

NOTICE OF ORDINARY MEETING

28 OCTOBER 2025



PORT STEPHENS COUNCIL

The Mayor and Councillors attendance is respectfully requested:

Mayor: L Anderson (Chair).

Councillors: R Armstrong, G Arnott, C Doohan, N Errington, P Francis, P Le Mottee, B Niland, M Watson, 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
 - i. 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.
 - ii. Almighty God, we ask for your blessing as we meet together on behalf of our community. So that today and into the future, you would direct and favour our deliberations to advance the welfare, safety and prosperity of our region. Amen.
- 4) Apologies and applications for a leave of absence from Mayor and Councillors.
- 5) Disclosures of interests.
- 6) Confirmation of minutes.
- 7) Mayoral minute(s).*
- 8) Motions to close meeting to the public.*
- 9) Reports to Council.
- 10) General Manager reports.*
- 11) Questions with Notice.*
- 12) Questions on Notice.
- 13) Notices of motions.*
- 14) Rescission Motions.*
- 15) Confidential matters.*
- 16) Conclusion of the meeting.

**if submitted*

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.

Urgency Motion – Is a motion that can be moved at a meeting to have a matter considered at a meeting. An urgency motion (procedural motion) can be moved and seconded to have a matter considered, and if passed and the Mayor rules the matter is of great urgency (ie cannot wait until the next Council meeting), then the substantive motion can be moved, seconded and debated as a motion. If the procedural motion is lost or the Mayor does not rule the matter is of great urgency the motion fails to proceed any further and Council resumes to normal business listed on the agenda.

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

A Point of Order can be raised where:

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

- e. Says or does anything that is inconsistent with maintaining order at the meeting or is likely to bring the Council or Committee into disrepute.

Declarations of Conflict of Interest – Definitions

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

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

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

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



Form of Special Disclosure of Pecuniary Interest

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

Important information

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

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

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

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

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

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

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

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

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

to be held on the _____ day of _____ 20__

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

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

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

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

in this item. The nature of the interest is _____

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

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

Mayor/Councillor left the Council meeting in Committee of the Whole at _____pm.

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

Mayor/Councillor left the Council meeting at _____ pm.

Mayor/Councillor returned to the Council meeting at _____ pm.

MOTIONS TO CLOSE

ITEM NO. 1

**FILE NO: 25/265266
EDRMS NO: PSC2022-02499**

MOTION TO CLOSE

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

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 36a Ferodale Road, Medowie.
 - 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.
-

COUNCIL REPORTS

ITEM NO. 1

**FILE NO: 25/158708
EDRMS NO: 16-2025-138-1**

DEVELOPMENT APPLICATION (DA) NO. 16-2025-138-1 - CHANGE TO HOURS OF OPERATION TO SERVICE STATION AT 12 RANDALL DRIVE, SALAMANDER BAY

REPORT OF: RYAN FALKENMIRE - DEVELOPMENT AND COMPLIANCE SECTION MANAGER
DIRECTORATE: COMMUNITY FUTURES

RECOMMENDATION IS THAT COUNCIL:

- 1) Approve Development Application (DA) No. 16-2025-138-1 for a change to the hours of operation to the service station at 12 Randall Drive, Salamander Bay (Lot 664 DP 32235) subject to the recommended conditions contained in **(ATTACHMENT 1)**.

BACKGROUND

The purpose of this report is to present Development Application (DA) 16-2025-138-1 for the change of hours of operation to the service station to enable trading 24 hours per day, 7 days per week at 12 Randall Drive, Salamander Bay to Council for determination.

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

Subject Land	12 Randall Drive Salamander Bay
Total Area	570sqm
Zoning	E1 Local Centre
Submissions	13 submissions
Key Issues	The key issues identified throughout the assessment of the development are: <ul style="list-style-type: none">• Amenity impact of extended trading hours• Traffic management• Spill containment and stormwater management A detailed assessment of these issues is contained within the Planner's Assessment Report (ATTACHMENT 2) .
Applicant	Cubic Projects Management Pty Ltd
Land Owner	Reminvest Pty Ltd

The DA has been reported in accordance with Council's 'Planning Matters to be Reported to Council Policy' as the DA was called up by Councillor Armstrong and Councillor Watson (**ATTACHMENT 3**).

A locality plan is provided at (**ATTACHMENT 4**).

Proposal

The proposed development seeks consent for extended trading hours at the existing service station located at 12 Randall Drive, Salamander Bay.

Presently, the service station is permitted to trade as follows:

Monday – Friday	7am – 6pm
Saturday	7am – 2pm
Sunday	7am – 12pm.

The DA, as lodged by the proponent, put forward several options for extended trading hours.

The options put forward were:

- Option A: 24 hours per day, 7 days per week
- Option B: Until 12am 7 days per week
- Option C: Until 10pm 7 days per week

The proponent's preference was for the service station to be able to operate 24 hours per day, 7 days per week (Option A). Option B and C did not provide a proposed opening time.

A time-limited consent allowing extended operating hours from 6:00am to 10:00pm (daily) for a trial period of 24 months is proposed in response to public objections and the findings from the Planner's Assessment. The applicant may seek to extend the trading hours through a future application at the cessation of the time-limited consent period.

Site Description

The subject site (the 'site') is located on a corner lot within an established retail and residential precinct at 12 Randall Drive Salamander Bay. The site is zone E1 Local Centre and forms part of the Salamander Bay Shopping Village. Surrounding the site is land zoned R2 Low Density Residential.

Site History

The development consent history dates back to a consent from 1989 (7-1989-4330-1) which involved 'additions to service station', signifying operation of the service

station prior to 1989. A subsequent development consent was issued in 2012 (DA 16-2012-153-1) for 'extensions to a service station'.

Key Issues

The key issues identified throughout the assessment of the development relate to the impact of the proposed extended trading hours on the surrounding area, traffic management, and while not directly related to the proposal to extend trading hours, spill containment and stormwater controls for the current service station operation. A detailed assessment of these issues is contained within the Planner's Assessment Report (**ATTACHMENT 2**). These key matters were addressed through the submission of additional information, design amendments and proposed conditions of consent, as outlined below.

Hours of Operation

The application had initially sought consent for the service station to be allowed to operate 24 hours a day, 7 days a week. Given the local context and associated amenity impacts, this was not supported by Council's Environmental Health or Planning Officers. For this reason, the findings from the Planner's Assessment Report (**ATTACHMENT 2**) recommends allowing the service station to operate between the hours of 6:00am to 10:00pm 7 days per week for a trial period of 2 years. In addition to this, to further address community concerns, the following conditions are proposed:

- All deliveries and waste collection to only occur during daytime hours (7am–6pm), 7 days per week
- The use of air compressors and gas bottle filling to only occur during daytime hours (7am–6pm), 7 days per week
- Upgrades to stormwater controls
- Implementation of a detailed Plan of Management
- Requirement for a Traffic Management Plan

The implementation of the proposed conditions will seek to address the key issues identified through the Planner's Assessment Report (**ATTACHMENT 2**) and mitigate impacts associated with the proposed extension of trading hours.

Traffic Management

Council's Development Engineers identified an opportunity to improve vehicle movements on the site. As a result, a one-way traffic arrangement (entry via Randall Avenue and exit via Monkley Avenue) was recommended to improve vehicle movements and reduce conflict for the existing service station.

A condition of consent is proposed requiring a Traffic Management Plan (TMP) to be prepared by a suitably qualified traffic engineer and endorsed by Council prior to the commencement of extended trading. Given that no physical works are proposed as

part of the development, and the extension of operating hours is modest, the expected increase in traffic is not considered to result in unacceptable safety impacts.

Spill Containment and Stormwater Management

The Stormwater Management Plan and Survey Plan submitted with the application detail that the service station has an existing Coalescing Filter (oil water separator) in place. Additionally, a trade waste agreement is in place with Hunter Water demonstrating there is no direct discharge from the refuelling area to the public stormwater system or natural water courses. All runoff from the fuel dispensing area is via the Coalescing Filter and into the sewer system under the trade waste agreement. To further address public concerns related to spill management and stormwater controls, Council has imposed conditions relating to the preparation of a Plan of Management to ensure that the ongoing operation complies with EPA Guidelines on spill management to minimise the risk of fuel-related pollutants being discharged. Further, conditions have also been imposed requiring the upgrade of stormwater controls and bunding to meet the relevant design standards.

Amenity Impacts

A Noise Impact Assessment (NIA) was submitted with the DA to support the extension of 24/7 trading at the service station, although limitations were identified through the assessment. On this basis, reduced trading until 10pm was recommended for a trial period. To further address noise impacts, conditions restricting high-impact activities such as fuel deliveries and waste collection to daytime hours (e.g. 7am–6pm) have been recommended to minimise the potential for sleep disturbance at nearby properties.

In terms of odour, the site is supported by a VR1 Vapour Recovery System, which satisfies the requirements under the Protection of the Environment Operations (Clean Air) Regulation 2022.

In terms of light emissions from the site, conditions of consent have been imposed requiring all external lighting (including forecourt and signage lighting) to comply with AS 4282:2019 – Control of the Obtrusive Effects of Outdoor Lighting, including appropriate shielding, luminous intensity limits, and direction away from residential properties.

Furthermore, site context is an important consideration in terms of amenity impacts, recognising the service station land use is permissible and located within an E1 Local Centre zone, which encourages retail and commercial land uses. The service station has been established and operating for an extended period of time and it is reasonable to expect some form of noise and light emissions from commercial uses in the E1 zone located adjacent residential areas. Accordingly, public concerns relating to loss of amenity from the service station trading extension must be given balanced with the site's E1 Local Centre zone and associated permissible land uses, including service stations.

The recommended trial and associated conditions allow for a balanced planning outcome that recognises the existing lawful use, supports local services in the E1 zone, and protects neighbourhood character.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2025-2029
Housing, tourism & economy	Implement the Economic Development Strategy, including ongoing support for sustainable tourism

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 proposed development is consistent with the relevant planning instruments including the Environmental Planning and Assessment Act 1979 (EP&A Act), relevant State Environmental Planning Policies, the Port Stephens Local Environmental Plan 2013, and the Port Stephens Development Control Plan 2014.

Risk	<u>Risk Ranking</u>	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.	Medium	Accept the recommendation.	Yes
There is a risk that if the DA is approved, the determination of the DA may be challenged by a third party in the Land and Environment Court.	Low	Accept the recommendation.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Social and Economic Impacts

The proposed development involves a change in hours of operation for an existing service station, which is a longstanding retail use within the locality. The proposal supports the continued operation of the business, providing extended access to fuel and convenience retail services for the local community, commuters, and visitors.

The development enables more flexible trading hours for the benefit of the wider community. The extended hours are expected to support local employment and improve service availability, particularly during early morning and evening periods.

The ongoing operation of the service station contributes to the local economy through direct employment, procurement of goods and services, and support for other businesses in the area. There are no anticipated adverse social or economic impacts arising from the proposed operational changes, subject to the implementation of the recommended conditions at **(ATTACHMENT 2)**.

Built Environment

The proposed change of operating hours will not involve any alterations to the built form of the site. The development retains the existing structure and layout, which is consistent with the established character of the area and the zoning objectives of the E1 Local Centre zone.

Overall, the development is compatible with the existing urban context, and there are no anticipated adverse impacts on the built environment.

Natural Environment

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

The Plan of Management will ensure that the ongoing service station operation complies with the EPA quantity and quality standards, including spill containment to mitigate the risk of fuel-related pollution.

COMMUNICATION AND ENGAGEMENT

Council's Communication and Engagement Strategy uses the IAP2 Framework to identify the level of engagement undertaken. An explanation for each level is shown below.

ORDINARY COUNCIL - 28 OCTOBER 2025

INFORM	To provide the public with balanced and objective information to assist them in understanding the problems, alternatives, opportunities and/or solutions.
CONSULT	To obtain public feedback on analysis, alternatives and/or decisions.
INVOLVE	To work directly with the public throughout the process to ensure that public concerns and aspirations are consistently understood and considered.
COLLABORATE	To partner with the public in each aspect of the decision including the development of alternatives and the identification of the preferred solution.
EMPOWER	To place final decision-making and/or developed budgets in the hands of the public.
	No external communications and engagement are required for this report.

The following communication and engagement applies to this report.

External communications and engagement

CONSULT	<p>The application was exhibited from 16 April 2025 to 14 May 2025 in accordance with the provisions of the Port Stephens Council Community Engagement Strategy. During this period, 13 submissions were received.</p> <p>A summary of the submissions is provided in the Planner's Assessment Report (ATTACHMENT 2).</p> <p>No referrals to external State government agencies were triggered by the development.</p>
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Internal communications and engagement

Consultation has been undertaken by the Development and Compliance Section with:

- Assets Section.

OPTIONS

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

ATTACHMENTS

- 1) Recommended Conditions of Consent. [↓](#)
- 2) Planner's Assessment Report. [↓](#)
- 3) Call to Council form. [↓](#)
- 4) Locality Plan. [↓](#)

COUNCILLORS' ROOM/DASHBOARD

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

TABLED DOCUMENTS

Nil.

General Conditions

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

Document No.	Revision No.	Document Title.	Drawn By.	Dated.
240205- DA100	B	Site Plan	Cubitic Consulting	10-03-2025
240205- DA102	B	Site Elevations	Cubitic Consulting	10-03-2025
240205- DA101	B	Proposed Parking Site Plan	Cubitic Consulting	10-03-2025
240205- DA200	B	Ground Floor Plan	Cubitic Consulting	10-03-2025
E250247 – D2	B	Stormwater Management Plan	NY Civil Engineering	13-08-2025

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

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

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

- (2) **Signage** – No consent is given or implied for any form of illumination or floodlighting to any sign.

Condition reason - To ensure that no illuminated signage or flood lights are installed in accordance with the development consent.

- (3) **Time limited approval** - In accordance with Section 4.17(1)(d) of the Environmental Planning & Assessment Act 1979, the approved use is limited to a period of 2 years from the date that operation commences trading in accordance with the nominated extended operating hours.

A further modification application must be provided to, and determined by, the Council prior to the expiration of this time period if the applicant intends to continue the use. If a modification application is not determined prior to the expiry of this consent, then the approved use must cease.

Council's consideration of a proposed continuation of the trial period will be

based on, among other things, the performance of the operator in relation to the compliance with development consent conditions and any substantiated complaints received.

It is recommended that where an applicant intends to continue the use, a modification application be lodged with the Council at least 3 months prior to the expiry of this consent.

Condition reason: To ensure the use is appropriate for the site based on the performance of the operator in relation to compliance with consent conditions and any substantiated complaints received.

- (4) **Extended operating hours for a prescribed trial period** - During ongoing use of the service station, notwithstanding the operating hours approved under DA 16-2012-153-1, the development may operate on a 2 year trial period under this consent for the following hours:

Day	From	To
Monday	6:00 am	10:00 pm
Tuesday	6:00 am	10:00 pm
Wednesday	6:00 am	10:00 pm
Thursday	6:00 am	10:00 pm
Friday	6:00 am	10:00 pm
Saturday	6:00 am	10:00 pm
Sunday	6:00 am	10:00 pm
Public holidays	6:00 am	10:00 pm

- a) Council must be informed in writing two weeks before the date of commencement of the trial period. The 2 year trial will commence from the date nominated in writing as advised to Council.
- b) An application to continue the extended operating hours should be lodged no less than 3 months before the end of the trial period.
- c) Once the prescribed period of extended operating hours lapses, the hours of operation will revert to the standard operating hours previously in force before this condition took effect.

Condition reason - To enable a trial period of approved alternative operating hours.

Prior to Commencement of Extended Trading Hours

- (5) **Coalescing Filter** – The Coalescing Filter System must be fitted with a high level and high oil alarm to improve management of the system. Details of installation must be submitted to Council.

Condition reason - To ensure ongoing responsible environmental compliance.

- (6) **Plan of Management** - A revised Plan of Management must be submitted to Council for approval that includes:

- a) Approved Hours of Operation (6:00am – 10:00pm)
- b) Time restrictions for deliveries and waste collection (as nominated in this consent)
- c) Noise and Complaint Management Procedure
- d) Light Management
- e) Odour/Vapour Management
- f) Stormwater Management
- g) Waste Management
- h) Staff Training
- i) Incident Reporting
- j) Complaints Management procedure

The Plan of Management must be provided to Council for approval prior to prior to commencement of extended hours trading.

Condition reason: To detail amendments required to be made to plans/documents.

- (7) **Stormwater Management** – Site stormwater controls and bunding must be in place to meet AS1940-2017 and AS4897-2008. Prior to commencement of extended trading hours, details of stormwater management satisfying AS1940-2017 and AS4897-2008 must be submitted to Council.

Condition reason: To ensure environmental and stormwater controls are in place for the site.

- (8) **External lighting** - Before the commencement extended trading hours, plans detailing external lighting must be prepared by a suitably qualified person.

The lighting plan must be consistent with the approved plans and documents, and the following requirements:

- a) comply with AS 4282: Control of Obtrusive Effects of Outdoor Lighting
- b) lighting must be placed at all entrances to, and exits from the premises
- c) lighting must provide coverage of the premises and surrounding areas

- for visibility and to reduce hidden areas;
- d) lighting must not interfere with traffic safety;
- e) lighting must not give rise to obtrusive light or have adverse impacts on the amenity of surrounding properties; and
- f) external lighting must not flash or intermittently illuminate unless required for safe ingress/egress of vehicles crossing a pedestrian footway or approved vehicle entrance.

The lighting plan must be submitted to the Council for approval.

Condition reason - To ensure external lighting is provided for safety reasons and to protect the amenity of the local area.

- (9) **Traffic Management Plan** – A Traffic Management Plan to be prepared by a suitably qualified traffic engineer and approved by Council prior to the commencement of extended trading hours, which nominates the following:
 - a) A 'No Entry' sign facing outwards from the site at the Randall Drive frontage adjacent to the driveway cross-over.
 - b) Traffic and circulation plan showing one-way traffic arrangement (entry via Randall Avenue and exit via Monkley Avenue).
- (10) **Roads Act Approval** - For construction/reconstruction of Council infrastructure, including vehicular crossings, footpath, kerb and gutter, stormwater drainage, an application must be made for a Roadworks Permit under Section 138B of the Roads Act 1993.

Condition reason: To ensure that works within the road reserve are approved by a Section 138B Approval of the Roads Act 1993.

Occupation and Ongoing Use

- (11) **Deliveries and waste collection** - During ongoing use of the service station, all deliveries (including fuel delivery), waste and recycling collection for the service station are to be undertaken only during the following hours:

Day	From	To
Monday - Saturday	7:00 am	6:00 pm
Sunday and Public Holidays	8:00 am	6:00 pm

- a) only occur in designated loading and unloading areas on the property;
- b) do not occur on the street;
- c) do not obstruct other operations;
- d) minimise disruption to public spaces;

ITEM 1 - ATTACHMENT 1 RECOMMENDED CONDITIONS OF CONSENT.

- e) maintain a clear service vehicle dock, car parking spaces and access driveways at all times; and
- f) all vehicles must enter and leave in a forward direction.

Condition reason - To ensure deliveries to the premises are carried out safely and protect the amenity of the local area.

- (12) **Service Station Related Activities** - During ongoing use of the service station, the use of air compressors and gas bottle filling are permitted to only be undertaken only during the following hours:

Day	From	To
Monday - Saturday	7:00 am	7:00 pm
Sunday and Public Holidays	8:00 am	6:00 pm

- (13) **Removal of graffiti** – The owner/manager of the site is responsible for the removal of all graffiti from the building and fences within 48 hours of its application.

Condition reason - To ensure that all graffiti is removed in a timely manner.

- (14) **Parking areas to be kept clear** – At all times, the loading, car parking spaces, driveways and footpaths must be kept clear of goods and must not be used for storage purposes.

Condition reason - To ensure that all associated areas with vehicle storage/parking are kept clear and solely for their intended purpose.

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

Condition reason - To ensure that no interference occurs to the amenity of the area.

- (16) **External lighting during ongoing use** - During ongoing use of the premises, all lighting must be operated and maintained in accordance with the approved plans and the requirements of this consent.

Condition reason - To ensure the safe operation of the premises and protect the amenity of the local area.

- (17) **Operational Plans** - The development must be carried out in accordance with the approved:

- a) Plan of Management
- b) Traffic Management Plan

Condition reason - To ensure the development is carried out in accordance with endorsed operational plans.

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.

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. **Bird strike advice** – As the subject site is located in an area mapped by the Department of Defence as “Birdstrike Group B”, organic waste and/or the storage of bins associated with any future development must be covered and/or enclosed and limited on-site.
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.



COMMERCIAL/INDUSTRIAL ASSESSMENT REPORT

APPLICATION REFERENCES

Application Number	16-2025-138-1
Development Description	Change hours of operation for service station
Applicant	CUBITIC PROJECTS MANAGEMENT PTY LTD
Land owner	Reminvest Pty Ltd
Date of Lodgement	31/03/2025
Value of Works	\$0.00
Submissions	13

PROPERTY DETAILS

Property Address	12 Randall Drive SALAMANDER BAY
Lot and DP	LOT: 664 DP: 32235
88B Restrictions on Title	None
Current Use	Service Station
Zoning	E1 LOCAL CENTRE
Site Constraints	ASS – Class 4 & 5 CKPoM – Mainly Cleared Land Coastal Zone
State Environmental Planning Policies	State Environmental Planning Policy (Resilience and Hazards) 2021; State Environmental Planning Policy (Biodiversity and Conservation) 2021; State Environmental Planning Policy (Sustainable Buildings) 2022; State Environmental Planning Policy (Transport and Infrastructure) 2021; State Environmental Planning Policy (Industry and Employment) 2021;

PROPOSAL

The proposed development seeks consent for extended trading hours at an existing service station located at 12 Randall Drive, Salamander Bay.

The service station is currently permitted to trade as follows:

- Monday – Friday 7am – 6pm,
- Saturday 7am – 2pm,
- Sunday 7am – 12pm.

The trading hours proposed by the applicant comprised various options:

- Option A: 24/7
- Option B: Until 12am
- Option C: Until 10pm

A time-limited consent allowing extended operating hours from 6:00am to 10:00pm (daily) for a trial period of 24 months is proposed in response to public objections and the findings from this assessment. The applicant may seek to extend the trading hours through a future application at the cessation of the time-limited consent period.

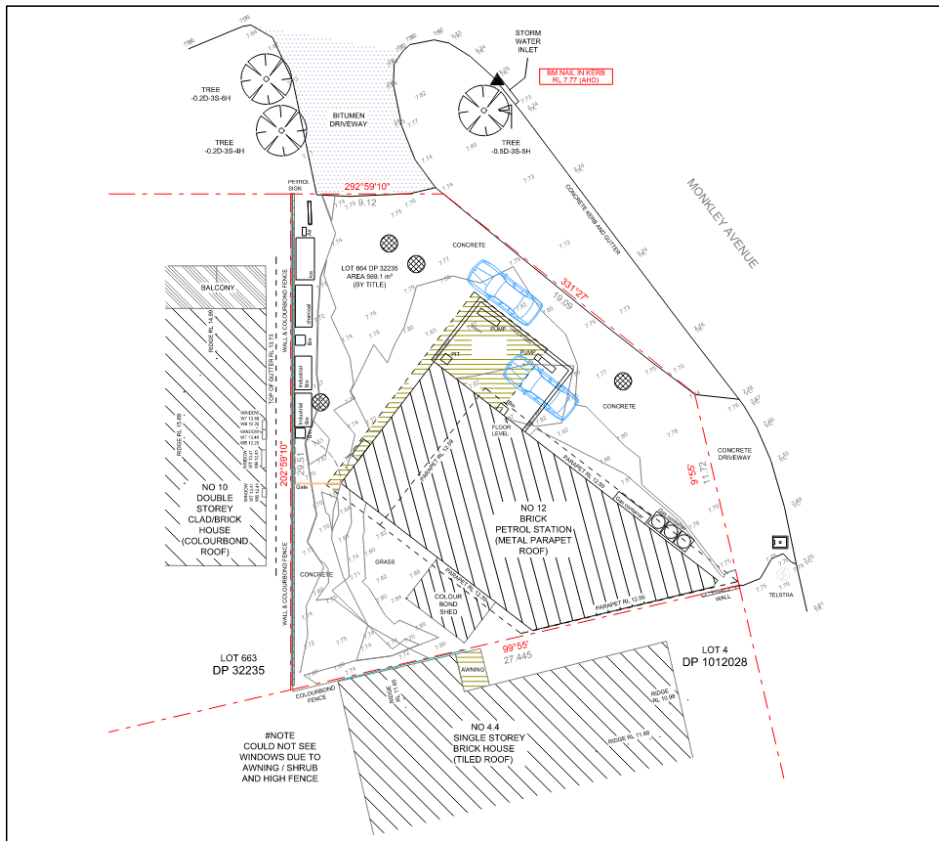


Figure 1: Proposed site plan

SITE DESCRIPTION

The site is located on a corner lot within an established retail and residential precinct of Salamander Bay. The site is located within the E1 Local Centre land use zone, and adjoins an R2 Low Density Residential zone to the north and east.



Figure 2: Aerial GIS imagery of the subject site

SITE HISTORY

The development consent history dates back to a consent from 1989 (7-1989-4330-1) which involved 'additions to service station', signifying operation of the service station prior to 1989. Consent was issued in 2012 (DA 16-2012-153-1) for 'extension to service station'. This consent approved the use of the site for vehicle maintenance i.e. mechanic business.

The subject site does not have records of contamination or historical applications that would impact the proposed development. Ongoing inspections of the service station by the NSW EPA and Councils Environmental Health Officers have occurred under the provisions of the Protection of the Environment Operations Act 1997 (POEO Act).

SITE INSPECTION DETAILS

A site inspection was carried out on 23 April 2025.

The subject site can be seen in images 1 and 2 below:



Photograph 1: Site Image 1



Photograph 2: Site Image 2

REFERRALS

The proposed development was referred to the following internal specialists. 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

Outcome	Supported with conditions
Comment	<p>Council's Development Engineering Officer raised concerns regarding site circulation and recommended a one-way traffic arrangement (entry via Randall Avenue and exit via Monkley Avenue) be considered to improve vehicle movement and reduce conflict.</p> <p>While the applicant has not committed to the one-way arrangement, this matter can be addressed through a condition of consent requiring a Traffic Management Plan (TMP) to be prepared by a suitably qualified traffic engineer and endorsed by Council prior to the commencement of extended trading. Given that no physical works are proposed as part of this application, and the extension of operating hours is modest, the expected increase in traffic is not considered to result in unacceptable safety impacts, subject to appropriate vehicle circulation measures being implemented through the TMP.</p>

Environmental Health

Outcome	Supported with conditions
Comment	<p>Council's Environmental Health Officer was not supportive of 24-hour trading due to potential amenity impacts, particularly relating to noise and air quality.</p> <p>A Noise Emissions Assessment was submitted, though limitations were noted including a lack of baseline monitoring and exclusion of certain noise sources. Conditions can be imposed requiring compliance with NSW EPA's Noise Policy for Industry (2017) to manage noise impacts during the extended hour's trial. These standards will guide acceptable noise levels at nearby sensitive receivers. Additional conditions restricting high-impact activities such as fuel deliveries and waste collection to daytime hours (e.g. 7am-6pm) are also recommended to minimise potential for sleep disturbance.</p> <p>In terms of odour, past complaints have primarily related to fuel vapours and gas bottle filling. While the site is compliant with Vapour Recovery Stage 1 (VR1) and requirements under the Protection of the Environment Operations (Clean Air) Regulation 2022, Council has consulted with the operator to consider upgrading to Vapour Recovery Stage 2 (VR2), in line with best practice to further minimise emissions and address neighbour concerns.</p> <p>The applicant has provided confirmation of a trade waste agreement with Hunter Water. The current discharge of stormwater is via a pit and Oil Water Separator into the sewerage system. A Plan of Management will be required to ensure ongoing training and incident management practises are in place.</p>

	Lighting impacts were also raised by Councils Environmental Health Officer. Conditions have been imposed requiring compliance with AS/NZS 4282:2019 – Control of the Obtrusive Effects of Outdoor Lighting, including shielding of light sources, limiting upward light spill, and managing luminance at residential boundaries.
Compliance Officer	
Outcome	Supported with conditions
Comment	<p>Councils Compliance Officer has provided conditional support for the proposed amendment, although does not support 24-hour trading due to the potential for unacceptable impacts on residential amenity and the history of community complaints.</p> <p>The applicant has agreed to restrict operating hours to 6:00am–10:00pm daily and accepts a 24-month time-limited consent. This trial period will enable Council to monitor amenity impacts and determine the long-term suitability of the extended hours and associated management practices.</p> <p>A condition requiring the installation of a 'No Entry' sign at the northern driveway, consistent with previous traffic safety recommendations, is supported and should be included on any consent issued.</p>

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

Section 1.7 – Application of Part 7 of Biodiversity Conservation Act 2016

The development does not trigger entry into the Biodiversity Offset Scheme, as the proposal does not involve native vegetation clearing within a Biodiversity Values Mapped area, exceed the area clearing threshold or propose significant ecological impact.

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

The development does not trigger assessment section 4.14 of the EP&A Act 1979 due to the subject site not being identified as bushfire prone land.

Section 4.46 – What is “integrated development”?

The proposed development does not require an integrated referral under section 4.46 of the Environmental Planning and Assessment Act 1979 (EP&A Act 1979) as it does not meet any of the applicable triggers.

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:

- The provisions of any environmental planning instrument, proposed instrument, development control plan, planning agreement and the regulations
 - Any environmental planning instrument, and
 - 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
 - Any development control plan, and
 - 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

ITEM 1 - ATTACHMENT 2 PLANNER'S ASSESSMENT REPORT.

- The regulations (to the extent that they prescribe matters for the purposes of this paragraph),
- That apply to the land to which the development application relates,
- The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,
- The suitability of the site for the development,
- Any submissions made in accordance with this Act or the regulations,
- The public interest.

The relevant matters outlined in section 4.15(1) of the EP&A Act are considered below.

Section 4.15(1)(a)(i) – Any environmental planning instrument		
STATE ENVIRONMENTAL PLANNING POLICY (RESILIENCE AND HAZARDS) 2021		
CHAPTER 2 – COASTAL MANAGEMENT		
Clause	Requirement	Assessment
2.2	Interpretation Development is within the Coastal Management Areas and therefore Chapter 2 of the SEPP applies.	Complies
	Development on land within the coastal environment area	
2.10	The development is located within the coastal environment area; AND The development is unlikely to cause adverse impacts to the integrity and resilience of the biophysical, hydrological, and ecological environment, the coastal environmental values and processes, water quality, marine and native flora, fauna, and their habitats, or to Aboriginal cultural heritage, practices, and places; AND The development is designed and sited to avoid adverse impact on the above mentioned areas.	Complies
		Complies
		Complies
Comment	The proposal involves no land disturbance and will not result in impacts to the ecological or coastal environmental values of the site. Existing environmental protections and site conditions will be maintained and improved through conditions relating to stormwater controls. The site benefits from a trade waste agreement with Hunter Water, whereby stormwater is discharged into the sewer via an Oil Water Separator. There is no direct discharge from the site into sensitive waterways, thereby not impacting marine or ecological systems.	
2.11	Development on land within the coastal use area The development is located within the coastal use area; AND The development is unlikely to cause adverse impact to existing and safe access to and along the foreshore, overshadowing and loss of views, visual amenity and scenic qualities, and Aboriginal cultural heritage, practices, and places, or cultural and built environment heritage; AND	Complies
		Complies

STATE ENVIRONMENTAL PLANNING POLICY (RESILIENCE AND HAZARDS) 2021		
	The development is designed and sited to avoid adverse impact on the above mentioned areas.	<input type="checkbox"/> Complies
Comment	The proposed development does not involve any building works and will not affect foreshore access, views, or visual amenity. There is no known Aboriginal cultural heritage or built heritage affected by the proposal. The site is not located adjacent or near any foreshore areas and is located within an established commercial precinct of Salamander Bay.	
2.12	Development in coastal zone generally – development not to increase risk of coastal hazards	
	The development is not likely to cause increased risk to coastal hazards on the land or other land.	<input type="checkbox"/> Complies
Comment	The proposal does not involve any change to the physical form of the development or alter site stability. As such, it does not increase risk of coastal hazards such as erosion, flooding, or inundation.	
2.13	Development in coastal zone generally – coastal management programs to be considered	
	The development is located within a coastal zone and the Port Stephens Coastal Management Plan (CMP) has been taken into consideration.	<input type="checkbox"/> Complies
Comment	The proposal is consistent with the objectives of the adopted CMP, including avoidance of environmental harm, minimisation of hazard risk, and preservation of visual and ecological values. The proposal does not conflict with any adopted actions or strategies in the CMP.	

PORT STEPHENS LOCAL ENVIRONMENTAL PLAN 2013		
Clause	Requirement	Assessment
	Suspension of covenants, agreements and instruments	
1.9A	<p>The development is not inconsistent with any of the following instruments:</p> <ul style="list-style-type: none"> • A covenant imposed by the Council or that the Council requires to be imposed, or • Any relevant instrument within the meaning of section 13.4 of the Crown Land Management Act 2016, or • Any conservation agreement within the meaning of the National Parks and Wildlife Act 1974, or • Any Trust agreement within the meaning of the Nature Conservation Trust Act 2001, or • Any property vegetation plan within the meaning of the Native Vegetation Act 2003, or • Any biobanking agreement within the meaning of Part 7A of the Threatened Species Conservation Act 1995, or 	<p><input type="checkbox"/> N/A</p> <p><input type="checkbox"/></p> <p><input type="checkbox"/></p> <p><input type="checkbox"/></p> <p><input type="checkbox"/></p> <p><input type="checkbox"/></p> <p><input type="checkbox"/></p>

PORT STEPHENS LOCAL ENVIRONMENTAL PLAN 2013		
	<ul style="list-style-type: none"> Any planning agreement within the meaning of Subdivision 2 of Division 7.1 of the Act. 	<input type="checkbox"/>
Comment		
2.1	Land use zones The proposed development is permissible in the E1 Local Centre zone. AND The development is consistent with the objectives of the zone.	<input type="button" value="Complies"/> <input type="button" value="Complies"/>
	The development seeks consent for the extension of trading hours which complies with the objectives of the zone through: <ul style="list-style-type: none"> Supporting the ongoing operation of a service station, which is a permissible and established use within the zone, serving both local residents and passing traffic; Improving flexibility and service availability for the community, including morning and evening trade for commuters and shift workers; Maintaining employment opportunities within an accessible and central location, thereby supporting the economic viability of the local centre; and Not involving any physical changes to the built form or intensification of land use that would affect walkability, public transport use, or the balance of residential and non-residential uses in the locality. 	
5.10	Heritage conservation There are no heritage items / archaeological sites / Aboriginal objects or places / conservation areas located on the subject site. OR The proposal includes impact on a heritage item / Archaeological site / Aboriginal object or place / conservation area; AND The application is supported with a heritage impact assessment; AND Impacts on the heritage significance of the site is considered reasonably avoided and/mitigated.	<input type="button" value="Complies"/> <input type="button" value="N/A"/> <input type="button" value="N/A"/> <input type="button" value="N/A"/>
	An AHIMS search was provided with the application, which showed that there are no recorded Aboriginal heritage sites or items within the subject site, or in close proximity to the subject site. The site is not located within any Aboriginal sensitive landscape features. As such, no adverse impact to Aboriginal heritage is expected, and a condition of consent relating to unexpected finds will be included to ensure that appropriate steps are taken should any be identified during works.	
	Essential services Essential services are available to the site where required.	<input type="button" value="Complies"/>
	7.6	

PORT STEPHENS LOCAL ENVIRONMENTAL PLAN 2013		
	Roads Act Approval condition required.	Imposed
	OSMS proposed, and relevant conditions required.	N/A
Comment	The subject site is serviced by reticulated water, electricity and sewer.	

Section 4.15(1)(a)(ii) – Any draft EPI

DRAFT EPI'S		
		Assessment
	There are no draft EPI's that are relevant to the proposed development.	Complies
OR	A draft EPI is relevant to the proposed development however the application is consistent with the aims and objectives of the document.	N/A
Comment	There are no draft EPIs that would impact the site.	

Section 4.15(1)(a)(iii) – Any DCP

Port Stephens Development Control Plan 2014
SECTION B – GENERAL PROVISIONS

B3 – ENVIRONMENTAL MANAGEMENT		
Clause	Requirement	Assessment
B3.A	B3.1 – Air quality The development would not cause adverse air quality subject to conditions of consent.	Imposed
Comment	As assessed by Council's Environmental Health Officer, in terms of odour, past complaints have primarily related to fuel vapours and gas bottle filling. While the site is compliant with Vapour Recovery Stage 1 (VR1) under the POEO Regulations, Council has recommended the operator consider upgrading to Vapour Recovery Stage 2 (VR2), in line with best practice to further minimise emissions. Noting however that VR2 systems are above the current standard set by the NSW EPA under the POEO Regulations, there is limited legal grounds or nexus to impose such a condition.	
B3.B	B3.2 – Noise The development would not generate offensive noise subject to conditions of consent.	Imposed
Comment	As assessed by Council's Environmental Health Officer, a Noise Emissions Assessment was submitted, though limitations were noted including a lack of baseline monitoring and exclusion of certain noise sources. Conditions can be imposed requiring compliance with NSW EPA's Noise Policy for Industry (2017) to manage site operations. These standards guide acceptable noise levels at nearby sensitive receivers.	

B3 – ENVIRONMENTAL MANAGEMENT	
	Additional conditions restricting high-impact and noisy activities such as fuel deliveries and waste collection to daytime hours (e.g. 7am–6pm) are also recommended to minimise potential for sleep disturbance at nearby properties.

B4 – DRAINAGE AND WATER QUALITY		
Clause	Requirement	Assessment
B4.A	B4.1 – Stormwater drainage plan	
	Development provides a stormwater drainage plan and a written description of the proposed drainage system within the SEE.	Complies
B4.B	B4.2 to B4.4 – Stormwater drainage plan	
	Development does not require on-site detention or on-site infiltration and the objectives of this control have been satisfied.	N/A
	OR The following applies to all minor development types other than subdivision: <ul style="list-style-type: none"> • Stormwater/drainage plans prepared and certified by a suitably qualified professional are to be submitted which provides for an on-site detention system. 	Complies
	OR - Detention / storage tanks in accordance with BASIX requirements are to be provided,	N/A
	AND - For every 100m ² of roof or impervious area collected an additional 2,000 litres detention / storage is to be provided.	N/A
	OR - A 6000 litre detention tank (in addition to any BASIX requirements) provided for each dwelling.	N/A
Comment	A Stormwater Plan has been provided which identifies the presence of an existing trade waste pit along with a Coalescing filter (Oil Water Separator) to manage stormwater discharge. To improve management practices, a condition will be imposed requiring a Plan of Management to improve training, maintenance and record keeping with respect to the system as well as the installation of an alarm to alert operators when the system has a high level oil and required emptying. Whilst appropriate measures are in place to manage stormwater and contaminants, conditions have also been imposed to upgrade bunding on the site to meet AS1940-2017 and AS4897-2008 to achieve EPA Fuel Dispensing Design Guidelines.	
B4.C	B4.5 to B4.7 – Water quality	
	Development includes a water quality improvement device, and a condition has been included requiring the inclusion of such a device.	Complies
	OR The parent subdivision includes subdivision wide Water Sensitive Urban Design (WSUD).	N/A
	B4.8 – Water quality	
	Erosion and sediment measures are provided during the construction phase, with conditions included in the determination.	N/A

B4 – DRAINAGE AND WATER QUALITY		
	B4.9 – Drinking water catchment	
	Development within the drinking water catchment is not considered likely to have an adverse impact on the catchment.	N/A
	OR	
	Development that is considered to have the potential for significant adverse impacts to the water quality of the drinking water catchment has been referred to Hunter Water under Section 51 of the <i>Hunter Water Act 1991</i> .	N/A

B8 – ROAD NETWORK AND PARKING		
Clause	Requirement	Assessment
B8.A	B8.1 – Traffic impacts	
	The development is supported by a satisfactory parking assessment.	Complies
	B8.2 – Traffic impacts	
	The development does not meet the trigger for a TIA. Note: If a TIA is required, an assessment must be provided below.	Complies
B8.C	B8.3 – Traffic impacts	
	Development will impact on traffic movements during the construction phase.	N/A
Comment	The development seeks modest extended trading hours with no major intensification of the site in terms of fuel capacity or dispensers. The site will not attract a significantly greater volume of traffic to the site, rather comparable traffic volumes under current conditions, although over a longer time period. The surrounding road network and intersection capacity is considered suitable to support the increase in trading hours until 10pm noting the site is within an established commercial precinct.	
B8.C	B8.12 – On-site parking access	
	The entry, exit and driveway separation widths of access points from a site to a street frontage is provided in accordance with Figure BV and the steps outlined in this control.	Variation
B8.C	B8.13 – On-site parking access	
	Ingress and egress to parking areas are consistent with this control in the DCP.	Variation
Comment	As outlined above in the referral response from Council's Engineering Officer, concerns were raised regarding site circulation and it was recommended the applicant amended the site to operate via a one-way traffic arrangement (entry via Randall Avenue and exit via Monkley Avenue) to improve vehicle movement and reduce conflict. Site traffic flows can be addressed through a condition of consent requiring a Traffic Management Plan (TMP) be prepared by a suitably qualified traffic engineer and submitted to Council for approval. Amending the site circulation to one-way movement and the installation of regulatory traffic signage will address potential conflicts.	

B8 – ROAD NETWORK AND PARKING	
	The extension of operating hours is modest, the expected increase in traffic is not considered to result in unacceptable safety impacts, subject to appropriate vehicle circulation measures being implemented.

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

PLANNING AGREEMENTS		Assessment
There are no planning agreements that have been entered into under section 7.4 relevant to the proposed development.		Complies
OR		
A draft EPI is relevant to the proposed development however the application is consistent with the aims and objectives of the document.		N/A
Comment		

Section 4.15(1)(a)(iv) – The regulations

EP&A REGULATIONS		Assessment
There are no relevant sections within the EP&A Regulation 2021 for the development (to the extent that they prescribe matters for the purposes of this paragraph).		Complies
Comment		

Section 4.15(1)(b) – The likely impacts of the development

THE LIKELY IMPACTS OF THE DEVELOPMENT		Assessment
Social and Economic Impact		
Comment	The proposed development involves a change in hours of operation for an existing service station, which is a longstanding commercial use within the locality. The proposal supports the continued operation of the business, providing extended access to fuel and convenience retail services for the local community, commuters, and visitors.	Satisfied
	The development enables more flexible trading hours without requiring upgrades to public infrastructure or placing additional burden on Council services. The extended hours are expected to support local employment and improve service availability, particularly during early morning and evening periods.	
	The ongoing operation of the service station contributes to the local economy through direct employment, procurement of goods and services, and support for other businesses in the area. There are no anticipated adverse social or economic impacts arising from the proposed operational changes.	
Built Environment Impact		

THE LIKELY IMPACTS OF THE DEVELOPMENT		
Comment	<p>The proposed change of operating hours do not involve any alterations to the built form of the site. The development retains the existing structure and layout, which is consistent with the established character of the area and the zoning objectives of the E1 Local Centre zone.</p> <p>The proposal includes appropriate on-site infrastructure, such as a stormwater management system and trade waste controls, to prevent off-site impacts and protect adjoining properties. Traffic movements are expected to increase slightly but can be accommodated within the existing road network and site layout, with improved traffic management conditions to be addressed via conditions.</p> <p>Overall, the development is compatible with the existing urban context, and there are no anticipated adverse impacts on the built environment.</p>	<div style="border: 1px solid black; padding: 2px; display: inline-block;">Satisfied</div>
Natural Environment Impact		
Comment	<p>The proposed development is not expected to adversely impact the natural environment. As no physical works are proposed beyond minor upgrades to stormwater infrastructure, there will be no significant earthworks, vegetation removal, or disturbance to natural features.</p> <p>The Plan of Management will ensure that the ongoing service station operation complies with the EPA quantity and quality standards, including spill containment to minimise the risk of fuel-related pollution.</p> <p>The proposal does not affect areas of ecological significance, and the continued use of the site will not result in any unacceptable environmental impacts.</p>	<div style="border: 1px solid black; padding: 2px; display: inline-block;">Satisfied</div>

Crime Prevention Through Environmental Design (CPTED) Assessment.

Surveillance (Passive and Active)

Principle: Maximise visibility of public spaces to discourage criminal behaviour.

Assessment: The site is open to the street and highly visible from both Randall Drive and Monkley Avenue. The forecourt and shopfront allow for clear sightlines between the public domain and staff within the convenience store, which enables passive surveillance.

Conditions of consent will require the retention (and if necessary, upgrade) of external lighting and CCTV, and may require the addition of signage advising customers that the site is under constant video monitoring. These features will discourage loitering and help mitigate risks associated with longer operating hours.

Access Control

ITEM 1 - ATTACHMENT 2 PLANNER'S ASSESSMENT REPORT.

Principle: Limit and clearly define access to reduce opportunities for unauthorised entry or inappropriate movement through the site.

Assessment: The site has multiple access points via Randall Drive and Monkley Avenue, with traffic now required to circulate in a one-way pattern. Council will impose conditions requiring a 'No Entry' sign on the northern driveway to reinforce the one-way traffic movement and minimise vehicular conflict.

Territorial Reinforcement

Principle: Encourage a sense of ownership and community responsibility over space.

Assessment: The site is clearly defined and operated as a commercial premises, with signage, branding, lighting, and defined pathways. While community submissions raised concern about loitering and inappropriate late-night behaviour, these risks are reduced through limiting the hours of operation and maintaining a clear separation between the service station and surrounding residential properties. Conditions requiring the maintenance of lighting, and landscaping can be included to ensure a sense of place and discourage unauthorised use of surrounding land.

Space/Activity Management

Principle: Ensure spaces are well maintained, managed, and regularly used to prevent decline and increase perceived safety.

Assessment: The site is active during the day and early evening, which supports natural surveillance and reduces opportunities for criminal activity during quiet periods. The proposed 6am to 10pm operating hours represent a compromise that avoids 24/7 activity while still activating the site during key community hours. Conditions of consent have been imposed which require the ongoing maintenance of lighting, signage, and landscaping, which will help project a sense of order and active management. The operator will also be encouraged to implement staff training protocols and security procedures to minimise disturbances.

Legibility and Wayfinding

Principle: Users should be able to easily understand the layout and purpose of a site.

Assessment: The site is legible in function and layout. Fuel bowsers, the convenience store, and entry/exit points are clear. Lighting and wayfinding aids will be required to comply with AS 4282:2019 to ensure illumination supports safety without impacting neighbouring properties.

Conclusion

The proposed development, involving only a change to the approved hours of operation, is considered consistent with CPTED principles subject to conditions of consent. The existing service station is well-surveilled and accessible. Concerns raised by the community (particularly around antisocial behaviour) have been addressed through a reduction in hours sought, a 24-month trial period, and appropriate safety conditions, including improved lighting, surveillance, and traffic management.

Section 4.15(1)(c) – The suitability of the site

The subject site is located within an established commercial zone and is relatively clear of vegetation. The site has access to all essential services and the proposed development makes

ITEM 1 - ATTACHMENT 2 PLANNER'S ASSESSMENT REPORT.

good use of the available land. The application includes 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

The application was exhibited from 16 April 2025 to 14 May 2025 in accordance with the provisions of the Port Stephens Council Community Engagement Strategy.

A total of 13 of submission/s were received in relation to the subject development proposal and is outlined below.

Item	Matter raised	Response
Potentially Hazardous Industry / SEPP (Resilience and Hazards) 2021		
1	Residents raised concern that the development is “potentially hazardous” and should have been subject to SEPP 33 methodology, including a Preliminary Hazard Analysis.	<p>Council acknowledges the site contains an existing underground petroleum storage system (UPSS). However, the current application relates only to a change in hours of operation for an already approved and operating service station, not the establishment of a new hazardous industry. The development does not involve changes to fuel storage or intensification of hazardous activities.</p> <p>Risks associated with the use are managed through existing licencing and compliance frameworks.</p> <p>Conditions of consent will reinforce environmental controls, and the proposed trial period allows for further monitoring.</p>
Water Pollution		
2	Concerns were raised about stormwater runoff, outdated site infrastructure, and potential contamination of nearby waterways due to increased site activity.	<p>The Stormwater Management Plan and Survey detail that the service station has an existing Coalescing filter (oil water separator) in place. Additionally, existing trade waste agreements have been confirmed with Hunter Water. There is no direct discharge from the refuelling area to the public stormwater system.</p> <p>Notwithstanding, Council have imposed conditions relating to the preparation of a Plan of Management to ensure that the ongoing operation complies with Council’s quantity and quality standards, including spill containment to minimise the risk of fuel-related pollution. Further, conditions have been imposed requiring the upgrade of bunding to meet the relevant AS design standards.</p>
Air Pollution (Odour)		
3	Residents reported prior issues with fuel vapour. Concerns remain about enforcement and long-term maintenance of vapour recovery systems.	<p>Council acknowledges prior complaints regarding odour.</p> <p>The service station meets the NSW EPA current requirements in regard to vapour collection for Port Stephens, being the V1 Vapour Recovery System. Council has requested that the proponents consider upgrading to VR2 to address neighbourly concerns. Notwithstanding this, should odour issues recur, Council retains its compliance and regulatory powers to address substantiated breaches under the Protection of the</p>

ITEM 1 - ATTACHMENT 2 PLANNER'S ASSESSMENT REPORT.

Item	Matter raised	Response
		Environment Operations Act 1997. To date however, there has been limited evidence of major odour emissions.
Noise Pollution		
4	Multiple residents described excessive noise from vehicle movements, tyre inflators, deliveries, and customer activity. Particular concern was raised regarding night-time and early-morning hours.	<p>Council has not supported the 24/7 trading hour proposal due to the potential for sleep disturbance and cumulative amenity impacts.</p> <p>Due to the potential for noise impacts, Council propose to implement conditions restricting operating hours to 6:00am to 10:00pm daily and prohibiting night-time fuel deliveries, waste collection, and other high-impact activities.</p> <p>A time-limited consent of 24 months will allow for monitoring of any residual impacts, with the option to reassess conditions at the end of that period.</p>
Light Pollution		
5	Residents objected to intrusive lighting from the forecourt and vehicle headlights impacting sleep and residential privacy.	<p>Council acknowledges that light spill is a valid concern. Shielding has been voluntarily installed but further improvement is considered warranted.</p> <p>Conditions of consent will require all external lighting (including forecourt and signage lighting) to comply with AS 4282:2019 – Control of the Obtrusive Effects of Outdoor Lighting, including appropriate shielding, luminous intensity limits, and direction away from residential properties.</p>
Traffic and Road Safety (Vehicle and Pedestrian)		
6	Numerous submissions raised concerns about increased traffic on Randall Drive and Monkley Avenue, non-compliance with the one-way traffic arrangement, poor manoeuvrability, pedestrian safety, and lack of formal footpaths.	<p>Council's Development Engineering Officer has recommended conditions of consent requiring signage improvements (including 'No Entry' signs), restriction of fuel deliveries to outside peak periods, and review of vehicle movement controls to address traffic conflict concerns.</p> <p>Footpath improvements are outside the scope of this development. There is no DCP or LEP control that specifies footpath upgrades and there is limited nexus between a modest extension of trading hours and public infrastructure upgrades.</p>
Crime and Anti-Social Behaviour		
7	Concerns were raised that 24/7 trading may encourage loitering, theft, or other antisocial behaviour. Reference was made to a robbery and poor late-night behaviour.	<p>Council acknowledges CPTED (Crime Prevention Through Environmental Design) principles are relevant.</p> <p>While there is no evidence to suggest that extending trading to 10pm will materially increase crime risk, 24-hour trading is not supported.</p>

Item	Matter raised	Response
		<p>Conditions will limit hours to 6am–10pm and require CCTV coverage, appropriate lighting, and clear sightlines across the forecourt to improve passive surveillance.</p> <p>Late-night loitering will be discouraged through operational procedures and monitored during the trial period.</p>
Community Character and Amenity		
8	<p>Objectors stressed that 24/7 trading would alter the character of a quiet residential area, decrease amenity, and potentially reduce property values.</p>	<p>Council acknowledges that the site is located adjacent an established residential area. Although, it is noted the service station land use is permissible and located within an E1 Local Centre zone, which encourages retail and commercial land uses. The service station has been established and operating for an extended period of time and it is reasonable to expect some form of noise emissions and traffic generation from commercial uses in the E1 zone located adjacent residential areas.</p> <p>Importantly, the adopted LEC Planning Principles under ‘Seaside Property Developments Pty Ltd v Wyong Shire Council [2004]’ stipulates that development at a zone interface needs to recognise and take into account the form of existing development and/or development likely to occur in an adjoining different zone. Accordingly, perceived residential character loss from the modest hour’s extension for the service station operation as outlined in the submissions must be given weight with regard to the E1 Local Centre zone and associated permissible land uses, including service stations.</p> <p>To address public submission concerns, 24/7 operation is not supported. The use will be limited to 6am–10pm daily under a time-limited trial of 24 months to monitor impacts.</p> <p>This allows for a balanced planning outcome that recognises the existing lawful use, supports local services in the E1 zone, and protects neighbourhood character to a reasonable extent.</p>

Section 4.15(1)(e) – The public interest

The development is considered to be in the public interest as it relates to the continued operation of an existing service station, which provides essential fuel and convenience services to the local community. The proposal seeks to extend trading hours in a limited and controlled manner to improve fuel and retail services and meet community demand, particularly during early morning and evening periods.

The development is not anticipated to result in any significant adverse impacts on surrounding properties or the amenity of the locality, subject to the recommended conditions of consent including restricted trading hours and environmental controls.

Section 7.12 – Fixed development consent levies

Fixed development contributions do not apply to the proposal.

Housing and Productivity Contribution Order 2023

The development is exempt from the Housing and Productivity contributions.

CONCLUSION

The proposed development has been considered in accordance with the requirements of the EP&A Act and associated Regulations as outlined in this report. Following a thorough assessment of the relevant planning controls, issues raised in submissions and the key issues identified in this report, it is considered that the application can be supported.

DETERMINATION

The application is recommended to be approved under delegated authority, subject to conditions as contained in the notice of determination.



**CALL TO COUNCIL FORM
DEVELOPMENT APPLICATION**

Development application (DA) call to Council request:	
<p>I/We (Mayor/Councillor/s) <u>Armstrong and Watson</u> request that DA number <u>16-2025-138-1</u> for DA description <u>Existing Service Station - Change of hours of operation to 24/7</u> located at <u>12 Randall Drive, Salamander Bay</u> be reported to Council for determination.</p>	
Reason:	
Public interest	
Declaration of Interest:	
<p>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.</p> <p>I/We (Mayor/Councillor/s) _____ have a conflict of interest:</p> <p><input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes</p> <p>If yes, please provide the nature of the interest and reasons why further action should be taken to bring this DA to Council:</p>	
<p>Signed: <small>Please sign or type name & attached to an email.</small></p> <p>Cr Armstrong - by Email</p>	<p>Date: 5 May 2025</p>
<p>Signed: <small>Please sign or type name & attached to</small></p> <p>Cr Watson - by Email</p>	<p>Date: 5 May 2025</p>

ITEM 1 - ATTACHMENT 4 LOCALITY PLAN.



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

ITEM NO. 2

**FILE NO: 25/40131
EDRMS NO: 58-2024-1-1**

PLANNING PROPOSAL - 19 GAN GAN ROAD, ANNA BAY

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Adopt the planning proposal (**ATTACHMENT 1**) to amend the Port Stephens Local Environmental Plan 2013 for land at 19 Gan Gan Road, Anna Bay (Lot 292 DP 880755) to:
 - a) Amend the land use zoning from RU2 Rural Landscape to E3 Productivity Support and C2 Environmental Conservation zones.
 - b) Amend the minimum lot size to specify no minimum lot size for the land zoned E3 Productivity Support zone.
 - 2) Forward the planning proposal to the NSW Department of Planning, Housing and Infrastructure for a Gateway determination and request authority to make the plan.
-

BACKGROUND

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

The planning proposal relates to land at 19 Gan Gan Road, Anna Bay (at the intersection with Nelson Bay Road) and seeks to amend the land use zone from RU2 - Rural Landscape to E3 - Productivity Support zone. The intent is to facilitate a future subdivision for employment and light industrial uses subject to a future development application.

The planning proposal also seeks to zone an area of 0.96ha of the site to C2 – Environmental Conservation zone. This zoned area would serve as a vegetated buffer for the future development and to ensure the scenic qualities of Nelson Bay Road are retained.

Should Council resolve to endorse the planning proposal, it would be forwarded to the DPHI requesting a Gateway determination with a request for Council to have Plan Making Authority for the proposal. Following the issue of a Gateway determination, the planning proposal would be publicly exhibited in accordance with any Gateway conditions, prior to being reported to Council for a final determination.

A Strategic Planning Assessment Report (SPAR) for this planning proposal is at **(ATTACHMENT 2)**.

A summary of the planning proposal and property details are provided below.

Date lodged	19 December 2024
Proponent	Perception Planning Pty Ltd
Landowner	Dal Corp Pty Ltd
Subject property	19 Gan Gan Road, Anna Bay
Total area	3.23 hectares
Current zoning	RU2 Rural Landscape
Current use	Single dwelling
Proposed changes	<p>Amend the land use zone from RU2 Rural Landscape zone to:</p> <ul style="list-style-type: none"> • E3 Productivity Support zone; and • C2 Environmental Conservation zone. <p>Amend the minimum lot size from 20ha to no lot size specified for the land zoned E3 – Productivity Support. Retain the minimum lot size of 20ha for the land zoned C2 Environmental Conservation.</p> <p>The intent is to facilitate a future subdivision for employment and light industrial uses subject to a future development application.</p>

Suitability of the site

The site is part of a precinct identified as suitable for future employment and light industrial uses in Council’s adopted Anna Bay Strategy and Town Plan (2008) (ABSTP).

The proposal includes the zoning of part of the site for conservation purposes, serving as a landscaped visual buffer in line with the intent of the ABSTP.

The site is well located with its exposure to Nelson Bay Road and Gan Gan Road. The site has the potential for vehicular access to Gan Gan Road, which would minimise traffic impacts on Nelson Bay Road as part of future development.

Part of the site is identified as flood prone land and the assessments undertaken demonstrate the impact of future development of the site is likely to be minor.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2025-2029
Housing, tourism & economy	Develop and implement Council's key planning documents

FINANCIAL/RESOURCE IMPLICATIONS

Financial and resourcing implications for Council as a consequence of the recommendations of this report are outlined below.

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

LEGAL, POLICY AND RISK IMPLICATIONS

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

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
There is a risk that that DPHI will refuse the planning proposal at Gateway.	Low	Accept the recommendations.	Yes
There is a risk that that the need for additional employment land in Port Stephens is not met.	Low	Accept the recommendations.	

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

The planning proposal is being processed in accordance with Part 3 of the EP&A Act. Should Council resolve to endorse the planning proposal, it would be forwarded to DPHI for a Gateway determination, including a request for Council to be made the Plan Making Authority.

Port Stephens Local Environmental Plan 2013 (LEP)

The planning proposal would amend the PSLEP 2013 to rezone the land from RU2 - Rural Landscape to E3 - Productivity Support and C2 - Environmental Conservation, as well as amending the minimum lot size mapping applicable to the site.

Hunter Regional Plan 2041 (HRP)

The proposal demonstrates consistency with the objectives for future employment lands in the Hunter Region. The site is well located with its exposure to Nelson Bay Road and Gan Gan Road. The proposal will leverage existing infrastructure and provide convenient access to employment land and services.

Local Strategic Planning Statement (LSPS)

The planning proposal gives effect to, and is consistent with, the Port Stephens Local Strategic Planning Statement (LSPS). Planning Priority 1 seeks to support the growth of strategic centres and major employment areas by monitoring employment land supply and assessing rezoning requests for consistency with the economic directions set in local strategies.

Anna Bay Town Plan 2008 (ABTP)

The ABTP is the local planning strategy for the area and has long identified the site for light industrial and employment zone uses. The planning proposal is also consistent with the direction to maintain a green gateway to the town centre as it will reserve an area of 0.96ha for environmental conservation along Nelson Bay Road.

The planning proposal is also consistent with the intent of the ABTP to rezone vegetated areas that are principally located on flood prone land for environmental protection purposes.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The planning proposal is likely to deliver a range of social and economic benefits, including:

- Support current and future population of Anna Bay and surrounding centres.
- Creation of temporary and ongoing employment opportunities within the Port Stephens LGA and the Hunter Region through construction and future development on the site.
- Stimulation of the local economy along the tourist and visitor corridor from Newcastle Airport to the Tomaree Peninsula.

The proposal will reserve an area of 0.96ha of the site for environmental conservation purposes. A preliminary flood impact assessment has been prepared to demonstrate that the impacts of future development on the site, including filling, will be able to be

managed through the future development application stage and are considered to be negligible. Similarly, inter-allotment drainage would need to be accommodated in the design of the future development to ensure that works do not adversely impact the local drainage network.

COMMUNICATION AND ENGAGEMENT

Council's Communication and Engagement Strategy uses the IAP2 Framework to identify the level of engagement undertaken. An explanation for each level is shown below.

INFORM	To provide the public with balanced and objective information to assist them in understanding the problems, alternatives, opportunities and/or solutions.
CONSULT	To obtain public feedback on analysis, alternatives and/or decisions.
INVOLVE	To work directly with the public throughout the process to ensure that public concerns and aspirations are consistently understood and considered.
COLLABORATE	To partner with the public in each aspect of the decision including the development of alternatives and the identification of the preferred solution.
EMPOWER	To place final decision-making and/or developed budgets in the hands of the public.

The following communication and engagement applies to this report.

External communications and engagement

INFORM	<p>Adjacent and adjoining landowners were notified in writing of the lodgement of the planning proposal.</p> <p>Adjoining landowners were consulted and given an opportunity to be included in the rezoning in accordance with the precinct identified in the ABSTP. These landowners did not agree to be part of the planning proposal.</p>
CONSULT	<p>Preliminary consultation has been undertaken with the following State agencies during the assessment of the scoping proposal:</p> <ul style="list-style-type: none"> • Department of Planning, Housing and Infrastructure • Department of Climate Change, Energy, the Environment and Water • Department of Primary Industries • NSW Heritage • Transport for NSW • Hunter Water Corporation • Rural Fire Services

	<p>Through the process, the agencies listed above made recommendations that have informed the planning proposal and accompanying studies and reports.</p> <p>Further consultation or referral of the planning proposal to authorities and government agencies is anticipated after Gateway determination, as set out under Section 9.1 of the EP&A Act, a Gateway condition may be imposed where an authority or agency has an interest in the proposal.</p> <p>The draft planning proposal would be publicly exhibited in accordance with the Gateway determination.</p>
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Internal communications and engagement

Consultation has been undertaken by the Strategy and Environment Section with:

- Assets Section.
- Development and Compliance Section.

OPTIONS

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

ATTACHMENTS

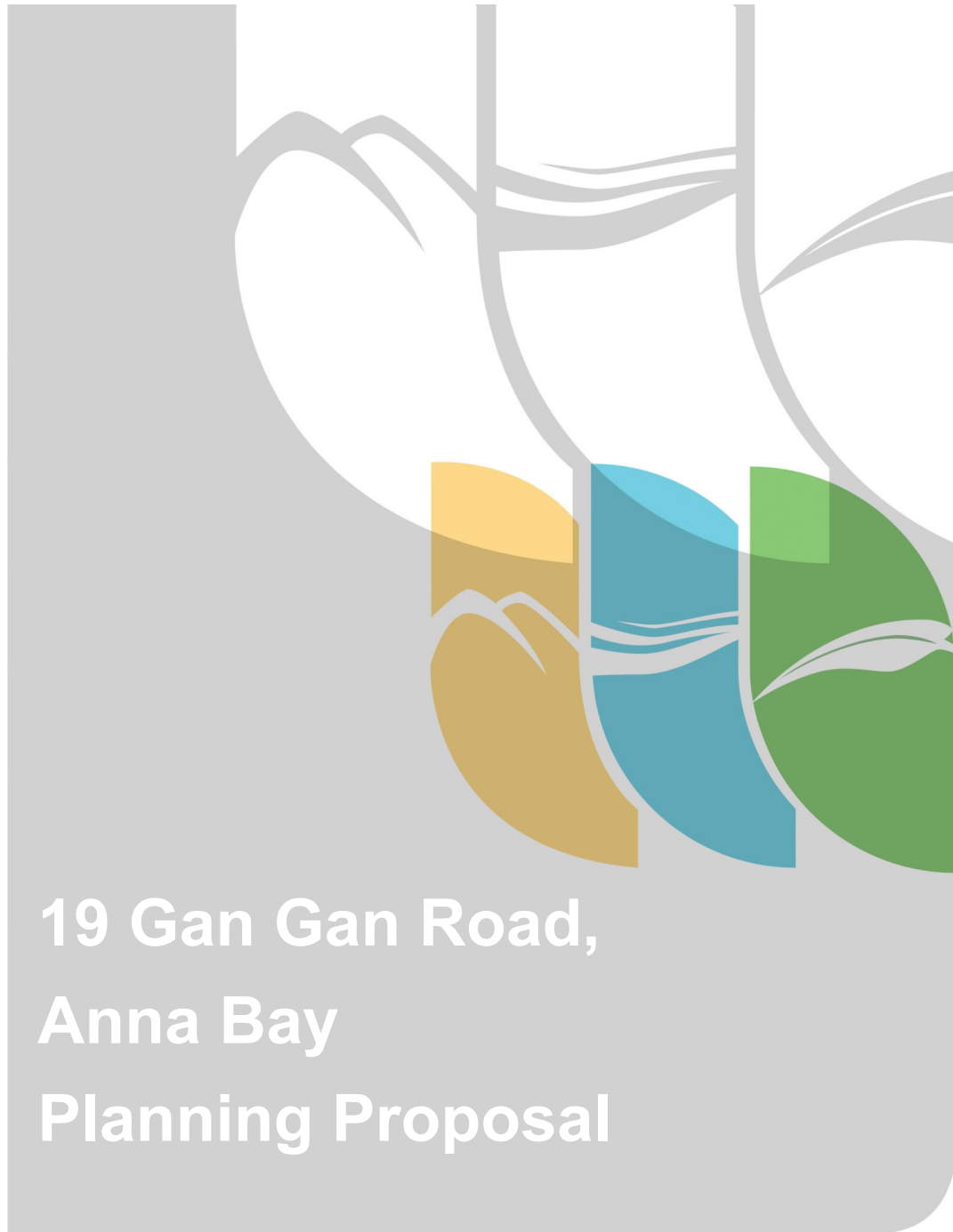
- 1) Planning Proposal. [↓](#)
- 2) Strategic Planning Assessment Report. [↓](#)

COUNCILLORS' ROOM/DASHBOARD

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

TABLED DOCUMENTS

Nil.



19 Gan Gan Road, Anna Bay Planning Proposal

**Proposed amendment to Port Stephens Local
Environmental Plan 2013**
Rezone to E3 Productivity Support and C2
Environmental Conservation,
Lot 292 DP 880755, 19 Gan Gan Road, Anna Bay



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VERSION CONTROL

Version	Date	Details
1	August 2025	Planning proposal for lodgement with Department of Planning, Housing and Infrastructure.

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- APPENDIX A** – Flood Impact Assessment
- APPENDIX B** – Strategic Civil Documentation
- APPENDIX C** – Aboriginal Cultural Heritage Assessment
- APPENDIX D** – Contamination Assessment
- APPENDIX E** – Biodiversity Development Assessment Report
- APPENDIX F** – Bushfire Assessment Report
- APPENDIX G** – Visual Impact Assessment
- APPENDIX H** – Landscape Plan
- APPENDIX I** – Servicing Strategy
- APPENDIX J** – Stormwater Management Plan
- APPENDIX K** – Stormwater Management Report
- APPENDIX L** – Traffic Impact Assessment
- APPENDIX M** – Employment Land Supply Analysis

FILE NUMBERS

Council: 58-2024-1-1

Department: PP-2024-2702

SUMMARY

Subject land: Lot 292 DP 880755
19 Gan Gan Road, Anna Bay

Proponent: Perception Planning Pty Ltd

Proposed changes: Amendment to the Port Stephens Local Environmental Plan 2013 to rezone land for future light industrial uses and conservation.

BACKGROUND

The planning proposal seeks to make an amendment to Port Stephens Local Environmental Plan 2013 (LEP) to rezone the site from RU2 Rural Landscape zone to:

- E3 Productivity Support zone (2.27 ha); and
- C2 Environmental Conservation zone (0.96 ha).

The planning proposal also seeks to amend the minimum lot size for the site so that there is no minimum lot size for the land zoned E3 Productivity Support zone. The

ITEM 2 - ATTACHMENT 1 PLANNING PROPOSAL.

minimum lot size for the proposed C2 Environmental Conservation zone will remain at 20 ha.

The planning proposal will facilitate the uses permitted in the E3 Productivity Support zone, subject to development consent, which include a mix of light industrial and employment land uses.

The planning proposal will also facilitate environmental conservation outcomes on part of the site. This part of the site is flood prone and will act as a vegetation buffer for the future development of the site to ensure the scenic qualities of Nelson Bay Road (a primary tourist and visitor corridor to the Tomaree Peninsula) are retained.

SITE

The subject site is legally described as Lot 292 DP 880755 and is known as 19 Gan Gan Road, Anna Bay. The subject site has an area of 3.23 ha. It fronts Nelson Bay Road roundabout to the north and Gan Gan Road to the south west. The site is adjoined by a rural residential properties.

The site location is shown in Figure 1.

The site is located approximately 1km by road north-west of the Anna Bay town centre. Rural residential development, a church, outdoor recreation facilities and retirement communities are located within the vicinity of the site. Some of the existing neighbouring uses would be permissible on the site under the proposed E3 Productivity Support zoning (e.g. Place of public worship and landscaping material supplies) (See Figure 2).

Lot sizes in the locality are varied with lots in the range of 5 to 20 hectares. There are also retirement villages in the vicinity on large lots with higher density housing on the sites. There are some smaller residential lots that would have been created under historical LEP provisions which allowed the excision of 'concessional' allotments from larger rural holdings.

The site is largely cleared and contains a dwelling and outbuildings, including a dam (See Figure 2). The site has a history of rural residential land uses, such as dairy farming and stock grazing with associated residential uses.

Connection to reticulated water and sewer are available to the site from Gan Gan Road, and electricity and telecommunications infrastructure are also available to the site.

The site has legal frontage to, and access from, Gan Gan Road, which is a sealed urban collector road. The site also has a frontage to Nelson Bay Road which is a dual carriageway. From the site to Salamander Bay is a 9 minute drive, to Nelson Bay is 11 minutes and to Raymond Terrace and Newcastle City is 25 minutes and 44 minutes respectively.

The northern portion of the site is flood prone and the whole of the site is bush fire prone land (Vegetation Category 3). The site is not identified as having important biodiversity values.

The subject land is currently zoned RU2 Rural Landscape under the LEP, consistent with all of the neighbouring land in this locality. Figure 3 shows the current zoning of the site and surrounds.

The objectives of the RU2 zone are:

- To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.
- To maintain the rural landscape character of the land.
- To provide for a range of compatible land uses, including extensive agriculture.
- To facilitate a variety of tourist and visitor-orientated land uses that complement and promote a stronger rural sector appropriate for the area.

FIGURE 1 –19 Gan Gan Rd, Anna Bay (land the subject of the planning proposal is shown in red)



FIGURE 2 – Site and surrounding land



FIGURE 3 – Current zoning extract showing the site outlined in red and the RU2 zone

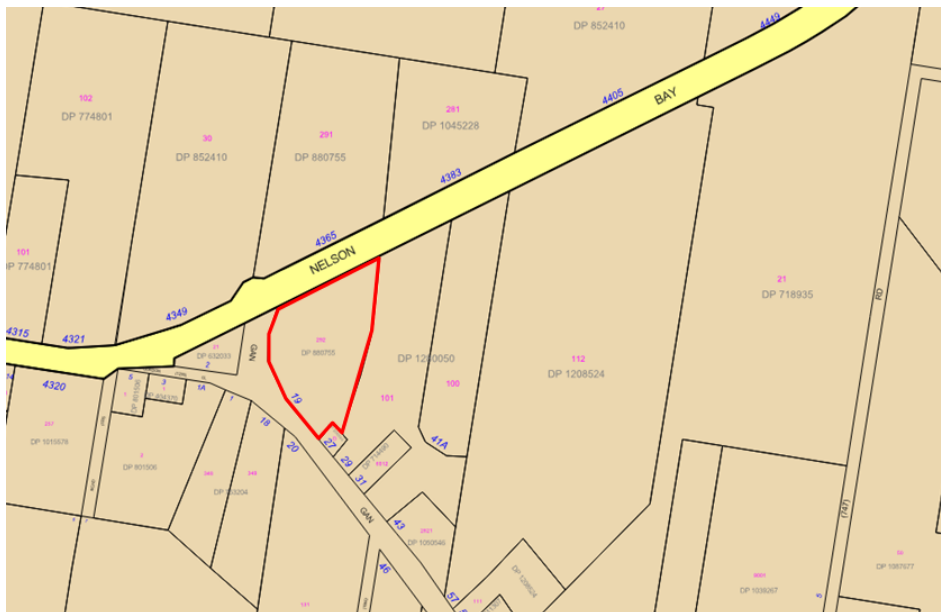
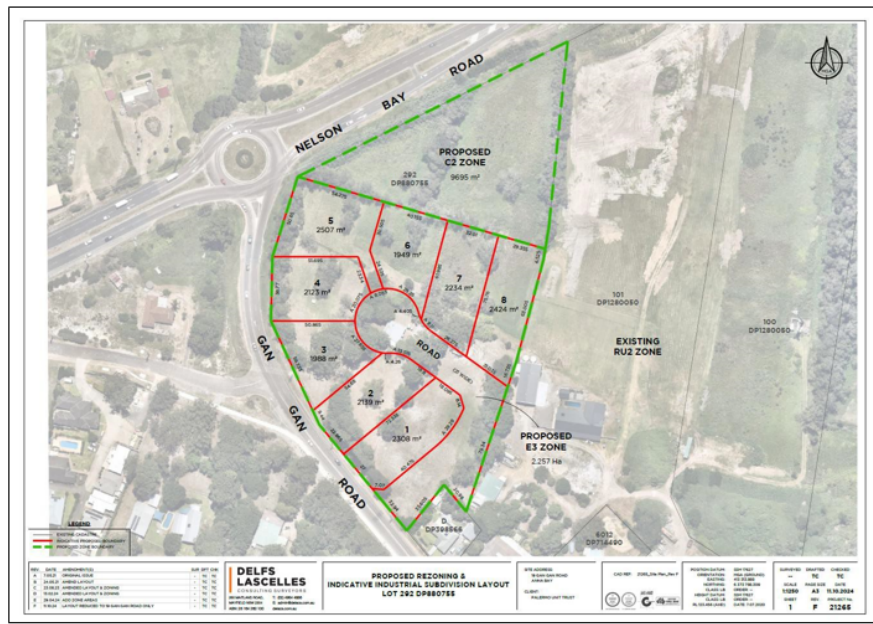


FIGURE 4 – Indicative concept subdivision layout (subject to development consent)



PART 1 – Objectives or intended outcomes

The planning proposal seeks to achieve the following outcomes:

- The proposal will allow the site, with consent, to have a light industrial subdivision of up to 8 lots.
- The proposal will enable the conservation of the flood prone portions of the site for environmental protection.

The intended outcome of this planning proposal is to rezone land at 19 Gan Gan Road, Anna Bay E3 Productivity Support Zone and C2 Environmental Conservation Zone. The planning proposal will also amend the minimum lot size for the part of the site to be zoned E3 Productivity Support to specify no lot size restriction. See Figures 5 and 6.

FIGURE 5 – Proposed zoning

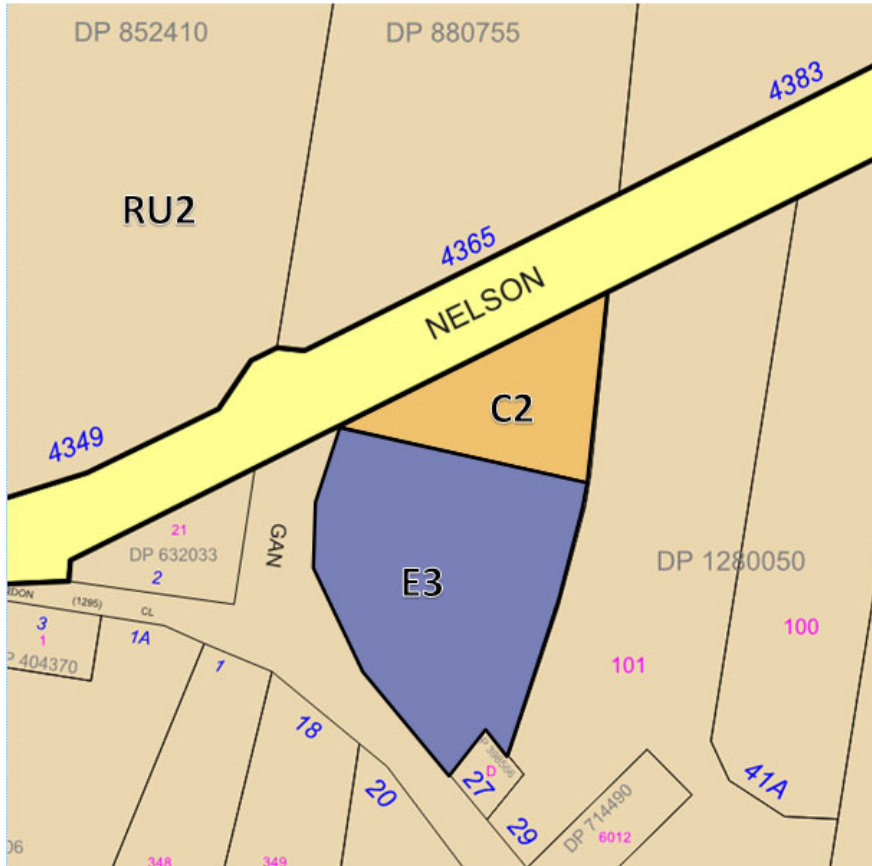
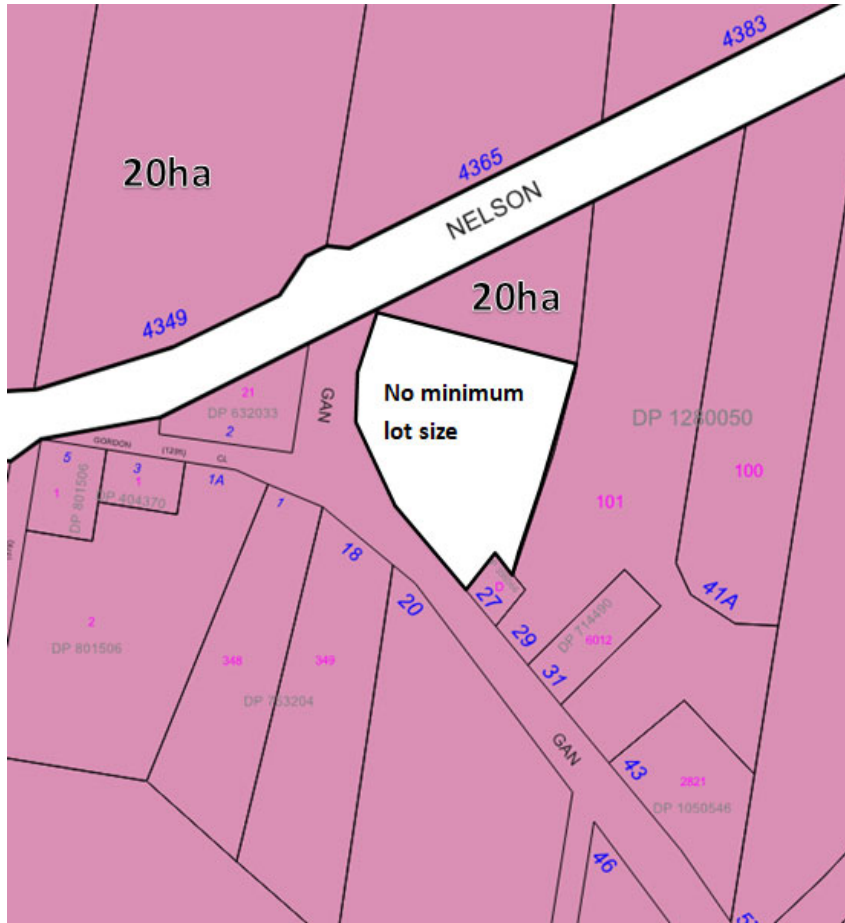


FIGURE 6 – Proposed minimum lot size change



PART 2 – Explanation of provisions

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

LEP Provision	Amendment	Explanation
Land Zoning Map	Rezone the site E3 Productivity Support Zone and C2 Environmental Conservation Zone.	Permit a light industrial subdivision with development consent and enable the conservation of the flood prone portion of the site for environmental protection.

Minimum Lot Size Map	Amend the minimum lot size for the part of the site to be zoned E3 Productivity Support to specify no lot size restriction.	Enable a light industrial subdivision with development consent.
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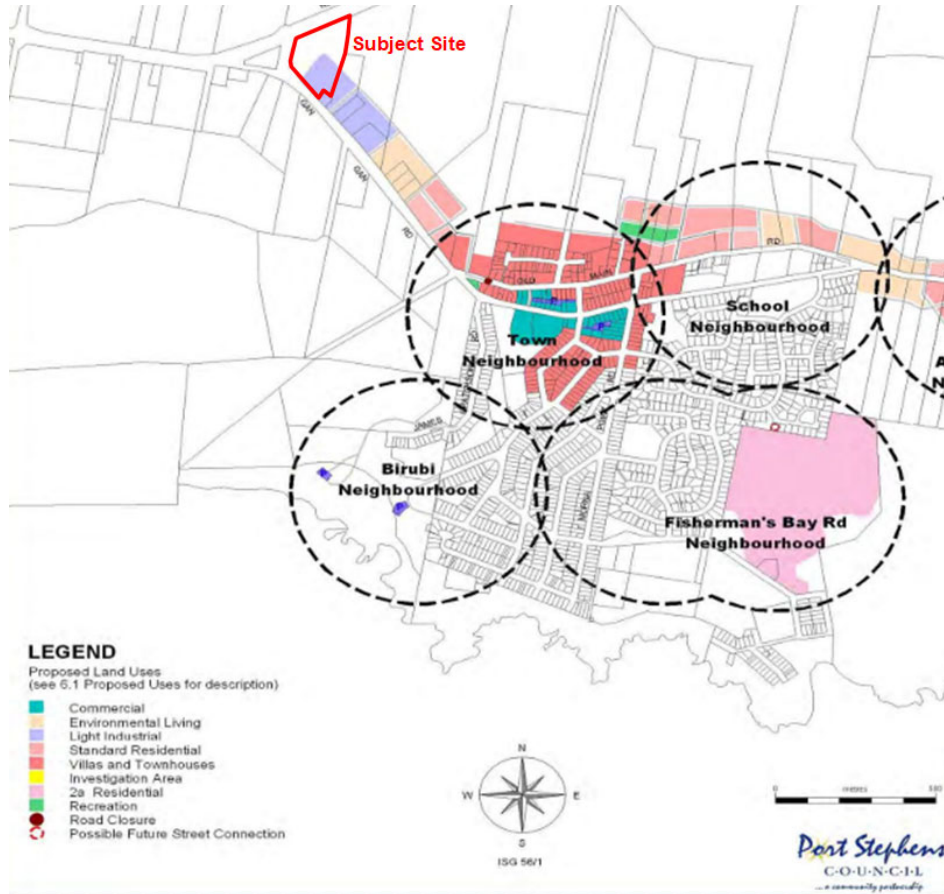
PART 3 – Justification of strategic merit and site specific merit

Section A – Need for the planning proposal

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

The proposal responds to the identification of land at the gateway to Anna Bay and on Nelson Bay Road as suitable for future industrial uses in the Anna Bay Strategy and Town Plan (2008) (ABSTP). Part of the site is included in a larger precinct identified in the ABSTP as suitable for light industrial uses (See Figure 7).

