

# DRAFT

## MINUTES – 25 AUGUST 2020



### PORT STEPHENS COUNCIL

Minutes of Ordinary meeting of the Port Stephens Council held in the Council Chambers, Raymond Terrace on – 25 August 2020, commencing at 8.04pm.

PRESENT: Mayor R Palmer, Councillors J Abbott, G Arnott, G Dunkley, K. Jordan, J Nell, S Smith, General Manager, Corporate Services Group Manager, Facilities and Services Group Manager, Development Services Group Manager and Governance Section Manager.

|     |   |
|-----|---|
| 148 | <p><b>Councillor John Nell</b><br/><b>Councillor Sarah Smith</b></p> <p>It was resolved that the apologies from Cr Paul Le Mottee and Cr Chris Doohan be received and noted, and the leave of absence previously granted to Cr Steve Tucker be noted.</p> |
| 149 | <p><b>Councillor Ken Jordan</b><br/><b>Councillor John Nell</b></p> <p>It was resolved that the Minutes of the Ordinary Meeting of Port Stephens Council held on 11 August 2020 be confirmed.</p>   |
|     | <p>There were no Declaration of Interest received.</p>  |

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# COUNCIL REPORTS

In accordance with Part 9.3 of the Code of Meeting Practice, Cr Arnott moved a matter of urgency. The motion was accepted as an urgent matter of business by the Mayor.

**ORDINARY COUNCIL MEETING - 25 AUGUST 2020  
MOTION**

|            |   |
|------------|---|
| <b>150</b> | <p><b>Councillor Giacomo Arnott<br/>Councillor John Nell</b></p> <p>It was resolved that Council:</p> <ol style="list-style-type: none"><li>1. Express its concern about the ongoing decimation of koala habitat within the Port Stephens Local Government Area and elsewhere;</li><li>2. Note that it supports the protection of koalas in Port Stephens, and as such;</li><li>3. Write to the Federal Minister for the Environment, the Hon Sussan Ley MP, requesting that close attention be paid to the proposed quarry at Brandy Hill that is currently with her for final environmental approval.</li></ol> |
|------------|---|

The motion was carried.

**ITEM NO. 1**

**FILE NO: 20/76043  
EDRMS NO: 16-2019-679-1**

**DEVELOPMENT APPLICATION 16-2019-679-1 FOR DEMOLITION OF EXISTING STRUCTURE AND CONSTRUCTION OF SHOPTOP HOUSING AND DETACHED DWELLING AT 26 KING STREET, RAYMOND TERRACE**

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

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Refuse Development Application 16-2019-679-1 for the demolition of the existing single storey commercial structure and the construction of shop top housing (2 commercial units on the ground floor and 2 residential units above) at 26 King Street, Raymond Terrace (Lot: 1 DP:862816) subject to the Reasons for Refusal contained in **(ATTACHMENT 3)**.

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**ORDINARY COUNCIL MEETING - 25 AUGUST 2020  
MOTION**

|  |   |
|--|---|
|  | <p><b>Councillor John Nell<br/>Councillor Giacomo Arnott</b></p> <p>That Council approve Development Application 16-2019-679-1 for the demolition of the existing single storey commercial structure and the construction of shop top housing (2 commercial units on the ground floor and 2 residential units above) at 26 King Street, Raymond Terrace (Lot: 1 DP:862816) subject to the Condition of Consent contained in <b>(CONDITIONS OF CONSENT 1 TABLED AT THE MEETING)</b>.</p> |
|--|---|

**ORDINARY COUNCIL MEETING - 25 AUGUST 2020  
AMENDMENT**

|  |   |
|--|---|
|  | <p><b>Mayor Ryan Palmer<br/>Councillor Jaimie Abbott</b></p> <p>That Council approve Development Application 16-2019-679-1 for the demolition of the existing single storey commercial structure and the construction of shop top housing (2 commercial units on the ground floor and 2 residential units above) at 26 King Street, Raymond Terrace (Lot: 1 DP:862816) subject to the Condition of Consent contained in <b>(CONDITIONS OF CONSENT 2 TABLED AT THE MEETING)</b>.</p> |
|--|---|

## MINUTES ORDINARY COUNCIL - 25 AUGUST 2020

In accordance with Section 375 (A) of the Local Government Act 1993, a division is required for this item.

Those for the Motion: Mayor Ryan Palmer and Crs Jaimie Abbott.

Those against the Motion: Crs Giacomo Arnott, Glen Dunkley, Ken Jordan, John Nell and Sarah Smith.

The amendment was lost.

The original motion moved by Cr John Nell was subsequently amended to defer item 1 as follows.

### ORDINARY COUNCIL MEETING - 25 AUGUST 2020 MOTION

|            |   |
|------------|---|
| <b>151</b> | <p><b>Councillor John Nell</b><br/><b>Councillor Giacomo Arnott</b></p> <p>It was resolved that Council defer Development Application 16-2019-679-1 for the demolition of the existing single storey commercial structure and the construction of shop top housing (2 commercial units on the ground floor and 2 residential units above) at 26 King Street, Raymond Terrace (Lot: 1 DP:862816) until the Ordinary Council meeting to be held on 22 September 2020.</p> |
|------------|---|

In accordance with Section 375 (A) of the Local Government Act 1993, a division is required for this item.

Those for the Motion: Mayor Ryan Palmer, Crs Jaimie Abbott, Giacomo Arnott, Glen Dunkley, Ken Jordan, John Nell and Sarah Smith.

Those against the Motion: Nil.

The motion was carried.

### BACKGROUND

The purpose of this report is to present Development Application (DA) 16-2019-679-1, to Council for determination. The subject DA relates to land located at 26 King Street, Raymond Terrace, legally identified as Lot: 1 DP: 862816 (the subject site). A locality plan is provided at **(ATTACHMENT 1)**.

The development application was called to Council by Councillor Arnott, Councillor Le Mottee and Councillor Jordan **(ATTACHMENT 4)**.

### Proposal

The application seeks approval for the demolition of the existing single storey commercial building and the construction of:

- Shop top Housing – The ground floor contains 2 commercial tenancies with front porches and kitchenette and bathroom amenities at the rear of each unit. The first floor contains 2 x 2 bedroom shop top residential units, with balconies facing the street. The units are accessed via the rear of the building.
- Dwelling – A detached dwelling will be located at the rear of the lot with a frontage to the Hunter River. The dwelling comprises of 2 bedrooms, open plan living, kitchen and dining area with a laundry.

### Site Description

The subject site has a total area of 690m<sup>2</sup>, is zoned B3 Commercial and is accessible via King Street. An existing single storey commercial structure is located at the front of the subject site. The site is orientated to the south-east fronting King Street and rear with north-east aspect to the Hunter River. A locality plan is provided at **(ATTACHMENT 1)**.

King Street is a mixed use street with a range of commercial, community, retail and residential uses.

### Key Issues

The key issues raised during the assessment of the application are outlined below. A detailed assessment of the development is contained within the Planners Assessment Report **(ATTACHMENT 2)**.

