BUDGET REVIEW TO 31 MARCH

**Capital Statement**

Result for the financial quarter ending 31 March 2024

	Original Budget 2023-2024 \$'000	Revotes and Rollovers \$'000	September Review \$'000	December Review \$'000	March Review \$'000	Revised Budget \$'000	Actuals YTD \$'000
<b>Capital Funding (2)</b>							
Grants and Contributions - Operating	2,226	9	450	1,868	-	4,554	3,229
Grants and Contributions - Capital	19,294	8,924	544	2,671	5,033	36,465	14,457
External Reserves	5,113	6,963	3,779	(109)	1,422	17,167	39,046
Internal Reserves	9,277	24,202	1,342	1,547	279	36,647	38,046
General fund contribution to capital	-	-	-	121	-	121	121
<b>Funding available for capital expenditure</b>	<b>35,910</b>	<b>40,097</b>	<b>6,114</b>	<b>6,098</b>	<b>6,734</b>	<b>94,954</b>	<b>94,899</b>
<b>Capital Expenditure (2)</b>							
<b>New Assets</b>							
Aquatic Structures	-	-	-	-	-	-	-
Buildings	-	584	-	-	-	584	311
Commercial Assets	775	137	(45)	-	-	867	78
Corporate Assets	250	734	80	16	-	1,080	690
Drainage	-	18	310	-	-	328	-
Open Space	-	-	-	-	-	-	-
Transport Infrastructure	8,003	5,652	805	993	642	16,095	4,425
Waste Assets	285	780	-	-	-	1,065	768
<b>Asset Renewals (Replacement) and Upgrades (1)</b>							
Aquatic Structures	200	114	(16)	318	-	617	150
Buildings	2,855	2,531	1,540	-	1,120	8,046	4,395
Commercial Assets	3,885	15,491	-	307	40	19,723	954
Corporate Assets	2,400	2,280	(19)	320	-	4,981	3,268
Drainage	1,420	347	60	-	-	1,827	245
Open Space	1,291	1,396	493	-	1,121	4,302	1,563
Transport Infrastructure	8,828	10,034	2,905	4,144	3,811	29,723	17,134
Waste Assets	-	-	-	-	-	-	-
<b>Total Capital Expenditure</b>	<b>30,193</b>	<b>40,097</b>	<b>6,114</b>	<b>6,098</b>	<b>6,734</b>	<b>89,237</b>	<b>33,982</b>
<b>Transfer to reserves (3)</b>	<b>5,718</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>5,718</b>	<b>60,918</b>

(1) Renewals are defined as the replacement of existing assets (as opposed to the acquisition of new assets)

(2) Excludes Newcastle Airport and related entities

(3) Transfer to reserves are funds set aside for future use



# ITEM 4 - ATTACHMENT 1      QUARTERLY BUDGET REVIEW TO 31 MARCH 2024.

## Capital Statement Variations

Result for the financial quarter ending 31 March 2024

Capital Expenditure New Assets	Recommended Change \$'000	Explanation
Aquatic Structures	-	-
Buildings	-	-
Commercial Assets	-	-
Corporate Assets	-	-
Drainage	-	-
Open Space	-	-
Transport Infrastructure	642	Construction of Marine Drive Pathway extension, smart parking implementation and bus shelter works
Waste Assets	-	-

## Asset Renewals (Replacement) and Upgrades

Aquatic Structures	-	-
Buildings	1,120	Replacement of Lakeside Leisure heat pump, building and information technology upgrades, including the EOC and shed installation at the depot
Commercial Assets	40	Upgrades to Raymond Terrace Community Care Elevator
Corporate Assets	-	-
Drainage	-	-
Open Space	1,121	King Park Sports Complex and Maitabula Sports Complex field lighting upgrades and Tomaree Sports Complex Drainage Upgrades
Transport Infrastructure	3,811	Projects from the first year of the State Government's special purpose roads grant
Waste Assets	-	-



# ITEM 4 - ATTACHMENT 1 QUARTERLY BUDGET REVIEW TO 31 MARCH 2024.

## Cash Reserve Balances

This statement sets out the budgeted reserve balances and funding source changes.

Reserve	Opening Balance \$'000	Transfers In \$'000	Original Budget \$'000	Revotes and Rollovers \$'000	September Review \$'000	December Review \$'000	March Review \$'000	Closing Balance \$'000	Actuals YTD \$'000
<b>External Restriction (1)</b>									
Bonds and Retentions	1,429	-	-	-	-	-	-	1,429	963
Domestic Waste	5,905	629	(365)	(806)	(98)	-	-	5,265	7,944
Crown Reserves	5,931	3,111	(3,898)	(1,827)	(495)	748	-	3,570	8,000
Developer Contributions	22,091	5,936	(850)	(2,477)	(3,315)	(639)	(1,422)	19,323	22,139
Unexpended Grants Reserve	10,698	26,325	(15,803)	(10,774)	(874)	(4,539)	(5,033)	-	7,473
<b>Total External Restriction</b>	<b>46,053</b>	<b>36,001</b>	<b>(20,915)</b>	<b>(15,884)</b>	<b>(4,782)</b>	<b>(4,430)</b>	<b>(6,456)</b>	<b>29,588</b>	<b>48,519</b>
<b>Internal Restriction (2)</b>									
Administration Building Reserve	550	365	(250)	-	(270)	-	(117)	278	611
Asset Rehabilitation Reserve	2,002	4,100	(3,600)	(1,465)	(283)	(187)	(199)	369	1,899
Commercial Properties Reserve	19,557	1,582	(1,000)	(17,021)	(204)	(1,055)	-	1,559	17,608
Community Loans	200	-	-	-	-	-	-	200	200
Community Halls	69	(50)	-	-	-	-	-	19	82
Drainage Reserve	491	1,629	(1,400)	(67)	(100)	-	-	553	1,576
Election Reserve	358	188	-	-	-	-	-	546	508
Employee Leave Entitlements (ELE)	1,000	-	-	-	-	-	-	1,000	1,000
Federal Assistance Grant Reserve	3,369	(3,369)	-	-	-	-	-	-	-
Fleet Reserve	2,304	2,114	(2,000)	(834)	(962)	(310)	-	312	1,293
IT Reserve	1,500	2,118	(400)	(2,118)	-	-	-	1,100	2,257
Other Waste Services Reserve	156	(134)	-	-	-	-	-	21	17
Parking Meters Reserve	398	1,243	(202)	-	(312)	(100)	(480)	547	784
Repealed Funds Reserve	2,455	-	-	(1,381)	(52)	-	-	1,021	1,802
Roads / Environmental Reserve	587	425	(425)	(516)	35	-	-	105	76
Sustainable Energy & Water Reserve	42	-	-	-	-	-	-	42	59
Unexpended Loan Funds Reserve	-	-	-	-	-	-	-	-	-
Ward Funds Reserve	29	60	(60)	(29)	-	-	-	-	58
Emergency & Natural Disaster	5,119	1,881	-	-	-	-	-	7,000	3,594
Grant Co-Contribution Reserve	586	2,414	-	-	-	-	-	3,000	1,622
Resilience Fund	3,000	-	-	-	-	-	-	3,000	3,000
<b>Total Internal Restriction</b>	<b>44,171</b>	<b>14,665</b>	<b>(9,337)</b>	<b>(24,231)</b>	<b>(2,149)</b>	<b>(1,652)</b>	<b>(796)</b>	<b>20,671</b>	<b>38,046</b>
<b>Total External and Internal Restrictions</b>	<b>90,225</b>	<b>50,666</b>	<b>(30,253)</b>	<b>(40,114)</b>	<b>(5,931)</b>	<b>(6,082)</b>	<b>(7,251)</b>	<b>50,259</b>	<b>84,565</b>
Variance Cash Reserves to Bank Account									(3,930)
Timing Difference									2,998
<b>Unrestricted Cash/(Shortfall)</b>									<b>(932)</b>

(1) Funds that must be spent for a specific purpose

(2) Funds that Council has designated for a specific purpose

(3) Excludes Newcastle Airport and related entities and 355c Committees Bank Accounts



# ITEM 4 - ATTACHMENT 1      QUARTERLY BUDGET REVIEW TO 31 MARCH 2024.

## Performance Indicators <sup>(1)</sup>

Result for the financial quarter ending 31 March 2024

1. Operating performance ratio	\$'000	Indicator	Benchmark	
Total continuing operating revenue excluding capital grants and contributions less operating expenses	5,781	4.86%	>0.00%	✓
Total continuing operating revenue excluding capital grants and contributions	118,875			
This ratio measures Council's achievement of containing operating expenditure within operating revenue.				
2. Debt service cover ratio				
Operating result before capital excluding interest and depreciation/impairment/amortisation	23,613	11.91	>2.00x	✓
Principal repayments (Statement of Cash Flows) plus borrowing costs (Income Statement)	1,982			
This ratio measures the availability of operating cash to service debt including interest, principal and lease payments.				
3. Unrestricted Working Capital ratio				
Total Current Assets less external restrictions	44,142	1.53	>1.5x	✓
Total Current Liabilities less external restrictions	28,847			
This ratio measures Council's ability to meet its short term obligations as they fall due.				
4. Cash expense ratio				
Current year's cash and cash equivalents plus all term deposits	80,635	8.74	>3.00 mths	✓
Operating expenses less depreciation + YTD days	9,224			
This liquidity ratio indicates the number of months Council can continue paying for its immediate expenses without additional cash inflow.				
5. Rates and annual charges outstanding percentage				
Rates and annual charges outstanding YTD	2,422	3.1%	<10.00%	✓
Rates and annual charges collectable	77,538			
To assess the impact of uncollected rates and annual charges on Council's liquidity and the adequacy of recovery efforts.				
6. Restricted Cash				
External Restrictions	46,519			
Internal Restrictions	38,046			
Unrestricted / (Shortfall)	(3,930)			✗
	80,635			

<sup>(1)</sup> Excludes Newcastle Airport and related entities



## ITEM 4 - ATTACHMENT 1

## QUARTERLY BUDGET REVIEW TO 31 MARCH 2024.

**Contracts and Other Expenses**

Result for the financial quarter ending 31 March 2024

Councillors are currently made aware of tenders of \$250,000 or more in accordance with legislation. However, Councillors should be made aware of other material contracts entered into by Council and details of other expenses that are of particular interest.