FIGURE 7 – ABSTP extract showing part of the site identified as suitable for future light industrial uses



The Planning Proposal will also implement an action in the Port Stephens Centres and Employment Land Study (2024, SGS Economics) (CELS):

“Conduct site specific investigations for rezoning RU2 Rural Landscape to E3 Productivity Support on the western edge of Anna Bay, to support a small scale employment area to encourage relocation of local light industrial businesses and local trades looking to expand or establish workshops.”

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

Amending the land zoning and minimum lot size is the only means of enabling future subdivision for light industrial land uses (in accordance with Council’s adopted strategic plans) and environmental conservation of the site.

The following alternative means were considered:

- Amend the zoning to be E4 General Industrial Zone and C2 Environmental Conservation zone. The intended outcome, to enable industrial subdivision and environmental conservation, can be achieved by amending the zoning to E4 General Industrial as opposed to E3 – Productivity Support, but this approach would not be consistent with the strategic studies and plans related to the land. The permissible land uses within the E4 General Industrial are more likely to result in adverse amenity impacts on the adjoining residential land.
- Amend Schedule 1 – Additional permitted uses. An additional permitted use for the site could enable permissible industrial uses and subdivision. However, this approach is not preferred because the NSW Government Draft Practice Note advises that LEP (Schedule 1) should only be used in exceptional circumstances. This is not considered to be an exceptional circumstance in accordance with this Practice Note.

The ABSTP and CELS support the floorspace growth in the locality. The land is largely unconstrained by environmental impacts and is in proximity to strategic centres and Newcastle city.

Section B – Relationship to the strategic planning framework

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

The planning proposal will give effect to the strategies and actions of the applicable objectives and priorities detailed in the HRP 2041, as outlined below.

Hunter Regional Plan 2041

The planning proposal is consistent with the Hunter Regional Plan (HRP) 2041.

The HRP identifies the importance of a continued supply of employment land to meet growing demand and provide for large and small businesses (p.15). It seeks to ensure that there is an adequate supply of employment land which is suitable located and sufficiently serviced.

Objective 1 of the HRP seeks to diversify the Hunter's mining, energy and industrial capacity. It aims to do this by providing a variety of employment uses and diversifying the employment base, while ensuring that new employment lands are serviced, capable of managing biodiversity impacts and are situated to avoid land use conflict (p.23).

Objective 8 is focused on planning for businesses and services at the heart of healthy, prosperous and innovative communities. The planning proposal supports this objective by encouraging industrial development, employment opportunities and encouraging economic diversity through the provision of jobs and services which do not rely solely on seasonal tourism.

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The planning proposal supports Objective 6 of the HRP by zoning the north-eastern portion of the site to C2 – Environmental Conservation.

Greater Newcastle Metropolitan Plan 2036

The planning proposal will give effect to Strategy 7 of the Greater Newcastle Metropolitan Plan (GNMP) because it will rezone land for employment opportunities in an accessible location.

The planning proposal will give effect to Strategy 12 of the GNMP because it will rezone part of the site for environmental conservation. This part of the site will act as a vegetation buffer for the industrial subdivision and will ensure the scenic qualities of Nelson Bay Road (a primary tourist and visitor corridor to the Tomaree Peninsula) are retained.

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

The planning proposal is consistent with the LSPS, Community Strategic Plan and ABSTP as outlined below.

Port Stephens Local Strategic Planning Statement

The LSPS sets out the vision for land use in Port Stephens over the next 20 years. It is a document which closely aligns with the Hunter Regional Plan and demonstrates the strategies and initiatives that the Council will follow in order to meet the objectives and outcomes of the HRP.

The LSPS identifies various planning priorities for the Council and commitments which the Council must undertake within nominated time frames. The parts of the LSPS which have relevance to the planning proposal are listed in the table below:

Port Stephens Local Strategic Planning Statement	
Relevant planning priority	Comment in context of proposal
Priority 2: Make business growth easier	
<ul style="list-style-type: none"> • Council acknowledges that the small business sector will continue to be a major jobs generator, particularly in creative, knowledge and service based, and tourism industries. • Council recognises that by creating an environment where business can thrive, Council can facilitate the growth of innovative and successful enterprise and ensure existing industries can continue to 	<p>The planning proposal will rezone land for employment opportunities, consistent with Council’s adopted local strategy and recent studies (CELS).</p>

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<p>provide jobs and opportunities in our LGA.</p> <ul style="list-style-type: none"> • Council commits to assessing rezoning requests consistent with local strategies. In this case the Council will need to consider the: <ul style="list-style-type: none"> • Port Stephens Community Strategic Plan 2022-2032 • Anna Bay Strategy and Town Plan 2008 	
Planning Priority 7: Conserve biodiversity values	
Council will prepare and implement a Biodiversity Strategy to avoid, minimise and offset impacts on biodiversity.	The planning proposal will rezone part of the site for environmental conservation to protect biodiversity outcomes.
Planning Priority 8: Improve resilience to hazards and climate change	
Assess rezoning requests for consistency with environmental, sustainability and risk management directions in local, regional and state planning framework.	The subject site is identified as flood prone land. A Flood Impact Assessment identifies that raising the land to 3.0m AHD to the 2m contour line will provide sufficient flood free land above the probable maximum flood (PMF) level to avoid risk to life and property as a result of a flood event (APPENDIX A). The report models the impacts of the proposed fill and identifies that the majority of flood impacts are contained within the subject site, with likely negligible impact to flood levels and velocities across the broader floodplain.

Port Stephens Community Strategic Plan 2022-2032

The CSP guides the planning and reporting activities of the Council to meet its Integrated Planning and Reporting framework obligations under the NSW Local Government Act.

The CSP involved extensive community consultation and focusses on 4 main themes. These themes assist Council in the development of its Delivery Program and Operational Plans. The themes, which have relevance to the planning proposal, are discussed in the table below.

Port Stephens Community Strategic Plan 2022-2032	
Relevant Theme	Comment in context of proposal
Our Place	

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P1 Strong economy, vibrant local businesses, active investment.	The planning proposal will add to the supply of employment land in an accessible location, consistent with Council's adopted land use plans and recent land use studies.
Our Environment	
E3 Environmental resilience	Part of the site is flood prone land. This area will be rezoned for environmental conservation.

Anna Bay Strategy and Town Plan (2008) (ABSTP)

The proposal responds to the identification of land at the gateway to Anna Bay and on Nelson Bay Road as suitable for future industrial uses in the Anna Bay Strategy and Town Plan (2008) (ABSTP). Part of the site is directly identified in the ABSTP as suitable for light industrial uses (See Figure 5 above).

The relevant key strategic directions of the ABSTP include:

A green corridor will enhance the entrance to Anna Bay from the east and west on both sides of Gan Gan Road. Development in these areas must maintain a green entrance to the town.

The C2 zoned portion of the site will retain and add to the vegetation along Nelson Bay Road. Any future development application for light industrial uses will be subject to existing controls in Council's Development Control Plan for landscaping and screening from Gan Gan Road. The planning proposal includes a visual impact assessment and draft landscape plan to demonstrate how this objective can be achieved at development application stage (**APPENDICES G and H**).

A new, small-scale light industrial area will be provided at the western edge of Anna Bay. This area has good transport access to Nelson Bay Rd. It will support the relocation of light industrial businesses currently operating on high value land within the commercial centre, and would allow local trades people to set up storage sites or workshops.

The planning proposal is consistent with this objective.

Vegetated areas that are principally located on flood prone land are identified for environmental protection.

The planning proposal is consistent with this direction.

New development areas will be required to complete a drainage study during rezoning and/or development occurring. The study will address flooding, drainage and water quality issues.

The planning proposal is consistent with this direction.

Adjoining landowners and developers are strongly encouraged to coordinate with each other to reduce the number of 'spot' rezonings. Rezoning requests for individual lots or small areas of land are not likely to be supported.

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The applicant has demonstrated that best endeavours were made to give adjoining landowners the opportunity to be part of this planning proposal however all have declined.

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

There are no other applicable State or regional studies or strategies.

Q6. Is the planning proposal consistent with applicable SEPPs?

An assessment of the relevant applicable SEPPs against the planning proposal is provided in the table below.

Relevant State Environmental Planning Policies (SEPP)

SEPP	Consistency and Implications
SEPP (Primary Production) 2021	
<p>Chapter 2 Primary production and rural development Aims to support sustainable agriculture and aquaculture by facilitating the orderly, environmentally sustainable, and economic use and development of land for primary production and rural development</p>	<p>The proposal is not inconsistent with the provisions of this SEPP.</p> <p>It will not adversely impact the production potential of the adjoining rural land given these parcels are currently being used for purposes other than primary production.</p>
SEPP (Resilience and Hazards) 2021	
<p>Chapter 2 Coastal Management Promotes an integrated and co-ordinated approach to land use planning in the coastal zone consistent with the objects of the <i>Coastal Management Act 2016</i>.</p>	<p>The planning proposal is consistent with this SEPP.</p> <p>The north-eastern portion of the site is mapped as a Coastal Environment Area. This includes the entire part of the site that is proposed to be rezoned for environmental conservation and a portion of the site proposed for future light industrial uses.</p> <p>With an appropriate servicing strategy and stormwater design, future development on the site can be managed appropriately to minimise impacts on the coastal environment (APPENDICES B, J, and K).</p> <p>An AHIMS search was conducted on 21 June 2023, including a 1000m buffer. The Aboriginal Cultural Heritage Assessment prepared demonstrates that future development can be</p>

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	managed so as to protect any Aboriginal cultural heritage in the vicinity (APPENDIX C) .
<p>Chapter 4 Remediation of Land</p> <p>This SEPP applies to land across NSW and states that land must not be developed if it is unsuitable for a proposed use because of contamination.</p>	<p>The planning proposal is consistent with this SEPP.</p> <p>The site history review indicates that the site has been owned by one family from 1929 to 2021. From at least the 1950s the site has been used for rural residential purposes and it is likely this activity was consistent from the 1930s.</p> <p>A detailed site investigation has been prepared in accordance with the contaminated land planning guidelines (APPENDIX D). The site can be made suitable for the proposed light industrial rezoning.</p>
SEPP (Biodiversity and Conservation) 2021	
<p>Chapter 3 Koala habitat protection 2020 (Applies to land zoned RU1, RU2, or RU3 only) Encourages the conservation and management of natural vegetation areas that provide habitat for koalas to ensure permanent free-living populations will be maintained over their present range.</p>	<p>The planning proposal is consistent with this SEPP.</p> <p>The site area is not mapped under the Comprehensive Koala Plan of Management (CKPoM) as preferred koala habitat, though 6 identified individuals of <i>Eucalyptus robusta</i>, a preferred koala feed trees were located across the site.</p> <p>As outlined within the Biodiversity Development Assessment Report (APPENDIX E), due to the fragmentation of the existing vegetation, there will not be a significant impact of foraging opportunities for the Koala. The portion of the site rezoned for conservation purposes may be protected by a vegetation management plan as part of the development assessment of future subdivision.</p>

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

An assessment of relevant Ministerial Directions against the planning proposal is provided in the table below. The planning proposal is considered consistent with the Directions. Any inconsistency is considered to be minor and justified.

Relevant Ministerial Directions

Ministerial Direction	Consistency and Implications
1. PLANNING SYSTEMS	
<p>1.1 Implementation of Regional Plans The objective of this direction is to give legal effect to the vision, land use strategy, goals, directions and actions contained in Regional Plans.</p>	<p>The planning proposal is consistent with the HRP. See assessment above.</p>
3. BIODIVERSITY AND CONSERVATION	
<p>3.1 Conservation Zones The objective of this direction is the protection and conservation of environmentally sensitive areas, by ensuring that planning proposals do not reduce the environmental protection standards applying to such land unless it is suitably justified by a relevant strategy or study or is of minor significance.</p>	<p>Direction 3.1 requires a planning proposal to include provisions relating to the protection and conservation of environmentally sensitive areas.</p> <p>As outlined within the Biodiversity Development Assessment Report (APPENDIX E), the part of the site that is flood prone is also the part to be reserved for environmental conservation.</p> <p>The minimum lot size for this portion of the site is proposed to be retained at 20ha and as such, future residential development will not be permitted on the site.</p> <p>A vegetation management plan may be required as part of the future assessment of any light industrial subdivision to protect and revegetate this area of the site.</p>
<p>3.2 Heritage Conservation The objective of this direction is to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance.</p>	<p>The site does not contain any heritage items/places listed in the Port Stephens Local Environmental Plan 2013.</p> <p>An Aboriginal Heritage Information Management System (AHIMS) search was conducted on 21 June 2023, including a 1000m buffer. 15 Aboriginal sites were recorded in the location with one Aboriginal place being declared (Birubi Place).</p> <p>The soil landscapes present within the site are generally favourable for the preservation of in situ archaeological material, however, the site has been strongly affected</p>

	<p>by environmental factors and modern land-use disturbances, including historic development of the land for permissible purposes in the rural zone, including a dwelling and ancillary structures (sheds).</p> <p>A Potential Archaeological Deposit (PAD) has been identified on the site in the form of a chert stone point and a mudstone scraper, each measuring approx. 2cm x 2cm in size (APPENDIX C). The PAD adjoins the existing shed on the site.</p> <p>An Aboriginal Heritage Impact Permit may be required to remove the item(s) from the site prior to any construction works occurring as part of the future development application process. Regardless of rezoning, this would likely be a requirement for any development currently permissible on the site under the existing rural zoning.</p> <p>The Aboriginal Cultural Heritage Assessment prepared demonstrates that future development can be managed so as to protect any Aboriginal cultural heritage on the site and in the vicinity (APPENDIX C).</p>
<p>4. RESILIENCE AND HAZARDS</p>	
<p>4.1 Flooding The objectives of this direction are to ensure that development of flood prone land is consistent with the NSW Government’s Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005, and that the provisions of an LEP on flood prone land is commensurate with flood hazard and includes consideration of the potential flood impacts both on and off the subject land.</p>	<p>The proposal is inconsistent with Ministerial Direction 4.1 section (2) which states... “A planning proposal must not rezone land within the flood planning area from Recreation, Rural, Special Purpose or Conservation Zones to a Residential, Employment, Mixed Use, W4 Working Waterfront or Special Purpose Zones”.</p> <p>The Direction specifies that a planning proposal may be inconsistent with the Direction in certain circumstances, including where the provisions that are</p>

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	<p>inconsistent are of minor significance as determined by Council.</p> <p>Some of the future light industrial lots will be located within the Flood Planning Area (FPA), with potentially four lots likely on land identified as high hazard flood storage.</p> <p>This planning proposal will rezone land impacted in the flood planning area from RU2 to E3 land however the Flood Impact Assessment (APPENDIX A) shows this inconsistency is considered minor because the impacts will be negligible across the broader floodplain.</p> <p>Further, the proposed future raising of the land to 3.0m AHD through the proposed fill extent will result in buildings that are constructed at or above the Flood Planning Level. The studies conclude that the management of risk to life and property is readily satisfied for future development of the rezoned site within the proposed fill extent.</p> <p>At development application stage, the interallotment drainage from the eastern neighbour should be accounted for as the civil designs are progressed, to ensure that future works do not adversely impact local drainage.</p> <p>The site is considered suitable for rezoning as these impacts can be managed at development application stage through the design of the future subdivision and development.</p>
<p>4.2 Coastal Management The objective of this direction is to protect and manage coastal areas of NSW. This direction applies to land within the coastal zone.</p>	<p>Part of the land is identified as a Coastal Environment Area. See assessment above against the relevant SEPP.</p>
<p>4.3 Planning for Bushfire Protection</p>	<p>The site is mapped as Bushfire Prone Land (Category 3). A Bushfire Assessment Report, which</p>

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<p>The objectives of this direction are to protect life, property and the environment from bush fire hazards, by discouraging the establishment of incompatible land uses in bush fire prone areas, to encourage sound management of bush fire prone areas.</p>	<p>addresses the document 'Planning for Bushfire Protection' and this Ministerial Direction is provided as APPENDIX F.</p>
<p>4.4 Remediation of Contaminated Land The objective of this direction is to reduce the risk of harm to human health and the environment by ensuring that contamination and remediation are considered by planning proposal authorities.</p>	<p>A detailed site investigation has been prepared (APPENDIX D). See assessment above against the relevant SEPP.</p>
<p>4.5 Acid Sulfate Soils (ASS) The objective of this direction is to avoid significant adverse environmental impacts from the use of land that has a probability of containing acid sulphate soils.</p>	<p>The site contains ASS Class 3 and 4 soils in the location of the proposed E3 land zoning.</p> <p>Future works may include works below two metres below the natural ground surface. The management of ASS would be assessed as part of any future development application to subdivide the land to enable construction of industrial buildings.</p> <p>The planning proposal does not risk exposing ASS, future assessment of the land as part of any development application can manage any risk of exposing ASS.</p>
<p>7. INDUSTRY AND EMPLOYMENT</p>	
<p>7.1 Employment Zones The objectives of this direction are to encourage employment growth in suitable locations, protect employment land in employment zones and support the viability of identified centres.</p>	<p>The subject site is identified within the ABTP as land suitable for future light industrial development. The development facilitates industrial growth in this area.</p>
<p>9. PRIMARY PRODUCTION</p>	
<p>9.2 Rural Lands The objective of this direction is to protect the agricultural production value of rural land and facilitate the orderly and economic development of rural lands for rural and related purposes. Applies to planning proposals that will affect an existing or proposed rural or environmental protection zone or changes the</p>	<p>It is not considered that the proposal would result in the potential for land use conflict given the context of the site.</p> <p>The proposal results in an appropriately located industrial estate which will not result in adverse impacts on the surrounding RU2 zoned land.</p>

existing minimum lot size within a rural or environment protection zone	
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Section C – Environmental, social and economic impact

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

The Biodiversity Development Assessment Report (BDAR) identifies that no threatened flora or fauna species were recorded within the study area during surveys (**APPENDIX E**). The future industrial development may result in removal of six *Eucalyptus robusta*, identified as preferred Koala feed trees (subject to development assessment).

The BDAR provides detailed mitigation measures to manage any likely impacts on native flora fauna. These measures can be applied at development application stage and may include a requirement to prepare a vegetation management plan and compensatory planting as part of a condition of consent.

Due to the level of disturbance on the site and the historical land use practices it is not expected that threatened species listed under either the Biodiversity Conservation Act or the Environmental Protection and Biodiversity Conservation Act would be present on the site or affected by the proposal.

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

Ecology

As set out above, a vegetation management plan may be required as part of any future industrial subdivision application process to manage any potential ecological impacts. The site is considered suitable for rezoning as proposed.

Visual impacts

Given the location of the site at the gateway to Anna Bay, visual impacts are considered to be able to be managed in accordance with the ABSTP by retaining the vegetated corridor along Nelson Bay Road and Gan Gan Road.

The C2 zoned portion of the site will retain and add to the vegetation along Nelson Bay Road. Any future development application for light industrial uses will be subject to existing controls in Council’s Development Control Plan for landscaping and screening from Gan Gan Road.

The planning proposal includes a visual impact assessment and draft landscape plan to demonstrate how this objective can be achieved at development application stage (**APPENDICES G and H**).

Flooding

The land is flood liable. A Flood Impact Assessment has been prepared (**APPENDIX A**). The studies show that the impacts of future development on the

site, including filling, will be able to be managed at development application stage.

It is noted that the inter-allotment drainage from the eastern neighbour should be accounted for as the civil designs are progressed during the development application stage for subdivision, to ensure that the future works do not adversely impact local drainage.

The filling of the land to 3.0m AHD through the proposed fill extent will result in future buildings that are constructed at or above the Flood Planning Level requirements of Council. It will additionally remove them from the PMF floodplain.

Bushfire

The land is bushfire prone, identified as Category 3. A Bushfire Assessment Report identifies risk to property and life because of a bushfire event can be suitably managed (**APPENDIX F**).

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

The planning proposal will not create adverse social impacts.

The rezoning of the land for light industrial purposes will have significant positive economic impacts as identified in the ABSTP. In particular, the development of this land will generate employment opportunities and will contribute positively to the tourist and visitor corridor of Nelson Bay Road.

Nelson Bay Road is the key transport corridor leading from Newcastle and Newcastle Airport (soon to be an international airport) to the Tomaree Peninsula. The site is located on this important economic corridor and the rezoning will support uses that are permissible in the E3 Productivity Support zone including a mix of light industrial and employment uses. The site suitability for any specific uses would be assessed at development application stage.

Section D – Infrastructure (Local, State and Commonwealth)**Q11. Is there adequate public infrastructure for the planning proposal?**

Electricity and telecommunications infrastructure are available to the site.

Connection to reticulated water and sewer is possible. The Servicing Strategy shows the future industrial subdivision will require the construction of a pressure sewer system approximately 500m x 63mm with tanks and pumps on each lot (**APPENDIX I**).

The site has frontage to, and access from, Gan Gan Road and there is easy access to Nelson Bay Road which will facilitate traffic movement to and from the area. No transport infrastructure upgrades are necessary to support the future development of the site.

No additional community or social infrastructure is required as a result of the proposal.

Section E – State and Commonwealth Interests**Q12. What are the views of state and federal public authorities and government agencies consulted in order to inform the Gateway determination?**

Agencies were consulted as part of the scoping proposal process including:

- DPHI
- Transport for NSW
- Rural Fire Service
- Department of Primary Industries – Agriculture
- Department of Climate Change, Energy, the Environment and Water
- Heritage NSW
- Hunter Water Corporation

The comments received have informed the preparation of the planning proposal.

The following agencies will be consulted as part of the Gateway determination:

- DPHI
- Department of Planning, Infrastructure and Housing
- Transport for NSW
- Rural Fire Service
- Department of Primary Industries – Agriculture
- Department of Climate Change, Energy, the Environment and Water

Agencies were previously consulted on the future use of the site for light industrial purposes as part of the preparation of the ABSTP. There were no agency objections at that time.

PART 4 – Mapping

FIGURE 8 – Proposed zoning map change

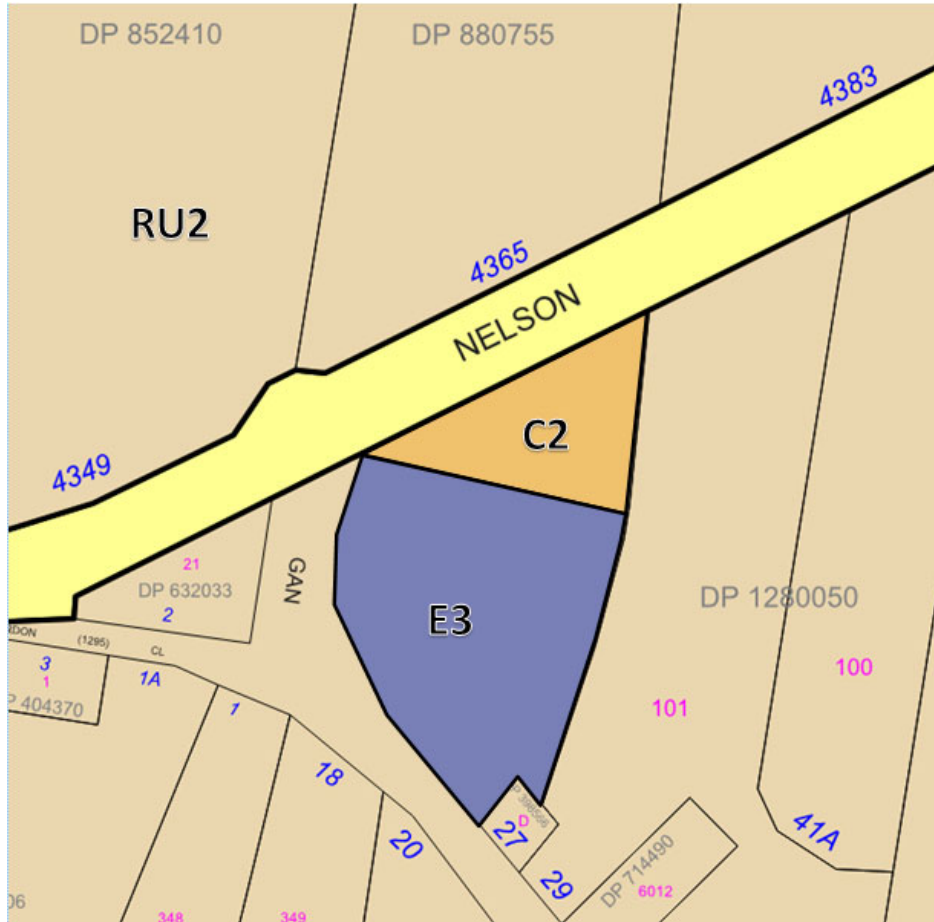
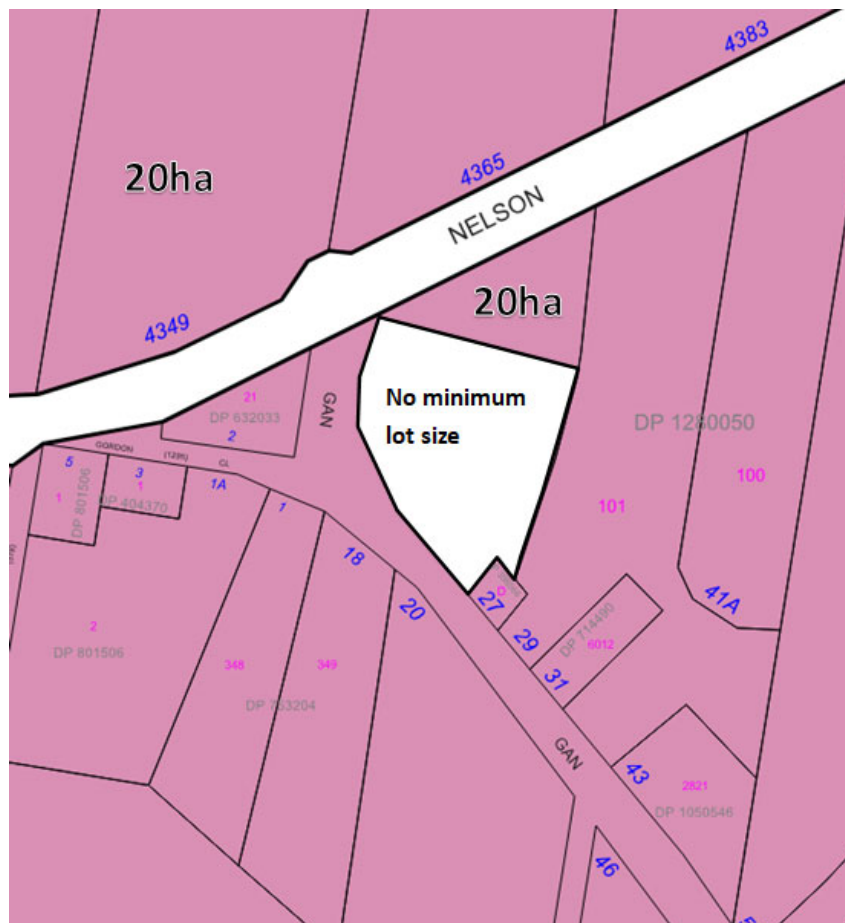


FIGURE 9 – Proposed minimum lot size map change



PART 5 – Community consultation

Adjoining landowners were notified when the planning proposal was lodged in accordance with Council policies.

Landowners identified in the ABSTP as part of the future light industrial precinct were contacted and given an opportunity to choose to be included in this planning proposal. None of the landowners agreed to be included.

Community consultation on the planning proposal will be undertaken in accordance with a future Gateway determination.

Notice of the public exhibition period would be placed in the local newspaper, The Port Stephens Examiner. The exhibition material would be on display at the following locations during normal business hours:

- Council's Administration Building, 116 Adelaide Street, Raymond Terrace
- Raymond Terrace Library, Sturgeon Street, Raymond Terrace
- Tomaree Library, 7 Community Close, Salamander Bay
- Medowie Community Centre, Cnr of Medowie and Ferodale Streets, Medowie

The planning proposal will also be available on Council's website.

PART 6 – Project timeline

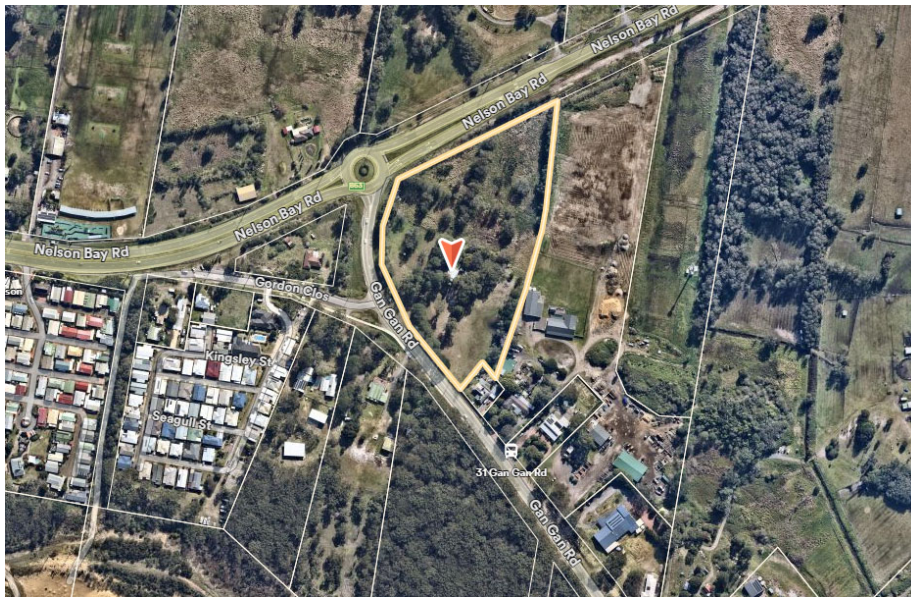
The indicative timeframe for the planning proposal is shown in the table below.

Stage	Timeframe and/or date
Consideration by Council	October 2025
Council decision	28 October 2025
Subject to Council determination	
Gateway referral to the Department	November 2025
Gateway determination	January 2026
Commencement and completion of public exhibition period	March 2026 – April 2026
Finalisation of planning proposal	June 2026 – August 2026
Gazettal of LEP amendment	November 2026



STRATEGIC PLANNING ASSESSMENT REPORT (SPAR)

Application No.	58-2024-1-1
Applicant Name	Perception Planning Pty Ltd
Landowner	Dal Corp Pty Ltd
Applicant Address	PO Box 107 Clarence Town, NSW, 2321
Site Location Details	LOT 292 DP 880755 19 GAN GAN ROAD, ANNA BAY, NSW, 2316
Proposal Summary	Amend the land use zone from RU2 Rural Landscape zone to: <ul style="list-style-type: none">• E3 Productivity Support zone; and• C2 Environmental Conservation zone. Amend the Minimum Lot Size from 20ha to no lot size specified for the land to be zoned E3 Productivity Support. Retain the minimum lot size of 20ha for the land zoned C2 Environmental Conservation.



Information	Assessment
Internal referrals	Key Issues Advice
Development Engineering Unit	<p>Part of the land to be rezoned C2 is identified as partly affected by the High Hazard Floodway category.</p> <p>Council is currently working on a Flood Risk Management Study and Plan (FRMSP) for the Anna Bay Tilligerry Creek area which will eventually supersede the existing flood data in this area once formally adopted. Mapping from the draft FRMSP indicates that the floodway extent within the site may reduce slightly and will not impact on the proposed development footprint. Given this, it is considered low risk if the impacted area is considered as 'flood storage' for the purposes of this flood impact assessment.</p> <p>This planning proposal will rezone land impacted by the FPL from RU2 to E3 land. This inconsistency with the Ministerial Direction needs to be justified as minor in order to satisfy the Direction.</p> <p>The modelling of the future filling of the site demonstrates the impact of future development of the site is likely minor. Further assessment at development application stage will need to be done to examine the slight increases in velocity experienced in the northern section of the lot which extend onto the neighbouring property to the east.</p> <p>The results indicate that there are no likely offsite flood level impacts during the 0.5% AEP event (used to represent the 1% year 2100 modelling scenario).</p> <p>Further assessment at DA stage is needed to include latest ARR guidance. Its likely the proposed drainage basins on the C2 zoned land will need to be larger but this can be designed and assessed at DA stage.</p>
Natural Systems Unit	<p>No issues with rezoning. At DA stage, the location of any proposed drainage basin will need to be assessed including:</p> <ul style="list-style-type: none"> • Impact on biodiversity • Zone objectives • Coastal inundation mapping
Development Planner	<p>Items noted to be considered at DA stage, including visual impacts, stormwater and drainage management and landscaping.</p>
State agency referrals – preliminary scoping proposal referrals	Summary
Department of Planning, Housing & Infrastructure	<p>Identified the items to be considered when reviewing referrals from other agencies.</p>

<p>Department of Climate Change, Energy, the Environment and Water</p>	<p>The planning proposal should include consideration of Threatened Ecological Communities (TECs) and threatened species such as the koala, wallum froglet, Diuris arenaria, Diuris praecox and Persicaria elatior.</p> <p>Any areas of High Environmental Value (HEV) identified during further assessment should be considered for inclusion in the proposed C2 Environmental Conservation zoned land.</p> <p>Isolation risks during rare flood events will need to be considered during the development application stage and in the operation procedures of future development.</p>
<p>Transport for NSW</p>	<p>All vehicle access should be provided via the proposed internal road shown as connecting to Gan Gan Road, in location/s where it is demonstrated to be safe.</p> <p>As such, access arrangements to the proposed zoned C2 land should be clarified to ensure access can be achieved from, and is limited to, the proposed internal road as part of a future Development Application.</p>
<p>Rural Fire Service</p>	<p>The bush fire report assumes the residual conservation C2 zoned land will retain a grassland formation. It should be assumed that the residual land will transform into a coastal forested wetland formation over time and the Bush Fire report should be amended to reflect a coastal forested wetland formation along the northern boundary. Noted a subsequent Bushfire Report was submitted following these comments in April 2025.</p> <p>As part of a future development application process for subdivision, a Bush Fire report should identify building envelopes for each future lot, so future building elements will not be exposed to radiant heat levels exceeding 40k/W.</p>
<p>Department of Primary Industries</p>	<p>No objections.</p>
<p>Hunter Water Corporation</p>	<p>The proponent has included a water and wastewater servicing strategy as part of their Scoping Study Documentation. This servicing strategy was based on a Notice of Formal Requirements provided by Hunter Water on 5 August 2021 (HW Ref 2021-1165) and is contained within Appendix 1 of the strategy document. Please note that the preparation of a water and wastewater strategy was not a requirement of Hunter Water, but appears to have been prepared by the proponent to provide completeness and clarity of servicing for the Scoping Study.</p> <p>Hunter Water recognises and appreciates the effort of the proponent to obtain servicing advice and prepare a servicing strategy for the proposed rezoning, and this documentation is sufficient for the current Scoping Study phase. However, the Hunter Water</p>

	letter outlining servicing requirements (HW Ref 2021-1165, dated on 5 August 2021) is now outside the 12-month validity period. A new application will need to be made to Hunter Water to accompany any future development application.
NSW Heritage	An Aboriginal cultural heritage assessment report (ACHAR) is needed to inform the planning proposal. 2. The ACHAR needs to be prepared in accordance with Heritage NSW guidelines 3. That complete archaeological assessment (including survey and test excavation) is conducted to inform the Scoping Study.

Information	Assessment
Department of Planning Guide to preparing planning proposals	
Part 1 – Statement of objectives or intended outcomes of the proposed LEP	The statement of objectives for the proposed instrument is supported. The planning proposal seeks to amend the Port Stephens Local Environmental Plan 2013 (PSLEP 2013) to facilitate a light industrial subdivision.
Part 2 – Explanation of the provisions that are to be included in the proposed LEP	<p>The planning proposal adequately explains the provisions that are proposed to be included in the draft instrument:</p> <ul style="list-style-type: none"> • Amend Land Zoning Map for the subject site within the Anna Bay suburb from RU2 – Rural Landscape to E3 – Productivity Support and C2 – Environmental Conservation. • Amend Lot Size Map for the subject site within the Anna Bay suburb from 20ha to no specified lot size restriction for the E3 – Productivity Support land and 40ha for the land identified as C2 – Environmental Conservation.
Part 3 – Justification of strategic and potential site-specific merit, outcomes, and the process for implementation	The justification provided for the objectives, outcomes and provisions of the proposed instrument, and whether it will give effect to, or is a product of, the local planning statement, is considered appropriate. See below for further detail.
Section A – Need for the planning proposal	
Q1. Is the planning proposal a result of an endorsed LSPS, strategic study or report?	The planning proposal provides employment land and opportunities at the gateway of Anna Bay. This is consistent with the strategies and objectives of the HRP 2041, Greater Newcastle Metropolitan Plan 2036, the Port Stephens Local Strategic Planning Statement (LSPS). It is consistent with the Port Stephens Centres and Employment Land Study (CELS) and generally consistent with the Anna Bay Strategy and Town Plan 2008 (ABSTP).
Q2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?	Amending the land zoning and minimum lot size within the LEP is the only means of enabling future subdivision for light industrial land uses and environmental conservation of the site. Alternative means have been explored in the planning proposal.

Section B – Relationship to strategic planning framework

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

Assessment of consistency with the Hunter Regional Plan 2041.

The planning proposal is consistent with the Hunter Regional Plan (HRP) 2041.

The HRP identifies the importance of a continued supply of employment land to meet growing demand and provide for large and small businesses (p.15). It seeks to ensure that there is an adequate supply of employment land which is suitable located and sufficiently serviced.

Objective 1 of the HRP seeks to diversify the Hunter’s mining, energy and industrial capacity. It aims to do this by providing a variety of employment uses and diversifying the employment base, while ensuring that new employment lands are serviced, capable of managing biodiversity impacts and are situated to avoid land use conflict (p.23).

Objective 8 is focused on planning for businesses and services at the heart of healthy, prosperous and innovative communities. The planning proposal supports this objective by encouraging industrial development, employment opportunities and encouraging economic diversity through the provision of jobs and services which do not rely solely on seasonal tourism.

The planning proposal supports Objective 6 of the HRP by zoning the north-eastern portion of the site to C2 – Environmental Conservation.

Assessment of consistency with the Greater Newcastle Metropolitan Plan 2036.

The planning proposal will give effect to Strategy 7 of the Greater Newcastle Metropolitan Plan (GNMP) because it will rezone land for employment opportunities in an accessible location.

The planning proposal will give effect to Strategy 12 of the GNMP because it will rezone part of the site for environmental conservation. This part of the site will act as a vegetation buffer for the industrial subdivision and will ensure the scenic qualities of Nelson Bay Road (a primary tourist and visitor corridor to the Tomaree Peninsula) are retained.

<p>Q4. Is the planning proposal consistent with a council LSPS that has been endorsed by the Planning Secretary or GCC, or another endorsed local strategy or strategic plan?</p>	<p>The planning proposal is consistent with the LSPS, Community Strategic Plan (CSP) and ABSTP as outlined below.</p>
<p>Assessment against the LSPS</p>	<p>Priority 2: Make business growth easier</p> <p>The planning proposal will rezone land for employment opportunities, consistent with Council's adopted local strategy and recent studies (CELS).</p> <p>Planning Priority 7: Conserve biodiversity values</p> <p>The planning proposal will rezone part of the site for environmental conservation to protect biodiversity outcomes.</p> <p>Planning Priority 8: Improve resilience to hazards and climate change</p> <p>The subject site is identified as flood prone land. A Flood Impact Study identifies that raising the land to 3.0m AHD to the 2m contour line will provide sufficient flood free land above the Probable Maximum Flood level to avoid risk to life and property as a result of a flood event. The report models the impacts of the proposed fill and identifies that the majority of flood impacts are contained within the subject site, with likely negligible impact to flood levels and velocities across the broader floodplain.</p> <p>Planning Priority 9: Protect and preserve productive agricultural land</p> <p>The land is currently zoned RU2, consisting of a residential dwellings and ancillary structures. The land is not currently utilised as productive agricultural land. The proposal is not considered to significantly impact upon available productive agricultural land. Land zoned RU2 to the east and south can still be managed as land to support primary industry.</p>
<p>Assessment against the CSP</p>	<p>Focus Area Two – Our Place</p> <p>The planning proposal supports the objective by creating a new industrial area to support the employment growth in Anna Bay through provision of employment lands. The proposal encourages the business diversification and helps to move away from the reliance of</p>

	<p>seasonal tourism.</p> <p>Focus Area Three – Our Environment</p> <p>This planning proposal supports the objective by rezoning part of the land to C2 – Environmental Conservation to reduce impacts on local biodiversity.</p>
<p>Assessment against the ABSTP</p>	<p>The ABSTP identifies a light industrial precinct that includes part of this site.</p> <p>An assessment against the relevant key strategic directions of the ABSTP include:</p> <p><i>1(b) A green corridor will enhance the entrance to Anna Bay from the east and west on both sides of Gan Gan Road. Development in these areas must maintain a green entrance to the town.</i></p> <p>The C2 zoned portion of the site will retain and add to the vegetation along Nelson Bay Road. Any future development application for light industrial uses will be subject to existing controls in Council’s Development Control Plan for landscaping and screening from Gan Gan Road. The planning proposal includes a visual impact assessment and draft landscape plan to demonstrate how this objective can be achieved at development application stage.</p> <p><i>6 A new, small-scale light industrial area will be provided at the western edge of Anna Bay. This area has good transport access to Nelson Bay Rd. It will support relocation of light industrial businesses currently operating on high value land within the commercial centre, and would allow local trades people to set up storage sites or workshops.</i></p> <p>The planning proposal is consistent with this objective.</p> <p>The ABSTP also contains a direction recommending vegetated areas that are principally located on flood prone land are identified for environmental protection.</p> <p>The planning proposal is consistent with this direction.</p> <p><i>The ABSTP contains a direction recommending new development areas will be required to complete a drainage study during rezoning and/or development occurring. The study will address flooding, drainage and water quality issues.</i></p>

The planning proposal is consistent with this direction.

The ABSTP contains a direction that adjoining landowners and developers are strongly encouraged to coordinate with each other to reduce the number of 'spot' rezonings. Rezoning requests for individual lots or small areas of land are not likely to be supported.

The applicant has demonstrated that best endeavors were made to give adjoining landowners the opportunity to be part of this planning proposal however all have declined.

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

STATE ENVIRONMENTAL PLANNING POLICY (SEPP) ASSESSMENT

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

SEPP	Assessment
SEPP (Resilience and Hazards) 2021	
Chapter 2 – Coastal management	<p>The north-eastern portion of the site is mapped as a Coastal Environment Area, which requires consideration against Chapter 2 of this SEPP.</p> <p>The relevant objectives are to ensure that the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment is maintained, and Aboriginal cultural heritage, practices and places are preserved.</p> <p>A stormwater design has been provided with the planning proposal and will be subject to assessment as part of any future development application. It shows that it would be possible to achieve stormwater detention and a biofiltration basin to meet Council water quality requirements and manage coastal environmental impacts.</p> <p>Ecological impacts have been assessed and the site is comprised of predominantly cleared and exotic vegetation with scattered native trees and a small area of low to moderate condition swamp forest vegetation. The site is not considered an important corridor linking habitat or facilitating fauna movement. The proposed zoning will retain 0.96ha of land for conservation zoning. A future development application may consider managing vegetation on this part of the site through a vegetation management plan.</p> <p>For assessment of heritage, see comments in relation to Ministerial Direction 3.2 below.</p>

	<p>Part of the site is mapped as a tidal inundation hazard area on the Draft Port Stephens Coastal Vulnerability Area Map. The amendment to the State Environmental Planning Policy (Resilience and Hazards) which will give effect to this map is certain and imminent.</p> <p>The relevant considerations relate to future development on the site and whether or not development of the site is likely to alter coastal processes to the detriment of the natural environment or other land. To develop part of the site for light industrial purposes there will be some filling of the site required. Potentially three future lots will require earthworks to fill to 3.0m AHD. The filling of the floodplain is shown in the studies supplied to have negligible impacts overall on the floodplain, however more detailed modelling can be undertaken at development application, in particular to ensure neighboring lots are not impacted.</p> <p>In addition, the stormwater management plan submitted demonstrates that a future development could comply with Council requirements for water management and water quality so as to minimise impacts on the natural environment.</p>
Chapter 4 – Remediation of Land	<p>Chapter 4 requires that consideration be given to whether the land is contaminated as part of a planning proposal. The planning proposal applies to land on which development for agricultural activities may have been carried out historically and is therefore potential contaminated.</p> <p>The site history review indicates that the site has been owned by one family from 1929 to 2021. From at least the 1950s the site has been used for rural residential purposes, and it is likely this activity was consistent from the 1930s. The site investigation supplied indicates that the site can be made suitable for the future light industrial purposes.</p>
SEPP (Transport and Infrastructure) 2021	
Chapter 2 – Infrastructure	<p>The SEPP may apply to a future development application because the site area of the propose E3 zoned land is greater than 20,000m². If the SEPP applies, a future development application may be referred to Transport for NSW and the consent authority will need to take into consideration accessibility, safety and parking among other matters.</p>
SEPP (Biodiversity and Conservation) 2021	
Chapter 4 Koala habitat protection 2020	<p>The aim of the SEPP is 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.</p> <p>The ecological surveys and assessment submitted did not observe the species during the field surveys. The site area is not mapped as preferred koala habitat, though 6 identified individuals of <i>Eucalyptus robusta</i>, a preferred koala feed tree, are located across the site. Due to the fragmentation of the existing vegetation, the assessment concludes that the future development of the site will not result in a significant impact of foraging opportunities for the Koala.</p> <p>The opportunity to rehabilitate and vegetate the proposed C2</p>

zoned land as part of any future development application is noted.

SEPP (Primary Production) 2021

Chapter 2 – Primary production and rural development	The potential impacts on rural land and primary production are addressed below in relation to Ministerial Direction 9.2.
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MINISTERIAL DIRECTION ASSESSMENT

Q7. Is the planning proposal consistent with applicable Ministerial Directions (section 9.1 Directions) or key government priority?

Ministerial Direction	Assessment
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Focus area 1: Planning Systems

1.1 Implementation of Regional Plans	The planning proposal is consistent with the HRP, GNMP and Council's strategic planning documents as described throughout this planning proposal.
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Focus area 3: Biodiversity and Conservation

3.1 Conservation Zones	<p>As outlined within the Biodiversity Assessment Report submitted, part of the site that is flood prone is also to be reserved for environmental conservation.</p> <p>The minimum lot size for this portion of the site is proposed to be retained at 20ha and as such, residential development will not be permitted on the site.</p> <p>A Vegetation Management Plan may be required as part of the future assessment of future light industrial subdivision to protect and revegetate this area of the site.</p>
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3.2 Heritage Conservation	<p>The site does not contain any heritage items/places listed in the <i>Port Stephens Local Environmental Plan 2013</i>.</p> <p>An AHIMS search was conducted on 21 June 2023, including a 1000m buffer.</p> <p>A Potential Archaeological Deposit (PAD) has been identified on the site in the form of a chert stone point and a mudstone scraper. Any future development application may require a permit for the removal of the objects prior to construction. Regardless of rezoning, this would likely be a requirement for any development currently permissible on the site under the existing rural zoning.</p> <p>The Aboriginal Cultural Heritage Assessment prepared demonstrates that future development can be managed so as to protect any Aboriginal cultural heritage on the site and in the vicinity.</p>
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Focus area 4: Resilience and Hazards

4.1 Flooding	Some of the future light industrial lots will be located within the Flood Planning Area (FPA), with four lots likely impacted by high hazard flood storage.
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Indicative zoning map:



Indicative future industrial subdivision:



FPA showing extent of the high hazard floodway in Blue:



A Flood Impact Assessment identifies that filling the E3 zoned land to 4.0m AHD to the 2m contour line will provide sufficient flood free land above the Probable Maximum Flood level to avoid risk to life and property as a result of a flood event. The report models the impacts of the proposed fill and identifies that the majority of flood impacts are contained within the subject site, with likely negligible impact to flood levels and velocities across the broader floodplain.

The proposal is inconsistent with Ministerial Direction 4.1 section (2) which states... “A planning proposal must not rezone land within the flood planning area from Recreation, **Rural**, Special Purpose or Conservation Zones to a Residential, **Employment**, Mixed Use, W4 Working Waterfront or Special Purpose Zones”

This planning proposal will rezone land impacted in the flood planning area from RU2 to E3 land however the Flood Impact Study shows this inconsistency is considered minor because the impacts will be negligible across the broader floodplain.

4.2 Coastal Management	Part of the land is identified as a Coastal Environment Area. See assessment above against the relevant SEPP.
4.3 Planning for Bushfire Protection	The site is mapped as Bushfire Prone Land (Category 3). A Bushfire Assessment Report, which addresses the document 'Planning for Bushfire Protection and this Ministerial Direction is provided and demonstrates risks can be appropriately managed.
4.4 Remediation of Contaminated Land	A detailed site investigation has been prepared. See assessment above against the relevant SEPP.
4.5 Acid Sulfate Soils	The site contains ASS Class 3 and 4 soils in the location of the proposed E3 land zoning. Future works may include works below two metres below the natural ground surface. The management of ASS would be

assessed as part of any future development application to subdivide the land to enable construction of industrial buildings. The planning proposal does not risk of exposing ASS, future assessment of the land as part of any development application can manage any risk of exposing ASS.

Focus area 7: Industry and Employment

7.1 Employment Zones The subject site is identified within the ABTP as land suitable for future light industrial development. The development facilitates industrial growth in this area, to further enable appropriate commercial development within the commercial core and along the tourist and visitor corridor of Nelson Bay Road.

Focus area 9: Primary Production

9.2 Rural Lands It is not considered that the proposal would result in the potential for land use conflict given the context of the site. The proposal results in an appropriately located light industrial estate which will likely not result in adverse impacts on the surrounding RU2 zoned land.

Information	Assessment
Section C – Environmental, social and economic impact	
<p>Q8. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?</p>	<p>The Biodiversity Development Assessment Report (BDAR) identified that no threatened flora or fauna species were recorded within the study area during surveys.</p> <p>The future development of the site would likely result in removal of six <i>Eucalyptus robusta</i>, identified as preferred koala feed trees. The BDAR provides detailed mitigation measures to manage any likely impacts on native and flora fauna. These measures can be applied at development application stage and may include a requirement to prepare a vegetation management plan as part of a condition of consent.</p> <p>Due to the level of disturbance on the site and the historical land use practices it is not expected that threatened species listed under either the Biodiversity Conservation Act or the Environmental Protection and Biodiversity Conservation Act would be present on the site or affected by the proposal.</p>
<p>Q9. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?</p>	<p>Given the location of the site at the gateway to Anna Bay, visual impacts are considered to be able to be managed in accordance with the ABSTP by retaining the vegetated corridor along Nelson Bay Road and Gan Gan Road. The C2 zoned portion of the site will retain and add to the vegetation along Nelson Bay Road. Any future development application for light industrial uses will be subject to existing controls in Council's Development Control Plan for landscaping and screening from Gan Gan Road. The planning proposal includes a visual impact assessment and draft landscape plan to demonstrate how this can be achieved at development application</p>

	<p>stage.</p> <p>It is noted that the inter-allotment drainage from the eastern neighbour should be accounted for as the civil designs are progressed during the development application stage for subdivision, to ensure that the future works do not adversely impact local drainage.</p> <p>The land is bushfire prone, identified as Category 3. A Bushfire Assessment Report identifies risk to property and life because of a bushfire event can be suitably managed.</p> <p>Flooding and drainage impacts have been assessed elsewhere in this report.</p>
<p>Q10. Has the proposal adequately addressed any social and environmental effects?</p>	<p>The rezoning of the land for industrial purposes will have positive social and economic effects. In particular, the development of this land as a light industrial precinct will generate local employment opportunities. The community benefit associated with future development will be found in the provision of an appropriately located industrial estate that provides floorspace to local businesses and trades to grow and service the future population needs.</p>

Section D – Infrastructure (Local, State and Commonwealth)

<p>Q11. Is there adequate public infrastructure for the planning proposal?</p>	<p>Connection to reticulated water and sewer is available.</p> <p>The Servicing Strategy shows the future industrial subdivision will require the construction of a pressure sewer system approximately 500m x 63mm with tanks and pumps on each lot.</p> <p>The site has frontage to, and access from, Gan Gan Road and there is easy access to Nelson Bay Road which will facilitate traffic movement to and from the area. No transport infrastructure upgrades are necessary to support the future development of the site.</p> <p>No additional community or social infrastructure is required as a result of the proposal.</p>
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Section E – State and Commonwealth Interests

<p>Q12. What are the views of state and federal public authorities consulted in order to inform the Gateway determination?</p>	<p>Agencies were consulted as part of the scoping proposal process including:</p> <ul style="list-style-type: none"> • Department of Planning, Infrastructure and Housing • Transport for NSW • Rural Fire Service • Department of Primary Industries – Agriculture • Department of Climate Change, Energy, the Environment and Water • Heritage NSW • Hunter Water Corporation
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Part 4 – Maps, where relevant, to identify the effect of the planning proposal and the area to which it applies	Maps will be prepared in accordance with the Department of Planning, Industry and Environment's 'Standard technical requirements for spatial datasets and maps'.
Part 5 – Details of the community consultation that is to be undertaken on the planning proposal	As per Gateway Determination.
Part 6 – Projected timeline of the plan making process	As per planning proposal

RECOMMENDATION

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

SIGNATURE

DATE

Strategic Planning Co-ordinator

19 August 2025

ITEM NO. 3

FILE NO: 25/238318
EDRMS NO: 58-2024-4-1

**PLANNING PROPOSAL - 587 NEWLINE ROAD, RAYMOND TERRACE
(MONARCH'S RISE)**

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Notes the amendments to the planning proposal (**ATTACHMENT 1**) for 587 Newline Road, Raymond Terrace (Lot 2 DP37430 and Lot 32 DP 554875) and the submissions received during exhibition (**ATTACHMENT 2**).
- 2) Authorises the exercise of delegations to make the amendment to the Port Stephens Local Environmental Plan 2013 under Section 3.36 of the Environmental Planning and Assessment Act 1979 (NSW).

BACKGROUND

The purpose of this report is to advise Council of the outcome of the exhibition of the planning proposal to amend the Port Stephens Local Environmental Plan 2013 (LEP) (**ATTACHMENT 1**) for 587 Newline Road, Raymond Terrace (known as Monarch's Rise within Kings Hill urban release area) and note the submissions received during exhibition (**ATTACHMENT 2**).

The planning proposal seeks to amend the Port Stephens Local Environment Plan 2013 (LEP) to align the zoning, building heights and minimum lot size with the subdivision lot layout of Development Application 16-2013-599-1, determined on 8 July 2024 (DA 16-2013-599-1).

The planning proposal will ensure that lots subdivided under DA 16-2013-599-1 will not have split zonings with split minimum lot sizes.

The planning proposal also seeks to reduce the minimum lot size in the MU1 Mixed Use zone from 400m² to 300m² to allow for more diverse housing around the neighbourhood centre.

The planning proposal will extend the MU1 Mixed Use zone over the land currently zoned C2 Environmental Conservation to align with DA 16-2013-599-1 and the agreed terms of a conservation voluntary planning agreement associated with the development consent.

ORDINARY COUNCIL - 28 OCTOBER 2025

A summary of the planning proposal and property details are provided below:

Date lodged	4 December 2024
Proponent	McCloy Project Management Pty Ltd
Subject property	Lot 2 DP 37430 and Lot 32 DP 554875 587 Newline Road, Raymond Terrace
Site area	Approximately 7 hectares
Current zoning	R1 General Residential, C2 Environmental Conservation
Current use	Unused rural land
Proposed changes	Align the MU1 Mixed Use zone with the lot layout envisioned under DA 16-2013-599-1. Extend the MU1 Mixed Use zone over land (approximately 2,300m ²) currently zoned C2 Environmental Conservation, adjoining Newline Road. Reduce the minimum lot size of the MU1 Mixed Use zone from 400m ² to 300m ² to achieve housing diversity in and around the neighbourhood centre.
Lot yield	Approximately 85 residential lots

On 13 February 2025, the planning proposal was submitted to the Department of Planning, Housing and Infrastructure (DPHI) to seek a Gateway determination in accordance with the Port Stephens Council Rezoning Request Policy.

On 13 March 2025, DPHI issued a Gateway determination (**ATTACHMENT 3**) requiring the planning proposal be updated to:

- Include an amendment to the LEP height of building map that aligns the existing MU1 Mixed Use Zone height limit of 15m and the R1 General Residential Zone height limit of 9m, illustrating the change between the existing and proposed height of building maps.
- Include additional detail and clarification in the objectives of the proposal and explanations of provisions in relation to all the zoning and minimum lot size changes that will occur associated with the realignment of the MU1 Mixed Use zone.
- Update administrative errors.
- Undertake further consultation with Transport for NSW, Department of Climate Change, Energy, the Environment and Water, NSW Rural Fire Service, Hunter Water Corporation and the NSW State Emergency Service.

The Gateway determination authorises Council to make the amendments to the LEP under Section 3.36(2) of the Environmental Planning and Assessment Act 1979 (NSW) (EP&A Act). This gives effect to the planning proposal following the public exhibition period. In accordance with the Gateway determination, the planning

proposal was updated and referred to the relevant public authorities, with 5 submissions being received (**ATTACHMENT 2**). The planning proposal was publicly exhibited from 30 May to 30 June 2025 and 1 submission was received. (**ATTACHMENT 2**).

Suitability of the site

The site is considered suitable for residential development given:

- Residential housing is permissible on the site currently as it is zoned MU1 Mixed Use and R1 General Residential and residential housing on the site has been granted development consent (DA 16-2013-599-1).
- The C2 Environmental Conservation zoned land being rezoned has been identified as not having high biodiversity value as part of the assessment associated with DA 16-2013-599-1.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2025-2029
Thriving and safe place to live	Program to develop and implement Council's key planning documents

FINANCIAL/RESOURCE IMPLICATIONS

Financial and resourcing implications for Council as a consequence of the recommendation of this report are outlined below.

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

LEGAL, POLICY AND RISK IMPLICATIONS

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

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that future lots on the approved subdivisions will have split zonings and split minimum lot sizes if recommendations are not supported.	High	Accept the recommendations.	Yes

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

The planning proposal is being processed in accordance with Part 3 of the EP&A Act, which provides the framework for amending a local environmental plan. DPHI issued a Gateway determination under Section 3.34 of the EP&A Act specifying that the planning proposal should proceed to exhibition, subject to conditions and consultation requirements.

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

Port Stephens Local Environmental Plan 2013 (LEP)

The subject site is currently zoned MU1 Mixed Use, R1 General Residential and C2 Environmental Conservation. The planning proposal seeks to amend the LEP to realign the zoning, building heights and minimum lot size with the subdivision lot layout in Development Application 16-2013-599-1, determined on 8 July 2024.

The planning proposal will ensure lots subdivided under DA 16-2013-599-1 will not have split zonings with split minimum lot sizes and will reflect the agreed terms of a conservation voluntary planning agreement associated with the development consent.

Port Stephens Development Control Plan 2014 (DCP)

The Monarch's Rise Estate is located within the urban release area of Kings Hill. King's Hill is contained in Chapter D14 of the DCP.

The planning proposal is generally consistent with the DCP.

Hunter Regional Plan 2041 (HRP)

The HRP includes an objective of creating 15-minute neighbourhoods where residents can work, socialise and access their daily needs without relying on a

personal vehicle. The planning proposal is consistent with this objective as it creates greater housing diversity and increases density around the neighbourhood centre, which will provide a number of services once it is fully developed. This facilitates a 15-minute neighbourhood by locating residents in close proximity to their day-to-day needs.

The planning proposal is consistent with the HRP.

Local Strategic Planning Statement 2020 (LSPS)

The Port Stephens LSPS outlines a 20-year vision for land use in Port Stephens, setting out the social, economic and environmental planning priorities for the future. The planning proposal is considered to be consistent with, and give effect to, the following planning priorities of the LSPS:

Priority 1: Support the growth of strategic centres.

Raymond Terrace is identified by the LSPS as a regionally significant centre. The planning proposal is consistent with this priority as it supports growth within the broader Raymond Terrace area.

Priority 4: Ensure suitable land supply (for housing)

The planning proposal is consistent with this priority as it will create more varied housing supply options in the future residential area of Kings Hill. This will be achieved by a reduction in minimum lot sizes in the MU1 Mixed Use zone of the Monarch's Rise estate.

Priority 5: Increase diversity of housing choice

The planning proposal is consistent with this priority as it supports higher density housing, smaller lots and varied housing options.

Port Stephens Local Housing Strategy (LHS)

The Port Stephens LHS outlines the vision for future housing growth in the Local Government Area (LGA). The strategy responds to a number of challenges to create outcomes that will ensure an adequate supply of housing and provide a framework for land use planning with an emphasis on greater housing types and sizes near town centres.

The planning proposal is consistent with the LHS as the site is identified for housing in the Housing Supply Plan. The planning proposal aligns with the outcomes of the LHS to ensure suitable land supply, improve housing affordability, increase housing choice and diversity and to facilitate liveable communities. The planning proposal achieves these outcomes by reducing minimum lot size in the MU1 Mixed Use Zone to achieve greater diversity in housing sizes and types near the neighbourhood centre.

The site has been identified for housing in the Port Stephens Housing Supply Plan and is consistent with the LHS.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Social and Economic

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

- Development of the land for housing will assist in meeting regional dwelling demand.
- Providing greater housing diversity through the introduction of smaller lot sizes to the residential market.
- Contributing to more affordable housing outcomes, with increased housing supply and diversity providing downward pressure on housing prices.

Environmental

The planning proposal seeks to extend the MU1 Mixed Use zone over land currently zoned C2 Environmental Conservation (approximately 2300m²) to reflect the subdivision approved under DA 16-2013-599-1. The development consent has an associated set of agreed terms that relate to a voluntary planning agreement (VPA). This VPA seeks to reserve a large parcel of land for conservation purposes, with approximately 17.5ha of land zoned R1 General Residential and 48.5ha of C2 Environmental Conservation zoned being retained and managed by Council once the requirements of the approved Vegetation Management Plan (VMP) have been met.

The C2 Environmental Conservation land being rezoned has not been identified as having high biodiversity value under the assessment of DA 16-2013-599-1.

COMMUNICATION AND ENGAGEMENT

Council’s Communication and Engagement Strategy uses the IAP2 Framework to identify the level of engagement undertaken. An explanation for each level is shown below.

INFORM	To provide the public with balanced and objective information to assist them in understanding the problems, alternatives, opportunities and/or solutions.
CONSULT	To obtain public feedback on analysis, alternatives and/or decisions.
INVOLVE	To work directly with the public throughout the process to ensure that public concerns and aspirations are consistently understood and considered.

ORDINARY COUNCIL - 28 OCTOBER 2025

COLLABORATE	To partner with the public in each aspect of the decision including the development of alternatives and the identification of the preferred solution.
EMPOWER	To place final decision-making and/or developed budgets in the hands of the public.
	No external communications and engagement are required for this report.

The following communication and engagement applies to this report.

External communications and engagement

INFORM	Adjacent and adjoining landowners were notified in writing of the lodgement of the planning proposal. They were notified again when the planning proposal was placed on public exhibition.
CONSULT	<p>The planning proposal was placed on public exhibition from 30 May 2025 to 30 June 2025 and 1 submission was received. The submission raised concerns associated with the loss of C2 Environmental Conservation zoned land. These concerns have been addressed in (ATTACHMENT 2).</p> <p>Consultation was undertaken with the following State agencies as part of the conditions set out by the Gateway determination:</p> <ul style="list-style-type: none">• Hunter Water Corporation• NSW State Emergency Service• Transport for New South Wales• Department of Climate Change, Energy, the Environment and Water (Biodiversity and Flooding)• NSW Rural Fire Service <p>The agency advice and public submission is addressed in the response to submissions table (ATTACHMENT 2).</p>

Internal communications and engagement

Consultation has been undertaken by the Strategy and Environment Section with:

- Assets Section.
- Development and Compliance Section.

OPTIONS

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

ATTACHMENTS

- 1) Planning Proposal. (Provided under separate cover) [⇨](#)
- 2) Response to Submissions. [↓](#)
- 3) Gateway Determination. [↓](#)

COUNCILLORS' ROOM/DASHBOARD

- 1) Unredacted submissions.

TABLED DOCUMENTS

Nil.

ITEM 3 - ATTACHMENT 2 RESPONSE TO SUBMISSIONS.

Monarch’s Rise Planning Proposal - Response to submissions table

Submission No.	Comment	Council Response
1. Hunter Water Corporation	The submission advised to rely on previous advice issued in relation to the approved subdivision DA 16-2013-599.	Noted.
	The previous advice notes that the proposal falls outside of the drinking water catchment area.	Noted.
	The previous advice notes that a developer-funded water servicing strategy is required to confirm available network capacity and optimal servicing arrangements for the bulk water connection.	Noted. The DA requires the relevant approvals to be provided prior to the release of the subdivision works certificate.
2. NSW State Emergency Service (SES)	The submission notes that the planning proposal should be considered against the Ministerial Direction 4.1 Flooding and the Flood Risk Management Manual 2023.	The planning proposal provides flood risk management advice demonstrating consistency with Ministerial Direction 4.1 Flooding and the Flood Risk Management Manual 2023.
	The submission states it does not support intensifying development on land below the flood planning level where there are existing evacuation constraints.	Noted. The planning proposal will not facilitate an intensification of development below the flood planning level.
	The submission supports the consideration of flood-free access. The submission recommends the consideration of raising road access for all lots and an evacuation capability assessment. The submission does not support shelter-in-place as a strategy for flood management.	Noted. Flood free access, evacuation and flood management strategies have been addressed in DA 16-2013-599.

ITEM 3 - ATTACHMENT 2 RESPONSE TO SUBMISSIONS.

Submission No.	Comment	Council Response
3. Transport for New South Wales (TfNSW)	The submission referred to previous advice issued in relation to DA 16-2013-599.	Noted. The issues raised in relation to the approved subdivision have already been addressed. The planning proposal will not impact on the approved development.
	The submission is supportive of the planning proposal progressing, noting that clause 6.5 Infrastructure - Pacific Highway access of the Port Stephens Local Environmental Plan 2013 will be applicable to future subdivision of land.	Noted.
4. Department of Climate Change, Energy, the Environment and Water	The submission has no concerns in relation to biodiversity impacts of the proposed rezoning.	Noted.
	The submission notes that shelter in place is not an appropriate flood management strategy, and the site should be evacuated before the evacuation route is flooded.	Noted. Flood evacuation has been addressed in the approved DA 16-2013-599. The planning proposal will not impact on the approved development.
	The submission notes a Flood Emergency Response Plan (FERP) should be prepared after the planning proposal has been approved.	Noted.
5. Rural Fire Service	The submission has no objection to the planning proposal.	Noted.
	The submission states that the approved subdivision shall ensure the required bushfire mitigation measures are implemented. Any future subdivisions shall comply with bushfire protection guidelines.	Noted. Bushfire mitigation measures have been addressed in the approved DA 16-2013-599.

ITEM 3 - ATTACHMENT 2 RESPONSE TO SUBMISSIONS.

Submission No.	Comment	Council Response
6. Resident	The submission objects to the planning proposal. It raises concerns regarding the extension of the MU1 Mixed Use zone over land currently zoned C2 Environmental Conservation and whether this amendment will set a precedent for further removal of conservation land.	<p>Around 2,300m² of land currently zoned C2 Environmental Conservation is proposed to be rezoned to MU1 Mixed Use Zone to provide consistency with the approved subdivision lot layout from DA 16-2013-599. This land has not been identified as having biodiversity values and will ensure consistency with the terms of the voluntary planning agreement.</p> <p>A condition of development consent requires the developer to dedicate approximately 48.5 hectares of C2 Environmental Conservation zoned land as well as 17.5 hectares of R1 General Residential zoned land to Council via the voluntary planning agreement.</p>
	The submission queries the timing of the amendment relative to the submission of the development application for the subdivision of the land.	<p>The development application for the subdivision of the land (DA 16-2013-599) was determined on 8 July 2024.</p> <p>The planning proposal was lodged with Council on 25 November 2024.</p>



Department of Planning, Housing and Infrastructure

Gateway Determination

Planning proposal (Department Ref: PP-2024-2629): *rezone land and amend associated development standards at part of Lot 2 DP 37430 and part of Lot 32 DP 554875, 587 Newline Road, Raymond Terrace.*

I, the Director, Hunter and Northern Region, at the Department of Planning, Housing and Infrastructure, as delegate of the Minister for Planning and Public Spaces, have determined under section 3.34(2) of the *Environmental Planning and Assessment Act 1979* (the Act) that an amendment to the Port Stephens Local Environmental Plan 2013 to rezone land and amend associated development standards at part of Lot 2 DP 37430 and part of Lot 32 DP 554875, 587 Newline Road, Raymond Terrace should proceed subject to the following Gateway conditions.

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

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

The LEP should be completed within nine (9) months of this Determination.

Gateway Conditions

1. Prior to community and agency consultation, the planning proposal is to be updated to:
 - (a) include an amendment to the LEP height of building map that aligns the existing MU1 Zone height limit of 15m, and the R1 General Residential Zone height limit of 9m, with proposing zoning layout and is illustrated with existing and proposed height of building maps;
 - (b) include additional detail and clarification in the proposal's objectives and explanation of provisions in relation to all the zoning and minimum lot size changes that will occur associated with the realignment of the MU1 Mixed Use zone;
 - (c) amend the proposed lot size map to accurately reflect the land area to which the changed controls will apply; and
 - (d) correct the title of Figure 9 as it only shows existing and proposed land zoning.

ITEM 3 - ATTACHMENT 3 GATEWAY DETERMINATION.

2. Public exhibition is required under section 3.34(2)(c) and clause 4 of Schedule 1 to the Act as follows:
 - (a) the planning proposal is categorised as standard as described in the *Local Environmental Plan Making Guideline* (Department of Planning and Environment, August 2023) and must be made publicly available for a minimum of 20 working days; and
 - (b) the planning proposal authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in *Local Environmental Plan Making Guideline* (Department of Planning and Environment, August 2023).
3. Consultation is required with the following public authorities and government agencies under section 3.34(2)(d) of the Act and/or to comply with the requirements of applicable directions of the Minister under section 9 of the Act:
 - Transport for NSW;
 - Department of Climate Change, Energy, the Environment and Water (Biodiversity and Flooding)
 - NSW Rural Fire Service
 - Hunter Water
 - NSW State Emergency Service.

Each public authority is to be provided with a copy of the planning proposal and any relevant supporting material via the NSW Planning Portal and given at least 30 working days to comment on the proposal.
4. A public hearing is not required to be held into the matter by any person or body under section 3.34(2)(e) of the Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).

Dated 12 March 2025



Craig Diss
Director, Hunter and Northern Region
Local Planning and Council Support
Department of Planning, Housing and
Infrastructure

Delegate of the Minister for Planning and
Public Spaces

PP-2024-2629 (IRF25/538)

ITEM NO. 4

FILE NO: 25/227397
EDRMS NO: PSC2024-00102

**VOLUNTARY PLANNING AGREEMENT - MCCLOY KINGS HILL PTY LTD -
MONARCH'S RISE**

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Place the draft Voluntary Planning Agreement (**ATTACHMENT 1**) between Council and McCloy Kings Hill Pty Ltd, together with the accompanying explanatory note (**ATTACHMENT 2**) on public notice for a period of 28 days in accordance with the Environmental Planning and Assessment Act 1979 and the Environmental Planning and Assessment Regulation 2021.
- 2) Should no submissions be received, approve the Voluntary Planning Agreement and explanatory note as exhibited for execution.

BACKGROUND

The purpose of this report is to seek endorsement to publicly notify a draft Voluntary Planning Agreement (VPA) (**ATTACHMENT 1**) between Council and McCloy Kings Hill Pty Ltd (the Developer), together with the accompanying explanatory note (**ATTACHMENT 2**).

The draft VPA relates to development consent 16-2013-599 for a staged development on Newline Road, Raymond Terrace known as Monarch's Rise. The development includes a 2 into 97 lot subdivision as well as clearing and subdivision works to support a broader concept masterplan for an estimated total yield of 700 lots.

On 8 July 2024, Council approved the development consent with a condition requiring a VPA to secure the ongoing management of conservation lands.

Under the draft VPA, the Developer will:

- Undertake conservation area works in accordance with the approved Vegetation Management Plan (VMP).
- Transfer 71 hectares of land to Port Stephens Council for conservation.
- Provide a monetary contribution of \$700,000 prior to the transfer of land.
- Provide a monetary contribution of \$700,000 (plus inflation) 5 years after the transfer of land.

The conservation area works are required to be completed to Council's satisfaction prior to the transfer of land to Council.

The draft VPA does not exclude the payment of local infrastructure contributions.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2025-2029
Housing, tourism & economy	Develop and implement Council's key planning documents

FINANCIAL/RESOURCE IMPLICATIONS

The contributions to be made by the Developer, as detailed within Schedule 1 of the draft VPA (**ATTACHMENT 1**), allow for the ongoing management and maintenance of the conservation land for 40 years. After this time, the management of the land will be funded by Council.

The agreement includes provisions that ensure the Developer is responsible for the legal costs and disbursements associated with preparing the agreement.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	No		
Reserve Funds	No		
Developer Contributions (S7.11)	No		Developer contributions are required in accordance with the development consent
External Grants	No		
Other	Yes	\$1,400,000 (plus CPI and accrued interest)	Monetary contribution proposed under the draft VPA.

LEGAL, POLICY AND RISK IMPLICATIONS

The agreement includes provisions to manage any risks associated with entering into the agreement.

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
There is a risk that conservation outcomes are not secured in accordance with the development consent.	Medium	Adopt the recommendations of the Report.	Yes
There is a risk that that the monetary contributions will be insufficient to fund the maintenance of the conservation land.	Low	The cost estimates have been verified using Council data from the management of other biodiversity sites. Adopt the recommendations.	Yes

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

The draft VPA has been prepared in accordance with Section 7.4 of the EP&A Act. The draft VPA will be publicly notified in accordance with Section 7.5 of the EP&A Act.

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

Public notice will be undertaken in accordance with Section 204 of the EP&A Regulation. An explanatory note (**ATTACHMENT 2**) has been prepared in accordance with Section 205 of the EP&A Regulation and will be exhibited with the draft VPA.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The draft VPA will provide for the rehabilitation, maintenance and management of conservation land, which will result in improved environmental outcomes. It will secure funding for Council to maintain 71 hectares of conservation land for 40 years.

Prior to dedication, the Developer must undertake works to improve the quality of the conservation land in accordance the approved VMP. These works include but are not limited to planting koala feed trees, annual weeding, removal of rubbish and installation of koala fencing separating the conservation lands from residential development.

COMMUNICATION AND ENGAGEMENT

Council’s Communication and Engagement Strategy uses the IAP2 Framework to identify the level of engagement undertaken. An explanation for each level is shown below.

INFORM	To provide the public with balanced and objective information to assist them in understanding the problems, alternatives, opportunities and/or solutions.
CONSULT	To obtain public feedback on analysis, alternatives and/or decisions.
INVOLVE	To work directly with the public throughout the process to ensure that public concerns and aspirations are consistently understood and considered.
COLLABORATE	To partner with the public in each aspect of the decision including the development of alternatives and the identification of the preferred solution.
EMPOWER	To place final decision-making and/or developed budgets in the hands of the public.
	No external communications and engagement are required for this report.

The following communication and engagement applies to this report.

External communications and engagement

CONSULT	The draft VPA will be publicly notified through Council's website and made available for inspection by the public for 28 days.
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Internal communications and engagement

Consultation has been undertaken by the Strategy and Environment Section with:

- Governance Section
- Financial Services Section
- Assets Section
- Development and Compliance Section

OPTIONS

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

ATTACHMENTS

- 1) Draft Voluntary Planning Agreement. [↓](#)
- 2) Explanatory Note. [↓](#)

COUNCILLORS' ROOM/DASHBOARD

Nil.

TABLED DOCUMENTS

Nil.



PLANNING AGREEMENT

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 (NSW)

514 NEWLINE ROAD, KINGS HILL AND 587 NEWLINE ROAD, RAYMOND TERRACE

PORT STEPHENS COUNCIL ABN 16 744 377 876

MCCLOY KINGS HILL PTY LIMITED ACN 652 158 202

DATE OF EXECUTION:

DRAFT



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DRAFT



This Planning Agreement is dated:

Parties

Council Port Stephens Council ABN 16 744 377 876 of 116 Adelaide Street, Raymond Terrace NSW 2324

Developer McCloy Kings Hill Pty Ltd ACN 652 158 202 of 1 Dickson Road, Loxford NSW 2326

Introduction

- A. The Developer owns the Land.
- B. The Developer proposes to carry out the Proposed Development on the Development Land.
- C. The Development Consent has been granted for the Proposed Development.
- D. The Developer has offered to enter into this deed with the Council in connection with the Proposed Development to make contributions acceptable to Council to protect, enhance and sustain the ecological values of the Land and result in a 'net gain' of Koala habitat in accordance with the Port Stephens Comprehensive Koala Plan of Management through the undertaking of the Conservation Area Works, the dedication or transfer of the Conservation Land and the making of the Monetary Contribution.
- E. The Council, being satisfied that the Developer's offer comprises the undertaking of works to rehabilitate and maintain the Conservation Land (in the case of the Conservation Area Works), the dedication of land free of cost (in the case of the Conservation Land Contribution) and the payment of a monetary contribution (in the case of the Monetary Contribution) for a public purpose accepts the Developer's offer and enters into this deed with the Developer pursuant to section 7.4(1) of the Act and condition 12 of the Development Consent.

Agreed Terms

1. Definitions and Interpretation

1.1. Definitions

In this document the following terms have the following meanings unless the context otherwise requires:

Term	Definition
Act	means the <i>Environmental Planning and Assessment Act 1979</i> (NSW).
Address for Service	means the address of each party appearing at Item 1 of Schedule 4 to this deed or any new address notified by any party to all other parties as its new Address for Service.
Approval	means any approvals, consents, certificates, permits, licences, conditions or permissions (and any modification or variations to them) which may be required by law or by any Authority exercising its functions and powers, for the commencement and carrying out of any works required under this deed or the



	Development and includes a Development Consent, assessment of an activity under Division 5.1 of the Act, or other approval under the Act.
Approved Signing Method	<p>means signing electronically by:</p> <ul style="list-style-type: none"> (a) insertion of an image (including a scanned image) of the person's own unique signature onto the deed; or (b) insertion of the person's name onto the deed; or (c) use of a stylus or touch finger or a touch screen to sign the deed, <p>provided that in each of the above cases, words to the effect of 'Electronic signature of me, [insert full name], affixed by me, or at my direction, on [insert date]' are also included on the deed; or</p> <ul style="list-style-type: none"> (d) use of a reliable electronic signing platform (such as DocuSign or AdobeSign) to sign the deed.
Authority	means any federal, state or local government or semi-governmental, statutory, judicial or public person, instrumentality or department.
Bank Guarantee	<p>means an irrevocable and unconditional undertaking without an expiry or end date in favour of Council to pay an amount or amounts of money to the Council on demand (being such amount as is required under this deed) issued by:</p> <ul style="list-style-type: none"> (a) one of the following trading banks: <ul style="list-style-type: none"> i. Australia and New Zealand Banking Group Limited, ii. Commonwealth Bank of Australia, iii. Macquarie Bank Limited, iv. National Australia Bank Limited, v. St George Bank Limited, vi. Westpac Banking Corporation, or (b) any other financial institution approved by the Council in its absolute discretion.
Base CPI	means the CPI number for the last quarter ending before the date of this Agreement.
Business Day	means a day that is not a Saturday, Sunday or public holiday or bank holiday in Newcastle, New South Wales.
CPI	means the 'Consumer Price Index – Sydney All Groups' published by the Australian Bureau of Statistics
Claim	Includes any claim, demand, remedy, suit, injury, damage, loss, cost, liability, action, proceeding or right of action howsoever arising and whether present or future, fixed or unascertained,



	actual or contingent whether at law, in equity, under statute or otherwise.
Clearance Certificate	means a clearance certificate issued by the Commissioner for Taxation under paragraph 14-220 of Schedule 1 of the <i>Taxation Administration Act 1953 (Cth)</i>
Current CPI	means the CPI number as provided in clause B of Item 4 of Schedule 3.
Conservation Land	means the land shown with hatching and referred to as "R1 Zoned Conservation Area" and "C2 Zoned Conservation Area" on the plan at Item 3 of Schedule 2.
Conservation Land Contribution	means the dedication or transfer of the Conservation Land to Council, in accordance with this deed.
Conservation Area Works	means the works specified in Item 2 of Schedule 3.
Corporations Act	means the <i>Corporations Act 2001 (Cth)</i> .
Costs	means any cost, charge, expense, outgoing, payment, fee or other expenditure.
Dealing	means in relation to the Development Land and Conservation Land (where applicable) to sell, transfer, assign, mortgage, charge, dispose, encumber or otherwise deal with the Land in whole or in part.
Development Application	means DA 16-2013-599, being a staged torrens title subdivision known as "Monarchs Rise", located on Newline Road, Raymond Terrace and including vegetation works, clearing, park, earthworks, roads, landscaping and associated subdivision works and infrastructure.
Development Consent	means the development consent granted under section 4.16 of the Act to the Development Application on 8 July 2024.
Development Contributions	means the carrying out of the Conservation Area Works, the dedication or transfer of the Conservation Land and the payment of the Monetary Contribution which the Landowner agrees to provide under this deed as set out Schedule 3.
Development Land	means the land shown cross hatched and described as 'R1 Development Lands' on the plan in Item 2 of Schedule 2.
ELNO	has the same meaning as in the <i>Electronic Conveyancing National Law (NSW)</i> .
Encumbrances	means an interest or power: <ul style="list-style-type: none"> (a) reserved in or over the Land or an interest in any part of the Land or; (b) created or otherwise arising in or over any interest in any part of the Land under any mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, title retention, conditional sale agreement, , option,



	restriction as to transfer, use or possession, easement, covenant, lease, subordination to any right of any other person and any other encumbrance or security interest, trust or bill of sale; or (c) by way of security for the payment of a debt or other monetary obligation or the performance of any obligation.
Foreign Resident Capital Gains Withholding Amount	means the amount a purchaser is required to pay to the Commissioner for Taxation under paragraph 14-200 of the <i>Taxation Administration Act 1953 (Cth)</i> .
GST	means any form of good and services tax payable under the GST Law.
GST Law	has the meaning given in the <i>A New Tax System (Goods and Services Tax) Act 1999 (Cth)</i> .
Land	means the land described at Item 1 of Schedule 2 and includes the Development Land and the Conservation Land collectively.
Mediation Rules of the Law Society of NSW	means the mediation rules published by the Law Society of NSW, from time to time.
Monetary Contribution	means the contribution identified at Item 4 of Schedule 3.
NSW-LRS	means NSW-Land Registry Services or such organisation as replacing or performing the functions thereof.
PEXA	means Property Exchange Australia Ltd.
Plan of Subdivision	means a plan of subdivision within the meaning of section 195 of the <i>Conveyancing Act 1919 (NSW)</i> .
Proposed Development	means the proposed development as described in the Development Application, and as approved by the Development Consent.
Real Property Act	means the <i>Real Property Act 1900 (NSW)</i> .
Register	means the Torrens Title register maintained under the Real Property Act.
Residential Development Lots	means lots created in the Development for separate residential occupation and disposition.
Subdivision Certificate	has the meaning given to the term in the Act.



Subdivision Works Certificate	has the meaning given to the term in the Act.
VMP	means the Vegetation Management Plan prepared by Restore dated 4 June 2024, and approved by the Development Consent, and amended from time to time with Council's approval.