### Flooding impacts

Council flood data and the flood advice (prepared by BMT dated 16 July 2019) provided by the applicant identified the site within an area classified as a high hazard floodway. The current flood levels applicable to the site are:

- Flood Planning Level = 5.8 metres AHD
- 1% AEP (year 2100) = 5.3 metres AHD
- 1% AEP (Current day) = 4.8 metres AHD
- 5% AEP (Current Day) = 3.3 metres AHD
- Probable Maximum Flood = 8.7 metres AHD

The proposed development includes finished floor level (FFL) as follows:

- Commercial units 2.80 metres AHD
- Residential shop top housing units above 6.10 metres AHD
- Detached dwelling 5.90 metres AHD

Residential development in a high hazard floodway is not encouraged under section B5.11 of the Port Stephens Development Control Plan 2014 (DCP 2014). An application may only be considered where it is demonstrated to have a specific community need/benefit, which does not relate to the provision of housing.

The development application cannot be supported noting it provides for residential development in a high hazard floodway, which is inconsistent with the DCP 2014. Further, the development was not able to demonstrate appropriate flood refuge or egress in a major flooding event. Given a probable maximum flood (PMF) of 8.7 metres AHD, the PMF would inundate the proposed shop top housing to a depth of 2.6 metres and the detached dwelling to a depth of 2.8 metres AHD.

In addition to the controls within Council's DCP 2014, clause 7.3 of Council's Local Environmental Plan (LEP 2013) also applies. Clause 7.3(3) states that the development must be compatible with the flood hazard of the land and that it must not have a significant, adverse effect on flood behaviour. Residential development in a high hazard floodway is not considered to be compatible noting the risk to life and property. Further, as the development was not able to demonstrate appropriate flood refuge or egress in a major flooding event, it is likely to place unreasonable and unnecessary strain upon emergency services in a major flooding event.

#### Suitability of the Site

Based on the information provided the assessment has determined that the site is not suitable for the proposed development as:

- The development does not comply with the requirements under the NSW Floodplain Manual and Council's adopted LEP 2013 and DCP 2014.
- The subject site is not suitable for the proposed residential development due to the high hazard floodway constraints and the associated risks.

#### Heritage

The site is located within the Raymond Terrace Heritage Conservation Area. The building located on the site is not listed as a local or State heritage item.

The existing building at 26 King Street has a small amount of historical interest as one of the early structures within the street circa the 1890s. It is considered to have little significance to the conservation area and as such, the demolition of the structure will not adversely impact on the heritage character of the area.

The replacement of the existing building with a new, sympathetically designed shop top building will enhance the Raymond Terrace Conservation Area. The design is considered to reinforce the history character of the street.



Noting the above, any potential impact to the heritage significance of the site is considered reasonably avoided and/or mitigated. Subsequently, the development is acceptable having regards to the relevant heritage provisions applying to the site.

#### Access to Hunter River Foreshore

The Hunter River is located to the rear of the site. The proposal includes the erection of a 1 metre fence along the rear boundary, including across the boundary of the levy bank. The proposed fence will restrict existing access to the river bank and foreshore. The foreshore which runs along the Hunter River to the rear of the property is identified as a key public pathway in Councils adopted Pathways Plans in 2016 for the Raymond Terrace Centre. The inclusion of the rear fence will compromise accessibility along this public pathway.

Further, the inclusion of the rear fence is considered inconsistent with clause 14 of the State Environmental Planning Policy Coastal Management, as it will result in a loss of existing access along the foreshore. On this basis, in the event of an approval, a condition is recommended which requires the rear fence to be removed from the proposed development.

#### Conclusion

Due to the sites location in a High Hazard Floodway, the development is inconsistent with the relevant legislation and policies, including:

- Environmental Planning and Assessment Act 1979, including section 4.15(1)(c) the suitability of the site
- Port Stephens LEP 2013 – clause 7.3 Flood Planning
- Port Stephens DCP 2014 – section B5 Flooding
- Council Floodplain Risk Management Policy
- NSW Government Floodplain Development Manual 2005.

The key issues arising through the assessment of the application are that the proposed development is not suitable outcome for the site, and for these reasons the proposed development is recommended for refusal for the reasons contained in **(ATTACHMENT 3)**.

#### **COMMUNITY STRATEGIC PLAN**

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

**FINANCIAL/RESOURCE IMPLICATIONS**

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

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

**LEGAL, POLICY AND RISK IMPLICATIONS**

The development application is inconsistent with the relevant planning instruments, flood development guidelines and studies including the EP&A Act, LEP 2013, DCP 2014, Council's Floodplain Risk Management Policy and the NSW Government Floodplain Development Manual 2005.

Detailed assessments against these requirements are contained within the Planners Assessment Report provided at **(ATTACHMENT 2)**.

In addition, section 733 of the Local Government Act 1993 (LG Act) provides Council with a general exemption from liability with respect to flood liable land only if the necessary studies and works are carried out in accordance with the principles contained in the NSW Floodplain Development Manual 2005.

The approval of the proposed development is considered to be inconsistent with the principles contained within the NSW Floodplain Development Manual and may negate the good faith immunity provisions in the LG Act.

| <b>Risk</b>  | <b><u>Risk Ranking</u></b> | <b>Proposed Treatments</b>                                  | <b>Within Existing Resources?</b> |
|--|----------------------------|---|-----------------------------------|
| There is a risk that if the application is approved Councils decisions will contradict the requirement set out under clause 7.3 of the LEP 2013. | Medium                     | Determine the application in line with the recommendations. | Yes                               |

| <b>Risk</b>  | <b><u>Risk Ranking</u></b> | <b>Proposed Treatments</b>                                  | <b>Within Existing Resources?</b> |
|--|----------------------------|---|-----------------------------------|
| There is a risk that if the application is approved, Council may be liable for damage or consequences to approving a development located on a site with a known high flood risk. | Medium                     | Determine the application in line with the recommendations. | Yes                               |
| There is a risk that the proposal will expose the property and people to risk of damage and death as a consequence of approving dwellings within a known flood risk area.        | Medium                     | Determine the application in line with the recommendations. | Yes                               |

### **SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

Outside of the flood related issues associated with the proposal, it is considered that the development will have an ongoing positive economic impact on the local area and the broader community through the creation of viable employment and economic activity during both the construction and ongoing operations of the development. The development will allow for the use of existing services and facilities in the locality without requiring significant infrastructure upgrades that burden the public.

However, the flood classification of the site results in the proposed development not being suitable for the site and the proposed development is therefore recommended for refusal for the reasons outlined in **(ATTACHMENT 3)**.

### **CONSULTATION**

#### Internal

Consultation was undertaken with internal technical staff to facilitate the assessment of the application including:

- Building and Developer Relations
- Development Engineering
- Strategic Planning (Development Contributions and Heritage Advisor)
- Natural Resources (Vegetation Management)
- Spatial Services
- Flood Advisory Review Panel.

The referral comments provided by these officers were considered as part of the detailed assessment and are discussed within the Planners Assessment Report (**ATTACHMENT 2**). The application is supported by all internal referrals, other than Development Engineering as per the assessment of the flooding impact subject to the site.

### External

Consultation was undertaken with the following external agencies and groups as part of the assessment process:

- Department of Defence
- Department of Planning, Industry and Environment - Biodiversity Conservation Division (BCD)
- Natural Resources Access Regulator (NRAR).

The referral comments provided by these external agencies and groups were considered during the detailed assessment and are detailed within the Planners Assessment Report (**ATTACHMENT 2**). It is noted that BCD has not provided final comment or concurrence on the application, which can occur as a requirement of a consent, if granted.