**Part A: Contracts**

Contracts (other than employment contracts and contracts entered into from Council's preferred suppliers list) that:

- Were entered into during the quarter ending 31 March 2024 and;
- Have a value equal to or more than \$50,000.

Contractor	Contract Details and Purpose	Contract Value (inc GST)	Start Date	End Date	Budget (Y/N)
INTELLIFLEET PTY LTD	Supply 60 x 4g upgrade kits, technicians & associated costs	68,242.90	9/01/2024	30/06/2024	Y
DATA#3 LIMITED	FT1002029 - Sophos Central Intercept & Central Firewall Integration Pack	61,557.54	9/01/2024	30/06/2024	Y
ANNA BAY SAND & EARTHMOVING	15/01/2024 - Stockpile Removal - Sibelco Site, LTP Rd Salt Ash, Nelson Bay Rd, Anna Bay + Nelson Bay Rd, Salt Ash	81,950.00	10/01/2024	30/06/2024	Y
PKF (NS) AUDIT & ASSURANCE LIMITED PARTNERSHIP	2023/24 Internal audit services as per audit plan	60,520.00	11/01/2024	30/06/2024	Y
DELL AUSTRALIA PTY LIMITED	33x Dell Thunderbolt Dock - WD22TB4, 33x Dell Latitude 5440 XCTO Base	76,883.40	15/01/2024	30/06/2024	Y
SHEDS N HOMES HUNTER VALLEY	RFQ120-2023 Raymond Terrace Depot Flocon Shed	77,890.00	22/01/2024	30/06/2024	Y
RAMAHO PTY LTD	Lawson St Easement	53,556.18	23/01/2024	30/06/2024	Y
PORT STEPHENS TOURISM LTD	DPS - Council Contribution January 2024 - \$220,000	220,000.00	31/01/2024	30/06/2024	Y
DELL AUSTRALIA PTY LIMITED	33x Dell Thunderbolt Dock - WD22TB4, 33x Dell Latitude 5440 XCTO Base	76,883.40	6/02/2024	30/06/2024	Y
PROTECH.ERM PTY LTD	Protech.ERM System Renewal - 12 Jan 2024 to 11 Jan 2025	95,291.22	12/01/2024	11/01/2025	Y
GLN PLANNING	RFQ031-2022 Lower Hunter Floodplain - Strategic Plan	164,691.36	20/02/2024	30/06/2024	Y
KJ FITZ TRADING PTY LIMITED	Project Management - 12 months from 28 Feb 2024 to 28 Feb 2025	207,515.00	28/02/2024	28/02/2025	Y
CREATIVE RECREATION SOLUTIONS PTY LIMITED	RFQ004-2024 Tomaree Sports Complex Playground	75,919.82	8/03/2024	30/06/2024	Y
ANA ASPHALT	RFQ007-2024 PSC Local Road Asphalt Patching	147,400.44	8/03/2024	30/06/2024	Y
CREATIVE RECREATION SOLUTIONS PTY LIMITED	RFQ004-2024-1 Centennial Park Playground	60,499.40	8/03/2024	30/06/2024	Y
MODUPLAY GROUP PTY LTD	RFQ009-2024 Taylors Beach Playground Replacement	110,000.00	11/03/2024	30/06/2024	Y
STUART & DUNN OFFICE SUPPLIES	RFQ008-2024 Modification of Facilities & Infrastructure section of PSC Administration Building	89,875.50	11/03/2024	30/06/2024	Y
SCONE OUTDOORS	Supply and deliver Toro Groundskeeper 4010D, including optional LED work light kit fitted	142,520.00	14/03/2024	30/06/2024	Y
EDSTEIN CREATIVE STONE	RFQ003-2024 Clock Tower Raymond Terrace	50,817.00	14/03/2024	30/06/2024	Y
ACTIVE TREE SERVICES PTY LTD	Q134365 - 18/03/2024 - March/April Tree Works	71,500.00	19/03/2024	30/06/2024	Y
FENWORX PTY LTD	RFQ011-2024 - Tomaree Rd, Shoal Bay - Asphalt Overlay	92,972.00	22/03/2024	30/06/2024	Y
AUDIT OFFICE OF NEW SOUTH WALES	2024 Audit Engagement	116,160.00	26/03/2024	30/06/2024	Y



# ITEM 4 - ATTACHMENT 1      QUARTERLY BUDGET REVIEW TO 31 MARCH 2024.

## Part B: Consultancy and Legal Expenses

Report shows expenditure as at 31 March 2024 for:

- Consultancies
- Legal fees

For the purposes of this report, a consultancy is defined as a person or organisation engaged under contract on a temporary basis to provide recommendation or high level specialist or professional advice to assist decision making by management. Generally it is the advisory nature of the work that differentiates a consultant from other contractors.

Expense	March Review	
	YTD \$ \$'000	Budget (Y/N)
<b>Consultants</b>		
Holiday Parks	1	Y
Property Development	-	
Engineering	44	Y
Development Planning	-	
IT	40	Y
Environment	64	Y
Other	106	Y
Construction	207	Y
<b>Total Consultancies</b>	<b>462</b>	
<b>Legal Fees</b>		
Advice	59	Y
Litigation	88	Y
<b>Total Legal Fees</b>	<b>147</b>	
Expense - Litigation	YTD \$	
	\$'000	
Local Government Law	8	
Environmental Law	6	
Planning & Development Law	74	
<b>Total Litigation Expense</b>	<b>88</b>	



**ITEM NO. 5**

**FILE NO: 24/95441  
EDRMS NO: PSC2017-00180**

## **HOLIDAY PARK FURNITURE DONATION**

REPORT OF: CAMERON DONALDSON - ACTING HOLIDAY PARKS SECTION  
MANAGER  
DIRECTORATE: CORPORATE STRATEGY AND SUPPORT

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### **RECOMMENDATION IS THAT COUNCIL:**

- 1) Undertake an Expression of Interest process to Not for Profit community organisations and Registered Charities to donate surplus Holiday Park furniture items to families and individuals in need across Port Stephens.

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### **BACKGROUND**

The Port Stephens Beachside Holiday Parks are currently undertaking cabin refurbishments across the 4 Holiday Parks – Fingal Bay Holiday Park, Shoal Bay Holiday Park, Halifax Holiday Park and Thou Walla Sunset Retreat. These refurbishments and upgrades are part of an ongoing asset replacement program designed to ensure the quality of the Holiday Parks accommodation produce.

The refurbishment project will see the replacement of aging soft furnishings and cabin equipment including, lounges, dining room furniture, bedroom furniture and various cabin appliances. Previously, attempts have been made to sell these items in line with Council's Asset Disposal Policy (**ATTACHMENT 1**) however, the various items have eventually been sent away as unwanted waste.

Over the past few months, the Holiday Parks team has been working across Council to find alternate solutions for the disposal of these items. The Port Stephens Homelessness Stakeholder Advocacy Group (HSAG) was established to support a coordinated approach to addressing the impacts of homelessness in Port Stephens. The HSAG have developed a 12 month action plan which includes a number of priorities including priority 1.2 - Identify low cost, immediate solutions to support those in need across Port Stephens.

The refurbishment project presents a unique opportunity for Council to provide direct support to those in need. The donation of furniture and whitegoods would provide immediate assistance to those setting up a home or moving into different housing types.

The process will occur over the coming weeks whilst the Capital Works Program is in operation during the low season.



It is proposed that this donation be managed through an Expression of Interest (EOI) process which targets community organisations and charities only. These organisations would then distribute the items to the local community.

The EOI process would set parameters around distribution and will only be open to Not for Profit community organisations and Registered Charities operating in Port Stephens.

It is proposed the EOI process aligns with the furniture disposal timelines.

## **COMMUNITY STRATEGIC PLAN**

<b>Strategic Direction</b>	<b>Delivery Program 2022-2026</b>
Financial Management	Implement the 2022 to 2025 Delivery Plans for Beachside Holiday Parks and Koala Sanctuary.

## **FINANCIAL/RESOURCE IMPLICATIONS**

Council have previously replaced furniture and whitegoods across the Holiday Parks. Attempts were made to have these items managed and sold through an auction house, however, this was not successful. Those items that could not be reused by the Holiday Parks were sent to general waste. This resulted in a disposal cost to Council.

It is proposed that Council would support the transport of these items to the various organisations, if required. The costs associated with this transport would be funded via the Holiday Parks budget.

<b>Source of Funds</b>	<b>Yes/No</b>	<b>Funding (\$)</b>	<b>Comment</b>
Existing budget	Yes	\$10,000	Estimated cost for storage and transportation of surplus Holiday Park furniture, whitegoods, furnishings and other items to Not for Profit organisations or Registered Charities operating in Port Stephens. These works are being funded from the Crown Reserve.
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 Expression of Interest process is not in line with the Asset Disposal Policy.	Low	An Expression of Interest process would ensure transparency and equity of distribution.	Yes
There is a risk that Council may incur additional costs if the Expression of Interest is not successful and items are required to be stored and/or disposed of.	Low	The Expression of Interest will be advertised through normal engagement methods and include consultation with relevant advisory groups.	Yes

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

The project supports Council's sustainability goals by reducing waste and extending the life of furniture items that may normally go to landfill.

By working with community organisations to distribute the furniture at no cost there is potential for positive social impacts, particularly for disadvantaged residents of Port Stephens. Cost of living pressures mean that setting up a house with basic furniture items can be difficult and out of reach for many.

**CONSULTATION**

Consultation with key stakeholders has been undertaken by the Holiday Parks Section.

Internal

- Communications Section.
- Financial Services Section.

External

- Homelessness Stakeholder Advisory Group.
- Community organisations in Port Stephens.

**OPTIONS**

- 1) Accept the recommendation.



<b>ORDINARY COUNCIL - 28 MAY 2024</b>
---------------------------------------

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

#### **ATTACHMENTS**

- 1) Asset Disposal Policy.