1.2. Interpretation

In this document:

- a. a reference to a clause, schedule, annexure or party is a reference to a clause of, and a schedule or annexure or party to, this document and references to this document include any schedules or annexures;
- b. a reference to a party to this document or any other document or agreement includes the party's successors, permitted substitutes and permitted assigns;
- c. if a word or a phrase is defined, its other grammatical forms have a corresponding meaning;
- d. a reference to a document or agreement (including a reference to this document) is to that document or agreement as amended, supplemented, varied or replaced;
- e. a reference to this document includes the agreement recorded by this document;
- f. a reference to legislation or to a provision of legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- g. if a day on or by which a person must do something under this document is not a Business Day, then the person must do it on or by the next Business Day;
- h. a reference to a person includes a corporation, trust, partnership, unincorporated body, government and local authority or agency, or other entity whether or not it comprises a separate legal entity; and
- i. a reference to 'month' means calendar month.

2. Operation and application of this deed

2.1. Operation

This deed commences on the date that this deed is signed by all the parties.

2.2. Planning Agreement under the Act

- a. This deed constitutes a planning agreement within the meaning of section 7.4 of the Act.
- b. The parties agree on the matters set out in Schedule 1.

2.3. Application

This deed applies to:

- a. the Land; and
- b. the Proposed Development.

2.4. Application of sections 7.11, 7.12 and Division 7.1 Subdivision 4 of the Act

The application of section 7.11, 7.12 and Division 7.1, Subdivision 4 of the Act is excluded to the extent stated in Schedule 1.



3. Development Contributions

3.1. Requirement to provide the Development Contributions

The Developer agrees to provide the Development Contributions in the manner and at the times set out in Schedule 3 to this deed.

3.2. Purpose of Development Contributions

- a. The Council is to apply each Development Contribution made by the Developer under this deed towards the public purpose of conservation and otherwise in accordance with this deed.
- b. Despite paragraph (a), the Council may apply a Development Contribution made under this deed towards a public purpose other than the public purpose specified in this deed if the Council reasonably considers that the public interest would be better served by applying the Development Contribution towards that other purpose rather than the purpose so specified.
- c. The Developer agrees that the Council has no obligation to repay the Monetary Contribution in any circumstances.

4. Enforcement and Indemnity

4.1. Indemnity

The Developer indemnifies Council in respect of any Claim that may arise in connection with the performance of the Developer's obligations under this deed but only to the extent that any such Claim does not arise as a result of the negligent acts or omissions of Council.

4.2. Suitable means of security

- a. To ensure enforcement of this deed by suitable means in the event of a breach of this deed by the Developer, the Developer agrees to:
 - i. register this deed in accordance with clause 5; and
 - ii. provide the Bank Guarantee meeting the requirements and at the time set out in clause C of Item 4 of Schedule 3.
- b. The parties acknowledge and agree that the registration of this deed in accordance with clause 5 and the provision of the Bank Guarantee constitutes 'suitable means' of enforcement for the purposes of section 7.4(3)(g) of the Act.

5. Registration on title

5.1. Land ownership

The Developer represents and warrants that it is:

- a. the legal and beneficial owner of the Land; and
- b. legally and beneficially entitled to obtain all consents and approvals and to otherwise do all things necessary for the Developer to comply with its obligations under this clause 5.

5.2. Registration of deed

- a. The Developer agrees to register this deed on title to the Land in accordance with this clause 5.2.
- b. The Developer as the registered proprietor of the Land acknowledges and agrees that entry into this deed constitutes consent to the registration of this deed on the title of the Land for the purposes of section 7.6(1)(a) of the Act.



- c. The Developer at its own cost must take all practical steps and otherwise do anything Council reasonably requires to procure:
 - i. the consent of each person, as required by the Registrar-General, who:
 - (A) has an estate or interest in the Land registered under the *Real Property Act 1900* (NSW); or
 - (B) is seized or possessed of an estate or interest in the Land, to registration of this deed on title to the Land and to the terms of this deed;
 - ii. the electronic lodgement of this deed in a registrable form through an ELNO for registration by the Registrar General in the relevant folio of the Register for the Land;
 - iii. the execution of any documents to effect clauses 5.2.c.i and 5.2.c.ii above;
 - iv. the registration of this deed in the relevant folio of the Register for the Land, including promptly responding to any requisitions made by the Registrar-General in respect of this deed and/or any ancillary documents.
- d. The Developer must provide Council with evidence of registration of this deed within 10 Business Days after registration.

5.3. Right to lodge caveat

- a. Until this deed is registered on title in accordance with clause 5.2, the parties acknowledge and agree that this deed confers on the Council an interest in the Land and entitles the Council to lodge and maintain a caveat on the title to the Land to prevent any Dealing in respect of the Land.
- b. Council may exercise its right to lodge a caveat in accordance with clause 5.3.a if the Developer does not register this deed in accordance with clause 5.2 within 10 Business Days of the deed commencing.
- c. If Council lodges a caveat in accordance with clause 5.3.b:
 - i. Council will do all things reasonably necessary:
 - A. to ensure that the caveat does not prevent or delay the Developer's registration of this deed in accordance with clause 5.2; and
 - B. to withdraw the caveat as soon as practicable after Council becomes aware that this deed has been registered on title in accordance with clause 5.2; and
 - ii. the Developer must pay all of Council's costs and expenses incurred in lodging and withdrawing the caveat promptly after receiving a tax invoice from Council following withdrawal of the caveat.

5.4. Release and discharge of deed

Provided the Developer is not in breach of this deed at the date of the request, Council agrees to do such things as are reasonably necessary to promptly release and discharge this deed:

- a. from the title to any Residential Development Lots; and
- b. in respect of the remainder of the Land, once the Developer makes the Conservation Land Contribution in accordance with this deed, and assuming all other obligations of the Developer under this deed have been met.



6. Dispute Resolution

6.1. Parties not to commence court proceedings without complying with dispute resolution procedures

- a. A party must not commence any court proceedings relating to a dispute unless it complies with this clause 6.
- b. Clause 6.1.a does not prevent, or prejudice the right of a party to institute court proceedings for urgent injunctive relief or declaratory relief in relation to any matter arising out of or relating to this deed.

6.2. Written notice of dispute

A party claiming that a dispute has arisen under or in relation to this deed must give written notice to the other party specifying the nature of the dispute ('Dispute Notice').

6.3. Attempt to resolve through informal dispute resolution

After a Dispute Notice is received, the parties must:

- a. meet in an endeavour to resolve the dispute in good faith within 7 Business Days of the receipt of the Dispute Notice; or
- b. if the dispute is not resolved within that period endeavour in good faith to agree:
 - i. an informal dispute resolution technique;
 - ii. an independent person required to guide the parties to resolve the matters in the Dispute Notice using the informal dispute resolution technique;
 - iii. procedures and a timetable for the carrying out of the agreed informal dispute resolution technique.

6.4. Mediation if dispute not resolved through informal dispute resolution

- a. If the parties do not agree to the matters in clause 6.3.b within 7 Business Days of receipt of a Dispute Notice (or any further period agreed to by the parties in writing), the parties must:
 - i. mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales; and
 - ii. in preparing for this mediation, jointly request the President of the Law Society of New South Wales or the President's nominee to select the mediator.
- b. Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- c. The Parties are to share equally the costs of the President, the mediator, and the mediation.

6.5. When Court proceedings may be commenced

If the dispute is not resolved through mediation in accordance with clause 6.4, within 20 Business Days, then any party which has complied with the provisions of this clause 6 may:

- a. terminate the dispute resolution process undertaken under clause 6; and
- b. following termination, commence court proceedings in relation to the matter set out in the Dispute Notice.



6.6. Parties not to use dispute resolution information for other purposes

- a. The parties acknowledge the purpose of any exchange of information or documents or the making of an offer of settlement under this clause 6 is to attempt to settle the matter set out in the Dispute Notice.
- b. No party may use any information or documents obtained through any dispute resolution process undertaken under this clause 6 in any court proceedings or for any purpose other than in an attempt to settle the matter set out in the Dispute Notice.

7. Assignment and Transfer

7.1. Right to assign or novate

- a. The Developer must not assign this deed to any person except in accordance with this clause.
- b. If the Developer seeks to assign its rights or benefits or novate its obligations to another party, the Developer must:
 - i. satisfy the Council that the person to whom the Developer's rights or obligations are to be assigned or novated ('**Incoming Party**') has sufficient assets, resources and expertise required to perform the Developer's obligations under this deed in so far as those obligations are to be assigned or novated to the Incoming Party;
 - ii. procure the execution of a deed by the Incoming Party with the Council on terms satisfactory to the Council under which the Incoming Party agrees to comply with the terms and conditions of this deed as though the Incoming Party were the Developer;
 - iii. satisfy Council, acting reasonably, that it is not in material breach of its obligations under this deed; and
 - iv. obtain Council's written notice that:
 - A. Council is satisfied that the requirements in clauses 7.1.b.i to 7.1.b.iii have been met; and
 - B. Council consents to the proposed assignment or novation.
- c. The Developer must pay the Council's reasonable legal costs and other expenses incurred under this clause 7.1 promptly after receiving a tax invoice from Council following the issue of Council's written notice under clause 7.1.b.iv.
- d. If at the date of the proposed transfer the Developer has provided Council the Bank Guarantee in accordance with clause C of Item 4 of Schedule 3, provided that:
 - i. the Developer has complied with clause 7.1; and
 - ii. the Incoming Party has provided Council with a replacement Bank Guarantee in accordance with the requirements of clause C of Item 4 of Schedule 3; on terms acceptable to Council,
 Council will promptly return the Bank Guarantee to the Developer.

7.2. Right to transfer Land

- a. Subject to clause 7.2.b, the Developer must not sell or transfer to another person (**Transferee**) the whole or any part of the Land:
 - i. on which this deed remains registered under section 7.6 of the Act; or
 - ii. for which the Development Contributions required under this deed remains outstanding.
- b. The Developer may sell or transfer the whole or any part of the Land to the Transferee if, before the sale or transfer the Developer:



- i. satisfies the Council, acting reasonably, that the proposed Transferee has sufficient assets, resources and expertise required to perform any of the remaining obligations of the Developer under this deed or satisfies Council, acting reasonably that the Developer will continue to be bound by the terms of this deed after the transfer has been effected;
- ii. procures the execution of a deed by the Transferee with the Council on terms satisfactory to Council, acting reasonably, under which the Transferee agrees to comply with the terms and conditions of this deed as though the Transferee were the Developer, which may include the provision of replacement Security;
- iii. satisfies Council, acting reasonably, that it is not in material breach of its obligations under this deed; and
- iv. obtains Council's written notice that:
 - A. Council is satisfied that the requirements in clauses 7.2.b.i to 7.2.b.iii have been met; and
 - B. Council consents to the proposed sale or transfer.
- c. The Developer must pay Council's reasonable legal costs and other expenses incurred under this clause 7.2 promptly after receiving a tax invoice from Council following the issue of Council's written notice under clause 7.2.b.iv.
- d. If at the date of the proposed transfer the Developer has provided Council the Bank Guarantee in accordance with clause C of Item 4 of Schedule 3, provided that:
 - i. the Developer has complied with clause 7.2; and
 - ii. the Incoming Party has provided Council with a replacement Bank Guarantee in accordance with the requirements of clause C of Item 4 of Schedule 3; on terms acceptable to Council,

Council will promptly return the Bank Guarantee to the Developer.

8. Capacity and relationship

8.1. General warranties

Each party warrants to each other party that:

- a. this deed creates legal, valid and binding obligations, enforceable against the relevant party in accordance with its terms; and
- b. unless otherwise stated, it has not entered into this deed in the capacity of trustee of any trust.

8.2. Power of attorney

If an attorney executes this deed on behalf of any party, the attorney declares that it has no notice of the revocation of that power of attorney.

8.3. Assurances

Each party must promptly execute all documents and do everything necessary or desirable to give full effect to the arrangements contained in this deed.

8.4. Relationship of parties

Unless otherwise stated:

- a. nothing in this deed creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the parties; and



- b. no party has the authority to bind any other party by any representation, declaration or admission, or to make any contract or commitment on behalf of any other party or to pledge any other party's credit.

9. GST

9.1. Definitions

Words used in this clause that are defined in the GST Law have the meaning given in that legislation.

9.2. Intention of the parties

The parties intend that:

- a. Divisions 81 and 82 of the GST Law apply to the supplies made under and in respect of this deed; and
- b. No additional amounts will be payable on account of GST and no tax invoices will be exchanged between the parties.

9.3. Reimbursement

Any payment or reimbursement required to be made under this deed that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which any entity is entitled for the acquisition to which the cost, expense or amount relates.

9.4. Consideration GST Exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this deed are GST Exclusive. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to the supply for the purposes of this clause 9.

9.5. Additional amounts for GST

- a. To the extent an amount of GST is payable on a supply made by a party under or in connection with this deed (**GST Amount**), the Recipient will pay to the Supplier the GST Amount at the same time and in the same manner as the consideration for the supply is to be provided. The Supplier must provide a tax invoice to the Recipient before the Supplier will be entitled to payment of the GST Amount.
- b. Clause 9.5 applies to non-monetary consideration.
- c. No additional amount shall be payable by the Council under clause 9.5 (a) unless, and only to the extent that, the Council (acting reasonably and in accordance with the GST Law) determines that it is entitled to an Input Tax Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.

9.6. No Merger

This clause will not merge on completion or termination of this deed.

10. Termination

10.1. Termination

This deed terminates if:

- a. the parties agree in writing to terminate the deed;



- b. the Developer has satisfied all of the obligations imposed on it under this deed in full; and
- c. the Council has issued written notice to the Developer stating that Council agrees that the circumstances above in clauses 10.1.a or 10.1.b have been achieved,.

10.2. Consequences of termination

If this deed terminates, then subject to any express provision in this deed to the contrary:

- a. all future rights and obligations of the parties under this document are discharged; and
- b. all rights and obligations of the parties existing at the time of termination, including the right for Council to retain any Development Contributions provided before termination, continue.

11. General provisions

11.1. Entire deed

This deed constitutes the entire deed between the parties regarding the matters set out in it and supersedes any prior representations, understandings or arrangements made between the parties, whether orally or in writing.

11.2. Notices and time for doing acts

- a. The provisions relating to the time for doing acts at Item 2 of Schedule 4 apply.
- b. The notice provisions at Item 1 of Schedule 4 apply.

11.3. Variation

This deed must not be varied except by a later written document executed by all parties.

11.4. Waiver

A right created by this deed cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right does not constitute a waiver of that right, nor will a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

11.5. Preservation of existing rights

The expiration or termination of this deed does not affect any right that has accrued to a party before the expiration or termination date.

11.6. No merger

Any right or obligation of any party that is expressed to operate or have effect on or after the completion, expiration or termination of this deed for any reason, will not merge on the occurrence of that event but will remain in full force and effect.

11.7. No fetter

Nothing in this deed will be construed as requiring Council, to do anything that would cause it to be in breach of any of its obligations at law and, without limitation, nothing will be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

11.8. Costs

The Landowner must pay Council's reasonable Costs incurred in preparing and executing this deed promptly after receiving a tax invoice from Council following commencement of the deed.



11.9. Counterparts

This deed may be executed in any number of counterparts. All counterparts taken together constitute one instrument. Delivery of this deed by email constitutes an effective mode of delivery.

11.10. Electronic execution and electronic exchange

- a. Each part consents to this deed being executed by a party by way of electronic signature using an Approved Signing Method.
- b. Where this deed is electronically signed by a party, the party warrants and agrees that the electronic signature has been used to identify the person signing and to indicate that the party intends to be bound by the electronic signature.

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Schedule 1 – Requirements under section 7.4 of the Act

The parties acknowledge and agree that the table set out below provides for certain terms, conditions and procedures for the purpose of the deed complying with the Act

Requirement under the Act	This deed
<p>Planning instrument and/or development application – (section 7.4 (2))</p> <p>The Developer has:</p> <ul style="list-style-type: none"> a) sought a change to an environmental planning instrument; b) made or proposes to make a Development Application; c) entered into an Agreement with or is otherwise associated with a person to whom paragraph (a) or (b) applies. 	<p>(a) No</p> <p>(b) Yes</p> <p>(c) Yes in that McCloy Project Management Pty Ltd and McCloy Kings Hill Pty Ltd are associated entities.</p>
<p>Description of land to which this deed applies – (section 7.4(3)(a))</p>	The land listed in Item 1 of Schedule 2.
<p>Description of development to which this deed applies – (section 7.4(3)(b)(ii))</p>	See description at Item 4 of Schedule 2.
<p>Description of change to the environmental planning instrument to which this deed applies – (section 7.4(3)(b)(i))</p>	Not applicable
<p>The scope, timing, and manner of delivery of contribution required by this deed – (section 7.4(3)(c))</p>	See Schedule 3.
<p>Applicability of section 7.11 of the Act – (section 7.4(3)(d)(i))</p>	This deed does not exclude the application of section 7.11 of the Act in respect of the Development.
<p>Consideration of benefits under this deed if section 7.11 applies - (section 7.4(3)(e))</p>	No.
<p>Applicability of section 7.12 of the Act – (section 7.4(3)(d)(ii))</p>	This deed does not exclude the application of section 7.12 of the Act in respect of the Development.
<p>Applicability of Division 7.1 Subdivision 4 of the Act – (section 7.4(3)(d)(iii))</p>	This deed does not exclude the application of Division 7.1, Subdivision 4 of the Act in respect of the Development.
<p>Mechanism for Dispute Resolution – (section 7.4(3)(f))</p>	See clause 6.
<p>Enforcement of this deed – (section 7.4(3)(g))</p>	See clause 4.
<p>No obligation to grant consent or exercise functions – (section 7.4(10))</p>	See clause 11.7.
<p>Registration of the Planning Agreement - (section 7.6 of the Act)</p>	Yes. See clause 5.
<p>Whether the Planning Agreement specifies that certain requirements of the deed must be complied with before a construction certificate is issued – section 21 of the <i>Environmental Planning</i></p>	No.



<i>and Assessment (Development Certification and Fire Safety) Regulation 2021)</i>	
Whether the Planning Agreement specifies that certain requirements of the deed must be complied with before an occupation certificate is issued – (section 48 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021)	No.
Whether the Planning Agreement specifies that certain requirements of the deed must be complied with before a subdivision certificate is issued – (section 6.15(1)(d) of the Act)	Yes. See Item 3 of Schedule 3.

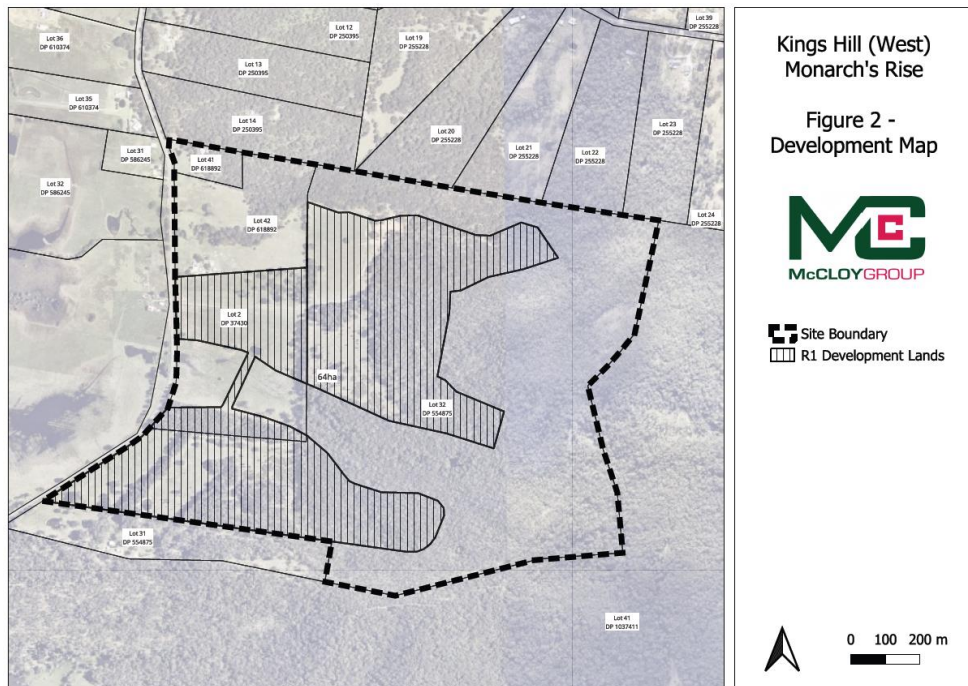
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Schedule 2 – Land and Development

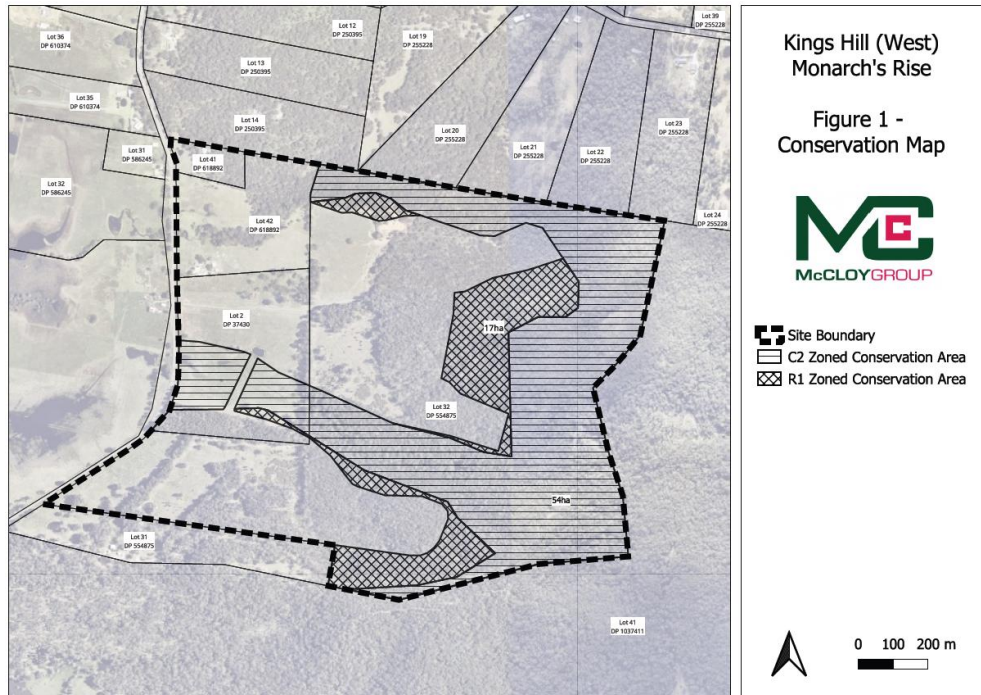
- Item 1 Land to which this deed applies**
 - (a) Lot 32 in Deposited Plan 554875, being folio identifier 32/554875
 - (b) Lot 2 in Deposited Plan 37430, being folio identifier 2/37430

Item 2 Development Land





Item 3 Conservation Land



Item 4 Development

The Proposed Development on the Development Land in accordance with the Development Consent, excluding subdivision of the Conservation Land into a separate title for dedication to Council in accordance with this deed.



Schedule 3 – Development Contributions

Item 1 Development Contributions

- (a) The Development Contributions which the Developer agrees to provide under this deed comprises the:
- (i) Conservation Area Works;
 - (ii) Conservation Land Contribution; and
 - (iii) Monetary Contribution
- (b) The Items in this Schedule 3 set out:
- (i) a description of;
 - (ii) the value of;
 - (iii) the timing within which the Developer must provide; and
 - (iv) other commitments of the Developer relating to, the relevant Development Contributions to which the Item relates.

Item 2 Conservation Area Works

A. Carrying out of Conservation Area Works in accordance with VMP

- (a) The Developer must, at its cost, carry out the Conservation Area Works on the Conservation Land in accordance with the VMP and the Development Consent, including (without limiting the terms of the VMP and the Development Consent):
- (i) planting of a minimum of 1 260 koala feed trees, 1260 supplementary trees/shrubs and groundcovers within the area of the Conservation Land shown as "Zone 1 - Revegetation" on Figure 3-1 in the VMP;
 - (ii) annual weeding and reporting of weeding located within the Conservation Land;
 - (iii) removal of all rubbish and existing fencing within the Conservation Land;
 - (iv) placement of nest boxes or placement of hollows within the Conservation Land in accordance with the VMP;
 - (v) annual monitoring and reporting on all nest boxes located within the Conservation Land;
 - (vi) annual reporting on all newly placed koala feed trees placed within the Conservation Land;
 - (vii) the installation of koala fencing separating the Conservation Land and the Development Land or any other land to be used for any proposed residential development;
 - (viii) the installation of access gates as located by Council separating the Conservation Land and the Development Land or any other land to be used for any proposed residential development;
 - (ix) upgrading of existing walking tracks and closure and rehabilitation of redundant walking tracks and trails as agreed in consultation with Council;
 - (x) undertaking the required pest animal control over the Conservation Land in accordance with the VMP;



- (xi) undertaking the required fire regime with prescribed ecological burns over the Conservation Land in accordance with the VMP.
- (b) The Conservation Area Works:
 - (i) must commence on the date on which the first Subdivision Works Certificate is issued for the Proposed Development under the Development Consent; and
 - (ii) must all be completed prior to the issue of the Subdivision Certificate for the 95th Residential Development Lot, subject to the requirements of the Development Consent and VMP for certain parts of the Conservation Area Works to be completed at earlier stages including prior to the issue of earlier Subdivision Certificates for the Proposed Development.
- (c) The Developer's obligations to complete the Conservation Area Works will be satisfied when the performance criteria set out in Table 5-1 of the VMP have been met, and Council has been provided with and approved the compliance report and documentary evidence from a qualified arborist and qualified ecologist in accordance with condition 71 of the Development Consent.
- (d) If there is any inconsistency between the Development Consent, this deed, and the VMP in respect of the carrying out of the Conservation Area Works, the Development Consent prevails, but if this deed requires anything additional to the Development Consent, that additional work must be carried out.
- (e) For the avoidance of doubt, any part of the Conservation Area Works which involves ongoing monitoring, weeding, reporting, pest control, or other action of a repetitive or ongoing nature, is only required to be carried out by the Developer until the date of dedication of the Conservation Land.

Item 3**Conservation Land Contribution****A. Subdivision of the Land to provide for the Conservation Land Contribution**

The Developer must, at its cost:

- (a) obtain any Approvals necessary to create one or more separate lots for the Conservation Land; and
- (b) prepare a Plan of Subdivision to create one or more separate lot(s) for the Conservation Land; and
- (c) provide Council with the Plan of Subdivision for its approval, acting reasonably, prior to lodging the Plan of Subdivision for registration at NSW-LRS.

B. Dedication or transfer of the Conservation Land

- (a) The Developer must dedicate the Conservation Land to Council free of any trusts, estates, interests, covenants and Encumbrances prior to or in conjunction with the issue of the Subdivision Certificate to create the 95th Residential Development Lot, but not more than 40 Business Days before that date, and after completion of the Conservation Area Works in accordance with Item A.
- (b) The parties acknowledge and agree that the requirement to dedicate the Conservation Land in accordance with Item 3 of Schedule 3 is a restriction on the issue of the relevant Subdivision Certificate for the Proposed Development within the meaning of section 6.15(1)(d) of the Act.



- (c) Upon receipt of Council's approval under Item 3A of this Schedule 3, the Developer must do all things necessary to enable registration of the dedication or transfer of the Conservation Land to Council.
- (d) The Conservation Land will be taken to have been dedicated to Council when:
 - (i) the Council is given:
 - A. a Clearance Certificate that is valid at the time of dedication of the Conservation Land, or
 - B. the Foreign Resident Capital Gains Withholding Amount in respect of the Conservation Land, and
 - (ii) One of the following has occurred:
 - A. a deposited plan is registered in the register of plans held with the Registrar-General at Land Registry Services - NSW that dedicates the Conservation Land as a public reserve or drainage reserve under the *Local Government Act 1993* (NSW), or
 - B. the Council is given evidence that a transfer of the Conservation Land to the Council has been effected by means of electronic lodgement and registration through PEXA or another ELNO.

Council must do all things reasonably necessary to assist the Developer in complying with its obligations under this clause including signing any necessary documents to authorise the transfer or dedication at the Developer's cost.

- (e) The Developer must meet all costs associated with the dedication of the Conservation Land including any administrative and legal costs incurred by Council in relation to that dedication.
- (f) The Developer will pay all rates and taxes owing in respect of the Conservation Land up to and including the date that the Developer dedicates or transfers the Conservation Land to Council.

C. Acquisition of Conservation Land

- (a) The Developer must act in good faith to provide the Conservation Land Contribution.
- (b) If the Developer does not provide the Conservation Land Contribution by the time required under clause B.(a) of Item 3 of Schedule 3, Council in its discretion may acquire and the Developer consents to Council acquiring the Conservation Land compulsorily for the amount of \$1 without having to follow the pre-acquisition procedure under the *Land Acquisition (Just Terms) Compensation Act 1991* (NSW).
- (c) Clause C.(b) in Item 3 of Schedule 3 constitutes an agreement for the purposes of section 30 of the *Land Acquisition (Just Terms) Compensation Act 1991* (NSW) and the parties acknowledge and agree that they have agreed on all relevant matters concerning the compulsory acquisition.
- (d) If, as a result of the acquisition referred to in clause C.(b) in Item 3 of Schedule 3, Council is required to pay compensation to any person other than the Developer, the Developer must reimburse Council that amount within 10 Business Days of receiving a written request to do so.
- (e) The Developer indemnifies and keeps indemnified Council against all Claims made against Council as a result of any acquisition by Council of the whole or any part of the Conservation Land or any interest in the Conservation Land in accordance with the terms of this clause.
- (f) The Developer must promptly do all things necessary, and consents to Council doing all things necessary to give effect to this clause, without limitation.



Item 4 Monetary Contribution

A. Monetary Contribution

- (a) The Council and Developer acknowledge and agree that the Monetary Contribution comprises the sum of the Portion 1 Contribution and Portion 2 Contribution set out in the table in paragraph (b) below) and is provided for the purposes of the ongoing management of the Conservation Land in accordance with the VMP.
- (b) The Developer agrees to provide the Monetary Contribution to Council in accordance with the timing set out in the table below:

Contribution	Monetary Contribution Amount	Timing
Portion 1 Contribution	The sum of \$700,000.	Prior to or simultaneously with the transfer of the Conservation Land to Council, and no later than the issue of the Subdivision Certificate to create the 95 th Residential Development Lot.
Portion 2 Contribution	The sum of \$700,000, indexed between the date of this deed and the date of payment in accordance with clause B of Item 4 of Schedule 3.	The date 5 years after the date of transfer or dedication of the Conservation Land to Council.

B. Adjustment of Monetary Contribution at Payment

- (a) The Portion 2 Contribution must be adjusted, at the time of payment, by multiplying the applicable base sum by an amount equal to the Current CPI divided by the Base CPI.
- (b) For the purposes of this clause B of Item 4 of this Schedule 3, the Current CPI is:
 - (i) if the Monetary Contribution is paid between 1 January and 30 June (inclusive) in any calendar year – the CPI number for the most recent quarter ending within that period which precedes the date of payment; and
 - (ii) if the Monetary Contribution is paid between 1 July and 31 December (inclusive) in any calendar year – the CPI number for the most recent quarter ending within that period which precedes the date of payment.

C. Bank Guarantee as security for Portion 2 Contribution

- (a) To secure performance of the payment of Portion 2 Contribution of the Monetary Contribution, the Developer must provide the Bank Guarantee on the date the Portion 1 Contribution is paid to Council.
- (b) The Bank Guarantee is to be for an amount equal to the Portion 2 Contribution.
- (c) The Bank Guarantee must:
 - a. name the Council as the relevant beneficiary; and



b. have an expiry date no earlier than six months after the date on which payment of the Portion 2 Contribution is due under clause A of Item 4 of Schedule 3.

(d) Council may call upon the Bank Guarantee immediately if the Developer does not pay the Portion 2 Contribution on the date it is due under clause A of Item 4 of Schedule 3.

(e) If the Developer has paid the Portion 2 Contribution, Council will promptly return the Bank Guarantee to the Developer.

D. Interest for late payment of Monetary Contribution

(a) If the Developer fails to pay a portion of the Monetary Contribution in accordance with the timing set out in the table at clause A of Item 4 of Schedule 3, the Developer must also pay to Council interest at a rate of 2% above the loan reference rate charged by the Commonwealth Bank of Australia from time to time in relation to the applicable portion.

(b) Interest is payable on the daily balance of amounts due from the due date for payment of those amounts until all outstanding amounts (including interest on those amounts) have been paid to the Council.



Schedule 4 - Address for service and Notices

Item 1 Address for service

Council	
Contact	Senior Strategic Planner - Growth & Infrastructure
Address	116 Adelaide Street, Raymond Terrace NSW 2324
Email	Developmentcontributions@portstephens.nsw.gov.au
Developer	
Contact	Managing Director
Address	1 Dickson Road, Loxford NSW 2326
Email	james@mccloygroup.com.au

Item 2 Time for doing acts

- A. If:
 - (a) the time for doing any act or thing required to be done; or
 - (b) a notice period specified in this deed, expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.
- B. If any act or thing required to be done is done after 5pm on the specified day, it is taken to have been done on the following Business Day.

Item 3 Notice provisions

- A. Any notice, demand, consent, approval, request or other communication (Notice) to be given under this deed must be in writing and must be given to the recipient at its Address for Service by being:
 - (a) hand delivered;
 - (b) sent by prepaid ordinary mail within Australia; or
 - (c) sent by email.
- B. A Notice is taken to have been given at the time stated in column 4, in relation to the method of giving the Notice stated in column 2 below, depending on the timing of delivery if relevant as set out in column 3 of the table below:

Ref	Method of giving notice	Timing of delivery	When the notice is taken to be given
1	Hand delivery	If delivery occurs after 5pm New South Wales time on a Business Day or at any time on a day	The next Business Day



		which is not a Business Day	
		If delivery occurs before 5pm New South Wales time on a Business Day.	On the date of delivery.
2.	Prepaid ordinary mail within Australia	N/A	On the date that is 4 Business Days after the date of posting.
3.	Email	If the email is sent before 5pm New South Wales time on a Business Day, and the sender does not receive a delivery failure notice.	On the date of sending.
		If the email is sent after 5pm New South Wales time on a Business Day or on a day that is not a Business Day.	On the next Business Day after the email is sent.



EXECUTED AS A DEED

Date:

Executed by PORT STEPHENS COUNCIL pursuant to s377 of the Local Government Act 1993:

Signature of General Manager

Signature of Witness

Name of General Manager (print)

Name of Witness (print)

Executed by McCloy Kings Hill Pty Ltd ACN 652 158 202 in accordance with Section 127 of the *Corporations Act 2001*

Signature of director

Signature of director/company secretary
(Please delete as applicable)

Name of director (print)

Name of director/company secretary (print)
(Please delete as applicable)

Explanatory Note

Port Stephens Council ABN 16 744 377 876

and

McCloy Kings Hill Pty Ltd ACN 652 158 202

Draft Planning Agreement

Environmental Planning & Assessment Act 1979 (NSW), section 7.4
Environmental Planning and Assessment Regulation 2021 (NSW), section 205

Introduction

The purpose of this explanatory note is to provide a plain English summary to support the notification of the draft planning agreement (**Planning Agreement**) prepared under Subdivision 2 of Division 7.1 of Part 7 of the *Environmental Planning and Assessment Act 1979 (NSW)* (**Act**).

This explanatory note has been prepared having regard to the Planning Agreements Practice Note and its contents have been agreed by the parties.

Parties to the Planning Agreement

The parties to the Planning Agreement are Port Stephens Council ABN 16 744 377 876 (**Council**) and McCloy Kings Hill Pty Ltd ACN 652 158 202 (**Developer**).

Description of the Subject Land

The Planning Agreement applies to:

- Lot 32 in Deposited Plan 554875; and
- Lot 2 in Deposited Plan 37430,

known as 514 Newline Road, Kings Hill and 587 Newline Road, Raymond Terrace (**Subject Land**).

Description of the Proposed Development

The Developer is seeking to subdivide the Subject Land by way of a two into 97 lot staged Torrens title subdivision and provide associated infrastructure in accordance with the Development Consent granted to Development Application DA 16-2013-599 which was granted by Council on 8 July 2024 (**Proposed Development**). The Developer has made an offer to Council to enter into the Planning Agreement in connection with the Proposed Development.

An indicative plan of the Proposed Development is at the end of this explanatory note.

Summary of Objectives, Nature and Effect of the Planning Agreement

The Planning Agreement provides that the Developer will make the following contributions:

- the Developer will carry out the Conservation Area Works on the Conservation Land in accordance with the Vegetation Management Plan (VMP) and the Development Consent and Schedule 3 to the Planning Agreement;
- the dedication of the Conservation Land to Council free of any encumbrances; and
- two monetary contributions of \$700,000 each. The first is not subject to indexation and is payable prior to or simultaneously with the transfer of the Conservation Land to Council, and no later than the

ITEM 4 - ATTACHMENT 2 EXPLANATORY NOTE.

issue of the Subdivision Certificate to create the 95th Residential Development Lot. The second contribution is subject to indexation and is payable 5 years after the date of dedication of the Conservation Land to Council.

The Developer is required provide a \$700,000 bank guarantee to secure payment of the second monetary contribution in accordance with Schedule 3 of the Planning Agreement.

The objective of the Planning Agreement is to secure land as an ecological offset for impacts of the Proposed Development including securing its restoration as a native eco-system and ongoing management in perpetuity.

Assessment of Merits of Planning Agreement**The Public Purpose of the Planning Agreement**

In accordance with section 7.4(2) of the Act, the Planning Agreement has the public purpose of the conservation or enhancement of the natural environment.

The Council and the Developer have assessed the Planning Agreement and both hold the view that the provisions of the Planning Agreement provide a reasonable means of achieving the public purpose set out above. This is because it will ensure that the Developer provides for the conservation or enhancement of the natural environment and provides for funding of recurrent expenditure for the ongoing management of the Conservation Land in perpetuity.

How the Planning Agreement promotes the Public Interest

The Planning Agreement promotes the public interest by promoting the following objects of the Act:

- promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources (section 1.3(a));
- to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment (section 1.3(b)); and
- to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats (section 1.3(e)).

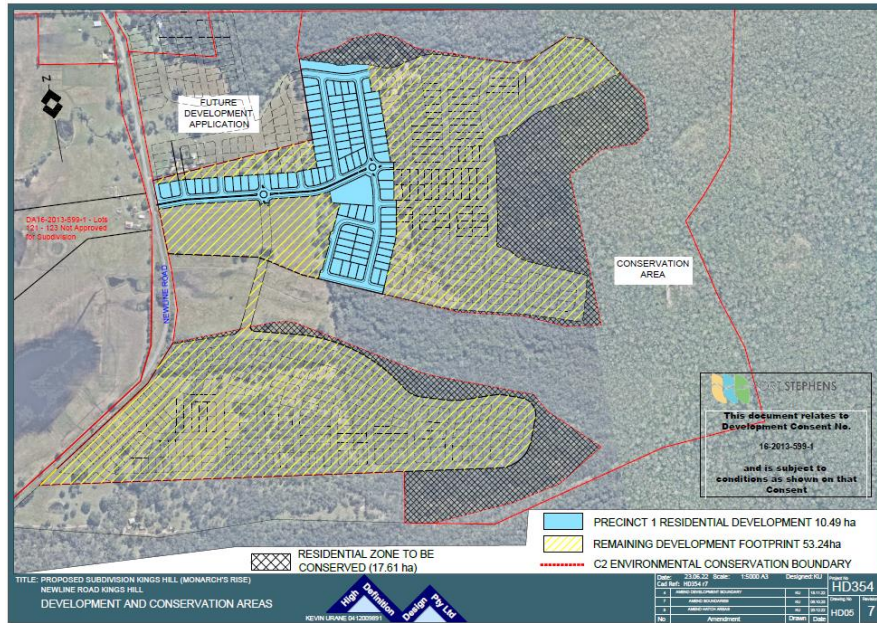
The Planning Agreement ensures that the Developer provides for the conservation or enhancement of the natural environment and provides for funding of recurrent expenditure for the ongoing management of the Conservation Land in perpetuity.

Requirements relating to Construction, Occupation and Subdivision Certificates

The Planning Agreement requires the Developer to dedicate the Conservation Land and to pay Portion 1 of the Monetary Contribution prior to the issue of a Subdivision Certificate to create the 95th Residential Development Lot.

ITEM 4 - ATTACHMENT 2 EXPLANATORY NOTE.

Indicative Plan of the Proposed Development



ITEM NO. 5

FILE NO: 25/123003
EDRMS NO: PSC2025-01675

VOLUNTARY PLANNING AGREEMENT - AGL - TOMAGO BATTERY ENERGY STORAGE SYSTEM

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Place the draft Voluntary Planning Agreement (**ATTACHMENT 1**) between Council and AGL Macquarie Pty Limited, together with the accompanying explanatory note (**ATTACHMENT 2**) on public notice for a period of 28 days in accordance with the Environmental Planning and Assessment Regulation 2021.
- 2) Should no amendments be required, approve the Voluntary Planning Agreement and explanatory note as notified for execution.

BACKGROUND

The purpose of this report is to provide the draft Voluntary Planning Agreement (VPA) (**ATTACHMENT 1**) between Council and AGL Macquarie Pty Limited (the Developer), together with the accompanying explanatory note (**ATTACHMENT 2**) to Council for consideration prior to public notification.

The draft VPA relates to State Significant Development (SSD) consent SSD-57107216, granted on 8 November 2024 by the Minister for Planning and Public Spaces (the Minister) for the construction of the Tomago Battery Energy Storage System.

The Minister has imposed a condition that requires Council and the Developer to enter into a VPA with a focus on funding community enhancement in the area surrounding the development.

Under the draft VPA, the Developer will provide Council with:

- \$200,000 payment upon registration on the National Energy Market; and
- Annual payments of \$200 per MW of installed capacity (estimated at \$100,000 per annum plus inflation) for 20 years or until battery storage operations cease, whichever is the sooner.

The draft VPA will result in Council receiving an estimated \$2.7 million by 2045.

ORDINARY COUNCIL - 28 OCTOBER 2025

The draft VPA enables Council to utilise this funding for community enhancement projects within the local area. This could include projects such as shared pathway connections and youth engagement and workforce development programs in Raymond Terrace.

If Council and the Developer do not enter into a VPA prior to 28 November 2025 the condition of the development consent requires the Developer to instead provide Council with:

- Annual contributions payments to Council of \$200 per MW of installed capacity (estimated at \$100,000 per annum) for 20 years or until operations cease, whichever is the sooner.

Receiving this funding as development contributions limits the expenditure to projects identified within Council’s Local Infrastructure Contributions Plan.

This outcome would result in Council receiving an estimated \$2 million of contributions by 2045 instead of \$2.7 million under the draft VPA.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2025-2029
Housing, tourism & economy	Develop and implement Council's key planning documents

FINANCIAL/RESOURCE IMPLICATIONS

The payments to be made by the Developer, as detailed within Schedule 1 of the draft VPA (**ATTACHMENT 1**), allow for the funding of community enhancement projects within the local area surrounding the development including Raymond Terrace.

The draft VPA includes provisions that ensure the Developer is responsible for the legal costs and disbursements associated with preparing the agreement.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	No		
Reserve Funds	No		
Developer Contributions (\$7.11)	No		
External Grants	No		
Other	Yes	\$2,700,000	Approximate total monetary contribution proposed under the draft VPA

LEGAL, POLICY AND RISK IMPLICATIONS

The draft VPA includes provisions to manage any risks associated with entering into the agreement.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that a delay in executing the draft VPA will result in Council receiving less funding.	Medium	Adopt the recommendations.	Yes
There is a risk that should the Developer fail to meet their obligations under the draft VPA, Council would need to enforce the draft VPA.	Medium	Adopt the recommendations.	Yes

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

The draft VPA has been prepared in accordance with Section 7.4 of the EP&A Act. The draft VPA will be publicly notified in accordance with Section 7.5 of the EP&A Act.

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

Public notice will be undertaken in accordance with Section 204 of the EP&A Regulation. An explanatory note (**ATTACHMENT 2**), has been prepared in accordance with Section 205 of the EP&A Regulation and will be notified with the draft VPA.

NSW Government planning agreement practice notes (practice notes)

The draft VPA has been prepared in accordance with the practice notes.

The practice notes recommend that planning agreements include security to minimise financial risk for Councils and help ensure developers satisfy their obligations. Security can include requiring financial security such as a bank guarantee and/or registering the planning agreements on the land title.

Under the draft VPA, the Developer is required to register the planning agreement on the land titles following execution. The draft VPA does not include provision for a bank guarantee.

In the event the Developer fails to meet their obligations under the draft VPA, Council would be required to enforce compliance with the agreement. Enforcement may range from a letter of demand through to Court proceedings.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The draft VPA will allow for the delivery of community enhancement projects within the area surrounding the Tomago Battery Energy Storage System. These projects may include road upgrades and maintenance, environmental projects, community projects or projects for any other public purpose. Local projects and programs could include:

- Supporting the work of existing and future community organisations in Raymond Terrace.
- Youth and workforce development programs in partnership with businesses in Tomago.
- Shared pathways around Hunter River High School, Heatherbrae.
- Placemaking projects in Raymond Terrace.
- Homelessness support programs in Raymond Terrace.

COMMUNICATION AND ENGAGEMENT

Council's Communication and Engagement Strategy uses the IAP2 Framework to identify the level of engagement undertaken. An explanation for each level is shown below.

INFORM	To provide the public with balanced and objective information to assist them in understanding the problems, alternatives, opportunities and/or solutions.
CONSULT	To obtain public feedback on analysis, alternatives and/or decisions.
INVOLVE	To work directly with the public throughout the process to ensure that public concerns and aspirations are consistently understood and considered.
COLLABORATE	To partner with the public in each aspect of the decision including the development of alternatives and the identification of the preferred solution.
EMPOWER	To place final decision-making and/or developed budgets in the hands of the public.
	No external communications and engagement are required for this report.

The following communication and engagement applies to this report.

External communications and engagement

CONSULT	The draft VPA will be publicly notified through Council's website and made available for inspection by the public for 28 days.
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Internal communications and engagement

Consultation has been undertaken by Strategy and Environment Section with:

- Governance Section.
- Financial Services Section.
- Assets Section.
- Communications and Customer Experience Section.
- Development and Compliance Section.

OPTIONS

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

ATTACHMENTS

- 1) Draft Voluntary Planning Agreement. [↴](#)
- 2) Explanatory Note. [↴](#)

COUNCILLORS' ROOM/DASHBOARD

Nil.

TABLED DOCUMENTS

Nil.



Voluntary Planning Agreement for Tomago Battery Energy Storage System Project

AGL Macquarie Pty Limited ABN 18 167 859 494

Port Stephens Council ABN 16 744 377 876

Version: 1

Brisbane | Sydney | Canberra

Level 11, 66 Eagle Street Brisbane QLD 4000 GPO Box 1855 Brisbane QLD 4001 T +61 7 3233 8888 F + 61 7 3229 9949

mccullough.com.au info@mccullough.com.au ABN 42 721 345 951

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Voluntary Planning Agreement for Tomago Battery Energy Storage System Project

Dated

Parties

Developer **AGL Macquarie Pty Limited ABN 18 167 859 494**

of Level 24, 200 George Street, Sydney, NSW 2000

Council **Port Stephens Council ABN 16 744 377 876**

of 116 Adelaide Street, Raymond Terrace NSW 2324

Background

- A The Developer made the VPA Offer to Council to enter into this Agreement.
- B The Developer was granted the Development Consent by the delegate of the Minister for Planning and Public Spaces under section 4.38 of the Act, for the carrying out of the Development.
- C Condition A14 of the Development Consent requires that the Developer must enter into this Agreement with Council in accordance with Division 7.1 of Part 7 of the Act and the terms of the VPA Offer.
- D The terms of the VPA Offer are summarised in Part 1 of Appendix 3 of the Development Consent and require the Developer to make Development Contributions to Council.
- E The parties enter into this Agreement to give effect to the requirements of the Development Consent and the terms of the VPA Offer.

Agreed terms

1 Definitions and interpretation

1.1 Definitions

In this Agreement the following definitions apply:

Term	Definition
Act	means the <i>Environmental Planning and Assessment Act 1979</i> (NSW).
Agreement	means this voluntary planning agreement.

Term	Definition
Business Day	means a day that is not a Saturday, Sunday or public holiday in NSW.
Council	Port Stephens Council ABN 16 744 377 876.
CPI	means the published Consumer Price Index (Sydney – All Groups) as published by the Australian Bureau of Statistics, or if that index is no longer published, then any other index which, in the reasonable opinion of the Council, is a similar index.
Department	means the NSW Department of Planning, Housing and Infrastructure.
Developer	means AGL Macquarie Pty Limited ABN 18 167 859 494
Developer's Land	means the Land that is owned by the Developer, specifically Part Lot 5 and Lot 6 in Deposited Plan 1286735
Development	means the development known as the Tomago Battery Energy Storage System Project as authorised by the Development Consent.
Development Consent	means the Development Consent in respect of the State Significant Development application number SSD 57107216 granted by the delegate of the Minister for Planning and Public Spaces on 8 November 2024.
Development Contributions	means a contribution made by the Developer under this Agreement, detailed in Schedule 2.
Dispute	means a dispute about the terms and operations of this Agreement.
Explanatory Note	means the explanatory note required by clause 205 of the Regulation.
Force Majeure Event	means an event preventing the Developer's operation of the Development which is outside of the Developer's reasonable control including, but not limited to, fire, storm, flood, drought, earthquake, failure of major dam, explosion, war, invasion, rebellion, sabotage, epidemic, labour dispute, failure or delay in transportation, act or omission (including laws, regulations, disapprovals or failures to approve) of any third person (including, but not limited to, subcontractors, customers, governments or government agencies).
Grants Program	means the Tomago BESS Project Community Grants Program which is run independently by the Developer and is in no way connected to the obligations or matters under clauses 5, 6 or 7 of this Agreement.
GST	has the meaning given to that term in the GST Act.
GST Act	means the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
Input Tax Credit	has the meaning given to that term in the GST Act.

Term	Definition
Joint Venture Operator	has the meaning given to that term in the GST Act.
Land	means the land to which the Development Consent relates, as set out in Schedule 3.
Minister	means the Minister administering the Act.
Operations	means the operation of the Development, but does not including commissioning (as defined in the Development Consent), trials of equipment or the use only of temporary facilities (as defined in the Development Consent).
Party	means a party to this Agreement, including their successors and assigns.
Progressive or Periodic Supply	means a Taxable Supply that satisfies the requirements of section 155-6 GST Act.
Public Purpose	means any purpose that benefits the public or a section of the public, including but not limited to a purpose specified under section 7.4(2) of the Act.
Recipient	has the meaning given to that term in the GST Act.
Regulation	means the <i>Environmental Planning and Assessment Regulation 2021</i> (NSW).
Representative Member	has the meaning given to that term in the GST Act.
Supplier	means the entity making the Supply.
Supply	has the meaning given to that term in the GST Act.
Tax Invoice	has the meaning given to that term in the GST Act.
Taxable Supply	has the meaning given to that term in the GST Act.
VPA Offer	means the Developer's offer to enter into a voluntary planning agreement with Council with respect to the Development, dated 30 August 2024.

1.2 Interpretation

In this document:

- (a) a singular word includes the plural and vice versa;
- (b) a word which suggests one gender includes the other gender;
- (c) a reference to a clause, schedule, annexure or party is a reference to a clause of, and a schedule, annexure or party to, this document and references to this document include any schedules or annexures;
- (d) a reference to a party to this document or any other document or agreement includes the party's successors, permitted substitutes and permitted assigns;
- (e) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;

- (f) a reference to a document or agreement (including a reference to this document) is to that document or agreement as amended, supplemented, varied or replaced;
- (g) a reference to this document includes the agreement recorded by this document;
- (h) a reference to legislation or to a provision of legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (i) if any day on or by which a person must do something under this document is not a Business Day, then the person must do it on or by the next Business Day.
- (j) a reference to a person includes a corporation, trust, partnership, unincorporated body, government and local authority or agency, or other entity whether or not it comprises a separate legal entity; and
- (k) a reference to 'month' means calendar month.

2 Application of the Agreement

This Agreement applies to:

- (a) the Land; and
- (b) the Development.

3 Planning agreement under the Act

This Agreement constitutes a planning agreement within the meaning of section 7.4(1) of the Act.

Schedule 1 demonstrates how this Agreement complies with each relevant requirement under Division 7.1, Part 7 of the Act.

4 Application of Sections 7.11, 7.12 and Division 7.1, Subdivision 4

For the purposes of section 7.4(3)(d) of the Act, this Agreement does not exclude the application of sections 7.11, 7.12 and Division 7.1, Subdivision 4 of the Act to the Development.

5 Provision of Development Contributions

5.1 The Development Contributions

Subject to this Agreement, the Developer will pay to Council the Development Contributions which are to be made:

- (a) for the public purpose specified by column 1 of Schedule 2;
- (b) in the amount referred to in column 2 of Schedule 2; and
- (c) at the times referred to in column 3 of Schedule 2.

5.2 Adjustment for CPI

The Development Contributions are to be adjusted according to CPI as follows:

$$DCP = \frac{DC \times A}{B}$$

where:

- (a) DC equals the particular Development Contribution payment amount required to be paid as per column 3 of Schedule 2;
- (b) DCP equals the actual Development Contribution payment amount payable at the time the particular payment is made;
- (c) A equals the most recent CPI published before the date the payment is due to be made; and
- (d) B equals the most recent CPI published before the date of the VPA Offer.

5.3 Notification

- (a) The Developer is to promptly notify the Council in writing of:
 - (i) the date of registration of the Development on the National Electricity Market;
 - (ii) the Developer's receipt of all approvals required to commence the Development promptly and no later than 20 Business Days after receipt of the last of such approvals;
 - (iii) the date of commencement of construction of the Development as notified to the Department in accordance with the Development Consent, within 10 Business Days after notification is provided to the Department;
 - (iv) the installed capacity of the Development, within 10 Business Days after the installed capacity is known;
 - (v) the date of proposed commencement of Operations, once that date is known by the Developer, and the actual date of commencement of Operations no later than 10 Business Days after the commencement of Operations;
 - (vi) the proposed date on which Operations will cease (if earlier than the 20th anniversary of the commencement of Operations), once that date is known by the Developer and the actual date of the cessation of Operations and no later than 10 Business Days after the date of cessation of Operations; and
 - (vii) any changes to the installed capacity, as soon as reasonably possible.
- (b) Nothing in this clause impacts, detracts from, or otherwise affects the Developer's obligation to make Development Contributions to the Council under this Agreement.

6 Payment of Development Contributions

6.1 Time of payment

- (a) A Development Contribution is made for the purposes of this Agreement when cleared funds are deposited by means of electronic transfer into a bank account nominated by Council.
- (b) If a Force Majeure Event has been in effect for a continuous period exceeding 90 days in the year preceding the payment date, the Development Contributions (under Item 2 in Schedule 2 only) are to be reduced on a pro-rata basis by the number of months that the Force Majeure Event occurred as notified to Council.

6.2 Intention to make payment

- (a) The Developer must give Council not less than ten (10) Business Days written notice of:
 - (i) its intention to pay a Development Contribution; and
 - (ii) the amount proposed to be paid.
- (b) Following receipt of the notice under clause 6.2(a) Council may request supporting documents evidencing the calculation of the Development Contribution. The Developer must give the documents requested within five (5) Business Days of receipt of this request from Council. If Council does not agree with the calculation of a Development Contribution contained in the Developer's notice under clause 6.2(a), it may issue a notice to the Developer to that effect, setting out Council's calculation of the Development Contribution and its reasoning.
- (c) The Developer must notify Council within ten (10) Business Days of receiving Council's notice under clause 6.2(b), whether it agrees with Council's calculations, and provide its reasons if it does not agree with the calculations.
- (d) On receipt of the notice under clause 6.2(c), Council may either accept the Developer's calculation or notify a Dispute under clause 11.2.

6.3 Requirement for invoice

- (a) Council must upon receiving the Developer's notice under clause 6.2, or, if there is disagreement regarding the amount of a Development Contribution, upon resolution of that disagreement, provide the Developer with a Tax Invoice for the amount of the Development Contribution that the Developer proposes to pay.
- (b) The Developer:
 - (i) is not required to pay a Development Contribution; and
 - (ii) will not be in breach of this Agreement if it fails to pay a Development Contribution at the time required by this Agreement,

if Council fails to provide the Developer with a Tax Invoice for the amount proposed to be paid by the Developer, provided the Developer has provided the notice required by clause 6.2(a).

7 Application of the Development Contributions

7.1 Use of Development Contributions for public purposes

- (a) Upon receipt of payment, Council must apply the Development Contributions to the Public Purpose noted for the Development Contribution in Schedule 2, being funding community enhancement in the area surrounding the Development, which may include, in the Council's absolute discretion (but is not limited to) road upgrades and maintenance, environmental projects and/or community projects or any other Public Purpose, including for the purpose of :
- (i) delivering community-wide benefits from the Development.
 - (ii) supporting the work of existing and future community organisations.
 - (iii) encouraging local community innovation and support for issues of community significance.
 - (iv) developing strong relations with the local and wider communities.

8 Developer's Grants Program

8.1 Council recommendations

- (a) The parties agree that Council may, at its discretion, offer comments or recommendations regarding the direction of future grants payments to be made by the Developer directly to community projects or groups under the Grants Program.
- (b) The Developer can take into consideration any comments and recommendations made by Council pursuant to clause 8.1(a).
- (c) Any comments or recommendations provided by Council under clause 8.1(a) serve to inform the Developer about any community projects or groups that could benefit from financial contributions made through the Grants Program.
- (d) Any comments or recommendations provided by Council should be provided to the Developer in the following way:
- (i) Made by correspondence to the address provided under clause 14.17;
 - (ii) Correspondence titled - "Comments or Recommendation to the Tomago BESS Project Community Grants Program"; and
 - (iii) Provided by Council up to twice per calendar year.
- (e) For avoidance of doubt, the Developer shall retain complete control and discretion over the administration of the Grants Program and the associated funds at all times. This control includes, but is not limited to, decisions regarding the Grants Program and the disbursement of grant payments, and in no way will be bound by the comments or recommendations made by the Council.
- (f) The parties acknowledge that grants payments pursuant to the Grants Program are not Development Contributions for the purposes of this Agreement, and this clause 8 is

included in this Agreement to document Council's ability to provide comments and recommendations only.

9 Registration of this Agreement

- (a) Within the later of:
 - (i) one month after the commencement of construction, as notified to Council in accordance with clause 5.3(a)(iii); or
 - (ii) one month after the date of the Agreement,

the Developer must, at its cost, lodge this Agreement for registration on the title to the Developer's Land pursuant to section 7.6 of the Act.
- (b) The Developer is to do such things as are reasonably necessary to enable the lodgement and registration of this Agreement to occur electronically through Property Exchange Australia Ltd or another ELNO, as defined in the participation rules as determined by the *Electronic Conveyancing National Law* as set out in the *Electronic Conveyancing (Adoption of National Law) Act 2012* (NSW), including by responding to any requests from Council in that regard within 10 Business Days.
- (c) The Developer may request that the registration of this Agreement be lifted from the title to the Developer's Land, and Council must do all things reasonably required for the Developer to release and discharge this Agreement from the title to the Developer's Land, if Council is satisfied that the Developer has paid all of the Development Contributions in accordance with this Agreement and the Developer is not in breach of this Agreement.
- (d) The Developer will pay the Council's reasonable costs and expenses incurred pursuant to this clause.

10 Enforcement

- (a) Without limiting any other remedies available to the parties, this Agreement may be enforced by either party in any court of competent jurisdiction.
- (b) If the Council reasonably considers that the Developer is in breach of any obligation under this Agreement, it may give a written notice to the Developer:
 - (i) specifying the nature and extent of the breach;
 - (ii) requiring the Developer to rectify the breach; and
 - (iii) specifying the period within which the breach is to be rectified being a period that is reasonable in the circumstances.
- (c) Despite any other provision of this Agreement, any costs incurred by the Council in remedying a breach of this Agreement may be recovered by the Council as a debt due in a court of competent jurisdiction.
- (d) For the purpose of clause 10(c), the Council's costs of remedying a breach the subject of a notice given under clause 10(b) include, but are not limited to:

- (i) the costs of the Council's employees, agents and contractors reasonably incurred for that purpose,
- (ii) all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and
- (iii) all legal costs and expenses reasonably incurred by the Council, by reason of the breach.

11 Dispute resolution

11.1 Not Commence

A party may not commence any court proceedings relating to a dispute in respect of any matter under this Agreement (**the Dispute**) unless it complies with clause 11.

11.2 Written Notice of the Dispute

A party claiming that the Dispute has arisen must give written notice to the other party specifying the nature of the Dispute.

11.3 Attempt to Resolve

On receipt of notice under clause 11.2, the parties must meet within 10 Business Days to endeavour in good faith to resolve the Dispute, and if the Dispute cannot be resolved to agree on a dispute resolution technique such as mediation, expert evaluation or other technique agreed by them.

11.4 Mediation

If the parties have not resolved the Dispute and have not agreed within 15 business days of receipt of notice under clause 11.2 (or any further period agreed in writing by them) as to:

- (a) the dispute resolution technique and procedures to be adopted;
- (b) the timetable for all steps in those procedures; and
- (c) the selection and compensation of the independent person required for such technique,

the parties must mediate the dispute in compliance with the Mediation Rules of the Law Society of New South Wales (or any replacement). The parties must request the President of the Law Society of New South Wales or the President's nominee to select the mediator and determine the mediator's remuneration.

11.5 Costs

Each Party to the dispute must pay its own costs of complying with clause 11. The parties to the Dispute must equally pay the costs of any mediation including without limitation the fees of any mediator and the cost of room hire.

11.6 Court proceedings

If the Dispute is not resolved within 42 days after the notice is given under clause 11.2, then any party which has complied with clause 11 may in writing terminate any dispute resolution process commenced under clause 11 and may commence court proceedings about the Dispute.

11.7 Not Use Information

The parties acknowledge the purpose of any exchange of information or documents or the making of an offer of settlement under clause 11 is to attempt to settle the Dispute. No party may use any information or documents obtained through any dispute resolution process under clause 11 for any purpose other than in an attempt to settle the Dispute.

11.8 No Prejudice

Clause 11 does not prejudice the right of a Party to institute court proceedings for urgent injunctive or declaratory relief about any matter arising out of or relating to this Agreement.

12 GST**12.1 GST exclusive**

Except under this clause, the consideration for a Supply made under or in connection with this document does not include GST.

12.2 Taxable Supply

- (a) If a Supply made under or in connection with this document is a Taxable Supply, then at or before the time any part of the consideration for the Supply is payable:
- (i) the Recipient must pay the Supplier an amount equal to the total GST for the Supply, in addition to and in the same manner as the consideration otherwise payable under this document for that Supply; and
 - (ii) the Supplier must give the Recipient a Tax Invoice for the Supply.
- (b) No additional amount shall be payable by the Council under clause (a)12.2(a) unless, and only to the extent that, the Council (acting reasonably and in accordance with the GST Act) determines that it is entitled to an Input Tax Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.

12.3 Later GST change

For clarity, the GST payable under clause 12.2 is correspondingly increased or decreased by any subsequent adjustment to the amount of GST for the Supply for which the Supplier is liable, however caused.

12.4 Reimbursement or indemnity

If either party has the right under this Agreement to be reimbursed or indemnified by another party for a cost incurred in connection with this Agreement, that reimbursement or indemnity excludes any GST component of that cost for which any Input Tax Credit may be claimed by the party being reimbursed or indemnified, or by its Representative Member, Joint Venture Operator or other similar person being entitled to put the Tax Credit (if any).

12.5 Warranty that Tax Invoice is issued for a Taxable Supply

Where a Tax Invoice is given by the Supplier, which includes an amount in respect of GST, the Supplier warrants that the Supply to which the tax invoice relates is a Taxable Supply and that it will remit the GST (as stated on the Tax Invoice) to the Australian Taxation Office.

12.6 Progressive or Periodic Supplies

Where a Supply made under or in connection with this document is a Progressive or Periodic Supply, clause 12.2 applies to each component of the Progressive or Periodic Supply as if it were a separate Supply.

13 Explanatory Note to the Agreement

Under clause 205 of the Regulation, the parties agree that the Explanatory Note is not to be used to assist in construing this Agreement.

14 General

14.1 Amendments

This document may only be amended by written agreement between all parties.

14.2 Relationship of the Parties

- (a) Nothing in this Agreement constitutes a partnership between the parties, nor does it constitute one party to be the agent of the other.
- (b) A party cannot in any way or for any purpose bind another party or contract in the name of another party.

14.3 Assignment and novation

- (a) Subject to clause 14.3(c), the Developer may (at its discretion) sell, transfer, assign or novate to any of the following (**New Party**) the whole or a part of an interest in this Agreement, or the Land:
 - (i) the purchaser of the whole or an interest in the Developer's Land or the Development;
 - (ii) any subsidiary, parent company or related body corporate (as provided in the *Corporations Act 2001* (Cth)) of the Developer.
- (b) If requested by the Developer, Council will sign all documents and undertake all acts reasonably necessary to give effect to the Developer's assignment of its rights or novation of its rights and obligations under this document.
- (c) Before any assignment or novation referred to in clause 14.3(a) the Developer is to procure the execution by the New Party of a deed of assumption in favour of Council in which the New Party covenants to be bound by this Agreement as if it were a party to this Agreement.
- (d) The Developer must pay the reasonable cost of Council related to the compliance by Council with Council's obligations under clause 14.3.

14.4 Counterparts

- (a) This document may be signed in any number of counterparts. All counterparts together make one instrument.

- (b) This Agreement commences when all counterparts have been signed and exchanged.
- (c) The Parties are to insert the date when this Agreement commences on the front page and the execution page

14.5 No merger

The rights and obligations of the parties under this Agreement do not merge on completion of any transaction contemplated by this Agreement.

14.6 Entire agreement

- (a) This Agreement supersedes all previous agreements about its subject matter and embodies the entire agreement between the parties.
- (b) To the extent permitted by law, any statement, representation or promise made in any negotiation or discussion, has no effect except to the extent expressly set out or incorporated by reference in this Agreement.

14.7 Further assurances

Each party must do all things reasonably necessary to give effect to this Agreement and the transactions contemplated by it.

14.8 Representations and warranties

The parties represent and warrant that they have the power to enter into this Agreement and comply with their obligations under this Agreement and that entry into this Agreement will not result in the breach of any law.

14.9 Confidentiality

- (a) The parties agree that the terms of this Agreement are not confidential and that this Agreement may be treated as a public document and exhibited or reported without restriction by either party.
- (b) Any information disclosed by a party under this Agreement:
 - (i) must be kept confidential unless it is already available in the public domain; and
 - (ii) may only be used to attempt to resolve a dispute.

14.10 No waiver

- (a) The failure of a party to require full or partial performance of a provision of this document does not affect the right of that party to require performance subsequently.
- (b) A single or partial exercise of or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy.
- (c) A right under this Agreement may only be waived in writing signed by the party granting the waiver, and is effective only to the extent specifically set out in that waiver.



14.11 Governing law and jurisdiction

- (a) New South Wales law governs this Agreement.
- (b) Each party irrevocably submits to the exclusive jurisdiction of the New South Wales courts and courts competent to hear appeals from those courts.

14.12 Severability

A clause or part of a clause of this Agreement that is illegal or unenforceable may be severed from this document and the remaining clauses or parts of the clause of this document continue in force.

14.13 No fetter

Nothing in this Agreement is to be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing is to be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

14.14 Costs

The Developer is to pay the Council’s costs of preparing, negotiating, executing, registering, releasing any registration of, and stamping (if required) this Agreement (capped at \$15,000 plus GST).

14.15 Notice

- (a) A notice, consent or communication under this Agreement is only effective if it is:
 - (i) in writing;
 - (ii) addressed to the person to whom it is to be given; and
 - (iii) given as follows:
 - (A) delivered by hand to that person’s address;
 - (B) sent by prepaid mail to that person’s address; or
 - (C) sent by email to that person’s email address and the sender receives an email receipt or other written confirmation from the recipient to the sender which indicates that the email was received at the email address of the recipient.

14.16 When is notice given

A notice, consent or communication given under clause 14.15 is given and received on the corresponding day set out in the table below. The time expressed in the table is the local time in the place of receipt.

If a notice is	It is given and received on
Delivered by hand or sent by email	(a) that day, if delivered by 5.00pm on a Business Day; or (b) the next Business Day, in any other case.

Sent by post	(a) three Business Days after posting, if sent within Australia; or (b) seven Business Day after posting, if sent to or from a place outside Australia.
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14.17 Address for notices

A person’s address and email number are those set out below, or as the person notifies the sender:

Name	AGL Macquarie Pty Limited ABN 18 167 859 494
Attention	Hamid Shilani
Address	Level 24, 200 George Street, Sydney NSW 2000
Email	hshilani@agl.com.au

Name	Port Stephens Council ABN 16 744 377 876
Attention	Senior Strategic Planner - Growth & Infrastructure
Address	PO Box 42, Raymond Terrace, NSW, 2324
Email	Developmentcontributions@portstephens.nsw.gov.au

14.18 Electronic Execution

- (a) Each Party:
 - (i) consents to this Agreement being signed by electronic signature or in wet ink;
 - (ii) agrees that if a party signs by electronic signature, it must do so by the methods set out in clause 14.18(c);
 - (iii) agrees that those methods validly identify the person signing and indicates that person’s intention to sign this Agreement;
 - (iv) agrees that those methods are reliable as appropriate for the purpose of signing this Agreement, and
 - (v) agrees that electronic signing of this Agreement by or on behalf of a Party by those methods indicates that Party’s intention to be bound.
- (b) If this Agreement is signed on behalf of a legal entity, the persons signing warrant that they have the authority to sign.
- (c) For the purposes of clause 14.18(a)(ii), the methods are:
 - (d) insertion of an image (including a scanned image) of the person’s own unique signature onto the Agreement; or
 - (e) insertion of the person’s name onto the Agreement; or
 - (f) use of a stylus or touch finger or a touch screen to sign the Agreement,



provided that in each of the above cases, words to the effect of 'Electronic signature of me, [insert full name], affixed by me, or at my direction, on [insert date]' are also included on the Agreement; or

- (g) use of a reliable electronic signing platform (such as DocuSign or AdobeSign) to sign the Agreement which includes the date and the time of signing; or
- (h) as otherwise agreed in writing between the Parties.

Schedule 1

Requirements of Division 7.1 Part 7 of the Act

Subject and subsection of the Act	The planning agreement
Planning Instrument or Development Application (section 7.4(1)) The Developer has: (a) sought a change to an environmental planning instrument; (b) made, or proposes to make, a project or development application; or (c) entered into an agreement with, or is otherwise associated with, a person to whom paragraph (a) and (b) applies.	No Yes No
Description of the land to which the Agreement applies (Section 7.4(3)(a))	See definition of 'Land' in clause 1 of this Agreement.
The scope, timing and manner of delivery of contribution required by this Agreement (Section 7.4(3)(c))	See clauses 5 and 6 and Schedule 2.
Applicability of sections 7.11, 7.12 and 7.1 Subdivision 4 of the Act (Section 7.4(3)(d))	See clause 4.
Mechanism for dispute resolution (Section 7.4 (3)(f))	See clause 11.
Enforcement of this Agreement (Section 7.4 (3)(g))	See clause 9, 10 and 11
Registration of this Agreement (Section 7.4 (3)(g))	See clause 9.

Schedule 2

Development Contributions

Item	Column 1	Column 2	Column 3
	Public Purpose of Development Contribution	Development Contribution	Date for payment of Development Contribution
1	Community enhancement	\$200,000 (one-off lump sum)	Contribution to be paid upon successful registration of the Development on the National Electricity Market.
2	Community enhancement	\$200 per MW per annum of installed capacity	Contribution to be paid annually commencing on the commencement of Operations and ending on the cessation of Operations of the Development or the 20th anniversary of the commencement of Operations (whichever is earlier). For any portion of the Operations period which is less than one year, the Developer will only be required to pay its Development Contribution for that year on a proportional basis.

Schedule 3

Land

Lot	DP
5-9, 24, 25 and 28	1286735
101-104	1125747
3	808004
1201	1229590

Execution

EXECUTED as an agreement

Executed by
AGL Macquarie Pty Limited ABN 18 167 859 494 in accordance with section 127 of the *Corporations Act 2001* (Cth) by

^ Signature of Director

^ Signature of Director/Secretary

^ Name of witness (print)

^ Full name of Director/Secretary

Executed by
Port Stephens Council ABN 16 744 377 876 by its authorised delegate, pursuant to a resolution made on

^ Signature of authorised delegate

^ Signature of witness

^ Name of authorised person

^ Name of witness

^ Office held

^ Office held

Explanatory Note – Draft Voluntary Planning Agreement for the Tomago Battery Energy Storage System Project – SSD 57107216

Introduction

- 1 The purpose of this explanatory note is to provide a plain English summary to support the public notification of the draft Voluntary Planning Agreement (**Agreement**) for the Tomago Battery Energy Storage System Project, prepared in accordance with Division 7.1 of Part 7 of the *Environmental Planning and Assessment Act 1979* (NSW) (**Act**).
- 2 This explanatory note was prepared jointly by AGL Macquarie Pty Limited (**Developer**) ABN 18 167 859 494 and Port Stephens Council (**Council**) ABN 16 744 377 876 under clause 205 of the *Environmental Planning and Assessment Regulation 2021* (NSW).

Parties to the Agreement

- 3 The parties to the Agreement are the Developer and the Council.

Description of the Proposed Development

- 4 On 8 November 2024, the Developer was granted Development Consent in respect of the State Significant Development application number SSD 57107216 by the delegate of the Minister for Planning and Public Spaces. The Development Consent was granted under section 4.38 of the Act (**Development Consent**) for the construction and operation of the Tomago Battery Energy Storage System Project (**Development**).
- 5 The Development will involve a 500 megawatt (MW) and up to 2,000 MW-hour Battery Energy Storage System (**BESS**), transmission lines, a high voltage substation, temporary and permanent ancillary infrastructure.
- 6 The Development is expected to significantly benefit the State and the local community, with key benefits including:
 - (a) improved electricity network security and increased energy storage within NSW;
 - (b) alignment with Commonwealth and NSW renewable energy policy positions;
 - (c) support for increased renewable power generation during daytime peak periods, placing downward pressure on wholesale electricity prices in accordance with the Integrated System Plan;
 - (d) creation of up to 200 direct jobs during the Development construction phase, and up to six jobs during operation.
- 7 The Developer has made an Offer to Council to enter into a voluntary planning agreement with respect to the Development.

Description of the Land

- 8 The Development is located on land the subject of the Development Consent, including land that is owned by the Developer, specifically Part Lot 5 and Lot 6 in Deposited Plan 1286735 (**Land**) known as 6 and 6A Old Punt Road, Tomago.

Summary of Objectives, nature and effect of the Agreement

- 9 The Agreement requires the Developer to provide Development Contributions as detailed in Schedule 2 of the Agreement to the Council in connection with carrying out the Development and to enable the Council to use the Development Contributions for public purposes.
- 10 The Agreement provides that the Developer will pay to the Council:
- (a) a one-off lump sum payment of \$200,000, upon successful registration of the Development on the National Electricity Market; and
 - (b) an annual payment of \$200 per MW of installed capacity, commencing from the commencement of Operations and ending on the earlier of either the cessation of operations of the Development or the 20th anniversary of the commencement of operations. For any portion of the operations period that is less than one year, the Developer will only be required to pay its development contribution for that year on a proportional basis. This annual contribution amount will be adjusted in accordance with the Consumer Price Index – Sydney all Groups.

Assessment of the merits of the Agreement including the impact on the public

- 11 The Agreement will enable the Council to provide community enhancements in the area surrounding the Development, such as (but not limited to) road upgrades and maintenance, environmental projects and/or community infrastructure projects, for one or more of the following public purposes:
- (a) delivering community-wide benefits from the Development;
 - (b) supporting the work of existing and future community organisations;
 - (c) encouraging local community innovation and support for issues of community significance; and
 - (d) developing strong relations with the local and wider communities.
- 12 Under the Agreement, the Council also has the opportunity to provide comments or recommendations to the Developer on the allocation of future grant payments under AGL's Community Grant Program. These recommendations are intended to guide the Developer toward supporting community projects or groups within the Port Stephens Local Government Area that would benefit from financial contributions, thereby promoting broader community advancement.
- 13 For the above reasons the Agreement is in the public interest.

Promotion of the public interest and one or more of the objects of the Act

- 14 The Agreement requires that the Council use the Development Contributions for public purposes in accordance with section 7.4(2) of the Act, and in doing so this Agreement promotes the following objects of the Act:

- (a) the provision and co-ordination of community services and facilities; and
- (b) the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats.

Promotion of the Council’s Charter under chapter 3 LGA

- 15 The Agreement promotes elements of the Council’s charter under chapter 3 *Local Government Act 1993* (NSW) (**LGA**) in that it enables the Council:
- (a) provide effective and efficient services to meet the diverse needs of the local community in a way that provides the best possible value for residents and ratepayers;
 - (b) work with others to secure appropriate services for local community needs; and
 - (c) to properly manage, develop, protect, restore, enhance and conserve the environment of the area for which it is responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development.

Identification of the planning purpose served by the Agreement and assessment of whether the Agreement provides a reasonable means of achieving that purpose

- 16 The Agreement promotes the public interest by ensuring that an appropriate contribution is made towards the improvement of infrastructure as well as environmental, amenity or community projects within the local government area. The payment of the Development Contributions are considered a reasonable and effective means of achieving this purpose.

Interpretation of Agreement

- 17 This explanatory note is a summary only and must not be used to assist in construing the Agreement.

ITEM NO. 6

FILE NO: 25/158517
EDRMS NO: PSC2024-03481-0006

DEVELOPMENT CONTROL PLAN 2025

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Receive and note the submissions received during the exhibition period **(ATTACHMENT 2)**.
- 2) Endorse the Port Stephens Development Control Plan 2025 **(ATTACHMENT 1)**, as amended.
- 3) Repeal the Port Stephens Development Control Plan 2014.
- 4) Provide public notice that the Port Stephens Development Control Plan 2025 has been approved and that the Port Stephens Development Control Plan 2014 has been repealed in accordance with the Environmental Planning and Assessment Regulation 2021.

BACKGROUND

The purpose of this report is to advise Council of the outcome of the consultation undertaken on the draft Port Stephens Development Control Plan 2025 (DCP) **(ATTACHMENT 1)** and to seek Council endorsement to repeal and replace the current DCP.

The existing Port Stephens Development Control Plan 2014 has been the subject of a comprehensive review in order to facilitate housing. The DCP has not had a comprehensive review for over 10 years.

At its meeting on 10 June 2025, Minute No. 119 **(ATTACHMENT 3)**, Council endorsed the draft DCP for exhibition. The draft DCP was publicly exhibited for 29 days from Monday 16 June 2025 to Monday 14 July 2025, in accordance with the Environmental Planning and Assessment Regulation 2021 (NSW) (EP&A Regulation).

Council received grant funding in 2024 through the Australian Government's Housing Support Program which enabled the comprehensive review of the existing DCP and the development of a digital DCP platform.

The draft DCP seeks to address housing affordability by implementing changes to improve assessment timeframes and includes provisions for better environmental outcomes. The key outcomes resulting from the comprehensive review are:

- Rationalised controls to provide customer-focused changes that will make it more cost effective and easier to prepare simple housing applications. This includes introducing an online DCP platform with tools to facilitate ease of use.
- Changes to improve assessment timeframes for housing applications through the provision of consistent controls and clear lodgement requirements provided in the Development Application Supporting Handbook (DASH).
- New protections targeting unauthorised under scrubbing of native vegetation on large residential lots, and clearer guidance on corridors and buffer areas.

Seven submissions were received during the exhibition period. They are summarised and addressed in **(ATTACHMENT 2)**.

The draft DCP has been amended to incorporate matters raised during the exhibition period. The key changes are summarised below:

- Aircraft noise and safety – in response to a submission from the Department of Defence, minor amendments were made to better reference height limitations for development within the Williamstown RAAF Defence Aviation Area.
- Natural environment – amendments to clarify compensatory planting requirements and buffers that mitigate ecological impact, and to highlight the importance of riparian corridors on water quality.
- Stormwater management – in response to feedback received from the engineering industry, targets for water quality outcomes were amended to align with industry standards and stormwater quality control area requirements were adjusted for different soil types.
- Flooding - in response to a submission from Hunter Water Corporation, a note was added to make reference to the Medowie Floodplain Risk Management Study and Plan 2016 for development proposed in the Campvale Drain Inundation Area.

A detailed explanation of the amendments is provided within **(ATTACHMENT 4)**.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2025-2029
Housing, tourism & economy	Develop and implement Council's key planning documents

FINANCIAL/RESOURCE IMPLICATIONS

The development of the draft DCP, DASH and digital DCP platform has been fully funded by grant funding received through the Australian Government’s Housing Support Program.

There are no foreseen negative financial or resources implications for Council.

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

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
There is a risk that information requirements for applications are not clear resulting in incomplete applications, requests for further information and assessment delays.	Low	Adopt the recommendations.	Yes
There is a risk that DCP controls are hard to navigate, overly onerous, and increase the cost of new housing.	Low	Adopt the recommendations.	Yes
There is a risk that DCP controls do not adequately protect the environment or respond to sustainability trends.	Low	Adopt the recommendations.	Yes

National Housing Accord 2024

The Australian Government has agreed to a National Housing Accord with states and territories, local government, institutional investors and the construction sector to deliver 1 million well-located homes over the next 5 years. The Commonwealth will provide \$3.5 billion in payments to state, territory and local governments to support the delivery of new homes towards the National Housing Accord target. The Australian Government's Housing Support Program is part of that funding commitment and the review of the DCP received grant funding through the Housing Support Program.

Hunter Regional Plan 2041 (HRP)

The HRP identifies that Port Stephens is forecast to grow by approximately 20,000 people over the next 20 years and specifies a projected housing demand for Port Stephens of 11,100 dwellings. The HRP required Council to adopt a LHS with actions to respond to these housing targets. The draft DCP gives effect to the actions in the LHS.

The DCP is also consistent with HRP objectives to incorporate sustainable planning and resilience in planning decisions, protect biodiversity and facilitate delivery of well-located homes.

Port Stephens Local Housing Strategy (LHS)

The draft DCP is consistent with the LHS and aligns with actions to:

- Implement process improvements to better streamline assessments and reduce the cost of housing (Action 2.7).
- Amend planning controls to improve feasibility for medium density developments in centres (Action 3.2).
- Enable more efficient and sustainable development outcomes for new greenfield housing and encouraging provision of small lot housing through controls (Action 3.3).
- Consider development controls for residential flat buildings, serviced apartments and shop top housing (Action 3.5).

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

Part 3 of the EP&A Act defines the purpose of a DCP. This legislative framework has informed the content of the draft DCP. Should Council resolve to proceed with the amendment, all necessary matters would be carried out in accordance with the EP&A Act.

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

Part 2 of the Environmental Planning & Assessment Regulation 2021 provides further guidance in regard to the form, structure and subject matter of DCPs. The draft DCP has been prepared with regard for these sections. The recommendation is in accordance with the provisions of the EP&A Regulation.

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

Chapter 2 of the Biodiversity and Conservation SEPP outlines planning provisions for the regulation of clearing vegetation in non-rural areas. The draft DCP aligns with the SEPP and declares the vegetation in non-rural areas of Port Stephens to which this Chapter of the SEPP applies.