### Notification

In accordance with local government legislation the application was notified as per Chapter A.12 of the DCP 2014 for 14 days from 12 November 2019 to 26 November 2019.

During notification, 1 submission was received. A detailed assessment of the submission is outlined within the Planners Assessment Report (**ATTACHMENT 2**).

## **OPTIONS**

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

## **ATTACHMENTS**

- 1) Locality plan. [↓](#)
- 2) Planners Assessment Report. [↓](#)
- 3) Reasons for Refusal. [↓](#)
- 4) Call to Council form. [↓](#)

**COUNCILLORS ROOM**

- 1) Development plans.

**TABLED DOCUMENTS**

Nil.

ITEM 1 - ATTACHMENT 1 LOCALITY PLAN.





**PORT STEPHENS COUNCIL**

# DEVELOPMENT ASSESSMENT REPORT

**APPLICATION REFERENCES**

|                                |   |
|--------------------------------|---|
| <b>Application Number</b>      | 16-2019-679-1   |
| <b>Development Description</b> | Demolition of existing dwelling, construction of shop top housing and detached dwelling |
| <b>Applicant</b>               | MR P M LUBRANO  |
| <b>Land owner</b>              | MR P M LUBRANO  |
| <b>Date of Lodgement</b>       | 24/10/2019  |
| <b>Value of Works</b>          | \$750,000.00  |
| <b>Submissions</b>             | 1   |

**PROPERTY DETAILS**

|                         |   |
|-------------------------|---|
| <b>Property Address</b> | 26 King Street RAYMOND TERRACE  |
| <b>Lot and DP</b>       | LOT: 1 DP: 862816   |
| <b>Current Use</b>      | Vacant commercial two storey building   |
| <b>Zoning</b>           | B3 COMMERCIAL CORE  |
| <b>Site Constraints</b> | <p>Acid Sulfate Soil – class 1, 5</p> <p>Koala Habitat Planning Map – Clear buffer, Clear, Preferred</p> <p>SEPP (Coastal Management) – Coastal Zone Combined Footprint</p> <p>Stormwater Drainage Requirement Areas – for development 100 year ARI detention is required</p> <p>OEH Referral - HV Flood Mitigation Scheme – Levee, flood gate structure</p> <p>RAAF – Height Trigger – 45m</p> <p>RAAF – Bird strike group A</p> <p>SEPP (Vegetation in non-rural areas) – B3</p> <p>Flood prone land - Minimal Risk, High Hazard Storage and Low Hazard Storage – Current GIS available to Planning Staff. Latest Data identifies the site as High Hazard Flood Way</p> <p>Heritage – C2 – Raymond Terrace Heritage Conservation Area – Local</p> |

**PROPOSAL**

The application proposes demolition of the existing dilapidated and vacant single storey building to facilitate the development of:

- shop top housing comprising two commercial units on the ground floor and two residential units above, and
- a detached dwelling to the rear of the lot with a frontage to the Hunter River (**Figure 1**).

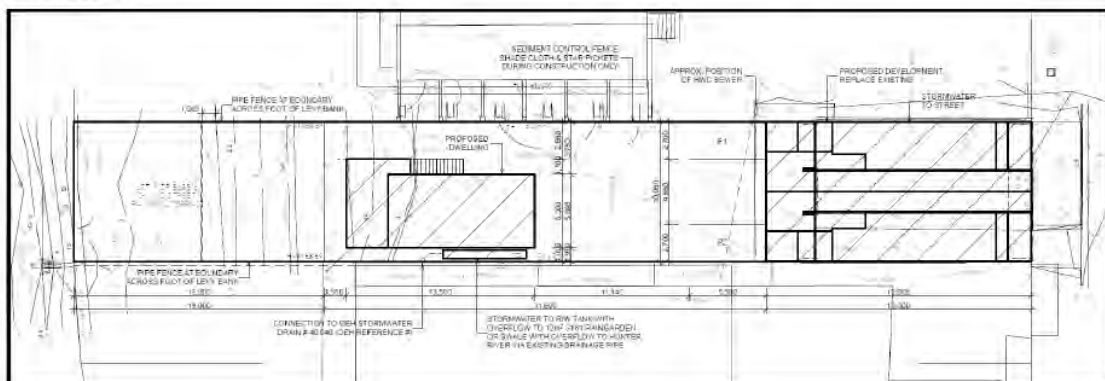
The proposed narrow shopfronts on the ground floor will address King Street contributing to the historic commercial use of the street. The commercial units comprise of unfurnished floor area with kitchenette and WC amenities at the rear of the unit.

The residential dwellings on the upper floor present balconies to the street with living areas and balconies located to the rear that are orientated to the north. Each dwelling comprises two bedrooms, bathroom; laundry; open plan living, kitchen and dining areas and laundry.

The detached dwelling is located at the rear of the site and consists of: two bedrooms, two bathrooms; laundry area; open plan living, kitchen and dining area; and a balcony facing the river. The detached dwelling proposes to be partly constructed on the levee located to the rear of the site. The detached dwelling is proposed to be erected on piers creating space for parking and a stairs connecting to the deck at the rear of the dwelling.

The proposal includes the erection of pipe fencing along the site boundary at the rear (north) of the site across the foot of the levee bank.

The development includes 4 car spaces in total, located on the ground floor to the rear of the shop top housing building. A driveway runs through the centre of the shop top housing to provide access to the off street parking for the residential and commercial components of the development.



**Figure 1:** Proposed site plan

**SITE DESCRIPTION**

The site is known as 26 King Street, Raymond Terrace (LOT: 1 DP: 862816) (**Figure 2**). Hunter River to the rear. The site has an area of 691.48m<sup>2</sup>. The site is regular in shape and falls from the base of the flood levee at the rear of the site towards King Street. The high water mark line (pink line figure 2) runs along the foot of the levee on the river side of site.

The site currently contains a single storey commercial structure. The site to the west includes a three storey commercial premises tenanted by the Department of Defence, and to the east of the site is the Scout Hall.





Figure 2: GIS aerial image of the subject site

Site History

The structure on the site is pre-dates Councils record system. The following applications have occurred on the site:

- Approval for demolition of building (16-2009-972-1)
- Approval for deck application (16-2015-1324-1)
- Refused commercial premises and private jetty (7-1996-1559-1)
- Approved shop fitting (7-1989-60574-1)
- Approved additions to dwelling (7-1989-60571-1)
- Approved Change of use from bike shop to hairdressing shop (7-1989-4270-1)
- Refused shoptop house and two commercial units, detached dwelling and demolition of existing (16-2018-827-1)

Site Inspection

A site inspection was carried out on **12 February 2020**. The subject site can be seen in figures photos below:



**Photo 1: Existing single storey vacant building on the site**



**Photo 2: Eastern side of existing building on the site**



Photo 3: Subject site facing toward to the rear



Photo 4: looking from the rear to the existing building on the site

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

16-2019-679-1

**PLANNING ASSESSMENT**

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

Spatial Services – Supported with conditions of consent.

Building Surveyor – Supported with conditions of consent.

Strategic Planning (Heritage) – Supported with conditions of consent.

Development Engineer – The application is not supported by Council's Development Engineers and Flooding Engineer due to the flood risk associated with the proposal. The information provided relating to water quality and traffic was considered suitable for the site. The application is recommended for refusal as the proposed used and flood hazard are not considered to be suitable.