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

Nil.

#### **TABLED DOCUMENTS**

Nil.



Policy

**FILE NO:** PSC2009-02488**TITLE:** ASSET DISPOSAL (OTHER THAN PROPERTY) POLICY**POLICY OWNER:** FINANCIAL SERVICES SECTION MANAGER**1. PURPOSE:**

- 1.1 The purpose of this policy is to provide a systematic and accountable method to Council officials (Councillors, staff and delegates of Council) for the disposal of surplus assets, excluding real property, and to ensure the process is transparent and complies with Council's Code of Conduct, Statement of Business Ethics and Financial Business Rules.
- 1.2 Environmentally sustainable asset disposal results in minimisation of unnecessary purchasing, waste minimisation, water and energy saving, pollution minimisation, avoidance of toxic chemicals, reduction in greenhouse gases and decision making that incorporates biodiversity and conservation objectives.

**2. CONTEXT/BACKGROUND:**

- 2.1 The Asset Disposal (other than property) Policy is required to ensure that the disposal of Council assets is ethical, transparent and accountable. The policy is supported by the Asset Disposal (other than property) Management Directive that prescribes the considerations and processes to be applied in the disposal of Council owned assets.

**3. SCOPE:**

- 3.1 This policy has been written considering the following principles:
  - a) High standards of behaviour and ethics are required of all parties to asset disposal activities.
  - b) Asset disposal activities aim to be efficient, effective and balance risk and total cost.
  - c) Due economy shall be exercised in all asset disposal decisions.
  - d) Asset disposal decisions shall consider relevant evaluation criteria including environmental sustainability, the support of registered disability employers and the support of local industry.

**4. DEFINITIONS:**

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

Asset	A resource with economic value that an individual, corporation or country owns or controls with the exception that it will provide future benefit.
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Policy



**5. POLICY STATEMENT:**

- 5.1 Surplus assets will be disposed of in a cost effective manner that complies with relevant regulations in a fair, transparent, environmentally sustainable manner to maximise financial return to Council. Prior to the disposal, assets will be reviewed in order to ascertain whether they have alternative uses within Council, contain hazardous materials or identifying marks. Council has adopted a Statement of Business Ethics that sets out the high ethical standards expected of Council officials and delegates, contractors and business associates.

**6. POLICY RESPONSIBILITIES:**

- 6.1 Financial Services Section Manager, Finance Acquisitions Coordinator, and the Procurement and Contract Management Specialist are responsible for the implementation, compliance of, monitoring, evaluating, reviewing and providing advice on this policy.
- 6.2 Section Managers, Civil Assets Manager and all relevant employees are responsible for complying with this policy.

**7. RELATED DOCUMENTS:**

- 7.1. Local Government Act 1993 (NSW).  
7.2. Local Government (General) Regulation 2021 (NSW).  
7.3. Competition and Consumer Act 2010 (Cth).  
7.4. Code of Conduct.  
7.5. Statement of Business Ethics.  
7.6. Procurement Policy.  
7.7. Fraud and Corruption Control Policy.  
7.8. Procurement Management Directive.  
7.9. Asset Disposal Management Directive.  
7.10. Financial Business Rules.  
7.11. Environment Policy.  
7.12. Asset Management Policy.  
7.13. NSW Government Sustainability Policy.  
7.14. NSW Government Code of Practice.  
7.15. NSW Government Procurement Policy framework.





Policy

**CONTROLLED DOCUMENT INFORMATION:**

This is a controlled document. Hardcopies of this document may not be the latest version. Before using this document, check it is the latest version; refer to Council's website <a href="http://www.portstephens.nsw.gov.au">www.portstephens.nsw.gov.au</a>			
<b>EDRMS container No</b>	PSC2009-02488	<b>EDRMS record No</b>	21/327656
<b>Audience</b>	Council staff		
<b>Process owner</b>	Financial Services Section Manager		
<b>Author</b>	Financial Services Section Manager		
<b>Review timeframe</b>	3 years	<b>Next review date</b>	October 2024
<b>Adoption date</b>	25/03/2014		

**VERSION HISTORY:**

Version	Date	Author	Details	Minute No.
1.0	25/03/14	Financial Services Section Manager	Policy adopted.	63
2.0	27/11/15	Financial Services Section Manager	This policy has been reviewed and formatted into the new template.	
3.0	09/02/2016	Financial Services Section Manager	Policy adopted.	019
4.0	12/12/2017	Financial Services Section Manager	Updated references from TRIM to RM8. Updated RM8 record number from PSC2009-02488/486 to 17/198654. Added Financial Business Rules to the Purpose. Added Procurement Management Directive, Asset Disposal Management Directive, and Financial Business Rules to the Related Documents.	317





Policy



5.0	12/11/2019	Financial Services Section Manager	<p>Updated policy into the current format.</p> <p>6.0 – Updated Policy Responsibilities as follows:</p> <p>Removed – 6.1 Section Managers</p> <p>Added - 6.1 Financial Services Section Manager, Financial Expenditure Coordinator and Procurement and Contract Management Specialist are responsible for the implementation, compliance of, monitoring, evaluating, reviewing and providing advice on this policy.</p> <p>Removed - 6.2 Expenditure Coordinator</p> <p>Added - 6.2 Section Managers, Civil Assets Planning Manager and all relevant employees are responsible for complying with this policy.</p> <p>6.3 – Removed 'Contractor'</p> <p>6.3 – Added 'Contract'</p> <p>Removed - 6.3 Procurement and Contractor Contract Management Specialist.</p> <p>6.4 Asset Section Manager.</p> <p>6.5 Civil Assets Planning Manager.</p> <p>Added '6.4 Asset Section Manager'</p> <p>Added '6.5 Civil Assets Planning Manager'</p> <p>Added '7.11 Environment Policy.'</p> <p>Added '7.12 Asset Management Policy.'</p> <p>Added '7.13 NSW Government Sustainability Policy.'</p>	208
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Policy



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Policy



			<p>Added '7.14 NSW Government Code of Practice.'</p> <p>Added '7.15 NSW Government Procurement Policy framework.'</p> <p>Updated EDRMS record number in version history.</p>	
6.0	26 October 2021	Financial Services Section Manager	<p>Updated policy into the new template.</p> <p>6.1 – Removed 'Expenditure' to reflect current naming convention of position title.</p> <p>6.2 – Removed 'Planning' to reflect current naming convention of position title.</p> <p>7.2 – updated Local Government (General) Regulation 2021 (NSW) to current.</p> <p>Controlled document information: Amended review timeframe to 3 years as per Council's policy review process.</p>	286

Policy

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ITEM NO. 6

FILE NO: 24/107971  
EDRMS NO: PSC2005-4245

**POLICY REVIEW: BEACHSIDE HOLIDAY PARKS TERMS, RULES AND CONDITIONS POLICY**

REPORT OF: CAMERON DONALDSON - ACTING HOLIDAY PARKS SECTION  
MANAGER  
DIRECTORATE: CORPORATE STRATEGY AND SUPPORT

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Endorse the revised Beachside Holiday Parks Terms, Rules and Conditions Policy shown at **(ATTACHMENT 1)**.
- 2) Place the revised Beachside Holiday Parks Terms, Rules and Conditions Policy 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 Beachside Holiday Parks Terms, Rules and Conditions Policy dated 10 August 2021, Minute Number 211 should no submissions be received.

---

**BACKGROUND**

The purpose of this report is to seek Council's endorsement of the revised Beachside Holiday Parks Terms, Rules and Conditions Policy (the policy) **(ATTACHMENT 1)**.

The policy provides consistency and clarity for the process of applying and managing the Beachside Holiday Parks terms and conditions relating to guest bookings, guests whilst onsite and holiday van owners (HVO) and is in keeping with relevant industry practice.

The nature of the Holiday Parks business requires a suite of documents that can be communicated clearly to guests and other stakeholders at the beginning of the business relationship and enforced when required to uphold our reputation and good business practice.

These documents include the Beachside Holiday Parks Terms and Conditions which outline a range of booking information including payments, arrival information and expected guest behaviour. The Beachside Holiday Parks - Park Rules provide more details about how guests ensure they stay safe and enjoy their holiday and the Beachside Holiday Parks Cancellation Conditions clearly outline monies that are non-refundable should guests need to cancel their booking.

The general principles of these documents are based on fairness, equity and safety and benchmarked against leading industry associations.



**ORDINARY COUNCIL - 28 MAY 2024**

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>
Financial Management	Implement the 2022 to 2025 Delivery Plans for Beachside Holiday Parks and Koala Sanctuary.

**FINANCIAL/RESOURCE IMPLICATIONS**

There are no financial or resource implications with the adoption of this policy.

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

**LEGAL, POLICY AND RISK IMPLICATIONS**

There are no legal implications associated with this recommendation as the practice followed is in keeping with industry standards.

These documents ensure that staff can confidently uphold best business practice and ensure guest safety at all times.

<b>Risk</b>	<b><u>Risk Ranking</u></b>	<b>Proposed Treatments</b>	<b>Within Existing Resources?</b>
There is a risk to Council's reputation if Council is not consistent when enforcing the Beachside Holiday Parks Terms and Conditions, Park Rules and Cancellation Conditions.	Low	Adopt the recommendations.	Yes



There is a risk to guests and holiday van owners if park rules are not followed.	Low	Adopt the recommendations.	Yes
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**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

There are no sustainability implications.

**CONSULTATION**

Consultation with key stakeholders has been undertaken by the Holiday Parks Section.

Internal

- The Executive Team have been consulted to seek management endorsement.

External

- Industry associations – CCIA (Caravan and Camping Industry Association).

In accordance with local government legislation the revised Beachside Holiday Parks Terms, Rules and Conditions Policy will go on public exhibition for a period of 28 days. A copy will be provided to holiday van owners.

**OPTIONS**

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

**ATTACHMENTS**

- 1) Revised Beachside Holiday Parks Terms, Rules and Conditions Policy.

**COUNCILLORS' ROOM/DASHBOARD**

Nil.