Port Stephens Local Environmental Plan 2013 (LEP)

The draft DCP has been prepared to give effect to the aims and objectives of the LEP.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The proposed amendments are considered to have positive social, environmental and economic implications. The amendments will improve access to information for the community and provide clear approval and assessment requirements. The draft DCP will facilitate increased certainty and confidence in planning processes and outcomes and facilitate housing in Port Stephens. The amendments will support improved environmental outcomes and sustainable development.

COMMUNICATION AND ENGAGEMENT

Council's Communication and Engagement Strategy uses the IAP2 Framework to identify the level of engagement undertaken. An explanation for each level is shown below.

INFORM	To provide the public with balanced and objective information to assist them in understanding the problems, alternatives, opportunities and/or solutions.
CONSULT	To obtain public feedback on analysis, alternatives and/or decisions.
INVOLVE	To work directly with the public throughout the process to ensure that public concerns and aspirations are consistently understood and considered.
COLLABORATE	To partner with the public in each aspect of the decision including the development of alternatives and the identification of the preferred solution.
EMPOWER	To place final decision-making and/or developed budgets in the hands of the public.

ORDINARY COUNCIL - 28 OCTOBER 2025

	No external communications and engagement are required for this report.
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The following communication and engagement have been conducted in the preparation of the draft DCP:

External communications and engagement

INFORM	<p>Fact sheets – proposed amendments to each chapter were identified in fact sheets and provided alongside the draft DCP on Council’s website.</p> <p>Updates on the website – the community has been kept informed at different stages of the review. The DCP page on Council’s website announced a review was taking place and the public exhibition dates, and has kept a link to the draft DCP available since the exhibition period closed as well as updates on the expected adoption date. The Public Exhibition page provided information of the dates and links to the relevant documents.</p> <p>Council Advisory Groups (Heritage, Environmental and Community Engagement) – received briefings on the project and email notification to advise of public exhibition.</p>
CONSULT	<p>The draft DCP was placed on public exhibition for 29 days, from Monday 16 June to Monday 14 July 2025 and was notified through direct email to various stakeholders and on Council’s website. Seven submissions were received, which are summarised and addressed in (ATTACHMENT 2).</p> <p>Agency consultation – Hunter Water Corporation (HWC) and the Commonwealth Department of Defence received relevant draft chapters (B3 Stormwater Management and B6 Aircraft Noise) prior to exhibition and provided feedback and guidance. A meeting was subsequently held with key HWC personnel to discuss matters raised in their submission.</p> <p>Industry engagement – included targeted engagement with the Urban Development Institute of Australia (UDIA). Consultation was held separately on multiple occasions post public exhibition to discuss matters raised in their submission.</p> <p>Targeted Development Industry Survey – a survey was distributed to the development industry including planning, engineering and ecological consultants, architects, developers and members of peak industry bodies, such as the Housing Industry Association.</p> <p>Updates on the website – an email address was provided for the community to contribute suggestions and make enquiries.</p>

Internal communications and engagement

Consultation has been undertaken by the Strategy and Environment Section with:

- Development and Compliance Section.
- Assets Section.
- Public Domain and Services Section.
- Capital Works Section.
- Communications and Customer Experience Section.
- Community Services Section.
- Governance Section.
- Organisation Support Section.

OPTIONS

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

ATTACHMENTS

- 1) Development Control Plan 2025. (Provided under separate cover) [⇒](#)
- 2) Submission table. [↓](#)
- 3) Council Minute No.119. [↓](#)
- 4) Explanation of Amendments. [↓](#)

COUNCILLORS' ROOM/DASHBOARD

- 1) Unredacted submissions.

TABLED DOCUMENTS

Nil.

ITEM 6 - ATTACHMENT 2 SUBMISSION TABLE.

Draft Development Control Plan 2025 - Response to Submissions

Submission No.	Comment	Council response
1. Voice of Wallalong and Woodville	<p>Figure 4: Determine the assessment pathway informs that if the proposed development is an unsuitable land use on flood prone land, it can be identified as suitable if it is redesigned and/or relocated on the site. The submission is concerned that redesigning with extensive landfill to make proposed development suitable could impact established neighbouring housing areas.</p>	<p>Council encourages proposed development be sited on an area of the site that is identified as suitable and not flood prone, as this minimises risk to life and property.</p> <p>Development proposed on flood prone land will typically need to undertake a flood impact and risk assessment (FIRA). The FIRA considers and assesses the post-development impacts of the development on the floodplain including changes in flood level, duration, velocity, changes in warning times and frequency of inundation. Assessment of the FIRA considers a full range of flood events, including smaller/more frequent events to larger/less frequent events. The “NSW Flood Risk Management Guideline LU01” provides more information on this assessment process.</p> <p>Certain development, i.e. those not considered to have significant risk or impact on the floodplain or surrounding area, do not need to provide a FIRA due to the nature of the development and their location within the floodplain.</p> <p>The Figure 4 flowchart has been updated with an additional arrow from “can the proposed development be redesigned and located on the site to be identified as suitable in Figure 5?” to indicate</p>

ITEM 6 - ATTACHMENT 2 SUBMISSION TABLE.

Submission No.	Comment	Council response
		there may be other potential outcomes.
	<p>With reference to Figure 5: Suitable land uses by flood hazard category, the submission is concerned that areas currently considered “minimal risk” may not be so in the future, and as such, subdivisions should not be considered on this land as the risks and dangers may become greater and difficult to mitigate.</p>	<p>The diagram has not been amended from the current DCP other than updated for simplicity. (Where appropriate, development types have been combined.)</p> <p>Council’s flood modelling considers rainfall and the associated risk well into the future, to the year 2100, including modelling for climate change impacts.</p> <p>Flood modelling is constantly being updated and takes into account potential increase in levels, including those as a result of climate change.</p> <p>Minimal risk flood prone land is above the flood planning level, as well as the probable maximum flood level, which refers to the largest flood that could conceivably occur.</p> <p>A development application that cannot demonstrate alignment with Council’s DCP and the associated policy documents is recommended to be refused as not being appropriate development.</p>
	<p>With reference to properties along the Williams River which have raised driveways, the submission expresses concern that fill or mounding may create displacement of flood waters to a wider area and impact neighbouring properties.</p>	<p>A FIRA seeks to provide applicants with a pathway to demonstrate that their development results in no significant impact on the floodplain. This includes assessment of local drainage paths, ensuring sufficient lateral flow paths are maintained. In addition, the FIRA also addresses the cumulative impacts of the proposed development by considering the wider catchment,</p>

ITEM 6 - ATTACHMENT 2 SUBMISSION TABLE.

Submission No.	Comment	Council response
		<p>and not just their development in isolation.</p> <p>Council acknowledges the importance of assessing the cumulative impacts of fill in the floodplain and has been working with external consultants to create a cumulative fill impact study to specifically address cumulative fill within the floodplain on a catchment wide scale.</p> <p>Port Stephens Council is currently undertaking a cumulative flood study on the Lower Hunter, together with Newcastle and Maitland City Councils, to assess flood impacts across the whole floodplain. The Flooding Chapter will be further reviewed towards the end of 2025 to incorporate the findings and suggested controls from this study.</p>
	<p>With reference to “All other development” listed as a development type in Figure 5: Suitable land uses by flood hazard category, the submission considers the term too vague and requests further explanation or examples.</p>	<p>This is not a new item in the DCP.</p> <p>“All other development” refers to all other development not listed separately. This ensures that all development on flood prone land is captured by the DCP and subject to relevant controls.</p>
	<p>With reference to B4.11 which indicates a flood impact and risk assessment (FIRA) is required for development on flood prone land, the submission questions if any development should be allowed on flood prone land and how it can be demonstrated that the fill does not adversely affect local drainage problems.</p>	<p>The “NSW Flood impact and Risks assessment guideline LU01” provides FIRA requirements to support development. FIRA typically look at a number of design storms from small frequent events to extreme events, and considers future rainfall events to accommodate the risk of climate change. It also considers impacts</p>

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		such as changes in flood level, velocity, duration, warning times, frequency of inundation, hazard category and flood function categorisation. These impacts can then be quantified, from which associated risks can be identified and managed.
	With reference to the note under B4.11 which identifies offsetting of fill, the submission questions how compensation for the cumulative effect of multiple mounds can be achieved.	<p>This is not a new item in the DCP.</p> <p>Flood storage areas generally store a significant proportion of the volume of flood water, and filling in these areas would typically displace flood volume to other areas of the floodplain.</p> <p>By providing additional “storage capacity” on the land in the form of excavation can negate the impact of proposed fill on the lot, as the displaced water will then be collected in the excavated area.</p>
	With reference to Figure 9: Livestock flood refuge mounds , the submission comments that the size of the mound should be relevant to the actual number of stock, and it should be mandated that the mound is used solely for livestock and not repurposed for a dwelling.	<p>This is not a new item in the DCP.</p> <p>Assessment of a DA for a flood refuge mound takes into account the number of animals that may be required to use it.</p> <p>A new report has been added to the DA assessment process – Stock Refuge Needs Assessment – to provide clarity on this. Applicants need to demonstrate they have sized the mound appropriately and sensibly with respect to the size of the land and the intended use. Further development applications would therefore be required to change the use of the existing development.</p>

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2. Tomaree Ratepayers and Residents Association (TRRA)	The submission expressed that the DASH has been created to reduce the volume of the DCP and to simplify its presentation but expresses concern that applicants/developers may not reference it.	The DCP gives the DASH statutory weight in control A7. The DASH is further mentioned throughout the DCP to inform users that it sets out the information required to accompany a DA to address the relevant objectives and controls of the chapter.
	The submission generally supports the content in B1 Tree Permits , however considers the broad content of the chapter could be clarified with a different title, i.e. "Tree Removal Permits".	"Tree permits" is the language reflected in the document Council issues when tree and vegetation removal or pruning is approved. It is also consistent with the language on Council's website.
	The submission supports the proposed amendments B2 Natural Environment .	Noted.
	With regard to B3 Stormwater Management , the submission states that driveways and garages have not been taken into account, and as such many new blocks can be almost entirely impermeable and will therefore have limited space for landscaping.	Landscaping requirements are provided within C4 Residential Development and will ensure appropriate provision of permeable area.
	The submission supports the proposed amendments to B4 Flooding .	Noted.
	The submission considers the proposed provision of EV charging parking spaces for non-residential development to be inadequate and suggests this be increased to at least 10%.	The 5% is a minimum standard and developers are able to provide additional charging spaces if they wish to. Increasing the provision may create a significant impact on cost for local businesses. Council has benchmarked this with other DCPs for similarly sized councils.

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	With regard to C1 Subdivision , the submission is concerned that public open space hierarchy should be more clearly prescribed and not assessed under merit.	The current population and the expected growth of the area is taken into consideration to determine public open space requirements.
	With regard to C2 Commercial , the submission: <ol style="list-style-type: none"> considers the increased threshold for contribution to public art of \$2M to \$5M to be excessive and recommends it be \$4M. strongly supports the controls regarding shipping container stacks. 	<ol style="list-style-type: none"> This control has not been updated since it was introduced in 2014. The figure is considered to be in line with inflation and construction costs and is consistent with what other councils require. Noted. The control is not new.
	The submission supports the proposed amendments to C3 Industrial .	Noted.
	With regard to C4 Residential Development , the submission <ol style="list-style-type: none"> generally supports the proposed provisions. queries whether simplification of setbacks will deliver best environmental and design outcomes as this wouldn't allow for sufficient space for trees and landscaping. considers that control C4.11 Sheds and shipping containers should address the shipping containers currently placed on Nelson Bay Road. 	<ol style="list-style-type: none"> Noted. The simplification of setback controls seeks to ensure there is consistency across different forms of development that have similar scales. The setbacks work with the revised requirements for site coverage and deep soil planting to ensure a balanced outcome for the environment. The DCP provides guidance for new development, and cannot be used retrospectively for approved development.
	The submission supports the addition of the signage chapter, however it is concerned that the provisions do not adequately deal	The DCP applies to proposed development and cannot be used retrospectively for approved development.

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	<p>with the number of signs on major non-urban roads, such as Nelson Bay Road, which has a growing number of large billboards and trailer mounted signs.</p>	<p>In July 2024 Council conducted a Large Billboard Audit along Nelson Bay Road and other major transport corridors for their respective approval and compliance status. It was discovered that the majority of billboards had historic approvals in place for advertising structures, most of which were granted in the period 1990 - 2000.</p> <p>Council will continue to monitor and manage signage complaints in accordance with the NSW Ombudsmen Guidelines for Enforcement, in terms of impact and risk.</p>
	<p>With regard to D2 Nelson Bay Town Centre, the submission:</p> <ol style="list-style-type: none"> 1. notes that the core values of the local community are acknowledged in the objectives and controls for each precinct. 2. identifies that Figure 52 does not include the residential development area immediately west of Church Street which, based on discussions, may come under pressure for development. 3. suggests “when viewed from the water on the bay” should be added to the dot points in D2.2. 4. suggests the third dot point in D2.5 should be expanded to include Donald Street as a main shopping street. 5. Suggests the 2nd bullet point in D2.6 which states “the precinct 	<ol style="list-style-type: none"> 1. Noted. 2. Council is aware that this area is also identified in the NSW Low and Mid-Rise Housing Reforms. There could be an opportunity for the DCP to be amended in the future to include these areas and some controls for infill development in accordance with the State government policy. As the reforms came into effect on 28 February 2025 when this project was already underway, Council did not include consideration of these reforms as part of this comprehensive review. <p>The State Government's Pattern Books demonstrate the types of infill development that can be carried out as complying development in the locations the subject of these reforms.</p>

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	<p>is appropriate for larger scale developments, with large footprints" should be subject to more general objectives and be placed in the Chapter Summary as there is a concern that the character of Nelson Bay could be lost if large developments on large footprints dominate.</p>	<p>3. This control has not been amended since it was previously the subject of significant community and industry consultation. Consideration is already given in D2.1, which seeks to preserve important vistas. Figure 52 includes significant vistas from the water in the bay.</p> <p>4. This control has not been amended since it was previously the subject of significant community and industry consultation. The 3rd dot point in D2.5 reinforces the hierarchy of the main shopping streets in the town centre in accordance with the Nelson Bay Public Domain Plan.</p> <p>5. This control has not been amended since it was previously the subject of significant community and industry consultation. This control, and all of the controls in this chapter, give effect to adopted Council strategies for Nelson Bay. This control is consistent with the character and scale of development identified as suitable in that location in those strategies.</p>
	<p>With regard to D4 Salamander Bay Shopping Centre, the submission identifies that a place plan is currently addressing the area and suggests a revision to the chapter once the place plan is finalised.</p>	<p>Noted. The draft Salamander Bay Town Centre Place Plan includes an action to review and strengthen planning controls for the town centre. Council will undertake a comprehensive review of the (town centre) DCP, following a DA to</p>

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		subdivide the remaining commercial land in the town centre, to ensure that future development delivers high-quality outcomes and contributes positively to the evolving identity of the town centre.
	With regard to Shoal Bay and the Tomaree Headland, the submission suggests that a site specific DCP chapter should be considered for the area as it is subject to significant growth, development suggestions and an increase in tourism.	<p>The Shoal Bay Place Plan includes an action for Council to prepare a Shoal Bay DCP if infrastructure investigations demonstrate that Shoal Bay can accommodate additional housing. A DCP would be prepared in conjunction with a planning proposal that amends planning controls to increase housing supply.</p> <p>As the landholder of the Tomaree Headland, the State Government is looking into the future of the site. Council continues to advocate to the State Government for the future use to be for community and recreational uses that are respectful to the historical and environmental importance of the site.</p>
3. DRB Engineering	With regard to Figure 3: Stormwater control area requirements in B3 Stormwater Management , the submission questions the draft requirement to match the post development 1% AEP flow to the pre-development 10% AEP flow as this would generally result in the need for larger storage volume and hence, more space and infrastructure for development.	Noted. The water quantity controls for clay soils in the 'All other development' category have been amended to require the post-development flows to match pre-development flows for all events up to the 1% AEP. This replaces the draft requirement to match the post development 1% AEP flow to the pre-development 10% AEP flow and will generally align with the current DCP requirements and industry standards.

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		For sandy soils, the requirement to infiltrate the 10% AEP rainfall depth will remain to encourage infiltration.
4. Koala Coalition	<p>The submission supports the recommended amendments to B1 and B2 and the efforts made to make the requirements clearer for everyone, including provision of the links to important documents and the improved language style.</p> <p>With regard to B1 Tree Management, the submission provides the following advice:</p> <ol style="list-style-type: none"> 1. the heading change from “tree Management” could be clearer and suggests renaming it “Tree and Vegetation Removal permits”. It also informs that the B1 fact sheet only refers to trees. 2. the extension to reference understorey clearing, which otherwise removes biodiversity, is highly supported. 3. notes that another fact sheet is being prepared that details how Council will be satisfied of the “risk to human life or property” exception? 4. the Tree Removal and Assessment Form needs to be improved to make it user-friendly and successful. 5. the DCP chapter should mention there is potential to be fined for offences relating to illegal clearing or tree and vegetation vandalism. 	<p>Noted.</p> <ol style="list-style-type: none"> 1. Tree permits is the language reflected in the document Council issues when tree and vegetation removal or pruning is approved. 2. Noted. 3. Council’s Tree Specifications state that where a tree proposes an unacceptable risk to human health, the health concern must be supported by a statutory declaration to provide further guidance on the consideration of human health matters in the determination of a tree removal application. The specifications also provide detail on how Council assesses a potential risk to property. There are plans to update the fact sheets available on Council’s website. 4. The form is being reviewed and updated to improve its usability. 5. The chapter was amended to note that removing trees, if a tree permit is required, is an offence under the planning

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		<p>legislation. Information on Council's tree vandalism approach and associated fines is provided on the "Trees" page on Council's website.</p>
	<p>With regard to B2 Natural Environment, the submission:</p> <ol style="list-style-type: none"> 1. is not supportive of the chapter name change from Flora and Fauna. 2. is supportive of the relocation of riparian corridor information to this chapter (from B3 Stormwater Management). 3. appreciates the logical distinction of B2 from B1. 4. Is unsure removal of information to the Development Application Supporting Handbook (DASH) will be successful as developers may not reference it, and: <ol style="list-style-type: none"> a. How can the DASH have statutory or legal standing when the DCP itself is not binding? b. The fact sheet identifies the DASH will be given legal standing through a standalone clause however this was not provided for review. 5. supports that clarification has been provided in B2.7 that requires an application to include consideration of the total clearing required for subdivisions. 	<ol style="list-style-type: none"> 1. The name change was considered practical to include the broader environmental content of the chapter. The chapter now also applies to riparian corridors. 2. Noted. A note box has subsequently been included to provide additional information on the benefits of riparian corridors. 3. Noted. 4. Other than Chapter B1, the planning legislation specifies that a DCP provides guidance for development assessment. Stand-alone control A7 in the DCP ensures the guidance in the DASH forms part of the DCP for the purposes of planning legislation. <ol style="list-style-type: none"> a. The DASH is a guide which contains links to legislated documentation, necessary for a proposed development. b. The DCP makes mention in Section A – Introduction - A7, that a DA assessed under the Plan must be accompanied by the relevant supporting documentation prescribed in Council's DASH. Council will be unlikely to accept a DA that

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	<p>6. supports the addition of tree species important to Port Stephens Koalas but queries the lists in B2.11 being different to B2.12 and considers the preferred Koala feed tree list should have greater prominence.</p> <p>7. expresses disappointment that more information was not included in B2.C Weeds relating to landscape guidelines for development applications to prevent the spread of weeds.</p> <p>8. supports many other positive changes in the chapter including the reference to lighting pollution guidelines for wildlife.</p>	<p>does not include the information prescribed.</p> <p>5. Noted.</p> <p>6. The list in B2.11 has been amended to include preferred Koala feed trees. B2.12 and the note that separately identifies preferred Koala feed trees has been removed to eliminate confusion.</p> <p>7. Planting of trees and vegetation is an exempt activity and the DCP would not apply, unless it is expressly prohibited. A new page has been created on Council's website titled, "Environmental Planning", which provides guidance on sustainable landscaping.</p> <p>8. Noted.</p>
	The submission identified some spelling mistakes and provided minor editing suggestions.	Noted. These items have been amended or removed.
	With regard to Section D , the submission suggests a list of the relevant areas be provided under the Specific Areas map.	Noted. A contents list has been added to the page.
5. Urban Development Institute of Australia	The submission commends the style of the draft DCP, highlighting it is easy to read and is concise with consistent formatting.	Noted.
	With regard to B1 Tree Removal , the submission suggests adding a flow chart or further guidance to the chapter to help clarify the pathways for tree removal.	Consideration can be given to including additional information on Council's website.

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	<p>With regard to B2 Natural Environment, the submission understands the intent of the draft chapter to provide more certainty and reduce complexity, however:</p> <ol style="list-style-type: none"> 1. requests Council refrain from using the terms Avoid, Minimise, and Offset(ing) as these terms have a specific definition and meaning under the Biodiversity Conservation Act 2016 (BC Act) and are only relevant when the Biodiversity Offsets Scheme (BOS) is triggered. 2. does not support Council's definition of 'high ecological features', especially for areas mapped as 'biodiversity values mapped areas' as Council has no control over the Biodiversity Values Map. 3. does not support native vegetation buffers on land that is already zoned, or land that is below a certain size, as it can quickly make development unfeasible. It considers buffers necessary to protect against development impacts should be considered and incorporated into planning at the rezoning stage, not at DA / DCP stage. 4. considers the riparian guidelines provides no additional information and recommends utilising, and instead referring to, the Office of Water (OW) guidelines which 	<ol style="list-style-type: none"> 1. Using the terms "avoid, minimise and offset" is a general approach to biodiversity management that pre-dates the BC Act. Many councils use this approach which makes for a consistent expectation to managing biodiversity impacts. 2. The definition has been amended to align with the Department of Planning, Industry and Environment 2020 "Avoiding and minimising impacts, Biodiversity Certification, Fact Sheet #1", and reference to Biodiversity Values mapped land has been removed. 3. B2.2 has been amended to require buffers around areas with high ecological features. The type of buffer is no longer limited to native vegetation and references to "native vegetation buffer" have been amended to "buffer", aligning with the glossary. Council aims to address buffers at rezoning stage. On smaller scale developments, or where rezoning has already occurred, this control outlines Council's expectations for buffers. 4. While the OW guidelines are to preserve water quality, Council also encourages the maintenance and improvement of ecological corridors as they provide a range of valuable environmental functions. A note

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	<p>would maintain consistency and clarity for applicants.</p> <p>5. considers the Biodiversity Corridors definition to be too extensive and ambiguous. It recommends mapping the corridors to provide clarity.</p> <p>6. disagrees with the requirements, at subdivision stage, to consider all clearing (as proponents may not yet have a servicing agreement from Hunter Water in place) and the need to provide boundary fencing where a development is adjacent to an area of threatened fauna (as these are exempt development under the Local Land Services Act).</p> <p>7. considers the requirement for compensatory replacement trees to be difficult to achieve to accommodate a ratio of 1:10 on a site and that Council should rather be satisfied that the requisite avoidance, minimisation and offsetting has occurred under legislation.</p> <p>8. requests additional information to understand the compensatory requirement for hollows to understand how it would be applied, such as to provide a measured value of the replacements.</p>	<p>box has been added highlighting their important functions.</p> <p>5. Council is currently undergoing updates to vegetation mapping. This would be the first step towards mapping corridors in the future. This information is shared in the media release.</p> <p>6. The requirement is a reflection of the expectations of Section 7.1 (3) of the <i>Biodiversity Regulation 2017</i>. Boundary fencing clearing can extend beyond the allowable activities outlined in the <i>Local Land Services Act 2013</i>. For land subject to the <i>Rural Boundary Clearing Code for New South Wales</i> or residentially zoned land, Council assesses the impacts of proposed new boundary fences.</p> <p>7. There is flexibility in the control to reduce the ratio. This is reflected in B2.11 which states trees must be replaced in accordance with the compensatory planting ratios, unless Council imposes an amended requirement in consideration of specific and unique site factors.</p> <p>8. The wording of this control has been updated to improve clarity and reference is made to Council's Biodiversity Technical Specification for more detail. The control allows for a</p>

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		dynamic approach to offsetting hollows to accommodate site conditions.
	With regard to Figure 3: Stormwater control area requirements in B3 Stormwater Management, the submission enquires why the detention requirements have changed, as it considers this will result in a significant increase in the size of basins, potentially adding unnecessary costs and complications for projects.	<p>Noted. The water quantity controls for clay soils in the 'All other development' category have been amended to require the post-development flows to match pre-development flows for all events up to the 1% AEP.</p> <p>This replaces the draft requirement to match the post development 1% AEP flow to the pre-development 10% AEP flow and will generally align with the current DCP requirements and industry standards.</p> <p>For sandy soils, the requirement to infiltrate the 10% AEP rainfall depth will remain to encourage infiltration.</p>
	With regard to B3.6 , which states that 'the rainfall depth for the 10% AEP event is to be infiltrated within the site without runoff', the submission queries, that as infiltration duration is not defined, if Council will leave it to applicants to define the parameters.	Applicants will need to provide a Stormwater Management Plan that outlines site-based design investigations, assumptions, design parameters, etc. and includes appropriate justification. Guidance on this can be found in Council's 'Soil Infiltration Technical Information Sheet'.
	<p>With regard to B3.8, the submission queries:</p> <ul style="list-style-type: none"> a. the justification for Council's stripping rate targets which are higher than any other LGA or authority that the engineers have reviewed. b. that Council may be at odds with Hunter Water, thereby 	<p>Further research and benchmarking have been conducted and new stripping rates are proposed that align with Landcom and City of Newcastle.</p> <p>Council are not at odds with the Hunter Water NorBE requirement, however both the NorBE and Council's stripping rates are specified in order to achieve better</p>

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	<p>causing delays at DA and SWC stages. It requests that the DCP not provide stripping rates within the Drinking Water Catchment and only rely on NorBE.</p>	<p>water quality outcome for a site. This has been clarified in the draft DCP.</p>
	<p>With regard to B3.10 which states that devices must be sited and designed to be taken offline from stormwater quantity drainage systems, the submission queries the point which suggests a bioretention basin cannot be placed in the same basin as a detention basin as it is common practice to have a combined detention and bioretention basin when not on a blue line. The submission further states that, when on a blue line, the Office of Water requires them to be offline. It requests the requirement be updated to make the distinction between the basin being on, or off, a blue line.</p>	<p>Council requires all water quality treatment devices (including bioretention) to be located 'offline' so that high flows can be diverted around the water quality devices, thus preventing potential damage, reducing maintenance issues and ensuring that devices remain functioning effectively (i.e. pollutants are not re-immobilised etc). Bioretention basins are generally designed with a maximum extended detention depth of 300mm. This can usually only be achieved by designing the bioretention basin to be offline from the detention basin, of which detention depths are generally greater. This considered standard industry practice.</p>
	<p>With regard to B3.1 (c), the submission objects to the impervious areas designated in Council's design specification 0074 Stormwater Drainage Design, including the Future Effective Percent Impervious Table.</p>	<p>The '<i>Future effective percent impervious table</i>' requirements in the Engineering Design specifications <i>0074 Stormwater Drainage Design</i> are already being applied by Council and has been subject to extensive investigation, research, benchmarking etc. The proposed DCP change will refer to the right location to obtain this information.</p> <p>In order to meet future housing demand while ensuring sustainable infrastructure planning, and not create legacy issues for future</p>

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		<p>generations to resolve, it is essential that new estates are designed in accordance with Councils Infrastructure Specifications. Stormwater modelling should adopt the % impervious area parameters outlined in the specifications which reflect real-world conditions and support long term development needs.</p> <p>Each development application will be assessed on its merits and where there are site specific conditions that mean the impervious area is going to be different to the specification, Council will work with applicants to ensure the best environmental outcome. A note has been added to the chapter to refer to section 4.15(3A) of the EP&A Act which requires Council to be flexible in applying the DCP if a reasonable alternative solution to achieve the objectives of a chapter is proposed.</p>
	<p>With regard to B3.1 (e) which states that 'Development for subdivision of more than 5 lots requires the provision of regional stormwater treatment measures and the preparation of a WSUD Strategy, unless it can demonstrate access to a regional stormwater treatment system with sufficient stormwater quantity and quality management capacity', the submission requests an explanation of what 'regional' means in this context.</p> <p>The submission notes that this requirement could be a significant</p>	<p>'Regional stormwater treatment measures' refers to a common treatment system that services all lots that can be more readily maintained and controlled, as opposed to individual 'on-site' private treatment systems.</p> <p>The WSUD strategy requirement need not be onerous in order to outline and document how water quality impacts have been considered and addressed.</p> <p>The requirement for a WSUD strategy is required to outline and</p>

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	<p>barrier to infill development as unless you have scale (e.g. 100 lots), placing a requirement to prepare a WSUD Strategy and the subsequent actions that could be conditioned will significantly impact the feasibility of small sites.</p>	<p>document how water quality impacts have been considered and addressed and should not onerous.</p> <p>Council will work with applicants to ensure development outcomes are not too onerous to impact feasibility and can meet best practice environmental outcomes. A note has been added to the chapter to refer to section 4.15(3A) of the EP&A Act which requires Council to be flexible in applying the DCP if a reasonable alternative solution to achieve the objectives of a chapter is proposed.</p>
	<p>With regard to B5 Network and Parking, the submission suggests reducing parking requirements for development within a walkable distance of higher order commercial centres.</p>	<p>The car parking requirements ensure that minimum standards are met for all forms of development. The broader public transport system that connects the towns and villages in Port Stephens is limited and as such, there is a reliance on motor vehicles for most journeys. The car parking rates are reflective of this.</p>
	<p>With regard to block and street layout in C1 Subdivision, the submission considers the requirement for a perimeter road around a park to be unnecessarily onerous, and recommends following the principles outlined in the book “Essentials of Urban Design” by Mark Sheppard at the CSIRO, which calls for 2-3 sides of a park to be bordered by a road. It also requests the term “perimeter road” should not be used as this has specific meaning under Planning for Bushfire Protection.</p>	<p>Providing perimeter roads is particularly important for larger scale parks to ensure access and connectivity. The requirement also considers the other design elements noted in C1.F Public Open Space to ensure that the open space is functional and safe.</p> <p>The use of the word ‘perimeter’ accurately reflects the intended outcomes in this context.</p>

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	<p>With regard to site coverage and landscaping in C4 Residential Development, the submission queries the proposed increase of soft landscaping on a residential lot from 20% to 25% of the site area and considers this contradictory to the Hunter Regional Plan 2041 which is encouraging higher densities through smaller residential lots.</p> <p>It also queries the private open space requirement which has been reduced from 50sqm to 24sqm.</p>	<p>Council has sought to make the requirements consistent across all forms of residential development in order to make it easier for applicants and to rationalise controls across different types of residential development.</p> <p>The intended outcome is to make it easier to meet requirements and simplify assessment. Council will assess individual applications on their merits and will work with applicants to achieve outcomes that are feasible and suitable for individual sites.</p>
	<p>With regard to Section D - Specific Areas, the submission suggests updates for:</p> <ol style="list-style-type: none"> 1. D7.21 in D7 Kings Hill: amend temporary flood free access requirement to be 1%, not 5% AEP; and 2. Figure 63 in D9 Medowie Planning Strategy (Precinct E and F): location of the green street and stormwater basins have moved. 	<ol style="list-style-type: none"> 1. This chapter has not been reviewed as part of this comprehensive review. 2. An amendment is not considered necessary as the majority of development is taking place initially and the remaining portion of the precinct will not affect future development.
6. Department of Defence (DoD)	<p>The submission suggested minor amendments to the chapter summary:</p> <ul style="list-style-type: none"> • to include the obstacle limitation surface (building height) as a consideration for development • to include consideration for interference to communications, navigation and surveillance equipment. 	<p>These suggested amendments have been included in the draft DCP.</p>

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	The submission suggests B6.2 be reworded to not “satisfy” indoor sound levels but “demonstrate how attenuation levels achieve...”	This has been amended in the draft DCP.
	The submission requests that proposed development, or certain activities, within the Defence Aviation Area that exceed the height limitations map, will require referral to DoD.	The chapter application has been amended to include reference to clause 7.4 Airspace operations in the LEP. This clause identifies that consultation with the relevant Commonwealth body is required if the height of a development exceeds the height identified in the obstacle limitations map. This process is already followed by Council’s Development Planning team.
7. Hunter Water Corporation (HWC)	<p>The submission reiterates HWC’s expectation that all development in the drinking water catchments should achieve a Neutral or Beneficial Effect (NorBE) on water quality.</p> <p>It suggests the DCP make reference to HWC’s “Protecting our Drinking Water Catchments: Guidelines for developments in the drinking water catchments” which outlines risks to NorBE.</p> <p>The submission also recommends the DCP 2025 includes an overarching statement to identify the requirement for all development in drinking water catchments to achieve NorBE.</p>	<p>Noted.</p> <p>The guidelines document is hyperlinked in a note box in B3.B Stormwater quality.</p> <p>The note has been updated to include HWC’s NorBE statement.</p> <p>B3.8 states that development within a drinking water catchment must achieve NorBE.</p>
	The submission notes the relocation of riparian corridors from Stormwater Management chapter to Natural Environment. It recommends noting the important	<p>Noted.</p> <p>A note has been added to Chapter B2 to highlight the importance of</p>

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	function of corridors in protecting water quality by establishing suitable buffers between development and waterways.	riparian corridors and their functions.
	With regard to B3 Stormwater Management , the submission supports the broadening of the application of the chapter which makes reference to clause 7.8 Drinking Water Catchments and clause 7.10 Williams River catchment.	Noted.
	<p>The submission notes the removal of the requirement for water quality assessment for small-scale development or where Water Sensitive Urban Design (WSUD) strategy applies. It states that although this may create low incremental impact, they do not result in nil impact and it is considered that the cumulative impact of such development could be significant.</p> <p>Regarding successive development within a subdivision, the submission considers it is reasonable that subsequent referrals for development on individual lots are not required to HWC, provided the development proceeds in accordance with the endorsed subdivision design.</p>	Successive development within a subdivision that falls outside of the original endorsed WSUD strategy would require reassessment of water quality impacts, which would most likely include a referral to Hunter Water.
	The submission acknowledges Council's intention to discontinue use of the Small Scale Stormwater Quality Model (SSSQM) platform, and is concerned that without suitable controls, stormwater runoff	Council's preferred water quality modelling is MUSIC. As very few SSSQM are being submitted to Council, and they are difficult to assess and validate, they have been removed from the DCP, however

ITEM 6 - ATTACHMENT 2 SUBMISSION TABLE.

Submission No.	Comment	Council response
	<p>from such development will contribute to a deterioration in water quality in the catchment areas.</p> <p>The submission further requests assurance that Council's "Deemed to Comply" controls will be appropriate to protect against cumulative water quality impact on HWC drinking water catchments.</p>	<p>Council will still accept and assess a SSSQM if it is presented by the applicant.</p> <p>This DCP does not include Deemed to Comply controls for water quality. (A previous DCP had included a 'Deemed to Comply' control for water quality however it was removed several years ago.)</p>
	<p>With regard to stormwater quality improvement devices (SQIDS), the submission suggests it would be useful for the DCP to require development applications give greater attention to maintenance requirements.</p>	<p>SQIDS are a requirement in PSC's Infrastructure Specification and are considered during both the development application phase and also the detailed design phase.</p> <p>The choice and acceptance of SQIDS requires ongoing maintenance for the landowner.</p>
	<p>With regard to B4 Flooding, the submission recommends the inclusion of a DCP control to prohibit the filling of land below 7.7 metres Australian Height Datum (AHD) in the Campvale Inundation Area in order to provide clear guidance on development in the area.</p>	<p>Although this requirement is detailed in the Meadowie Floodplain Risk Management Study and Plan (MFRMS) 2016, a note has been added to the draft DCP to inform that the MFRMS must be referred to for guidance on proposed development in the Campvale Drain Inundation Area.</p>
	<p>The submission notes that some of the precincts referred to under Section D - Specific Areas fall within a drinking water catchment.</p>	<p>Noted.</p>
	<p>With reference to D1 Heatherbrae, D3 Seabreeze Estate – Nelson Bay, D5 Richardson Road – Raymond Terrace, D6 Rees James Road – Raymond Terrace, D7 Kings Hill, D8 – Williamtown Defence and Airport Related Employment Zone (DAREZ), D9 –</p>	<p>All proposed development (with stormwater requirements) must refer to B3 Stormwater Management even if their location is in a specific area in the DCP with additional stormwater requirements.</p> <p>Requirements in Section D are in addition to Sections B & C and it is</p>

ITEM 6 - ATTACHMENT 2 SUBMISSION TABLE.

Submission No.	Comment	Council response
	<p>Medowie Planning Strategy Precincts E & F and D9 – Medowie Planning Strategy Precincts E & F, the submission is concerned the objectives listed in these chapters would override any general requirements in Chapter B3 that regulate stormwater quality.</p>	<p>only in the event of inconsistency that Section D would prevail.</p>
	<p>The submission recommends the inclusion of a statement about the expectations for development in drinking water catchment areas to align with Hunter Water’s development guidelines. This would include development in catchment areas that are no longer identified as specific areas in the proposed DCP 2025.</p>	<p>A statement is included as a note in B3.B Water quality, titled “Development in a drinking water catchment” which informs that development that has the potential to affect water quality in a drinking water catchment will be referred to HWC. Reference is made to HWC’s “Protecting our drinking water catchments - Guidelines for developments in drinking water catchments” for development types that will likely require referral to HWC.</p> <p>All proposed development with stormwater requirements must refer to B3 Stormwater Management even if their location is no longer a specific area in the DCP.</p>
	<p>The submission notes that part the Rees James Road precinct and the southern part of Kings Hill drain to Irrawang Swamp which is HWC owned and subject to ecological restoration and management. It considers that planning for the volume and quality of water draining to the swamp from surrounding development, should include consideration of this.</p>	<p>Noted.</p>

MINUTES ORDINARY COUNCIL - 10 JUNE 2025

Councillor Giacomo Arnott left the meeting at 7:21pm.
 Councillor Peter Francis left the meeting at 7:21pm.

ITEM NO. 4

FILE NO: 25/14109
EDRMS NO: PSC2024-03481

DRAFT DEVELOPMENT CONTROL PLAN 2025

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Place the draft Port Stephens Development Control Plan 2025 **(ATTACHMENT 1)** on public exhibition for a minimum of 28 days in accordance with the Environmental Planning and Assessment Act 1979 (NSW) and the Environmental Planning and Assessment Regulation 2021.
- 2) A further report to be provided to Council upon completion of the public exhibition period seeking endorsement of the Development Control Plan 2025.

ORDINARY COUNCIL MEETING - 10 JUNE 2025**MOTION**

119	<p>Councillor Chris Doohan Councillor Jason Wells</p> <p>It was resolved that Council:</p> <ol style="list-style-type: none"> 1) Place the draft Port Stephens Development Control Plan 2025 (ATTACHMENT 1) on public exhibition for a minimum of 28 days in accordance with the Environmental Planning and Assessment Act 1979 (NSW) and the Environmental Planning and Assessment Regulation 2021. 2) A further report to be provided to Council upon completion of the public exhibition period seeking endorsement of the Development Control Plan 2025.
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In accordance with Section 375 (A) of the Local Government Act 1993, a division is required for this item.

Those for the Motion: Mayor Leah Anderson, Crs Rosalyn Armstrong, Chris Doohan, Nathan Errington, Mark Watson and Jason Wells.

MINUTES ORDINARY COUNCIL - 10 JUNE 2025

Those against the Motion: Nil.

The motion was carried.

BACKGROUND

The purpose of this report is to seek Council endorsement to place the draft Port Stephens Development Control Plan 2025 (draft DCP) (**ATTACHMENT 1**) on public exhibition for a period of 28 days.

The existing Port Stephens Development Control Plan 2014 (current DCP) has been the subject of a comprehensive review and a draft DCP has been prepared with the intention to repeal and replace the current DCP.

The primary role of the Development Control Plan (DCP) is to guide permissible development by:

- Giving effect to the aims and objectives of the Port Stephens Local Environmental Plan 2013 (LEP)
- Facilitating permissible development under the LEP
- Providing flexibility to allow alternative solutions to meet the LEP objectives.

The provisions of a DCP for these purposes are not statutory requirements or development standards.

The preparation and exhibition of the draft DCP completes committed actions under the Port Stephens Local Housing Strategy (LHS), specifically:

- To implement process improvements to streamline assessments and reduce the cost of housing
- To improve the development feasibility of medium density developments in centres
- To enable more efficient and sustainable development outcomes for new housing including small lot housing, residential flat buildings and shop top housing.

Actions in the LHS were prioritised in order to meet the State Government housing targets for the LGA. Council received grant funding in 2024 through the Australian Government's Housing Support Program. This grant support has enabled the comprehensive review of the existing DCP and the development of the digital DCP platform.

The key changes resulting from the comprehensive review have been summarised below.

Housing affordability

Controls for all types of housing have been reviewed and rationalised to find cost savings for applicants where possible. There are also customer-focused changes that will make it easier to prepare simple housing applications. These changes include:

MINUTES ORDINARY COUNCIL - 10 JUNE 2025

- Introducing an online DCP platform with tools to facilitate ease of use, which includes:
 - A matrix to make the identification of lodgement requirements easier based on development types.
 - Search, print and save functionality to make it easier to prepare an application.
 - Use of a mobile and tablet friendly platform.
 - Ease of access to glossary terms.
 - Ease of access through hyperlinks to relevant sites, maps, documents and forms.
- Relocating information around specific assessment requirements and development types to a Development Application Supporting Handbook.
- New mapping and explanatory figures that are clear and uniform.
- The use of plain English to explain planning jargon, making it easier for users to interpret and understand.

Faster approvals

The changes related to improved assessment timeframes include the provision of consistent controls for different types of housing. The use of consistent requirements for setbacks, landscaping and other residential requirements will make it easier and quicker to assess housing applications.

Controls have also been rationalised to remove duplication, consolidate related subject matter or to relocate information requirements so that overall there are less controls to address in an application. This is aimed at speeding up processing times for applications and reduce the administrative burden for both applicants and Council. Clearer information about upfront requirements has been provided in the Development Application Supporting Handbook which is aimed at reducing the need to request further information from an applicant during assessment. This is intended to speed up overall assessment and determination timeframes for applicants.

Better environmental outcomes

The draft DCP includes new protections targeting unauthorised underscrubbing of native vegetation on large residential lots. There are also new controls that will provide better protections for koala habitat, greater guidance on biodiversity corridors and buffer areas as well as information relating to development in mapped coastal vulnerability areas as a result of the Coastal Management Program.

Other amendments

At its meeting on 27 February 2024, Minute No. 14 (**ATTACHMENT 2**) Council resolved to request a report be prepared outlining the best way to implement an amendment to the DCP to include provisions related to electric vehicle (EV) charging infrastructure for dwelling houses, dual occupancies and semi-detached dwellings. As part of the DCP review, EV charging requirements were benchmarked against other councils, with research undertaken on installation options and costs. The

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controls proposed in the draft DCP are intended to facilitate EV trends and usage whilst limiting any adverse cost impacts on housing affordability.

The flooding chapter has been restructured to align with the NSW Flood Risk Management Manual and the recently released NSW Shelter in Place Guidelines. It is noted that a standalone amendment of the flooding chapter is proposed for late 2025 in response to the cumulative flood controls developed in collaboration with Maitland City Council and the City of Newcastle.

A detailed explanation of all amendments has been provided in the fact sheets prepared for each DCP chapter (**ATTACHMENT 3**).

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

The development of the draft DCP and digital DCP platform has been managed within existing budget resources and using grant funding received through the Australian Government's Housing Support Program.

There are no foreseen negative financial or resource implications for Council.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes		
Reserve Funds	No		
Developer Contributions (\$7.11)	No		
External Grants	Yes	\$100,000	Australian Government's Housing Support Program funding.
Other	No		

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LEGAL, POLICY AND RISK IMPLICATIONS

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
There is a risk that information requirements for applications are not clear resulting in incomplete applications, requests for further information and assessment delays.	Low	Adopt the recommendations.	Yes
There is a risk that DCP controls are hard to navigate, overly onerous, and increase the cost of new housing.	Low	Adopt the recommendations.	Yes
There is a risk that DCP controls do not adequately protect the environment or respond to sustainability trends.	Low	Adopt the recommendations.	Yes

National Housing Accord 2024

The Australian Government has agreed to a National Housing Accord with states and territories, local government, institutional investors and the construction sector to deliver 1 million well-located homes over the next 5 years. The Commonwealth will provide \$3.5 billion in payments to state, territory and local governments to support the delivery of new homes towards the National Housing Accord target. The Australian Government’s Housing Support Program is part of that funding commitment and the review of the DCP received grant funding through the Housing Support Program.

Hunter Regional Plan 2041 (HRP)

The HRP identifies that Port Stephens is forecast to grow by approximately 20,000 people over the next 20 years and specifies a projected housing demand for Port Stephens of 11,100 dwellings. The HRP includes actions for Council to adopt a LHS with actions to respond to these housing targets. The draft DCP gives effect to the actions in the LHS.

The DCP is also consistent with HRP objectives to incorporate sustainable planning and resilience in planning decisions, protect biodiversity and facilitate delivery of well-located homes.

MINUTES ORDINARY COUNCIL - 10 JUNE 2025Port Stephens Local Housing Strategy (LHS)

The draft DCP is consistent with the LHS and aligns with actions to:

- Implement process improvements to better streamline assessments and reduce the cost of housing (Action 2.7).
- Amend planning controls to improve feasibility for medium density developments in centres (Action 3.2).
- Enable more efficient and sustainable development outcomes for new greenfield housing and encouraging provision of small lot housing through controls (Action 3.3).
- Consider development controls for residential flat buildings, serviced apartments and shop top housing (Action 3.5).

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

Part 3 of the EP&A Act defines the purpose of a DCP. This legislative framework has informed the content of the draft DCP. Should Council resolve to proceed with the amendment, all necessary matters in preparing the plan would be carried out in accordance with the EP&A Act.

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

Part 2 of the Environmental Planning & Assessment Regulation 2021 provides further guidance in regard to the form, structure and subject matter of DCPs. The draft DCP has been prepared with regard for these sections. Division 2 of Part 3 of the EP&A Regulations specifies the requirements for public participation. The recommendation is in accordance with the provisions of the EP&A Regulations.

The EP&A Regulation requires the draft DCP to be listed on planning certificates from the commencement of the exhibition period.

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

Chapter 2 of the Biodiversity and Conservation SEPP outlines planning provisions for the regulation of clearing vegetation in non-rural areas. The draft DCP aligns with the SEPP and declares the vegetation in non-rural areas of Port Stephens to which this Chapter of the SEPP applies.

Port Stephens Local Environmental Plan 2013 (LEP)

The draft DCP has been prepared to give effect to the aims and objectives of the LEP.

MINUTES ORDINARY COUNCIL - 10 JUNE 2025

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The proposed amendments are considered to have positive social, environmental and economic implications. The amendment will improve access to information for the community and provide clearer approval and assessment requirements. The draft DCP will facilitate increased certainty and confidence in planning processes and outcomes and facilitate housing in Port Stephens. The amendments will support improved environmental outcomes and sustainable development.

COMMUNICATION AND ENGAGEMENT

Council's Communication and Engagement Strategy uses the IAP2 Framework to identify the level of engagement undertaken. An explanation for each level is shown below.

INFORM	To provide the public with balanced and objective information to assist them in understanding the problems, alternatives, opportunities and/or solutions.
CONSULT	To obtain public feedback on analysis, alternatives and/or decisions.
INVOLVE	To work directly with the public throughout the process to ensure that public concerns and aspirations are consistently understood and considered.
COLLABORATE	To partner with the public in each aspect of the decision including the development of alternatives and the identification of the preferred solution.
EMPOWER	To place final decision-making and/or developed budgets in the hands of the public.

The following communication and engagement applies to this report.

External communications and engagement

The following communication and engagement has been conducted in the preparation of the draft DCP:

INFORM	<ul style="list-style-type: none"> Update on the website to inform the community that the DCP was under review. Council Advisory Groups (Heritage, Environment and Community Engagement) received briefings on the project.
CONSULT	<ul style="list-style-type: none"> Update on the website - An email address was provided for the community to contribute suggestions and make enquiries. Targeted Development Industry Survey – A survey was distributed to the development industry including planning, engineering and ecological consultants, architects, developers and members of peak industry bodies.

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	<ul style="list-style-type: none"> • Port Stephens Development Forum – A presentation was given at the Port Stephens Development Forum to provide feedback on the survey results. Discussion and suggestions made during the Forum were recorded and incorporated in the review • Agency consultation - Hunter Water Corporation and the Commonwealth Department of Defence received relevant draft chapters (B3 Stormwater Management and B6 Aircraft Noise and Safety) and provided feedback and guidance. • Industry engagement included targeted engagement with the Urban Development Institute of Australia (UDIA).
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The following communication and engagement is planned:

CONSULT	Following Council's endorsement, the draft DCP will be placed on public exhibition for 28 days and will be notified through social media, direct email to stakeholders, print advertising and Council's website.
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Internal communications and engagement

Consultation has been undertaken by the Strategy and Environment Section with:

- Assets Section.
- Development and Compliance Section.
- Public Domain and Services Section.
- Communications and Customer Experience Section.

OPTIONS

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

ATTACHMENTS

- 1) Draft Development Control Plan 2025. (Provided under separate cover)
- 2) Council Meeting 27 February 2024 Minute 014. (Provided under separate cover)
- 3) DCP-Fact Sheets. (Provided under separate cover)

COUNCILLORS' ROOM/DASHBOARD

Nil.

TABLED DOCUMENTS

Nil.

Explanation of Amendments

Draft Port Stephens Development Control Plan 2025 Amendments

Section B - General Provisions – B2 Natural Environment

NO.	EXPLANATION OF AMENDMENTS
1	<p>Application</p> <ol style="list-style-type: none"> 1. Add “and Littoral Rainforests” ... 2. Clarify that the chapter applies to land with “priority” weeds as defined on the NSW Weedwise website. 3. Add “vegetation”, in addition to trees, as consideration of, for removal or pruning. <p>Explanation: Expanded to provide clarity to the scope of the chapter.</p>
2	<p>B2.2 and Note under B2.2</p> <ol style="list-style-type: none"> 1. Remove “native vegetation” to describe buffer type. 2. Amend the sentence to clearly indicate a buffer area. 3. Amend the heading of the note to expand on the use of buffers and provide better explanation. <p>Explanation: The control has been amended to acknowledge the other forms that buffers can take, such as physical and geographical barriers, asset protection zones and compatible land uses.</p>
3	<p>Riparian corridors</p> <ol style="list-style-type: none"> 1. In responses to a submission from HWC, add a note to identify the important functions of riparian corridors. <p>Explanation: Controls relating to riparian corridors were moved to the Natural Environment chapter from the Stormwater Management chapter. Riparian corridors provide a range of environmental functions including protecting water quality by establishing suitable buffers between development and waterways.</p>
4	<p>B2.6</p> <ol style="list-style-type: none"> 1. Add “of”. <p>Explanation: Fix grammatical error.</p>

ITEM 6 - ATTACHMENT 4 EXPLANATION OF AMENDMENTS.

5	<p>B2.8</p> <ol style="list-style-type: none"> 1. Amend to refer to Council’s Biodiversity Technical Specification for outdoor lighting installation when development is adjacent to an area of threatened fauna habitat. <p>Explanation: The Biodiversity Technical Specification contains detailed guidance on Fauna Friendly Lighting requirements and expectations.</p>
6	<p>B2.B Compensatory requirements</p> <ol style="list-style-type: none"> 1. Add a note “Compensatory habitat” to explain when compensatory requirements may apply. <p>Explanation: Provides clarity for the requirement.</p> <ol style="list-style-type: none"> 2. Amend objective to remove “habitat” and replace with “feed trees and hollow bearing trees”. <p>Explanation: To ensure consistency in references to habitat that will require compensation if removed.</p>
7	<p>B2.11</p> <ol style="list-style-type: none"> 1. Restructure the sentence and combine the control with B2.12 to remove duplication. 2. Add the 3 Preferred Koala feed tree species (as identified in the note “Preferred Koala feed tree species”) to the list of replacement trees in B2.11. 3. Delete the note “Preferred Koala feed tree species”. 4. Remove “preferred” when referring to Koala feed tree species. 5. Renumber all the remaining controls in the chapter to reflect the removal of B2.12. <p>Explanation: To provide clarity and consistency when referring to Koala feed tree species.</p>
8	<p>Note: Important Koala vegetation</p> <ol style="list-style-type: none"> 1. Rename to “Koala feed trees” <p>Explanation: the change is to provide greater clarity as to the importance/relevance of the trees and draw greater attention to the list as identified in B2.11.</p> <ol style="list-style-type: none"> 2. Remove reference to Council’s CKPOM. <p>Explanation: The list in B2.11 is the comprehensive list of Koala feed trees, including both the CKPOM species and other species identified by Council.</p> <ol style="list-style-type: none"> 3. Amend the sentence to reflect the changes made in B2.11.

	<p>Explanation: The numbering of all controls after B2.11 requires amending as a result of B2.12 being combined with B2.11.</p>
9	<p>Figure 1: Compensatory Koala feed tree planting ratios for preferred Koala feed trees and important Koala species</p> <ol style="list-style-type: none"> 1. Amend title to “Compensatory Koala feed tree planting ratios” 2. Amend heading in column 1 to remove “preferred” and “important Koala vegetation” to provide simplicity in the explanation. 3. Amend heading in column 2 to “Loss to gain replacement planting ratio for Koala feed tree species” <p>Explanation: The amendments provide clarity on the compensatory replacement value as determined by the size of a tree being replaced.</p>
10	<p>B2.13</p> <ol style="list-style-type: none"> 1. Add “and planted in accordance with Council’s Biodiversity Specification”. <p>Explanation: The Biodiversity Technical Specification contains the detailed expectations for street tree replacement.</p>
11	<p>B2.15</p> <ol style="list-style-type: none"> 1. Add “in accordance with Council’s Biodiversity Technical Specification”. 2. Remove “The compensatory arboreal hollow size and type must be appropriate for the species being managed on the site or the hollow being removed”. <p>Explanation: The Biodiversity Technical Specification contains a detailed outline of Council’s expectations regarding the installation of compensatory hollows.</p>
12	<p>Figure 2: Compensatory hollow ratios</p> <ol style="list-style-type: none"> 1. Remove reference to Hollow Log hollows. <p>Explanation: Removed reference to a brand name.</p>
13	<p>B2C Weeds</p> <ol style="list-style-type: none"> 1. Add “priority” to clarify the type of weeds applicable to the control, as defined on the NSW WeedWise website. <p>Explanation: Although all weeds can require management, priority weeds can pose a significant risk to human health, the environment, animals, or agriculture and therefore need to be strictly managed. The control discerns priority weeds necessary for this consideration.</p>

Section B - General Provisions – B3 Stormwater Management

NO.	EXPLANATION OF AMENDMENTS
1	<p>B3.6 Additional requirements for development in stormwater control areas:</p> <ol style="list-style-type: none"> 1. Add “for the current day” with regards to providing pre-developed flow rates. 2. Add a note to clarify that if an applicant proposes an alternative solution that can meet the objectives of the chapter, Council will be flexible in applying the DCP (in accordance with Section 4.15(3A) of the EP&A Act). <p>Explanation: The amendment provides clarity as to Council's expected assessment requirements.</p>
2	<p>Note: Development in a drinking water catchment</p> <ol style="list-style-type: none"> 1. Add “Hunter Water Corporation requires that all development in a drinking water catchment achieves a Neutral or Beneficial Effect.” <p>Explanation: Hunter Water Corporation recommended inclusion of a statement to identify their NorBE requirements.</p>
3	<p>Figure 3: Stormwater control area requirements</p> <ol style="list-style-type: none"> 1. Amend incorrect reference to B4.1. <p>Explanation: The reference was amended to provide clarity on which development types are relevant to the requirement.</p> <ol style="list-style-type: none"> 2. Replace “The post-developed 1% AEP (Annual Exceedance Probability) peak flow must not exceed the pre-developed 10% AEP peak flow from the site” with “the post-developed peak flow rate is to be less than the pre-developed flow rate for all flood events up to the 1% AEP” as infiltration requirements in sandy soils. <p>Explanation: The water quantity controls for ‘All other development’ were amended to align more with the existing DCP requirements and industry standards. The requirement to infiltrate the 10% AEP rainfall depth will remain to encourage infiltration and provide benefit to Council’s existing drainage network.</p> <ol style="list-style-type: none"> 3. Remove the clay soils detention requirement “For on-site detention: The post-developed 1% AEP peak flow must not exceed the pre-developed 10% AEP peak flow from the site.”

	<p>Explanation: This replaces the draft requirement to match the post-development 1% AEP flow to the pre-development 10% AEP flow, which would generally result in the need for larger storage volume.</p> <p>4. Amend the detention requirement to include “on-site” quantity management systems.</p> <p>Explanation: This clarifies that the same criteria applies for both on-site and regional scale systems in clay soil areas.</p>
4	<p>B3.8 Requirements for development within a drinking water catchment</p> <p>1. Replace “or” with “and”, and add “testing of both criteria is required to achieve...”</p> <p>Explanation: To clarify that to achieve the best water quality outcome for a site, both Neutral or Beneficial Effect (NorBE), as well as water quality stripping targets, must be demonstrated. (As defined in the DCP glossary, water quality stripping targets refer to the minimum requirements for reducing pollutants in stormwater runoff before it enters public drainage or natural waterways.)</p> <p>2. Amend the total phosphorous retention post-development load from 60% to 65%.</p> <p>3. Amend the total suspended solids post-development load from 90% to 85%.</p> <p>Explanation: These changes align with Landcom’s stripping rate requirements which Council refers to as a minimum standard for erosion and sediment control.</p>
5	<p>B3.9 Requirements for development outside a drinking water catchment</p> <p>1. Amend the total phosphorous retention post-development load from 60% to 65%.</p> <p>2. Amend the total suspended solids post-development load from 90% to 85%.</p> <p>Explanation: These changes align with Landcom’s stripping rate requirements which Council refers to as a minimum standard for erosion and sediment control.</p>

Section B - General Provisions – B4 Flooding

NO.	EXPLANATION OF AMENDMENTS
1	<p>Figure 4: Determine the assessment pathway</p> <p>1. Add an arrow to the flow chart to clarify the assessment pathways.</p>

ITEM 6 - ATTACHMENT 4 EXPLANATION OF AMENDMENTS.

	<p>Explanation: Figure 4 has been updated to show that development can be redesigned and/or relocated to be deemed suitable.</p>
2	<p>Figure 7: Flood hazard categories and development type suitability</p> <p>1. Adjust the Probable Maximum Flood (PMF) and Flood Planning Level (FPL) indication markers and add a flood free area.</p> <p>Explanation: The figure required amending to correctly identify the placement of the FPL and PMF levels (the PMF line must intersect with the upper extent of the minimal flood risk area, and the FPL line must intersect with the upper extent of the flood fringe area) and to include a flood free area above the PMF.</p>
3	<p>Note: Flood impacts are assessed using flood certificates</p> <p>1. Amend the figure numbers to reference correct figures.</p> <p>Explanation: The figures were incorrectly referenced.</p>
4	<p>Note: Campvale Drain Inundation Area</p> <p>1. In response to a submission from HWC, add a note that the Medowie Floodplain Risk Management Study and Plan 2016 must be referred to for guidance when proposing to add fill in the Campvale Drain Inundation area.</p> <p>Explanation: The Medowie Floodplain Risk Management Study and Plan 2016 provides specific guidance for proposed development in the Campvale Drain Inundation Area.</p>

Section B - General Provisions – B6 Aircraft Noise and Safety

NO.	EXPLANATION OF AMENDMENTS
1	<p>Application</p> <p>1. In responses to a submission from Department of Defence, add reference to LEP clause 7.4 Airspace operations.</p> <p>Explanation: To provide guidance that proposed development and certain activities within the Defence Aviation Area that exceed the height, as indicated in the height limitations map, will require referral to the Department of Defence.</p>
2	<p>Chapter Summary</p> <p>1. In responses to a submission from Department of Defence, amend to include:</p>

ITEM 6 - ATTACHMENT 4 EXPLANATION OF AMENDMENTS.

	<ul style="list-style-type: none"> a. the obstacle limitation surface (building height) as a consideration for development; b. consideration for interference to communications, navigation and surveillance equipment. <p>2. Remove “measures to protect radar from electromagnetic radiation”.</p> <p>Explanation: Updates the list of key considerations in the chapter.</p>
3	<p>Control B6.2</p> <ul style="list-style-type: none"> 1. In responses to a submission from Department of Defence, amend control from “satisfy” indoor sound levels to “demonstrate how attenuation levels achieve the indoor design sound levels shown in Figure 14: Indoor design sound levels by providing an acoustic report.” <p>Explanation: Specifies the requirement of an acoustic report.</p>

Section C – Development Types – C4 Residential Development

NO. EXPLANATION OF AMENDMENTS

1 **Application**

- 1. Amend note to add reference to the *State Environmental Planning Policy (Housing) 2021* and the NSW Apartment Design Guide for residential flat buildings.

Explanation: Provides guidance on the relevant legislation and design standards applicable to residential flat buildings.

2 **C4.2 Building setbacks**

- 1. Add map of the Koala Bay area.
- 2. Amend the subsequent figure numbers in Section C to reflect the addition of the new map.

Explanation: Defines the applied area referred to in the control, and updates the figure numbers in response to the additional figure.

Section D – Specific Areas

NO. EXPLANATION OF AMENDMENTS

1 **Figure 50: DCP Specific Areas**

- 1. Amend the heading to “DCP Specific Areas – Land Application Map”
- 2. Add a contents list of the chapters under the map.

Explanation: Easily identifies and locates relevant chapters.

Section E – Glossary

NO.	EXPLANATION OF AMENDMENTS
1	<p>Amend or remove definitions:</p> <ol style="list-style-type: none"> <li data-bbox="443 472 1161 508">1. Delete “Biodiversity Development Assessment Report (BDAR)”. <p>Explanation: The BDAR is no longer referred to in the DCP. The Development Application Supporting Handbook (DASH) provides detailed information on supporting documentation required to accompany a DA.</p> <ol style="list-style-type: none"> <li data-bbox="443 645 1222 703">2. Expand “high value ecological features” to clarify specific fauna habitat and ecologically valuable environments. <p>Explanation: Updated to expand and clarify important ecological features with specific conservation value.</p>

ITEM NO. 7

**FILE NO: 25/172089
EDRMS NO: 89-2025-145-1**

**TEMPORARY SUSPENSION OF ALCOHOL FREE ZONE (AFZ) - SHOAL BAY
FOOD AND WINE FESTIVAL AND SAIL PORT STEPHENS STREET PARTY**

REPORT OF: AMBER HERRMANN - ACTING COMMUNICATION &
CUSTOMER EXPERIENCE SECTION MANAGER
DIRECTORATE: COMMUNITY FUTURES

RECOMMENDATION IS THAT COUNCIL:

- 1) Approve the temporary suspension of part of the Shoal Bay Alcohol Free Zone (AFZ) (**ATTACHMENT 1**) during the Shoal Bay Food and Wine Festival on Saturday 14 March 2026 (and contingency weather dates of 21 and 28 March 2026) from 9am until 10pm in accordance with section 645 of the Local Government Act 1993 (NSW) (LG Act).
 - 2) Approve the temporary suspension of part of the Nelson Bay Alcohol Free Zone (AFZ) (**ATTACHMENT 2**) during the Sail Port Stephens Street Party event on Wednesday 15 April 2026 from 9am until 10pm in accordance with section 645 of the Local Government Act 1993 (NSW) (LG Act).
 - 3) Publicly notify the temporary suspension of the Shoal Bay and Nelson Bay Alcohol Free Zone by publishing a notice in the Port Stephens Examiner, the Port Stephens News of the Area, on Council's website and via direct communications to local businesses prior to the event for the purposes of satisfying section 645(1) of the LG Act.
 - 4) Implement the requirements for signage in accordance with the Ministerial Guidelines Alcohol Free Zones 2009.
-

BACKGROUND

The purpose of this report is to seek Council endorsement to temporarily suspend part of the Shoal Bay and Nelson Bay Alcohol Free Zone (AFZ) to facilitate the Shoal Bay Food and Wine Festival and the Sail Port Stephens Street Party.

It is proposed to temporarily suspend the AFZ on Shoal Bay Road between Government Road and Tomaree Road in Shoal Bay on Saturday 14 March 2026 (and contingency weather dates of Saturday 21 March 2026 and Saturday 28 March 2026) from 9am until 10pm for the Shoal Bay Food and Wine Festival (**ATTACHMENT 1**).

It is proposed to temporarily suspend the AFZ on Magnus Street between Yacaaba Street and Stockton Street as well as Stockton Street between Victoria Parade and Donald Street on Wednesday 15 April 2026 from 9am until 10pm for the Sail Port Stephens Street Party (**ATTACHMENT 2**).

Under the Local Government Act 1993 (NSW) (LG Act), Council may resolve to temporarily suspend an AFZ to, among other purposes, accommodate short term community events.

The LG Act includes a requirement to give public notice in a manner that is likely to bring the notice to the attention of members of the public in the area as a whole or in a part of the area that includes the AFZ concerned.

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

Council will provide public notice for the suspension of the Nelson Bay and Shoal Bay AFZ by publishing a notice in the Port Stephens Examiner, the Port Stephens News of the Area, on Council website and via direct communications to local businesses.

The Guidelines require the existing alcohol restriction signage within the affected Shoal Bay and Nelson Bay AFZ event areas to be amended for the temporary suspended period and reinstated following the event.

Note the proposed suspension will not impact the term of the current Shoal Bay and Nelson Bay AFZs (4 years).

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2025-2029
Community Wellbeing	Deliver and manage community recreational, leisure and community facilities

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 existing AFZ restricts alcohol in the declared area 24 hours, 7 days a week (**ATTACHMENT 1, ATTACHMENT 2**). Council has the power to suspend the AFZ under section 645 of the LG Act.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that attendees will drink within the existing AFZ area that has not been suspended.	Medium	NSW Police have supported the temporary suspension of alcohol in the Shoal Bay AFZ for the event and will resource the area and surrounds as required.	Yes
There is a risk that broken glass and litter could accumulate and be left behind from the event.	Medium	Relevant sections in Council have been notified of the event and Council will increase the waste management in place if necessary.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Appropriate waste management will address any potential environmental impacts that could result from the event. The temporary suspension of the AFZ will assist to support a successful local event which will deliver economic benefits within the local community.

COMMUNICATION AND ENGAGEMENT

Council’s Communication and Engagement Strategy uses the IAP2 Framework to identify the level of engagement undertaken. An explanation for each level is shown below.

INFORM	To provide the public with balanced and objective information to assist them in understanding the problems, alternatives, opportunities and/or solutions.
CONSULT	To obtain public feedback on analysis, alternatives and/or decisions.
INVOLVE	To work directly with the public throughout the process to ensure that public concerns and aspirations are consistently understood and considered.
COLLABORATE	To partner with the public in each aspect of the decision including the development of alternatives and the identification of the preferred solution.

ORDINARY COUNCIL - 28 OCTOBER 2025

EMPOWER	To place final decision-making and/or developed budgets in the hands of the public.
	No external communications and engagement are required for this report.

The following communication and engagement applies to this report.

External communications and engagement

INFORM	Notification of the temporary suspension of the Shoal Bay and Nelson Bay Alcohol Free Zone by publishing a notice in the Port Stephens Examiner, the Port Stephens News of the Area, on Council's website and via direct communications to local businesses prior to the event for the purposes of satisfying section 645(1) of the LG Act.
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Internal communications and engagement

Consultation has been undertaken by the Communications and Customer Experience Section with:

- Strategy and Environment Section.
- Public Domain and Services Section.
- Governance Section.
- Community Services Section.

OPTIONS

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

ATTACHMENTS

- 1) Alcohol Free Zone - Shoal Bay. [↓](#)
- 2) Alcohol Free Zone - Nelson Bay. [↓](#)

COUNCILLORS' ROOM/DASHBOARD

Nil.

TABLED DOCUMENTS

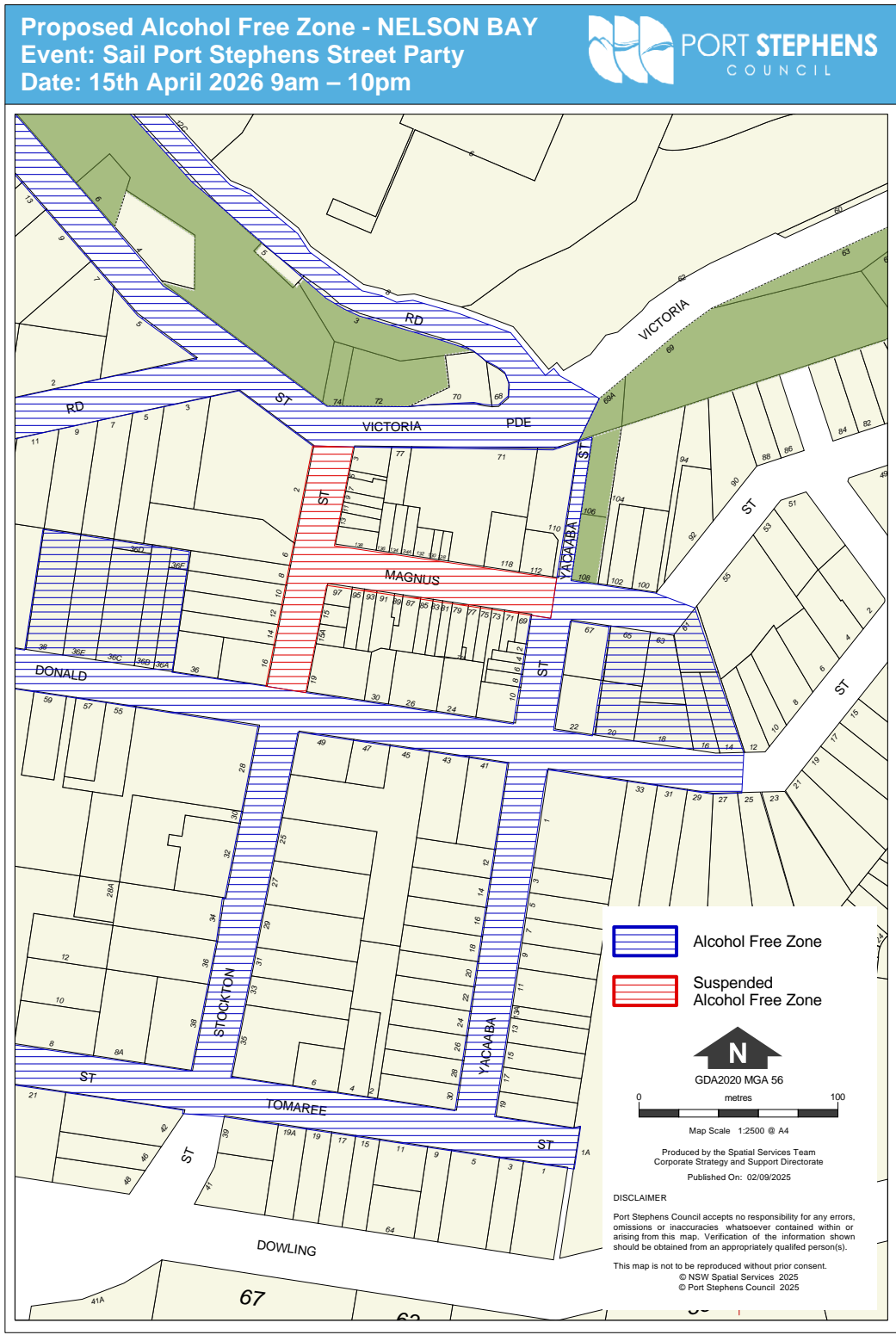
Nil.

ITEM 7 - ATTACHMENT 1 ALCOHOL FREE ZONE - SHOAL BAY.



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

ITEM 7 - ATTACHMENT 2 ALCOHOL FREE ZONE - NELSON BAY.



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

ITEM NO. 8

**FILE NO: 25/234775
EDRMS NO: PSC2014-01768**

REVISED COMMUNICATION AND ENGAGEMENT STRATEGY

REPORT OF: AMBER HERRMANN - ACTING COMMUNICATION &
CUSTOMER EXPERIENCE SECTION MANAGER
DIRECTORATE: COMMUNITY FUTURES

RECOMMENDATION IS THAT COUNCIL:

- 1) Receives and notes the submissions received during the public exhibition of the revised Communication and Engagement Strategy 2025-2030 (**ATTACHMENT 1**).
- 2) Adopt the revised Communication and Engagement Strategy 2025-2030 as amended (**ATTACHMENT 2**).

BACKGROUND

The purpose of this report is to advise Council of the outcome of the exhibition of the revised Communication and Engagement Strategy 2025-2030 (the strategy), as well as noting the response to submissions (**ATTACHMENT 1**). This report also recommends that Council adopt the strategy (**ATTACHMENT 2**).

Under the Integrated Planning and Reporting (IP&R) requirements, Council is required to commence a review of the current Community Engagement Strategy within 3 months of the Local Government election. This review process ensures that the strategy aligns with the 4 year term of Council.

At its meeting on 25 February 2025, Minute No. 025 (**ATTACHMENT 3**), Council resolved to place the strategy on public exhibition for 28 days. During this period, we received 5 submissions. In response to these submissions, proposed changes were discussed with the Communication and Engagement Advisory Group (CEAG), and changes have been made to the strategy. Key amendments are outlined further in this report.

A full Communication and Engagement Report, which details the activities undertaken to help develop the strategy, is provided in (**ATTACHMENT 4**).

Included in the strategy is the Community Participation Plan (CPP). The CPP is a requirement under the Environmental Planning and Assessment Act 1979 (EP&A ACT). The revised draft CPP exceeds the minimum requirements for community engagement and clearly outlines where residents can participate in the decision-making of an Addendum Request, Planning Proposal and Development Application

process. A summary of the changes made following the exhibition process are as follows:

General content and formatting amendments

The Community Engagement Advisory Group (CEAG) provided general feedback in April 2025 regarding minor improvements to the content and formatting of the strategy.

The following has been changed as a result of this feedback:

- The strategy has been updated to include participation statistics from the public exhibition phase (see page 10).
- Community statistics page updated to ensure information is updated (see page 7).
- Clearer reference to the Communication and Engagement Principles in Key objectives tables (see pages 19, 21, 23).
- Update to the reporting requirements to include a timing element where applicable (see pages 19 and 21).
- Update of targets to annual targets (page 25).

Community Participation Plan amendments

Three of the submissions and subsequent discussions with the CEAG members called for improvements to the Community Participation Plan (CPP). A detailed explanation of the amendments is provided within **(ATTACHMENT 5)**. Amendments are also highlighted within **(ATTACHMENT 2)**.

The revised draft CPP has been significantly expanded to clearly articulate the opportunities for community input in the Addendum Request, Planning Proposal and Development Application processes. In summary, these include:

- Outline of the community participation requirements under the Environmental Planning and Assessment Act (EP&A Act) 1979 (page 26).
- Table outlining how Council is meeting the EP&A Act community participation requirements (page 27).
- Reference to the levels of communication and engagement, linking with the strategy (page 28).
- Step by step process, including infographic for state and local government strategies, Addendum Requests, Planning Proposals and Development Applications, providing a description of each step and what community participation is included (page 28 to 35).
- Information on speaking in public access (page 36).

The revised draft CPP goes beyond the statutory requirements, making sure:

- All affected communities are informed of Addendum Requests, Planning Proposals, and Development Applications as they are lodged and at public

exhibition through print advertisement in the local newspaper, information on the Council's website and the Council's e-newsletter where appropriate.

- Proponents are required to provide Council with a Communication and Engagement report outlining the communication and engagement undertaken as part of the pre-lodgement of an addendum request and scoping proposal.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2025-2029
Connecting with community	Implement the Communication and Engagement Strategy

FINANCIAL/RESOURCE IMPLICATIONS

There are no direct financial/resource implications, as the strategy will continue to be implemented as part of ongoing operations.

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

A Community Engagement Strategy is required under the Integrated Planning & Reporting (IP&R) requirements. Council is required to commence a review of its current Community Engagement Strategy within 3 months of the local government elections. Adopting the recommendations will help ensure compliance with the Local Government Act 1993, relating to community engagement strategies, and the Environment and Planning Assessment Act 1979, Division 2.6, relating to the Community Participation Plan.

ORDINARY COUNCIL - 28 OCTOBER 2025

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that Council does not meet legislative requirements under the IP&R requirements relating to community engagement strategies.	Low	Adopt the recommendations.	Yes
There is a risk that Council may be in breach of the Environment and Planning Assessment Act 1979 if it does not have an endorsed Community Participation Plan.	Low	Adopt the recommendations.	Yes
There is a risk that the revised draft CPP could raise community expectations about the level of influence they have over an Addendum Request or Planning Proposal after the application is lodged, but before Public Exhibition.	Medium	Track and monitor customer contact at Step 2 of the Planning Proposal, when notification is for informational purposes only and does not invite submissions or feedback. Clear messaging is provided in communications about when notifications are for informational purposes only and when submissions are invited.	Yes
There is a risk that the revised draft CPP enables notification of the affected community before Council resolves to progress with the assessment of the Planning Proposal and the merits of the proposal are assessed by the State Government.	Medium	Clear messaging is provided in notifications that the Planning Proposal may not progress to assessment or may change at Gateway Determination.	Yes

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that Council may be exposed to reputation damage if it does not have a clear and comprehensive approach to communications and community engagement that aligns with Local Government Act 1993 requirements.	Low	Adopt the recommendations.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Adopting the recommendations demonstrates a greater understanding that engagement and communications are directly linked to the liveability and wellbeing of our community. By enabling our community to participate in the decision-making process, and be informed about the services, projects and initiatives that Council delivers, Council can improve the way people feel about living and working in Port Stephens. Adopting the recommendations ensures that Council will continue to follow best practice when engaging and communicating with the community about the services and activities of Council. There are no significant economic or environmental implications associated with the adoption of these recommendations.

COMMUNICATION AND ENGAGEMENT

Council's Communication and Engagement Strategy uses the IAP2 Framework to identify the level of engagement undertaken. An explanation for each level is shown below.

INFORM	To provide the public with balanced and objective information to assist them in understanding the problems, alternatives, opportunities and/or solutions.
CONSULT	To obtain public feedback on analysis, alternatives and/or decisions.
INVOLVE	To work directly with the public throughout the process to ensure that public concerns and aspirations are consistently understood and considered.
COLLABORATE	To partner with the public in each aspect of the decision including the development of alternatives and the identification of the preferred solution.
EMPOWER	To place final decision-making and/or developed budgets in the hands of the public.

ORDINARY COUNCIL - 28 OCTOBER 2025

	No external communications and engagement are required for this report.
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The following communication and engagement applies to this report.

External communications and engagement

The following table represents only the current phase of communication and engagement for the strategy. To view the full communication and engagement activities for all phases of the strategy’s development, refer to the Communication and Engagement Report June 2025 (**ATTACHMENT 4**).

INFORM	The promotion of the public exhibition period for the strategy was hosted on Council's website and promoted to media outlets, print advertisements, posted on social media, and featured in bulk e-newsletters. Direct emails were also sent to key local community groups.
CONSULT	The strategy was placed on formal public exhibition for 28 days, and five (5) submissions were received. The content of the submissions was referred to the Communications and Engagement Advisory Group (CEAG) with a specific focus on the Community Participation Plan. In response to these submissions and CEAG discussions, changes have been made to the strategy.
INVOLVE	The changes to the strategy post public exhibition were refined through the advice of the CEAG.

During the exhibition period, a total of 5 submissions were received. A summary of the submissions is included in (**ATTACHMENT 1**). The submissions are summarised in the following table with the primary theme shown:

Submission	Theme
1	Improve wording, choice of language, formatting and keep to plain English, including website improvement suggestions.
2, 3, 4	Suggested considerable change to the Community Participation Plan to improve community consultation opportunities in the Planning Proposal process specifically.
5	Improve equity and access – draft document was not available for the ‘listen option’ on Councils website.

The submissions were reviewed with the CEAG on 16 April 2025 and in further discussion in August 2025 with feedback incorporated into the strategy as outlined in (**ATTACHMENT 2**).

Internal communications and engagement

Consultation has been undertaken by the Communications and Customer Experience Section with:

- Development Assessment and Compliance Section
- Strategy and Environment Section
- Governance Section
- Directorate Corporate Strategy and Support

OPTIONS

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

ATTACHMENTS

- 1) Communication and Engagement Strategy Submissions Table. [↓](#)
- 2) Communication and Engagement Strategy 2025-2030. (Provided under separate cover) [⇒](#)
- 3) 25 February 2025, Minute No. 025. [↓](#)
- 4) Communication and Engagement Report June 2025. (Provided under separate cover) [⇒](#)
- 5) Community Participation Plan Changes Fact Sheet. [↓](#)

COUNCILLORS' ROOM/DASHBOARD

- 1) Unredacted full submissions.

TABLED DOCUMENTS

Nil.

ITEM 8 - ATTACHMENT 1 COMMUNICATION AND ENGAGEMENT STRATEGY SUBMISSIONS TABLE.

No	Themes	Summarised comment	Council's response
1	Suggested changes to the draft strategy	<p>Primary concern is that the overall strategy is too vague and too general.</p> <p>Additional, relatively minor, formatting and language suggestions.</p> <p>Suggested better links between have your say website and items on public exhibition</p>	<p>Feedback has been considered and improvements incorporated where possible.</p> <p>Council to investigate options to better link items on public exhibition to have your say website.</p> <p>Direct letter to be sent to submitter in response to suggestions.</p>
2	<p>Suggested changes to the draft strategy to improve processes especially relating to the CPP.</p> <p>AB Rise development and 19 Gan Gan Road @ Anna Bay referenced as examples of where the CPP has failed.</p>	<p>Calls for the CPP to be like Byron Council CPP from 2019.</p> <p>Primary concern is with the PSC CPP and the process associated with Planning Proposals or rezonings.</p> <p>“The rezoning process ie the standard LEP making process does not provide opportunity</p> <p>for community input until Stage 5 ie after decision making by council. This goes against the objects of the EP&A act. The current non transparent process used by PSC delivers outcomes that council perceive to be in the community's interests but without community consultation, decision making is often</p>	<p>Council to make clearer in the strategy, including the appended CPP, the difference in processes between DA's and Planning Proposals or rezonings.</p> <p>Direct letter to be sent to submitter in response to suggestions.</p>

ITEM 8 - ATTACHMENT 1 COMMUNICATION AND ENGAGEMENT STRATEGY SUBMISSIONS TABLE.

No	Themes	Summarised comment	Council's response
		incongruent to community aspirations. This erodes trust."	
3	Suggested changes to the Strategy and especially CPP Uses 19 Gan Gan Road, Anna Bay as an example of where the CPP fails	Primary concern with the CPP: "The CPP does go into detail around Development Applications and Modification Applications, but does not adequately provide for community consultation concerning Planning Proposals." Also did not like the Planning proposals factsheet provided with adjoining neighbor notification primarily as there is no element of consultation in Stage 5 until the public hearing [similar to above response].	Council to make clearer in the strategy, including the appended CPP, the difference in processes between DA's and Planning Proposals or rezonings. Direct letter to be sent to submitter in response to suggestions.
4	Suggested changes to the draft strategy includes full rewrite and re-exhibit	Suggests community engagement strategy is rewritten in a different format including using the CPP from Byron Shire from 2019 as the primary guide.	Council to make clearer in the strategy, including the appended CPP, the difference in processes between DA's and Planning Proposals or rezonings. Direct letter to be sent to submitter in response to suggestions.

ITEM 8 - ATTACHMENT 1 COMMUNICATION AND ENGAGEMENT STRATEGY SUBMISSIONS TABLE.