Flood Advisory Review Panel – The application was referred to the Flood Advisory Review Panel (FARP) following the recommended refusal from the Development Engineers with regard to the proposed use and flood hazard. The proposed use, flood hazard and risk to life and property associated with the development was considered. FARP did not support the proposed development and advised the residential use is not considered suitable within the flood risk category applicable to the site.

The current DCP does not support residential development in this hazard category, being high hazard floodway. Access from the building is not available during the 1% AEP event. As a result, the DCP would require that flood refuge be incorporated into the development due to the potential of the building becoming isolated and an island during flood events. Flood refuge is required at the PMF level (8.7m AHD), which is not possible for either of the buildings. The dwellings would become inundated in the PMF; shop top housing to a depth of 2.6m and the detached dwelling to a depth of 2.8m AHD.

**External Referrals**Department of Defence

The proposed development and subject site is outside of the 20 contour 2025 ANEF for the RAAF Base Williamtown. However, the site will be subject to aircraft flying over and would experience some level of aircraft noise. The site is within an area mapped as Bird strike Group C and certain uses have the potential to attract wildlife and increase the risk of bird strike for aircraft operating from RAAF Base Williamtown. In the event the application is supported, advice to adhere to bird strike requirements would need to be included.

Biodiversity Conservation Division (BCD)

The subject site is located in a declared flood plain and the proposed development includes the construction of a detached dwelling adjacent to the levee bank. As such concurrence under Section 256 of the Water Management Act is required for the proposal.

The applicant has liaised directly with BCD and to resolve the stormwater design in relation to the levee bank. In the event of an approval a condition would require the detailed stormwater design is to be endorsed by BCD prior to the release of the Construction Certificate.

Natural Resources Access Regulator

The application was referred to NRAR to provide advice on the requirement for an 'activity approval' for works within 40m of waterfront land. For the works associated with the new dwelling, activities with respect to dwellings are exempt from requiring controlled activity approval under Schedule 4, Clause 29 of the Water Management (General) Regulation 2018 as long as they are not carried out on or on the bed or bank of any river. The stormwater works, based on the detail on

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

16-2019-679-1

the drawing, will not require a new connection and would not require any works on waterfront land. A controlled activity approval was therefore not required.

**Section 4.15 - Matters for Consideration****Section 4.15(a)(i) - any environmental planning instrument**State Environmental Planning Policy Coastal Management 2018

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

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

The proposed development is sufficiently setback from the North Channel Hunter River waterbody whereby it will not result in any adverse impacts.

As per Clause 14 of the SEPP, development consent must not be granted for development unless the consent authority has considered existing and safe access to and along the foreshore, overshadowing and loss of views, visual amenity and scenic qualities and heritage values. The consent authority must also be satisfied that the development is designed and sited to avoid adverse impacts and to ensure the development has taken into account the surrounding built environment in its design.

The proposed development is an appropriate type and design for the location. The proposed use of the site for commercial and residential purposes adopting a sustainable built form will ensure that the visual amenity of the river is protected. The building envelope and scale of the development is compatible with the natural setting and will not adversely impact view corridors. The inclusion of the rear fence is considered inconsistent with Clause 14 of the State Environmental Planning Policy Coastal Management, as it will result in a loss of existing access along the foreshore. On this basis, in the event of an approval, a condition is recommended which requires the rear fence to be removed from the proposed development.

Therefore, the application generally satisfies the objectives of the SEPP and the other matters for consideration stipulated under Clause 13 and 14 with the exception of the rear fence. The proposal in this regard is supportable subject to a condition requiring the removal of the rear fence, in the event of an approval.

SEPP 55 Remediation of Land

Clause 7 of SEPP 55 requires the consent authority to consider whether land is contaminated, is in a suitable state despite contamination, or requires remediation to be made suitable for the proposed development. It is noted that the subject site is not listed as contaminated land on the NSW EPA website, nor has previous record of contamination in Council's system. The land is not within an investigation area and the general industrial workshop use is not listed as a possible contaminating use. Noting this, the proposed development satisfies the requirements of SEPP No. 55.

SEPP (BASIX) 2004

A BASIX Certificate has been submitted for the proposed development which demonstrates that the proposal can achieve required water and energy saving targets compared to the standard model house.

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

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

The proposed development is defined as shop top housing and a detached dwelling, both of which are permissible with consent in the zone. The development addresses the objectives of the B3 Commercial Core zone by contributing to the variety of commercial, retail, residential and business uses available to the community, encourages employment opportunity and facilitates the growth of Raymond Terrace as regional centre.

**Clause 4.3 – Height of Buildings**

The proposed detached dwelling has a maximum building height of 6.16m and the shop top housing component has a building height of 7.65m to the parapet, both of which are below the maximum permissible building height of 12 metres specified on the Height of Buildings Map.

**Clause 5.10 – Heritage conservation**

The site is located within the Raymond Terrace Heritage Conservation Area. The building is not listed as a local or State heritage item.

The existing building at 26 King Street has a small amount of historical interest as one of the early structures within the street circa the 1890s. It is considered to have little significance or considered to be a contributory item.

According to the Statement of Heritage Impact (SOHI) prepared to support the application, the only criterion under which the existing building demonstrates significance is that of historic association – specifically that the building originally housed the “Gloucester Examiner” newspaper. This association would of course be lost by the total demolition of the building. The photographs which provide the evidence would remain however and would continue the association meaning that the impact of the demolition would be ameliorated. The fact that the building is not a heritage item means that the impact is not immediately affecting a built heritage item. Consent to demolish this building was previously granted in 2010 under DA 16-2009-972- 1.

The replacement of the existing building with a new, sympathetically designed commercial building will continue and enhance the interpretation of King Street as an important part of the development of Raymond Terrace and the centre of commercial activity and social life. It will also reinforce the historic character of the street as a commercial and residential use area. The overall impact of the development will be negligible for King Street.

The proposed development and information supplied has been considered suitable by Council’s heritage advisor. The demolition of the existing structure, as found in the SOHI and will not adversely impact on the heritage character of the area. The referral also notes the site is not likely to warrant an archaeological assessment.

Noting this, any potential impact to the heritage significance of the site is considered reasonably avoided and/or mitigated. Subsequently, the development is consistent with the objectives of this clause.

**Clause 7.1 – Acid Sulfate Soils**

The subject land is mapped as containing potential Class 5 acid sulfate soils. The proposed development is not anticipated to entail excavations below 2 metres, however, given the site proximity to the waterway, exposure of Class 1 ASS is anticipated. If supported, a condition would be required on any consent relating to the requirement of a geotechnical report and associated ASS report.

**Clause 7.2 – Earthworks**

The application proposes earthworks on the site to achieve a level building platform through the use of balanced cut and fill. Earthworks are minor in nature and are not anticipated to result in any negative impacts on the subject or adjoining land, or any public place. No material is proposed to be imported or exported from the subject site and accordingly, the development accords with the requirements of this clause.

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**Clause 7.3 – Flood Planning**

Clause 7.3 seeks to minimise the flood risk to life and property associated with the use of land and to allow development only where it is compatible with the lands flood hazard so as to ensure that significant adverse impacts on the flood behaviours and the environment are avoided.