**TABLED DOCUMENTS**

Nil.



# ITEM 6 - ATTACHMENT 1 REVISED BEACHSIDE HOLIDAY PARKS TERMS, RULES AND CONDITIONS POLICY.

## Policy



**FILE NO:** PSC2005-4245

**TITLE:** BEACHSIDE HOLIDAY PARKS TERMS, RULES & CONDITIONS POLICY

**OWNER:** HOLIDAY PARKS SECTION MANAGER

### 1. PURPOSE:

- 1.1 The purpose of this policy is to outline Port Stephens Beachside Holiday Parks approach to the application of all terms and conditions relating to guest bookings, guest's onsite and holiday van owners (HVO). The policy relates to the management and upholding of the Beachside Holiday Parks (BSHP) Terms and Conditions, Cancellation Conditions and Park Rules in keeping with relevant industry practice.

### 2. CONTEXT/BACKGROUND:

- 2.1 The nature of our business requires a suite of documents that can be communicated clearly to guests and other stakeholders at the beginning of our business relationship and enforced, when required, to uphold our reputation and good business practice.
- 2.2 These documents include the Beachside Holiday Parks (BSHP) Terms and Conditions which outlines a range of booking information including payments, arrival information and expected guest behaviour. The BSHP Park Rules provides more details about how guests ensure they stay safe and enjoy their holiday and the BSHP Cancellation Conditions clearly outlines monies that are non-refundable should guests need to cancel their booking.
- 2.3 The general principles of these documents are based on fairness, equity and safety and benchmarked against leading industry associations.

### 3. SCOPE:

- 3.1 This policy provides guidance for all matters relating to guest bookings, booking cancellations and the expected behaviour of all guests and holiday van owners while staying at the Beachside Holiday Parks. The development of these documents has been guided by industry standards and the key principles of good business practice, fairness and the overall enjoyment of all guests.





**ITEM 6 - ATTACHMENT 1 REVISED BEACHSIDE HOLIDAY PARKS TERMS, RULES AND CONDITIONS POLICY.**

## Policy



### 4. DEFINITIONS:

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

Beachside Holiday Parks	Fingal Bay, Shoal Bay, Halifax, Thou Walla, Port Stephens Koala Sanctuary.
Guest	A person or persons who are staying onsite at one of our the Beachside Holiday Parks.
Holiday Van Owner	Short term resident of the Beachside Holiday Parks.
Leading Industry Associations	Caravan and Camping Industry Association.

### 5. STATEMENT:

5.1 Beachside Holiday Parks will carry out its responsibilities to administer the Terms and Conditions, Park Rules and Cancellation Conditions and ensure:

- a) All relevant policies and conditions are communicated clearly to all guests, holiday van owners and other stakeholders.
- b) Staff are consistent in their approach and understanding of all documents.
- c) All staff are capable of escalating relevant matters to senior managers for resolution.

5.2 A review of the Terms and Conditions, Park Rules and Cancellation Conditions will be undertaken annually in keeping with industry practice.

### 6. RESPONSIBILITIES:

6.1 The overall responsibility for the policy is with the Holiday Parks Section Manager with implementation primarily via the Beachside Holiday Parks Operations Manager, Commercial Business Manager and the Koala Sanctuary Assistant Manager.

6.2 The key position/s responsible for implementing, complying with, monitoring, evaluating, reviewing and providing advice on the policy include Holiday Park Assistant Managers, all Guest/customer Services Officers and Sales and Reservations Officers, grounds team leaders and grounds officers.

### 7. RELATED DOCUMENTS:

- 7.1 Holiday Van Owners Standard Operating Procedures (PSC).
- 7.2 Holiday Van Owners Annual Occupancy Agreement (PSC).
- 7.3 Crown Lands Management Act 2016.
- 7.4 Beachside Holiday Parks Plans of Management (PSC).





# ITEM 6 - ATTACHMENT 1 REVISED BEACHSIDE HOLIDAY PARKS TERMS, RULES AND CONDITIONS POLICY.

## Policy



- 7.5 Local Government Act 1993.  
 7.6 Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2021 2005.  
 7.7 Holiday Parks (Long-term Casual Occupation) Act 2002 (NSW).

### CONTROLLED DOCUMENT INFORMATION:

This is a controlled document. Hardcopies of this document may not be the latest version. Before using this document, check it is the latest version; refer to Council's website: <a href="http://www.portstephens.nsw.gov.au">www.portstephens.nsw.gov.au</a> .			
EDRMS container No.	PSC2005-4245	EDRMS record No.	TBA
Audience	Council staff and the Community		
Process owner	Holiday Parks Section Manager		
Author	Holiday Parks Section Manager		
Review timeframe	3 years	Next review date	TBA
Adoption date	10 August 2021		

### VERSION HISTORY:

Version	Date	Author	Details	Minute No.
1	10 August 2021	Holiday Parks Section Manager.	New Policy.	211
2	TBA	Holiday Parks Section Manager.	1.1, 2.2 and 4.1 – added 'the' when referencing Beachside Holiday Parks. 6.1, 6.2 – position titles updated to reflect current. 7.6 – Updated year to current version. 7.7 – Added Holiday Parks (Long-term Casual Occupation) Act 2002 (NSW).	TBA





**ITEM NO. 7**

**FILE NO: 23/281854  
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) Fight Motor Neurone Disease (Fight MND) – Central Ward funds - \$500 donation towards freight costs associated with equipment for the Fight MND Big Freeze fundraising event at Tanilba Bay.
  - b) Hinton Wallalong District Pony Club – Cr Giacomo Arnott – Rapid response - \$500 donation towards 2024-2025 annual licence fee.
  - c) Raymond Terrace RSL Sub-Branch – West Ward funds - \$3,690 donation towards equipment hire for ANZAC Day commemoration service.

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**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**

Fight Motor Neurone Disease (Fight MND)	An organisation dedicated to funding research and raising awareness for those in the community affected by motor neurone disease.	\$500	Donation towards freight costs associated with equipment for the Fight MND Big Freeze fundraising event at Tanilba Bay.
Hinton Wallalong District Pony Club	A small, family friendly pony club offering instruction and activities.	\$500	Donation towards 2024-2025 annual licence fee.
Raymond Terrace RSL Sub-Branch	An ex-service organisation tasked with the wellbeing, care and commemoration of ex-serving Defence Force personnel and their dependants.	\$3,690	Donation towards equipment hire for ANZAC Day commemoration service.

**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. 8**

**FILE NO: 24/111034  
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 28 May 2024.

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<b>No:</b>	<b>Report Title</b>	<b>Page:</b>
1	Cash and Investment Portfolio - April 2024	234
2	Designated Persons' Return	244
3	Annual Disclosure of Interest Returns for 2024 to 2025	245
4	Delegations Report	248
5	Council Resolutions	250

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# INFORMATION PAPERS



**ITEM NO. 1**

**FILE NO: 23/342428  
EDRMS NO: PSC2017-00180**

**CASH AND INVESTMENT PORTFOLIO - APRIL 2024**

REPORT OF: GLEN PETERKIN – ACTING DIRECTOR CORPORATE  
STRATEGY AND SUPPORT  
DIRECTORATE: CORPORATE STRATEGY AND SUPPORT

**BACKGROUND**

The purpose of this report is to present Council's schedule of cash and investments held at 30 April 2024.

Council's total portfolio of investments was \$75.7 million with an additional \$1.5 million held in Council's operational account as at 30 April 2024.

The investment portfolio is currently yielding 4.92% p.a. on a rolling 1 year performance, which was 0.68% above the benchmark with investment income on target to meet or exceed budget.

The investment portfolio meets the benchmarks for institution exposure and maturity limits but is outside of the benchmark in relation to rating exposure. As at 30 April 2024 Council held 2% more cash with non-rated institutions than the benchmarks allow for, which is due to the overall portfolio holdings decreasing from the normal consumption of cash during the month. No further investments will be placed with non-rated institutions until the benchmark is reached.

**ATTACHMENTS**

1) Cash Investment Portfolio - 30 April 2024.