No	Themes	Summarised comment	Council's response
5	Equity and access	"The listen option does not work for the Communication and Engagement strategy. It does work in other sections on Council pages."	<p>Council to investigate options for a listening option for the attached PDFs, as the 'Readspeaker' program only currently works for website text.</p> <p>Phone call to submitter in response to suggestion.</p>

MINUTES ORDINARY COUNCIL - 25 FEBRUARY 2025

ITEM NO. 1

**FILE NO: 24/342275
EDRMS NO: PSC2014-01768**

REVISED COMMUNICATION AND ENGAGEMENT STRATEGY

REPORT OF: JANELLE GARDNER - COMMUNICATIONS AND CUSTOMER
 EXPERIENCE SECTION MANAGER
DIRECTORATE: COMMUNITY FUTURES

RECOMMENDATION IS THAT COUNCIL:

- 1) Endorse the revised Communication and Engagement Strategy 2024-2028 **(ATTACHMENT 1)**.
- 2) Place the revised Communication and Engagement Strategy, as amended on public exhibition for a period of 28 days and should no submissions be received, the strategy be adopted, without a further report to Council.
- 3) Revoke the Communication and Engagement Strategy 2022-2027 **(ATTACHMENT 2)** should no submissions be received.

**ORDINARY COUNCIL MEETING - 25 FEBRUARY 2025
MOTION**

025	<p>Councillor Jason Wells Councillor Mark Watson</p> <p>It was resolved that Council:</p> <ol style="list-style-type: none">1) Endorse the revised Communication and Engagement Strategy 2024-2028 (ATTACHMENT 1).2) Place the revised Communication and Engagement Strategy, as amended on public exhibition for a period of 28 days and should no submissions be received, the strategy be adopted, without a further report to Council.3) Revoke the Communication and Engagement Strategy 2022-2027 (ATTACHMENT 2) should no submissions be received.
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Those for the Motion: Mayor Leah Anderson, Crs Rosalyn Armstrong, Giacomo Arnott, Nathan Errington, Peter Francis, Paul Le Mottee, Ben Niland, Mark Watson and Jason Wells.

Those against the Motion: Nil.

The motion was carried.

MINUTES ORDINARY COUNCIL - 25 FEBRUARY 2025**BACKGROUND**

The purpose of this report is to seek Council endorsement to place the revised Communication and Engagement Strategy 2024-2028 (the strategy) on public exhibition for a period of 28 days (**ATTACHMENT 1**).

Under the Integrated Planning & Reporting (IP&R) requirements, Council is required to commence a review of the current Community Engagement Strategy within 3 months of the Local Government election. This ensures the strategy aligns with the 4 year term of Council and the IP&R cycle.

The current Communication and Engagement Strategy 2022-2027 (**ATTACHMENT 2**) was adopted on 13 December 2022. The development of this strategy included detailed engagement with over 2,300 community members over a three phase period between 2021 and 2022:

- Phase 1: Communication and engagement data gathering
- Phase 2: Communication and engagement deep-dive including community focus group
- Phase 3: Public Exhibition with the broader community and refinement of the strategy following feedback received.

For full details of the previous engagement conducted refer to the Community Engagement Report 2022 (**ATTACHMENT 3**).

A review of the strategy was completed via Councils Communication and Engagement Advisory Group (CEAG). The CEAG includes 9 community members along with the Mayor and 5 Councillors.

Recommendations from the CEAG include:

- Increased focus on reaching and engaging with a diverse range of demographics to target communication more effectively
- The use of digital marketing to enhance awareness of Council projects and services
- Update targets to better reflect current social media trends.

This feedback has been included in the draft document (**ATTACHMENT 1**).

Included in the Strategy is the Community Participation Plan (CPP). The CPP is a requirement under the Environmental Planning and Assessment Act 1979 (EP&A Act). The CPP outlines the minimum requirements for public exhibition periods for plan making and development applications and acts as a guide to how residents can participate in local planning decisions. There were minimal changes recommended for the CPP.

MINUTES ORDINARY COUNCIL - 25 FEBRUARY 2025

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2022-2026
Communication and engagement	Deliver the 4-year program for the Communication and Engagement Strategy

FINANCIAL/RESOURCE IMPLICATIONS

There are no direct financial/resource implications, as the strategy will continue to be implemented as part of ongoing operations.

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

A Community Engagement Strategy is required under the Integration Planning & Reporting (IP&R) requirements. Council is required to commence a review its current Community Engagement Strategy within 3 months of the local government elections.

Adopting the recommendations will help ensure compliance with the Local Government Act 1993 relating to community engagement strategies and the Environment and Planning Assessment Act 1979 - Division 2.6 relating to the Community Participation Plan.

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
There is a risk that Council does not meet legislative requirements under the IP&R requirements relating to community engagement strategies.	Low	Adopt the recommendations.	Yes

MINUTES ORDINARY COUNCIL - 25 FEBRUARY 2025

There is a risk that Council may be in breach of the Environment and Planning Assessment Act 1979 if it does not have an endorsed Community Participation Plan.	Low	Adopt the recommendations.	Yes
There is a risk that Council may be exposed to reputation damage if Council does not have a clear and comprehensive approach to communications and community engagement that aligns with Local Government Act 1993 requirements.	Low	Adopt the recommendations.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Adopting the recommendations demonstrates Council’s greater understanding that engagement and communications are directly linked to the liveability and wellbeing of our community. By enabling our community to participate in the decision making process, and be informed about the services, projects and initiatives Council delivers, Council can improve the way people feel about living and working in Port Stephens. Adopting the recommendations ensures that Council will continue to follow best practice when engaging and communicating with the community about the services and activities of Council.

There are no significant economic or environmental implications resulting from the adoption of the recommendations.

COMMUNICATION AND ENGAGEMENT

Council’s Communication and Engagement Strategy uses the IAP2 Framework to identify the level of engagement undertaken. An explanation for each level is shown below.

INFORM	To provide the public with balanced and objective information to assist them in understanding the problems, alternatives, opportunities and/or solutions.
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MINUTES ORDINARY COUNCIL - 25 FEBRUARY 2025

CONSULT	To obtain public feedback on analysis, alternatives and/or decisions.
INVOLVE	To work directly with the public throughout the process to ensure that public concerns and aspirations are consistently understood and considered.
COLLABORATE	To partner with the public in each aspect of the decision including the development of alternatives and the identification of the preferred solution.
EMPOWER	To place final decision-making and/or developed budgets in the hands of the public.

The following communication and engagement applies to this report.

External communications and engagement

INVOLVE	<ul style="list-style-type: none"> • Since the CEAG commenced in August 2023, ongoing feedback around communications and engagement programs has been provided by panel members. These recommendations have been incorporated into the revised strategy. • In December 2024, the CEAG met to review the current strategy. The recommendations from this meeting have been included in the revised strategy.
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Internal communications and engagement

Internal feedback has been gathered from across the organisation over the past year. This included improving key objectives to focus on reaching and engaging with a diverse range of demographics to target communication more effectively, using digital marketing to enhance awareness of Council projects and services and updating targets to better reflect current social media trends.

Internal feedback was also sought from the Development and Compliance Section to inform the proposed changes to the Community Participation Plan (CPP).

OPTIONS

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

ATTACHMENTS

- 1) Draft Port Stephens Communication and Engagement Strategy 2024 to 2028. (Provided under separate cover)
- 2) Port Stephens Communication and Engagement Strategy 2022 to 2027. (Provided under separate cover)
- 3) Port Stephens Communications and Engagement Strategy Engagement Report.

MINUTES ORDINARY COUNCIL - 25 FEBRUARY 2025

(Provided under separate cover)

COUNCILLORS' ROOM/DASHBOARD

Nil.

TABLED DOCUMENTS

Nil.



What are our statutory requirements?	What do we currently do?	What are we proposing?
<p>Addendum requests</p> <ul style="list-style-type: none"> • Nil 	<ul style="list-style-type: none"> • Early engagement with government and key agencies. • Notify adjoining landowners when an Addendum Request is lodged. • Public exhibition of 28 days with notification on the website and inviting submissions. • Public access at Council meeting. 	<ul style="list-style-type: none"> • Early engagement with government and key agencies. • Notify adjoining landowners when an Addendum Request is lodged. • Public exhibition of 28 days with notification on the website and inviting submissions. • Public access at Council meeting. • Communication and engagement report provided to Council by proponent outlining the communication and engagement undertaken as part of the pre-lodgement. • A Social Impact Assessment may also be required depending on the proposed impacts of the development. • Notify the affected community when an Addendum Request is lodged via print advertisements in local newspapers, information on the Council's website and an item in the Council's e-newsletter, where appropriate.

ITEM 8 - ATTACHMENT 5 COMMUNITY PARTICIPATION PLAN CHANGES FACT SHEET.

What are our statutory requirements?	What do we currently do?	What are we proposing?
Planning proposals		
<ul style="list-style-type: none"> Step 5: Public exhibition Community engagement will occur according to the Gateway determination, which determines the allocated timeframe (5 days, 28 days, etc.). Gateway can identify that no engagement is required and does not define engagement level or methods to use. <p>*The State Government's Local Environmental Plan Making Guidelines (Aug 2023) recommends against community engagement until Step 3 Gateway determination has been made by the State Government to ensure the community has clear and evidence-based information available to help them make informed comments on the proposal.</p>	<ul style="list-style-type: none"> Step 1: Scoping proposal: Early engagement with government and key agencies. Step 2: Planning proposal: Notify adjoining land owners when a Planning Proposal is lodged. Public access available at Council meeting. Step 4: Post Gateway: Input from government and key agencies. Step 5: Public exhibition: Public exhibition as determined by Gateway, which generally includes a letter to adjoining land owners, information on Council's website, submission invited, and optional public hearing. Step 6: Assessment Public access at Council meeting. Step 7: Finalisation Automatic notification of the outcome through the Planning Portal. 	<ul style="list-style-type: none"> Step 1: Scoping proposal: Early engagement with government and key agencies. Proponent is required to provide a communication and engagement report to Council outlining what communications and engagement have been undertaken as part of pre-lodgement. A Social Impact Assessment may also be required depending on the proposed impacts of the development. Step 2: Planning proposal Notify adjoining land owners when a Planning Proposal is lodged. Notify the affected community when a Planning Proposal is lodged via print advertisements in local newspapers, information on the Council's website and items in the Council's e-newsletter, where appropriate. Public access available at Council meeting Step 4: Post Gateway: Input from government and key agencies Step 5: Public exhibition: Notify the affected community via print advertisements in local newspapers, information on the Council's website and items in the Council's e-newsletter where appropriate. Notify adjoining land owners Invitation for written submission Optional public hearing if determined as a requirement of Gateway. Step 6: Assessment Public access at Council meeting. Step 7: Finalisation Automatic notification of the outcome through the Planning Portal.

ITEM NO. 9

**FILE NO: 25/96939
EDRMS NO: PSC2015-03017**

PETITION - TREE VANDALISM

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Note the receipt of a petition relating to tree vandalism from community members containing 641 signatures.

BACKGROUND

The purpose of this report is to advise Council of the receipt of a petition from community members containing 641 signatures requesting action and updating of policies to reflect a more aggressive response to illegal acts of land clearing and/or vandalism. The petition request is at **(ATTACHMENT 1)**.

The petition acknowledges that the requests made are already underway or under consideration by Council.

A summary of Council's current actions in relation to tree vandalism is provided as follows:

- Council has erected signage, banners and installed temporary surveillance cameras where appropriate to deter further actions and protect rehabilitation efforts.
- Council has used a range of media to raise awareness in relation to tree vandalism including the use of media releases, social media, radio and print media.
- Council has undertaken a comprehensive review of the Tree Vandalism Policy in response to a Notice of Motion from the 25 February 2025 Ordinary Council Meeting, Minute No. 021 **(ATTACHMENT 2)**.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2025-2029
Environmental balance	Develop and implement a program for Council to deliver technical environmental advice, strategies and policies

FINANCIAL/RESOURCE IMPLICATIONS

The receipt of the petition will not have financial or resourcing implications for Council.

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 receipt of the petition will not have legal, policy and risk implications for Council.

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
There is a risk that the receipt of the petition is not processed in accordance with Council’s Receipt of Petitions Policy.	Low	Accept the recommendation.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The Receipt of Petitions Policy provides the community with an opportunity to express their opinions to Council on matters of significant community interest and/or impact. The petition raises concerns relating to tree vandalism and its impact on social, economic and environmental values.

COMMUNICATION AND ENGAGEMENT

Council’s Communication and Engagement Strategy uses the IAP2 Framework to identify the level of engagement undertaken. An explanation for each level is shown below.

INFORM	To provide the public with balanced and objective information to assist them in understanding the problems, alternatives, opportunities and/or solutions.
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ORDINARY COUNCIL - 28 OCTOBER 2025

CONSULT	To obtain public feedback on analysis, alternatives and/or decisions.
INVOLVE	To work directly with the public throughout the process to ensure that public concerns and aspirations are consistently understood and considered.
COLLABORATE	To partner with the public in each aspect of the decision including the development of alternatives and the identification of the preferred solution.
EMPOWER	To place final decision-making and/or developed budgets in the hands of the public.

The following communication and engagement applies to this report.

External communications and engagement

INFORM	The petition has been received and reported to Council in accordance with the Receipt of Petitions Policy. The community has been informed through the published Business Paper.
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Internal communications and engagement

Consultation has been undertaken by the Strategy and Environment Section with:

- Assets Section.
- Community Services Section.
- Public Domain and Services Section.
- Development and Compliance Section.

OPTIONS

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

ATTACHMENTS

- 1) Petition Request. [↓](#)
- 2) 25 February 2025 - Ordinary Council Meeting Minute No. 021. [↓](#)

COUNCILLORS' ROOM/DASHBOARD

- 1) Unredacted Petition.

TABLED DOCUMENTS

Nil.

PETITION TO PORT STEPHENS COUNCIL

In response to Jan 18/19, 2025 aggressive 'Tree Vandalism' on the Bridle Path (Nelson Bay), we (the undersigned) neighbourhood and community members call on Port Stephens Council to:

- Respond to this incident in an equally aggressive fashion including consideration of:
 - Erection of permanent or semi-permanent demarcation between private and public lands so that there is no confusion about ownership and responsibility;
 - Installation of appropriate, permanent or semi-permanent signage that creates a visible indication of what has occurred and consequences for repeat offences;
 - Authority for Port Stephens Council and/or the Nelson Bay West Landcare Group to replant similar tree species in the immediate vicinity of those vandalised;
 - Attempt to maintain the damaged trees in situ, in whole or in part, for as long as possible to afford an opportunity for re-plantings to establish and thrive.
- Review and update the PSC Vegetation Management Policies (including: Tree Vandalism, Public Property Encroachment, and Tree Removal Policies) to reflect a more aggressive response to illegal acts of land clearing and/or vandalism.

MINUTES ORDINARY COUNCIL - 25 FEBRUARY 2025

NOTICE OF MOTION

ITEM NO. 1

FILE NO: 25/22868

EDRMS NO: PSC2024-03148

TREE VANDALISM POLICY

COUNCILLOR: ROSALYN ARMSTRONG

THAT COUNCIL:

- 1) Notes the increased prevalence of tree vandalism occurring across public land in Port Stephens.
 - 2) Requests that the General Manager undertake a review of the Tree Vandalism Policy to investigate options for increased community awareness, education and compliance actions in response to tree vandalism incidents.
 - 3) Engages with Council's Environmental Advisory Group as part of this review.
-

**ORDINARY COUNCIL MEETING - 25 FEBRUARY 2025
MOTION**

021	<p>Councillor Rosalyn Armstrong Councillor Jason Wells</p> <p>It was resolved that Council:</p> <ol style="list-style-type: none">1) Notes the increased prevalence of tree vandalism occurring across public land in Port Stephens.2) Requests that the General Manager undertake a review of the Tree Vandalism Policy to investigate options for increased community awareness, education and compliance actions in response to tree vandalism incidents.3) Engages with Council's Environmental Advisory Group as part of this review.4) In carrying out this review consider the 2007 Model issued by Joint Organisation of Hunter Councils and the subject policies of Central Coast, City of Coffs Harbour and Tweed Shire Councils who have adopted this model more completely than we have in Port Stephens.
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MINUTES ORDINARY COUNCIL - 25 FEBRUARY 2025

Cr Rosalyn Armstrong requested an amendment to include item 4 in the motion. The seconder accepted the amendment.

Those for the Motion: Mayor Leah Anderson, Crs Rosalyn Armstrong, Giacomo Arnott, Nathan Errington, Peter Francis, Paul Le Mottee, Ben Niland, Mark Watson and Jason Wells.

Those against the Motion: Nil.

The motion was carried.

BACKGROUND REPORT OF: BROCK LAMONT – STRATEGY AND ENVIRONMENT SECTION MANAGER**BACKGROUND**

The purpose of the Tree Vandalism Policy is to set out a consistent approach for Council when responding to tree vandalism incidents in Port Stephens. It includes a range of response measures which are collectively aimed at raising the public profile of the tree vandalism in the community in order to serve as effective deterrence measures.

Council has recently been investigating a number of tree vandalism incidents on public land in Port Stephens, including a significant incident at the Bridle Path in Nelson Bay.

The current Tree Vandalism Policy was last reviewed by Council in March 2023. The policy is due for review in March 2026.

FINANCIAL/RESOURCE IMPLICATIONS

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

ATTACHMENTS

Nil.

ITEM NO. 10

**FILE NO: 25/156544
EDRMS NO: 25/158517**

POLICY REVIEW - PUBLIC TREE AND VEGETATION VANDALISM POLICY

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Place the revised Public Tree and Vegetation Vandalism Policy shown at **(ATTACHMENT 1)** on public exhibition for a period of 28 days.
- 2) Should no submissions be received, resolve that the policy be adopted without a further report to Council.
- 3) Revoke the Tree Vandalism Policy dated 14 March 2023, Minute No. 51 should no submissions be received **(ATTACHMENT 2)**.

BACKGROUND

The purpose of this report is to provide the revised Public Tree and Vegetation Vandalism Policy (the 'policy') at **(ATTACHMENT 1)** to Council for consideration prior to public exhibition.

The policy has been reviewed in response to recent tree vandalism incidents, which prompted a Council resolution on 25 February 2025 **(ATTACHMENT 2)**. The resolution noted that Council:

- 1) Notes the increased prevalence of tree vandalism occurring across public land in Port Stephens.
- 2) Requests that the General Manager undertake a review of the Tree Vandalism Policy to investigate options for increased community awareness, education and compliance actions in response to tree vandalism incidents.
- 3) Engages with Council's Environmental Advisory Group (EAG) as part of this review.
- 4) In carrying out this review consider the 2007 Model issued by Joint Organisation of Hunter Councils and the subject policies of Central Coast, City of Coffs Harbour and Tweed Shire Councils who have adopted this model more completely than we have in Port Stephens.

The policy was originally developed in 2008 to provide certainty for the community and staff regarding Council's response to incidences of Tree and/or Vegetation Vandalism in Port Stephens.

The revised policy includes a range of response measures which are collectively aimed at raising the public profile of the tree vandalism in the community in order to serve as effective deterrence measures.

The EAG has been consulted in the review of the policy and benchmarking of the above policies has been undertaken.

As a result of the review, several updates are proposed, including:

- Broadening the policy scope to include trees and vegetation more generally.
- Limiting the scope to trees and vegetation on public land.
- Updating definitions to include terms like ‘public tree and vegetation vandalism’ and ‘vegetation’.
- Adding an investigation and response matrix that categorises incidents as Minor, Moderate and Major in Significance.
- Clarifying how the policy interacts with the Compliance Policy for investigation and enforcement procedures.
- Updating roles and responsibilities related to investigating and responding to vandalism.

Yellow highlighting indicates an amendment has been made and strikethrough text indicates text to be deleted.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2025-2029
Environmental balance	Develop and implement a program for Council to deliver technical environmental advice, strategies and policies

FINANCIAL/RESOURCE IMPLICATIONS

The revised policy outlines different investigation and response procedures based on the severity of an incident.

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

LEGAL, POLICY AND RISK IMPLICATIONS

There are no foreseen legal or policy implications as a result of the proposed recommendations.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that in the absence of a policy that the incidence of tree vandalism will increase.	Medium	Adopt the recommendations.	Yes
There is a risk that the absence of a policy will make Council's compliance and enforcement measures inconsistent.	Medium	Adopt the recommendations.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The policy's primary goal is to minimise vandalism of public trees and vegetation throughout Port Stephens. Public trees and vegetation are valued public assets which enhance the area's appearance, amenity and biodiversity. This policy serves as a deterrent to support their protection.

COMMUNICATION AND ENGAGEMENT

Council's Communication and Engagement Strategy uses the IAP2 Framework to identify the level of engagement undertaken. An explanation for each level is shown below.

INFORM	To provide the public with balanced and objective information to assist them in understanding the problems, alternatives, opportunities and/or solutions.
CONSULT	To obtain public feedback on analysis, alternatives and/or decisions.
INVOLVE	To work directly with the public throughout the process to ensure that public concerns and aspirations are consistently understood and considered.
COLLABORATE	To partner with the public in each aspect of the decision including the development of alternatives and the identification of the preferred solution.
EMPOWER	To place final decision-making and/or developed budgets in the hands of the public.

The following communication and engagement applies to this report.

External communications and engagement

The EAG was consulted during the policy review. Their feedback and comments have been incorporated into the revised policy.

The following communication and engagement is proposed for the public exhibition period:

CONSULT	The policy will be placed on public exhibition for 28 days and will be notified through relevant Council media platforms, print advertising and Council's website.
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Internal communications and engagement

Consultation has been undertaken by the Strategy and Environment Section with:

- Governance Section.
- Assets Section.
- Community Services Section.
- Public Domain and Services Section.
- Development and Compliance Section.

OPTIONS

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

ATTACHMENTS

- 1) Revised - Public Tree and Vegetation Vandalism Policy. [↓](#)
- 2) Council Minute No.51 - 14 March 2023. [↓](#)

COUNCILLORS' ROOM/DASHBOARD

Nil.

TABLED DOCUMENTS

Nil.

ITEM 10 - ATTACHMENT 1 REVISED - PUBLIC TREE AND VEGETATION VANDALISM POLICY.

Policy



FILE NO: PSC2008-2921

TITLE: PUBLIC TREE AND VEGETATION VANDALISM POLICY

OWNER: STRATEGY AND ENVIRONMENT SECTION MANAGER

1. PURPOSE:

1.1 This policy sets out a consistent approach for Council when responding to public tree and vegetation vandalism incidents in Port Stephens. It includes a range of response measures including education, monitoring, regulation, enforcement and rehabilitation which are collectively aimed at curbing tree and vegetation vandalism, raising the public profile of the tree and vegetation vandalism, fostering greater community stewardship of trees and vegetation and supporting in the community in order to serve as effective deterrence measures.

2. CONTEXT/BACKGROUND:

- 2.1 Tree and vegetation vandalism continues to be of concern in Port Stephens and is particularly apparent in coastal areas where development pressure as well as conflicts between water views and vegetation puts trees / vegetation on Council managed land at risk.
- 2.2 Tree and vegetation vandalism has a significant and cumulative impact on Council assets, the community and the environment. Impacts include reduced visual amenity, and community amenity and well-being, the loss of wind-breaks and erosion control in some locations, and the loss of wildlife habitat, and reduced shade.
- 2.3 Such vandalism can also have substantial financial and human resource costs for Council including tree and vegetation replacement costs, the cost of the investigation, rehabilitation and repair costs, and the cost of implementing potential punitive and/or deterrence measures.

3. SCOPE:

3.1 This policy applies to all instances of tree and vegetation vandalism on Council managed land.

4. DEFINITIONS:

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

Policy

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ITEM 10 - ATTACHMENT 1 REVISED - PUBLIC TREE AND VEGETATION VANDALISM POLICY.



Policy

Council managed land	Any land that is under the care, control and management of Port Stephens Council.
Prosecution	Investigation and determination of compliance action in response to alleged vandalism, with action taken where an offence is proven. May include caution, fines or court appearance. Engaged contractors may also be prosecuted for tree and vegetation vandalism.
Public tree and vegetation vandalism	The intentional and unlawful destruction, damage or injury to trees and/or vegetation on Council managed land. Examples include poisoning, slashing, pruning, removal and ringbarking.
Vegetation	Includes any of the following, whether dead or alive, native or exotic: <ul style="list-style-type: none"> - a tree - an understorey plant - a groundcover - a plant occurring in a wetland or inter-tidal area

5. STATEMENT:

- 5.1 Vandalism of trees and vegetation on community and public land is unlawful criminal offence and all reports of tree vandalism on public land will be investigated in accordance with the PSC Compliance Policy and responded to in accordance with Appendix 1 – Tree and Vegetation Response Assessment Model.
- 5.2 The long term protection and management of trees and vegetation on public land (including re-establishment in previously cleared areas) is integral to maintaining the economic, cultural, environmental and social values of Port Stephens.
- 5.3 Council is committed to reducing/stopping tree and vegetation vandalism within Port Stephens and to responding to the events in accordance with Appendix 1.
- 5.4 The identification and prosecution of perpetrators of public tree and vegetation vandalism will be pursued by Council consistent with this policy, and Council's Compliance Policy and Council Prosecutions Policy.
- 5.5 Council will assess and respond to tree and vegetation vandalism in accordance with Appendix 1. the retention value (Very low, Low, Medium, or High) of the vandalised tree in accordance with Port Stephens Council Tree Technical Specification which takes into account the following factors: significance of the tree; the tree's life cycle stage; the profile of the site; the tree's safe useful life expectancy; the environmental effects; the target where the tree could fall;

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ITEM 10 - ATTACHMENT 1 REVISED - PUBLIC TREE AND VEGETATION VANDALISM POLICY.



Policy

~~damage caused; and the cost of remediation.~~

- 5.6 ~~In the absence of successful prosecutions,~~ Council and the community will work together for the prevention of further damage and the rehabilitation of damaged areas.
- 5.7 Community education is a key mechanism to promote the value of trees and vegetation, and to encourage the reporting of vandalism.
- 5.8 Council will report on the number of recorded tree ~~and vegetation~~ vandalism incidents within Port Stephens every 6 months.
- 5.9 Council may install surveillance equipment in certain areas experiencing reoccurring tree ~~and vegetation~~ vandalism incidents as required to protect trees and vegetation ~~including rehabilitation.~~

6. RESPONSIBILITIES:

- 6.1 All members of the public have responsibility for complying with this policy.
- 6.2 Strategy and Environment have responsibility for ~~monitoring,~~ reviewing and providing advice on this policy.
- 6.3 ~~Strategy and Environment~~ Development and Compliance have responsibility for ~~monitoring and~~ undertaking compliance in accordance with Council's Compliance Policy.
- 6.4 Public Domain and Services have responsibility for undertaking and funding relevant response measures under this policy.
- 6.5 All Council officials have a responsibility to ~~understand and~~ comply with this policy ~~and associated procedure.~~

7. RELATED DOCUMENTS:

- 7.1 Compliance Policy
- ~~7.2 Council Prosecutions Policy~~
- 7.3 Environmental Management Systems Framework ~~Environmental Assessment Procedure (EMS 3.0)~~
- ~~7.4 Environmental Incident Procedure (EMS 4.0)~~
- 7.5 Environment Policy
- ~~7.6 Heritage Policy~~
- 7.7 Legal Management Directive
- ~~7.8 Tree Vandalism Management Directive~~
- 7.9 Environmental Planning & Assessment Act (EP&A) 1979
- 7.10 Port Stephens Council ~~Tree Biodiversity~~ Technical Specifications

Policy

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ITEM 10 - ATTACHMENT 1 REVISED - PUBLIC TREE AND VEGETATION VANDALISM POLICY.

Policy



- 7.11 Biodiversity Conservation Act 2016
- 7.12 State Environmental Planning Policy (Biodiversity and Conservation) 2021

CONTROLLED DOCUMENT INFORMATION:

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EDRMS container No.	PSC2008-2921	EDRMS record No.	23/75818
Audience	Councilors, staff and community		
Process owner	Strategy and Environment Section Manager		
Author	Natural Systems Coordinator		
Review timeframe	3 years	Next review date	14 March 2026 XX 2028
Adoption date	August 2018		

VERSION HISTORY:

Version	Date	Author	Details	Minute No.
1	August 2018	Natural Resources Coordinator	Reviewed the previous policy (Tree/Vegetation Vandalism Policy), included numbering to each paragraph and updated the version control. Substantial re-write of the policy which necessitates replacing the existing policy dated July 2014. Intent of existing policy remains unchanged.	246

Policy

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ITEM 10 - ATTACHMENT 1 REVISED - PUBLIC TREE AND VEGETATION VANDALISM POLICY.

Policy



Version	Date	Author	Details	Minute No.
2	December 2020	Natural Resources Coordinator	<p>1.1 - Deleted paragraph.</p> <p>5.1 – Insert ‘healthy ecosystems’ delete environmental health.</p> <p>5.1 - added ‘of Port Stephens’ residents’.</p> <p>5.3 – Deletion of consistently.</p> <p>5.5 – Insert ‘proportionate’, ‘deterrent’, to rehabilitate”.</p> <p>5.5 - Delete ‘deterrence, the rehabilitation of, and in accordance with the relevant guidelines’.</p> <p>7.9 – Insert ‘Environmental Planning & Assessment Act (EPA&A) 1979’.</p> <p>7.10 – Insert Tree Vandalism Guidelines: Response measures for low, medium and high impact vandalism events.</p> <p>Delete Appendix 1 – Tree Vandalism Guidelines: Response measures for low, medium and high impact vandalism events.</p>	277

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ITEM 10 - ATTACHMENT 1 REVISED - PUBLIC TREE AND VEGETATION VANDALISM POLICY.

Policy



3	14 March 2023	Natural Systems Coordinator	<p>2.2 – Delete ‘This.’</p> <p>2.2 – Insert ‘Tree’.</p> <p>4.1 – Insert ‘Prosecution’ to the table.</p> <p>4.1 – Insert definition to the table ‘Investigation and determination of compliance action in response to alleged vandalism, with action taken where an offence is proven. May include caution, fines or court appearance’.</p> <p>5.1 – Insert ‘Vandalism of trees on community and public land is criminal offence and all reports of tree vandalism on public land will be investigated.’</p> <p>5.2 – Replace ‘Council values trees and vegetation on Council managed land and the significant contribution they make to healthy ecosystems and the health and wellbeing of Port Stephens’ residents’ with ‘The long term protection and management of trees and vegetation on public land (including re-establishment in previously cleared areas) is integral to maintaining the economic, cultural, environmental and social values of Port Stephens.’</p> <p>5.3 – Delete ‘maintaining the economic, cultural, environmental and social values of Port Stephens.’</p> <p>5.3 – Insert ‘Council is committed to reducing/stopping tree vandalism within Port Stephens.’</p>	051
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Policy

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ITEM 10 - ATTACHMENT 1 REVISED - PUBLIC TREE AND VEGETATION VANDALISM POLICY.



Policy

			<p>5.4 – Delete ‘and’.</p> <p>5.5 – Removed reference to assessment to industry standards and replaced with reference to Port Stephens Council Tree Technical Specification for tree value.</p> <p>5.8 – Insert “Council will report on the number of recorded tree vandalism incidents within Port Stephens every 6 months.”</p> <p>5.9 – Insert “Council may install surveillance equipment in certain areas experiencing reoccurring tree vandalism incidents as required to protect trees and vegetation”.</p> <p>6.5 – Insert “All Council officials have a responsibility to comply with this policy and associated procedure.”</p> <p>7.3 – Replaced reference to Environmental Legislative Requirements Procedure with Environmental Assessment Procedure.</p> <p>7.10 – Replaced reference to Tree Vandalism Guidelines: Response measures for low, medium and high impact vandalism events with Port Stephens Council Tree Technical Specification.</p> <p>Changed author to reflect name change</p>	
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ITEM 10 - ATTACHMENT 1 REVISED - PUBLIC TREE AND VEGETATION VANDALISM POLICY.



Policy

4	XX 2025	Natural Systems Coordinator	<p>Title – Insert 'Public' and 'and Vegetation'</p> <p>1.1 - Insert 'public' and 'and vegetation'</p> <p>1.1 – Replace 'It includes a range of response measures which are collectively aimed at raising the public profile of the tree vandalism in the community in order to serve as effective deterrence measures' with 'It includes a range of response measures including education, monitoring, regulation, enforcement and rehabilitation which are collectively aimed at curbing tree and vegetation vandalism raising the public profile of tree and vegetation vandalism, fostering greater community stewardship of trees and vegetation, and supporting effective deterrence measures.'</p> <p>2.1 - Insert 'and vegetation'</p> <p>2.2 – Replace 'Tree vandalism has a significant and cumulative impact on Council assets and the environment. Impacts include reduced visual and community amenity, the loss of wind-breaks and erosion control in some locations, and the loss of wildlife habitat.' with 'Tree and vegetation vandalism has a significant and cumulative impact on Council assets, the community and the environment. Impacts include reduced visual amenity, and community amenity and well-being, the loss of wind- breaks and erosion control in some locations, and the loss of wildlife habitat, and reduced shade.'</p> <p>2.3 - Insert 'and vegetation'</p>
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ITEM 10 - ATTACHMENT 1 REVISED - PUBLIC TREE AND VEGETATION VANDALISM POLICY.

Policy



		<p>3.1 - Insert 'and vegetation'</p> <p>4.1 – Insert 'Engaged contractors may also be prosecuted for tree and vegetation vandalism.' to the Prosecution definition</p> <p>4.1 – Insert definition to the table 'Public tree and vegetation vandalism - The intentional and unlawful destruction, damage or injury to trees and/or vegetation on Council managed land. Examples include poisoning, slashing, pruning, removal and ringbarking.'</p> <p>4.1 – Insert definition to the table 'Vegetation - Includes any of the following, whether dead or alive, native or exotic:</p> <ul style="list-style-type: none"> - a tree - an understorey plant - a groundcover - a plant occurring in a wetland or inter-tidal area <p>5.1 – Replace 'Vandalism of trees on community and public land is criminal offence and all reports of tree vandalism on public land will be investigated.' with 'Vandalism of trees and vegetation on community and public land is unlawful and all reports of vandalism on public land will be investigated in accordance with the PSC Compliance Policy and responded to in accordance with Appendix 1 - Tree and Vegetation Vandalism Response Assessment Model.'</p> <p>5.3 – Replace 'Council is committed to reducing/stopping tree vandalism within Port Stephens.' with 'Council is committed to reducing/stopping tree and vegetation vandalism within Port Stephens and to responding to the events in accordance with Appendix</p>
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Policy

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ITEM 10 - ATTACHMENT 1 REVISED - PUBLIC TREE AND VEGETATION VANDALISM POLICY.

Policy



		<p>1:</p> <p>5.4 – Replace 'The identification and prosecution of perpetrators of public tree vandalism will be pursued by Council consistent with this policy, Council's Compliance Policy and Council Prosecutions Policy.' with 'The identification and prosecution of perpetrators of public tree and vegetation vandalism will be pursued by Council consistent with this policy and Council's Compliance Policy.'</p> <p>5.5 – Replace 'Council will assess the retention value (Very low, Low, Medium, or High) of the vandalised tree in accordance with Port Stephens Council Tree Technical Specification which takes into account the following factors: significance of the tree; the tree's life cycle stage; the profile of the site; the tree's safe useful life expectancy; the environmental effects; the target where the tree could fall; damage caused; and the cost of remediation.' with 'Council will assess and respond to tree and vegetation vandalism in accordance with Appendix 1.'</p> <p>5.6 – Delete 'In the absence of successful prosecutions.'</p> <p>5.8 - Insert 'and vegetation'</p> <p>5.9 – Replace 'Council may install surveillance equipment in certain areas experiencing reoccurring tree vandalism incidents as required to protect trees and vegetation.' with 'Council may install surveillance equipment in certain areas experiencing reoccurring tree and vegetation vandalism incidents as required to protect trees and vegetation including rehabilitation'</p>
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ITEM 10 - ATTACHMENT 1 REVISED - PUBLIC TREE AND VEGETATION VANDALISM POLICY.



Policy

			<p>sites:</p> <p>6.2 – Delete 'monitoring.'</p> <p>6.3 – Replace 'Strategy and Environment' with 'Development and Compliance' and insert 'monitoring and'</p> <p>6.5 – Insert 'understand and' and delete 'and associated procedure'</p> <p>7.0 – Replace Related Documents</p> <p>7.1 Compliance Policy</p> <p>7.2 Council Prosecutions Policy</p> <p>7.3 Environmental Assessment Procedure (EMS 3.0)</p> <p>7.4 Environmental Incident Procedure (EMS 4.0)</p> <p>7.5 Environment Policy</p> <p>7.6 Heritage Policy</p> <p>7.7 Legal Management Directive</p> <p>7.8 Tree Vandalism Management Directive</p> <p>7.9 Environmental Planning & Assessment Act (EP&A) 1979</p> <p>7.10 Port Stephens Council Tree Technical Specifications' with</p> <p>'7.1 Compliance Policy</p> <p>7.2 Environmental Management System Framework Environment Policy</p> <p>7.3 Legal Management Directive</p> <p>7.4 Environmental Planning & Assessment Act (EP&A) 1979</p> <p>7.5 Port Stephens Council Biodiversity Technical Specifications</p> <p>7.6 Biodiversity Conservation Act 2016</p> <p>7.7 State Environmental Planning Policy (Biodiversity and Conservation) 2021'</p> <p>Insert Appendix 1 – Tree and Vegetation Response Assessment Model</p>	
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Policy

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ITEM 10 - ATTACHMENT 1 REVISED - PUBLIC TREE AND VEGETATION VANDALISM POLICY.

Policy



APPENDIX 1 – TREE AND VEGETATION RESPONSE ASSESSMENT MODEL

Location: _____
 Officer: _____
 Date: _____

VANDALISM ASSESSMENT

Criteria (0.125 Weighting for each Main Criteria)	T#1	T#2	T#3	T#4	T#5	T#6	T#7	T#8	T#9
Significance of the tree									
Type 2 for YES or 1 for NO for each item									
Historical value									
Commemorative tree									
Significant tree (on register)									
Exceptionally old or fine specimen									
Curious growth habit or physical appearance									
Horticultural/scientific value									
Unusually large size									
Rare to the area									
Outstanding aesthetic quality									
Valuable habitat or corridor or community area									
Key stone species									
Contributes to landscape									
TOTAL	0	0	0	0	0	0	0	0	0
WEIGHTED TOTAL	0	0	0	0	0	0	0	0	0
Life Cycle Stage									
Type 3 for young, 10 for semi-mature, 42 for mature									
WEIGHTED TOTAL	0	0	0	0	0	0	0	0	0
Site									
1 for low profile, 2 for average profile and 3 for high profile									
WEIGHTED TOTAL	0	0	0	0	0	0	0	0	0
SULE (Safe Useful Life Expectancy)									
Type 1 for short, 2 for medium or 3 for long									
WEIGHTED TOTAL	0	0	0	0	0	0	0	0	0

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ITEM 10 - ATTACHMENT 1 REVISED - PUBLIC TREE AND VEGETATION VANDALISM POLICY.



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Criteria (0.125 Weighting for each Main Criteria)	T#1	T#2	T#3	T#4	T#5	T#6	T#7	T#8	T#9
Environmental effects									
Type 2 for YES or 1 for NO									
Did the vandalism cause contamination?									
Did the vandalism contribute to erosion?									
Did the vandalism result in the loss of nesting sites?									
Is the area able to be restored?									
Did the vandalism impact threatened species?									
TOTAL	0	0	0	0	0	0	0	0	0
WEIGHTED TOTAL	0	0	0	0	0	0	0	0	0
Target									
1 for occasional, 2 intermittent, 3 frequent, 4 for constant									
WEIGHTED TOTAL	0	0	0	0	0	0	0	0	0
Damage									
Type 2 for major or 1 minor									
WEIGHTED TOTAL	0	0	0	0	0	0	0	0	0
Cost of remediation									
Type in actual amount divided by 1000									
WEIGHTED TOTAL	0	0	0	0	0	0	0	0	0
TOTAL SCORE	0	0	0	0	0	0	0	0	0

RESPONSE ACTIONS

SIGNIFICANCE	ACTION
<p>Minor Significance</p> <p>2.63 - 6.253</p>	<ul style="list-style-type: none"> • Upon preliminary assessment the following may occur: <ul style="list-style-type: none"> ◦ Letterbox surrounding residents ◦ Install temporary signage ◦ Leave tree in place as far as safety allows ◦ Rehabilitate or replant ◦ Consider recouping remediation costs where lawfully available • Refer to Port Stephens Council's Compliance Policy for regulatory response options
<p>Moderate Significance</p> <p>6.253 - 9.876</p>	<ul style="list-style-type: none"> • Letterbox surrounding residents • Install temporary signage • Leave tree in place as far as safety allows • Consider if permanent signage is warranted • Replant and rehabilitate damaged areas • Consider recouping remediation costs where lawfully available • Refer to Port Stephens Council's Compliance Policy for regulatory response options

ITEM 10 - ATTACHMENT 1 REVISED - PUBLIC TREE AND VEGETATION VANDALISM POLICY.

Policy



SIGNIFICANCE	ACTION
<p>Major Significance</p> <p>9.876 - 13.5</p>	<ul style="list-style-type: none"> • Letterbox surrounding residents • Install temporary signage • Leave tree in place as far as safety allows • At the discretion of the General Manager, erect permanent signs on the site highlighting the damage and its consequences • Publicise damage, responses and prosecutions in the media • Involve residents and community groups (eg. Landcare and schools) directly in planning and implementing rehabilitation strategies • Persist with rehabilitation works and maintenance of rehabilitated areas to ensure no loss of vegetation over time • At the discretion of the General Manager, draw attention to the damage through banners. • Consider use of covert surveillance cameras on sites where vandalism is frequent, and camera resources permit. • Consider recouping remediation costs where lawfully available • Refer to Port Stephens Council's Compliance Policy for regulatory response options

MINUTES ORDINARY COUNCIL - 14 MARCH 2023

ITEM NO. 7

**FILE NO: 22/325151
EDRMS NO: PSC2008-2921**

POLICY REVIEW: TREE VANDALISM POLICY

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Receive and note the submissions received shown at **(ATTACHMENT 1)**.
- 2) Endorse the revised Tree Vandalism Policy as shown at **(ATTACHMENT 2)**.
- 3) Revoke the Tree Vandalism Policy dated December 2020, Minute Number 277.

**ORDINARY COUNCIL MEETING - 14 MARCH 2023
MOTION**

051	<p>Councillor Leah Anderson Councillor Jason Wells</p> <p>It was resolved that Council:</p> <ol style="list-style-type: none">1) Receive and note the submissions received shown at (ATTACHMENT 1).2) Endorse the revised Tree Vandalism Policy as shown at (ATTACHMENT 2).3) Revoke the Tree Vandalism Policy dated December 2020, Minute Number 277.
------------	---

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

Those against the Motion: Nil.

The motion was carried.

BACKGROUND

The purpose of this report is to seek Council endorsement of the revised Tree Vandalism Policy (the policy) shown at **(ATTACHMENT 2)** following public exhibition.

MINUTES ORDINARY COUNCIL - 14 MARCH 2023

The policy sets out a consistent approach for Council when responding to tree vandalism incidents on Council managed land in Port Stephens. It provides for a proportionate compliance and enforcement approach that responds to the significance of the vandalism event and the cost of remediation.

Tree vandalism incidents continue to occur in Port Stephens and are particularly apparent in the coastal zone and waterfront locations where urban land uses can put vegetation on Council managed land at risk.

The review of the policy results in no fundamental changes to the policy adopted in December 2020. There have been no major legislative changes that require a revised position of Council and all changes made are administrative corrections.

During public exhibition 4 submissions were received (**ATTACHMENT 1**). Changes were made to Sections 4, 5 and 6 of the policy as a result of the submission.

Please note that yellow highlighted in the attached policy indicates an amendment has been made prior to public exhibition and strikethrough text is to be deleted. Text highlighted in blue shows amendments that have been made following public exhibition.

This review is part of the scheduled 3 yearly cycle.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2022-2026
Ecosystem function	Develop and deliver a program for Council to implement environmental strategies and policies

FINANCIAL/RESOURCE IMPLICATIONS

There are no financial implications arising from the review of this policy. No substantive changes are proposed to the way in which Council responds to incidences of tree vandalism, relative to the existing policy.

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

MINUTES ORDINARY COUNCIL - 14 MARCH 2023

LEGAL, POLICY AND RISK IMPLICATIONS

There is no legal requirement for Council to have a Tree Vandalism policy position. The policy strengthens Council's position through a consistent and sustainable approach to the planning, procurement and delivery of its services and assets.

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
There is a risk that in the absence of a policy the incidence of tree vandalism will increase.	Medium	Adopt the recommendations.	Yes
There is a risk that the absence of a policy will make Council's compliance and enforcement measures inconsistent.	Medium	Adopt the recommendations.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The policy will provide guidance on developing Council's sustainable performance.

The primary aim of the policy is to reduce the incidence of vandalism to public trees and vegetation on Council managed land across Port Stephens. Public trees are a valued public asset with the policy providing a strengthened position and approach to tree vandalism management. The policy provides protection of these assets, resulting in improved local amenity and the ongoing provision of the environmental services that these trees and vegetation provide, including habitat, shade, wind amelioration, and soil stabilisation.

CONSULTATION

Consultation with key stakeholders has been undertaken by the Natural Systems team.

Consultation with a number of internal stakeholders was undertaken to ensure the revised policy was consistent with Council's existing policies and practices, specifically in the area of Enterprise Risk, Compliance, and Asset Management.

Internal

The following sections of Council were consulted on the revised policy and all feedback and comments have been incorporated into the revised policy:

MINUTES ORDINARY COUNCIL - 14 MARCH 2023

- Governance
- Development and Compliance
- Public Domain and Services

The Executive Team were consulted to seek management endorsement.

External

In accordance with the Local Government Act 1993, the revised policy was placed on public exhibition for a period of 28 days from 28 October 2022 to 25 November 2022.

During public exhibition 4 submissions were received. Specific matters raised in the submissions have been addressed in the response to submissions provided in **(ATTACHMENT 1)**.

Based on the responses to the matters raised in the submissions, minor amendments to the exhibited policy are recommended.

OPTIONS

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

ATTACHMENTS

- 1) Submissions Table.
- 2) Revised Tree Vandalism Policy.

COUNCILLORS ROOM

- 1) Copy of Submissions.

TABLED DOCUMENTS

Nil.

MINUTES ORDINARY COUNCIL - 14 MARCH 2023

ITEM 7 - ATTACHMENT 1 SUBMISSIONS TABLE.

Tree Vandalism Policy Review 2022 – Response to Submissions

No.	Author of submission	Comment	Council response
1	Resident	The submission states the policy wording should be strengthened to note tree vandalism is illegal.	Wording in 5.1 has been amended to note tree vandalism is a criminal offence.
		The submission notes the initial policy was modelled on the Hunter Joint Organisation (Hunter JO) Regional Tree and Vegetation Management Policy. Other Coastal Councils have continued to use the Hunter JO model.	Noted.
		The submission notes the wording of Port Stephen's policy has changed over time.	Wording has been amended to include wording from initial policy.
		The submission notes response measures, specifically relating to key Council documents, are referred to in the Policy but are not publicly available.	Internal facing Council documents can be requested by members of the public as per the Government Information Public Access Act.
		The submission states the language within the Tree Technical Specification (2014) has become out of date making it difficult to interpret in context of the current policy. In addition, the Specification was difficult to locate at the bottom of the Development Control Plan.	The Tree Technical Specification has been updated and will be made publicly available on Council's website.
		The submission notes an effective Tree Vandalism Policy is an important statement of intent and a framework for action on behalf of the Port Stephens community and is deserving of Council attention and resourcing.	Noted.
		The submission states the clear intent and wording stated on the website should	Wording in 5.1 and has been amended.

MINUTES ORDINARY COUNCIL - 14 MARCH 2023

ITEM 7 - ATTACHMENT 1 SUBMISSIONS TABLE.

No.	Author of submission	Comment	Council response
		be added to the policy "Vandalising public or private trees is an offence, and all reports of tree vandalism to our Council will be investigated".	
		The submission states Council's responsive actions and prioritisation approach should be clearly summarised and either included within the Policy (e.g. as an Appendix) or linked via publicly available procedures.	Responsive actions and prioritisation are detailed within Council's framework documents including the Tree Vandalism Management Directive. The Policy details Council's statement of intent and is adopted.
		The submission states there should be regular reporting on the number of tree vandalism incidents across the LGA, including associated time and costs. The submission state these metrics can be used in regular dialogue with relevant community groups.	Addition of six monthly reporting on the number of recorded tree vandalism incidents within Port Stephens has been added to Section 5.8.
2	Tomaree Ratepayers and Residents Association Inc. (TRRA)	The submission notes that the proposed changes are very minor and not in themselves controversial.	Noted.
		The submission states the Tree Vandalism Policy (the Policy) has become progressively weekend since it was first adopted in 2008. In particular less effective in explaining all relevant procedures and criteria. Subsequently failing to educate the community and deterring unlawful tree removal.	See response to submission No 1.
		The submission states the Policy has diverged from the Hunter Joint Organisation (Hunter JO) model, in which several other Councils including Central Coast,	See response to submission No 1.

MINUTES ORDINARY COUNCIL - 14 MARCH 2023

ITEM 7 - ATTACHMENT 1 SUBMISSIONS TABLE.

No.	Author of submission	Comment	Council response
		Coffs Harbour and Tweed have continued to adopt the model completely.	
		The submission notes the Policy refers to secondary documents, some of which are not publicly available (e.g. Environmental Assessment Procedure (EMS 3.0), Environmental Incident Procedure (EMS 4.0) and the Tree Vandalism Management Directive), which include critical operational detail.	See response to submission No 1.
		The submission notes Council's Tree Technical Specifications 2014 document is out of date.	The Tree Technical Specification has been updated and will be made publicly available on Council's website.
		The submission notes the Policy cannot be divorced from the issue of staff resources.	Noted.
		The submission states the recruitment of a Vegetation Management Officer without advanced qualifications as an arborist is problematic when urgent response is required in relation to tree vandalism.	Noted. Council's Environmental Management Team Leader has suitable qualifications to complete the requirements of the role. Continued professional development and the utilisation of specialist contractors for advice have been considered.
		The submission notes the renaming of the relevant position from Tree Preservation Officer to Vegetation Management Officer sends a disappointing message to the community about Council's priorities.	Noted.
		The submission notes the efforts made by Council staff	Noted.

MINUTES ORDINARY COUNCIL - 14 MARCH 2023

ITEM 7 - ATTACHMENT 1 SUBMISSIONS TABLE.

No.	Author of submission	Comment	Council response
		<p>within the Natural Resources team in relation to tree management and tree vandalism is not criticized. However, the priority of Council to resource this important role is criticised.</p> <p>The submission states the Tree Vandalism Policy and Tree Management section within the Development Control Plan (DCP) are closely related. Therefore, no final decisions should be made on the Policy without also considering submissions to the DCP.</p> <p>The submission recommends pending clarification of the relationship to the Policy, and relevant operational processes either:</p> <ul style="list-style-type: none"> • The changes to the Tree Management section of the DCP should be removed from the DCP amendments • The entire DCP amendment be deferred. <p>The submission notes further clarification around the above recommendations will be noted within the DCP amendment submission by the author.</p>	<p>Noted.</p> <p>Council notes the Tree Vandalism Policy specifically refers to the vandalism or intentional damage to trees and/or vegetation. Tree Management has been included in the DCP as it is specifically related to the request for the removal or prune trees or other vegetation. The DCP specifically relates to development control and therefore tree management is deemed appropriate to be included.</p>
3	Koala Coalition EcoNetwork Port Stephens Inc. (KKEPS)	<p>The submission notes their agreement with the TRRA submission. In particular, notes agreement with:</p> <ul style="list-style-type: none"> • The Policy should be considered in alignment 	Noted.

MINUTES ORDINARY COUNCIL - 14 MARCH 2023

ITEM 7 - ATTACHMENT 1 SUBMISSIONS TABLE.

No.	Author of submission	Comment	Council response
		with Council's overall Tree Management Policy. <ul style="list-style-type: none"> • Favourable for Council to employ a professional arborist. • The Policy should be strengthened, as per TRRA's submission. • A quick response to acts of tree vandalism cannot be met with contractors compared to that of a relevant Council staff member. 	
		The submission notes Council contracting arborists on an 'as-needed' basis may result in: <ul style="list-style-type: none"> • the arborist not having broad-based regional and detailed local knowledge of local species and their habitat • the arborist not having heightened ability to identify preferred and secondary native species of trees and other planted species necessary for local wildlife. 	See response to submission No 2.
		The submission notes the previously employed Tree Preservation Officer was knowledgeable and support to maintaining/restoring Koala corridors.	Noted.
		The submission recommends Council employ a qualified arborist who can work consistently with other expert professionals within Council.	See response to submission No 2.
		The submission notes more expertise is needed by	See response to submission No 2.

MINUTES ORDINARY COUNCIL - 14 MARCH 2023

ITEM 7 - ATTACHMENT 1 SUBMISSIONS TABLE.

No.	Author of submission	Comment	Council response
		Council staff to avoid tree vandalism through highly challenging expert consultation with property owners, as well as education of the public in preventing tree vandalism.	
4	Mambo-Wanda Wetlands Conservation Group	The submission notes the support of TRRA's submission.	Noted.
		The submission notes since the departure of a suitably qualified arborist Council has not employed anyone with suitable qualifications for the same position (now named the Vegetation Management Team Lead).	See response to submission No 2.
		The submission notes there is a high turnover of staff within the Environmental Systems team; leading to lack of knowledge and consistency in compliance and the application of policies.	Noted.
		The submission notes staff within the Natural Systems team consult with local Landcare groups prior to removing or lopping problematic trees and hope this continues.	Noted.
		The submission recommends the use of cameras as a deterrent within problematic areas known to Council and Landcare groups.	Addition of "Council may install surveillance equipment in certain areas experiencing reoccurring tree vandalism incidents as required to protect trees and vegetation".

MINUTES ORDINARY COUNCIL - 14 MARCH 2023

ITEM 7 - ATTACHMENT 2 REVISED TREE VANDALISM POLICY.

Policy



FILE NO: PSC2008-2921
TITLE: TREE VANDALISM POLICY
OWNER: STRATEGY AND ENVIRONMENT SECTION MANAGER

1. PURPOSE:

1.1 This policy sets out a consistent approach for Council when responding to tree vandalism incidents in Port Stephens. It includes a range of response measures which are collectively aimed at raising the public profile of the tree vandalism in the community in order to serve as effective deterrence measures.

2. CONTEXT/BACKGROUND:

2.1 Tree vandalism continues to be of concern in Port Stephens and is particularly apparent in coastal areas where development pressure as well as conflicts between water views and vegetation puts trees / vegetation on Council managed land at risk.

2.2 **This Tree** vandalism has a significant and cumulative impact on Council assets and the environment. Impacts include reduced visual and community amenity, the loss of wind- breaks and erosion control in some locations, and the loss of wildlife habitat.

2.3 Such vandalism can also have substantial financial and human resource costs for Council including tree replacement costs, the cost of the investigation, rehabilitation and repair costs, and the cost of implementing potential punitive and/or deterrence measures.

3. SCOPE:

3.1 This policy applies to all instances of tree vandalism on Council managed land.

4. DEFINITIONS:

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

Council managed land Any land that is under the care, control and management of Port Stephens Council.

Prosecution Investigation and determination of compliance action in response to alleged vandalism, with action taken where an offence is proven. May include caution, fines or court appearance.

Policy

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MINUTES ORDINARY COUNCIL - 14 MARCH 2023

ITEM 7 - ATTACHMENT 2 REVISED TREE VANDALISM POLICY.

Policy



Tree vandalism The intentional and unlawful destruction, damage or injury to trees and/or vegetation on Council managed land. Examples include poisoning, mowing, pruning, removal and ringbarking.

5. STATEMENT:

- 5.1 Vandalism of trees on community and public land is criminal offence and all reports of tree vandalism on public land will be investigated.
- 5.2 The long term protection and management of trees and vegetation on public land (including re-establishment in previously cleared areas) is integral to maintaining the economic, cultural, environmental and social values of Port Stephens. Council values trees and vegetation on Council managed land and the significant contribution they make to healthy ecosystems and the health and wellbeing of Port Stephens' residents.
- 5.3 Council is committed to reducing/stopping tree vandalism within Port Stephens, maintaining the economic, cultural, environmental and social values of Port Stephens.
- 5.4 The identification and prosecution of perpetrators of public tree vandalism will be pursued by Council consistent with this policy, and Council's Compliance Policy and Council Prosecutions Policy.
- 5.5 Council will assess the retention value (Very low, Low, Medium, or High) of the vandalised tree in accordance with Port Stephens Council Tree Technical Specification the impact (Low, Medium, or High) of the tree vandalism incident in accordance with the industry standard assessment which takes into account the following factors: significance of the tree; the tree's life cycle stage; the profile of the site; the tree's safe useful life expectancy; the environmental effects; the target where the tree could fall; damage caused; and the cost of remediation.
- 5.6 In the absence of successful prosecutions, Council and the community will work together for the prevention of further damage and the rehabilitation of damaged areas. Council will develop and implement proportionate response measures to act as a deterrent to prevent further damage and to rehabilitate damaged areas.
- 5.7 Community education is a key mechanism to promote the value of trees and vegetation, and to encourage the reporting of vandalism. Council will continue to promote the protection of trees and vegetation, and to encourage the reporting of vandalism.

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MINUTES ORDINARY COUNCIL - 14 MARCH 2023

ITEM 7 - ATTACHMENT 2 REVISED TREE VANDALISM POLICY.

Policy



5.8 Council will report on the number of recorded tree vandalism incidents within Port Stephens every 6 months.

5.9 Council may install surveillance equipment in certain areas experiencing reoccurring tree vandalism incidents as required to protect trees and vegetation.

6. RESPONSIBILITIES:

6.1 All members of the public have responsibility for complying with this policy.

6.2 Strategy and Environment have responsibility for monitoring, reviewing and providing advice on this policy.

6.3 Strategy and Environment have responsibility for undertaking compliance in accordance with Council's Compliance Policy.

6.4 Public Domain and Services have responsibility for undertaking and funding relevant response measures under this policy.

6.5 All Council officials have a responsibility to comply with this policy and associated procedure.

7. RELATED DOCUMENTS:

7.1 Compliance Policy

7.2 Council Prosecutions Policy

7.3 Environmental Assessment Legislative Requirements Procedure (EMS 3.0)

7.4 Environmental Incident Procedure (EMS 4.0)

7.5 Environment Policy

7.6 Heritage Policy

7.7 Legal Management Directive

7.8 Tree Vandalism Management Directive

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

7.10 Tree Vandalism Guidelines: Response measures for low, medium and high impact vandalism events Port Stephens Council Tree Technical Specifications

Policy

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MINUTES ORDINARY COUNCIL - 14 MARCH 2023

ITEM 7 - ATTACHMENT 2 REVISED TREE VANDALISM POLICY.

Policy



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EDRMS container No.		EDRMS record No.	
Audience	Councilors, staff and community		
Process owner	Strategy and Environment Section Manager		
Author	Natural Resources Systems Coordinator		
Review timeframe	3 years	Next review date	August 2025
Adoption date	August 2018		

VERSION HISTORY:

Version	Date	Author	Details	Minute No.
1	August 2018	Natural Resources Coordinator	Reviewed the previous policy (Tree/Vegetation Vandalism Policy), included numbering to each paragraph and updated the version control. Substantial re-write of the policy which necessitates replacing the existing policy dated July 2014. Intent of existing policy remains unchanged.	246
2	December 2020	Natural Resources Coordinator	1.1 - Deleted paragraph. 5.1 – Insert 'healthy ecosystems' delete environmental health. 5.1 - added 'of Port Stephens' residents'. 5.3 – Deletion of consistently. 5.5 – Insert 'proportionate', 'deterrent', to rehabilitate". 5.5 - Delete 'deterrence, the rehabilitation of, and in accordance with the relevant guidelines'.	277

Policy

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Policy



Version	Date	Author	Details	Minute No.
			7.9 – Insert 'Environmental Planning & Assessment Act (EPA&A) 1979'. 7.10 – Insert Tree Vandalism Guidelines: Response measures for low, medium and high impact vandalism events. Delete Appendix 1 – Tree Vandalism Guidelines: Response measures for low, medium and high impact vandalism events.	
3	TBC	Natural Systems Coordinator	2.2 – Delete 'This'. 2.2 – Insert 'Tree'. 4.1 – Insert 'Prosecution' to the table. 4.1 – Insert definition to the table 'Investigation and determination of compliance action in response to alleged vandalism, with action taken where an offence is proven. May include caution, fines or court appearance'. 5.1 – Insert 'Vandalism of trees on community and public land is criminal offence and all reports of tree vandalism on public land will be investigated.' 5.2 – Replace 'Council values trees and vegetation on Council managed land and the significant contribution they make to healthy ecosystems and the health and wellbeing of Port Stephens' residents' with 'The long term protection and management of trees and vegetation on public land (including re-establishment in previously cleared areas) is integral to maintaining the economic, cultural, environmental and social values of Port Stephens.'	TBC

Policy



Version	Date	Author	Details	Minute No.
			<p>5.3 – Delete 'maintaining the economic, cultural, environmental and social values of Port Stephens.'</p> <p>5.3 – Insert 'Council is committed to reducing/stopping tree vandalism within Port Stephens.'</p> <p>5.4 – Delete 'and'.</p> <p>5.5 – Removed reference to assessment to industry standards and replaced with reference to Port Stephens Council Tree Technical Specification for tree value.</p> <p>5.8 – Insert 'Council will report on the number of recorded tree vandalism incidents within Port Stephens every 6 months.'</p> <p>5.9 – Insert 'Council may install surveillance equipment in certain areas experiencing reoccurring tree vandalism incidents as required to protect trees and vegetation.'</p> <p>6.5 – Insert 'All Council officials have a responsibility to comply with this policy and associated procedure.'</p> <p>7.3 – Replaced reference to Environmental Legislative Requirements Procedure with Environmental Assessment Procedure.</p> <p>7.10 – Replaced reference to Tree Vandalism Guidelines: Response measures for low, medium and high impact vandalism events with Port Stephens Council Tree Technical Specification.</p> <p>Changed author to reflect name change.</p>	

Policy

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ITEM NO. 11

**FILE NO: 25/186889
EDRMS NO: PSC2013-00406**

POLICY REVIEW - COMPLIANCE POLICY

REPORT OF: RYAN FALKENMIRE - DEVELOPMENT AND COMPLIANCE
SECTION MANAGER
DIRECTORATE: COMMUNITY FUTURES

RECOMMENDATION IS THAT COUNCIL:

- 1) Place the revised Compliance Policy shown at **(ATTACHMENT 1)** on public exhibition for a period of 28 days.
- 2) Should no submissions be received, the revised Compliance Policy be adopted without a further report to Council.
- 3) Revoke the Compliance Policy dated 13 July 2021, Minute No. 169 should no submissions be received.
- 4) Revoke the Dog Noise Policy dated 28 September 2021, Minute No. 247 **(ATTACHMENT 2)** should no submissions be received.

BACKGROUND

The purpose of this report is to provide the revised Compliance Policy (the 'policy') **(ATTACHMENT 1)** to Council for consideration prior to public exhibition.

The revised policy has been developed with the objective of providing a more comprehensive framework ensuring a consistent and transparent approach is applied to all Council compliance matters. Implementing a more comprehensive policy framework is important for serving community interests, managing Council compliance resources, satisfying procedural fairness and providing clear expectations for both Council officers and the community.

The policy revokes the need for a standalone Dog Noise Policy **(ATTACHMENT 2)**. The policy is more comprehensive and provides a detailed and robust framework for all compliance matters equally across Council, which includes dog noise complaints. The Dog Noise Policy, originally adopted in 1997, provided a structured framework for addressing barking dog complaints. Despite being revoked, the key principles and guidelines from the Dog Noise Policy have been integrated into the more comprehensive revised Compliance Policy, and in this regard, there will be no reduction in community support to address barking dog noise matters.

A summary table **(ATTACHMENT 3)** has been included to highlight the key aspect and approach outlined in the review.

In accordance with Council's ongoing review of compliance practices and strategic service delivery, the Dog Noise Policy is recommended to be revoked to avoid having two separate compliance policies that effectively serve the same purpose. Should the Dog Noise Policy not be revoked, there would be a standalone policy to serve only one compliance matter; possibly undermining the effectiveness of the policy.

Should the recommendation be adopted, Council's compliance approach will have alignment with contemporary regulatory frameworks.

Following adoption and implementation of the policy, Council's Compliance Team will develop and display public information to assist the community in lodging complaints for common matters, including outlining information requirements and investigation steps.

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

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2025-2029
Community safety	Develop an annual program for Council to provide compliance services to enhance public safety and health

FINANCIAL/RESOURCE IMPLICATIONS

There are no known financial or resource implications from adopting the recommendations.

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

LEGAL, POLICY AND RISK IMPLICATIONS

There are no foreseen legal or policy implications as a result of the proposed recommendations. The revised Policy has been developed relying on NSW Ombudsman Guidelines and benchmarked against other Council policies.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that compliance actions are occurring without clear guidelines to the public	Medium	Adopt the recommendations.	Yes
There is a risk that the tandem operation of both the Compliance Policy and Dog Noise Policy could create inconsistencies in the overall compliance approach	Medium	Adopt the recommendations.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

There are no sustainability implications created by the revised policy.

COMMUNICATION AND ENGAGEMENT

Council’s Communication and Engagement Strategy uses the IAP2 Framework to identify the level of engagement undertaken. An explanation for each level is shown below.

INFORM	To provide the public with balanced and objective information to assist them in understanding the problems, alternatives, opportunities and/or solutions.
CONSULT	To obtain public feedback on analysis, alternatives and/or decisions.
INVOLVE	To work directly with the public throughout the process to ensure that public concerns and aspirations are consistently understood and considered.
COLLABORATE	To partner with the public in each aspect of the decision including the development of alternatives and the identification of the preferred solution.
EMPOWER	To place final decision-making and/or developed budgets in the hands of the public.
	No external communications and engagement are required for this report.

The following communication and engagement applies to this report.

External communications and engagement

INFORM	To provide the public with balanced and forward facing information to assist them in understanding Councils approach to compliance based matters.
CONSULT	The policy will be placed on public exhibition for 28 days and will be notified through relevant Council media platforms, print advertising and Council's website.

Internal communications and engagement

Consultation has been undertaken by the Development and Compliance Section with:

- Strategy and Environment Section.
- Governance Section.

OPTIONS

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

ATTACHMENTS

- 1) Revised Compliance Policy. [↓](#)
- 2) Dog Noise Policy. [↓](#)
- 3) Summary Table. [↓](#)

COUNCILLORS' ROOM/DASHBOARD

Nil.

TABLED DOCUMENTS

Nil.

Policy



FILE NO: PSC2013-00406-0075

TITLE: COMPLIANCE POLICY

OWNER: DEVELOPMENT AND COMPLIANCE SECTION MANAGER

1. PURPOSE:

- 1.1 The purpose of this policy is to outline Port Stephens Council's general approach to compliance and enforcement. The policy relates to the regulation of development activity, pollution control, regulation of parking, natural resource management, environmental health, the control over the keeping of animals and other regulatory issues within Council's area of responsibility as listed in the community strategic plan.

2. CONTEXT/BACKGROUND:

- 2.1 As compliance is a challenging area with typically high levels of community interest, a policy is required to set the framework to assist staff and provide clarity for the community. The policy was first developed in 2007 and has been amended a number of times since. ~~The policy provides the content around council offices using their discretion and factors to consider when handling compliance matters.~~

- 2.2 This policy is derived from the NSW Ombudsman 'Model Compliance and Enforcement Policy 2015' and industry best practice guidelines. This policy outlines the methodology, requirements and services associated with compliance based services undertaken by Port Stephens Council. This policy provides information for the public, along with all internal and external stakeholders.

3. SCOPE:

- 3.1 This policy provides guidance for all compliance related matters in the Port Stephens local government area. The policy particularly applies to, or is useful for persons that are the subject of a compliance investigation, the complainant/submission maker, the general public and Council staff.
- 3.2 The NSW Ombudsman's Enforcement Guidelines for Council's have been used as the basis of framing this policy and for developing operational procedures to address compliance issues.

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Compliance and enforcement principles:

3.3 Accountable and Transparent:

- a) Acting in the best interests of public health and safety and in the best interests of the environment ensuring accountability for decisions to take or not take action.
- b) Acting fairly and impartially and without bias or unlawful discrimination
- c) Providing information about compliance and enforcement priorities and reasons for decisions to improve understanding and certainty and promote trust by the regulated community.
- d) Ensuring meaningful reasons for decisions are given to all relevant parties, particularly when there is a departure from this policy.
- e) Acting on any complaints or concerns about the conduct of compliance officers in accordance with Council's complaints management policy and procedures.
- f) Advising people and organisations subject to enforcement action of any avenues available to seek an internal or external review of a decision.

3.4 Consistent and Proportional:

- a) Encouraging reports about possible unlawful activity by acting reasonably in response to the circumstances and facts in regards to each matter.
- b) Ensuring the level of enforcement action is proportionate to the level of risk associated with the breach.
- c) Making cost and resource efficient decisions regarding regulatory action.
- d) Providing educational response for matters categorised as minor to moderate.

Policy objectives:

3.5 This policy is to establish clear guidelines and protocols for internal and external stakeholders and provide the following workable guidelines on:

- a) Categorisation of reports of unlawful activities.
- b) Assessing if reports alleging unlawful activities warrants an investigation.
- c) Determining if enforcement/regulatory action is required.
- d) Investigation/Enforcement options available to Council.
- e) Review of determinations.
- f) Discretion of Officers.
- g) Allocation of Compliance Resource.
- h) The role of Principal Certifier.
- i) Considerations with anonymous reports.
- j) Information provided by concerned party/witness.
- k) Neighbourhood Disputes and Mediation Options.
- l) Procedural fairness.

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Regulatory process:

3.6 Assessment and Investigation:

- a) A preliminary assessment of all matters will be undertaken to determine:
 - i. If Council are the Appropriate Regulatory Authority
 - ii. If there is sufficient information in the lodgement to warrant investigation
 - iii. An initial risk categorisation is to be undertaken in accordance with Risk Categorisation.
- b) Investigations are to be assigned by the relevant Delegated Officer
- c) Compliance investigations may be required to undergo reassessment of risk classification as investigations are undertaken.

3.7 No Action or Educational Approach:

- a) Council does not have jurisdiction.
- b) Matter has been previously assessed and no additional information or impacts have been presented.
- c) The allegations are a lawful action.
- d) The allegation is not supported with evidence or substance.
- e) The matter has been categorised as Minor in accordance with Council's risk categorisation.
- f) The matter is considered to be civil in nature and best to be mediated in a private manner.
- g) The relevant; Coordinators, Managers, Directors, General Manager or equivalent has deemed that undertaking action would unreasonably impact on resources and/or is unlikely to achieve an outcome sufficient to justify expenditure of resources.

3.8 Warnings, Education and Voluntary Rectification/Remediation:

- a) Breach is identified to have occurred that is deemed to be Minor to Moderate in accordance with Council's Risk Categorisation.
- b) The investigation is unable to identify substantial evidence or substance to warrant ongoing investigation.
- c) Proactive attempts have been undertaken to remedy the breach.
- d) No remediation/rectification of the breach is required or can be undertaken on an instructional/ voluntary basis.
- e) Development Consent or approval for the activity could be obtained.

3.9 Notices, Orders, Directions, Penalty Infringements:

- a) Breach is identified to have occurred that is deemed to be Moderate to Major in accordance with Council's Risk categorisation.
- b) Prior knowledge of the breach by offender is considered.

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c) Specialised remediation/rectification is required.

3.10 Prosecution/Legal Options:

- a) Breach is identified to have occurred that is deemed to be Major in accordance with Council's Risk Categorisation.
- b) Breach is deemed to have long lasting environmental or community effects.
- c) Penalty Infringements are deemed to not be reflective of the breach that has occurred.
- d) Council has obtained sufficient evidence to support a legal procedure.

Review of determinations:

- 3.11 A review can be requested by the concerned party following a determination being made by the assessing/delegated officer.
- 3.12 The request for review is to be made in writing to the relevant Council Directorate.
- 3.13 The request is to provide details as to why a review is required.
- 3.14 The review is to be undertaken by the assessing/delegated officers supervisor (or relevant).

Discretion:

- 3.15 Responsible Officers are not limited by this policy in their use of discretion and exercise of official functions as required.
- 3.16 In the event that Officers utilise their discretionary power, the full circumstances and facts of each case need to be considered and the decision made on the merits.
- 3.17 Decisions about what action should be taken by Council are made at the Council's discretion.
 - a) The objective is that reports alleging unlawful activity will be resolved to the satisfaction of Council, not always necessarily to the person raising the matter. Council will try to resolve matters efficiently to best manage Council resources.

Allocation of compliance resources:

- 3.18 A breach of a technical, inconsequential or minor nature, in the absence of any other aggravating factor, will generally not warrant a decision to take formal enforcement action to remedy or restrain the breach.
- 3.19 This Policy acknowledges the costs and benefits of taking enforcement action or instituting proceedings should also be considered where breaches are solely of a minor technical nature or resulting in no material impacts upon any other

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party or the health, safety and amenity of the environment and community. (i.e. cost of proceedings and allocation of Council resources compared to the likely outcome and proportionate to the impact).

3.20 Council's initial risk categorisation and associated assessment are to be carried out to ensure that Council's resources are being allocated to matters that are or are likely to cause a significant adverse environmental or community impact.

The role of principal certifier:

3.21 In the event that concerns are received regarding a property in which an active Consent is present and a Principal Certifier has been appointed to the works/property the following may occur:

- a) Should the matter have been categorised as Minor to Moderate in accordance with Council's risk categorisation, the concerns will be notified to the Principal Certifier and the concerned party will be provided with the contact details of the Principal Certifier.
- b) Should the matter have been categorised as Major in accordance with Council's risk categorisation, the concerns will be notified to the Principal Certifier and additional assessment will be undertaken by the relevant Team Leader or Compliance Officer to determine if intervention or assistance is required to be provided by Port Stephens Council.

Considerations with anonymous reports:

3.22 Anonymous reports will be recorded and assessed in accordance with this policy.

3.23 In the event of anonymous concerns where Compliance Officers are unable to obtain adequate information and/or witnessed evidence (i.e. witness statements, images or event details), Council may be less likely to progress an investigation.

Information provided by concerned party/witness:

3.24 To ensure that Council resources are allocated appropriately, Council relies on members of the public to assist with providing information regarding the area in which they wish for an investigation to occur; these details include but are not limited to:

- a) Property address.
- b) Date and time of the incident/activity.
- c) A description of what was observed or has occurred.
- d) Details of any safety concerns that may be applicable.
- e) Details of environmental and personal impacts.

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- f) Vehicle registration details, if applicable.
- g) For noise or activity concerns – an impact diary.
- h) If available any video or photographic evidence.

3.25 If the matter proceeds to Court, the concerned party/witness may be required to give oral evidence and any statements, will be tendered in evidence.

3.26 Should the concerns be in relation to an activity or ongoing function, an activity diary may need to be supplied by the affected party to support an investigation and possible compliance action.

- a) Ongoing activity or function can include but is not limited to barking dogs, noise concerns, and disruptive business activities.

Neighbourhood disputes and mediation options:

3.27 Council is unable to act or intervene in neighbour disputes relating to the activities or behaviour of a neighbour or other matters which are of a private or civil nature. Including but not limited to:

- a) Dividing fences.
- b) Shared driveways or assets.
- c) Right of carriage ways.
- d) Trespassing.
- e) Encroachment.
- f) Damage to private property.
- g) Over hanging vegetation.
- h) Natural water overflow.
- i) Behaviour of persons.
- j) Storage of materials.

3.28 The preliminary assessment may identify that matters are best to be addressed directly between neighbours. Therefore in accordance with the NSW Ombudsman Guidelines, Council has adopted the process to request that neighbouring properties to undertake mediation in the first instance for matters including but not limited to:

- a) Barking dogs (first complaint with no clear evidence).
- b) Direction of stormwater.
- c) Overgrown properties.
- d) Impacts from exempt or minor development.
- e) Neighbourhood street parking.
- f) Minor noise concerns.
- g) Minor or inconsequential complaints.

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3.29 Mediation also allows for negotiated outcomes, helps to maintain neighbourhood relationships and aims to reach a mutually acceptable agreement that avoids the need for regulatory intervention.

3.30 Concerned parties will be directed by Council Officers where appropriate to information about how to resolve neighbourhood concerns and disputes including – LawAccess NSW and NSW Civil and Administrative Tribunal (or equivalent).

Procedural fairness:

3.31 Procedural fairness or Natural Justice is to be provided where necessary and applicable in regarding to concerns regarding a breach of legislation. In this regard, Council will:

- a) Act fairly and without bias.
- b) Inform those whose rights or interests may be adversely affected by the substance of any allegations against them or grounds for adverse comment about them.
- c) Consider any submissions put forward that provide relevant information regarding the matter being investigated.
- d) Council Officers may use their discretionary power in relation to the administration of procedural fairness in events that may be considered an emergency or require immediate determination.

Risk Matrix:

Minor	Moderate	Major
Features of category:		
<ul style="list-style-type: none"> - Consequences are minor in nature - Offence is unlikely to reoccur or cause public/safety concerns - Low level offence severity - Short term impacts may be caused - Matter may not require on-going regulatory monitoring or involvement. 	<ul style="list-style-type: none"> - Consequences are moderate in nature - Serious/ongoing impacts are unlikely - Moderate priority issue for Council and community - Effects numerous members of the community. 	<ul style="list-style-type: none"> - Permanent, long-term, reoccurring or serious damage to health, property or environment are likely or have occurred - Large scale impacts - May require directed/ordered restoration or rectification.

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Examples of Actives:		
<ul style="list-style-type: none"> - Aesthetic concerns - Animal nuisances - Abandoned vehicles - Out of Hours works/operations - Minor localised issues - Minor Unauthorised development - Overgrown vegetation - Noise complaints (minor) - Barking dogs - Health and amenity (minor) - Neighbour nuisances - Minor direction of stormwater or overland water flow - Minor, technical or administrative breaches to legislation - Waste storage. 	<ul style="list-style-type: none"> - Animal control (general) - Breach of consent conditions - Minor clearing of vegetation - Construction site management - Major re-direction of stormwater drainage - Noise complaints, following attempted mediation - Pollution incidents - Unauthorised development. 	<ul style="list-style-type: none"> - Significant pollution incidents - Large scale clearing of vegetation or areas that contain threatened species habitat - Immediate threat to public health or safety - Food poisoning incidents - Abandoned vehicles in an unsafe location - Collapsed or unsafe building works in public areas - Aggressive and high impact dog attacks - Swimming pool safety.

4. DEFINITIONS:

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

Breach/Unlawful activity	An act of breaking or failing to comply with a law, agreement, legislative requirement or condition of consent (approval).
Discretion	Discretion relates to a Council officers' consideration in deciding whether to take enforcement action or not, or what extent of action to take.
Risk categorisation	A category applied to each report/request in accordance with the Risk Matrix to determine the appropriate associated response in accordance with this policy.

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Principles	The considerations and value to which Council staff consider any compliance matter against as mentioned in this policy.
Risk based approach	In a public and environmental context, risk is measured in terms of the likelihood of an event occurring and the risk of harm to human health and the environment.

5. STATEMENT:

- 5.1 Council will carry out its compliance responsibilities in a fair and equitable manner to ensure:
- The relevant details are considered in compliance investigations and decisions are made in an environmentally and socially responsible manner.
 - That action is proportional and reasonable to the breach that has occurred
 - Compliance resources are allocated appropriately.
 - The initiation of a process of education and creation of awareness within the community in relation to the reasons for and importance of compliance.
 - The investigation and enforcement of complaints about unlawful activity or failure to comply with the terms or conditions of approval, notices, licences or breaches of legislation which Council is responsible for enforcing.
 - Cooperation with other Government Agencies responsible for enforcing legislation that relates to unlawful activities within Port Stephens.
 - ~~Council considers the guiding principles in (Appendix 1) to assist staff in meeting the above policy statements to act promptly, consistently and effectively to allegations of unlawful activity~~
 - The establishment of clear guidelines for the exercise of discretion in dealing with action requests or complaints about unlawful activity and to assist Council staff.

6. RESPONSIBILITIES:

- The policy is implemented primarily via the ~~Environmental and Health~~ Compliance Coordinator.
- All Council staff that deal with written or verbal requests or complaints alleging unlawful activity are responsible for following the policy framework.
- All formal notifications of alleged unlawful activity will be lodged in Councils customer request system and directed to the responsible officer.

7. RELATED DOCUMENTS:

- Local Government Act 1993.
- Environmental Planning and Assessment Act 1979.
- Protection of the Environment Operations Act 1997.

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- 7.4 Roads Act 1993.
- 7.5 Companion Animals Act 1998.
- 7.6 Public Health Act 2010
- 7.7 Swimming Pools Act 1992.
- 7.8 Rural Fires Act 1997.
- 7.9 Road Transport Act 2013.
- 7.10 Food Act 2003.
- 7.11 Public Spaces (Unattended Property) Act 2021.
- ~~7.11 impounding Act 1993.~~
- 7.12 Biodiversity Conservation Act 2016.
- 7.13 Biosecurity Act 2015.
- 7.14 Vegetation Vandalism Policy.

CONTROLLED DOCUMENT INFORMATION:

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EDRMS container No.	PSC2013-00406	EDRMS record No.	TBA
Audience	Council staff, the general public		
Process owner	Development and Compliance Section Manager		
Author	Compliance Coordinator		
Review timeframe	3 4 years	Next review date	TBA
Adoption date	28 August 2007		

VERSION HISTORY:

Version	Date	Author	Details	Minute No.
1	28/08/2007	Manager Development and Building	Policy adopted by Council	235
2	26/11/2013	Manager Development Assessment and Compliance	Amended.	344

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Version	Date	Author	Details	Minute No.
2.1	28/03/2017	Development Assessment and Compliance Section Manager	Updated to new template.	065
3	26/11/2019	Development Assessment and Compliance Section Manager	Minor punctuation and grammatical changes throughout including to: 2.1, 3.1, 3.2, 5.1a, 5.1e, 5.1f. 6.1 Deleted Manager Development Assessment and Compliance and replaced with Environmental Health and Compliance Coordinator. 7.12 Deleted Weeds Act and replaced with Biodiversity Conservation Act 2016.	231
4	13/07/2021	Environmental Health and Compliance Coordinator	Policy updated to new template to reflect current style.	169

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5	TBA	Compliance Coordinator	<p>2.1 – Deleted “The policy provides the content around council offices using their discretion and factors to consider when handling compliance matters”.</p> <p>2.2 – Added.</p> <p>3-3 – 3-31 – Added.</p> <p>Risk Matrix – Added.</p> <p>4.1 – Added “Breach/Unlawful activity - An act of breaking or failing to comply with a law, agreement, legislative requirement or condition of consent (approval).”</p> <p>4.1 – Added “Risk categorisation - A category applied to each report/request in accordance with the Risk Matrix to determine the appropriate associated response in accordance with this policy.”</p> <p>4.1 – Deleted “Principles - The considerations and value to which Council staff consider any compliance matter against as mentioned in this policy.”</p> <p>4.1 – Deleted “Risk based approach - In a public and environmental context, risk is measured in terms of the likelihood of an event occurring and the risk of harm to human health and the environment.”</p> <p>5.1 – Added ‘b’ and ‘c’</p> <p>5.1 – Deleted ‘f’</p> <p>6.1 – Added “Environmental and Health”</p> <p>6.1 – Added “Compliance Coordinator”</p> <p>7.11 – Deleted “impounding Act 1993.”</p> <p>7.11 - Added “Public Spaces (Unattended Property) Act 2021.”</p>	TBA
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Version	Date	Author	Details	Minute No.
			7.13 – Added 7.14 - Added	

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Policy



FILE NO: PSC2013-00406/043

TITLE: DOG NOISE POLICY

OWNER: DEVELOPMENT AND COMPLIANCE SECTION MANAGER

1. PURPOSE:

1.1 The purpose of this policy is to provide a formal framework for the management and regulation of barking dog noise complaints in the Port Stephens Local Government Area (LGA). The policy also provides an efficient and cost effective method of gathering the information and evidence required to resolve dog noise control issues.