The site is identified within a high hazard flood category. Current flood levels applicable to the site:

- FPL = 5.8m AHD
- 1% AEP (year 2100) = 5.3m AHD
- 1% AEP (Current day) = 4.8m AHD
- 5% AEP (Current Day) = 3.3m AHD
- PMF = 8.7m AHD

The proposed development includes finished floor level (FFL) are as follows:

- Commercial units 2.80m AHD
- Residential shop top housing units above 6.10m AHD
- Detached dwelling 5.90m AHD

The subject site is located on King Street and has river front access to the Hunter River. In the event of a flood the commercial units would be inundated by flood water and the residential dwellings would experience loss of connection and the ability to leave the site via King Street, which would restrict the safe evacuation of residents resulting in a risk to life in the event of a significant flood event.

The application contains limited information demonstrating the proposed development will not result in unacceptable risk to life and property in the event of a flood in accordance with the requirements of clause 7.3. The design and supporting information contains limited evidence for appropriate measures that will adequately manage risk to life and property from flood events.

As the flood risk is considered significant, the proposal was referred to FARP, responsible for providing advice in relation to flooding for DA's submitted over flood impacted land. The Panel did not support the proposed application in its current design. Council's current policy and DCP requirements do not support or encourage new residential developments within a High Hazard Floodway, however it was noted commercial development could be considered subject to strict flood design controls and measures.

The current proposal is not supported as the current data and flooding policy does not support residential development in high hazard flood way. Given the low lying level of the site, the proposed development is not able to provide flood refuge above the PMF level. In the event of a PMF event, the proposed residential dwelling could be inundated by over 2.5m of water. A refuge is essential for development likely to become isolated in large flooding events as per the DCP. The site will become inundated by flood water and access to the site is lost in a 5% AEP event (approx. 1 in 20 year). In this event, the proposed residential dwellings would lose access and would be isolated until flood waters receded.

Further information prepared by Tattersall Lander dated 14 April 2020 was provided to further support the application with regard to flooding, by providing detail on flood impacts, flood mapping, and behaviour. The information was reviewed by Councils Flooding Engineer and Development Engineers, where it was determined the additional information failed to resolve the key flooding concerns.

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In this regard, the proposed development has not responded to the objectives of Clause 7.3, and development consent should not be granted as the documentation submitted with the application has not demonstrated that the development meets the objectives of the Clause. The proposed development is not considered suitable for the flood hazard applicable to the site.

**Clause 7.6 – Essential Services**

Clause 7.6 requires the consent authority to be satisfied with the connection of essential services to the subject site including water, electricity, sewerage, stormwater and access. The subject site is serviced by reticulated water, electricity and sewer. The subject land also maintains direct access to King Street, meeting the requirements of this clause relating to water, electricity and sewerage.

Stormwater drainage and water quality report was provided with the application. Three 3,000L water tanks with overflows directed to a raingarden and then drainage to the Hunter River and King Street. The stormwater management plan has been assessed and adequately meets the requirements of this clause.

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

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

***Section 4.15(a)(iii) – any development control plan***

Port Stephens Development Control Plan 2014

**Chapter A.12 – Notification and Advertising**

In accordance with the requirements of chapter A.12, the development application was notified for 14 days from 12 November 2019 to 26 November 2019.

**Chapter B2 – Natural Resources**

The application does not include the removal of any significant trees on the site. The site inspection did not identify any trees on the site. The development meets the objectives of this section in this regard.

**Chapter B3 – Environment Management**

The site is located within Acid sulfate soils class 5. Refer to clause 7.1 of the LEP 2013 discussion above for further detail.

**Chapter B4 – Drainage and Water Quality**

The subject site is identified within a drainage requirement area. Given the location and proximity of the site to the Hunter River on-site detention is not considered an effective stormwater management approach. The preferred strategy is to release the water as opposed to retaining stormwater on-site. However, the use of rainwater tanks that maximise the water re-use on the site are encouraged on the site to reduce the total volume of stormwater on the site.

The plans provided show a 12m<sup>2</sup> raingarden proposed to be connected to the 3 x 3000L rain water tanks and discharge to the Hunter River for the proposed detached dwelling. The rain garden will be directed from the site to the Hunter River via the flood levee pipe at the rear of the site. The flood levee pipe is a BCD asset used as part of the Hunter River flood mitigation scheme, therefore any works to this pipe require approval from BCD prior to commencement. In the event of approval, a condition would need to be imposed requiring BCD concurrence prior to the release of a Construction Certificate.

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The stormwater drainage and water quality for the development can be supported subject to conditions.

**Chapter B5 – Flooding**

As discussed in the LEP provisions above, the subject land is mapped as being within the Flood Planning Area as a High Hazard flood way. The FPL for habitable area is 5.8m AHD.

Clause B5.11 of the DCP states development located in high hazard floodway, including new building or structures and fill are not supported unless accompanied by a flood study. The control stipulates that development is not encouraged in a flood way unless the application is considered to demonstrate specific community needs/benefits, which does not relate to the provision of housing as in this instance.

The proposed development does not allow for a flood refuge as the buildings will be inundated during the PMF storm event (8.7m AHD). A flood refuge is required by the DCP B5.10 to ensure developments do not become isolated island during flood events.

The DA was referred to Council FARP for consideration and the panel did not support the application.

As per the advice from Council's Development Engineer, the information failed to provide further detail to support the proposed development. The development can therefore not be supported in this regard.

**Chapter B6 – Essential Services**

As discussed clause 7.6 of the LEP essential services are available. The site has the ability to arrange connection to electricity, water and sewer. A stormwater management plan has been provided with the application that complies with Council specifications.

**Chapter B8 – Heritage**

As discussed Clause 5.10 of the LEP, the subject site is located within the Raymond Terrace Heritage Conservation Area. The development is considered to have no significant impact on the heritage conservation area of Raymond Terrace. The demolition and development is likely to result in a sympathetic development that enhances the conservation area.

The proposed development is considered to be consistent with chapter B8 of the DCP.

**Chapter B9 – Road Network and Parking**

The subject site is identified in the Raymond Terrace Town Centre under Chapter D11 of the DCP. Chapter D11 includes separate parking requirements for the site, permitting a 100% reduction in the total number of parking spaces required. A detailed assessment has been completed below against chapter D 11.

**Chapter C – Development Types**

The shop top housing development comprises both commercial and residential uses, therefore the provisions of chapter C2 and C4 are applicable.

**Chapter C2 – Commercial**Height

The proposed shop top housing is below the 12m requirement of the LEP. The minimum ground floor height requirement for all new development within a commercial zone is 3.5m. The proposed floor to ceiling height is 3m which does not meet this requirement of the DCP however, the requirement of the BCA is 2.4m, which the proposed design meets.

The design of shop top housing includes a parapet for heritage design which has a height of 2.5m.

There are no applicable height requirements under chapter C2 of the DCP for the residential use in the upper floor of the proposed development. The privacy impact of the units on adjoining

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developments has been assessed and as the surrounding development include commercial and recreation structures, there is no adverse impact to privacy a result of residential development.

Site Frontage and Setbacks

The ground floor of the development is built to the front boundary which meets the requirement of the DCP for new developments. The proposed site frontage allows for the zone objectives to be achieved while maintaining the existing character of the area. The DCP requires the second storey to be setback 3.5m from the front boundary for mixed-use development. The upper level residential units have decks facing the street frontage which provide sufficient articulation of the building and meet the intent of the DCP control.