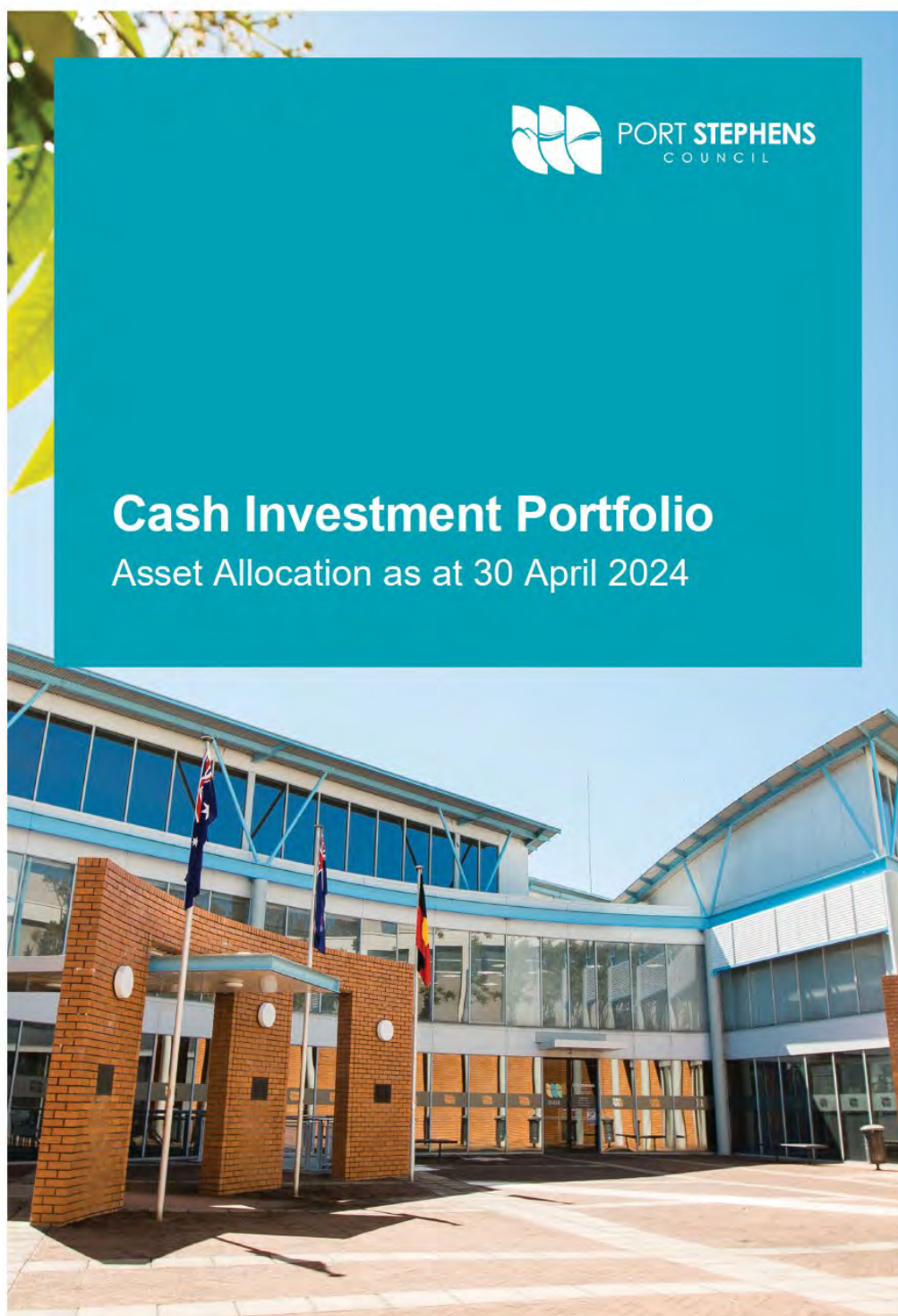
**COUNCILLORS' ROOM**

Nil.

**TABLED DOCUMENTS**

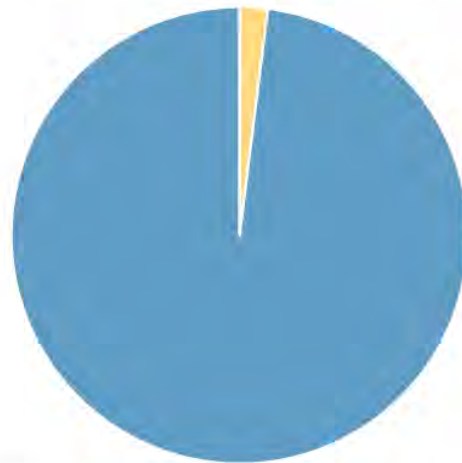
Nil.







## Cash Investment Portfolio Holdings



■ At Call ■ Cash ■ At Notice ■ TD ■ Managed Fund

Product Type	Market Value (\$)	Within Policy
At Call	-	
Cash	1,533,296	✓
At Notice	-	
TD	75,724,911	✓
Managed Fund	-	
	<b>77,258,207</b>	

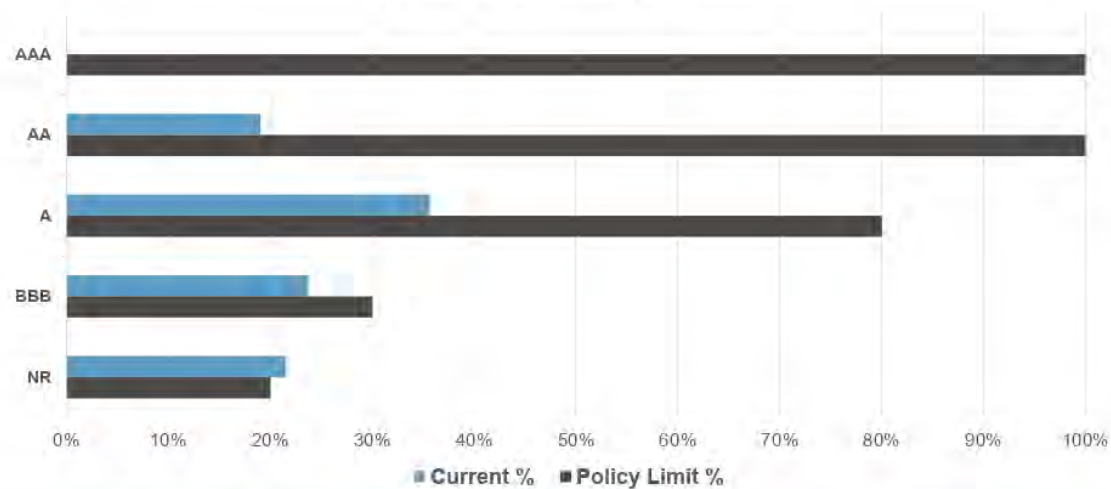
✓ = Yes

✗ = No



## Rating Exposure

### Total Credit Exposure



Credit Rating Group	Market Value (\$)	Current %	Policy Limit %	Within Policy
AAA	-	0%	100%	✓
AA	14,698,225	19%	100%	✓
A	27,547,868	36%	80%	✓
BBB	18,363,280	24%	30%	✓
NR	16,648,834	22%	20%	*
	<b>77,258,207</b>	<b>100%</b>		

✓ = Yes

\* = No



## ITEM 1 - ATTACHMENT 1 CASH INVESTMENT PORTFOLIO - 30 APRIL 2024.



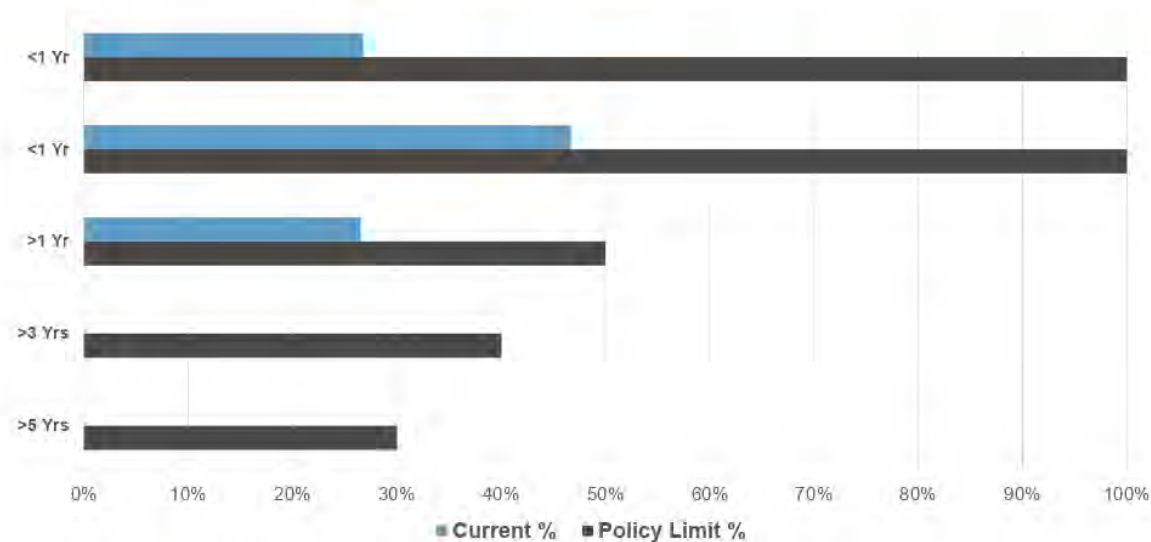
Institution	Rating	Total Investment	Exposure	Policy Limit	Remaining to Limit	Within Policy
AMP Bank	BBB	3,088,979	4%	10%	4,636,841	✓
Arab Bank	NR	7,227,984	9%	10%	497,837	✓
Australian Military Bank	BBB	1,038,262	1%	10%	6,687,559	✓
Bank Vic	BBB	5,157,861	7%	10%	2,567,959	✓
Bank of China	A	4,101,985	5%	20%	11,349,656	✓
CBA	AA	6,075,680	8%	30%	17,101,782	✓
CBA - Cash	AA	1,533,296	2%	30%	21,644,166	✓
Coastline Credit Union Limited	BBB	1,008,440	1%	10%	6,717,381	✓
Community First Bank Ltd	BBB	1,008,406	1%	10%	6,717,414	✓
Defence Bank	BBB	1,048,958	1%	10%	6,676,863	✓
Dnister Credit Co-Op	NR	1,022,960	1%	10%	6,702,860	✓
Great Southern Bank	BBB	1,034,808	1%	10%	6,691,013	✓
ICBC Bank	A	9,013,463	12%	20%	6,438,178	✓
ING Bank	A	12,374,183	16%	20%	3,077,458	✓
Judo Bank	BBB	2,920,818	4%	10%	4,805,003	✓
M MOVE Bank	NR	1,047,973	1%	10%	6,677,848	✓
Macquarie Bank	A	2,058,236	3%	20%	13,393,405	✓
MyState Bank	BBB	1,007,964	1%	10%	6,717,856	✓
Police Credit Union	NR	4,159,402	5%	10%	3,566,419	✓
Summerland Bank	NR	3,190,515	4%	10%	4,535,306	✓
The Mutual Bank	BBB	1,048,784	1%	10%	6,677,037	✓
Westpac	AA	7,089,249	9%	30%	16,088,213	✓
Total		77,258,207				