2. CONTEXT/BACKGROUND:

2.1 The policy (formerly the Dog Noise Strategy) was first adopted by Council on 3 June 1997 and was most recently amended on 8 October 2019. When compared to the original strategy, the revised policy continues to provide Council operational staff with an improved, cost effective method of dealing with noise complaints in relation to barking dogs as well as enabling a sufficient amount of evidence to be obtained in dog noise control matters.

2.2 Dog noise in the Port Stephens LGA is managed as 'offensive noise' under the Protection of the Environment Operations Act 1997 (POEO Act). The policy requires the submission of a barking dog diary ('the diary') from complainants within 7 days of the event to establish the validity of their complaints.

2.3 Council is committed to resolving dog noise problems having regard to legislative requirements and can only do so when persons who lodge complaints about barking dogs provide the required level of information to support the complaint. An integral part of the investigation process includes persons lodging complaints being willing to provide evidence and appear as a witness if necessary.

2.4 The policy sets Port Stephens Council apart in terms of how other peer Council's manage nuisance dogs and provides a consistent and transparent approach.

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3. SCOPE:

- 3.1 The role of Council's Ranger team in the implementation of the policy is to manage barking dog complaints in the Port Stephens LGA where the complainants are able to provide evidence demonstrating the noise created is 'offensive noise' as defined by the POEO Act.

4. DEFINITIONS:

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

Nuisance Dog	A dog that makes a noise, by barking or otherwise, that persistently occurs or continues to such a degree or extent that it unreasonably interferes with the peace, comfort or convenience of any person in any other premises.
Offensive Noise	Interferes unreasonably with (or is likely to interfere unreasonably with) the comfort or repose of a person who is outside the premises from which it is emitted.
Repeated Barking	More than three episodes of five barks in one hour on multiple occasions during a 24 hour period. (Note – this is a guide for the assessing officer only and does not necessarily constitute offensive noise. A demonstrated impact needs to be identified).

5. STATEMENT:

- 5.1 Upon receipt of a first complaint about dog noise, Council staff will attempt to make contact with the dog owner and advise that a complaint has been received. The dog owner will be given 14 days to resolve the issue without further involvement from Council.
- 5.2. If the dog barking persists past the 14 day period described above, Council will request a Council approved diary and statement form to be completed by the complainant giving time and duration of barking. Complainants are encouraged to obtain audio recordings of noise episodes where possible, to accompany the diary.

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- 5.3. On submitting the diary to Council an investigation will be carried out by the Ranger team and if the noise is deemed offensive via a supplementary method of verification which may include neighbour interviews, patrols, video and audio recordings, a Council officer will issue a Noise Abatement Direction to the owner of the dog. Once issued, the noise abatement direction will remain in force for 28 days.
- 5.4 If further offensive noise is caused within the 28 day period described above the complainant will be requested to provide an additional diary and other methods of verification should be obtained where possible. If the evidence provided demonstrates the Noise Abatement Direction has been breached a Council Officer may issue infringements to the owner of the dog, accompanied by a new Noise Abatement Direction.
- 5.5 If the noise is not deemed offensive by Council staff at the conclusion of their investigation, the complainant will be advised accordingly and no further action will be taken.
 - a) note – the above process will be repeated while ever the dog noise continues.
 - b) after the expiry of the 28 days Council staff may take the following action:
 - 5.5.1 if multiple diaries and statements have been received and an offence is considered to be committed, issue a Prevention Notice under the POEO Act.
 - 5.5.2 if no further diaries are received the matter will be deemed to be resolved and no further action will be taken.
- 5.6 The definition of 'offensive noise' is set out in the POEO Act. For the purposes of dog barking noise, it is accepted that dogs may bark for various reasons and this alone does not make the noise offensive. As a guide to dog barking noise interfering unreasonably with comfort or repose, the dog noise would need to meet 1 or more of the following:
 - a) barking before 7am or after 8pm; or
 - b) repeated barking that interrupts normal home activity such as sleep, conversations, phone calls, watching television, study etc.
- 5.7 Should additional complaints and completed diaries be received after a Prevention Notice has been issued, a decision will be made having consideration to Council's legal procedures policy as to further action.
- 5.8 If the matter is not resolved following the above process Council may issue a Court Attendance Notice.

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6. RESPONSIBILITIES:

- 6.1 Coordinator Environmental Health and Compliance.
- 6.2 Ranger Team Leader.
- 6.3 Ranger Team.

7. RELATED DOCUMENTS:

- 7.1 Companion Animals Act 1998 (Nuisance Orders).
- 7.2 Protection of the Environment Operations Act 1997 (Prevention Notice, Noise Abatement Order).
- 7.3 Dog Noise Diary.
- 7.4 Dog Noise Fact Sheet.

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: www.portstephens.nsw.gov.au .			
EDRMS container No.	PSC2013-00406/43	EDRMS record No.	21/124858
Audience			
Process owner	Development and Compliance Section Manager		
Author	Compliance Coordinator		
Review timeframe	3 years	Next review date	28 Sep 2024
Adoption date	3 June 1997		

VERSION HISTORY:

Version	Date	Author	Details	Minute No.
1	3/6/1997		Policy adopted by Council	1083
2	30/1/2001		Amended	016
3	19/10/2004		Amended	375
4	13/8/2013		Amended	216
5	14/02/2017	Coordinator Environmental	Changes to Policy and approach based on Protection of Environmental Operations	008

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Policy

		Health and Compliance.	Act offensive noise, rather than Companion Animals Act nuisance order. New noise diary and supplementary fact sheet. Provides for a robust yet effective way to manage noise.	
6	8/10/2019	Coordinator Environmental Health and Compliance.	<p>Updated to new template. Minor punctuation and grammatical changes made throughout.</p> <p>2.2. Feedback from customers and an internal process review has led to the Policy now seeking that the complainant's diary be supplemented by one additional diary from another affected neighbour to assist in establishing validity of complaints. The onus of gathering the additional diary from another affected neighbour rests solely with the primary complainant.</p> <p>4.1. Definitions updated to include 'Continuous Barking'.</p> <p>5.1 Upon receipt of a first complaint about dog noise, Council staff will attempt to make contact with the dog owner and advise that a complaint has been received. The dog owner will be given fourteen days to resolve the issue without further involvement from Council.</p> <p>5.2. If the dog barking persists past the fourteen day period described above, Council will request a Council approved diary and statement form to be completed by the complainant giving time and duration of barking.</p> <p>5.3. On submitting the diary to Council an investigation will be</p>	182

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Policy

			<p>carried out by the Ranger team and if the noise is deemed offensive via a supplementary method of verification which may include neighbour interviews, patrols, video and audio recordings, A Council officer will issue a Noise Abatement Direction to the owner of the dog. Once issued, the noise abatement direction will remain in force for twenty eight days.</p> <p>5.4 If further offensive noise is caused within the twenty eight days period described above the complainant will be requested to provide an additional diary and other methods of verification should be obtained where possible. If the evidence provided demonstrates the Noise Abatement Direction has been breached a Council Officer may issue infringements to the owner of the dog, accompanied by a new Noise Abatement Direction.</p> <p>5.5 If the noise is not deemed offensive by Council staff at the conclusion of their investigation, the complainant will be advised accordingly, and no further action will be taken</p> <p>5.5.3 If multiple diaries and statements have been received and an offence is considered to be committed, issue a Prevention Notice under the Protection of the Environment Operations Act 1997.</p> <p>5.6 If no further diaries are received the matter will be</p>	
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Policy



			deemed to be resolved and no further action will be taken.	
7	28/09/2021	Compliance Coordinator	Revision of Policy, incorporation into new styling format and minor punctuation and grammar amendments throughout. 2.1 Added – policy (formerly the Dog Noise Strategy) 2.1 Added – When compared to the original strategy, the revised... continues... 2.2 Added - within 7 days of the event. 7.1 Deleted – Councils Local Companion Animals Management Plan.	247

Policy

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ITEM 11 - ATTACHMENT 3 SUMMARY TABLE.

Aspect / Approach	Dog Noise Policy (Current)	Compliance Policy (Proposed)	Barking Dogs – Enforcement Guidelines/Public information (Proposed)
Purpose	Provide framework for managing barking dog noise complaints efficiently and with transparency.	Establish a universal compliance and enforcement framework for all Council regulatory functions and responsibilities (dog noise, development breaches, pollution, animals, etc.), ensuring consistency and proportionality.	Provide compliance officers with practical, step-by-step enforcement processes for barking dog complaints consistent with the revised Compliance Policy.
Scope	Barking dogs only, defined as “offensive noise” under POEO Act.	Encompasses all compliance investigations for a consistent approach, including all animal noise nuisances.	Provides concerned parties, Council officers and dog owners with upfront guidance and options with issues arising from barking dogs.
Initial Response	First complaint - owner contacted; given 14 days to resolve issue.	Complaints categorised by risk with escalating approach to promote neighbourly relations, education/mediation and actions to reflect the evidence and impacts.	Advisory letter to owner and concerned party providing guidance and non-regulatory options i.e. mediation encouraged before regulatory action. Provides time to undertake training, amend at home practices and discussions to be had between parties.
Investigation & Verification	Rangers assess diary and conduct patrols, interviews, or recordings. If “offensive noise” confirmed - Noise Abatement	Matters are risk assessed and assigned to Council officers for review against the Compliance Policy and Barking Dogs – Enforcement Guidelines. Enforcement action is proportional to risk level and impact – i.e. time	If mediation and other improvement measures unsuccessful and offensive noise continues, Council Rangers undertake appropriate investigation and apply regulatory action.

ITEM 11 - ATTACHMENT 3 SUMMARY TABLE.

Aspect / Approach	Dog Noise Policy (Current)	Compliance Policy (Proposed)	Barking Dogs – Enforcement Guidelines/Public information (Proposed)
	Direction (28 days).	afforded to make domestic improvements, warnings, Noise Abatement Directions, POEO Notices.	
Method	Prescriptive step-by-step process with limited discretion.	Officers will act within guided principles of procedural fairness, proportionality, and efficient resource use relying on the Barking Dogs – Enforcement Guidelines and revised Compliance Policy.	Officers apply procedural fairness, neutrality, and discretion, escalating only when evidence supports enforcement and ongoing impacts persists.
Framework	Regulatory and procedural, focused on enforcement and fails to reflect other measures first.	Balanced: risk and impact based, consistent with other Compliance investigations and regulatory actions.	Escalating and consistent: mediation first, evidence-led regulatory enforcement second (Noise Abatement Orders and Infringements), legal action as last resort.

ITEM NO. 12

**FILE NO: 25/184022
EDRMS NO: PSC2005-3664**

POLICY REVIEW - PROVISION AND MANAGEMENT OF CEMETERIES

REPORT OF: JOHN MARETICH - ASSETS SECTION MANAGER
DIRECTORATE: FACILITIES AND INFRASTRUCTURE

RECOMMENDATION IS THAT COUNCIL:

- 1) Notes no submissions received during public exhibition period.
- 2) Revoke the Provision and Management of Cemeteries Policy dated 24 May 2022 (Minute No. 134).
- 3) Adopt the revised Provision and Management of Cemeteries Policy shown at **(ATTACHMENT 1)**.

BACKGROUND

The purpose of this report is to seek Council's endorsement of the revised Provision and Management of Cemeteries Policy ('policy') at **(ATTACHMENT 1)**.

The policy was placed on public exhibition for 28 days from 25 June 2025 to 23 July 2025. During this time no submissions were received. Though some Councillors indicated that the policy could be simplified to provide an easier statement of intent for this service, and hence removing the procedural or restrictive aspects in the policy.

In addition, statements in this policy that are of an operational manner, that are already covered in Council's Strategic Asset Management Plan, have also been removed in the policy to reduce duplication. Some operations information is still present in the proposed policy following the recent changes to the Cemeteries and Crematoria Act. At the Council meeting held 24 June 2025 **(ATTACHMENT 2)** it was resolved the policy be reported back to Council at the conclusion of the public exhibition period.

Council is required to ensure the sufficient provision of cemetery facilities meet the needs of the community.

Please note that yellow highlighting in the attached policy indicates an amendment has been made and strikethrough text is to be deleted. Text highlighted in blue shows amendments that have been made following public exhibition.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2025-2029
Infrastructure, facilities & connections	Deliver, manage and maintain community and property assets in accordance with the Strategic Asset Management Plan 2025-2035 (SAMP)

FINANCIAL/RESOURCE IMPLICATIONS

There are no financial or resource implications from adopting the recommendations. Revenue from cemetery fees and charges are used to offset the cost of maintaining all cemeteries.

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

LEGAL, POLICY AND RISK IMPLICATIONS

There are no legal or policy impediments to adopting the recommendations.

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
There is a risk that Council is operating a cemetery service without a policy.	Low	Adopt the recommendations.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

There are no sustainability implications created by the revised policy.

COMMUNICATION AND ENGAGEMENT

Council’s Communication and Engagement Strategy uses the IAP2 Framework to identify the level of engagement undertaken. An explanation for each level is shown below.

INFORM	To provide the public with balanced and objective information to assist them in understanding the problems, alternatives, opportunities and/or solutions.
CONSULT	To obtain public feedback on analysis, alternatives and/or decisions.
INVOLVE	To work directly with the public throughout the process to ensure that public concerns and aspirations are consistently understood and considered.
COLLABORATE	To partner with the public in each aspect of the decision including the development of alternatives and the identification of the preferred solution.
EMPOWER	To place final decision-making and/or developed budgets in the hands of the public.
	No external communications and engagement are required for this report.

The following communication and engagement applies to this report.

External communications and engagement

CONSULT	The policy was placed on public exhibition for 28 days with no submissions received.
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Internal communications and engagement

Consultation with key stakeholders has been undertaken by the Assets Section with:

- Executive Team.
- Governance Section.
- Financial Services Section.
- Community Services Section.
- Public Domain and Services Section.

OPTIONS

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

ATTACHMENTS

- 1) Provision and Management of Cemeteries Policy. [↓](#)
- 2) Council Resolution, Minute No.142 - 24 June 2025. [↓](#)

COUNCILLORS' ROOM/DASHBOARD

Nil.

TABLED DOCUMENTS

Nil.

ITEM 12 - ATTACHMENT 1 PROVISION AND MANAGEMENT OF CEMETERIES POLICY.

Policy



FILE NO: PSC2005-3664

TITLE: PROVISION AND MANAGEMENT OF CEMETERIES

OWNER: ~~COMMUNITY SERVICES~~ **ASSETS** SECTION MANAGER

1. PURPOSE:

- 1.1 To ensure the management and maintenance of cemeteries are undertaken in a lawful and respectful manner.
- 1.2 To ensure the sufficient provision of cemetery facilities to meet the needs of the community.

2. CONTEXT/BACKGROUND:

- 2.1 Council manages cemeteries at Anna Bay, Karuah, Nelson Bay, Seaham and Raymond Terrace. These cemeteries offer interments in plots, columbarium walls and memorial gardens. Council also maintains the grounds of historic cemeteries at Hinton, Raymond Terrace and Birubi Point.
- 2.2 Cemetery management requires a focus on compassion with the customer, accuracy in the management of records and safety in the issuing of permits to undertake work. This policy sets the parameters by which cemeteries will be managed in Port Stephens Council. ~~and ensures that the corporate knowledge that underpins the management of cemeteries is held in one place.~~

3. SCOPE:

- 3.1 This policy applies to all cemeteries that are on land that is owned or managed by Port Stephens Council.
- 3.2 This policy does not relate to:
 - a) **parks and roadside memorials**
 - b) cemeteries, columbarium walls or memorial gardens on land that is not owned or managed by Port Stephens Council.

4. DEFINITIONS:

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

Cemetery	A place for burials, not being a church yard.
Cinerary urn	A container holding cremated human remains

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Policy

Columbarium Wall	A structure with tiers of niches for reception of cinerary urns.
Memorial Garden	A place for reception of cinerary urns.
Exhumation	To dig out, unearth.
Interment	Burial in the earth or placement of cinerary urns in a columbarium wall or memorial garden.
Interred	The placement of human remains in the earth, columbarium wall or memorial garden.
Interment Site	A place of burial in the earth or placement of ashes in a columbarium wall or memorial garden.
Interment Right	An exclusive right granted for use of an interment site. There is no entitlement to any real estate. The holder of an interment right has the sole authority to determine who can be buried or placed in the interment site and to permit headstones, inscriptions and memorials on the site.

5. STATEMENT:

5.1 Provision of cemeteries

5.1.1 Council will plan for the provision of cemeteries including burial plots, columbarium walls and memorial gardens through the Strategic Asset Management Plan process.

5.2 Management of cemeteries

5.2.1 Council **does not** permits any person to undertake an activity within a cemetery **unless through:**

- a) the **activity is an** approved activity such as:
 - i. the quiet and respectful commemoration of the dead or undertaking of historical research
 - ii. the use of roadways and pathways to gain access to interment sites or amenities.
- b) the person holds an interment right, exhumation permit, ~~works permit or monument permit~~ **or other approval as required and** issued by Council to undertake that activity.
- c) **Other activities require Council approval.**

Policy

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ITEM 12 - ATTACHMENT 1 PROVISION AND MANAGEMENT OF CEMETERIES POLICY.

Policy



- 5.2.2 Council shall maintain cemeteries to agreed service levels detailed in the maintenance service contract specification.
- 5.2.3 Council will comply with the Cemeteries & Crematoria NSW Cemetery Operator Licence conditions.
- 5.2.4 Council shall create and maintain general terms and conditions relating to interment rights and monumental permits.
- 5.3 Keeping of records
- 5.3.1 Council shall maintain a register of a) all interments, exhumations and interment rights in respect of each cemetery.
~~b) complaints received relating to interments in accordance with the Cemetery Operator licence conditions.~~
- 5.4 Interment sites and Interment rights
- 5.4.1 Human remains of a deceased person may only be interred at interment sites with the written permission of Council who shall issue an interment right.
- 5.4.2 Interment rights may not be sold or transferred except with the express written consent of Council.
- 5.4.3 The owner of an interment right may relinquish an interment right to Council provided an interment has not taken place and upon providing 28 days notice in writing. If the request is received within 10 days of the interment right contract being signed, a full refund will be offered, minus the current interment right cancellation/transfer fee representing our reasonable administration fee. Thereafter, no refund will be offered.
- 5.4.4 A person may not hold more than two interment rights.
- 5.5 Monuments
- 5.5.1 Council approval is required for the installation of a monument.
- 5.5.2 A monument must be in keeping with the scale and character of the interment area.
- 5.5.3 A monument permit shall only be granted in respect of an interment site with the consent of the holder of the interment right.
- 5.5.4 The holder of a monument permit is responsible for the maintenance and repair of the monument or any works required to ensure public or employee safety
- 5.5.5 ~~If Council is required to undertake any work relating to monuments, to ensure public or employee safety, Council may recover the costs associated with such works from the holder.~~

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ITEM 12 - ATTACHMENT 1 PROVISION AND MANAGEMENT OF CEMETERIES POLICY.

Policy



5.6 Exhumation

- 5.6.1 An exhumation may only take place when an order by a Coroner or a Court permitting such exhumation is issued; or
- a) a person has obtained prior to commencing exhumation:
 - i. Approval for exhumation by NSW Health in accordance with the provisions of the Public Health Act.
 - ii. Approval from Council **under delegated authority**.

5.7 Mementos and Tributes

5.7.1 Floral tributes can only be placed:

- a) ~~on columbarium walls on niches where a Council approved plaque has a built in vase.~~
- b) ~~in memorial gardens in an approved plastic flower container (available at Council) adjacent to the plaque.~~
- c) ~~in monumental/lawn beam plots in containers that form part of the monument.~~

5.7.2 Tributes must not encroach neighbouring memorials or burial locations.

5.7.3 Wrapping and rubber bands must be removed from floral tributes before placement.

5.7.1 The following are prohibited in Council cemeteries **without Council approval**:

- a) items made from or containing glass or other breakable materials such as porcelain.
- b) planting of trees, shrubs or other plants.
- c) gluing or permanently attaching items to gardens, walls or memorials.
- d) Except on days of a total fire ban, the lighting of candles and incense sticks for cultural or religious reasons is acceptable only where the candle or incense is fully contained in an approved enclosed container and extinguished prior to leaving. Alternatively, appropriately placed LED candles may be used.

5.8 Memorials

- 5.8.1 New or restored memorials must comply with the applicable provisions of Australian Standards 4204:2019 Headstones and cemetery monuments and 4425:2020 Above-ground burial structures.

5.9 Customer Service

- 5.9.1 Council will ensure all future interment right purchases are in the form of a consumer contract in accordance with the Cemetery Operator licence conditions.
- 5.9.2 Council is required to comply with the Cemetery and Crematorium Operator Code of Practice 2018 approved by Cemeteries and Crematoria NSW.

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5.9.3 Council will, in addition to our general customer experience charter, comply with the Cemetery Operator licence conditions Customer Service Principles being:

- a) respect the personal choices of our customers
- b) provide customers and prospective customers with full and accurate information about the products and services that we are able or unable to provide
- c) carry out our business with competency and integrity, and
- d) maintain high standards of conduct, to enhance the reputation of the industry.

5.10 Dispute Resolution

5.10.1 When resolving any disputes with an interment customer, Council will, in addition to following our complaint handling policy:

- a) deal with disputes and complaints in a respectful and compassionate way; and
- b) advise customers, if they are not satisfied with our handling of the complaint they can contact the Cemeteries Agency, censw.info@cemeteries.nsw.gov.au or 02 9842 8470.
- c) record all complaints in a register and maintain relevant records for 7 years.

6. RESPONSIBILITIES:

- 6.1 Overall implementation of this policy lies with the ~~Community Services~~ **Assets** Section Manager. Key policy areas are delegated to the following sections and teams:
- a) Provision of cemeteries – ~~Civil Assets~~ Section.
 - b) ~~Management~~ **Contract and lease** of cemeteries – Community Services Section / ~~Emergency Management~~ team.
 - c) Keeping of Records – ~~Facilities and Services Group Manager's~~ **Infrastructure Director's** Office / ~~Business Systems Support~~ and **Facilities and Infrastructure** Administration team.
 - d) Interment sites and Interment rights – ~~Facilities and Services Group Manager's~~ **Infrastructure Director's** Office / ~~Business Systems Support~~ and **Facilities and Infrastructure** Administration team.
 - e) Monuments - - ~~Facilities and Services Group Manager's~~ **Infrastructure Director's** Office / ~~Business Systems Support~~ and **Facilities and Infrastructure** Administration team.
 - f) Exhumation - - ~~Facilities and Services Group Manager's~~ **Infrastructure Director's** Office / ~~Business Systems Support~~ and **Facilities and Infrastructure** Administration team.

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ITEM 12 - ATTACHMENT 1 PROVISION AND MANAGEMENT OF CEMETERIES POLICY.

Policy



7. RELATED DOCUMENTS:

- 7.1 Port Stephens Council Setting of Fees and Charges Management Directive (PSC).
- 7.2 Port Stephens Council Code of Conduct (PSC).
- 7.3 ~~Procedure Requirements for works within Council cemeteries by external agents (PSC).~~ Port Stephens Council Customer Experience Charter.
- 7.4 Port Stephens Council Application Form – Permit to carry out monumental work in Port Stephens Cemeteries (PSC).
- 7.5 Port Stephens Council Application Form – Cemetery Burial Application (PSC).
- 7.6 Port Stephens Council Application Form – Columbarium Wall/ Memorial Garden Application (PSC).
- 7.7 ~~Application Form – Annual Permit to undertake work in Port Stephens Council Cemeteries (PSC).~~ Cemetery and Crematorium Operator Code of Practice 2018 (NSW).
- 7.8 Port Stephens Council Application Form – Confirmation of Cemetery Information (PSC).
- 7.9 Port Stephens Council Application Form – Request to Transfer Right of Interment (PSC).
- 7.10 Port Stephens Council Form – Template for Memorial Niche Plaques (PSC).
- 7.11 Port Stephens Council Form – Template for Terrazzo Oval Plaques (PSC).
- 7.12 Port Stephens Council Form – Template for Raymond Terrace Granite Columbarium Wall (PSC).
- 7.13 Port Stephens Council Cemeteries information brochure (PSC).
- 7.14 Port Stephens Council Columbarium Walls and Memorial Gardens brochure (PSC).
- 7.15 Cemeteries and Crematoria Act 2013 (NSW).
- 7.16 Local Government Act 1993 (NSW).
- 7.17 Crown Land Management Act 2016 (NSW).
- 7.18 Public Health Act 2010 (NSW).
- 7.19 Coroners Act 2009 (NSW).
- 7.20 Anti-Discrimination Act 1977 (NSW).
- 7.21 Births Deaths and Marriages Registration Act 1995 (NSW).
- 7.22 Fair Trading Act 1987 (NSW).
- 7.23 Government Information (Public Access) Act 2009 (NSW).
- 7.24 Heritage Act 1977 (NSW).
- 7.25 Human Tissue Act 1983 (NSW).
- 7.26 State Records Act 1998 (NSW).
- 7.27 Work Health and Safety Act 2011 (NSW).
- 7.28 Cemeteries & Crematoria NSW Cemetery Operator Licence (NSW).
- 7.29 Port Stephens Council Perpetual Interment Right Consumer Contract.

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EDRMS container No.	PSC2005-3664	EDRMS record No.	TBA
Audience	Funeral Directors, Grave Diggers, Monumental Masons, West Ward Cemetery Group, Volunteer Groups, Historical Societies, general community.		
Process owner	Emergency Management Coordinator Assets Section Manager		
Author	Community Services Section Manager		
Review timeframe	3 4 years	Next review date	TBA
Adoption date	14/07/2015		

VERSION HISTORY:

Version	Date	Author	Details	Minute No.
0.1	27/05/2015	Community Services Section Manager	Draft version for review by Executive Leadership Team	n/a
0.2	07/07/2015	Community Services Section Manager	Draft version for Public Exhibition.	n/a
1.	14/07/2015	Community Services Section Manager	The Public Exhibition period ended 20 August 2015 and no submissions were received. This policy is now adopted and replaces the Port Stephens Cemeteries Policy (dated 290102 – Min No. 016)	194
2.	19/09/2019	Community Services	Reviewed and updated in new Policy Template.	187

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ITEM 12 - ATTACHMENT 1 PROVISION AND MANAGEMENT OF CEMETERIES POLICY.

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Version	Date	Author	Details	Minute No.
		Section Manager	<p>4.1 Definitions updated to include 'Memorial Garden' and under Interment Site the words 'of ashes' and 'wall' were added.</p> <p>5.2.6 the addition of "or Volunteer Group".</p> <p>7.16 the addition of "Local Government Act 1993 (NSW)".</p> <p>Controlled Document Information the addition of the word "cemetery" and "Volunteer Group".</p> <p>The public exhibition period ended 18 September 2019 and no submissions were received.</p> <p>This policy is now adopted and replaces the Provision and Management of Cemeteries Policy dated 14/07/2015 – Min No. 194.</p>	
3.	24/05/2022	Community Services Section Manager	<p>Updated policy into the latest format.</p> <p>2.2 – Removed "Council".</p> <p>5.3 – Removed 'Council may delegate some aspects of the maintenance of cemeteries to a 355c Committee or Volunteer Group of Council' to reflect that all maintenance is either carried out by contractors or internal Council staff.</p> <p>5.6.1 (a) – Updated 'NSW Department of Health' to 'NSW Health' to reflect correct title.</p> <p>6.1 (b) – Updated 'Contracts and Services team' to 'Emergency Management team' to reflect current responsibilities.</p>	134

Policy

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ITEM 12 - ATTACHMENT 1 PROVISION AND MANAGEMENT OF CEMETERIES POLICY.

Policy



Version	Date	Author	Details	Minute No.
			<p>7.17 Added “Management” to the Crown Lands Act 2016 (NSW). Audience: Removed ‘355c Cemetery Committees’ to reflect that there are no 355c Cemetery Committees. Process owner: updated ‘Contracts and Services Coordinator’ to ‘Emergency Management Coordinator’ to reflect current responsibilities. Controlled document information: amended review timeframe to 3 years in accordance with Council’s policy review process.</p>	
4.	TBA	Asset & Community Services Section Managers	<p>Reviewed and updated Policy. Process Owner amended as policy has changed Sections. 3.2(a) Added 4.1 Definitions for Cinerary urn and Interred Added 5.2.1 – wording amended to better reflect meaning. (b) Removed “works permit or”, Added “or other approval as required and” (c) added. 5.2.3 Added 5.4.3 Added “provided an interment has not taken place and upon providing 28 days notice in writing. If the request is received within 10 days of the interment right contract being signed, a full refund will be offered, minus the current interment right cancellation/transfer fee representing our reasonable</p>	TBA

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ITEM 12 - ATTACHMENT 1 PROVISION AND MANAGEMENT OF CEMETERIES POLICY.

Policy



Version	Date	Author	Details	Minute No.
			administration fee. Thereafter, no refund will be offered." 5.5.4 "or any works required to ensure public or employee safety" added 5.6.1(a)(ii) Added "under delegated authority". 5.7 - 5.9 Added clauses. 6.1 Updated titles in Responsibilities. 7. Added and updated Related documents.	

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MINUTES ORDINARY COUNCIL - 24 JUNE 2025

ITEM NO. 7

**FILE NO: 25/91525
EDRMS NO: PSC2005-3664**

POLICY REVIEW - PROVISION AND MANAGEMENT OF CEMETERIES

REPORT OF: JOHN MARETICH - ASSETS SECTION MANAGER
DIRECTORATE: FACILITIES AND INFRASTRUCTURE

RECOMMENDATION IS THAT COUNCIL:

- 1) Place the revised Provision and Management of Cemeteries policy shown at **(ATTACHMENT 1)** on public exhibition for a period of 28 days.
- 2) Should no submissions be received the policy be adopted without a further report to Council.
- 3) Revoke the Provision and Management of Cemeteries policy dated 24 May 2022, Minute No. 134 should no submissions be received.

**ORDINARY COUNCIL MEETING - 24 JUNE 2025
MOTION**

142	<p>Councillor Giacomo Arnott Councillor Jason Wells</p> <p>It was resolved that Council:</p> <ol style="list-style-type: none">1) Place the revised Provision and Management of Cemeteries policy shown at (ATTACHMENT 1) on public exhibition for a period of 28 days.2) This policy is to be reported back to Council at the conclusion of public exhibition.
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Those for the Motion: Mayor Leah Anderson, Crs Rosalyn Armstrong, Giacomo Arnott, Chris Doohan, Nathan Errington, Peter Francis, Paul Le Mottee, Ben Niland, Mark Watson and Jason Wells

Those against the Motion: Nil.

The motion was carried.

MINUTES ORDINARY COUNCIL - 24 JUNE 2025

BACKGROUND

The purpose of this report is to provide the revised Provision and Management of Cemeteries Policy ('policy') at (ATTACHMENT 1) to Council for consideration prior to public exhibition.

Council is required to ensure the sufficient provision of cemetery facilities meet the needs of the community.

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

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2022-2026
Infrastructure and facilities	Provide, manage and maintain community assets in accordance with the SAMP 2024-2034

FINANCIAL/RESOURCE IMPLICATIONS

There are no financial or resource implications from adopting the recommendations. Revenue from cemetery fees and charges are used to offset the cost of maintaining all cemeteries.

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

LEGAL, POLICY AND RISK IMPLICATIONS

There are no legal or policy impediments to adopting the recommendations.

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
There is a risk that Council is operating a cemetery service without a policy.	Low	Adopt the recommendations.	Yes

MINUTES ORDINARY COUNCIL - 24 JUNE 2025**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

There are no sustainability implications created by the revised Policy.

COMMUNICATION AND ENGAGEMENT

Council's Communication and Engagement Strategy uses the IAP2 Framework to identify the level of engagement undertaken. An explanation for each level is shown below.

INFORM	To the public with balanced and objective information to assist them in understanding the problems, alternatives, opportunities and/or solutions.
CONSULT	To obtain public feedback on analysis, alternatives and/or decisions.
INVOLVE	To work directly with the public throughout the process to ensure that public concerns and aspirations are consistently understood and considered.
COLLABORATE	To partner with the public in each aspect of the decision including the development of alternatives and the identification of the preferred solution.
EMPOWER	To place final decision-making and/or developed budgets in the hands of the public.
	No external communications and engagement are required for this report.

The following communication and engagement applies to this report.

External communications and engagement

CONSULT	The policy will be placed on public exhibition for 28 days and will be notified through Council's website.
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Internal communications and engagement

Consultation with key stakeholders has been undertaken by the Assets Section with:

- Executive Team.
- Governance Section.
- Financial Services Section.
- Community Services Section.
- Public Domain and Services Section.

MINUTES ORDINARY COUNCIL - 24 JUNE 2025

OPTIONS

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

ATTACHMENTS

- 1) Provision and Management of Cemeteries Policy.

COUNCILLORS' ROOM/DASHBOARD

Nil.

TABLED DOCUMENTS

Nil.

MINUTES ORDINARY COUNCIL - 24 JUNE 2025

ITEM 7 - ATTACHMENT 1 PROVISION AND MANAGEMENT OF CEMETERIES POLICY.

Policy



FILE NO: PSC2005-3664
TITLE: PROVISION AND MANAGEMENT OF CEMETERIES
OWNER: COMMUNITY SERVICES ASSETS SECTION MANAGER

1. PURPOSE:

- 1.1 To ensure the management and maintenance of cemeteries are undertaken in a lawful and respectful manner.
- 1.2 To ensure the sufficient provision of cemetery facilities to meet the needs of the community.

2. CONTEXT/BACKGROUND:

- 2.1 Council manages cemeteries at Anna Bay, Karuah, Nelson Bay, Seaham and Raymond Terrace. These cemeteries offer interments in plots, columbarium walls and memorial gardens. Council also maintains the grounds of historic cemeteries at Hinton, Raymond Terrace and Birubi Point.
- 2.2 Cemetery management requires a focus on compassion with the customer, accuracy in the management of records and safety in the issuing of permits to undertake work. This policy sets the parameters by which cemeteries will be managed in Port Stephens Council and ensures that the corporate knowledge that underpins the management of cemeteries is held in one place.

3. SCOPE:

- 3.1 This policy applies to all cemeteries that are on land that is owned or managed by Port Stephens Council.
- 3.2 This policy does not relate to:
 - a) parks and roadside memorials
 - b) cemeteries, columbarium walls or memorial gardens on land that is not owned or managed by Port Stephens Council.

4. DEFINITIONS:

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

Cemetery	A place for burials, not being a church yard.
Cinerary urn	A container holding cremated human remains

Policy

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MINUTES ORDINARY COUNCIL - 24 JUNE 2025

ITEM 7 - ATTACHMENT 1 PROVISION AND MANAGEMENT OF CEMETERIES POLICY.

Policy



Columbarium Wall	A structure with tiers of niches for reception of cinerary urns.
Memorial Garden	A place for reception of cinerary urns.
Exhumation	To dig out, unearth.
Interment	Burial in the earth or placement of cinerary urns in a columbarium wall or memorial garden.
Interred	The placement of human remains in the earth, columbarium wall or memorial garden.
Interment Site	A place of burial in the earth or placement of ashes in a columbarium wall or memorial garden.
Interment Right	An exclusive right granted for use of an interment site. There is no entitlement to any real estate. The holder of an interment right has the sole authority to determine who can be buried or placed in the interment site and to permit headstones, inscriptions and memorials on the site.

5. STATEMENT:

5.1 Provision of cemeteries

5.1.1 Council will plan for the provision of cemeteries including burial plots, columbarium walls and memorial gardens through the Strategic Asset Management Plan process.

5.2 Management of cemeteries

5.2.1 Council does not permit any person to undertake an activity within a cemetery unless:

- a) the activity is an approved activity such as:
 - i. the quiet and respectful commemoration of the dead or undertaking of historical research
 - ii. the use of roadways and pathways to gain access to interment sites or amenities.
- b) the person holds an interment right, exhumation permit, ~~works permit or monument permit~~ **or other approval as required and** issued by Council to undertake that activity.

5.2.2 Council shall maintain cemeteries to agreed service levels detailed in the maintenance service contract specification.

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MINUTES ORDINARY COUNCIL - 24 JUNE 2025

ITEM 7 - ATTACHMENT 1 PROVISION AND MANAGEMENT OF CEMETERIES POLICY.

Policy



5.2.3 Council will comply with the Cemeteries & Crematoria NSW Cemetery Operator Licence conditions.

5.2.4 Council shall create and maintain general terms and conditions relating to interment rights and monumental permits.

5.3 Keeping of records

5.3.1 Council shall maintain a register of:

- a) all interments, exhumations and interment rights in respect of each cemetery.
- b) complaints received relating to interments in accordance with the Cemetery Operator licence conditions.

5.4 Interment sites and Interment rights

5.4.1 Human remains of a deceased person may only be interred at interment sites with the written permission of Council who shall issue an interment right.

5.4.2 Interment rights may not be sold or transferred except with the express written consent of Council.

5.4.3 The owner of an interment right may relinquish an interment right to Council provided an interment has not taken place and upon providing 28 days notice in writing. If the request is received within 10 days of the interment right contract being signed, a full refund will be offered, minus the current interment right cancellation/transfer fee representing our reasonable administration fee. Thereafter, no refund will be offered.

5.4.4 A person may not hold more than two interment rights.

5.5 Monuments

5.5.1 Council approval is required for the installation of a monument.

5.5.2 A monument must be in keeping with the scale and character of the interment area.

5.5.3 A monument permit shall only be granted in respect of an interment site with the consent of the holder of the interment right.

5.5.4 The holder of a monument permit is responsible for the maintenance and repair of the monument.

5.5.5 If Council is required to undertake any work relating to monuments, to ensure public or employee safety, Council may recover the costs associated with such works from the holder.

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MINUTES ORDINARY COUNCIL - 24 JUNE 2025

ITEM 7 - ATTACHMENT 1 PROVISION AND MANAGEMENT OF CEMETERIES POLICY.

Policy



5.6 Exhumation

5.6.1 An exhumation may only take place when an order by a Coroner or a Court permitting such exhumation is issued; or

- a) a person has obtained prior to commencing exhumation:
 - i. Approval for exhumation by NSW Health in accordance with the provisions of the Public Health Act.
 - ii. Approval from Council under delegated authority.

5.7 Mementos and Tributes

5.7.1 Floral tributes can only be placed:

- a) on columbarium walls on niches where a Council approved plaque has a built in vase.
- b) in memorial gardens in an approved plastic flower container (available at Council) adjacent to the plaque.
- c) in monumental/lawn beam plots in containers that form part of the monument.

5.7.2 Tributes must not encroach neighbouring memorials or burial locations.

5.7.3 Wrapping and rubber bands must be removed from floral tributes before placement.

5.7.4 The following are prohibited in Council cemeteries:

- a) items made from or containing glass or other breakable materials such as porcelain.
- b) planting of trees, shrubs or other plants.
- c) gluing or permanently attaching items to gardens, walls or memorials.
- d) Except on days of a total fire ban, the lighting of candles and incense sticks for cultural or religious reasons is acceptable only where the candle or incense is fully contained in an approved enclosed container and extinguished prior to leaving. Alternatively, appropriately placed LED candles may be used.

5.8 Memorials

5.8.1 New or restored memorials must comply with the applicable provisions of Australian Standards 4204:2019 Headstones and cemetery monuments and 4425:2020 Above-ground burial structures.

5.9 Customer Service

5.9.1 Council will ensure all future interment right purchases are in the form of a consumer contract in accordance with the Cemetery Operator licence conditions.

5.9.2 Council is required to comply with the Cemetery and Crematorium Operator Code of Practice 2018 approved by Cemeteries and Crematoria NSW.

Policy

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MINUTES ORDINARY COUNCIL - 24 JUNE 2025

ITEM 7 - ATTACHMENT 1 PROVISION AND MANAGEMENT OF CEMETERIES POLICY.

Policy



5.9.3 Council will, in addition to our general Customer Experience Charter, comply with the Cemetery Operator licence conditions Customer Service Principles being:

- a) respect the personal choices of our customers
- b) provide customers and prospective customers with full and accurate information about the products and services that we are able or unable to provide
- c) carry out our business with competency and integrity, and
- d) maintain high standards of conduct, to enhance the reputation of the industry.

5.10 Dispute Resolution

5.10.1 When resolving any disputes with an interment customer, Council will, in addition to following our Complaint Handling Policy:

- a) deal with disputes and complaints in a respectful and compassionate way; and
- b) advise customers, if they are not satisfied with our handling of the complaint they can contact the Cemeteries Agency, ccnsw.info@cemeteries.nsw.gov.au or 02 9842 8470.
- c) record all complaints in a register and maintain relevant records for 7 years.

6. RESPONSIBILITIES:

- 6.1 Overall implementation of this policy lies with the Community Services Assets Section Manager. Key policy areas are delegated to the following sections and teams:
 - a) Provision of cemeteries – Civil Assets Section.
 - b) Management Contract and lease of cemeteries – Community Services Section / Emergency Management team.
 - c) Keeping of Records – Facilities and Services Group Manager's Infrastructure Director's Office / Business Systems Support and Administration team.
 - d) Interment sites and Interment rights – Facilities and Services Group Manager's Infrastructure Director's Office / Business Systems Support and Administration team.
 - e) Monuments – Facilities and Services Group Manager's Infrastructure Director's Office / Business Systems Support and Administration team.
 - f) Exhumation – Facilities and Services Group Manager's Infrastructure Director's Office / Business Systems Support and Administration team.

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MINUTES ORDINARY COUNCIL - 24 JUNE 2025**ITEM 7 - ATTACHMENT 1 PROVISION AND MANAGEMENT OF CEMETERIES POLICY.****Policy****7. RELATED DOCUMENTS:**

- 7.1 **Port Stephens Council** Setting of Fees and Charges Management Directive (PSC).
- 7.2 **Port Stephens Council** Code of Conduct (PSC).
- 7.3 **Port Stephens Council** Procedure – Requirements for works within Council cemeteries by external agents (PSC); **Port Stephens Council Customer Experience Charter**.
- 7.4 **Port Stephens Council** Application Form – Permit to carry out monumental work in Port Stephens Cemeteries (PSC).
- 7.5 **Port Stephens Council** Application Form – Cemetery Burial Application (PSC).
- 7.6 **Port Stephens Council** Application Form – Columbarium Wall/Memorial Garden Application (PSC).
- 7.7 **Port Stephens Council** Application Form – Annual Permit to undertake work in Port Stephens Council Cemeteries (PSC); **Cemetery and Crematorium Operator Code of Practice 2018 (NSW)**.
- 7.8 **Port Stephens Council** Application Form – Confirmation of Cemetery Information (PSC).
- 7.9 **Port Stephens Council** Application Form – Request to Transfer Right of Interment (PSC).
- 7.10 **Port Stephens Council** Form – Template for Memorial Niche Plaques (PSC).
- 7.11 **Port Stephens Council** Form – Template for Terrazzo Oval Plaques (PSC).
- 7.12 **Port Stephens Council** Form – Template for Raymond Terrace Granite Columbarium Wall (PSC).
- 7.13 **Port Stephens Council** Cemeteries information brochure (PSC).
- 7.14 **Port Stephens Council** Columbarium Walls and Memorial Gardens brochure (PSC).
- 7.15 Cemeteries and Crematoria Act 2013 (NSW).
- 7.16 Local Government Act 1993 (NSW).
- 7.17 Crown Land Management Act 2016 (NSW).
- 7.18 Public Health Act 2010 (NSW).
- 7.19 Coroners Act 2009 (NSW).
- 7.20 Anti-Discrimination Act 1977 (NSW).
- 7.21 Births Deaths and Marriages Registration Act 1995 (NSW).
- 7.22 Fair Trading Act 1987 (NSW).
- 7.23 Government Information (Public Access) Act 2009 (NSW).
- 7.24 Heritage Act 1977 (NSW).
- 7.25 Human Tissue Act 1983 (NSW).
- 7.26 State Records Act 1998 (NSW).
- 7.27 Work Health and Safety Act 2011 (NSW).
- 7.28 **Cemeteries & Crematoria NSW Cemetery Operator Licence (NSW)**.
- 7.29 **Port Stephens Council Perpetual Interment Right Consumer Contract**.

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ITEM 12 - ATTACHMENT 2 COUNCIL RESOLUTION, MINUTE NO.142 - 24 JUNE 2025.

MINUTES ORDINARY COUNCIL - 24 JUNE 2025

ITEM 7 - ATTACHMENT 1 PROVISION AND MANAGEMENT OF CEMETERIES POLICY.

Policy



CONTROLLED DOCUMENT INFORMATION:

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EDRMS container No.	PSC2005-3664	EDRMS record No.	TBA
Audience	Funeral Directors, Grave Diggers, Monumental Masons, West Ward Cemetery Group, Volunteer Groups, Historical Societies, general community.		
Process owner	Emergency Management Coordinator Assets Section Manager		
Author	Community Services Section Manager		
Review timeframe	3 4 years	Next review date	TBA
Adoption date	14/07/2015		

VERSION HISTORY:

Version	Date	Author	Details	Minute No.
0.1	27/05/2015	Community Services Section Manager	Draft version for review by Executive Leadership Team	n/a
0.2	07/07/2015	Community Services Section Manager	Draft version for Public Exhibition.	n/a
1.	14/07/2015	Community Services Section Manager	The Public Exhibition period ended 20 August 2015 and no submissions were received. This policy is now adopted and replaces the Port Stephens Cemeteries Policy (dated 290102 – Min No. 016)	194
2.	19/09/2019	Community Services	Reviewed and updated in new Policy Template.	187

Policy

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MINUTES ORDINARY COUNCIL - 24 JUNE 2025

ITEM 7 - ATTACHMENT 1 PROVISION AND MANAGEMENT OF CEMETERIES POLICY.

Policy



Version	Date	Author	Details	Minute No.
		Section Manager	4.1 Definitions updated to include 'Memorial Garden' and under Interment Site the words 'of ashes' and 'wall' were added. 5.2.6 the addition of "or Volunteer Group". 7.16 the addition of "Local Government Act 1993 (NSW)". Controlled Document Information the addition of the word "cemetery" and "Volunteer Group". The public exhibition period ended 18 September 2019 and no submissions were received. This policy is now adopted and replaces the Provision and Management of Cemeteries Policy dated 14/07/2015 – Min No. 194.	
3.	24/05/2022	Community Services Section Manager	Updated policy into the latest format. 2.2 – Removed "Council". 5.3 – Removed 'Council may delegate some aspects of the maintenance of cemeteries to a 355c Committee or Volunteer Group of Council' to reflect that all maintenance is either carried out by contractors or internal Council staff. 5.6.1 (a) – Updated 'NSW Department of Health' to 'NSW Health' to reflect correct title. 6.1 (b) – Updated 'Contracts and Services team' to 'Emergency Management team' to reflect current responsibilities.	134

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Policy



Version	Date	Author	Details	Minute No.
			<p>7.17 Added "Management" to the Crown Lands Act 2016 (NSW). Audience: Removed '355c Cemetery Committees' to reflect that there are no 355c Cemetery Committees. Process owner: updated 'Contracts and Services Coordinator' to 'Emergency Management Coordinator' to reflect current responsibilities. Controlled document information: amended review timeframe to 3 years in accordance with Council's policy review process.</p>	
4.	TBA	Assets & Community Services Section Managers	<p>Reviewed and updated policy. Process Owner amended as policy has changes Sections. 3.2(a) Added 4.1 Definitions for Cinerary urn and Interred Added 5.2.1(b) Removed "works permit or", Added "or other approval as required and" 5.2.3 Added 5.3.1(b) Added 5.4.3 Added "provided an interment has not taken place and upon providing 28 days notice in writing. If the request is received within 10 days of the interment right contract being signed, a full refund will be offered, minus the current interment right cancellation/transfer fee representing our reasonable administration fee. Thereafter, no refund will be offered."</p>	TBA

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ITEM 12 - ATTACHMENT 2 COUNCIL RESOLUTION, MINUTE NO.142 - 24 JUNE 2025.

MINUTES ORDINARY COUNCIL - 24 JUNE 2025

ITEM 7 - ATTACHMENT 1 PROVISION AND MANAGEMENT OF CEMETERIES POLICY.

Policy



Version	Date	Author	Details	Minute No.
			5.6.1(a)(ii) Added "under delegated authority". 5.7 - 5.10 Added clauses. 6.1 Updated titles in Responsibilities. 7. Added and updated Related documents. Amended review timeframe to 4 years in accordance with Council's policy and management directive review process.	

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ITEM NO. 13

**FILE NO: 25/265210
EDRMS NO: PSC2009-9420**

POLICY REVIEW: ACCESS TO INFORMATION POLICY

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Place the revised Access to Information policy shown at **(ATTACHMENT 1)** on public exhibition for a period of 28 days.
- 2) Should no submissions be received the policy be adopted without a further report to Council.
- 3) Revoke the Access to Information policy dated 13 September 2022, Minute No. 250 should no submissions be received.

BACKGROUND

The purpose of this report is to provide the revised Access to Information policy (the 'policy') at **(ATTACHMENT 1)** to Council for consideration prior to public exhibition. The policy has been reviewed as part of Council's ongoing policy review program.

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

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

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

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2025-2029
Governance	Deliver governance services and internal audit program

FINANCIAL/RESOURCE IMPLICATIONS

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

LEGAL, POLICY AND RISK IMPLICATIONS

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

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

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Nil.

COMMUNICATION AND ENGAGEMENT

Council's Communication and Engagement Strategy uses the IAP2 Framework to identify the level of engagement undertaken. An explanation for each level is shown below.

INFORM	To provide the public with balanced and objective information to assist them in understanding the problems, alternatives, opportunities and/or solutions.
CONSULT	To obtain public feedback on analysis, alternatives and/or decisions.
INVOLVE	To work directly with the public throughout the process to ensure that public concerns and aspirations are consistently understood and considered.

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COLLABORATE	To partner with the public in each aspect of the decision including the development of alternatives and the identification of the preferred solution.
EMPOWER	To place final decision-making and/or developed budgets in the hands of the public.
	No external communications and engagement are required for this report.

The following communication and engagement applies to this report.

External communications and engagement

CONSULT	The policy will be placed on public exhibition for 28 days and will be notified through social media, direct email to stakeholders, print advertising and Council's website.
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Internal communications and engagement

Consultation with key stakeholders was undertaken by the Governance Section with:

- General Manager.
- Executive Team.

OPTIONS

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

ATTACHMENTS

Nil.

COUNCILLORS' ROOM/DASHBOARD

Nil.

TABLED DOCUMENTS

Nil.

ITEM NO. 14

**FILE NO: 25/252380
EDRMS NO: A2004-0284**

NEW CODE OF MEETING PRACTICE

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Place the revised Code of Meeting Practice shown at **(ATTACHMENT 1)** on public exhibition for a period of up to 42 days.
 - 2) Should no submissions be received the policy be adopted without a further report to Council.
 - 3) Revoke the Code of Meeting Practice dated 10 June 2025 Minute No. 126 should no submissions be received.
 - 4) Adopt the Order of Business as detailed in this report and commence the Order of Business in line with the timing of the revised Code of Meeting Practice.
 - 5) Endorse the Public Access Protocol shown at **(ATTACHMENT 2)**.
-

BACKGROUND

The purpose of this report is to provide the revised Code of Meeting Practice (the Code) at **(ATTACHMENT 1)** to Council for consideration prior to public exhibition.

The Port Stephens Council Code of Meeting Practice is based on the revised Model Code of Meeting Practice released by the Office of Local Government on 29 August 2025. Council is required to adopt the Code by 31 December 2025. Should the Code not be adopted by the due date, transactional savings have been included and the Model Code of Meeting Practice will apply until Council has adopted the Code.

The Code applies to meetings of the Council and Committees of Council where members are all elected members. The model Code also applies to boards of joint organisations and county councils. All references that apply to boards of joint organisations and county councils have been removed.

Council last adopted the Code on 10 June 2025, which includes mandatory and non-mandatory provisions. Council is also able to include supplementary clauses; however, any supplementary clauses cannot be inconsistent with the model Code.

The Code **(ATTACHMENT 1)** has maintained any previously adopted non-mandatory provisions.

The key amendments to the Code are:

- 1) Clause 3.4 – makes provision for the Mayor to call an extraordinary meeting without the need of obtaining 2 Councillor signatures.
- 2) Clause 3.14 – Councillors are not permitted to ask questions with notice under clause 3.13 that would constitute an act of disorder.
- 3) Clause 3.26 – Council must ensure it only deals with agenda items that are listed on an extraordinary agenda.
- 4) Clauses 3.27 to 3.31 – changes to the how Council deals with urgency motions.
- 5) Clauses 3.32 and 3.33 – prohibition of pre-meeting briefing sessions. Councillors may request information listed for a meeting, however, the information is to be made public and the information is to be provided in a way that does not involve any discussion of the information.
- 6) Clauses 3.33 to 3.38 – removal of pre-meeting briefing sessions from the previous Code.
- 7) Clauses 4.1 to 4.27 – Public Forum (Public Access) to be removed and Council to develop a Public Access Protocol.
- 8) Clause 4.3 – Public Access must be livestreamed.
- 9) Clause 5.2 – makes provision for Council to determine the standards of dress for Councillors.
- 10) Clauses 5.4 to 5.6 – makes provision for Councillors to submit an apology and it will be considered a leave of absence, if granted. Council must not act unreasonably when considering the grant leave of absence.
- 11) Clauses 5.18 to 5.30 – Councillors may request to attend a meeting by audio visual link (AVL) where they are prevented from attending because of ill-health or other medical reasons or because of unforeseen caring responsibilities.
- 12) Clauses – 5.35 to 5.44 – ‘webcasting’ will be known as ‘livestreaming’. Recording is to take place in real time.
- 13) Clauses 7.1 to 7.6 – Councillors and staff are to stand when the Mayor enters the Chamber and when addressing the meeting. Modes of address have been amended to include ‘Mayor’, ‘Deputy Mayor’ and ‘Chair’.
- 14) Clauses 9.3 to 9.6 – changes to how urgency motions are dealt with at a meeting.
- 15) Clauses 9.7 to 9.9 – Mayoral Minute provisions have been amended to make provision for a Mayoral Minute to be put to a meeting on any matter or topic. Clauses 9.6 to 9.10 have been removed.
- 16) Clause 9.15 – Councillors may ask a question of the General Manager through the Mayor.
- 17) Clause 10.3 – A Councillor may withdraw a notice of motion at any time, however, Council may consider the matter should it be determined at a meeting.
- 18) Clause 10.9 – motions will no longer be required to include expenditure of funds.
- 19) Clauses 10.17 to 10.19 – rules governing foreshadowed motions have been removed.
- 20) Clause – 11.7 to 11.8 – Council must not make a final planning decision without receiving a staff report containing an assessment and recommendation. Should Council not adopt the staff recommendation, it must include reasons why in the resolution.

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- 21) Clause 14.4(d) – makes provision for legal professional privilege.
- 22) Clauses 14.25 to 14.26 – makes provision for confidential business papers to be made public after the confidentiality has ceased. Consultation is to occur with the Council and other affected parties prior to release.
- 23) Clause 15.10, 15.12, 15.13 – changes to act of disorder at a meeting.
- 24) Clauses 15.19 to 15.20 – makes provision for expulsion from meetings and a definition of act of disorder by members of the public.

The Code makes provision for a councillor to attend a Council meeting by audio visual link, therefore the Order of Business will require amendment to include audio visual requests. The Order of Business below has been updated to include item 5. This Order of Business will come into effect at the same time as the new Code of Meeting Practice.

In addition to the amendments above, the Code has been updated to reflect changes in clause numbers and other minor amendments from the revised model Code.

Clause 4.2 of the Code requires Council to determine the rules applicable to Public Access. The Public Access Protocol at **(ATTACHMENT 2)** is based on the previous Code of Meeting Practice requirements for public forums.

Please note the Table below provided the details of the highlighting within the Code.

	Explanation
Yellow highlight	Changes new or amended clauses
Strike out text	Clauses to be deleted
Green highlight	Clauses included in various version of Council's Code that are not included in the Model Code of Meeting Practice
Red text	Non-mandatory clauses

ORDER OF BUSINESS

The proposed Order of Business is below:

- 1) Opening meeting
- 2) Acknowledgement of Country
- 3) Prayer
- 4) Apologies and applications for a leave of absence from Mayor and Councillors
- 5) Attendance by audio visual link**
- 6) Disclosures of interests
- 7) Confirmation of minutes
- 8) Mayoral minute(s)*
- 9) Motions to close meeting to the public*
- 10) Reports to Council
- 11) General Manager reports*
- 12) Questions with Notice*
- 13) Questions on Notice
- 14) Notices of motions*

ORDINARY COUNCIL - 28 OCTOBER 2025

- 15) Rescission Motions*
- 16) Confidential matters*
- 17) Conclusion of the meeting

**if submitted*

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2025-2029
Resources and finance	Deliver Governance Services and internal audit program

FINANCIAL/RESOURCE IMPLICATIONS

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

LEGAL, POLICY AND RISK IMPLICATIONS

Council is required to adopt a Code of Meeting Practice based on the model Code to ensure it meets all legislative requirements in relation to conducting a meeting of the Council and a committee meeting of Council.

Section 361 of the Local Government Act 1993, requires Council to publicly exhibit the Code for a period of 28 days and allow 42 days for submissions to be received from the community.

The Code is to be adopted by 31 December 2025. Should the Code not be adopted by the due date, transactional savings have been included and the Model Code of Meeting Practice will apply until Council has a Code adopted.

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

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

There are limited sustainability implications associated with this report.

COMMUNICATION AND ENGAGEMENT

Council’s Communication and Engagement Strategy uses the IAP2 Framework to identify the level of engagement undertaken. An explanation for each level is shown below.

INFORM	To provide the public with balanced and objective information to assist them in understanding the problems, alternatives, opportunities and/or solutions.
CONSULT	To obtain public feedback on analysis, alternatives and/or decisions.
INVOLVE	To work directly with the public throughout the process to ensure that public concerns and aspirations are consistently understood and considered.
COLLABORATE	To partner with the public in each aspect of the decision including the development of alternatives and the identification of the preferred solution.
EMPOWER	To place final decision-making and/or developed budgets in the hands of the public.
	No external communications and engagement are required for this report.

The following communication and engagement applies to this report.

External communications and engagement

CONSULT	The revised Code of Meeting Practice is required to be publicly exhibited for a period of 28 days and allow 42 days for submissions to be received from the community. Public exhibition will take place at Council's library network, the Administration Building and be available from Council's website.
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Internal communications and engagement

Consultation has been undertaken by the Governance Section with:

- General Manager's Office.
- Mayor and Councillors.

OPTIONS

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

ATTACHMENTS

- 1) Draft Code of Meeting Practice. [↓](#)
- 2) Public Access Protocol. [↓](#)

COUNCILLORS' ROOM/DASHBOARD

Nil.

TABLED DOCUMENTS

Nil.

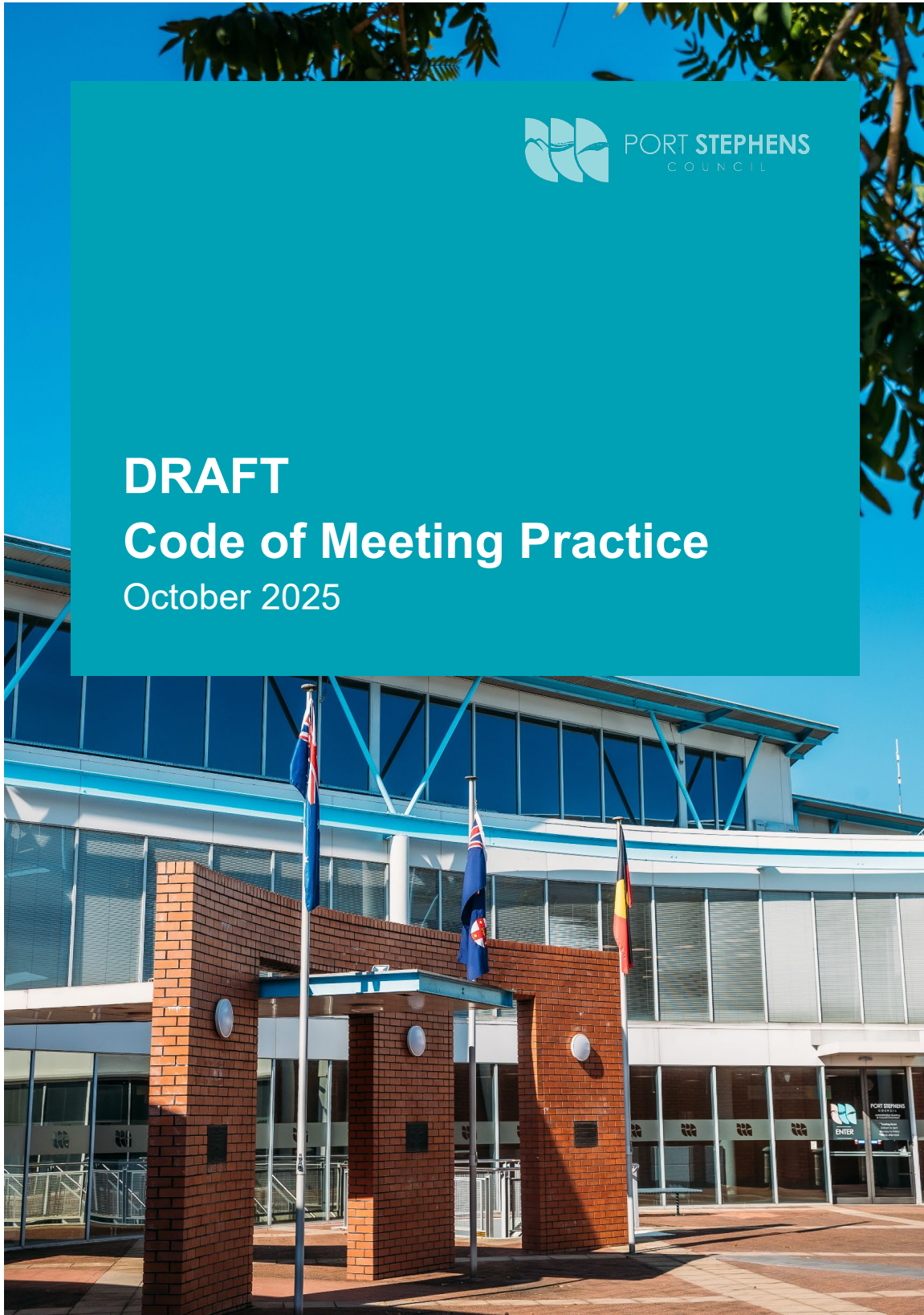


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1 INTRODUCTION

This Model Code of Meeting Practice for Local Councils in NSW (the Model Meeting Code) is prescribed under section 360 of the Local Government Act 1993 (the Act) and the Local Government (General) Regulation 2021 (the Regulation).

The Model Meeting Code applies to all meetings of councils and committees of councils of which all the members are councillors (committees of Council). Council committees whose members include persons other than councillors may adopt their own rules for meetings unless the Council determines otherwise.

Councils must adopt a code of meeting practice that incorporates the mandatory provisions of the model meeting code.

A council's adopted code of meeting practice may also incorporate the non-mandatory provisions of the Model Meeting Code and other supplementary provisions. However, a code of meeting practice adopted by a Council must not contain provisions that are inconsistent with the mandatory provisions of this Model Meeting Code.

A council and a committee of the council of which all the members are councillors must conduct its meetings in accordance with the code of meeting practice adopted by the council.

2 MEETING PRINCIPLES

2.1 Council and committee meetings should be:

Transparent: Decisions are made in a way that is open and accountable.

Informed: Decisions are made based on relevant, quality information.

Inclusive: Decisions respect the diverse needs and interests of the local community.

Principled: Decisions are informed by the principles prescribed under Chapter 3 of the Act.

Trusted: The community has confidence that Councillors and staff act ethically and make decisions in the interests of the whole community.

~~Respectful: Councillors, staff and meeting attendees treat each other with respect.~~

Effective: Meetings are well organised, effectively run and skilfully chaired.

Orderly: Councillors, staff and meeting attendees behave in a way that contributes to the orderly conduct of the meeting.

Note: The Office of Local Government has issued a guideline on free speech in local government in NSW. The Guideline provides practical guidance to councils on what free speech means in the context of NSW local government, including in relation to Council meetings. The Guidelines have been issued under section 23A of the Act meaning councils must consider them when exercising their functions at meetings.

3 BEFORE THE MEETING

Timing of ordinary Council meetings

3.1 The Council shall, by resolution, set the frequency, time, date and place of its ordinary meetings. The last Ordinary Council meeting of the Council term will be held in August of the fourth year of the term.

[10/6/2025 Min.126]

3.2 Despite clauses 3.1, 3.45, 3.7 and 3.16, an ordinary meeting may be cancelled if there are no operational reports to be considered by Council. The General Manager must inform the Mayor should this situation arise. The Mayor may, after consultation with each Councillor, as far as practicable, cancel the meeting. Where a meeting is cancelled, notice of the cancellation must be published on the Council's website and in such other manner that the Council is satisfied is likely to bring notice of the cancellation to the attention of as many people as possible.

[9/6/2020 Min.098]

Note: Under section 365 of the Act, Councils are required to meet at least ten (10) times each year, each time in a different month unless the Minister for Local Government has approved a reduction in the number of times that a Council is required to meet each year under section 365A.

Extraordinary meetings

3.23 If the Mayor receives a request in writing, signed by at least two (2) Councillors, the Mayor must call an extraordinary meeting of the Council to be held as soon as practicable, but in any event, no more than fourteen (14) days after receipt of the request. The Mayor can be one of the two Councillors requesting the meeting.

Note: Clause 3.23 reflects section 366 of the Act.

3.34 The Mayor may call an extraordinary meeting without the need to obtain the signature of two (2) Councillors.

Notice to the public of Council meetings

3.45 The Council must give notice to the public of the time, date and place of each of its meetings, including extraordinary meetings, and of each meeting of committees of the Council.

Note: Clause 3.45 reflects section 9(1) of the Act.

3.56 For the purposes of clause 3.45, notice of a meeting of the Council and of a committee of Council must be published before the meeting takes place. The notice must be published on the Council's website, and in such other manner that the Council is satisfied is likely to bring notice of the meeting to the attention of as many people as possible. **Drafting Note – the following sentence has been transferred to clause 3.24** The business paper will be

ITEM 14 - ATTACHMENT 1 DRAFT CODE OF MEETING PRACTICE.

~~published on the Council website by 10am following the release of the business paper to the Mayor and Councillors under clause 3.7.~~

~~[13/09/2022 Min. 240]~~

3.67 For the purposes of clause 3.4~~5~~, notice of more than 1 meeting may be given in the same notice.

Notice to Councillors of ordinary Council meetings

~~3.7 The General Manager must send to each Councillor, at least 3 days after the previous Ordinary Council meeting (with the exception of the February ordinary meeting each year where the business paper is to be released 3 days after the fourth Tuesday of January), a notice specifying the time, date and place at which the meeting is to be held, and the business proposed to be considered at the meeting.~~

~~[28/2/2023 Min.020]~~

3.7~~8~~ The General Manager must send to each Councillor, at least 3 days before each meeting of the Council, a notice specifying the time, date and place at which the meeting is to be held, and the business proposed to be considered at the meeting. At Council, the agenda will be provided 3 days after the previous Ordinary Council meeting (with the exception of the February ordinary meeting each year where the business paper is to be released 3 days after the fourth Tuesday of January). [10/6/2025 Min.126]

Note: Clause 3.7~~8~~ reflects section 367(1) of the Act.

3.8~~9~~ The notice and the agenda for, and the business papers relating to, the meeting may be given to Councillors in electronic form, unless the Council determines otherwise, but only if all Councillors have facilities to access the notice, agenda and business papers in that form.

Note: Clause 3.8~~9~~ reflects section 367(3) of the Act.

Notice to Councillors of extraordinary meetings

3.9~~10~~ Notice of less than three (3) days may be given to Councillors of an extraordinary meeting of the Council in cases of emergency.

Note: Clause 3.9~~10~~ reflects section 367(2) of the Act.

Giving notice of business to be considered at Council meetings

3.40~~11~~ A Councillor may give notice of any business they wish to be considered by the Council at its next ordinary meeting by way of a notice of motion. To be included on the agenda of the meeting, the notice of motion must be in writing and must be submitted within such reasonable time before the meeting is to be held as determined by the Council. 3 days prior to the distribution of the business paper.

[9/6/2020 Min. 098]

ITEM 14 - ATTACHMENT 1 DRAFT CODE OF MEETING PRACTICE.

3.44¹² A Councillor may, in writing to the General Manager, request the withdrawal of a notice of motion submitted by them prior to its inclusion in the agenda and business paper for the meeting at which it is to be considered.

Questions with notice

3.42¹³ A Councillor may, by way of a notice submitted under clause 3.40¹¹, ask a question for response by the General Manager about the performance or operations of the Council.

3.14 A Councillor is not permitted to ask a question with notice under clause 3.14³ that would constitute an act of disorder.

~~3.15 A Councillor is not permitted to ask a question with notice under clause 3.14 that comprises a complaint against the General Manager or a member of staff of the Council, or a question that implies wrongdoing by the General Manager or a member of staff of the Council.~~

~~3.12 If the General Manager considers that a notice of motion submitted by a Councillor for consideration at an ordinary meeting of the Council has legal, strategic, financial or policy implications which should be taken into consideration by the meeting, the General Manager may prepare a report in relation to the notice of motion for inclusion with the business papers for the meeting at which the notice of motion is to be considered by the Council.~~

~~3.13 A notice of motion for the expenditure of funds on works and/or services other than those already provided for in the Council's current adopted operational plan must identify the source of funding for the expenditure that is the subject of the notice of motion. If the notice of motion does not identify a funding source, the General Manager must either:~~

- ~~(a) Prepare a report on the availability of funds for implementing the motion if adopted for inclusion in the business papers for the meeting at which the notice of motion is to be considered by the Council, or~~
- ~~(b) By written notice sent to all Councillors with the business papers for the meeting for which the notice of motion has been submitted, defer consideration of the matter by the Council to such a date specified in the notice, pending the preparation of such a report.~~

3.46¹⁵ The General Manager or their nominee may respond to a question with notice submitted under clause 3.14³ by way of a report included in the business papers for the relevant meeting of the Council.

~~3.16 The General Manager or their nominee may respond to a question with notice submitted under clause 3.14 by way of a report included in the business papers for the relevant meeting of the Council or orally at the meeting.~~

Agenda and business papers for ordinary meetings

3.47¹⁶ The General Manager must cause the agenda for a meeting of the Council or a committee of the Council to be prepared as soon as practicable before the meeting.

3.48¹⁷ The General Manager must ensure that the agenda for an ordinary meeting of the Council states:

- (a) all matters to be dealt with arising out of the proceedings of previous meetings of the Council, and
- (b) if the Mayor is the chairperson – any matter or topic that the chairperson proposes, at the time when the agenda is prepared, to put to the meeting, and
- (c) all matters, including matters that are the subject of staff reports and reports of committees, to be considered at the meeting, and
- (d) any business of which due notice has been given under clause 3.49¹¹.

3.49¹⁸ Nothing in clause 3.48¹⁷ limits the powers of the Mayor to put a Mayoral Minute to a meeting without notice under clause 9.7.

3.20¹⁹ The General Manager must not include in the agenda for a meeting of the Council any business of which due notice has been given if, in the opinion of the General Manager, the business is, or the implementation of the business would be, unlawful. The General Manager must report, without giving details of the item of business, any such exclusion to the next meeting of the Council.

3.24²⁰ Where the agenda includes the receipt of information or discussion of other matters that, in the opinion of the General Manager, is likely to take place when the meeting is closed to the public, the General Manager must ensure that the agenda of the meeting:

- (a) identifies the relevant item of business and indicates that it is of such a nature (without disclosing details of the information to be considered when the meeting is closed to the public), and
- (b) states the grounds under section 10A(2) of the Act relevant to the item of business.

Note: Clause 3.24²⁰ reflects section 9(2A)(a) of the Act.

3.22²¹ The General Manager must ensure that the details of any item of business which, in the opinion of the General Manager, is likely to be considered when the meeting is closed to the public, are included in a business paper provided to Councillors for the meeting concerned. Such details must not be included in the business papers made available to the public and must not be disclosed by a Councillor or by any other person to another person who is not authorised to have that information.

Statement of ethical obligations

~~3.23 Business papers for all ordinary and extraordinary meetings of the Council and committees of the Council must contain a statement reminding the Mayor and Councillors of their oath or affirmation of office made under section 233A of the Act and their obligations under the Council's Code of Conduct to disclose and appropriately manage conflicts of interest.~~

Availability of the agenda and business papers to the public

3.24²² Copies of the agenda and the associated business papers, such as correspondence and reports for meetings of the Council and committees of Council, are to be published on the Council's website, and must be made available to the public for inspection, or for taking away by any person free of charge at the offices of the Council, at the relevant meeting and at such other venues determined by the Council.

Note: Clause 3.24²² reflects section 9(2) and (4) of the Act.

3.25²³ Clause 3.24²² does not apply to the business papers for items of business identified under clause 3.49²⁰ as being likely to be considered when the meeting is closed to the public.

Note: Clause 3.25²³ reflects section 9(2A)(b) of the Act.

3.26²⁴ For the purposes of clause 3.24²², copies of agendas and business papers must be published on the Council's website. ~~and made available to the public at a time that is as close as possible to the time they are available to Councillors.~~ **The business paper will be published on the Council website by 10am following the release of the business paper to the Mayor and Councillors under clause 3.78.**

[13/09/2022 Min. 240]

Note: Clause 3.26²⁴ reflects section 9(3) of the Act.

3.27²⁵ A copy of an agenda, or of an associated business paper made available under clause 3.24²², may in addition be given or made available in electronic form unless the Council determines otherwise.

Note: Clause 3.27²⁵ reflects section 9(5) of the Act.

Agenda and business papers for extraordinary meetings

3.28²⁶ ~~The General Manager~~ **Council** must ensure that the agenda for an extraordinary meeting of the Council deals only with the matters stated in the notice of the meeting.

~~3.29 Despite clause 3.28, business may be considered at an extraordinary meeting of the Council, even though due notice of the business has not been given, if:~~

- ~~(a) A motion is passed to have the business considered at the meeting, and~~
- ~~(b) The business to be considered is ruled by the chairperson to be of great urgency on the grounds that it requires a decision by the Council before the next scheduled ordinary meeting of the Council.~~

~~3.30 A motion moved under clause 3.29 (a) can be moved without notice but only after the business notified in the agenda for the extraordinary meeting has been dealt with.~~

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- ~~3.31 Despite clauses 10.20 – 10.30, only the mover of a motion moved under clause 3.29 (a) can speak to the motion before it is put.~~
- ~~3.32 A motion of dissent cannot be moved against a ruling of the chairperson under clause 3.29 (b) on whether a matter is of great urgency.~~
- 3.27 Nothing in clause 3.26 limits the powers of the Mayor to put a Mayoral minute to an extraordinary meeting without notice under clause 9.7.
- 3.28 Despite clause 3.26, business may be considered at an extraordinary meeting of the Council at which all Councillors are present, even though due notice has not been given of the business, if the Council resolves to deal with the business on the grounds that it is urgent and requires a decision by the Council before the next scheduled ordinary meeting of the Council. A resolution adopted under this clause must state the reasons for the urgency.
- 3.29 A motion moved under clause 3.28 can be moved without notice but only after the business notified in the agenda for the extraordinary meeting has been dealt with. Despite any other provision of this code, only the mover of a motion moved under clause 3.28, and the chairperson, if they are not the mover of the motion, can speak to the motion before it is put.
- 3.30 If all Councillors are not present at the extraordinary meeting, the Council may only deal with business at the meeting that Councillors have not been given due notice of, where a resolution is adopted in accordance with clause 3.28 and the chairperson also rules that the business is urgent and requires a decision by the Council before the next scheduled ordinary meeting.
- 3.31 A motion of dissent cannot be moved against a ruling of the chairperson under clause 3.30 on whether a matter is urgent.

Pre-meeting briefing sessions

- ~~3.33 Prior to each ordinary meeting of the Council, the General Manager may arrange a pre-meeting briefing session to brief Councillors on business to be considered at the meeting. Pre-meeting briefing sessions may also be held for extraordinary meetings of the Council and meetings of committees of the Council.~~
- ~~3.34 Pre-meeting briefing sessions are to be held in the absence of the public.~~
- ~~3.35 Pre-meeting briefing sessions may be held by audio-visual link.~~
- ~~3.36 The General Manager or a member of staff nominated by the General Manager is to preside at pre-meeting briefing sessions.~~
- ~~3.37 Councillors must not use pre-meeting briefing sessions to debate or make preliminary decisions on items of business they are being briefed on, and any debate and decision making must be left to the formal Council or committee meeting at which the item of business is to be considered.~~
- ~~3.38 Councillors (including the Mayor) must declare and manage any conflicts of interest they may have in relation to any item of business that is the subject of~~

a briefing at a pre-meeting briefing session, in the same way that they are required to do so at a Council or committee meeting. The Council is to maintain a written record of all conflict of interest declarations made at pre-meeting briefing sessions and how the conflict of interest was managed by the Councillor who made the declaration.

Prohibition of pre-meeting briefing sessions

3.32 Briefing sessions must not be held to brief Councillors on business listed on the agenda for meetings of the Council or committees of the Council.

Note: The prohibition on the holding of briefing sessions under clause 3.32 reflects the intent of Chapter 4, Part 1 of the Act which requires business of the Council to be conducted openly and transparently at a formal meeting of which due notice has been given and to which the public has access. Pre-meeting briefing sessions are inconsistent with the principles of transparency, accountability and public participation and have the potential to undermine confidence in the proper and lawful decision-making processes of the Council.

3.33 Nothing in clause 3.32 prevents a Councillor from requesting information from the General Manager about a matter to be considered at a meeting, provided the information is also available to the public. Information requested under this clause must be provided in a way that does not involve any discussion of the information.

4 PUBLIC FORUMS (Public Access)

4.1 The Council may hold a public forum on the second Tuesday of each month (and the fourth Tuesday of the month at the discretion of the Mayor) for the purpose of hearing oral submissions from members of the public on items of business to be considered at the meeting and/or other matters at the discretion of the Mayor. Public forums may also be held prior to extraordinary Council meetings and meetings of committees of the Council.

4.2 Public forums may be held by audio-visual link.

4.2(a) Presentations to public forums must be done in person and are not permitted to be written or video presentations unless the presenter is present to respond to questions per clause 4.15.

4.3 Public forums are to be chaired by the Mayor or their nominee.

4.4 To speak at a public forum, a person must first make an application to the Council in the approved form. Applications to speak at the public forum must be received by 12 noon on the Monday before the date on which the public forum is to be held, and must identify the item of business on the agenda of the Council meeting the person wishes to speak on, if applicable, and whether they wish to speak 'for' or 'against' the item.

4.5 A person may apply to speak on no more than 2 items of business on the agenda of the Council meeting.

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- ~~4.6 Legal representatives acting on behalf of others are not to be permitted to speak at a public forum unless they identify their status as a legal representative when applying to speak at the public forum.~~
- ~~4.7 The Mayor or their delegate may refuse an application to speak at a public forum. The Mayor or their delegate must give reasons in writing for a decision to refuse an application.~~
- ~~4.8 No more than 2 speakers are to be permitted to speak 'for' or 'against' each item of business on the agenda for the Council meeting.~~
- ~~4.9 If more than the permitted number of speakers' apply to speak 'for' or 'against' any matter, those permitted to speak will be determined by the order the applications were received by Council.~~
- ~~4.10 If more than the permitted number of speakers apply to speak 'for' or 'against' any matter, the Mayor or their delegate may, increase the number of speakers permitted to speak on an item of business, where they are satisfied that it is necessary to do so to allow the Council to hear a fuller range of views on the relevant item of business.~~
- ~~4.11 Approved speakers at the public forum are to register with the Council any written, visual or audio material to be presented in support of their address to the Council at the public forum, and to identify any equipment needs by 2pm the day of the public forum. The Mayor or their delegate may refuse to allow such material to be presented.~~
- ~~4.12 The Mayor or their delegate is to determine the order of speakers at the public forum.~~
- ~~4.13 Each speaker will be allowed 5 minutes to address the Council. This time is to be strictly enforced by the chairperson.~~
- ~~4.14 Speakers at public forums must not digress from the item on the agenda, if applicable, of the Council meeting they have applied to address the Council on. If a speaker digresses to irrelevant matters, the chairperson is to direct the speaker not to do so. If a speaker fails to observe a direction from the chairperson, the speaker will not be further heard.~~
- ~~4.15 A Councillor (including the chairperson) may, through the chairperson, ask questions of a speaker following their address at a public forum. Questions put to a speaker must be direct, succinct and without argument.~~
- ~~4.16 Speakers are under no obligation to answer a question put under clause 4.14. Answers by the speaker, will be regulated by the chairperson.~~
- ~~4.17 Speakers at public forums cannot ask questions of the Council, Councillors or Council staff.~~
- ~~4.18 The General Manager or their nominee may, with the concurrence of the chairperson, address the Council in response to an address to the Council at a public forum after the address and any subsequent questions and answers have been finalised.~~

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- ~~4.19 Where an address made at a public forum raises matters that require further consideration by Council staff, the General Manager may recommend that the Council defer consideration of the matter pending the preparation of a further report on the matters.~~
- ~~4.20 When addressing the Council, speakers at public forums must comply with this Code and all other relevant Council codes, policies and procedures. Speakers must refrain from engaging in disorderly conduct, publicly alleging breaches of the Council's Code of Conduct or making other potentially defamatory statements.~~
- ~~4.21 If the chairperson considers that a speaker at a public forum has engaged in conduct of the type referred to in clause 4.20, the chairperson may request the person to refrain from the inappropriate behaviour and to withdraw and unreservedly apologise for any inappropriate comments. Where the speaker fails to comply with the chairperson's request, the chairperson may immediately require the person to stop speaking.~~
- ~~4.22 Clause 4.21 does not limit the ability of the chairperson to deal with disorderly conduct by speakers at public forums in accordance with the provisions of Part 15 of this Code.~~
- ~~4.23 Where a speaker engages in conduct of the type referred to in clause 4.20, the Mayor or their delegate may refuse further applications from that person to speak at public forums for such a period as the Mayor or their delegate considers appropriate.~~
- ~~4.24 Councillors (including the Mayor) must declare and manage any conflicts of interest they may have in relation to any item of business that is the subject of an address at a public forum, in the same way that they are required to do so at a Council or committee meeting. The Council is to maintain a written record of all conflict of interest declarations made at public forums and how the conflict of interest was managed by the Councillor who made the declaration.~~
- ~~4.25 Public forums are to be streamed live and made available following the Council meeting in the same terms as for regular meetings at 5.26 – 5.31.~~
- ~~4.26 Speakers will be asked whether they consent to their contribution being streamed live and made available per 4.25. The arrangements at 4.25 will be activated only for those who consent. To preserve the flow of the recording, all speakers who do not consent will be heard prior to those who do consent.~~
- ~~4.27 Mayor and Councillor attendance at public forum sessions will be recorded.~~
- ~~**Note: Public forums should not be held as part of a Council or committee meeting. Council or committee meetings should be reserved for decision making by the Council or committee of Council.**~~

4 PUBLIC FORUMS (Public Access)

- ~~4.1 The Council may hold a public forum prior to meetings of the Council and committees of the Council for the purpose of hearing oral submissions from~~

members of the public on items of business to be considered at the meeting. Public forums may also be held prior to meetings of other committees of the Council.