Commercial units at the ground floor include a porch entry to each of the units which is 2.5m deep, the width of each commercial unit is 3.2m, facilitating a 3m wide driveway to occur through the middle of the building. The building is built to the boundary for both side setbacks.

Building Form, Massing and Building Entries

The development is a two storey building that is built to the front and side boundary for the first 19m of the site. The siting of the development is a replacement of the existing structure on the site and continuation the character of the King Street precinct. The shop top housing is to be located in front portion of the site while the detached dwelling is to be located within the rear of the shop top housing development.

The design of the shop top housing is a reflection of the heritage buildings along the street, including a colour bond roof and a parapet in keeping with the character of the street.

Facades

The frontage of the ground floor commercial units will activate the streetscape through the use of floor to ceiling glazing and a clearly identifiable pedestrian entry. The frontage of the building includes a 3m wide driveway through the middle of the structure to provide access to the parking located behind the building line.

The materials and finishes for the King Street frontage are primarily masonry works, whereas the detached dwelling is lightweight clad with colour bond. The design of the shop top development and detached dwelling is an attempt to reflect the historic nature of previous structures within Raymond Terrace. The proposed detached dwelling in the rear is to reflect previous light weight, boat shed structures along the riverfront, and the shop top housing is a reflection of historic terrace style development similar to those remaining along King Street.

A public footpath exists along the King Street front boundary; this meets the requirement of providing clear pedestrian access to the site from the street.

Landscaping

The application does not include detail regarding the proposed landscaping for the site. Through discussions with Council Vegetation Management Officer, the subject site and its constraints and the proposed development do not allow for a practical landscaping outcome. The absence of landscaping is not considered to adversely impact on the subject site or the character of the area.

**Chapter C4 – Dwelling house, secondary dwelling, dual occupancy or ancillary structures**

The development includes a detached dwelling, consisting of one single storey, two bedroom dwelling. An assessment has been made against C4 of the DCP.

| Reference      | Control  | Assessment   |
|----------------|--|--|
| Objective C4.A | <b>Height</b> <ul style="list-style-type: none"> <li>To ensure the height of buildings is</li> </ul> | The detached dwelling has a maximum height of 6.16m. The dwelling is built |

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| <p>Requirement<br/>C4.1</p>                                   | <p>appropriate for the context and character of the area</p> <ul style="list-style-type: none"> <li>To ensure building height reflects the hierarchy of centres and land use structure</li> </ul>  | <p>on piers to permit car parking under the house.</p> <p>The dwelling complies with the maximum height specified under Clause 4.3 of the LEP, and is considered to adequately fulfil the objectives off this control.</p>  |
| <p>Objective C4.B<br/><br/>Requirement<br/>C4.2 – C4.23</p>   | <p><b>Setbacks</b></p> <ul style="list-style-type: none"> <li>To ensure development provides continuity and consistency to the public domain</li> <li>To ensure development contributes to the streetscape and does not detract from the amenity of the area.</li> </ul> | <p>The detached dwelling is setback 16.6m from the rear of the shop top housing development, and 11.14m from the car parking spaces for the residential units. The detached dwelling has a frontage to the Hunter River including a 3m deep x 5.3m wide veranda facing the river frontage.</p> <p>The dwelling achieves the side and rear setback specified under C4.10, C4.12, C4.14 and C4.16, and is considered a suitable outcome for the site.</p>   |
| <p>Objective<br/>C4.C<br/><br/>Requirement<br/>C4.24-4.30</p> | <p><b>Streetscape and privacy</b></p> <ul style="list-style-type: none"> <li>To ensure development activates the streetscape to provide passive surveillance and privacy</li> </ul>  | <p>The detached dwelling addresses the Hunter River and the shop top housing development to the frontage of the site. A veranda with the kitchen and living area opening up to faces of the Hunter River is provided to the rear of the site. Two bedrooms face toward the shop top housing development at the front of the site.</p> <p>The dwelling is residential in character and design, appearing as a simple dwelling. Noting this, the subject dwelling is considered suitable due to design, bulk, scale, form, materials and roof configuration in relation to surrounding buildings on the subject site, as well as neighbouring and adjacent allotments.</p> <p>Privacy screens are to be installed to divide the residential premises, from the commercial premises, limiting privacy impacts for the subject dwellings and neighbouring businesses.</p> |
| <p>Objective<br/>C4.D</p>                                     | <p><b>Private Open Space</b></p> <ul style="list-style-type: none"> <li>To ensure private open space with solar access is provided to allow opportunity for passive and active</li> </ul>  | <p>The dwelling includes a veranda which is 3m deep x 5.3m wide; the veranda is considered suitable private open space for the dwelling on the subject site. The</p>  |

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| Requirement<br>C4.31–C4.34                          | outdoor recreation  | site is located within a commercial precinct and the development presents a design consistent with a mixed-use development.  |
| Objective<br>C4.E<br><br>Requirement<br>C4.35-C4.37 | <b>Car Parking and Garages</b> <ul style="list-style-type: none"> <li>To ensure car parking caters for anticipated vehicle movements to and from the development and does not adversely impact on building articulation</li> </ul>  | Parking is available on site for the detached dwelling, one car space is required and a carport has been provided toward the rear of the dwelling. In the event of an approval, conditions of consent are to be included to ensure parking for each dwelling is clearly signposted. No garages are proposed. |
| Objective<br>C4.F<br><br>Requirement<br>C4.38-4.42  | <b>Landscaping</b> <ul style="list-style-type: none"> <li>To enhance the appearance and amenity of developments through the retention and/or planting of large and medium sized trees</li> <li>To encourage landscaping between buildings for screening.</li> <li>To ensure landscaped areas are consolidated and maintainable spaces that contribute to the open space structure of the area</li> <li>To add value and quality of life for residents and occupants within a development in terms of privacy, outlook, views and recreational opportunities.</li> <li>To create and enhance vegetation links between natural areas and reduce weed potential to environmentally sensitive areas</li> <li>To reduce air borne pollution by reducing the heat island effect</li> <li>To intercept stormwater to reduce stormwater runoff</li> </ul> | The proposed application does not include detail regarding the proposed landscaping for the site. Through discussions with Council Vegetation Management Officer, the subject site and its constraints do not allow for a practical landscaping outcome.   |
| Objective C4.G<br>RequirementC4.43-<br>C4.44        | <b>Site Facilities and Services</b> <ul style="list-style-type: none"> <li>To ensure development provides appropriate facilities and services in the most appropriate site location</li> </ul>  | The proposed development benefits from sufficient space for the storage of waste bins and clothes drying areas.  |

**Chapter D11 – Raymond Terrace**

Site specific development controls are applicable to the proposed development and have been assessed below as follows.

D11.D King Street Heritage Character

The site is identified in the King Street Heritage Precinct as identified in Figure DT of the DCP. The proposed development has been designed in a manner to reflect the heritage character of the street.

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Under this chapter, development is to provide a frontage to King Street that retains the heritage character and has cohesive riverfront built edge that reflects the area river port origin. The development includes a detached dwelling and proposed rear fence on the levy bank, which will support the cohesive riverfront built edge and restrict the further development of public domain elements such as a footpath. The requirements of the Raymond Terrace and Heatherbrae Strategy 2015 – 2031 require open space, public domain and shared path improvements. In the event of any approval, a condition will be required to remove the rear fence proposed on the levee bank.