✓ = Yes

✗ = No



### Term to Maturity Limits

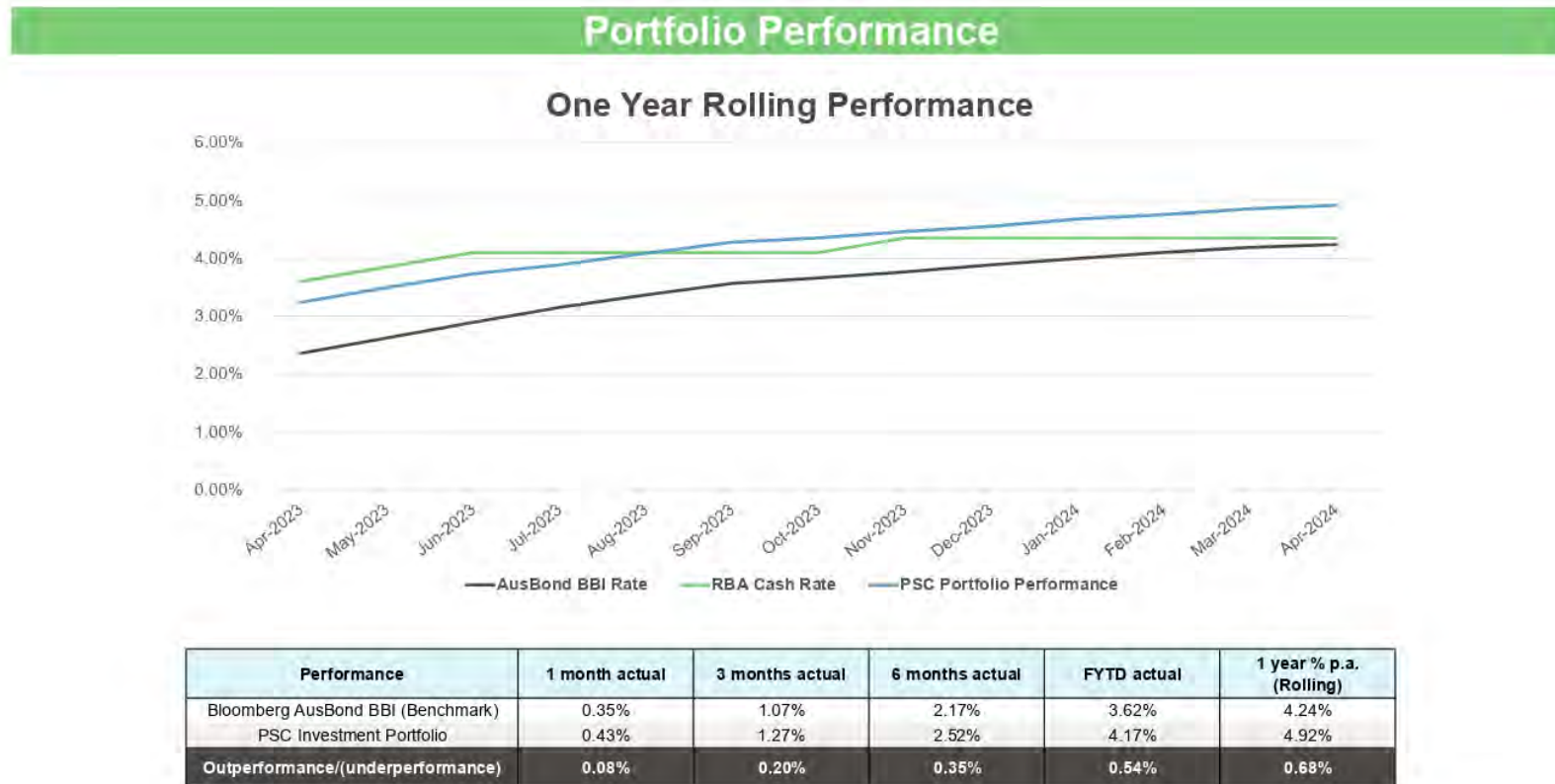


Detailed Maturity Profile	Market Value (\$)	Current %	Policy Limit %	Within Policy
Less than or equal 90 Days	20,676,335	27%	100%	✓
Between 90 Days and 365 Days	36,069,512	47%	100%	✓
Between 366 Days and 3 Years	20,512,361	27%	50%	✓
Between 3 Years and 5 Years	-	0%	40%	✓
Greater than 5 Years	-	0%	30%	✓
	<b>77,258,207</b>	<b>100%</b>		

✓ = Yes

✗ = No

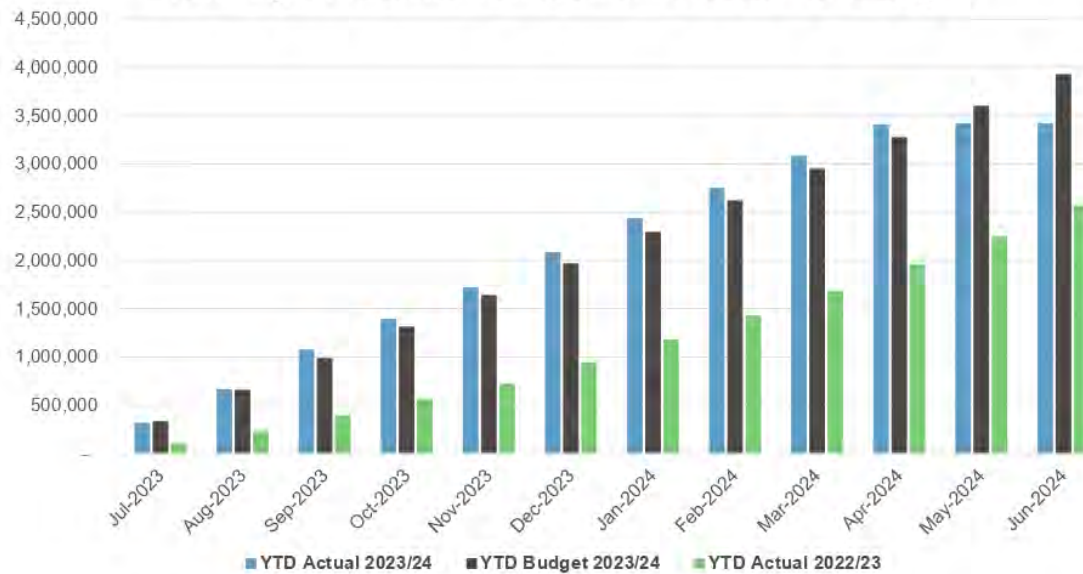






## Income Earned vs Budget

Monthly Investment Income - Actual to Budget





## Investment Register

Institution	Market Value	Days Held	Interest Rate	Date Invested	Maturity Date	Rating
CBA - Cash	1,533,296	1		30/04/2024	1/05/2024	AA
Judo Bank	825,606	746	3.35%	22/04/2022	7/05/2024	BBB
ICBC Bank	9,013,463	32	4.55%	18/04/2024	20/05/2024	A
Macquarie Bank	1,028,876	627	4.41%	1/09/2022	20/05/2024	A
CBA	1,003,695	475	4.65%	7/02/2023	27/05/2024	AA
ING Bank	1,046,349	377	5.05%	31/05/2023	11/06/2024	A
Macquarie Bank	1,029,360	649	4.41%	1/09/2022	11/06/2024	A
ING Bank	1,046,349	383	5.05%	31/05/2023	17/06/2024	A
The Mutual Bank	1,048,784	362	5.80%	28/06/2023	24/06/2024	BBB
ING Bank	1,045,970	384	5.10%	6/06/2023	24/06/2024	A
ING Bank	1,046,603	376	5.67%	5/07/2023	15/07/2024	A
Westpac	1,007,985	692	4.35%	23/08/2022	15/07/2024	AA
Police Credit Union	1,010,453	538	5.02%	14/02/2023	5/08/2024	NR
Westpac	1,009,471	538	5.01%	21/02/2023	12/08/2024	AA
Defence Bank	1,048,958	479	4.95%	5/05/2023	26/08/2024	BBB
CBA	1,017,951	396	5.46%	3/08/2023	2/09/2024	AA
Bank Vic	1,056,664	544	5.02%	15/03/2023	9/09/2024	BBB
Police Credit Union	1,049,650	500	5.02%	5/05/2023	16/09/2024	NR
Police Credit Union	1,049,650	507	5.02%	5/05/2023	23/09/2024	NR
CBA	1,017,819	424	5.42%	3/08/2023	30/09/2024	AA
ING Bank	1,016,027	655	4.68%	23/12/2022	8/10/2024	A
Great Southern Bank	1,034,808	409	5.25%	1/09/2023	14/10/2024	BBB
ING Bank	1,016,298	661	4.70%	23/12/2022	14/10/2024	A
CBA	1,016,964	416	5.16%	1/09/2023	21/10/2024	AA
Westpac	1,011,411	732	4.90%	3/11/2022	4/11/2024	AA
Summerland Bank	1,066,756	719	4.65%	23/11/2022	11/11/2024	NR
Summerland Bank	1,066,756	726	4.65%	23/11/2022	18/11/2024	NR
ING Bank	1,018,247	724	4.50%	2/12/2022	25/11/2024	A
ING Bank	1,018,616	738	4.50%	2/12/2022	9/12/2024	A
CBA	1,015,485	731	4.71%	20/12/2022	20/12/2024	AA
Police Credit Union	1,049,650	612	5.02%	5/05/2023	6/01/2025	NR
ING Bank	1,044,888	587	4.98%	6/06/2023	13/01/2025	A
Westpac	1,007,504	594	4.98%	6/06/2023	20/01/2025	AA
Judo Bank	1,048,363	579	5.75%	28/06/2023	27/01/2025	BBB
Westpac	1,007,504	602	4.98%	6/06/2023	28/01/2025	AA
Arab Bank	1,049,036	593	5.83%	28/06/2023	10/02/2025	NR
CBA	1,003,766	733	4.74%	8/02/2023	10/02/2025	AA
Bank Vic	1,034,013	535	5.13%	1/09/2023	17/02/2025	BBB
Arab Bank	1,034,212	542	5.16%	1/09/2023	24/02/2025	NR
Arab Bank	1,049,036	607	5.83%	28/06/2023	24/02/2025	NR
Bank of China	1,033,946	556	5.12%	1/09/2023	10/03/2025	A
Summerland Bank	1,057,003	726	5.05%	15/03/2023	10/03/2025	NR
Arab Bank	1,034,212	563	5.16%	1/09/2023	17/03/2025	NR
Westpac	1,032,114	550	5.28%	21/09/2023	24/03/2025	AA
ING Bank	1,027,925	515	5.48%	27/10/2023	25/03/2025	A
Westpac	1,013,260	515	5.50%	2/11/2023	31/03/2025	AA
AMP Bank	1,001,096	732	5.00%	20/04/2023	21/04/2025	BBB
AMP Bank	1,048,904	727	5.00%	9/05/2023	5/05/2025	BBB
MOVE Bank	1,047,973	731	5.15%	26/05/2023	26/05/2025	NR
Arab Bank	1,023,139	559	5.52%	29/11/2023	10/06/2025	NR
ING Bank	1,008,285	479	5.04%	1/03/2024	23/06/2025	A
Judo Bank	1,046,849	733	5.70%	5/07/2023	7/07/2025	BBB
MyState Bank	1,007,964	497	5.10%	4/03/2024	14/07/2025	BBB
AMP Bank	1,038,979	725	5.25%	3/08/2023	28/07/2025	BBB
Australian Military Bank	1,038,262	726	5.27%	9/08/2023	4/08/2025	BBB
ING Bank	1,038,625	734	5.30%	8/08/2023	11/08/2025	A
Bank of China	1,033,946	717	5.12%	1/09/2023	18/08/2025	A
Bank of China	1,033,946	724	5.12%	1/09/2023	25/08/2025	A
Dnister Credit Co-Op	1,022,960	647	5.55%	1/12/2023	8/09/2025	NR
Arab Bank	1,023,084	661	5.58%	1/12/2023	22/09/2025	NR
Community First Bank Ltd	1,008,406	586	5.03%	29/02/2024	7/10/2025	BBB
Bank Vic	1,022,340	696	5.40%	1/12/2023	27/10/2025	BBB
Bank Vic	1,022,422	703	5.42%	1/12/2023	3/11/2025	BBB
Bank Vic	1,022,422	717	5.42%	1/12/2023	17/11/2025	BBB
Coastline Credit Union Limited	1,008,440	655	5.05%	29/02/2024	15/12/2025	BBB
Arab Bank	1,015,266	733	5.02%	10/01/2024	12/01/2026	NR
Bank of China	1,000,147	735	5.35%	29/04/2024	4/05/2026	A
Total	77,258,207					