4.2 The Council may determine the rules under which public forums are to be conducted and when they are to be held.

4.3 The provisions of this code requiring the livestreaming of meetings also apply to public forums.

4.4 Mayor and Councillor attendance at public forum sessions will be recorded.

10/6/2025 Min. 126

5 COMING TOGETHER

Attendance by Councillors at meetings

5.1 All Councillors must make reasonable efforts to attend meetings of the Council and of committees of the Council of which they are members.

Note: A Councillor may not attend a meeting as a Councillor (other than the first meeting of the Council after the Councillor is elected or a meeting at which the Councillor takes an oath or makes an affirmation of office) until they have taken an oath or made an affirmation of office in the form prescribed under section 233A of the Act.

5.2 The Council may determine standards of dress for Councillors when attending meetings.

5.23 A Councillor cannot participate in a meeting of the Council or of a committee of the Council unless personally present at the meeting, unless permitted to attend the meeting by audio-visual link under this code.

~~5.3 Where a Councillor is unable to attend 1 or more ordinary meetings of the Council, the Councillor should request that the Council grant them a leave of absence from those meetings. This clause does not prevent a Councillor from making an apology if they are unable to attend a meeting. However, the acceptance of such an apology does not constitute the granting of a leave of absence for the purposes of this Code and the Act.~~

~~5.4 A Councillor's request for leave of absence from Council meetings should, if practicable, identify (by date) the meetings from which the Councillor intends to be absent and the grounds upon which the leave of absence is being sought.~~

~~5.5 The Council must act reasonably when considering whether to grant a Councillor's request for a leave of absence.~~

5.4 Where a Councillor is unable to attend 1 or more meetings of the Council or committees of the Council, the Councillor should submit an apology for the meetings they are unable to attend, state the reasons for their absence from the meetings and request that the Council grant them a leave of absence from the relevant meetings.

5.5 The Council must not act unreasonably when considering whether to grant a Councillor's request for a leave of absence.

5.6 Where a Councillor makes an apology under clause 5.54, the Council must determine by resolution whether to grant the Councillor a leave of absence for the meeting for the purposes of section 234(1)(d) of the Act. If the Council resolves not to grant a leave of absence for the meeting, it must state the reasons for its decision in its resolution.

5.67 A Councillor's civic office will become vacant if the Councillor is absent from three (3) consecutive ordinary meetings of the Council without prior leave of the Council, or leave granted by the Council at any of the meetings concerned, unless the holder is absent because they have been suspended from office under the Act, or because the Council has been suspended under the Act, or as a consequence of a compliance order under section 438HA.

Note: Clause 5.67 reflects section 234(1)(d) of the Act.

~~5.7 A Councillor who intends to attend a meeting of the Council despite having been granted a leave of absence should, if practicable, give the General Manager at least 2 days' notice of their intention to attend.~~

The quorum for a meeting

5.8 The quorum for a meeting of the Council is a majority of the Councillors of the Council who hold office at that time and are not suspended from office. **The quorum for Port Stephens Council is 6.**

[28/5/2019 Min. 113]

Note: Clause 5.8 reflects section 368(1) of the Act.

5.9 Clause 5.8 does not apply if the quorum is required to be determined in accordance with directions of the Minister in a performance improvement order issued in respect of the Council.

Note: Clause 5.9 reflects section 368(2) of the Act.

5.10 A meeting of the Council must be adjourned if a quorum is not present:

- (a) at the commencement of the meeting where the number of apologies received for the meeting indicates that there will not be a quorum for the meeting, or
- (b) within half an hour after the time designated for the holding of the meeting, or
- (c) at any time during the meeting.

5.11 In either case, the meeting must be adjourned to a time, date, and place fixed:

- (a) by the chairperson, or
- (b) in the chairperson's absence, by the majority of the Councillors present, or
- (c) failing that, by the General Manager.

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- 5.12 The General Manager must record in the Council's minutes the circumstances relating to the absence of a quorum (including the reasons for the absence of a quorum) at or arising during a meeting of the Council, together with the names of the Councillors present.
- 5.13 Where, prior to the commencement of a meeting, it becomes apparent that a quorum may not be present at the meeting, or that the health, safety or welfare of Councillors, Council staff and members of the public may be put at risk by attending the meeting because of a natural disaster or a public health emergency, the Mayor may, in consultation with the General Manager and, as far as is practicable, with each Councillor, cancel the meeting. Where a meeting is cancelled, notice of the cancellation must be published on the Council's website and in such other manner that the Council is satisfied is likely to bring notice of the cancellation to the attention of as many people as possible.
- 5.14 Where a meeting is cancelled under clause 5.13, the business to be considered at the meeting may instead be considered, where practicable, at the next ordinary meeting of the Council or at an extraordinary meeting called by the Mayor under clause 3.34.

Meetings held by audio-visual link

- 5.15 A meeting of the Council or a committee of the Council may be held by audio-visual link where the Mayor determines that the meeting should be held by audio-visual link because of a natural disaster or a public health emergency. The Mayor may only make a determination under this clause where they are satisfied that attendance at the meeting may put the health and safety of Councillors and staff at risk. The Mayor must make a determination under this clause in consultation with the General Manager and, as far as is practicable, with each Councillor.
- 5.16 Where the Mayor determines under clause 5.16 that a meeting is to be held by audio-visual link, the General Manager must:
- (a) give written notice to all Councillors that the meeting is to be held by audio-visual link, and
 - (b) take all reasonable steps to ensure that all Councillors can participate in the meeting by audio-visual link, and
 - (c) cause a notice to be published on the Council's website and in such other manner the General Manager is satisfied will bring it to the attention of as many people as possible, advising that the meeting is to be held by audio-visual link and providing information about where members of the public may view the meeting.
- 5.17 This code applies to a meeting held by audio-visual link under clause 5.15 in the same way it would if the meeting was held in person.

Note: Where a Council holds a meeting by audio-visual link under clause 5.15, it is still required under section 10 of the Act to provide a physical venue for members of the public to attend in person and observe the meeting.

Attendance by Councillors at meetings by audio-visual link

- ~~5.18 Councillors may attend and participate in meetings of the Council by audio-visual link only when the meeting is held in accordance with 5.15 to 5.17 of the Code, and may attend and participate in Committees of the Council by audio-visual link at any time, unless it is a Committee of the Whole.~~
- ~~5.19 The Council must comply with the Health Privacy Principles prescribed under the Health Records and Information Privacy Act 2002 when collecting, holding, using and disclosing health information in connection with a request by a Councillor to attend a meeting by audio-visual link.~~
- ~~5.20 This code applies to a Councillor attending a meeting by audio-visual link in the same way it would if the Councillor was attending the meeting in person. When a Councillor attends a meeting by audio-visual link under this code, they are to be taken as attending the meeting in person for the purposes of the code and will have the same voting rights as if they were attending the meeting in person.~~
- ~~5.21 A Councillor must give their full attention to the business and proceedings of the meeting when attending a meeting by audio-visual link. The Councillor's camera must be on at all times during the meeting except as may be otherwise provided for under this code.~~
- ~~5.22 A Councillor must be appropriately dressed when attending a meeting by audio-visual link and must ensure that no items are within sight of the meeting that are inconsistent with the maintenance of order at the meeting or that are likely to bring the Council or the committee into disrepute.~~
- 5.18 Councillors may attend and participate in meetings of the Council and committees of the Council by audio-visual link with the approval of the Council or the relevant committee where they are prevented from attending the meeting in person because of ill-health or other medical reasons or because of unforeseen caring responsibilities.
- 5.19 Clause 5.18 does not apply to meetings at which a Mayoral election is to be held.
- 5.20 A request by a Councillor for approval to attend a meeting by audio-visual link must be made in writing to the General Manager prior to the meeting in question and must provide reasons why the Councillor will be prevented from attending the meeting in person.
- 5.21 Councillors may request approval to attend more than one meeting by audio-visual link. Where a Councillor requests approval to attend more than one meeting by audio-visual link, the request must specify the meetings the request relates to in addition to the information required under clause 5.20.
- 5.22 The Council must comply with the Health Privacy Principles prescribed under the Health Records and Information Privacy Act 2002 when collecting, holding, using and disclosing health information in connection with a request by a Councillor to attend a meeting by audio-visual link.

- 5.23 A Councillor who has requested approval to attend a meeting of the Council or a committee of the Council by audio-visual link may participate in the meeting by audio-visual link until the Council or committee determines whether to approve their request and is to be taken as present at the meeting. The Councillor may participate in a decision in relation to their request to attend the meeting by audio-visual link.
- 5.24 A decision whether to approve a request by a Councillor to attend a meeting of the Council or a committee of the Council by audio-visual link must be made by a resolution of the Council or the committee concerned. The resolution must state the meetings the resolution applies to.
- 5.25 If the Council or committee refuses a Councillor's request to attend a meeting by audio-visual link, their link to the meeting is to be terminated.
- 5.26 A decision whether to approve a Councillor's request to attend a meeting by audio-visual link is at the Council's or the relevant committee's discretion. The Council and committees of the Council must act reasonably when considering requests by Councillors to attend meetings by audio-visual link.
- 5.27 The Council and committees of the Council may refuse a Councillor's request to attend a meeting by audio-visual link where the Council or committee is satisfied that the Councillor has failed to appropriately declare and manage conflicts of interest, observe confidentiality or to comply with this code on one or more previous occasions they have attended a meeting of the Council or a committee of the Council by audio-visual link.
- 5.28 This code applies to a Councillor attending a meeting by audio-visual link in the same way it would if the Councillor was attending the meeting in person. Where a Councillor is permitted to attend a meeting by audio-visual link under this code, they are to be taken as attending the meeting in person for the purposes of the code and will have the same voting rights as if they were attending the meeting in person.
- 5.29 A Councillor must give their full attention to the business and proceedings of the meeting when attending a meeting by audio-visual link. The Councillor's camera must be on at all times during the meeting except as may be otherwise provided for under this code.
- 5.30 A Councillor must be appropriately dressed when attending a meeting by audio-visual link and must ensure that no items are within sight of the meeting that are inconsistent with the maintenance of order at the meeting or that are likely to bring the Council or the committee into disrepute.

Entitlement of the public to attend Council meetings

- 5.2331 Everyone is entitled to attend a meeting of the Council and committees of the Council. The Council must ensure that all meetings of the Council and committees of the Council are open to the public.

Note: Clause 5.2331 reflects section 10(1) of the Act.

5.24~~32~~³³ Clause 5.23~~31~~³² does not apply to parts of meetings that have been closed to the public under section 10A of the Act.

5.25~~33~~³⁴ A person (whether a Councillor or another person) is not entitled to be present at a meeting of the Council or a committee of the Council if expelled from the meeting:

- (a) by a resolution of the meeting, or
- (b) by the person presiding at the meeting if the Council has, by resolution, authorised the person presiding to exercise the power of expulsion.

Note: Clause 5.25~~33~~³⁴ reflects section 10(2) of the Act.

5.34 On the adoption of this code and at the commencement of each Council term, the Council must determine whether to authorise the person presiding at a meeting to exercise a power of expulsion.

~~**Note:** If adopted, clauses 15.15 and 15.16 confer a standing authorisation on all chairpersons of meetings of the Council and committees of the Council to expel persons from meetings. If adopted, clause 15.15 authorises chairpersons to expel any person, including a Councillor, from a Council or committee meeting. Alternatively, if adopted,~~

Note: Clause 15.46~~15~~¹⁶ authorises chairpersons to expel persons other than Councillors from a Council or committee meeting.

Livestreaming ~~Webcasting of meetings~~

5.26~~35~~³⁶ Each meeting of the Council or a committee of the Council is to be recorded by means of an audio-visual device.

5.27~~36~~³⁷ At the start of each meeting of the Council or a committee of the Council, the chairperson must inform the persons attending the meeting that:

- (a) the meeting is being recorded and made publicly available on the Council's website, and
- (b) persons attending the meeting should refrain from making any defamatory statements.

5.28 ~~The recording of a meeting is to be made publicly available on the Council's website:~~

- ~~(a) at the same time as the meeting is taking place, or~~
- ~~(b) as soon as practicable after the meeting, and~~
- ~~(c) a meeting may only not be webcast live in the case of technical issues or technical limitations.~~
- ~~(d) in case of issues per 5.28 (c), the meeting will be paused for 5 minutes to enable troubleshooting to occur. If the issue is not fixed after 5 minutes, the meeting may continue so long as it is still being recorded for the recording to be made available after the meeting.~~

~~5.29 The recording of a meeting is to be made publicly available on the Council's website for at least 12 months after the meeting or to the limit of Council's Information Technology storage capacity, whichever is greater.~~

5.37 The recording of a meeting is to be made publicly available on the Council's website at the same time as the meeting is taking place.

5.38 The recording of a meeting is to be made publicly available on the Council's website for at least 12 months after the meeting or for the balance of the Council's term, or to the limit of Council's Information Technology storage capacity whichever is the longer period.

5.3039 Clauses 5.2835 - 5.2938 do not apply to any part of a meeting that has been closed to the public in accordance with section 10A of the Act.

Note: Clauses 5.2635 – 5.3039 reflect section 236 of the Regulation.

5.3140 Recordings of meetings may be disposed of in accordance with the State Records Act 1998.

Attendance of the General Manager and other staff at meetings

5.3241 The General Manager is entitled to attend, but not to vote at, a meeting of the Council or a meeting of a committee of the Council of which all of the members are Councillors.

Note: Clause 5.3241 reflects section 376(1) of the Act.

5.3342 The General Manager is entitled to attend a meeting of any other committee of the Council and may, if a member of the committee, exercise a vote.

Note: Clause 5.3342 reflects section 376(2) of the Act.

5.3443 The General Manager may be excluded from a meeting of the Council or a committee while the Council or committee deals with a matter relating to the standard of performance of the General Manager or the terms of employment of the General Manager.

Note: Clause 5.3443 reflects section 376(3) of the Act.

5.3544 The attendance of other Council staff at a meeting, (other than as members of the public) shall be determined by the General Manager in consultation with the Mayor.

6 THE CHAIRPERSON

The chairperson at meetings

6.1 The Mayor, or at the request of or in the absence of the Mayor, the Deputy Mayor (if any) presides at meetings of the Council.

Note: Clause 6.1 reflects section 369(1) of the Act.

- 6.2 If the Mayor and the Deputy Mayor (if any) are absent, a Councillor elected to chair the meeting by the Councillors present presides at a meeting of the Council.

Note: Clause 6.2 reflects section 369(2) of the Act.

Election of the chairperson in the absence of the Mayor and Deputy Mayor

- 6.3 If no chairperson is present at a meeting of the Council at the time designated for the holding of the meeting, the first business of the meeting must be the election of a chairperson to preside at the meeting.
- 6.4 The election of a chairperson must be conducted:
- (a) by the General Manager or, in their absence, an employee of the Council designated by the General Manager to conduct the election, or
 - (b) by the person who called the meeting or a person acting on their behalf if neither the General Manager nor a designated employee is present at the meeting, or if there is no General Manager or designated employee.
- 6.5 If, at an election of a chairperson, two (2) or more candidates receive the same number of votes and no other candidate receives a greater number of votes, the chairperson is to be the candidate whose name is chosen by lot.
- 6.6 For the purposes of clause 6.5, the person conducting the election must:
- (a) arrange for the names of the candidates who have equal numbers of votes to be written on similar slips, and
 - (b) then fold the slips so as to prevent the names from being seen, mix the slips and draw one of the slips at random.
- 6.7 The candidate whose name is on the drawn slip is the candidate who is to be the chairperson.
- 6.8 Any election conducted under clause 6.3, and the outcome of the vote, are to be recorded in the minutes of the meeting.

Chairperson to have precedence

- 6.9 When the chairperson rises or speaks during a meeting of the Council:
- (a) any Councillor then speaking or seeking to speak must cease speaking and, if standing, immediately resume their seat, and
 - (b) every Councillor present must be silent to enable the chairperson to be heard without interruption.

7 MODES OF ADDRESS

7.1 Where physically able to, Councillors and staff should stand when the Mayor enters the chamber and when addressing the meeting.

7.42 If the chairperson is the Mayor, they are to be addressed as 'Mr Mayor', 'Madam Mayor' or 'Mayor'.

7.3 If the chairperson is the deputy Mayor, they are to be addressed as 'Mr Deputy Mayor', or 'Madam Deputy Mayor' or 'Deputy Mayor'.

7.24 Where the chairperson is not the Mayor or deputy Mayor, they are to be addressed as either 'Mr Chairperson' or 'Madam Chairperson' or 'Chair'.

7.35 A Councillor is to be addressed as 'Councillor [surname]'.

7.46 A Council officer is to be addressed by their official designation or as Mr/Ms/Mx [surname].

8 ORDER OF BUSINESS FOR ORDINARY COUNCIL MEETINGS

8.1 At a meeting of the Council, the general order of business is as fixed by resolution of the Council.

8.2 The order of business as fixed under clause 8.1 may be altered for a particular meeting of the Council if a motion to that effect is passed at that meeting. Such a motion can be moved without notice.

Note: If adopted, Part 13 allows Council to deal with items of business by exception.

~~8.3 Despite clauses 10.20–10.30, only the mover of a motion referred to in clause 8.2 may speak to the motion before it is put.~~

8.3 Despite any other provision of this code, only the mover of a motion referred to in clause 8.2 and the chairperson, if they are not the mover of the motion, can speak to the motion before it is put.

9 CONSIDERATION OF BUSINESS AT COUNCIL MEETINGS

Business that can be dealt with at a Council meeting

9.1 The Council must not consider business at a meeting of the Council:

- (a) unless a Councillor has given notice of the business, as required by clause 3.4~~0~~¹¹, and
- (b) unless notice of the business has been sent to the Councillors in accordance with clause 3.7~~8~~ in the case of an ordinary meeting or clause 3.9¹⁰ in the case of an extraordinary meeting called in an emergency.

9.2 Clause 9.1 does not apply to the consideration of business at a meeting, if the business:

- (a) is already before, or directly relates to, a matter that is already before the Council, or
- (b) is the election of a chairperson to preside at the meeting, or
- (c) ~~subject to clause 9.9,~~ is a matter or topic put to the meeting by way of a Mayoral minute, or
- (d) is a motion for the adoption of recommendations of a committee, ~~including, but not limited to, a committee~~ of the Council.

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~~9.3 — Despite clause 9.1, business may be considered at a meeting of the Council even though due notice of the business has not been given to the Councillors if:~~

- ~~(a) — A motion is passed to have the business considered at the meeting, and
(b) — The business to be considered is ruled by the chairperson to be of great urgency on the grounds that it requires a decision by the Council before the next scheduled ordinary meeting of the Council.~~

~~9.4 — A motion moved under clause 9.3(a) can be moved without notice. Despite clauses 10.20–10.30, only the mover of a motion referred to in clause 9.3(a) can speak to the motion before it is put.~~

~~9.5 — A motion of dissent cannot be moved against a ruling by the chairperson under clause 9.3(b).~~

9.3 — Despite clause 9.1, business may be considered at a meeting of the Council at which all Councillors are present even though due notice has not been given of the business to Councillors, if the Council resolves to deal with the business on the grounds that it is urgent and requires a decision by the Council before the next scheduled ordinary meeting. A resolution adopted under this clause must state the reasons for the urgency.

9.4 — A motion moved under clause 9.3 can be moved without notice. Despite any other provision of this code, only the mover of a motion referred to in clause 9.3 and the chairperson, if they are not the mover of the motion, can speak to the motion before it is put.

9.5 — If all Councillors are not present at a meeting, the Council may only deal with business at the meeting that Councillors have not been given due notice of, where a resolution is adopted in accordance with clause 9.3, and the chairperson also rules that the business is urgent and requires a decision by the Council before the next scheduled ordinary meeting.

9.6 — A motion of dissent cannot be moved against a ruling by the chairperson under clause 9.5.

Mayoral minutes

~~9.6 — Subject to clause 9.9, if the Mayor is the chairperson at a meeting of the Council, the Mayor may, by minute signed by the Mayor, put to the meeting without notice any matter or topic that is within the jurisdiction of the Council, or of which the Council has official knowledge.~~

~~9.7 — A mayoral minute, when put to a meeting, takes precedence over all business on the Council's agenda for the meeting. The chairperson (but only if the chairperson is the Mayor) may move the adoption of a mayoral minute without the motion being seconded.~~

~~9.8 — A recommendation made in a mayoral minute put by the Mayor is, so far as it is adopted by the Council, a resolution of the Council.~~

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~~9.9 A mayoral minute must not be used to put without notice matters that are routine and not urgent, or matters for which proper notice should be given because of their complexity. For the purpose of this clause, a matter will be urgent where it requires a decision by the Council before the next scheduled ordinary meeting of the Council.~~

~~9.9 (a) A mayoral minute must include a statement within the motion, the report, or in the Mayor's speech, outlining why the motion is not considered to be "routine and not urgent" per clause 9.9.~~

~~9.10 Where a mayoral minute makes a recommendation which, if adopted, would require the expenditure of funds on works and/or services other than those already provided for in the Council's current adopted operational plan, it must identify the source of funding for the expenditure that is the subject of the recommendation. If the mayoral minute does not identify a funding source, the Council must defer consideration of the matter, pending a report from the General Manager on the availability of funds for implementing the recommendation if adopted.~~

Mayoral minutes

9.7 The Mayor may, by minute signed by the Mayor, put to the meeting without notice any matter or topic that the Mayor determines should be considered at the meeting.

9.8 A Mayoral minute, when put to a meeting, takes precedence over all business on the Council's agenda for the meeting. The Mayor may move the adoption of a Mayoral minute without the motion being seconded.

9.9 A recommendation made in a Mayoral minute put by the Mayor is, so far as it is adopted by the Council, a resolution of the Council.

Staff reports

9.44¹⁰ A recommendation made in a staff report is, so far as it is adopted by the Council, a resolution of the Council.

Reports of committees of Council

9.42¹¹ The recommendations of a committee of the Council are, so far as they are adopted by the Council, resolutions of the Council.

9.43¹² If in a report of a committee of the Council distinct recommendations are made, the Council may make separate decisions on each recommendation.

Questions

9.44¹³ A question must not be asked at a meeting of the Council unless it concerns a matter on the agenda of the meeting or notice has been given of the question in accordance with clauses 3.40¹¹ and 3.44¹³, unless the Council determines otherwise in accordance with this code.

- 9.45~~14~~¹⁴ A Councillor may, through the chairperson, ask another Councillor about a matter on the agenda.
- 9.16 ~~A Councillor may, through the General Manager, put a question to a Council employee about a matter on the agenda. Council employees are only obliged to answer a question put to them through the General Manager at the direction of the General Manager.~~
- 9.15 A Councillor may, through the Mayor, ask the General Manager about a matter on the agenda. The General Manager may request another Council employee to answer the question.
- 9.47~~16~~¹⁶ A Councillor or Council employee to whom a question is put is entitled to be given reasonable notice of the question and, in particular, sufficient notice to enable reference to be made to other persons or to information. Where a Councillor or Council employee to whom a question is put is unable to respond to the question at the meeting at which it is put, they may take it on notice and report the response to the next meeting of the Council.
- 9.48~~17~~¹⁷ Councillors must ask questions directly, succinctly, and without argument.
- 9.49~~18~~¹⁸ The chairperson must not permit discussion on any reply to, or refusal to reply to, a question put to a Councillor or Council employee.

10 RULES OF DEBATE

Motions to be seconded

- 10.1 Unless otherwise specified in this code, a motion or an amendment cannot be debated unless or until it has been seconded.

Notices of motion

- 10.2 A Councillor who has submitted a notice of motion under clause 3.40~~11~~¹¹ is to move the motion the subject of the notice of motion at the meeting at which it is to be considered.
- 10.3 ~~If a Councillor who has submitted a notice of motion under clause 3.10 wishes to withdraw it after the agenda and business paper for the meeting at which it is to be considered have been sent to Councillors, the Councillor may request the withdrawal of the motion when it is before the Council.~~
- 10.3 If a Councillor who has submitted a notice of motion under clause 3.11 wishes to withdraw it, they may request its withdrawal at any time. If the notice of motion is withdrawn after the agenda and business paper for the meeting at which it is to be considered have been sent to Councillors, the chairperson is to note the withdrawal of the notice of motion at the meeting unless the Council determines to consider the notice of motion at the meeting.
- 10.4 In the absence of a Councillor who has placed a notice of motion on the agenda for a meeting of the Council:

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- (a) any other Councillor may, with the leave of the chairperson, move the motion at the meeting, or
- (b) the chairperson may defer consideration of the motion until the next meeting of the Council.

Chairperson's duties with respect to motions

- 10.5 It is the duty of the chairperson at a meeting of the Council to receive and put to the meeting any lawful motion that is brought before the meeting.
- 10.6 The chairperson must rule out of order any motion or amendment to a motion that is unlawful or the implementation of which would be unlawful.
- 10.7 Before ruling out of order a motion or an amendment to a motion under clause 10.6, the chairperson is to give the mover an opportunity to clarify or amend the motion or amendment.
- ~~10.8 Any motion, amendment, or other matter that the chairperson has ruled out of order is taken to have been lost.~~

Motions requiring the expenditure of funds

- ~~10.9 A motion or an amendment to a motion which if passed would require the expenditure of funds on works and/or services other than those already provided for in the Council's current adopted operational plan must identify the source of funding for the expenditure that is the subject of the motion. If the motion does not identify a funding source, the Council must defer consideration of the matter, pending a report from the General Manager on the availability of funds for implementing the motion if adopted.~~

Amendments to motions

- ~~10.40~~⁸ An amendment to a motion must be moved and seconded before it can be debated.
- 10.44⁹ An amendment to a motion must relate to the matter being dealt with in the original motion before the Council and must not be a direct negative of the original motion. An amendment to a motion which does not relate to the matter being dealt with in the original motion, or which is a direct negative of the original motion, must be ruled out of order by the chairperson.
- 10.42¹⁰ The mover of an amendment is to be given the opportunity to explain any uncertainties in the proposed amendment before a seconder is called for.
- 10.43¹¹ If an amendment has been lost, a further amendment can be moved to the motion to which the lost amendment was moved, and so on, but no more than 1 motion and 1 proposed amendment can be before Council at any one time.
- 10.44¹² While an amendment is being considered, debate must only occur in relation to the amendment and not the original motion. Debate on the original motion is to be suspended while the amendment to the original motion is being debated.

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10.45¹³ If the amendment is carried, it becomes the motion and is to be debated. If the amendment is lost, debate is to resume on the original motion.

10.46¹⁴ An amendment may become the motion without debate or a vote where it is accepted by the Councillor who moved the original motion.

10.46¹⁵ (a) An amendment put forward that becomes the motion at clause 10.46¹⁴, is to be noted in the minutes as being accepted by the mover and seconder of the original motion.

[13/9/22 Min. 240]

Foreshadowed motions

10.17 A Councillor may propose a foreshadowed motion in relation to the matter the subject of the original motion before the Council, without a seconder during debate on the original motion. The foreshadowed motion is only to be considered if the original motion is lost or withdrawn and the foreshadowed motion is then moved and seconded. If the original motion is carried, the foreshadowed motion lapses.

10.18 Where an amendment has been moved and seconded, a Councillor may, without a seconder, foreshadow a further amendment that they propose to move after the first amendment has been dealt with. There is no limit to the number of foreshadowed amendments that may be put before the Council at any time. However, no discussion can take place on foreshadowed amendments until the previous amendment has been dealt with and the foreshadowed amendment has been moved and seconded.

10.19 Foreshadowed motions and foreshadowed amendments are to be considered in the order in which they are proposed. However, foreshadowed motions cannot be considered until all foreshadowed amendments have been dealt with.

Limitations on the number and duration of speeches

10.20¹⁶ A Councillor who, during a debate at a meeting of the Council, moves an original motion, has the right to speak on each amendment to the motion and a right of general reply to all observations that are made during the debate in relation to the motion, and any amendment to it at the conclusion of the debate before the motion (whether amended or not) is finally put.

10.24¹⁷ A Councillor, other than the mover of an original motion, has the right to speak once on the motion and once on each amendment to it.

10.22¹⁸ A Councillor must not, without the consent of the Council, speak more than once on a motion or an amendment, or for longer than 5 minutes at any one time.

10.23¹⁹ Despite clause 10.18, the chairperson may permit a Councillor who claims to have been misrepresented or misunderstood to speak more than once on a motion or an amendment, and for longer than 5 minutes on that

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motion or amendment to enable the Councillor to make a statement limited to explaining the misrepresentation or misunderstanding.

10.25²⁰ Despite clauses 10.20¹⁶ and 10.24¹⁷, a Councillor may move that a motion or an amendment be now put:

- (a) if the mover of the motion or amendment has spoken in favour of it and no Councillor expresses an intention to speak against it, or
- (b) if at least 2 Councillors have spoken in favour of the motion or amendment and at least 2 Councillors have spoken against it.

10.26²¹ The chairperson must immediately put to the vote, without debate, a motion moved under clause 10.25²⁰. A seconder is not required for such a motion.

10.27²² If a motion that the original motion or an amendment be now put is passed, the chairperson must, without further debate, put the original motion or amendment to the vote immediately after the mover of the original motion has exercised their right of reply under clause 10.20¹⁶.

10.28²³ If a motion that the original motion or an amendment be now put is lost, the chairperson must allow the debate on the original motion or the amendment to be resumed.

10.29²⁴ All Councillors must be heard without interruption and all other Councillors must, unless otherwise permitted under this code, remain silent while another Councillor is speaking.

10.30²⁵ Once the debate on a matter has concluded and a matter has been dealt with, the chairperson must not allow further debate on the matter.

~~10.24 Despite clause 10.22, the Council may resolve to shorten the duration of speeches to expedite the consideration of business at a meeting.~~

10.26 Clause 10.25 does not prevent a further motion from being moved on the same item of business where the original motion is lost provided the motion is not substantially the same as the one that is lost.

10.34²⁷ If any debate on an item, the Chairperson must ask the mover if they wish to utilise their right of reply prior to the item being put.

[13/9/2022 Min.240]

11 VOTING

Voting entitlements of Councillors

11.1 Each Councillor is entitled to 1 vote.

Note: Clause 11.1 reflects section 370(1) of the Act.

11.2 The person presiding at a meeting of the Council has, in the event of an equality of votes, a second or casting vote.

Note: Clause 11.2 reflects section 370(2) of the Act.

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- 11.3 Where the chairperson declines to exercise, or fails to exercise, their second or casting vote, in the event of an equality of votes, the motion being voted upon is lost.

Voting at Council meetings

- 11.4 A Councillor who is present at a meeting of the Council but who fails to vote on a motion put to the meeting is taken to have voted against the motion.
- ~~11.6 If a Councillor who has voted against a motion put at a Council meeting so requests, the General Manager must ensure that the Councillor's dissenting vote is recorded in the Council's minutes.~~
- ~~11.7 The decision of the chairperson as to the result of a vote is final unless the decision is immediately challenged and not fewer than two (2) Councillors rise and call for a division.~~
- ~~11.8 When a division on a motion is called, the chairperson must ensure that the division takes place immediately. The General Manager must ensure that the names of those who vote for the motion and those who vote against it are recorded in the Council's minutes for the meeting.~~
- ~~11.9 When a division on a motion is called, any Councillor who fails to vote will be recorded as having voted against the motion in accordance with clause 11.5 of this code.~~
- 11.5 Voting at a meeting, including voting in an election at a meeting, is to be by open means (such as on the voices, by show of hands or by a visible electronic voting system). However, the Council may resolve that the voting in any election by Councillors for Mayor or deputy Mayor is to be by secret ballot.
- 11.6 All voting at Council meetings, (including meetings that are closed to the public), must be recorded in the minutes of meetings with the names of Councillors who voted for and against each motion or amendment (including the use of the casting vote) being recorded.

Note: If clause 11.16 is adopted, clauses 11.6 – 11.9 and clause 11.15 may be omitted.

Voting on planning decisions

- 11.7 The Council or a Council committee must not make a final planning decision without receiving a staff report containing an assessment and recommendation in relation to the matter put before the Council for a decision.
- 11.8 Where the Council or a Council committee makes a planning decision that is inconsistent with the recommendation made in a staff report, it must provide reasons for its decision and why it did not adopt the staff recommendation.
- 11.79 The General Manager must keep a register containing, for each planning

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decision made at a meeting of the Council or a Council committee (including, but not limited to a committee of the Council), the names of the Councillors who supported the decision and the names of any Councillors who opposed (or are taken to have opposed) the decision.

~~11.15 For the purpose of maintaining the register, a division is taken to have been called whenever a motion for a planning decision is put at a meeting of the Council or a Council committee.~~

11.8¹⁰ Each decision recorded in the register is to be described in the register or identified in a manner that enables the description to be obtained from another publicly available document.

11.9¹¹ Clauses 11.7⁹-11.8¹⁰ apply also to meetings that are closed to the public.

Note: Clauses 11.9-11.11 reflect section 375A of the Act.

Note: The requirements of clause 11.9 may be satisfied by maintaining a register of the minutes of each planning decision.

12 COMMITTEE OF THE WHOLE

12.1 The Council may resolve itself into a committee to consider any matter before the Council.

Note: Clause 12.1 reflects section 373 of the Act.

12.2 All the provisions of this code relating to meetings of the Council, so far as they are applicable, extend to and govern the proceedings of the Council when in committee of the whole, except the provisions limiting the number and duration of speeches and encouraging Councillors and staff to stand when addressing the meeting.

Note: Clauses 10.20¹⁶ – 10.30²⁷ limit the number and duration of speeches.

Note: Clause 7.1 encourages Councillors and staff to stand when addressing the meeting where they can.

12.3 The General Manager or, in the absence of the General Manager, an employee of the Council designated by the General Manager, is responsible for reporting to the Council the proceedings of the committee of the whole. It is not necessary to report the proceedings in full, but any recommendations of the committee must be reported.

12.4 The Council must ensure that a report of the proceedings (including any recommendations of the committee) is recorded in the Council's minutes. However, the Council is not taken to have adopted the report until a motion for adoption has been made and passed.

13 DEALING WITH ITEMS BY EXCEPTION

13.1 The Council or a committee of Council may, at any time, resolve to adopt multiple items of business on the agenda together by way of a single

resolution where it considers it necessary to expedite the consideration of business at a meeting.

- 13.2 Before the Council or committee resolves to adopt multiple items of business on the agenda together under clause 13.1, the chairperson must list the items of business to be adopted and ask Councillors to identify any individual items of business listed by the chairperson that they intend to vote against the recommendation made in the business paper or that they wish to speak on.
- 13.3 The Council or committee must not resolve to adopt any item of business under clause 13.1 that a Councillor has identified as being one they intend to vote against the recommendation made in the business paper or to speak on.
- 13.4 Where the consideration of multiple items of business together under clause 13.1 involves a variation to the order of business for the meeting, the Council or committee must resolve to alter the order of business in accordance with clause 8.2.
- 13.5 A motion to adopt multiple items of business together under clause 13.1 must identify each of the items of business to be adopted and state that they are to be adopted as recommended in the business paper.
- 13.6 Items of business adopted under clause 13.1 are to be taken to have been adopted unanimously.
- 13.7 Councillors must ensure that they declare and manage any conflicts of interest they may have in relation to items of business considered together under clause 13.1 in accordance with the requirements of the Council's Code of Conduct.

14 CLOSURE OF COUNCIL MEETINGS TO THE PUBLIC

Grounds on which meetings can be closed to the public

- 14.1 The Council or a committee of the Council may close to the public so much of its meeting as comprises the discussion or the receipt of any of the following types of matters:
- (a) personnel matters concerning particular individuals (other than Councillors),
 - (b) the personal hardship of any resident or ratepayer,
 - (c) information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business,
 - (d) commercial information of a confidential nature that would, if disclosed:
 - (i) prejudice the commercial position of the person who supplied it, or
 - (ii) confer a commercial advantage on a competitor of the Council, or
 - (iii) reveal a trade secret,
 - (e) information that would, if disclosed, prejudice the maintenance of law,
 - (f) matters affecting the security of the Council, Councillors, Council staff or Council property,
 - (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege,

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- (h) information concerning the nature and location of a place or an item of Aboriginal significance on community land,
- (i) alleged contraventions of the Council's code of conduct.

Note: Clause 14.1 reflects section 10A(1) and (2) of the Act.

- 14.2 The Council or a committee of the Council may also close to the public so much of its meeting as comprises a motion to close another part of the meeting to the public.

Note: Clause 14.2 reflects section 10A(3) of the Act.

Matters to be considered when closing meetings to the public

- 14.3 A meeting is not to remain closed during the discussion of anything referred to in clause 14.1:
- (a) except for so much of the discussion as is necessary to preserve the relevant confidentiality, privilege or security, and
 - (b) if the matter concerned is a matter other than a personnel matter concerning particular individuals, the personal hardship of a resident or ratepayer or a trade secret – unless the Council or committee concerned is satisfied that discussion of the matter in an open meeting would, on balance, be contrary to the public interest.

Note: Clause 14.3 reflects section 10B(1) of the Act.

- 14.4 A meeting is not to be closed during the receipt and consideration of information or advice referred to in clause 14.1(g) unless the advice concerns legal matters that:
- (a) are substantial issues relating to a matter in which the Council or committee is involved, and
 - (b) are clearly identified in the advice,
 - (c) are fully discussed in that advice, and
 - (d) are subject to legal professional privilege.

Note: Clause 14.4 reflects section 10B(2) of the Act.

- 14.5 If a meeting is closed during the discussion of a motion to close another part of the meeting to the public (as referred to in clause 14.2), the consideration of the motion must not include any consideration of the matter or information to be discussed in that other part of the meeting other than consideration of whether the matter concerned is a matter referred to in clause 14.1.

Note: Clause 14.5 reflects section 10B(3) of the Act.

- 14.6 For the purpose of determining whether the discussion of a matter in an open meeting would be contrary to the public interest, it is irrelevant that:
- (a) a person may misinterpret or misunderstand the discussion, or
 - (b) the discussion of the matter may:
 - (i) cause embarrassment to the Council or committee concerned, or to

- Councillors or to employees of the Council, or
(ii) cause a loss of confidence in the Council or committee.

Note: Clause 14.6 reflects section 10B(4) of the Act.

- 14.7 In deciding whether part of a meeting is to be closed to the public, the Council or committee concerned must consider any relevant guidelines issued by the Departmental Chief Executive of the Office of Local Government.

Note: Clause 14.7 reflects section 10B(5) of the Act.

Notice of likelihood of closure not required in urgent cases

- 14.8 Part of a meeting of the Council, or of a committee of the Council, may be closed to the public while the Council or committee considers a matter that has not been identified in the agenda for the meeting under clause 3.49²¹ as a matter that is likely to be considered when the meeting is closed, but only if:
- (a) it becomes apparent during the discussion of a particular matter that the matter is a matter referred to in clause 14.1, and
- (b) the Council or committee, after considering any representations made under clause 14.9, resolves that further discussion of the matter:
- (i) should not be deferred (because of the urgency of the matter), and
- (ii) should take place in a part of the meeting that is closed to the public.

Note: Clause 14.8 reflects section 10C of the Act.

Representations by members of the public

- 14.9 The Council, or a committee of the Council, may allow members of the public to make representations to or at a meeting, before any part of the meeting is closed to the public, as to whether that part of the meeting should be closed.

Note: Clause 14.9 reflects section 10A(4) of the Act.

- 14.10 A representation under clause 14.9 is to be made after the motion to close the part of the meeting is moved and seconded.

- 14.11 Despite clauses 14.9 and 14.10, the Council may resolve to close the meeting to the public in accordance with this Part to hear a representation from a member of the public as to whether the meeting should be closed to consider an item of business where the representation involves the disclosure of information relating to a matter referred to in clause 14.1.

- 14.11¹² Where the matter has been identified in the agenda of the meeting under clause 3.24²⁰ as a matter that is likely to be considered when the meeting is closed to the public, in order to make representations under clause 14.9, members of the public must first make an application to the Council in a manner determined by the Council. Applications must be received by 2pm the day before the meeting at which the matter is to be considered.

[28/5/2019 Min. 113]

- 14.42¹³ The General Manager (or their delegate) may refuse an application made under clause 14.44¹². The General Manager or their delegate must give reasons in writing for a decision to refuse an application.
- 14.43¹⁴ No more than 2 speakers are to be permitted to make representations under clause 14.9.
- 14.44¹⁵ If more than the permitted number of speakers apply to make representations under clause 14.9, the General Manager or their delegate may request the speakers to nominate from among themselves the persons who are to make representations to the Council. If the speakers are not able to agree on whom to nominate to make representations under clause 14.9, the General Manager or their delegate is to determine who will make representations to the Council.
- 14.45¹⁶ The General Manager (or their delegate) is to determine the order of speakers.
- 14.46¹⁷ Where the Council or a committee of the Council proposes to close a meeting or part of a meeting to the public in circumstances where the matter has not been identified in the agenda for the meeting under clause 3.20 as a matter that is likely to be considered when the meeting is closed to the public, the chairperson is to invite representations from the public under clause 14.9 after the motion to close the part of the meeting is moved and seconded. The chairperson is to permit no more than 2 speakers to make representations in such order as determined by the chairperson.
- 14.47¹⁸ Each speaker will be allowed 5 minutes to make representations, and this time limit is to be strictly enforced by the chairperson. Speakers must confine their representations to whether the meeting should be closed to the public. If a speaker digresses to irrelevant matters, the chairperson is to direct the speaker not to do so. If a speaker fails to observe a direction from the chairperson, the speaker will not be further heard.

Expulsion of non-Councillors from meetings closed to the public

- 14.48¹⁹ If a meeting or part of a meeting of the Council or a committee of the Council is closed to the public in accordance with section 10A of the Act and this code, any person who is not a Councillor and who fails to leave the meeting when requested, may be expelled from the meeting as provided by section 10(2)(a) or (b) of the Act.
- 14.49²⁰ If any such person, after being notified of a resolution or direction expelling them from the meeting, fails to leave the place where the meeting is being held, a police officer, or any person authorised for the purpose by the Council or person presiding, may, by using such force as is reasonably necessary, remove the first-mentioned person from that place and, if necessary restrain that person from re-entering that place for the remainder of the meeting.

Note: Failure to comply with a direction to leave a meeting is an offence under section 660 of the Act carrying a maximum penalty of 20 penalty units.

Obligations of Councillors attending meetings by audio-visual link

14.20²¹ Councillors attending a meeting by audio-visual link must ensure that no other person is within sight or hearing of the meeting at any time that the meeting is closed to the public under section 10A of the Act.

Information to be disclosed in resolutions closing meetings to the public

14.24²² The grounds on which part of a meeting is closed must be stated in the decision to close that part of the meeting and must be recorded in the minutes of the meeting. The grounds must specify the following:

- (a) the relevant provision of section 10A(2) of the Act,
- (b) the matter that is to be discussed during the closed part of the meeting,
- (c) the reasons why the part of the meeting is being closed, including (if the matter concerned is a matter other than a personnel matter concerning particular individuals, the personal hardship of a resident or ratepayer or a trade secret) an explanation of the way in which discussion of the matter in an open meeting would be, on balance, contrary to the public interest.

Note: Clause 14.46²² reflects section 10D of the Act.

Resolutions passed at closed meetings to be made public

14.22²³ If the Council passes a resolution during a meeting, or a part of a meeting, that is closed to the public, the chairperson must make the resolution public as soon as practicable after the meeting, or the relevant part of the meeting, has ended, and the resolution must be recorded in the publicly available minutes of the meeting.

14.23²⁴ Resolutions passed during a meeting, or a part of a meeting, that is closed to the public must be made public by the chairperson under clause 14.47²³ during a part of the meeting that is livestreamed where practicable.

14.25 The General Manager must cause business papers for items of business considered during a meeting, or part of a meeting, that is closed to public, to be published on the Council's website as soon as practicable after the information contained in the business papers ceases to be confidential.

14.26 The General Manager must consult with the Council and any other affected persons before publishing information on the Council's website under clause 14.25 and provide reasons for why the information has ceased to be confidential.

15 KEEPING ORDER AT MEETINGSPoints of order

15.1 A Councillor may draw the attention of the chairperson to an alleged breach of this code by raising a point of order. A point of order does not require a seconder.

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~~15.2 A point of order cannot be made with respect to adherence to the principles contained in clause 2.1.~~

15.3² A point of order must be taken immediately it is raised. The chairperson must suspend the business before the meeting and permit the Councillor raising the point of order to state the provision of this code they believe has been breached. The chairperson must then rule on the point of order – either by upholding it or by overruling it.

Questions of order

15.4³ The chairperson, without the intervention of any other Councillor, may call any Councillor to order whenever, in the opinion of the chairperson, it is necessary to do so.

15.5⁴ A Councillor who claims that another Councillor has committed an act of disorder, or is out of order, may call the attention of the chairperson to the matter.

15.6⁵ The chairperson must rule on a question of order immediately after it is raised but, before doing so, may invite the opinion of the Council.

15.7⁶ The chairperson's ruling must be obeyed unless a motion dissenting from the ruling is passed.

Motions of dissent

15.8⁷ A Councillor can, without notice, move to dissent from a ruling of the chairperson on a point of order or a question of order. If that happens, the chairperson must suspend the business before the meeting until a decision is made on the motion of dissent.

15.9⁸ If a motion of dissent is passed, the chairperson must proceed with the suspended business as though the ruling dissented from had not been given. If, as a result of the ruling, any motion or business has been rejected as out of order, the chairperson must restore the motion or business to the agenda and proceed with it in due course.

15.10⁹ Despite any other provision of this code, only the mover of a motion of dissent and the chairperson can speak to the motion before it is put. The mover of the motion does not have a right of general reply.

Acts of disorder

15.11¹⁰ A Councillor commits an act of disorder if the Councillor, at a meeting of the Council or a committee of the Council:

- (a) contravenes the Act, the Regulation or this code, or
- (b) assaults or threatens to assault another Councillor or person present at the meeting, or
- (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 the committee, or addresses or attempts to address the Council or the committee on such a motion, amendment or matter, or
- ~~(d) Insults, makes unfavourable personal remarks about, or imputes improper motives to any other Council official, or alleges a breach of the Council's Code of Conduct, or~~
- ~~(e) Says or does anything that is inconsistent with maintaining order at the meeting or is likely to bring the Council or the committee into disrepute.~~
- (d) uses offensive or disorderly words, or
- (e) makes gestures or otherwise behaves in a way that is sexist, racist, homophobic or otherwise discriminatory, or, if the behaviour occurred in the Legislative Assembly, would be considered disorderly, or
- (f) imputes improper motives to or unfavourably personally reflects upon any other Council official, or a person present at the meeting, except by a motion, or
- (g) says or does anything that would promote disorder at the meeting or is otherwise inconsistent with maintaining order at the meeting.

Note: Clause 15.44¹⁰ reflects section 182 of the Regulation.

Note: The Legislative Assembly's Speaker's Guidelines state that "Members are not to use language, make gestures, or behave in any way in the Chamber that is sexist, racist, homophobic or otherwise exclusionary or discriminatory. Such conduct may be considered offensive and disorderly, in accordance with Standing Order 74".

15.42¹¹ The chairperson may require a Councillor:

- (a) to apologise without reservation for an act of disorder referred to in clauses 15.44¹⁰(a), (b), (d), (e), or (g), or
- (b) to withdraw a motion or an amendment referred to in clause 15.44¹⁰(c) and, where appropriate, to apologise without reservation, or
- (c) to retract and apologise without reservation for any statement that constitutes an act of disorder referred to in clauses 15.44¹⁰(d), (e), (f) or (g).

Note: Clause 15.42¹¹ reflects section 233 of the Regulation.

15.12 A failure to comply with a requirement under clause 15.11 constitutes a fresh act of disorder for the purposes of clause 15.10.

15.13 Where a Councillor fails to take action in response to a requirement by the chairperson to remedy an act of disorder under clause 15.11 at the meeting at which the act of disorder occurred, the chairperson may require the Councillor to take that action at each subsequent meeting until such time as the Councillor complies with the requirement. If the Councillor fails to remedy the act of disorder at a subsequent meeting, they may be expelled from the meeting under clause 15.17.

How disorder at a meeting may be dealt with

15.43¹⁴ If disorder occurs at a meeting of the Council, the chairperson may adjourn the meeting for a period of not more than 15 minutes and leave the chair. The Council, on reassembling, must, on a question put from the

chairperson, decide without debate whether the business is to be proceeded with or not. This clause applies to disorder arising from the conduct of members of the public as well as disorder arising from the conduct of Councillors.

Expulsion from meetings

~~15.15 All chairpersons of meetings of the Council and committees of the Council are authorised under this code to expel any person, including any Councillor, from a Council or committee meeting, for the purposes of section 10(2)(b) of the Act.~~

15.44¹⁵ All chairpersons of meetings of the Council and committees of the Council are authorised under this code to expel any person other than a Councillor, from a Council or committee meeting, for the purposes of section 10(2)(b) of the Act. Councillors may only be expelled by resolution of the Council or the committee of the Council.

~~———— **Note: Councils may use either clause 15.15 or clause 15.16.**~~

15.45¹⁶ Clause [15.15/15.16] ~~[delete whichever is not applicable]~~, does not limit the ability of the Council or a committee of the Council to resolve to expel a person, including a Councillor, from a Council or committee meeting, under section 10(2)(a) of the Act.

15.46¹⁷ A Councillor may, as provided by section 10(2)(a) or (b) of the Act, be expelled from a meeting of the Council for having failed to comply with a requirement under clause 15.42¹¹ or clause 15.13. The expulsion of a Councillor from the meeting for that reason does not prevent any other action from being taken against the Councillor for the act of disorder concerned.

Note: Clause 15.46¹⁷ reflects section 233(2) of the Regulation.

15.47¹⁸ A member of the public may, as provided by section 10(2)(a) or (b) of the Act, be expelled from a meeting of the Council for engaging in or having engaged in disorderly conduct at the meeting.

15.19 Members of the public attending a meeting of the Council:

- (a) must remain silent during the meeting unless invited by the chairperson to speak,
- (b) must not bring flags, signs or protest symbols to the meeting, and
- (c) must not disrupt the meeting.

15.20 Without limiting clause 15.18, a contravention of clause 15.19 or an attempt to contravene that clause, constitutes disorderly conduct for the purposes of clause 15.18. Members of the public may, as provided by section 10(2) of the Act, be expelled from a meeting for a breach of clause 15.19.

15.48²¹ Where a Councillor or a member of the public is expelled from a meeting, the expulsion and the name of the person expelled, if known, are to be recorded in the minutes of the meeting.

15.19²² If a Councillor or a member of the public fails to leave the place where a meeting of the Council is being held immediately after they have been expelled, a police officer, or any person authorised for the purpose by the Council or person presiding, may, by using such force as is reasonably necessary, remove the Councillor or member of the public from that place and, if necessary, restrain the Councillor or member of the public from re-entering that place for the remainder of the meeting.

Note: Failure to comply with a direction to leave a meeting is an offence under section 660 of the Act carrying a maximum penalty of 20 penalty units.

How disorder by Councillors attending meetings by audio-visual link may be dealt with

15.20²³ Where a Councillor is attending a meeting by audio-visual link, the chairperson or a person authorised by the chairperson may mute the Councillor's audio link to the meeting for the purposes of enforcing compliance with this code.

15.24²⁴ If a Councillor attending a meeting by audio-visual link is expelled from a meeting for an act of disorder, the chairperson of the meeting or a person authorised by the chairperson, may terminate the Councillor's audio-visual link to the meeting.

Use of mobile phones and the unauthorised recording of meetings

15.22²⁵ Councillors, Council staff and members of the public must ensure that mobile phones are turned to silent during meetings of the Council and committees of the Council.

15.23²⁶ A person must not live stream or use an audio recorder, video camera, mobile phone or any other device to make a recording of the proceedings of a meeting of the Council or a committee of the Council without the prior authorisation of the Council or the committee.

15.24²⁷ Without limiting clause 15.47¹⁸, a contravention of clause 15.23²⁶ or an attempt to contravene that clause, constitutes disorderly conduct for the purposes of clause 15.47¹⁸. Any person who contravenes or attempts to contravene clause 15.23²⁶, may, as provided for under section 10(2) of the Act, be expelled from the meeting.

15.25²⁸ If any such person, after being notified of a resolution or direction expelling them from the meeting, fails to leave the place where the meeting is being held, a police officer, or any person authorised for the purpose by the Council or person presiding, may, by using such force as is reasonably necessary, remove the first-mentioned person from that place and, if necessary, restrain that person from re-entering that place for the remainder of the meeting.

Note: Failure to comply with a direction to leave a meeting is an offence under section 660 of the Act carrying a maximum penalty of 20 penalty units.

16 CONFLICTS OF INTEREST

- 16.1 All Councillors and, where applicable, all other persons, must declare and manage conflicts of interest they have in matters being considered at meetings of the Council and committees of the Council in accordance with the Council's code of conduct. ~~All declarations of conflicts of interest and how the conflict of interest was managed by the person who made the declaration must be recorded in the minutes of the meeting at which the declaration was made.~~ All declarations of conflicts of interest must be recorded in the minutes of the meeting at which the declaration was made.
- 16.2 Councillors attending a meeting by audio-visual link must declare and manage any conflicts of interest they have in matters being considered at the meeting in accordance with the Council's code of conduct. Where a Councillor has declared a pecuniary or significant non-pecuniary conflict of interest in a matter being discussed at the meeting, the Councillor's audio-visual link to the meeting must be suspended or terminated and the Councillor must not be in sight or hearing of the meeting at any time during which the matter is being considered or discussed by the Council or committee, or at any time during which the Council or committee is voting on the matter.
- 16.3 The full form that was filled out by the Councillor to declare their conflict of interest will be displayed in the meeting minutes, with any confidential or personal information redacted.

[13/9/2022 Min. 240]

17 DECISIONS OF THE COUNCIL

Council decisions

- 17.1 A decision supported by a majority of the votes at a meeting of the Council at which a quorum is present is a decision of the Council.

Note: Clause 17.1 reflects section 371 of the Act in the case of Councils and section 400T(8) in the case of joint organisations.

- 17.2 Decisions made by the Council must be accurately recorded in the minutes of the meeting at which the decision is made.

Rescinding or altering Council decisions

- 17.3 A resolution passed by the Council may not be altered or rescinded except by a motion to that effect of which notice has been given under clause 3.40 in accordance with this code.

Note: Clause 17.3 reflects section 372(1) of the Act.

- 17.4 If a notice of motion to rescind a resolution is given at the meeting at which the resolution is carried, the resolution must not be carried into effect until the motion of rescission has been dealt with.

Note: Clause 17.4 reflects section 372(2) of the Act.

- 17.5 If a motion has been lost, a motion having the same effect must not be considered unless notice of it has been duly given in accordance with ~~clause 3.40~~ **this code**.

Note: Clause 17.5 reflects section 372(3) of the Act.

- 17.6 A notice of motion to alter or rescind a resolution, and a notice of motion which has the same effect as a motion which has been lost, must be signed by 3 Councillors if less than 3 months has elapsed since the resolution was passed, or the motion was lost.

Note: Clause 17.6 reflects section 372(4) of the Act.

- 17.7 If a motion to alter or rescind a resolution has been lost, or if a motion which has the same effect as a previously lost motion is lost, no similar motion may be brought forward within 3 months of the meeting at which it was lost. This clause may not be evaded by substituting a motion differently worded, but in principle the same.

Note: Clause 17.7 reflects section 372(5) of the Act.

- 17.8 The provisions of clauses 17.5–17.7 concerning lost motions do not apply to motions of adjournment.

Note: Clause 17.8 reflects section 372(7) of the Act.

- 17.9 A notice of motion submitted in accordance with clause 17.6 may only be withdrawn under clause 3.44 **12** with the consent of all signatories to the notice of motion.

- 17.10 A notice of motion to alter or rescind a resolution relating to a development application must be submitted to the General Manager no later than **5pm of the day** ~~4-day~~ after the meeting at which the resolution was adopted.

- 17.11 A motion to alter or rescind a resolution of the Council may be moved on the report of a committee of the Council and any such report must be recorded in the minutes of the meeting of the Council.

Note: Clause 17.11 reflects section 372(6) of the Act.

- ~~17.12 Subject to clause 17.7, in cases of urgency, a motion to alter or rescind a resolution of the Council may be moved at the same meeting at which the resolution was adopted, where:~~

- ~~(a) a notice of motion signed by three Councillors is submitted to the chairperson at the meeting, and~~
~~(b) the Council resolves to deal with the motion at the meeting on the grounds that it is urgent and requires a decision by the Council before the next scheduled ordinary meeting of the Council.~~

- ~~17.13 A motion moved under clause 17.12(b) can be moved without notice. Despite any other provision of this code, only the mover of a motion referred to in~~

~~clause 17.12(b) and the chairperson, if they are not the mover of the motion, can speak to the motion before it is put.~~

~~17.14 A resolution adopted under clause 17.12(b) must state the reasons for the urgency.~~

Recommitting resolutions to correct an error

17.12 Despite the provisions of this Part, a Councillor may, with the leave of the chairperson, move to recommit a resolution adopted at the same meeting:

- (a) to correct any error, ambiguity or imprecision in the Council's resolution, or
- (b) to confirm the voting on the resolution.

17.13 In seeking the leave of the chairperson to move to recommit a resolution for the purposes of clause 17.12(a), the Councillor is to propose alternative wording for the resolution.

17.14 The chairperson must not grant leave to recommit a resolution for the purposes of clause 17.12(a), unless they are satisfied that the proposed alternative wording of the resolution would not alter the substance of the resolution previously adopted at the meeting.

17.15 A motion moved under clause 17.12 can be moved without notice. Despite ~~clauses 10.20—10.30,~~ any other provision of this code, only the mover of a motion referred to in clause 17.12 and the chairperson, if they are not the mover of the motion, can speak to the motion before it is put.

17.16 A motion of dissent cannot be moved against a ruling by the chairperson under clause 17.12.

17.17 A motion moved under clause 17.12 with the leave of the chairperson cannot be voted on unless or until it has been seconded.

18 TIME LIMITS ON COUNCIL MEETINGS

18.1 Meetings of the Council and committees of the Council are to conclude at a ~~time the Council may from time to time determine.~~ no later than 9:00pm

~~18.2 If the business of the meeting is unfinished at 9pm, the Council or the committee may, by resolution, extend the time of the meeting.~~

18.3~~2~~ If the business of the meeting is unfinished at 9pm at the time the Council has determined, and the Council does not resolve to extend the meeting, the chairperson must either:

- (a) defer consideration of the remaining items of business on the agenda to the next ordinary meeting of the Council, or
- (b) adjourn the meeting to a time, date and place fixed by the chairperson.

18.4~~3~~ Clause 18.2 does not limit the ability of the Council or a committee of the Council to resolve to adjourn a meeting at any time. The resolution adjourning the meeting must fix the time, date and place that the meeting is

to be adjourned to.

18.54 Where a meeting is adjourned under clause 18.2 or 18.3, the General Manager must:

- (a) individually notify each Councillor of the time, date and place at which the meeting will reconvene, and
- (b) publish the time, date and place at which the meeting will reconvene on the Council's website and in such other manner that the General Manager is satisfied is likely to bring notice of the time, date and place of the reconvened meeting to the attention of as many people as possible.

19 AFTER THE MEETING

Minutes of meetings

19.1 The Council is to keep full and accurate minutes of the proceedings of meetings of the Council.

Note: Clause 19.1 reflects section 375(1) of the Act.

19.2 At a minimum, the General Manager must ensure that the following matters are recorded in the Council's minutes:

- (a) the names of Councillors attending a Council meeting and whether they attended the meeting in person or by audio-visual link,
- (b) details of each motion moved at a Council meeting and of any amendments moved to it,
- (c) the names of the mover and seconder of the motion or amendment,
- (d) whether the motion or amendment was passed or lost, and
- (e) such other matters specifically required under this code.

19.3 The minutes of a Council meeting must be confirmed at a subsequent meeting of the Council.

Note: Clause 19.3 reflects section 375(2) of the Act.

19.4 Any debate on the confirmation of the minutes is to be confined to whether the minutes are a full and accurate record of the meeting they relate to.

19.5 When the minutes have been confirmed, they are to be signed by the person presiding at the subsequent meeting.

Note: Clause 19.5 reflects section 375(2) of the Act.

19.6 The confirmed minutes of a meeting may be amended to correct typographical or administrative errors after they have been confirmed. Any amendment made under this clause must not alter the substance of any decision made at the meeting.

19.7 The confirmed minutes of a Council meeting must be published on the Council's website. This clause does not prevent the Council from also publishing unconfirmed minutes of its meetings on its website prior to their

confirmation.

Access to correspondence and reports laid on the table at, or submitted to, a meeting

- 19.8 The Council and committees of the Council must, during or at the close of a meeting, or during the business day following the meeting, give reasonable access to any person to inspect correspondence and reports laid on the table at, or submitted to, the meeting.

Note: Clause 19.8 reflects section 11(1) of the Act.

- 19.9 Clause 19.8 does not apply if the correspondence or reports relate to a matter that was received or discussed or laid on the table at, or submitted to, the meeting when the meeting was closed to the public.

Note: Clause 19.9 reflects section 11(2) of the Act.

- 19.10 Clause 19.8 does not apply if the Council or the committee resolves at the meeting, when open to the public, that the correspondence or reports are to be treated as confidential because they relate to a matter specified in section 10A(2) of the Act.

Note: Clause 19.10 reflects section 11(3) of the Act.

- 19.11 Correspondence or reports to which clauses 19.9 and 19.10 apply are to be marked with the relevant provision of section 10A(2) of the Act that applies to the correspondence or report.

Implementation of decisions of the Council

- 19.12 The General Manager is to implement, without undue delay, lawful decisions of the Council.

Note: Clause 19.12 reflects section 335(b) of the Act.

20 COUNCIL COMMITTEES

Application of this Part

- 20.1 This Part only applies to committees of the Council whose members are all Councillors.

Council committees whose members are all Councillors

- 20.2 The Council may, by resolution, establish such committees as it considers necessary.

- 20.3 A committee of the Council is to consist of the Mayor and such other Councillors as are elected by the Councillors or appointed by the Council.

- 20.4 The quorum for a meeting of a committee of the Council is to be:

- (a) such number of members as the Council decides, or

ITEM 14 - ATTACHMENT 1 DRAFT CODE OF MEETING PRACTICE.

- (b) if the Council has not decided a number – a majority of the members of the committee.

Functions of committees

- 20.5 The Council must specify the functions of each of its committees when the committee is established but may from time to time amend those functions.

Notice of committee meetings

- 20.6 The General Manager must send to each Councillor, regardless of whether they are a committee member, at least three (3) days before each meeting of the committee, a notice specifying:

- (a) the time, date and place of the meeting, and
- (b) the business proposed to be considered at the meeting.

- 20.7 Notice of less than three (3) days may be given of a committee meeting called in an emergency.

Attendance at committee meetings

- ~~20.8 A committee member (other than the Mayor) ceases to be a member of a committee if the committee member:~~

- ~~(a) Has been absent from 3 consecutive meetings of the committee without having given reasons acceptable to the committee for the member's absences, or~~
- ~~(b) Has been absent from at least half of the meetings of the committee held during the immediately preceding year without having given to the committee acceptable reasons for the member's absences.~~

- ~~20.9 Clause 20.8 does not apply if all of the members of the Council are members of the committee.~~

Non-members entitled to attend committee meetings

- 20.40⁸ A Councillor who is not a member of a committee of the Council is entitled to attend, and to speak at a meeting of the committee. However, the Councillor is not entitled:

- (a) to give notice of business for inclusion in the agenda for the meeting, or
- (b) to move or second a motion at the meeting, or
- (c) to vote at the meeting.

Chairperson and deputy chairperson of Council committees

- 20.44⁹ The chairperson of each committee of the Council must be:

- (a) the Mayor, or
- (b) if the Mayor does not wish to be the chairperson of a committee, a member of the committee elected by the Council, or

ITEM 14 - ATTACHMENT 1 DRAFT CODE OF MEETING PRACTICE.

- (c) if the Council does not elect such a member, a member of the committee elected by the committee.

20.42¹⁰ The Council may elect a member of a committee of the Council as deputy chairperson of the committee. If the Council does not elect a deputy chairperson of such a committee, the committee may elect a deputy chairperson.

20.43¹¹ If neither the chairperson nor the deputy chairperson of a committee of the Council is able or willing to preside at a meeting of the committee, the committee must elect a member of the committee to be acting chairperson of the committee.

20.44¹² The chairperson is to preside at a meeting of a committee of the Council. If the chairperson is unable or unwilling to preside, the deputy chairperson (if any) is to preside at the meeting, but if ~~if~~ neither the chairperson nor the deputy chairperson is able or willing to preside, the acting chairperson is to preside at the meeting.

Procedure in committee meetings

20.45¹³ Subject to any specific requirements of this code, each committee of the Council may regulate its own procedure. The provisions of this code are to be taken to apply to all committees of the Council. ~~unless the Council or the committee determines otherwise in accordance with this clause.~~

20.46¹⁴ Whenever the voting on a motion put to a meeting of the committee is equal, the chairperson of the committee is to have a casting vote as well as an original vote unless the Council or the committee determines otherwise in accordance with clause 20.45¹³.

20.47¹⁵ Voting at a Council committee meeting is to be by open means (such as on the voices, by show of hands or by a visible electronic voting system).

Mayoral minutes

20.16 The provisions of this code relating to Mayoral minutes also apply to meetings of committees of the Council in the same way they apply to meetings of the Council.

Closure of committee meetings to the public

20.48¹⁷ The provisions of the Act and Part 14 of this code apply to the closure of meetings of committees of the Council to the public in the same way they apply to the closure of meetings of the Council to the public.

20.49¹⁸ If a committee of the Council passes a resolution, or makes a recommendation, during a meeting, or a part of a meeting that is closed to the public, the chairperson must make the resolution or recommendation public as soon as practicable after the meeting or part of the meeting has ended and report the resolution or recommendation to the next meeting of the Council. The resolution or recommendation must also be recorded in the publicly available minutes of the meeting.

20.20¹⁹ Resolutions passed during a meeting, or a part of a meeting that is closed to the public must be made public by the chairperson under clause 20.49¹⁸ during a part of the meeting that is ~~webcast~~ **livestreamed where practicable.**

20.20 The General Manager must cause business papers for items of business considered during a meeting, or part of a meeting, that is closed to public, to be published on the Council's website as soon as practicable after the information contained in the business papers ceases to be confidential.

20.21 The General Manager must consult with the committee and any other affected persons before publishing information on the Council's website under clause 20.20 and provide reasons for why the information has ceased to be confidential.

Disorder in committee meetings

20.24²² The provisions of the Act, the Regulation, and this code relating to the maintenance of order in Council meetings apply to meetings of committees of the Council in the same way they apply to meetings of the Council.

Minutes of Council committee meetings

20.22²³ Each committee of the Council is to keep full and accurate minutes of the proceedings of its meetings. At a minimum, a committee must ensure that the following matters are recorded in the committee's minutes:

- (a) the names of Councillors attending a meeting and whether they attended the meeting in person or by audio-visual link,
- (b) details of each motion moved at a meeting and of any amendments moved to it,
- (c) the names of the mover and seconder of the motion or amendment,
- (d) whether the motion or amendment was passed or lost, and
- (e) such other matters specifically required under this code.

20.23²⁴ All voting at meetings of committees of the Council (including meetings that are closed to the public), must be recorded in the minutes of meetings with the names of Councillors who voted for and against each motion or amendment, (including the use of the casting vote), being recorded.

20.24²⁵ The minutes of meetings of each committee of the Council must be confirmed at a subsequent meeting of the committee.

20.25²⁶ Any debate on the confirmation of the minutes is to be confined to whether the minutes are a full and accurate record of the meeting they relate to.

20.26²⁷ When the minutes have been confirmed, they are to be signed by the person presiding at the subsequent meeting.

20.27²⁸ The confirmed minutes of a meeting may be amended to correct typographical or administrative errors after they have been confirmed.

amendment made under this clause must not alter the substance of any decision made at the meeting.

20.28²⁹ The confirmed minutes of a meeting of a committee of the Council must be published on the Council's website. This clause does not prevent the Council from also publishing unconfirmed minutes of meetings of committees of the Council on its website prior to their confirmation.

21 IRREGULARITIES

21.1 Proceedings at a meeting of a Council or a Council committee are not invalidated because of:

- (a) a vacancy in a civic office, or
- (b) a failure to give notice of the meeting to any Councillor or committee member, or
- (c) any defect in the election or appointment of a Councillor or committee member, or
- (d) a failure of a Councillor or a committee member to declare a conflict of interest, or to refrain from the consideration or discussion of, or vote on, the relevant matter, at a Council or committee meeting in accordance with the Council's code of conduct, or
- (e) a failure to comply with this code.

Note: Clause 21.1 reflects section 374 of the Act.

22 DEFINITIONS

the Act	means the Local Government Act 1993
act of disorder	means an act of disorder as defined in clause 15.10 of this code
amendment	in relation to an original motion, means a motion moving an amendment to that motion
audio recorder	any device capable of recording speech
audio-visual link	means a facility that enables audio and visual communication between persons at different places
business day	means any day except Saturday or Sunday or any other day the whole or part of which is observed as a public holiday throughout New South Wales
chairperson	in relation to a meeting of the Council – means the person presiding at the meeting as provided by section 369 of the Act and clauses 6.1 and 6.2 of this code, and in relation to a meeting of a committee – means the person presiding at the meeting as provided by clause 20.9 of this code
this code	means the Council’s adopted code of meeting practice
committee of the Council	means a committee established by the Council in accordance with clause 20.2 of this code (being a committee consisting only of Councillors) or the Council when it has resolved itself into committee of the whole under clause 12.1
Council official	includes Councillors, members of staff of a Council, administrators, Council committee members, delegates of Council and any other person exercising functions on behalf of the Council
councillor	means a councillor elected to Port Stephens Council, including the mayor, unless the mayor is defined in another capacity within this code.
day	means calendar day
division	means a request by two Councillors under clause 11.7 of this code requiring the recording of the names of the Councillors who voted both for and against a motion
foreshadowed amendment	means a proposed amendment foreshadowed by a councillor under clause 10.18 of this code during debate on the first amendment.
foreshadowed motion	means a motion foreshadowed by a councillor under clause 10.17 of this code during debate on an original motion.
livestream	a video broadcast of a meeting transmitted across the internet concurrently with the meeting
open voting	means voting on the voices or by a show of hands or by a visible electronic voting system or similar means
planning decision	means a decision made in the exercise of a function of a Council under the Environmental Planning and Assessment Act 1979 including any decision relating to a development application, an environmental planning instrument, a development control plan, a planning agreement or a development contribution plan under that

ITEM 14 - ATTACHMENT 1 DRAFT CODE OF MEETING PRACTICE.

	Act, but not including the making of an order under Division 9.3 of Part 9 of that Act
performance improvement order	means an order issued under section 438A of the Act
quorum	means the minimum number of Councillors or committee members necessary to conduct a meeting
the Regulation	means the Local Government (General) Regulation 2021
webcast	a video or audio broadcast of a meeting transmitted across the internet either concurrently with the meeting or at a later time.
year	means the period beginning 1 July and ending the following 30 June

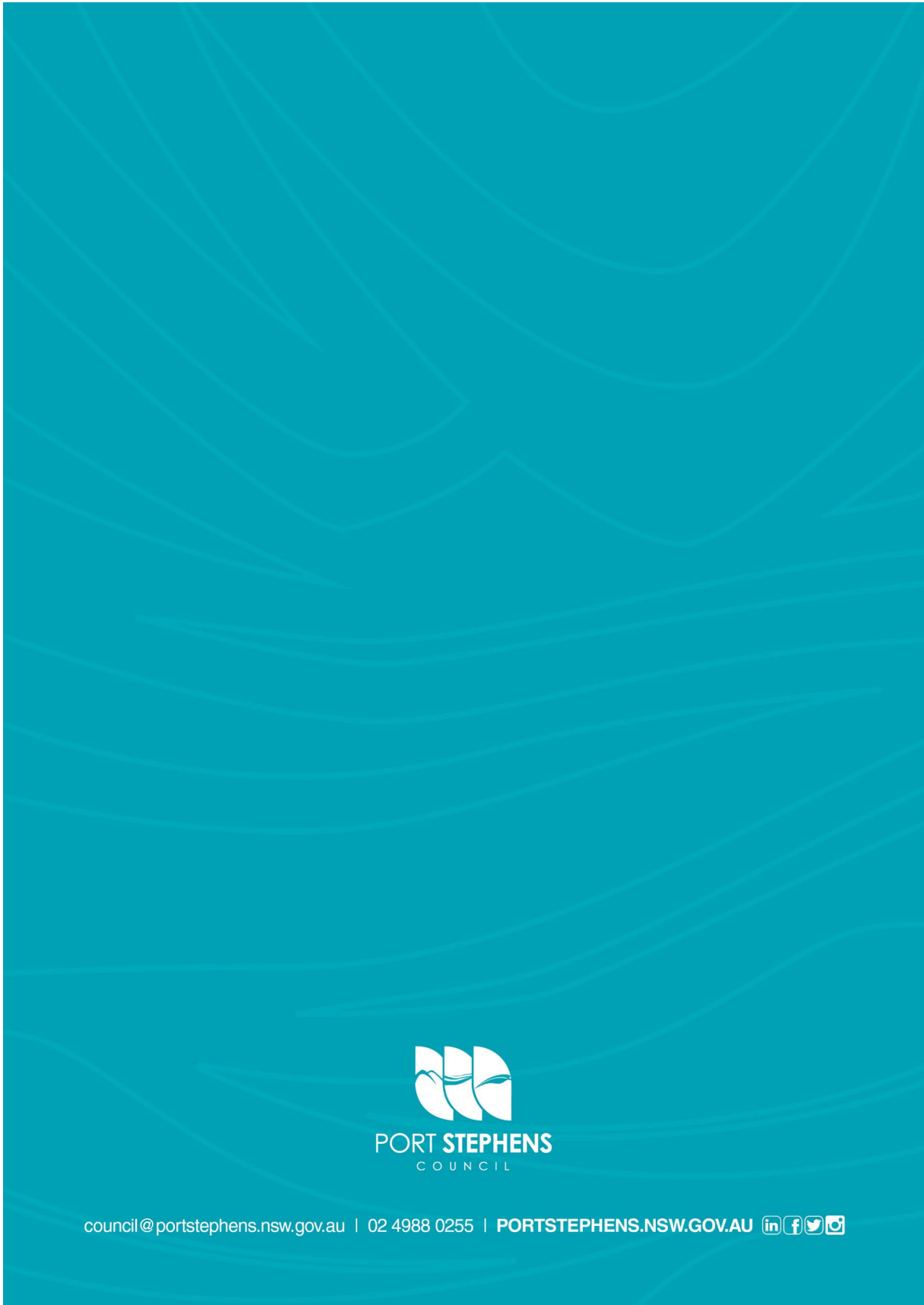
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CONTROLLED DOCUMENT INFORMATION:

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 www.portstephens.nsw.gov.au			
TRIM container No	A2004-0284	EDRMS record No	TBC
Audience	Elected Council		
Process owner	Governance Section Manager		
Author	Governance Section Manager		
Review timeframe	4 years	Next review date	TBC
Adoption date	TBC		

VERSION HISTORY:

Version	Date	Author	Details	Minute No.
1.0	TBC	Governance Section Manager	Adoption of the new Code of Conduct.	#



Public Access Protocol



Public Access provides a forum for community members to speak directly to the Mayor and Councillors about local or Council issues.

The Public Access Protocol is in place to inform the community about Public Access, including when the sessions are held, how to apply to address the Council and the requirements of the speakers.

The Protocol is:

- 1) The Council may hold a public access on the second Tuesday of each month (and the fourth Tuesday of the month at the discretion of the Mayor) for the purpose of hearing oral submissions from members of the public on items of business to be considered at the meeting and/or other matters at the discretion of the Mayor. Public access may also be held prior to extraordinary Council meetings and meetings of committees of the Council.
- 2) Public Access may be held by audio-visual link.
- 3) Presentations to public access must be done in person and are not permitted to be written or video presentations unless the presenter is present to respond to questions per clause 16 below.
- 4) Public Access is to be chaired by the Mayor or their nominee.
- 5) To speak at a public access, a person must first make an application to the Council in the approved form. Applications to speak at the public access must be received by 12 noon on the Monday before the date on which the public access is to be held, and must identify the item of business on the agenda of the Council meeting the person wishes to speak on, if applicable, and whether they wish to speak 'for' or 'against' the item.
- 6) A person may apply to speak on no more than 2 items of business on the agenda of the Council meeting.
- 7) Legal representatives acting on behalf of others are not to be permitted to speak at a public access unless they identify their status as a legal representative when applying to speak at the public access.
- 8) The Mayor or their delegate may refuse an application to speak at a public access. The Mayor or their delegate must give reasons in writing for a decision to refuse an application.
- 9) No more than 2 speakers are to be permitted to speak 'for' or 'against' each item of business on the agenda for the Council meeting.
- 10) If more than the permitted number of speakers' apply to speak 'for' or 'against' any matter, those permitted to speak will be determined by the order the applications were received by Council.

ITEM 14 - ATTACHMENT 2 PUBLIC ACCESS PROTOCOL.

- 11) If more than the permitted number of speakers apply to speak 'for' or 'against' any matter, the Mayor or their delegate may, increase the number of speakers permitted to speak on an item of business, where they are satisfied that it is necessary to do so to allow the Council to hear a fuller range of views on the relevant item of business.
- 12) Approved speakers at the public access are to register with the Council any written, visual or audio material to be presented in support of their address to the Council at the public access, and to identify any equipment needs by 2pm the day of the public access. The Mayor or their delegate may refuse to allow such material to be presented.
- 13) The Mayor or their delegate is to determine the order of speakers at the public access.
- 14) Each speaker will be allowed 5 minutes to address the Council. This time is to be strictly enforced by the chairperson.
- 15) Speakers at public access must not digress from the item on the agenda, if applicable, of the Council meeting they have applied to address the Council on. If a speaker digresses to irrelevant matters, the chairperson is to direct the speaker not to do so. If a speaker fails to observe a direction from the chairperson, the speaker will not be further heard.
- 16) A Councillor (including the chairperson) may, through the chairperson, ask questions of a speaker following their address at a public access. Questions put to a speaker must be direct, succinct and without argument.
- 17) Speakers are under no obligation to answer a question put under clause 16. Answers by the speaker, will be regulated by the chairperson.
- 18) Speakers at public access cannot ask questions of the Council, Councillors or Council staff.
- 19) The General Manager or their nominee may, with the concurrence of the chairperson, address the Council in response to an address to the Council at a public access after the address and any subsequent questions and answers have been finalised.
- 20) Where an address made at a public access raises matters that require further consideration by Council staff, the General Manager may recommend that the Council defer consideration of the matter pending the preparation of a further report on the matters.
- 21) When addressing the Council, speakers at public access must comply with all relevant Council codes, policies and procedures. Speakers must refrain from engaging in disorderly conduct, publicly alleging breaches of the Council's Code of Conduct or making other potentially defamatory statements.
- 22) If the chairperson considers that a speaker at a public access has engaged in conduct of the type referred to in clause 21, the chairperson may request the person to refrain from the inappropriate behaviour and to withdraw and unreservedly apologise for any inappropriate comments. Where the speaker fails to comply with the chairperson's request, the chairperson may immediately require the person to stop speaking.
- 23) Clause 22 does not limit the ability of the chairperson to deal with disorderly conduct by speakers at public access in accordance with the provisions of Part 15 of the Code of Meeting Practice.

ITEM 14 - ATTACHMENT 2 PUBLIC ACCESS PROTOCOL.

- 24) Where a speaker engages in conduct of the type referred to in clause 21, the Mayor or their delegate may refuse further applications from that person to speak at public access for such a period as the Mayor or their delegate considers appropriate.
- 25) Councillors (including the Mayor) must declare and manage any conflicts of interest they may have in relation to any item of business that is the subject of an address at a public access, in the same way that they are required to do so at a Council or committee meeting. The Council is to maintain a written record of all conflict of interest declarations made at public access and how the conflict of interest was managed by the Councillor who made the declaration.
- 26) Public access is to be livestreamed and made available to the public under Part 4 of the Code of Meeting Practice.

Note: Public access will not be held as part of a council or committee meeting. Council or committee meetings are reserved for decision-making by the council or committee of council.

ITEM NO. 15

**FILE NO: 25/241025
EDRMS NO: PSC2024-03158**

REQUEST FOR FINANCIAL ASSISTANCE

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Approves provision of financial assistance under Section 356 of the Local Government Act 1993 from Mayoral and Ward Funds to the following:-
 - a) Masonic Holdings – Lodge Tomaree No. 878 – Mayoral Funds - \$2,000 donation towards 2025-2026 rates.
 - b) Lions Club of Tilligerry Peninsula – Rapid response – Cr Chris Doohan - \$500 donation towards 2025 Literature Awards.
 - c) The Rock Church Port Stephens – Rapid response – Cr Mark Watson - \$500 donation towards 2025 Foodcare Christmas Party event.
-

BACKGROUND

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

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

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

Council is unable to grant approval of financial assistance to individuals unless it is performed in accordance with the Local Government Act 1993. This would mean that the financial assistance would need to be included in the Operational Plan or Council would need to advertise for 28 days of its intent to grant approval. Council can make donations to community groups.

The requests for financial assistance are shown below:

MAYORAL FUNDS

Masonic Holdings – Lodge Tomaree No. 878 (Freemasons)	Freemasonry is an organisation for men over 18 designed to encourage members towards self-improvement.	\$2,000	Donation towards 2025-2026 rates.
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WARD FUNDS

Lions Club of Tilligerry Peninsula	Lions Clubs work to improve health and wellbeing, strengthen communities, support those in need and encourage peace and international understanding.	\$500	Donation towards 2025 Port Stephens Literature Awards.
The Rock Church Port Stephens	Foodcare is a community care program serving the Port Stephens community by providing food and non-perishables to people under financial stress.	\$500	Donation towards Foodcare Christmas Party Event.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2025-2029
Resources and finance	Develop and implement strategic direction and governance of Council

FINANCIAL/RESOURCE IMPLICATIONS

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

ORDINARY COUNCIL - 28 OCTOBER 2025

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

LEGAL AND POLICY IMPLICATIONS

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

The Policy interpretation required is whether the Council believes that:

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

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

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Nil.

COMMUNICATION AND ENGAGEMENT

Council's Communication and Engagement Strategy uses the IAP2 Framework to identify the level of engagement undertaken. An explanation for each level is shown below.

INFORM	To provide the public with balanced and objective information to assist them in understanding the problems, alternatives, opportunities and/or solutions.
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ORDINARY COUNCIL - 28 OCTOBER 2025

CONSULT	To obtain public feedback on analysis, alternatives and/or decisions.
INVOLVE	To work directly with the public throughout the process to ensure that public concerns and aspirations are consistently understood and considered.
COLLABORATE	To partner with the public in each aspect of the decision including the development of alternatives and the identification of the preferred solution.
EMPOWER	To place final decision-making and/or developed budgets in the hands of the public.
	No external communications and engagement are required for this report.

The following communication and engagement applies to this report.

External communications and engagement

INFORM	Community members are advised of the outcome of their application.
--------	--

Internal communications and engagement

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

Consultation has been undertaken to ensure budget requirements are met and approved.

OPTIONS

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

ATTACHMENTS

Nil.

COUNCILLORS' ROOM/DASHBOARD

Nil.

TABLED DOCUMENTS

Nil.

ITEM NO. 16

**FILE NO: 25/241041
EDRMS NO: PSC2024-03232**

INFORMATION PAPERS

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

RECOMMENDATION IS THAT COUNCIL:

Receives and notes the Information Papers listed below being presented to Council on 28 October 2025.

No:	Report Title	Page:
1	Cash and Investment Portfolio - September 2025	414
2	Delegations Report	415
3	Council Resolutions	417

INFORMATION PAPERS

ITEM NO. 1

**FILE NO: 25/185802
EDRMS NO: PSC2017-00180**

CASH AND INVESTMENT PORTFOLIO - SEPTEMBER 2025

REPORT OF: GLEN PETERKIN - FINANCIAL SERVICES SECTION MANAGER
DIRECTORATE: CORPORATE STRATEGY AND SUPPORT

BACKGROUND

Due to the timing of the distribution of the Council agenda for 28 October 2025, the Cash and Investment Report as at 30 September 2025 was not available for publication at that time.