Development within the King Street Precinct is eligible to receive a 100% reduction in the total parking required. However, comments received from Councils Traffic Engineer indicate that the current parking of King Street is at capacity. Residential street parking is an issue and any parking that cannot be catered for on the site is likely to result in residents having to park at a distance from the site. In this regard, four (4) residential car parking spaces have been provided. Bicycle parking is required to be provided under this chapter the DCP. Noting this, the proposal includes adequate car parking on the site.

Clause D11.22 requires development within the flood planning area to not contribute to the flood hazard and must be able to satisfy the provisions of the LEP relating to flooding. A detailed assessment against the flooding character of the site has been completed above against the LEP and DCP chapter B5. The proposed development is not considered suitable for the subject site due to the flood hazard.

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

There are no regulations that apply to the proposal.

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

Social and Economic Impacts

The proposal will result in three residential units and two commercial units on the site, increasing the housing stock and diversity of the area. The construction of the development would result in employment opportunities during and after the development of the structures and having a monetary contribution to the local area.

Impacts on the Built Environment

As detailed in the SoHI, the subject building is not of heritage significance. The proposed design is considered sympathetic to the King Street historic character. The development will not result in adverse impacts to the surrounding development privacy or solar amenity.

Impacts on the Natural Environment

The proposed development is not considered to be compatible with the flood risk associated with the land and may result in unacceptable impact to life. The proposed development is not considered to align with a suitable use of the site and does not align with Councils endorsed policies.

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

The subject site is located in a mixed use area within the Raymond Terrace Town Centre. The proposal in its current form does not demonstrate a suitable use for the site given the flood category of the land. The residential units are not a considered a suitable use in a high hazard floodway. Further to this, there is limited information with the application to demonstrate the safety

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of residents would be achieved in the event of a significant PMF event on the subject site. The current design would be inundated by flood waters with no adequate flood refuge for the residents.

Based on the information provided for assessment the development cannot be support and is not considered to be a suitable use for the site.

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

Public Submissions

The application was exhibited from 12 November 2019 to 26 November 2019 in accordance with the provisions of the Port Stephens Council Community Participation Plan. One submission received during this time. The matters raised during the exhibition period have been detailed in the table below.

| Comment  | Council response  |
|--|---|
| Car parking spaces – site area not sufficient to provide car parking spaces on the site for both retail and residential requirements   | <p>This has been taken into consideration through the assessment of the application. The subject site is identified within the Raymond Terrace Town Centre under Chapter D11 of the DCP, which includes additional requirements that apply to King Street, these include car parking.</p> <p>The objective of the D11.6 –D11.7 to provide incentive for the retention and redevelopment of King Street heritage. The requirements note sites within the King Street Precinct (which the site is identified within) receive a 100% reduction in the parking requirement under B9 of the DCP.</p> <p>The proposal includes four on-site parking spaces and within the provision of Councils controls.</p> |
| Amenity – the proposed 1m high fence around the property boundary to the waterfront. This restrict the amenity and access of the area. | <p>The proposed 1m high fence is not supported with the proposed application; the fence is not supported by BCD or Council. The fence is inconsistent with Council Pathway Plan which includes the construction of a shared pathway to the rear of the site. In the event of any approval, a condition is required to remove the rear fence.</p>  |

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|  |   |
|--|---|
| <p>Materials – the proposed materials, the large expansive concrete wall and the corrugated iron of the detached dwelling</p>  | <p>Due to the construction requirements relating to fire-rating and safety for building built to boundaries, masonry walls are required and have been proposed. The building elements built to the side and front boundary create a continuous and active street frontage along King Street, which is consistent with the provisions of Council controls.</p> <p>The detached dwelling to the rear is lightweight cladding and corrugated steel.</p> <p>The application has been submitted with a supporting Statement of Heritage Impact (SoHI); which has been considered and supported by council’s heritage advisor. While a mimic heritage style development is not preferred; the proposal does present a design which is sympathetic to the heritage character of the street and has been supported by the SoHI.</p> |
| <p>Density of development – site coverage. The level of residential density is not There is not a development within the street which has the same bulk and scale.</p>                   | <p>The proposed residential component of the application is not considered a suitable use on the site with consideration of the flood hazard applicable to the site.</p>  |
| <p>Soil and Water – limited detail on the proposed stormwater management.</p>  | <p>The stormwater management plan has been assessed and adequately meets the requirements of Council specifications subject to conditions.</p>  |
| <p>Waste – likely to have 10 bins on the site for all the uses. Where will the bins site for collection? How will this affect parking on the site? Goes back to density on the site.</p> | <p>There is suitable space behind building frontage to store waste bins.</p>  |

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

The proposed development is not considered to be in the public interest as the proposed residential component is not consistent or suitable with the flood category applied to the subject site. The impact and increase in risk to life and property as a result of the development on the site in a significant flood event is not supportable in this instance.

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

Development contributions are applicable to the application for the total of three additional dwellings on the site and it will result in an increase in demand for public services and amenities.

**DETERMINATION**

The application is recommended for refusal by the elected Council.

SOPHIE-MARIE EFKARPIDIS | Development Planner



**SCHEDULE 1 – REASONS FOR REFUSAL**

The application is recommended for refusal on the following grounds:

1. The proposed development fails to satisfy Clause 7.3 - Flood Planning of the Port Stephens Local Environmental Plan 2013 as the development does not demonstrate that it is compatible with the high hazard floodway category of the site, including minimising the risk to life associated with the flood hazard (s4.15(1)(a)(i) EP&A Act);
2. The development does not comply with the controls contained within Chapter B5 Flooding of the Port Stephens Development Control Plan (s4.15(1)(a)(iii) EP&A Act);
3. The proposed development does not demonstrate the site is suitable for the proposed site given the flood category of the land s4.15(1)(c) of the EP&A Act); and
4. The proposed development is not considered to be in the public interest as the development is inconsistent with the adopted principles and strategies which seek to promote the appropriate development of the land (s4.15(1)(e) EP&A Act).



**PORT STEPHENS COUNCIL**

116 Adelaide Street  
Raymond Terrace NSW 2324

PO Box 42  
Raymond Terrace NSW 2324

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

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# Call to Council form

Development Application

116 Adelaide Street,  
Raymond Terrace NSW 2324

PO Box 42  
Raymond Terrace NSW 2324

**p** (02) 4988 0255 | **f** (02) 4987 3612  
**e** council@portstephens.nsw.gov.au

**DX** 21406 | **ABN** 16 744 377 876

## DEVELOPMENT APPLICATION (DA) CALL TO COUNCIL REQUEST

We (Mayor/Councillor/s)

|                         |  |
|-------------------------|--|
| Name:                   | Giacomo Arnott   |
| Name:                   | Paul LeMottee  |
| Name:                   | Ken Jordan   |
| request that DA number: | 16-2019-679-1  |
| for DA description:     | Demolition, construction of existing dwelling into shop top / detached |
| located at:             | 26 King St Raymond Terrace NSW 2324                                    |

be reported to Council for determination.