## Restricted Cash

Reserve	As at April 2024 \$'000
<b>External</b>	
Deposits, retentions and bonds	970
Grants and Contributions	6,691
Developer contributions (inc Haulage)	22,009
Domestic Waste Management	7,737
Crown Reserve	7,553
<b>Internal</b>	
Asset Rehab/Reseals	2,069
Drainage	1,708
Commercial Property	17,364
Election Reserve	525
Employee Leave Entitlements (ELE)	1,000
Fleet	1,077
Resilience fund	3,000
Grants Co-contribution	204
Emergency & Natural Disaster	3,473
Other Waste	35
Council Parking	846
IT	2,062
Sustainable energy and water reserve	61
Repealed	1,947
Transport levy	111
Admin Building	601
Ward Funds	62
Community Halls	87
Community Loans	200
<b>Total</b>	<b>81,392</b>
<b>Cash and Investment Report</b>	<b>77,258</b>
<b>Variance Cash Reserves to Bank Account</b>	<b>(4,134)</b>
Variance Due to:	
Outstanding Debtors	417
Loans not funded through a reserve	251
Outstanding GST refund	364
<b>Total Variance</b>	<b>1,032</b>
<b>Unrestricted Cash/(Shortfall)</b>	<b>(3,102)</b>
(due to timing of income and expenditure)	



**ITEM NO. 2**

**FILE NO: 24/77333  
EDRMS NO: PSC2023-01217**

**DESIGNATED PERSONS' RETURN**

REPORT OF: TONY WICKHAM - GOVERNANCE SECTION MANAGER  
DIRECTORATE: GENERAL MANAGER'S OFFICE

**BACKGROUND**

The purpose of this report is to table Councillor and Designated Persons' Return/s (return) submitted.

In accordance with Part 4 – Pecuniary Interest of the Code of Conduct, all designated persons are required to submit a return. Returns are to be tabled at the first Council meeting after the lodgement date.

The following is a list of position/s who have submitted return/s:

- Audit Risk and Improvement Committee independent member - Frank Cordingley.
- Audit Risk and Improvement Committee independent member – Paul Dunn.

**ATTACHMENTS**

Nil.

**COUNCILLORS' ROOM/DASHBOARD**

Nil.

**TABLED DOCUMENTS**

- 1) Designated Persons' Return.



**ITEM NO. 3**

**FILE NO: 24/81271  
EDRMS NO: PSC2024-01273**

**ANNUAL DISCLOSURE OF INTEREST RETURNS FOR 2024 TO 2025**

REPORT OF: TONY WICKHAM - GOVERNANCE SECTION MANAGER  
DIRECTORATE: GENERAL MANAGER'S OFFICE

**BACKGROUND**

The purpose of this report is to advise Council of the Mayor, Councillors and persons designated for the submission of pecuniary interest returns for the period 1 July 2024 to 30 June 2025.

Elected Members\*

Mayor Ryan Palmer  
Cr Leah Anderson  
Cr Giacomo Arnott  
Cr Matthew Bailey  
Cr Glen Dunkley  
Cr Chris Doohan  
Cr Peter Francis  
Cr Peter Kafer  
Cr Steve Tucker  
Cr Jason Wells

\*The period covering the Mayor and Councillors will be subject to the outcome of the 2024 local government election. Those elected at the election will be required to submit a disclosure of interest return for the remainder of the period.

Audit, Risk and Improvement Committee

Chairperson  
Independent members (2)

General Manager's Office

General Manager  
Governance Section Manager  
Legal Services Manager  
Lawyer



Corporate Strategy and Support

Business Development & Marketing Manager  
Director Corporate Strategy and Support  
Financial Services Section Manager  
Holiday Parks Section Manager  
Organisation Support Section Manager  
Principal Property Planner  
Strategic Property Coordinator

Community Futures

Building & Certification Coordinator  
Building Surveyor (5)  
Building Surveyor (Fire Safety)  
Cadet Environmental Health Officer  
Communications and Customer Experience Section Manager  
Compliance Coordinator  
Development and Compliance Section Manager  
Development Compliance Officer (3)  
Development Planner (3)  
Development Planning Coordinator  
Director Community Futures  
Environmental Health Officer (2)  
Environmental Health Team Leader  
Environmental Officer (2)  
Environmental Planner (2)  
Environmental Planning Team Leader  
Environmental Strategy Team Leader  
Environmental Management Team Leader  
Natural Systems Coordinator  
Principal Building Surveyor  
Principal Strategic Planner  
Ranger (4)  
Ranger Team Leader  
Senior Building Surveyor  
Senior Building Surveyor – Certifications  
Senior Building Surveyor (Fire Safety)  
Senior Development Planner (2)  
Senior Environmental Health Officer  
Senior Ranger  
Senior Strategic Planner (2)  
Senior Strategic Planner – Growth and Infrastructure  
Strategic Planner (3)  
Strategic Planning Coordinator  
Strategy and Environment Section Manager  
Sustainability Officer  
Vibrant Places Team Leader



Facilities and Infrastructure

Assets Section Manager  
Capital Works Section Manager  
Community Services Section Manager  
Director Facilities and Infrastructure  
Public Domain and Services Section Manager  
Senior Development Engineer

**ATTACHMENTS**

Nil.

**COUNCILLORS' ROOM/DASHBOARD**

Nil.

**TABLED DOCUMENTS**

Nil.



**ITEM NO. 4**

**FILE NO: 24/27768  
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**

Date exercised	Delegations exercised	Purpose	Role exercising delegation	Reported to Council
07/05/2024	Clause 178 of the Local Government (General) Regulation 2021	Acceptance of tender T012-2024 - Don Waring Field and Car Park Design.	General Manager	28/05/2024
08/05/2024	Code of Meeting Practice	Approval of Public Access application - Community Wellbeing Strategy.	Mayor	28/05/2024
14/05/2024	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 2 April 2024.	General Manager	28/05/2024



**ITEM NO. 5**

**FILE NO: 24/106428  
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 5 - 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>	14/05/2024
	<b>Officer:</b>		<b>Printed:</b>	Wednesday, 15 May 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		
		Pearl, Steven				
<b>15 May 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	Administrative Amendment to the Port Stephens Local Environmental Plan 2013	13/08/2024	29/11/2023	
3		Pearl, Steven				23/324875
<b>15 May 2024</b> The Administrative Amendment was exhibited from 10 April 2024 to 10 May 2024. A report is scheduled to be presented to Council at its meeting of 9 July 2024.						

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		Pearl, Steven				23/324875
<b>15 May 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 27/02/2024	Lamont, Brock	Draft Port Stephens Development Control Plan 2014 - Chapter D12 Richardson Road	1/12/2024	28/02/2024	
2		Pearl, Steven				24/50158
<b>15 May 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		Pearl, Steven				24/50158
<b>15 May 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 5 - ATTACHMENT 1 COMMUNITY FUTURES RESOLUTIONS.



<b>Division:</b>	Community Futures	<b>Date From:</b>	10/10/2023
<b>Committee:</b>		<b>Date To:</b>	14/05/2024
<b>Officer:</b>		<b>Printed:</b>	Wednesday, 15 May 2024
<b>Action Sheets Report</b>			

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 27/02/2024	Lamont, Brock	Exhibition of draft Port Stephens Coastal Management Program	25/06/2024		
4 015		Peart, Steven				24/50158
<b>15 May 2024</b>						
Council endorsed the draft Coastal Management Program and associated appendices to be placed on public exhibition, commencing 28 February 2024 and concluding 28 March 2024. Council has commenced complementary community engagement. A further report is forecasted to be presented to Council for consideration at its meeting of 25 June 2024.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 12/03/2024	Grobbelaar, Evert	Notification from Developers Prior to Clearing of Major Vegetation	9/07/2024	13/03/2024	
1 037		Peart, Steven				24/63800
<b>15 May 2024</b>						
A report outlining options to require developers to notify Council prior to the commencement of clearing of major vegetation will be prepared and reported to Council 9 July 2024.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 26/03/2024	Lamont, Brock	Revised Local Housing Strategy	25/06/2024	27/03/2024	
1 043		Peart, Steven				24/75831
<b>15 May 2024</b>						
Council resolved to place the revised Port Stephens Local Housing Strategy on public exhibition for a period of 28 days. Following exhibition a report has been prepared and will be reported to Council on 25 June 2024.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 26/03/2024	Lamont, Brock	Draft Port Stephens Development Control Plan - Chapter B1 Tree Management and B2 Flora and Fauna	12/07/2024	27/03/2024	
2 044		Peart, Steven				24/75831
<b>15 May 2024</b>						
The draft Port Stephens Development Control Plan 2014 Chapter B1 Tree Management and B2 Flora and Fauna was exhibited from 2 April 2024 to 30 April 2024. A report is scheduled to be presented to Council at its meeting of 9 July 2024.						