The Cash and Investment Report as at 30 September 2025 will be available for Council's consideration in a Supplementary Report.

ATTACHMENTS

Nil.

COUNCILLORS' ROOM/DASHBOARD

Nil.

TABLED DOCUMENTS

Nil.

ITEM NO. 2

**FILE NO: 25/241004
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
4-Sep-25	Clause 178 of the Local Government (General) Regulation 2021)	RFQ011-FY2025-26 - ICT Device Procurement	General Manager	28 October 2025
5-Sep-25	Code of Meeting Practice	Approval of Public Access application regarding Item 1 - DA 16-2025-81-1, Flood Mound at 269 Newline Road, Raymond Terrace	Mayor	28 October 2025
9-Sep-25	Code of Meeting Practice	Approval of Public Access application - Notice of Motion 2 - Kings Hill	Mayor	28 October 2025
9-Sep-25	Code of Meeting Practice	Approval of Public Access application - Notice of Motion 2 - Kings Hill	Mayor	28 October 2025
23-Sep-25	Clause 178 of the Local Government (General) Regulation 2021)	RFQ017-2025-26 - TfNSW State Roads Reseal Prep Heavy Patching	General Manager	28 October 2025

ITEM NO. 3

**FILE NO: 25/241011
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 3 - ATTACHMENT 1 COMMUNITY FUTURES RESOLUTIONS.



Division: Community Futures **Date From:** 10/06/2025
Committee: **Date To:** 23/09/2025
Officer:
Printed: Wednesday, 24 September 2025
Action Sheets Report

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 10/06/2025	Lamont, Brock	Draft Local Infrastructure Contributions Plan 2020 - Comprehensive Amendment	28/11/2025		
5 120		Pearl, Steven				25/148178
24 Sep 2025 A submission was received during public exhibition. A report back to Council is scheduled for 25 November 2025.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 10/06/2025	Herrmann, Amber	Trial of Tomaree Shuttle Bus	30/04/2026		
1 130		Pearl, Steven				25/148178
24 Sep 2025 Stakeholder meeting has been held, outcomes from the meeting will be reported to Council.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
	Ordinary Council 10/06.2025	Lamont, Brock	MATTER ARISING - Min No. 121 - Item 5 - Draft Local Infrastructure Contributions Plan 2020 - Comprehensive amendment.	28/11/2025		
		Pearl, Steven				
24 Sep 2025 A two way is to be held on 21 October 2025.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 22/07/2025	Lamont, Brock	Draft Salamander Bay Town Centre Place Plan	25/11/2025	23/07/2025	
2		Pearl, Steven				25/191415
24 Sep 2025 The draft Salamander Bay Town Centre Place Plan is on public exhibition for 28 days. Exhibition closes 19 August 2025 and a report back to Council is tentatively scheduled for 25 November 2025.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 22/07/2025	Lamont, Brock	Request to Revoke Remaining Declared Offshore Wind Zone and Restore to Community and Environment	28/11/2025		
1		Pearl, Steven				25/191415
24 Sep 2025 It was resolved that the item be deferred to allow Council staff to seek information from the Federal Energy Minister regarding the legal process and the Government's ability to revoke the balance of the offshore wind zone., Staff are working to organise a Two Way with the Mayor and Councillors once response received.						

ITEM 3 - ATTACHMENT 1 COMMUNITY FUTURES RESOLUTIONS.



Division: Community Futures **Date From:** 10/06/2025
Committee: **Date To:** 23/09/2025
Officer:
Printed: Wednesday, 24 September 2025
Action Sheets Report

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 12/08/2025	Herrmann, Amber	Request for Sporting Excellence Fund	25/11/2025	13/08/2025	
2		Peart, Steven				25/213775
24 Sep 2025						
It was resolved that Council approves the provision of financial assistance to Ebony Newton for \$300 from the Sporting Excellence Fund. This funding request will be placed on public exhibition for a period of 28 days. Should no submissions be received, the funds will be approved, without a further report to Council.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 23/09/2025	Falkenmire, Ryan	Development Application (DA) 16-2025-81-1 for Earthworks comprising a flood mound for stock refuge, construction of a shed and installation of 3 shipping containers at 269 Newline Road, Raymond Terrace	25/11/2025	24/09/2025	
1		Peart, Steven				25/263649
24 Sep 2025						
Council, at its meeting of 23 September 2025, resolved to defer DA 16-2025-81-1 for earthworks comprising a flood mound, to be reported back to Council at the earliest opportunity.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 23/09/2025	Lamont, Brock	Local Housing Strategy Annual Report	28/11/2025	24/09/2025	
2		Peart, Steven				25/263649
24 Sep 2025						
The Addendum Request received for 22 Homestead Street, Salamander Bay has been placed on public exhibition for 28 days.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 23/09/2025	Herrmann, Amber	Town Centre Placemaking Policy	28/11/2025	24/09/2025	
3		Peart, Steven				25/263649
24 Sep 2025						
The Town Centre Placemaking Policy has been placed on public exhibition for a period of 28 days. The policy will be reported back to Council following public exhibition.						

ITEM 3 - ATTACHMENT 1 COMMUNITY FUTURES RESOLUTIONS.



Division: Community Futures **Date From:** 10/06/2025
Committee: **Date To:** 23/09/2025
Officer:
Action Sheets Report **Printed: Wednesday, 24 September 2025**

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 23/09/2025	Lamont, Brock	Policy Review: Rezoning Request Policy (renamed Planning Proposal Policy)	28/11/2025	24/09/2025	
10		Peart, Steven				25/263649
24 Sep 2025						
It was resolved that Council., Place the revised Planning Proposal Policy on public exhibition for a period of 28 days., The revised policy come back to Council following public exhibition to allow consideration of amendments that may be appropriate given the passage of the NSW Planning Reform Bill through the NSW Parliament.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 23/09/2025	Herrmann, Amber	Policy Review: Community Development Policy	28/11/2025	24/09/2025	
11		Peart, Steven				25/263649
24 Sep 2025						
The revised Community Development Policy has been placed on public exhibition for a period of 28 days. Should no submissions be received, the policy be adopted without a further report to Council., Revoke the Community Development Policy dated 12 July 2022, should no submissions be received.						

ITEM 3 - ATTACHMENT 2 CORPORATE STRATEGY AND SUPPORT RESOLUTIONS.



Action Sheets Report	Division: Corporate Strategy and Support	Date From: 11/04/2023
	Committee:	Date To:
	Officer:	
		Printed: Wednesday, 24 September 2025

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 11/04/2023	Pattison, Zoe	22 Homestead Street, Salamander Bay	30/12/2025	12/04/2023	
5 088		Pattison, Zoe				23/92450
24 Sep 2025						
Council is investigating options for the rezoning of 22 Homestead Street, Salamander Bay, and the development of a Vegetation Management Plan, to provide the best opportunity to enable a successful long-term rehabilitation of the site.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 22/08/2023	Pattison, Zoe	Raymond Terrace Gateway Site Masterplan	31/03/2026		
1 193		Pattison, Zoe				23/214729
24 Sep 2025						
Options for the future of the Gateway site will be considered as part of the broader Raymond Terrace Town Centre Strategy.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 24/06/2025	Pattison, Zoe	112 Adelaide Street and 18A Sturgeon Street, Raymond Terrace	31/12/2025	25/06/2025	
1		Pattison, Zoe				25/159107
24 Sep 2025						
It was resolved that Council progresses with Option 2 outlined in the confidential business paper.						

ITEM 3 - ATTACHMENT 3 FACILITIES AND INFRASTRUCTURE RESOLUTIONS.



Division: Facilities and Infrastructure **Date From:** 27/08/2013
Committee: **Date To:** 23/09/2025
Officer:
Action Sheets Report **Printed: Wednesday, 24 September 2025**

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 27/08/2013	Maretich, John Kable, Gregory	Campvale Drain	31/12/2026		
24 Sep 2025 This long term action will form part of the discussion with Hunter Water Corporation.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 11/04/2023	Maretich, John Kable, Gregory	Naming Recreation Precinct at Medowie after Geoff Dingle	31/12/2026	12/04/2023	
2 085						23/92450
24 Sep 2025 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 28/11/2023	Maretich, John Kable, Gregory	Sale of closed roads in Raymond Terrace	31/12/2025	29/11/2023	
1						23/324875
24 Sep 2025 Expression of Interest (EOI) road is still under negotiation. 1 road to remain as road reserve and 1 road sold.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 28/05/2024	Maretich, John Kable, Gregory	Bus Stop Infrastructure Plan	31/03/2026	29/05/2024	
1						24/131056
24 Sep 2025 Council Engineers will continue development of the Bus Shelter Infrastructure Plan. Future Country Passenger Transport Infrastructure Grants Scheme (CPTIGS) funding is expected to aid in the plan's completion within the next financial year. Deferred as per PS Item dated 29 August 2025.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 23/07/2024	Maretich, John Kable, Gregory	Raymond Terrace Boat Ramp	30/04/2026	24/07/2024	
6						24/189773
24 Sep 2025 A two way conversation and a report will be provided to Council once funding opportunities are available that will help determine the scope of works. Discussions have commenced with funding agencies to seek funding.						

ITEM 3 - ATTACHMENT 3 FACILITIES AND INFRASTRUCTURE RESOLUTIONS.



Division: Facilities and Infrastructure **Date From:** 27/08/2013
Committee: **Date To:** 23/09/2025
Officer:
Printed: Wednesday, 24 September 2025
Action Sheets Report

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 10/12/2024	Maretich, John	Bus Shelters in Port Stephens	28/02/2026	11/12/2024	
1		Kable, Gregory				24/333356
24 Sep 2025 Council staff reviewing further actions for EOI.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 10/06/2025	Kable, Gregory	Port Stephens Roads Acceleration Program Expanded Funding Strategy	31/12/2026	11/06/2025	
4		Kable, Gregory				25/148178
115						
24 Sep 2025 As resolved, strategy for funding of the RAP program will be pursued over the next 18 months.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 10/06/2025	Maretich, John	MATTER ARISING - Min No. 131 - NOM 1 - Trial of Tomaree Shuttle Bus	30/04/2026		
		Kable, Gregory				
24 Sep 2025 Staff are continuing to prepare report with ongoing consultation with some interested parties.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 24/06/2025	Maretich, John	Medowie Drainage	31/03/2026	25/06/2025	
1		Kable, Gregory				25/159107
24 Sep 2025 Council Staff have commenced discussion with Hunter Water Corporation to address the items within this NOM.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 24/06/2025	Maretich, John	Drainage on Sports Fields	31/12/2025	25/06/2025	
2		Kable, Gregory				25/159107
24 Sep 2025 Council staff will report back to Council on all sporting fields within the LGA that require drainage upgrades and investigate a funding strategy to commence drainage upgrades on identified sporting fields.						

ITEM 3 - ATTACHMENT 3 FACILITIES AND INFRASTRUCTURE RESOLUTIONS.



Action Sheets Report	Division: Facilities and Infrastructure	Date From: 27/08/2013
	Committee:	Date To: 23/09/2025
	Officer:	Printed: Wednesday, 24 September 2025

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 22/07/2025	Maretich, John	Review and Strategic Planning for Dog Recreation Areas in Port Stephens	31/08/2026		
2		Kable, Gregory				25/191415
24 Sep 2025						
Staff will review the existing dog parks and off-leash areas in accordance with the resolutions. This review will be finalised in 2026 and a report will be prepared for Council. The next revision of the Strategic Assets Management Plan (SAMP) will be modified to incorporate dog parks.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 26/08/2025	Maretich, John	Drainage Maintenance	31/12/2025	27/08/2025	
1		Kable, Gregory				25/231579
24 Sep 2025						
As per Council resolution, staff will investigate funding opportunities for open drain maintenance. Staff will also prepare a letter for the Hon. Kate Washington MP, Member for Port Stephens to be reviewed by the Mayor and Councillors and to be discussed at a future briefing on open drain maintenance. A two way conversation has been scheduled for 18 November 2025.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 26/08/2025	Maretich, John	Acquisition of Part 79 Brandy Hill Drive, Brandy Hill for the Brandy Hill Shared Pathway	31/12/2025	27/08/2025	
1		Kable, Gregory				25/231579
24 Sep 2025						
Staff will prepare the documents, required to affect the payment of compensation, for the General Manager's signature as Council's authorised representative.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 23/09/2025	Maretich, John	Anna Bay Traffic and Transport Management	31/03/2026	24/09/2025	
1		Kable, Gregory				25/263649
24 Sep 2025						
Staff to prepare and report as per Council resolution.						



Division: General Manager's Office **Date From:** 23/09/2025
Committee: **Date To:** 23/09/2024
Officer: **Printed:** Wednesday, 24 September 2025

Action Sheets Report

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 23/09/2025	Wickham, Tony	Proposal to Alter the Port Stephens Local Government Boundaries	30/01/2026	24/09/2025	
9		Crosdale, Timothy				25/263649
24 Sep 2025						
Resolution of Council is progressing.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 23/09/2025	Wickham, Tony	Policy Review: Council Prosecutions Policy	31/10/2025	24/09/2025	
12		Crosdale, Timothy				25/263649
24 Sep 2025						
On public exhibition for 28 days.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 23/09/2025	Wickham, Tony	Policy Review: Alternative Dispute Resolution Policy	31/10/2025	24/09/2025	
13		Crosdale, Timothy				25/263649
24 Sep 2025						
On public exhibition for 28 days.						

NOTICES OF MOTION

NOTICE OF MOTION

ITEM NO. 1

FILE NO: 25/253213

EDRMS NO: PSC2009-0965

GENERAL MANAGER'S DELEGATIONS

COUNCILLOR: GIACOMO ARNOTT

THAT COUNCIL:

- 1) Notes Councillor interest in understanding the extent of modifications or revocations which can be made to delegations to the General Manager.
- 2) Agrees to seek external legal advice on the following matters, with the advice to be provided to the elected Councillors in a two way briefing:
 - a) Does the Local Government Act at Chapter 12 provide the Elected Council with an absolute right to modify or revoke any delegation it provides to the General Manager?
 - b) Which powers or functions are prohibited from being delegated away from the Elected Council?
 - c) Please explain the effect of s381(3) of the Local Government Act, and how this applies to powers or functions of the Council from other Acts of Parliament.
 - d) If another Act confers a power or function onto the Council, and that power or function is then delegated to the General Manager voluntarily, with s381(3) in mind, does the Council have the absolute right to modify or amend that delegation?
 - e) If any other Act confers a power or function on the Council which has been delegated to the General Manager, does s381(3) make it unlawful for that Act to delegate such power or function directly to the General Manager without the ability of the Elected Council to modify or revoke it? In a situation where this does occur, does the Council have the right to modify or revoke the delegation and rely on s381(3) of the Act to justify it?
 - f) Please review the Council's Delegations Register (Schedule of Delegable Functions) and provide advice on whether any of the LEC Act delegations are unable to be modified or revoked by the Elected Council.
 - g) Please provide advice on whether the General Manager is lawfully able to refuse to allow a motion to appear in a meeting agenda where that motion seeks to modify a delegation of the General Manager which is listed in the Delegations Register, in light of s381(3) of the Local Government Act.

**BACKGROUND REPORT OF: TONY WICKHAM – GOVERNANCE SECTION
MANAGER**

BACKGROUND

Council has sought an estimate of costs. The estimate of costs is \$3,400 to \$4,400.

FINANCIAL/RESOURCE IMPLICATIONS

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

ATTACHMENTS

- 1) Council meeting minutes extract - 26 August 2025. [↓](#)

MINUTES ORDINARY COUNCIL - 26 AUGUST 2025

ITEM NO. 8

**FILE NO: 25/201567
EDRMS NO: PSC2009-0965**

DELEGATIONS: GENERAL MANAGER AND ACTING GENERAL MANAGER AND LOCAL TRAFFIC COMMITTEE APPOINTMENTS

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Receives and notes the Authorisation and Delegation Instrument for prescribed traffic control devices and regulation of traffic at **(ATTACHMENT 1)**.
- 2) Delegate the Functions in accordance with the Instrument of Delegation to the General Manager attached to this report as **(ATTACHMENT 2)**.
- 3) Appoint the 3 Directors (Community Futures, Facilities & Infrastructure and Corporate Strategy and Support) to act in the capacity of the General Manager on a rotational basis, in the absence of the General Manager, and that such appointment ceases upon the return to work of the General Manager or other resolution of Council.
- 4) The Mayor and General Manager be authorised to establish a rotational calendar for the role of acting General Manager.
- 5) Any person acting as General Manager pursuant to this resolution has all the functions, delegations and sub-delegations given to the General Manager by the Council.
- 6) Rename the Local Traffic Committee to Local Transport Forum.
- 7) Appoint Mayor Leah Anderson and Cr Ben Niland as delegates, and Cr Nathan Errington as an alternate delegate to the Local Transport Forum.

**ORDINARY COUNCIL MEETING - 26 AUGUST 2025
MOTION**

203	<p>Councillor Ben Niland Councillor Chris Doohan</p> <p>It was resolved that Council:</p> <ol style="list-style-type: none">1) Receives and notes the Authorisation and Delegation Instrument for prescribed traffic control devices and regulation of traffic at (ATTACHMENT 1).2) Delegate the Functions in accordance with the Instrument of Delegation to the General Manager attached to this report as (ATTACHMENT 2).
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MINUTES ORDINARY COUNCIL - 26 AUGUST 2025

	<ul style="list-style-type: none">3) Appoint the 3 Directors (Community Futures, Facilities & Infrastructure and Corporate Strategy and Support) to act in the capacity of the General Manager on a rotational basis, in the absence of the General Manager, and that such appointment ceases upon the return to work of the General Manager or other resolution of Council.4) The Mayor and General Manager be authorised to establish a rotational calendar for the role of acting General Manager.5) Any person acting as General Manager pursuant to this resolution has all the functions, delegations and sub-delegations given to the General Manager by the Council.6) Rename the Local Traffic Committee to Local Transport Forum.7) Appoint Mayor Leah Anderson and Cr Ben Niland as delegates, and Cr Nathan Errington as an alternate delegate to the Local Transport Forum.
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Cr Giacomo Arnott foreshadowed a matter arising.

Those for the Motion: Mayor Leah Anderson, Crs Rosalyn Armstrong, Giacomo Arnott, Chris Doohan, Nathan Errington, Peter Francis, Paul Le Mottee, Ben Niland, Mark Watson and Jason Wells.

Those against the Motion: Nil.

The motion was carried.

**ORDINARY COUNCIL MEETING - 26 AUGUST 2025
MATTER ARISING**

	<p>Councillor Giacomo Arnott Councillor Rosalyn Armstrong</p> <p>That Council:</p> <ul style="list-style-type: none">1) Notes Councillor interest in understanding the extent of modifications or revocations which can be made to delegations to the General Manager.2) Agrees to seek external legal advice on the following matters, with the advice to be provided to the elected Councillors in a two-way briefing:<ul style="list-style-type: none">a. Does the Local Government Act at Chapter 12 provide the Elected Council with an absolute right to modify or revoke any delegation it provides to the General Manager?b. Which powers or functions are prohibited from being delegated away from the Elected Council?
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MINUTES ORDINARY COUNCIL - 26 AUGUST 2025

	<p>c. Please explain the effect of s381(3) of the Local Government Act, and how this applies to powers or functions of the Council from other Acts of Parliament.</p> <p>d. If another Act confers a power or function onto the Council, and that power or function is then delegated to the General Manager voluntarily, with s381(3) in mind, does the Council have the absolute right to modify or amend that delegation?</p> <p>e. If any other Act confers a power or function on the Council which has been delegated to the General Manager, does s381(3) make it unlawful for that Act to delegate such power or function directly to the General Manager without the ability of the Elected Council to modify or revoke it? In a situation where this does occur, does the Council have the right to modify or revoke the delegation and rely on s381(3) of the Act to justify it?</p> <p>f. Please review the Council's Delegations Register (Schedule of Delegable Functions) and provide advice on whether any of the LEC Act delegations are unable to be modified or revoked by the Elected Council.</p> <p>g. Please provide advice on whether the General Manager is lawfully able to refuse to allow a motion to appear in a meeting agenda where that motion seeks to modify a delegation of the General Manager which is listed in the Delegations Register, in light of s381(3) of the Local Government Act.</p>
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**ORDINARY COUNCIL MEETING - 26 AUGUST 2025
AMENDMENT**

204	<p>Mayor Leah Anderson Councillor Chris Doohan</p> <p>It was resolved that the matter arising be deferred and returned to Council as a Notice of Motion with background of costs to seeking legal advice on the matter of delegations to the General Manager.</p>
------------	--

Those for the Motion: Mayor Leah Anderson, Crs Chris Doohan, Nathan Errington, Paul Le Mottee, Ben Niland, Mark Watson and Jason Wells.

Those against the Motion: Crs Rosalyn Armstrong, Giacomo Arnott and Peter Francis.

The amendment was put and became the motion.

Cr Giacomo Arnott foreshadowed his original motion should the motion fail.

MINUTES ORDINARY COUNCIL - 26 AUGUST 2025

Those for the Motion: Crs Leah Anderson, Rosalyn Armstrong, Chris Doohan, Nathan Errington, Peter Francis, Paul Le Mottee, Ben Niland, Mark Watson and Jason Wells.

Those against the Motion: Cr Giacomo Arnott.

The motion was carried.

**ORDINARY COUNCIL MEETING - 26 AUGUST 2025
PROCEDURAL MOTION**

205	Councillor Ben Niland Councillor Chris Doohan It was resolved that the Council meeting be extended for 30 minutes to 9:30pm.
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Those for the Motion: Mayor Leah Anderson, Crs Rosalyn Armstrong, Giacomo Arnott, Chris Doohan, Nathan Errington, Peter Francis, Paul Le Mottee, Ben Niland, Mark Watson and Jason Wells.

Those against the Motion: Nil.

The motion was carried.

BACKGROUND

The purpose of this report is to provide the General Manager's and acting General Manager's delegations for Council's consideration and adoption, and rename the Local Traffic Committee.

Transport for NSW have recently released an updated Authorisation and Delegation Instrument for prescribed traffic control devices and regulation of traffic at **(ATTACHMENT 1)**.

Accordingly, the General Manager's delegations have been reviewed and are shown at **(ATTACHMENT 2)**.

The Authorisation and Delegation Instrument at **(ATTACHMENT 1)** also changes the name of the Local Traffic Committee to the Local Transport Forum.

Council's delegates on the Local Traffic Committee are Mayor Anderson and Cr Niland, with Cr Errington as an alternate.

Council is required to officially rename the Local Traffic Committee to Local Transport Forum and appoint delegates.

MINUTES ORDINARY COUNCIL - 26 AUGUST 2025

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2025-2029
Resources and finance	Deliver Governance Services and internal audit program

FINANCIAL/RESOURCE IMPLICATIONS

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

LEGAL, POLICY AND RISK IMPLICATIONS

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

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that without the appropriate delegations, the General Manager would not be able to exercise the functions of General Manager.	Low	Adopt the recommendations.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Nil.

MINUTES ORDINARY COUNCIL - 26 AUGUST 2025**COMMUNICATION AND ENGAGEMENT**

Council's Communication and Engagement Strategy uses the IAP2 Framework to identify the level of engagement undertaken. An explanation for each level is shown below.

INFORM	To provide the public with balanced and objective information to assist them in understanding the problems, alternatives, opportunities and/or solutions.
CONSULT	To obtain public feedback on analysis, alternatives and/or decisions.
INVOLVE	To work directly with the public throughout the process to ensure that public concerns and aspirations are consistently understood and considered.
COLLABORATE	To partner with the public in each aspect of the decision including the development of alternatives and the identification of the preferred solution.
EMPOWER	To place final decision-making and/or developed budgets in the hands of the public.
	No external communications and engagement are required for this report.

The following communication and engagement applies to this report.

External communications and engagement

	No external communications and engagement are required for this report.
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Internal communications and engagement

Consultation has been undertaken by the Governance Section with:

- General Manager

OPTIONS

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

ATTACHMENTS

- 1) Transport for NSW - Authorisation and Delegation Instrument
- 2) Instrument of Delegation - General Manager.

MINUTES ORDINARY COUNCIL - 26 AUGUST 2025

COUNCILLORS' ROOM/DASHBOARD

Nil.

TABLED DOCUMENTS

Nil.

MINUTES ORDINARY COUNCIL - 26 AUGUST 2025

ITEM 8 - ATTACHMENT 1 TRANSPORT FOR NSW - AUTHORISATION AND DELEGATION INSTRUMENT



Transport
for NSW

AUTHORISATION AND DELEGATION
PRESCRIBED TRAFFIC CONTROL DEVICES AND
REGULATION OF TRAFFIC

*Roads Act 1993
Road Transport Act 2013*

On behalf of Transport for NSW, I, Josh Murray, Secretary of the Department of Transport:

- a) **REVOKE** the instrument of 31 October 2011 titled "*Roads and Maritime Services – Delegation to Councils*"; and
- b) **REVOKE** the instrument of 12 December 2023 titled "*Instrument of Delegation and Authorisation – Traffic Management and Pedestrian Works – Temporary Delegation to Councils No.2*"; and
- c) **DELEGATE** under section 31(1) of the *Transport Administration Act 1988* and all other enabling powers, the functions set out in **Schedule 1** to the delegates set out in **Schedule 2**, subject to the conditions and limitations set out in **Schedule 4**; and
- d) **AUTHORISE** those delegates, under section 31(2) of the *Transport Administration Act 1988*, to sub-delegate the functions set out in **Schedule 1** to the persons set out in **Schedule 3**; and
- e) **AUTHORISE** the delegates set out in **Schedule 2**, under section 122(b) of the *Road Transport Act 2013*, to install or display (or interfere with, alter, or remove) any prescribed traffic control device required to give effect to the carrying out of traffic control work except where indicated as restricted in the Transport for NSW "*Traffic Signs Register*", subject to the conditions and limitations set out in **Schedule 4**; and
- f) **CONSENT**, under s.87(4) of the *Roads Act 1993*, to the construction, installation, maintenance, repair, removal, or replacement of a portable traffic control light used temporarily by a delegate in the context of carrying out road work or traffic control work, subject to the conditions and limitations set out in **Schedule 4**; and

MINUTES ORDINARY COUNCIL - 26 AUGUST 2025

ITEM 8 - ATTACHMENT 1 TRANSPORT FOR NSW - AUTHORISATION AND DELEGATION INSTRUMENT

Authorisation and Delegation Instrument

- g) **DIRECT** that failure to comply with the conditions and limitations set out in **Schedule 4** renders the prescribed traffic control device authorisation and delegation inoperative with respect to the functions exercised.

Note: the authorisation at (e) above is referred to in this Instrument as "the prescribed traffic control device authorisation".

This Instrument commences on 1 August 2025 and continues in force until revoked.



Josh Murray
Secretary
Department of Transport

Date: 21/07/2025

MINUTES ORDINARY COUNCIL - 26 AUGUST 2025

ITEM 8 - ATTACHMENT 1 TRANSPORT FOR NSW - AUTHORISATION AND DELEGATION INSTRUMENT

Authorisation and Delegation Instrument

SCHEDULE 1 – FUNCTIONS

- (a) The functions and powers of Transport for NSW under section 115(2) of the *Roads Act 1993* to regulate traffic on a public road for purposes other than those set out in that section.
- (b) The power to establish and operate a special event parking scheme for a road under Part 8, Division 3 of the *Road Transport (General) Regulation 2021*.

SCHEDULE 2 – DELEGATES

A council constituted under the *Local Government Act 1993*.

SCHEDULE 3 – SUB-DELEGATES

The general manager of a council, or an employee of the council.

SCHEDULE 4 – CONDITIONS AND LIMITATIONS

Note: Reference to a delegate in this Schedule includes reference to a sub-delegate.

1. Scope of Authorisation and Delegation

A delegate must not exercise a function listed in Schedule 1 of this Instrument and may not use the prescribed traffic control device authorisation:

- (a) outside its local government area as constituted under the *Local Government Act 1993*;
- (b) on a road or part of a road classified as a Freeway, Controlled Access Road, Tollway, or Transitway; or
- (c) on any road identified with the 'Administrative Category' of 'State' in the '*Schedule of Classified Roads and Unclassified Regional Roads*' (as published and amended from time to time by Transport for NSW), except with the written consent of Transport for NSW

Note: The prescribed traffic control device authorisation allows delegates to install, display, etc. those devices and extends to the engagement of third parties (such as developers, road construction contractors, etc.) to install and display any such devices as a consequence of a delegate's decision and approval under this Instrument.

2. Local Transport Forum

- (a) A delegate must convene a Local Transport Forum to which a representative from each of the following is invited to attend:

page 3 of 6

MINUTES ORDINARY COUNCIL - 26 AUGUST 2025

ITEM 8 - ATTACHMENT 1 TRANSPORT FOR NSW - AUTHORISATION AND DELEGATION INSTRUMENT

Authorisation and Delegation Instrument

- (i) the delegate
 - (ii) Transport for NSW
 - (iii) NSW Police Force
 - (iv) The local Member(s) of NSW Parliament
 - (v) The operator of any public passenger service likely to be affected by traffic control work proposed by the delegate
- (b) A delegate may invite any other person to attend the Local Transport Forum.
- (c) A delegate may seek technical advice from the Local Transport Forum regardless of whether this Instrument is being used.
- (d) The Local Transport Forum is to provide advice to the delegate on any matter put before it for advice.
- (e) A delegate must consider any advice provided by the Local Transport Forum.
- 3. Mandatory prior referral of some proposals**
- (a) A delegate must refer to the Local Transport Forum any proposal to exercise a function listed in Schedule 1 of this Instrument or to use the prescribed traffic control device authorisation where that proposal would:
- for a period exceeding **6 months**:
 - (i) restrict or prohibit passage along a road of any persons, vehicles, or animals;
or
 - (ii) compel or prevent a turn from one public road to another public road;
 - or
 - for a period exceeding **24 hours**:
 - (iii) prevent, impede, or hinder the safe or efficient operation of a public passenger service; or
 - (iv) prevent access to a public transport station, stop, wharf, or service; or
 - (v) remove or render less effective any bus priority measure.
- (b) Following consideration of advice provided by the Local Transport Forum, the delegate may proceed with the proposal unless the Transport for NSW representative advises the meeting of the Local Transport Forum that Transport for NSW will be submitting a Statement of Concern within seven (7) days.

MINUTES ORDINARY COUNCIL - 26 AUGUST 2025

ITEM 8 - ATTACHMENT 1 TRANSPORT FOR NSW - AUTHORISATION AND DELEGATION INSTRUMENT

Authorisation and Delegation Instrument

- (c) If a Statement of Concern has been provided to the delegate in accordance with clause (b) above, the delegate may not exercise the relevant function until a further seven (7) days after it has circulated to the members of the Local Transport Forum, a written response addressing the Statement of Concern and setting out the delegate's reasons for proceeding to exercise the function.

4. Keeping of records

- (a) The proceedings of the Local Transport Forum must be recorded and made public as soon as practicable.
- (b) A post facto record of any use of the prescribed traffic control device authorisation (excluding any instance that has already been the subject of prior referral per condition 3) must be tabled at the Local Transport Forum as soon as practicable and no later than three (3) months after the fact.

5. Coordination

- (a) A delegate must consult any public passenger service operator – either directly or via the Local Transport Forum – before exercising any function listed in Schedule 1 of this Instrument or using the prescribed traffic control device authorisation where it is likely to affect the operation of a public passenger service provided by that operator.
- (b) Details of such consultation undertaken outside of the Local Transport Forum must be tabled at the Local Transport Forum as soon as practicable.
- (c) A delegate must give not less than seven (7) days' notice to NSW Police Force and Transport for NSW – either directly or via the Local Transport Forum – before regulating traffic under this Instrument for the purposes of a public event.

6. References

- (a) A delegate must use the NSW Design of Roads and Streets Manual (TS 00066, as amended from time to time) as a primary reference when exercising a function listed in Schedule 1 of this Instrument or using the prescribed traffic control device authorisation.
- (b) Use of a portable traffic control light or R4-212n roadwork speed limit sign under this Instrument must be in accordance with the Transport for NSW Traffic Control at Work Sites Manual (TS 05492, as amended from time to time).

7. Preservation of head of power

Notwithstanding this Instrument, Transport for NSW reserves all and any rights and powers, including to:

- (a) Direct a public authority under clause 8I of Schedule 1 of the *Transport Administration Act 1988*, or alter or remove, or direct the alteration or removal of any prescribed traffic control device, under Part 5.3, Division 2 of the *Road Transport Act 2013*; and

MINUTES ORDINARY COUNCIL - 26 AUGUST 2025

ITEM 8 - ATTACHMENT 1 TRANSPORT FOR NSW - AUTHORISATION AND DELEGATION INSTRUMENT

Authorisation and Delegation Instrument

- (b) Carry out road work in accordance with Part 6 of the *Roads Act 1993*; and
- (c) Carry out traffic control work on any public road, including exclusive power to carry out or consent to the construction, erection, installation, maintenance, repair, removal or replacement of a traffic control light under section 87 of the *Roads Act 1993*; and
- (d) Regulate traffic under Part 8 of the *Roads Act 1993*.
- (e) Revoke or withdraw this delegation, authorisation, or any component of it at any time with respect to any or all delegates.

MINUTES ORDINARY COUNCIL - 26 AUGUST 2025

ITEM 8 - ATTACHMENT 2 INSTRUMENT OF DELEGATION - GENERAL MANAGER.



Port Stephens Council

INSTRUMENT OF DELEGATION TO GENERAL MANAGER

On 26 August 2025 the Port Stephens Council ("Council") resolved that:

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

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MINUTES ORDINARY COUNCIL - 26 AUGUST 2025

ITEM 8 - ATTACHMENT 2 INSTRUMENT OF DELEGATION - GENERAL MANAGER.

delegations of the General Manager for the period only of the absence of the General Manager unless otherwise resolved by the Council.

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

Schedule 1: Limitations

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

Schedule 2: Instruments of Delegation to Council

Delegator	Instrument Name	Date Of Instrument

ITEM 1 - ATTACHMENT 1 COUNCIL MEETING MINUTES EXTRACT - 26 AUGUST 2025.

MINUTES ORDINARY COUNCIL - 26 AUGUST 2025

ITEM 8 - ATTACHMENT 2 INSTRUMENT OF DELEGATION - GENERAL MANAGER.

<p>Transport for NSW</p>	<p>PRESCRIBED TRAFFIC CONTROL DEVICES AND REGULATION OF TRAFFIC</p> <p>DELEGATE the following functions to the General Manager as permitted under the Authorisation and Delegation from Transport for NSW dated 21 July 2025.</p> <p>Functions</p> <p>a) The functions and powers of Transport for NSW under section 115(2) of the <i>Roads Act 1993</i> to regulate traffic on a public road for purposes other than those set out in in that section.</p> <p>b) The power to establish and operate a special event parking scheme for a road under Part 8, Division 3 of the <i>Road Transport (General) Regulation 2021</i>.</p> <p>AUTHORISE the General Manager under section 122(b) of the <i>Road Transport Act 2013</i>, to install or display (or interfere with, alter, or remove) any prescribed traffic control device required to give effect to the carrying out of traffic control work except where indicated as restricted in the Transport for NSW "<i>Traffic Signs Register</i>", subject to the conditions and limitations set out in Schedule 4 (attached); and</p> <p>Note under s.87(4) of the <i>Roads Act 1993</i>, Transport for NSW consent to the construction, installation, maintenance, repair, removal, or replacement of a portable traffic control light used temporarily by a delegate in the context of carrying out road work or traffic control work, subject to the conditions and limitations set out in Schedule 4.</p>	<p>1 August 2025</p>
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ITEM 1 - ATTACHMENT 1 COUNCIL MEETING MINUTES EXTRACT - 26 AUGUST 2025.**MINUTES ORDINARY COUNCIL - 26 AUGUST 2025****ITEM 8 - ATTACHMENT 2 INSTRUMENT OF DELEGATION - GENERAL MANAGER.***Schedule 3: Council Policy Functions*

Code	Policy Function	Conditions / Limitations (if any)
CP017 - Annual leave	Authority to approve annual leave applications for staff within his/her section.	
CP018 - Sick/carer's leave	Authority to approve staff applications for sick or carer's leave within his/her section.	
CP019 - Other leave	Authority to approve staff applications for other leave including but not limited to: long service leave, parental leave, bereavement/compassionate leave or career break, in accordance with any corporate processes.	
CP020 - Overtime/leave in lieu	Authority to approve the allocation and payment of overtime, leave in lieu and payment of meal allowances and travelling time to staff within his/her section.	
CP021 - Authorise scheduled training	Authority to approve the attendance of staff within his/her section at scheduled training courses or seminars.	
CP022 - Authorised scheduled training	Authority to approve attendance of staff within his/her Directorate to attend unscheduled training courses or seminars.	
CP023 - Unscheduled training	Authority to approve attendance of staff within his/her Directorate to attend unscheduled training courses or seminars.	
CP024 - Examination leave	Authority to approve examination and study leave for staff within his/her area of responsibility, in	

ITEM 1 - ATTACHMENT 1 COUNCIL MEETING MINUTES EXTRACT - 26 AUGUST 2025.**MINUTES ORDINARY COUNCIL - 26 AUGUST 2025****ITEM 8 - ATTACHMENT 2 INSTRUMENT OF DELEGATION - GENERAL MANAGER.**

	accordance with any corporate processes.	
CP025 - Approve timesheets	Authority to approve timesheets for staff within his/her area of responsibility.	
CP026 - Approve flexi time	Authority to approve flexi time leave for staff within his/her area of responsibility.	
CP028 - Rostered days off and rostering working times	Authority to approve variations to rostered day off patterns and rostered working times.	
CP034 - Appoint & replace Directors	Authority to appoint and replace Directors in accordance with the current structure and staff establishment numbers and after consultation with Council.	
CP074 - Authority to appoint and dismiss staff	Authority to appoint and dismiss staff within your area of responsibility.	
CP037 - Written and oral communications	Authority to carry out administrative actions, including written and oral communication, necessary to perform the duties and functions of the position.	
CP041 - Authority to sign contracts for sale	Authority to sign contracts of sale in accordance with the Resolution of Council to buy or sell land.	
CP043 - Authority to endorse cheques, bills, promissory notes and EFT	Authority to solely endorse cheques, bills, promissory notes and EFT payable to the Order of the Council in accordance with the duties and functions of the delegates position.	

ITEM 1 - ATTACHMENT 1 COUNCIL MEETING MINUTES EXTRACT - 26 AUGUST 2025.

MINUTES ORDINARY COUNCIL - 26 AUGUST 2025

ITEM 8 - ATTACHMENT 2 INSTRUMENT OF DELEGATION - GENERAL MANAGER.

CP044 - Authority to enter into a contract	Authority to sign and enter into a contract on behalf of Council.	Authority to sign and enter into a contract on behalf of Council, with the exception of the head contracts relating to pools/leisure centres, waste and pound/ animal refuges, all of which must be reported to Council for decision.
CP065 - Authority to use purchasing card	Authority to use purchasing card to pay suppliers within your area of responsibility and within the approved budget. Note: General Manager and Directors only.	
CP069 - Authority to approve purchase orders	Authority to approve purchase orders within your area of responsibility and within the approved budget. Note: General Manager and Directors only.	
CP014 - Media Policy	Authority to issue media releases and to provide supporting factual information and comment in accordance with the Media Policy and associated Management Directive.	
CP030 - Social Media Spokesperson	Authority to act as a social media spokesperson for the purpose of representing Council's position on	

ITEM 1 - ATTACHMENT 1 COUNCIL MEETING MINUTES EXTRACT - 26 AUGUST 2025.**MINUTES ORDINARY COUNCIL - 26 AUGUST 2025****ITEM 8 - ATTACHMENT 2 INSTRUMENT OF DELEGATION - GENERAL MANAGER.**

	<p>matters of policy, and to provide information on Council's activities within their area or responsibility. This function includes the authority to publish content on behalf of Council on social media platforms.</p>	
CP031 - Speak to the Media	<p>Authority to act as a spokesperson for Council for the purposes of representing Council's position on matters of policy, and to provide factual background information on Council's administration and operations within their area of responsibility.</p>	
CP032 - Transfer of vote within a program maximum \$10,000	<p>Authority to transfer a vote within a budget program up to a maximum of \$10,000.</p>	
CP033 - Write off bad debts up to \$10,000	<p>Authority to write off bad debts to an amount of \$10,000 in any one instance.</p>	
CP033A - Write off rate or charges up to \$10,000	<p>Authority to write off rate or charges to an amount of \$10,000 in any one instance.</p>	
CP090 - Authority to serve on Newcastle Airport	<p>Authority to act as a Council nominated director on Newcastle Airport Pty Ltd, Greater Newcastle Aerotropolis Pty Ltd, Newcastle Airport Partnership Company 3 and Newcastle Airport Partnership Company 4.</p>	

Pursuant to a Resolution of the Council at its meeting of 26 August 2025:

ITEM 1 - ATTACHMENT 1 COUNCIL MEETING MINUTES EXTRACT - 26 AUGUST 2025.

MINUTES ORDINARY COUNCIL - 26 AUGUST 2025

ITEM 8 - ATTACHMENT 2 INSTRUMENT OF DELEGATION - GENERAL MANAGER.

Leah Anderson

Mayor

Date:

General Manager's acknowledgement of Delegations of Authority

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

General Manager of Port Stephens Council

Date:

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NOTICE OF MOTION

ITEM NO. 2

FILE NO: 25/265235

EDRMS NO: PSC2024-03148

KINGS HILL

COUNCILLOR: GIACOMO ARNOTT

THAT COUNCIL:

- 1) Notes that the Hunter & Central Coast Regional Planning Panel rejected the Kings Hill Concept Development Application on 4 February 2022, the Land and Environment Court rejected the Kings Hill Concept Development Application on 23 August 2023, and the Land and Environment Court, on appeal, again rejected the Kings Hill Concept Development Application on 17 January 2025.
- 2) Notes that Council has approved Development Application (DA) 16-2013-599-2 on part of the Kings Hill Urban Release Area (KHURA), is assessing KHD Precincts 6 and 7 (DA 16-2024-158-1 and DA 16-2024-174-1), and that significant holdings within the KHURA have been put forward as State Significant Development with the NSW Government (SSD-85368982).
- 3) Agrees that it is critical that the development community, Council staff, and the broader community, understand that Council's current housing targets will fall critically short without Kings Hill being approved.
- 4) Agrees that in light of the implications of point 3, it is essential to diversify Council's strategic planning approach to account for the potential outcome of the sections of the KHURA which have been submitted for State Significant Development being refused or not fully realised.
- 5) Requests the General Manager to continue to focus on pursuing the objectives of the Local Housing Strategy, specifically:
 - a) Increasing building heights and density in Raymond Terrace.
 - b) Identifying and pursuing pathways to resolving identified infrastructure deficiencies in Karuah which could unlock additional land suitable for housing.
 - c) Continuing the process of rezoning and development on land in Salamander Bay, with a view to increasing the building heights as much as is practicable.
 - d) Continuing to promote and facilitate rezoning requests in Medowie and Fullerton Cove, where suitable, to facilitate increased housing, at the highest density which is practicable.
 - e) Any other opportunities, in consultation with the elected Council, which may be developer or Council led, to increase housing densities in existing, well serviced parts of Port Stephens.
- 6) Requests that the General Manager write to the NSW Minister for Planning and Public Spaces seeking advice on how the KHURA (with the exception of existing approvals) could best be managed should SSD-85368982 not be successful,

with a specific consideration given to whether the NSW Government could purchase the land for the purposes of biobanking or some other environmental purpose.

- 7) Agrees that while Council currently supports the KHURA in general, a review of this position will be triggered should SSD-85368982 be refused or not fully realised, through a report to Council outlining options for dealing with the land.
- 8) Requests that the General Manager write to the NSW Minister for Planning and Public Spaces, with a copy of this motion and a request that the assessment occur quickly so that Council's strategic planning can be focused on housing projects that are deliverable in the shortest timeframe possible.

BACKGROUND REPORT OF: BROCK LAMONT – STRATEGY & ENVIRONMENT SECTION MANAGER

BACKGROUND

The Kings Hill Urban Release Area (KHURA) was rezoned from rural land use to residential, commercial and environmental land uses under a site specific Local Environmental Plan in 2010. The site-specific Local Environmental Plan and associated planning provisions were incorporated into the current Port Stephens Local Environmental Plan 2013 as a nominated Urban Release Area.

The KHURA is identified within the NSW Government's Hunter Regional Plan 2041 as 'new residential land' and as a 'priority location for future housing around Williamstown'.

Part of the KHURA has been identified within the Port Stephens Local Housing Strategy (LHS) as part of the Housing Supply Plan (HSP).

The LHS and HSP have been conditionally endorsed by the NSW Department of Planning, Housing and Infrastructure (DPHI). One of the outstanding conditions from DPHI relates to the mapping of the entire KHURA, acknowledging its total potential yield of up to 3,500 dwellings, subject to the resolution of environmental and infrastructure planning issues.

Preliminary discussion regarding this motion with DPHI has indicated that Council would be required to undertake a rigorous planning assessment to inform the most appropriate zoning footprint of the KHURA if not for residential purposes.

This assessment may require significant resources including Council planning staff time, studies and technical costs.

FINANCIAL/RESOURCE IMPLICATIONS

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

ATTACHMENTS

Nil.

NOTICE OF MOTION

ITEM NO. 3

FILE NO: 25/265104

EDRMS NO: A2004-0284

MODEL CODE OF MEETING PRACTICE AND MODEL CODE OF CONDUCT

COUNCILLOR: PETER FRANCIS

THAT COUNCIL:

- 1) Requests the General Manager to write to the Hon. Chris Minns MP, Premier of New South Wales, in light of the proposed changes to the Local Government Model Code of Conduct and Model Code of Meeting Practice and request the Premier sign into legislation and regulation that all State government meetings be laid open to the public, including but not limited to:
 - a) Meetings between the NSW State Governor and the NSW Premier, their Ministers of the Crown, their staff, retained advisors and, all and any other participants.
 - b) Meetings between the NSW Premier, their Ministers of the Crown, their staff, retained advisors and, all and any other participants.
 - c) Meetings between Ministers of the Crown, their staff, retained advisors, and all and any other participants.
 - d) Meetings of Cabinet, Shadow Cabinet, and meetings of all Parliamentary parties, their staff, retained advisors, and all and any other participants.
 - e) Meetings of any NSW Parliamentarian with their staff, retained advisors, and all and other participants.

This will more closely align the State codes with the proposed Local Government codes.

BACKGROUND REPORT OF: TONY WICKHAM – GOVERNANCE SECTION MANAGER

BACKGROUND

The Office of Local Government released the model Code of Meeting Practice (the model Code) on 29 August 2025. The model Code is mandatory across NSW local government councils and is to be in place by 31 December 2025.

FINANCIAL/RESOURCE IMPLICATIONS

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

ATTACHMENTS

Nil.

RESCISSION MOTIONS

NOTICE OF RESCISSION

ITEM NO. 1

FILE NO: 25/233377

EDRMS NO: PSC2024-03150

DEVELOPMENT APPLICATION (DA) 16-2018-386-5 FOR A S4.55(2) MODIFICATION TO APPROVED MIXED USE DEVELOPMENT (RESIDENTIAL FLAT BUILDING AND COMMERCIAL PREMISES) AT 1 YACAABA STREET, NELSON BAY

COUNCILLORS: CHRIS DOOHAN, BEN NILAND, PAUL LE MOTTEE & MARK WATSON

THAT COUNCIL:

Rescind its decision of 26 August 2025, Minute No. 195 on Item No. 1 Development Application (DA) 16-2018-386-5 for a S4.55(2) Modification to Approved Mixed Use Development (Residential Flat Building and Commercial Premises) at 1 Yacaaba Street, Nelson Bay.

ATTACHMENTS

- 1) 26 August 2025 - Minute No. 195 - DA - 1 Yacaaba Street, Nelson Bay. [↓](#)

**ITEM 1 - ATTACHMENT 1 26 AUGUST 2025 - MINUTE NO. 195 - DA - 1
YACAABA STREET, NELSON BAY.**

MINUTES ORDINARY COUNCIL - 26 AUGUST 2025

ITEM NO. 1

**FILE NO: 25/176116
EDRMS NO: 16-2018-386-5**

**DEVELOPMENT APPLICATION (DA) 16-2018-386-5 FOR A S4.55(2)
MODIFICATION TO APPROVED MIXED USE DEVELOPMENT (RESIDENTIAL
FLAT BUILDING AND COMMERCIAL PREMISES) AT 1 YACAABA STREET,
NELSON BAY**

REPORT OF: RYAN FALKENMIRE - DEVELOPMENT AND COMPLIANCE
SECTION MANAGER
DIRECTORATE: COMMUNITY FUTURES

RECOMMENDATION IS THAT COUNCIL:

- 1) Refuses Development Application (DA) No. 16-2018-386-5 for a S4.55(2) modification to an approve mixed use development (residential flat building and commercial premises) – add an additional level and 2 residential units at 1 Yacaaba Street, Nelson Bay (Lot: 200 DP: 1284277) as per the Reasons for Refusal contained in **(ATTACHMENT 1)**.

**ORDINARY COUNCIL MEETING - 26 AUGUST 2025
MOTION**

195	<p>Councillor Giacomo Arnott Councillor Rosalyn Armstrong</p> <p>It was resolved that Council refuses Development Application (DA) No. 16-2018-386-5 for a S4.55(2) modification to an approve mixed use development (residential flat building and commercial premises) – add an additional level and 2 residential units at 1 Yacaaba Street, Nelson Bay (Lot: 200 DP: 1284277) as per the Reasons for Refusal contained in (ATTACHMENT 1).</p>
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In accordance with Section 375 (A) of the Local Government Act 1993, a division is required for this item.

Those for the Motion: Mayor Leah Anderson, Crs Rosalyn Armstrong, Giacomo Arnott, Nathan Errington, Peter Francis and Jason Wells.

Those against the Motion: Crs Chris Doohan, Paul Le Mottee, Ben Niland and Mark Watson.

The motion was carried.

**ITEM 1 - ATTACHMENT 1 26 AUGUST 2025 - MINUTE NO. 195 - DA - 1
YACAABA STREET, NELSON BAY.**

MINUTES ORDINARY COUNCIL - 26 AUGUST 2025

BACKGROUND

The purpose of this report is to present a modification to a development application (DA) to Council for determination. A summary of the proposed modified DA and property details are provided below:

Subject Land	1 Yacaaba Street, Nelson Bay (Lot: 200 DP: 1284277)
Total Area	2,019m ²
Zoning	E1 Local Centre
Submissions	Total 88 submissions <ul style="list-style-type: none"> • Oppose: 76 submissions • Support: 12 submissions 17 submissions of support were received as a standardised form letter and have been counted as 1 unique submission.
Key Issues	<ul style="list-style-type: none"> • Variations to development controls including building height and floor space ratio (FSR) • Impacts on visual amenity • Public interest • Substantially the same development test The key planning issues are detailed further within the Planner's Assessment Report (ATTACHMENT 2).
Applicant	Docaaba Pty Ltd
Land Owner	Docaaba Pty Ltd

The DA has been reported to Council in accordance with Council's 'Council Related Planning Matters Policy' as the DA seeks to vary a development standard by greater than 10%.

Council commissioned an independent assessment of the modification application given the extent of the height variation and strong community interest in the site. The findings from the independent assessment have informed the recommendation and key planning issues outlined in this report.

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

Development Proposal

The proposal is for a Section 4.55(2) modification application to an approved mixed-use development comprising 56 x residential units and 3 x ground floor retail spaces. Specifically, the modification seeks consent for an additional level containing 2 x residential units that would increase the total number of units to 58. The proposed additional units would consist of 3 x bedroom apartments with an open plan living area, kitchen, bathroom, ensuite, balcony areas, combined laundry and associated extension of services including lift and fire stairs.

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The modification would increase the original approved building height from 30.6 metres to 34.52 metres, while the Floor Space Ratio (FSR) would increase from the original approval of 2.84:1 to 3.19:1. No changes to any other elements of the approved development or design are sought under the proposed modification application.

Site Description

The subject site is known as 1 Yacaaba Street, Nelson Bay and legally described as Lot 200 DP 1284277. The site currently contains the partially constructed mixed-use development, which is the subject of this application. The site is a corner allotment and has a frontage to Yacaaba Street to the west and Donald Street to the north.

The site is located within the Nelson Bay Town Centre area surrounded by a mixture of commercial and residential land uses, including shop top housing to the north and south, and retail premises to the west, all within the E1 Local Centre Zone. The adjoining site to the east is currently vacant, however, has approval for a residential flat building comprising 17 units. Developments further to the east predominately comprise a mixture of low and medium density residential housing being within the R3 Medium Density Residential Zone.

Site and Approval History

- DA 16-2018-386-1: The original approval was granted by the elected Council on 9 July 2019 for the demolition of an existing car park and construction of a 9-storey building containing 56 units, 3 ground floor commercial premises and 109 car parking spaces split across 2 basement levels. The development was approved with a maximum building height of 30.6m and Floor Space Ratio (FSR) of 2.84:1.
- DA 16-2018-386-2: S4.55(1A) modification application for changes to the approved building design, including increase of floor to ceiling heights for servicing, reconfiguration of 6 units from 2 bedrooms to 3 bedrooms and increase in parking spaces from 109 to 116. The application increased the building height to 31.02m and the FSR to 2.91:1. The modification application was approved on 24 May 2022.
- DA 16-2018-386-3: S4.55(1A) modification application for several changes to the building design, associated with the public domain works required in accordance with the conditions and to address flooding impacts. No change to the approved height occurred through this modification, however, the FSR increased marginally to 2.99:1. This modification was approved on 20 March 2023.
- DA 16-2018-386-4: S4.55(1A) modification application to marginally increase the building height for the provision of a lift generator room required in accordance with the Building Code of Australia. This application also included the replacement of the approved awning with a pergola on the Level 8 apartment balconies. This modification resulted in the building height being increased to 32.07 metres and was approved on 4 November 2024.

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Key Issues

The key issues identified through the assessment of the modified development relate to the proposed variations to development controls under the Port Stephens Local Environmental Plan (PSLEP), impacts to visual amenity and whether the modification is substantially the same development as that originally approved.

A detailed assessment of the proposed modified development and these matters is contained within the Planner's Assessment Report (**ATTACHMENT 2**).

Variations to Development Controls

The proposed modified development would involve variations to 2 development standards, being building height and FSR. Notwithstanding, the development standard variations and non-compliance remains subject to a merit assessment, as follows:

- The modified proposal would result in further exceedance of the maximum allowable building height for the site prescribed under Clause 4.3 of the PSLEP. A maximum building height of 28 metres applies to the subject site, with the original development application approved at a building height of 30.6 metres. The proposed modification increases the building height to 34.52 metres, which is an increase of 3.92 metres (12.8%) above the originally approved development and 6.52 metres (23.3%) above the applicable building height development standard.
- The extent of the height variation is not supported as it would be inconsistent with the objectives of Clause 4.3 as detailed within the Planner's Assessment Report (**ATTACHMENT 3**). The additional height would increase the visual dominance of the building when viewed from the Nelson Bay Town Centre, the waterway and foreshore, along with residential properties in the R3 zone immediately adjoining the subject site. The additional height to cater for the proposed 2 additional units would also increase the extent of overshadowing generated to the east, south and west of the site.
- The modified development would result in the development exceeding the maximum allowable FSR prescribed under Clause 4.4 of the PSLEP. The modification would have an FSR of 3.19:1, exceeding the permitted FSR of 3:1 and representing a variation of 6.33% to the PSLEP development standard.
- The increase and variation to the FSR is not supported as it would not be compatible with the envisioned outcomes under the Clause as detailed within the Planner's Assessment Report (**ATTACHMENT 2**). The additional level resulting in the exceedance of the 3:1 FSR control would increase the visual bulk and scale of the building and contribute to further overshadowing of adjoining properties. For these reasons, the extent of this variation is not supported.

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Impacts on Visual Amenity

The subject site is located on the eastern side of the Nelson Bay Town Centre, with frontage to Yacaaba Street and Donald Street. The site is zoned E1 Local Centre and immediately adjoins an R3 Medium Density Residential zone to the east. A maximum building height limit of 17.5m under the PSLEP applies to the land immediately to the east and west, while a 28m PSLEP building height limit applies to the land to the north and south. Despite the 17.5m PSLEP building height limit for the R3 zoned land to the east of the site, this area is also mapped as a low and mid-rise housing inner area under the State Environmental Planning Policy (Housing) 2021. This provision of the Housing SEPP enables residential flat building development up to 6 storeys and a maximum building height of 22m.

In considering the context of the development and the subject site, it is noted that the additional level would increase the visual dominance of the building when viewed from multiple locations within Nelson Bay. As such, the proposed building height is deemed to be inconsistent with the context and character of the area due to the associated impact on visual amenity.

Prior to lodgement of the modification application, the Port Stephens Urban Design Panel (UDP) reviewed concepts for the proposed additional level on the approved building. The UDP were generally unsupportive of the proposed additional level, particularly regarding the bulk and scale outcomes. The UDP noted that the modified design would increase the visual presence of the building in the Nelson Bay Township and may impact views. Further details of the comments provided by the UDP are provided in the Planner's Assessment Report (**ATTACHMENT 2**).

Substantially the Same Development

Under Section 4.55(2)(a) of the Environmental Planning and Assessment Act 1979, a consent authority may only modify a development if it is satisfied that the development as modified is substantially the same development as that originally approved.

The modified development would result in notable non-compliances with the applicable development standards arising from the additional level. The additional level would also substantially contribute to the bulk and scale of the building and impact upon the visual amenity of the Nelson Bay locality. Furthermore, as detailed in the Planner's Assessment Report (**ATTACHMENT 2**), the extent of changes between the originally approved development and the modification are notable in respect to the height, gross floor area and subsequently FSR.

Given the extent of changes proposed and comparisons between the quantitative and qualitative elements of the development as approved and as modified, the independent assessment concluded that the development is not considered to satisfy the substantially the same development test under Section 4.55(2)(a) of the Environmental Planning and Assessment Act 1979.

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Conclusion

As detailed in the Planner’s Assessment Report (**ATTACHMENT 2**), the modification application proposes multiple non-compliances against the Port Stephens Local Environmental Plan 2013 development standards. The extent of variations demonstrably has the potential to impact the visual amenity of the Nelson Bay Township, result in additional overshadowing to adjoining properties and notably increase the bulk, scale and visual dominance from the approved development. Moreover, the development as modified is not considered to be substantially the same as originally approved.

On this basis, the proposed development is not recommended for approval as outlined in the Planner’s Assessment Report (**ATTACHMENT 2**) and the Reasons for Refusal (**ATTACHMENT 1**).

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2022-2029
Housing, tourism & economy	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		
External Grants	No		
Other	No		

LEGAL, POLICY AND RISK IMPLICATIONS

The proposed development is inconsistent with the relevant planning instruments, including the PSLEP 2013 and Environmental Planning & Assessment Act 1979. A detailed assessment against these provisions is contained within the Planner’s Assessment Report provided at (**ATTACHMENT 2**). Based on the recommendation by the independent assessment and Council staff, the determination of the DA may be challenged by the applicant in the Land and Environment Court.

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Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
There is a risk that if the DA is refused, the determination of the DA may be challenged by the applicant in the Land and Environment Court.	High	Determine the DA as per the recommendation and reasons for refusal, noting that it is within Council's resources to defend such an appeal in the Land and Environment Court.	Yes
There is a risk that if the DA is approved, the determination of the DA may be challenged by a third party in the Land and Environment Court.	Low	Determine the DA in line with the recommendation and Reasons for Refusal.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Social and Economic Impacts

The Planner's Assessment Report (**ATTACHMENT 2**) prepared by the independent planner noted the proposed modification would have neutral social and economic impacts. Notwithstanding if approved, the development would deliver social and economic benefits through the provision of 2 additional residential units in Nelson Bay Town Centre.

Impacts on Built Environment

The proposed modification is considered to have potential adverse impacts on the built environment due to the extent of the development standard non-compliances proposed. The proposed modification for an additional residential level would result in a visually dominating building that would likely impact on important vistas within and external to the Nelson Bay Town Centre. Furthermore, the modification would increase the extent of overshadowing already generated by the approved development.

Impacts on the Natural Environment

The proposed modification would have negligible additional impacts on the natural environment noting the existing approved environmental controls would remain in place and no vegetation removal is proposed.

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COMMUNICATION AND ENGAGEMENT

Council's Communication and Engagement Strategy uses the IAP2 Framework to identify the level of engagement undertaken. An explanation for each level is shown below.

INFORM	To the public with balanced and objective information to assist them in understanding the problems, alternatives, opportunities and/or solutions.
CONSULT	To obtain public feedback on analysis, alternatives and/or decisions.
INVOLVE	To work directly with the public throughout the process to ensure that public concerns and aspirations are consistently understood and considered.
COLLABORATE	To partner with the public in each aspect of the decision including the development of alternatives and the identification of the preferred solution.
EMPOWER	To place final decision-making and/or developed budgets in the hands of the public.
	No external communications and engagement are required for this report.

The following communication and engagement apply to this report.

External communication and engagement

Public Submissions

CONSULT	<p>The application was exhibited from 22 May 2025 to 5 June 2025 in accordance with the provisions of the Port Stephens Council Community Engagement Strategy.</p> <p>A total of 88 submissions were received during the exhibition period, 12 in support, with 17 submissions in support deemed as 1 unique submission due to being a form letter, and 76 in opposition to the proposal.</p> <p>A summary and response to the submissions is provided in the Planner's Assessment Report (ATTACHMENT 2).</p>
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Internal communications and engagement

Consultation has been undertaken by the Development and Compliance Section with:

- Assets Section
- Community Services Section

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- Strategy and Environment Section

OPTIONS

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

ATTACHMENTS

- 1) Reasons for Refusal.
- 2) Planner's Assessment Report.
- 3) Locality Plan.

COUNCILLORS' ROOM

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

TABLED DOCUMENTS

Nil.

Reasons for Refusal

1. The proposed development under s4.55(2) of the *Environmental Planning and Assessment Act 1979* to modify Development Application 16-2018-386-4 does not satisfy "the same or substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all)" test under s4.55(2)(a) through significant increases in building height (12.8%), building rooftop plant (15.7%), gross floor area (11.8%) and floor space ratio (11.9%) compared to the original development to which consent was granted. The proposed additional residential level, from 9 to 10 storeys, will increase the visual bulk and scale of the building to the detriment of the Nelson Bay Town Centre and adjoining residential areas to the east and south. In the circumstances, the development does not satisfy the provision under s4.55(2) of the *EP&A Act 1979*.
2. The proposed development does not satisfy the requirements under s146 and s147 of Chapter 4 of the State Environmental Planning Policy (Housing) 2021 as the Port Stephens Urban Design Panel does not support any additional development on the upper floor due to height and bulk concerns (s4.15(1)(a)(i) of the *EP&A Act 1979*).
3. The proposed development is not consistent with building height objective under clause 4.3(1) (a) of the Port Stephens LEP2013 as it exceeds the applicable standard applying to the site by 23.3% and the additional residential level would have adverse amenity (overshadowing) and streetscape (visual dominance) impacts for adjacent properties and the Nelson Bay Town Centre (s4.15(1)(a)(i) of the *EP&A Act 1979*).
4. The proposed development is not consistent with the floor space ratio objectives under clause 4.4(1)(a) and (c) of the Port Stephens LEP 2013 as it exceeds the applicable standard by 6.33% and will contribute to adverse amenity (overshadowing) on adjacent properties and streetscape (visual dominance, bulk and scale) impacts when viewed from within the Nelson Bay Town Centre, waterways, foreshore and from adjacent properties and from residential properties to the east (s4.15(1)(a)(i) of the *EP&A Act 1979*).
5. The proposed development fails to satisfy Chapter B8.B - On-site Parking and Control B8.4 of the Port Stephens Development Control Plan resulting in a shortfall of five (5) visitor parking spaces (s4.15(1)(a)(iii) of the *EP&A Act 1979*).
6. The proposed development fails to satisfy Chapter D5 Nelson Bay Centre and Controls D5.1 and D5.5 in terms of preserving important vistas and height, bulk and scale concerns, respectively (s4.15(1)(a)(iii) of the *EP&A Act 1979*).
7. The proposed development will have an adverse impact on the built environment through the proposed additional residential level increasing the building from 9 to

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10 levels, the extent of building height non-compliance with the applicable standard and introducing a non-compliance with the floor space ratio standard of 3:1 applying to the site, thereby resulting in a visually dominating building that will impact on vistas within and external to the Nelson Bay Town Centre and increase the extent of overshadowing already generated by the approved development (s4.15(1)(b) of the *EP&A Act 1979*).

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ITEM 1 - ATTACHMENT 2 PLANNER'S ASSESSMENT REPORT.

 PORT STEPHENS COUNCIL	
S4.55(2) MODIFICATION APPLICATION ASSESSMENT REPORT	
APPLICATION DETAILS	
Modification Application Number	16-2018-386-5
Development Description	Mixed Use Development – Residential flat building (56 residential units comprising a mix of one, two and three bedrooms), commercial premises (three units), basement car parking (109 spaces) and associated works including demolition of existing carpark
Modification Description	S4.55(2) Modification to approved mixed use development (residential flat building and commercial premises) - add additional level and 2 x residential units
Applicant	Docaaba Pty Ltd
Date Of Lodgement	12/05/2025
PROPERTY DETAILS	
Property Address	1 Yacaaba Street NELSON BAY
Lot and DP	LOT: 200 DP: 1284277
Zoning	E1 LOCAL CENTRE
Site constraints that affect the modification	N/A
ASSESSMENT SUMMARY	
Designated Development	The application is not designated development
Integrated Development	The application does not require additional approvals listed under s4.46 of the EP&A Act
Concurrence	The application does not require the concurrence of another body

16-2018-386-5

MODIFICATION PROPOSAL

The s4.55(2) modification application seeks to modify development consent DA No.16-2018-386-1. Council originally granted consent on 9 July 2018 for a mixed-use development, comprising a residential flat building with 56 units (a mix of 1, 2 and 3-bedroom apartments), 3 commercial premises and basement parking with 109 spaces. The approved works included the demolition of an existing at grade car park.

The proposed s4.55(2) modification application seeks to amend the building design through the provision of two (2) additional 3-bedroom apartments to the development, increasing from 56 to 58 apartments. This will result in an additional level to the approved building, from 9 to 10 storeys and an increase to the original approved building height of 30.6 metres (roof - RL42.20) to 34.52 metres (roof top of hob – RL46.12).

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

SITE DESCRIPTION

Site Description

The subject site originally comprised four (4) allotments with frontage to Donald and Yacaaba Streets, Nelson Bay which have since been consolidated and is now known as 1 Yacaaba Street. The site is legally described as Lot 200 in DP1284277 with a land area of approximately 2018.9 square metres.

The site is zoned E1 Local Centre under the Port Stephens Local Environmental Plan 2013 (PSLEP) and is subject to a building height standard of 28 metres and a floor space ratio standard of 3:1. The site is located on the eastern periphery of the Nelson Bay Town Centre, approximately 300 metres from Nelson Bay Marina and the Foreshore Reserve. Currently, construction of the development is underway on the site.

Surrounding Locality

To the south, the site adjoins a 5-6 storey mixed-use building, with additional low-rise commercial and residential buildings nearby.

To the north and west are mostly 1 to 2-storey commercial buildings, including a 3-storey mixed use building with ground floor commercial and apartments above.

North-east of the site is an at-grade parking area and a 5-6 storey residential building.

To the east is the R3 zoned land largely occupied by single and multi-dwelling houses.

16-2018-386-5



Figure 1: 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
16-2018-386-1	Mixed-use development – residential flat building (56 residential units comprising a mix of one, two and three bedrooms), commercial premises (three units), basement car parking (109 spaces) and associated works including demolition of existing car park.	Approved	9 July 2019
16-2018-386-2	S4.55(2) Modification to mixed use development – building design changes	Approved	24 May 2022
16-2018-386-3	S4.55(1A) Modification to mixed use development – building design changes	Approved	20 March 2023
16-2018-386-4	S4.55(1A) Modification to mixed use development – increase in building height to accommodate a lift generator room	Approved	4 November 2024

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The subject site does not have records of contamination or historical applications that would impact the proposed development.

REFERRALS

The proposed development was referred to the following internal specialists and external agencies.

Internal

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

Building Surveyor	
Comment:	Building – proposal supported subject to inclusion of conditions.
Development Engineering	
Comment:	Engineering - application supported subject to conditions.
Development Contributions	
Comment:	Development Contributions – provides updated contributions condition.
Waste Management	
Comment:	Waste Management – application supported with no additional conditions.
Spatial Services	
Comment:	Spatial Services – No comments

All internal referral officers have supported the application.

External (non-integrated)

The proposed modification was referred to the following external agencies in accordance with clause 109 of the regulations:

Choose External Referral Agency	
Comment:	Port Stephens Urban Design Panel (UDP) – The proposed modification was referred to the UDP prior to lodgement. The UDP does not consider that any additional development on the upper floor can be supported due to concerns in respect to height and bulk.

The external referral has not supported the application.

Environmental Planning and Assessment Act 1979

Section 4.55(2) Other modifications

The relevant provision under s4.55(2) of the EP&A Act is :

“(2) Other modifications A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if—

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(a) it is satisfied that the development to which the consent as modified relates is the same or substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all),"

In respect to s4.55(2)(a) the question of what constitutes "substantially the same development" is set out in *Moto Projects (No 2) Pty Limited v. North Sydney Council [1999] NSWLEC 280* where at paragraphs 55 and 56, Bignold, J. describes the process for consideration of a proposed modification of development in the following terms:-

"55. The requisite factual finding obviously requires a comparison between the development, as currently approved, and the development as proposed to be modified. The result of the comparison must be a finding that the modified development is "essentially or materially" the same as the approved development.

*56. The comparative task does not merely involve a comparison of the physical features or components of the development as approved and modified where that comparative exercise is undertaken in some type of sterile vacuum. Rather, the comparison involves an appreciation, **qualitative**, as well as **quantitative**, of the developments being compared in their proper contexts (including the circumstances in which the development consent was granted."*

In *quantitative* terms the original development consent granted to DA16-2018-386-1 was for a 9-storey mixed use development comprising 3 commercial premises on the ground floor and 56 apartments above (5 x 1-bedroom, 27 x 2-bedroom and 24 x 3-bedroom apartments) and basement parking for 109 vehicles.

The approved development achieved a building height of 30.6 metres (roof level RL42.20) with lift/stairwell overrun and plant on roof at RL43.16.

The approved development had a gross floor area of 5,761m² and a floor space ratio (FSR) of 2.85:1.

The modification application 16-2028-386-5 seeks consent for the following:

- An additional residential level resulting in a 10-storey building - an increase of 11.1%,
- An increase from 56 to 58 apartments and changes to apartment mix (5 x 1-bedroom, 21 x 2-bedroom and 30 x 3-bedroom apartments),
- An increase in building height to 34.52 metres (RL46.12 – roof top of hob) – an increase of 12.8%,
- An increase in gross floor area to 6443.25m² (+682.25m²) – an increase of 11.8%.

The key concerns are the relationship of the proposed building height and floor space ratio outcomes with the respective development standards applying to the site under the PSLEP. The proposed height of the building under the modification will be 6.52 metres above the 28-metre height standard under the PSLEP – a non-compliance of 23.3%; the floor space ratio of the building, as modified, will achieve an FSR of 3.19:1, 6.3% above the 3:1 development standard applying to the site.

As demonstrated above, the extent of change between the original approved development and the proposed modification is significant in respect to the height, gross floor area and FSR.

Furthermore, the extent of non-compliance with the applicable development standards arising from the additional level is notable and will contribute to the bulk and scale of the building within the Nelson Bay Town Centre.

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In the circumstances, it is considered that the proposed modification does not satisfy the "substantially the same development as the development for which consent was originally granted" in quantitative terms.

In *qualitative* terms, the proposed additional residential level, from 9 to 10 storeys, will increase the bulk and scale of the building to the detriment of the Nelson Bay Town Centre and adjoining residential areas. In this context the comments of the Port Stephens UDP in their report dated 12 December 2024 are relevant, namely:

"The DRP was unanimous in the opinion that the approved design represents a significant proposal-especially in its bulk and scale – which will have a large presence in the Nelson Bay township, and which will impact views. The Pre-DA proposal for an additional floor substantially exceeds the height control for the site, and further adds bulk to a building that does not fully comply with the Apartment Design Guide minimum boundary setbacks, and which has no deep soil landscape included. The Panel does not consider that any additional development on the upper floor can be supported".

The increases to the building height and floor space ratio arising from the proposed additional residential level to the building will be significant and increase the visual bulk of the building when viewed from various locations within the Town Centre and from adjoining and more distant residential areas to the east and south as evident in the Visual Impact Assessment prepared by Design Cubicle and *Images 1-4* below.



Image 1: Perspective from Nelson Bay Waterfront

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Image 2: Perspective from Stockton Street



Image 3: Perspective from Mantra Apartments

16-2018-386-5



Image 4: Perspective from Mantra Apartments

In the circumstances, it is considered that the proposed modification does not satisfy the “*substantially the same development as the development for which consent was originally granted*” in qualitative terms.

In this context the development, as modified, is not *essentially or materially* the same development as the original approved development.

The proposed modification does not satisfy the requirement under s4.55(2) of the EP&A Act1979.

The development, as modified, is not substantially the same as the approved development for the reasons detailed above.

S4.55(2)(b) – Concurrence and Integrated Development

The application did not require concurrence or integrated referrals.

S4.55(2)(c) – Notification

The application has been notified in accordance with Councils Community Engagement Strategy. As a result of this process, 88 submissions were received, 12 in support (17 submissions in support deemed to be as one unique submission) and 76 in opposition to the proposal.

S4.55(2)(d) – Submissions

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

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Matter raised	Response
Matter 1	
Non-compliance with building height and floor space ratio controls under PSLEP is unreasonable and will detract with the unique appeal of Nelson Bay and the low scale nature of the Town Centre	The non-compliance with the height and FSR standards applying to the site adds to the visual bulk and scale of the building when viewed from within the Town Centre and from surrounding areas; the future character of the Town Centre is prescribed in the PSLEP Building Heights Map at 17.5 metres with a spine down Yacaaba Street at 28 metres.
Matter 2	
Views 1 – the additional residential level will impact adversely of views of Port Stephens currently enjoyed from upper levels of the Landmark Building off Dowling Street.	The addition of a 10th level to the building may increase the extent of view loss from some apartments in the Landmark building, however, given the totality of views available from this site, it is unlikely to be significant.
Matter 3	
Views 2 – Submissions were received raising concerns regarding increased height and bulk of the proposed modification on views from the waterway, foreshore reserve and from residential areas and within the town centre.	The additional level to the building will increase the height and bulk of the approved development when viewed from the waterway, foreshore reserve and surrounding areas as indicated in the Visual Impact Assessment.
Matter 4	
Precedent – submissions raised questions whether the granting of approval to the modification to increase building height through an additional level based on the applicant's representations of escalating costs of construction justify abandonment of building height and bulk standards prescribed by LEP and DCP.	Approval of the modification application by Council could create a precedent for future developments in the Port Stephens LGA.
Matter 5	
Overshadowing – additional level will increase the overshadowing of adjacent properties.	There will be a relatively minor increase in the extent of overshadowing arising from the modification compared to the overshadowing impacts generated by the approved development.

S4.55(3) – S4.15(1) Assessment

S4.15(1)(a)(i) – The provisions of any EPI

The application is not consistent with the provision of the PSLEP 2013 and relevant SEPPs applicable to the proposal.

State Environmental Planning Policies

SEPP (Housing) 2021 – Chapter 4 Design of residential apartment development s146 and 147 are relevant. The proposed modification was referred to the Port Stephens UDP for pre-lodgement advice on 12 December 2024. The UDP report stated, amongst other things,

“The DRP was unanimous in the opinion that the approved design represents a significant proposal –especially in its bulk and scale – which will have a large presence in the Nelson Bay township, and which will impact views. The Pre-DA proposal for an additional floor substantially exceeds the height control for the site, and further adds bulk to a building that does not fully comply with the Apartment Design Guide minimum boundary setbacks, and

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which has no deep soil landscape included. The Panel does not consider that any additional development on the upper floor can be supported.

The following observations were made in respect to the detailed of the proposal, but addressing these issues would unfortunately not have the capacity to resolve the fundamental concerns of the Panel in respect of height and bulk."

SEPP (Sustainable Buildings) 2021 - Satisfied with an Amended BASIX Certificate lodged with the application.

Port Stephens Local Environmental Planning Policy 2013

Clause 2.3 Zone objectives and Land Use Table

The proposed modification to the approved mixed- use development is permissible with consent in the E1 Local Centre zone and is consistent with the zone objectives.

Clause 4.3 Height of Buildings

The site is subject to a 28-metre height standard. At the time the original development was lodged the site was subject to a 15-metre height limit. In 2018, Council adopted the Nelson Bay Town Centre & Foreshore Strategy which endorsed a 28-metre building height for the subject site through a subsequent planning proposal. The original development application was approved at a building height of 30.6 metres (RL42.20).

The proposed modification increases the building height to 34.52 metres (RL46.12) which is an increase of 3.92 metres (12.8%) above the approved development and 6.52 metres (23.3%) above the applicable building height standard. It is noted that a Clause 4.6 does not apply to applications under S.4.55 of the EP&A Act, however, any non-compliance with a development standard is still subject to a merit assessment.

The increase in building height of the 9-storey building is not supported by the Port Stephens (UDP) for reasons detailed elsewhere in this report.

In terms of amenity and streetscape considerations, the additional level will increase the visual dominance of the building when viewed from within the Nelson Bay Town Centre, the waterway and foreshore and residential properties in the R3 zone immediately adjoining the subject site to the east. The proposed increase in building height will increase the extent of overshadowing generated by the approved building to the east, south and west of the site.

Accordingly, it is considered that the proposed increase in the building height is not compatible with Height of Building objective Clause 4.3(1)(a) of the PSLEP, namely "to ensure the height of buildings is appropriate for the context and character of the area".

In the circumstances, the proposal for an additional residential level, increasing the building from 9 to 10 storeys is not supported on a merit assessment consistent with the conclusion reached by the UDP.

Clause 4.4 Floor Space Ratio

The site is subject to a maximum floor space ratio of 3:1. The original development had a gross floor area of 5,761m² and an FSR of 2.85:1. Subsequent modifications have increased the gross floor area to 6,057.75m² and an FSR of 3:1. The proposed additional residential level increases the gross

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floor area of the building 6443.25m², an increase of 385.5m² and an FSR of 3.19:1, 6.33% above the applicable PSLEP development standard.

The increase in floor space ratio to the 9-storey building is not supported by the Port Stephens UDP for reasons of height and bulk, as detailed elsewhere in this report.

In terms of amenity and streetscape considerations, the additional height and bulk of the proposal will increase the visual dominance of the building when viewed from within the Nelson Bay Town Centre, the waterway and foreshore and residential properties in the R3 zone immediately adjoining the subject site to the east and south. The non-complying element of floor area over the 3:1 standard will contribute to further overshadowing of properties located to the east, south and west of the site.

Accordingly, it is considered that the proposal for an additional residential level resulting in an exceedance of the 3:1 Floor Space Ratio standard applying to the site is not compatible with the outcomes envisaged under Floor Space Ratio objectives Clause 4.4(1)(a) and (c), namely "(a) to ensure that buildings are compatible with the bulk and scale of the desired future character of the locality" and "(c) to minimise the effects of bulk and scale of buildings".

In the circumstances, the proposal for an additional residential level, increasing the building from 9 to 10 storeys and contravening the 3:1 FSR standard is not supported on a merit assessment and consistent with the findings reached by the Port Stephens UDP.

Other Clauses 7.1 Acid Sulphate Soils, Essential Services and 7.22 Active Street Frontages of the PSLEP 2013 are not specifically relevant to the modification application.

Assessment	
There are no draft EPI's that are relevant to the proposed development	<input checked="" type="checkbox"/>
Comment: Nil relevant	
A draft EPI is relevant to the proposed development however the application is consistent with the aims and objectives of the document.	<input type="checkbox"/>
Comment: Nil relevant	
S4.15(1)(a)(iii) – Port Stephens Development Control Plan 2014	
DCP Chapter	Compliant
B – General Controls	<input type="checkbox"/>
Comment: The proposed modification does not comply with B8.B On-site parking provision and Control B8.4. The two (2) additional 3-bedroom apartments will generate a requirement for an additional 4 car spaces plus 0.66 visitor parking space, resulting in a total of 120.66 spaces rounded up to 121 spaces. The proposal modification provides 116 car spaces. The application seeks to utilise existing allocated visitor parking spaces on Basement 1 for the additional 4 residential spaces resulting in a shortfall of 5 visitor parking spaces.	
C Development Type	<input checked="" type="checkbox"/>
Comment: There are no specific controls for mixed use/residential flat buildings in the DCP	
D Specific Areas	<input type="checkbox"/>

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Comment:	The site is located in D5 Nelson Bay Centre - Town Living and Commercial Precinct. The approved development and proposed modification are not consistent with the outcomes envisaged under Control D5.1 in terms of preserving important vistas as evidenced by Visual Impact Assessment and Control D5.5 in terms of the height, bulk and scale concerns expressed by UDR Panel.	
S4.15(1)(a)(iiia) – Any planning agreement or draft planning agreement entered into under section 7.4		
Assessment		
There are no planning agreements that have been entered into under section 7.4 relevant to the proposed development.		<input checked="" type="checkbox"/>
Comment:		
S4.15(1)(a)(iv) – The regulations		
Assessment		
There are no matters within the regulations that are relevant to the determination of the application.		<input type="checkbox"/>
Comment:	Environmental Planning & Assessment Regulation 2021 S102 (2) and (3) of the Regulations are satisfied through provision of Design Verification Statement and BASIX Certificate. It is noted that the Port Stephens UDP was not supportive of the proposed additional residential level due to height and bulk concerns. S107 satisfied as modification application notified for 14 days.	
S4.15(1)(b) – The likely impacts of the development		
Assessment		
Social and Economic Environment		
Comment:	The proposed modification would be neutral in social and economic terms.	
Built Environment		
Comment:	The proposal for an additional residential level increasing the building from 9 to 10 levels, the extent of building height non-compliance with the applicable standard and introducing a non-compliance with the floor space ratio standard of 3:1 applying to the site, will result in a visually dominating building that will impact on important vistas within and external to the Nelson Bay Town Centre. Further, an increase in the extent of overshadowing already generated by the approved development will be exacerbated. The Port Stephens UDP does not support the proposed modification on height and bulk concerns.	
Natural Environment		
Comment:	The proposed modification will not impact the natural environment.	
S4.15(1)(c) – The suitability of the site		
The subject site has approval for a 9-storey mixed-use development that already exceeds the building height standard applying to the site, although complies with the floor space ratio standard. The proposed modification seeks to increase the extent of building height non-compliance and introduces a non-compliance with the FSR standard resulting in an increase in height bulk and scale		

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of the development on the site. The Port Stephens UDP does not support the proposed modification on height and bulk concerns. In the circumstances it would be reasonable to conclude that the site is not suitable for the additional building height and floor space.

S4.15(1)(d) – Any submissions

Submissions have been addressed in accordance with S4.55(2)(b) above.

S4.15(1)(e) – The public interest

The proposed modification increases the extent of non-compliance with the applicable height and floor space ratio development standards of the approved development applying to the site under the Port Stephens LEP 2013. A number of submissions raised concerns that approval of the proposed modification could create a precedent for existing and future developments to modify consents to exceed the established development standards under the LEP.

DETERMINATION

The modification application is recommended to be refused.

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ITEM 1 - ATTACHMENT 3 LOCALITY PLAN.



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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.