## ITEM 5 - 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>	14/05/2024
	<b>Officer:</b>		<b>Printed: Wednesday, 15 May 2024</b>	

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 26/03/2024	Lamont, Brock	Draft Voluntary Planning Agreement - Hanson Construction Materials Pty Ltd	12/06/2024	27/03/2024	
3 045		Pearl, Steven				24/75831
<b>15 May 2024</b>						
The draft Voluntary Planning Agreement between Council and Hanson Constructions Materials Pty Ltd, together with the accompanying explanatory note was exhibited 28 March 2024 to 29 April 2024. A report has been prepared and will be reported to Council on 11 June 2024.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 23/04/2024	Grobbelaar, Evert	Policy Review: Asbestos Management	11/06/2024	24/04/2024	
5		Pearl, Steven				24/100180
<b>15 May 2024</b>						
As per Council's Resolution at its Ordinary Meeting of 23 April 2024, the policy has been placed on public exhibition from 26 April 2024 for a period of 28 days. Should submissions be received, the policy will be reported to the meeting of 11 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>15 May 2024</b>						
As per Council Resolution of 14 May 2024, policies will be placed on public exhibition for a period of 28 days. Following exhibition, policies will be reported back to Council should submissions be received.						



## ITEM 5 - 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>	14/05/2024
	<b>Officer:</b>		<b>Printed: Wednesday, 15 May 2024</b>	

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
243	Ordinary Council 27/08/2013	Pattison, Zoe	Campvale Drain	31/12/2024		
		Pattison, Zoe				
<b>15 May 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 1	Ordinary Council 11/10/2022	Pattison, Zoe	Policy Review: Property Investment and Development Policy	31/12/2024	12/10/2022	
		Pattison, Zoe				22/273002
<b>15 May 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 2	Ordinary Council 11/10/2022	Pattison, Zoe	Policy Review: Acquisition and Divestment of Land	31/12/2024	12/10/2022	
		Pattison, Zoe				22/273002
<b>15 May 2024</b>						
Report deferred to allow for further clarification on the distribution of funds.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report 5 088	Ordinary Council 11/04/2023	Pattison, Zoe	22 Homestead Street, Salamander Bay	31/12/2024	12/04/2023	
		Pattison, Zoe				23/92450
<b>15 May 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 1 193	Ordinary Council 22/08/2023	Pattison, Zoe	Raymond Terrace Gateway Site Masterplan	31/12/2024		
		Pattison, Zoe				23/214729
<b>15 May 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 5 - 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>	14/05/2024
	<b>Officer:</b>		<b>Printed: Wednesday, 15 May 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	31/12/2024	29/11/2023	
1		Pattison, Zoe				23/324875
<b>15 May 2024</b>						
2 of the roads are currently being marketed. An Expression of Interest for the remaining road is underway.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 23/04/2024	Pattison, Zoe	Proposed Sale of Land – Heatherbrae	23/07/2024	24/04/2024	
1		Pattison, Zoe				24/100180
<b>15 May 2024</b>						
Matter considered at the Council meeting on 23 April 2024. Deferred to 23 July 2024.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 14/05/2024	Pattison, Zoe	Medowie Social	11/07/2024		
1		Pattison, Zoe				24/115689
<b>15 May 2024</b>						
A Development Application for a change of use to a Registered Club will be prepared. In addition, further community consultation is to be undertaken with the outcomes of the consultation to be provided to Councillors via a two way conversation once completed.						



## ITEM 5 - 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>	14/05/2024
	<b>Officer:</b>		<b>Printed:</b>	Wednesday, 15 May 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	
2 085		Kable, Gregory				23/92450
<b>15 May 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 13/02/2024	Kable, Gregory	Council Chambers	31/05/2024	14/02/2024	
1 008		Kable, Gregory				24/37059
<b>15 May 2024</b>						
Options for refurbishments have been supplied to the Councillors. 1 preliminary option will be further investigated.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 27/02/2024	Maretich, John	Raymond Terrace 7 Day Makeover	23/07/2024		
10 020		Kable, Gregory				24/50158
<b>15 May 2024</b>						
Face to face consultation has been completed with projects being scoped and priced.						

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>15 May 2024</b>						
As per Council resolution the Lakeside Sports Complex Masterplan has been placed on public exhibition for 28 days.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 23/04/2024	Maretich, John	Mallabulla Sports Complex Masterplan	26/07/2024	24/04/2024	
4		Kable, Gregory				24/100180
<b>15 May 2024</b>						
As per Council resolution the Mallabulla Sports Complex masterplan has been placed on public exhibition for 28 days.						



ITEM 5 - 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>	14/05/2024
	<b>Officer:</b>		<b>Printed:</b>	Wednesday, 15 May 2024

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 23/04/2024	Maretich, John	Policy Review - Community Sport Equitable Access and Usage	30/06/2024	24/04/2024	
6		Kable, Gregory				24/100180
<b>15 May 2024</b> As per Council resolution the Community Sport Equitable Access and Usage Policy has been placed on public exhibition for 28 days.						





<b>Action Sheets Report</b>	<b>Division:</b>	General Manager's Office	<b>Date From:</b>	11/04/2023
	<b>Committee:</b>		<b>Date To:</b>	14/05/2024
	<b>Officer:</b>		<b>Printed: Wednesday, 15 May 2024</b>	

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 11/04/2023	Crosdale, Timothy	Request for Financial Assistance	31/05/2024	12/04/2023	
9		Crosdale, Timothy				23/92450
099						
<b>14 May 2024</b>						
Awaiting paperwork to process payments.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 9/04/2024	Wickham, Tony	Privacy Management Plan	12/06/2024	10/04/2024	
7		Crosdale, Timothy				24/85501
<b>14 May 2024</b>						
Report to be prepared for Council.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 14/05/2024	Wickham, Tony	Policy Review: Councillor Induction and Professional Development	28/05/2024	15/05/2024	
3		Crosdale, Timothy				24/115689
<b>15 May 2024</b>						
Policy will be placed on public exhibition for 28 days.						



# NOTICES OF MOTION



**NOTICE OF MOTION**

**ITEM NO. 1**

**FILE NO: 24/118124**

**EDRMS NO: PSC2021-04195**

**BUS STOP INFRASTRUCTURE PLAN**

**COUNCILLOR: JASON WELLS**

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**THAT COUNCIL:**

- 1) Requests that the General Manager undertakes a review of existing bus stop infrastructure, using data collected from bus companies and other sources, to create a bus stop infrastructure plan that would inform the Council's Asset Management Plan chapter Ancillary Assets.
- 

**BACKGROUND REPORT OF: JOHN MARETICH – ASSET SECTION MANAGER**

**BACKGROUND**

Bus stops in the Port Stephens Local Government Area have a mix of seating, shelters or empty spaces with simple bus poles. While the condition of our existing infrastructure is monitored and managed, the recent growth in population in some areas and the community request for additional shelters would warrant a review of our bus stop infrastructure plan.

As noted in the Notice of Motion, using data collected from bus companies, Transport for New South Wales (TfNSW), and other community sources, Council would be able to undertake a review of existing bus stop infrastructure to create a bus stop infrastructure plan. This information would feed into the Council's Asset Management Plan (SAMP) chapter in the Ancillary Assets section and assist in prioritising bus stop infrastructure upgrades.

Council has previously been successful in gaining funds for bus stop infrastructure, predominantly through grants such as the Country Passenger Transport Infrastructure Grant Scheme (CPTIGS). Having a revised plan that prioritises projects would assist in gaining funding opportunities.



**FINANCIAL/RESOURCE IMPLICATIONS**

<b>Source of Funds</b>	<b>Yes/No</b>	<b>Funding (\$)</b>	<b>Comment</b>
Existing budget	Yes		In kind staff costs to undertake the review and plan creation.
Reserve Funds	No		
Developer Contributions (\$7.11)	No		
External Grants	No		
Other	No		

**ATTACHMENTS**

Nil.



**NOTICE OF MOTION**

**ITEM NO. 2**

**FILE NO: 24/118817**

**EDRMS NO: PSC2021-04195**

**PATHWAYS REVIEW**

**COUNCILLOR: LEAH ANDERSON**

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**THAT COUNCIL:**

- 1) Requests the General Manager to undertake a review of the Council's Pathways Plan with updated mapping and a greater emphasis on providing pedestrian access surrounding schools, aged care facilities, shopping districts and where our community live.
  - 2) Requests the General Manager to investigate a prioritisation methodology that would create priority areas to present to Council. These priority areas will be used to seek funding opportunities and help direct funding.
- 

**BACKGROUND REPORT OF: JOHN MARETICH – ASSET SECTION MANAGER**

**BACKGROUND**

The Pathways Plan that was last adopted by Council in 2016 documented existing and proposed pathways in our Local Government Area and was used to:

- identify missing links
- identify connections for the community between destinations such as residential areas to shopping centres
- promote alternative transport modes
- provide a safer route than on-road travel
- enhance leisure activities and, hence, possible tourist attractions.

The 2016 Pathways Plan did identify 182 km in gaps in our pathway network and would allow Council to seek funding from several funding sources. As per the Notice of Motion, a new iteration of the Pathways Plan could introduce a prioritisation methodology that would create priority areas.

**FINANCIAL/RESOURCE IMPLICATIONS**



**ORDINARY COUNCIL - 28 MAY 2024**

<b>Source of Funds</b>	<b>Yes/No</b>	<b>Funding (\$)</b>	<b>Comment</b>
Existing budget	Yes		In-kind costs.
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.