### REASON

Heritage concerns

### SIGNATURE OF APPLICANT/S

|           |                      |      |                                 |
|-----------|----------------------|------|---------------------------------|
| Signature | <input type="text"/> | Date | <input type="text" value="11"/> |
| Signature | <input type="text"/> | Date | <input type="text" value="11"/> |
| Signature | <input type="text"/> | Date | <input type="text" value="11"/> |

### PRIVACY

Port Stephens Council is committed to protecting your privacy. We take reasonable steps to comply with relevant legislation and Council policy. **Purpose:** The purpose of this form is to enable Council to record the matter raised and taken appropriate action. **Intended recipients:** Council employees, contractors and other third parties where appropriate. **Supply:** Voluntary. **Consequence of Non Provision:** Council may not take action on the matter raised. **Storage and security:** This document will be placed on the relevant file and/or saved in Council's records management system in accordance with Council policy and relevant legislation. **Access:** Please contact Council on 02 4988 0255 to enquire how you can access information.

**CONDITIONS OF CONSENT 1 TABLED AT THE MEETING**



**CONDITIONS WITHOUT PREJUDICE**

**1.0 - General Conditions of Consent**

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

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

| Plan reference/<br>drawing no. | Name of plan                   | Prepared by              | Date           |
|--------------------------------|--------------------------------|--------------------------|----------------|
| 19567-7<br>Page 2 of 12        | Site Plan                      | Portside Building Design | 10 June 2020   |
| 19567-7<br>Page 3 of 12        | Ground Floor Plan              | Portside Building Design | 10 June 2020   |
| 19567-7<br>Page 3 of 12        | First Floor Plan               | Portside Building Design | 10 June 2020   |
| 19567-7<br>Page 5 and 6 of 12  | Elevations                     | Portside Building Design | 10 June 2020   |
| 2290-1J<br>Sheet no. 2290-1J-3 | Floor Plan – Two bedroom villa | Uni Plan Group           | 3 October 2019 |
| 2290-1J<br>Sheet no. 2290-1J-3 | Elevations – Two bedroom Villa | Uni Plan Group           | 3 October 2019 |
| 2290-1J<br>Sheet no. 2290-1J-5 | Site Plan – Two bedroom Villa  | Uni Plan Group           | 3 October 2019 |
| 19567-7<br>Page 13 of 12       | Vehicle Turning Circles        | Portside Building Design | 10 June 2020   |

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

- (2) **Amendments to documents and plans** – The development must be amended as follows:
- a) Remove any reference to fencing along the side and rear boundaries of the site;
  - b) Remove any reference to the detached single dwelling located toward the rear of the site.

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



- (3) **BASIX Certificate** – The applicant must undertake the development strictly in accordance with the commitments listed in the BASIX certificate(s) for the development to which this consent applies.
- (4) **Building Code of Australia** – All building work must be carried out in accordance with the BCA. In this clause, a reference to the BCA is a reference to that Code as in force on the date the application for the relevant Construction Certificate is made.
- (5) **Home Building Act** – Pursuant to Section 4.17(11) of the *Environmental Planning & Assessment Act 1979*, residential building work within the meaning of the *Home Building Act 1989* shall not be carried out unless the PCA for the development to which the work relates:
- a) In the case of work for which a principal contractor has been appointed:
    - i. Has been informed in writing of the name and licence number of the principal contractor; and
    - ii. Where required has provided an insurance certificate with the name of the insurer by which work is insured under Part 6 of that Act.
  - b) In the case of work to be carried out by an owner-builder:
    - i. Has been informed in writing of the name of the owner-builder; and
    - ii. If the owner-builder is required to hold an owner-builder permit under that Act; has provided a copy of the owner-builder permit.
- (6) **Home Building Act – Insurance** – Building work that involves residential building work within the meaning of the *Home Building Act 1989*, must not commence until such time as a contract of insurance is in force in accordance with Part 6 of that Act.
- This clause does not apply:
- a) to the extent to which an exemption is in force under Clause 187 or 188 of the *Environmental Planning & Assessment Regulation 2000 (EP&A Regulation 2000)*, subject to the terms of any condition or requirement referred to in Clause 198(6) or 188(4) of the *EP&A Regulation 2000*; or
  - b) to the erection of a temporary building, other than a temporary structure to which subclause (1A) of Clause 98 of the *EP&A Regulation 2000* applies.
- (7) **Excavation for residential building works** – If the approved development involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the consent must, at the person's own expense:
- a) protect and support the adjoining premises from possible damage from the excavation; and
  - b) where necessary, underpin the adjoining premises to prevent any such damage.
- This condition does not apply if the person having the benefit of the consent owns the adjoining land or the owner of the adjoining land has given consent in writing that



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

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

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

- (9) **Shoring of adjoining buildings** - Where any excavation required for the development extends below the level of the base of a footing of a building, structure or work on adjoining land (including within a road or rail corridor), the person having the benefit of the consent must protect and support that building, structure or work from possible damage from the excavation, and where necessary underpin the building, structure or work to prevent any such damage.

- (10) **Outdoor lighting** – All lighting must comply with AS 1158 'Lighting for Roads and Public Spaces' and AS 4282 'Control of Obtrusive Effects of Outdoor Lighting'.

- (11) **Roof mounted equipment** – All roof mounted equipment such as air conditioning units, service pipes and vents etc., required to be installed must be concealed within the external walls of the development or adequately screened so as not to be visible from a public place.

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

## 2.0 – Prior to Issue of a Construction Certificate

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

- (1) **Dilapidation report – Adjoining property** - A dilapidation report including a photographic survey of the following adjoining properties must be provided to the Certifying Authority. The dilapidation report must detail the physical condition of those properties, both internally and externally, including walls, ceilings, roof, structural members and other similar items.

The dilapidation report is to be prepared by a qualified Structural Engineer and the owner of the adjoining property. All costs incurred in achieving compliance with this condition must be borne by the applicant.



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

Details demonstrating compliance must be provided to the Certifying Authority.

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

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

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

Details demonstrating compliance must be provided to the Certifying Authority.

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

- (5) **Flood Risk Management Plan** - A Flood Risk Management Plan prepared by a qualified Flood Engineer must be provided to the Certifying Authority demonstrating compliance with the following:

- a) The design must show that the proposed development is capable of withstanding the effects of flood waters, including immersion, structural stability, buoyancy and impact and loading from debris up to and including the 1% Annual Exceedance Probability (AEP) event.
- b) Certification that the proposed development/ building flood refuge is capable of withstanding the force of any flood waters experienced up to the Probable Maximum Flood Event (PMF).
- c) Certification demonstrating that any damage to the proposed development sustained in a flood will not generate debris capable of causing damage to downstream buildings or property
- d) Certification demonstrating that the rainwater tank, finishes, plant fittings and equipment and any other buoyant fixtures will be of materials and functional capacity to withstand the forces of floodwater in events up to and including the 1% AEP event including hydrostatic pressure, hydrodynamic pressure and buoyancy forces.



- (6) **Soil, erosion, sediment and water management** – An Erosion and Sediment Control Plan (ESCP) must be prepared in accordance with Council's Infrastructure Specifications. Details demonstrating compliance must be provided to the Certifying Authority.
- (7) **Roads Act Approval** – For construction/reconstruction of Council infrastructure, including vehicular crossings. Footpath, kerb and gutter, stormwater drainage, an application must be made for a Roadworks Permit under Section 138B of the *Roads Act 1993*.
- (8) **Construction Environment Management Plan** - A Construction Environment Management Plan (CEMP) must be submitted to and approved by to the Certifying Authority and Council. The required CEMP must outline the sequence and construction methodology and specify mitigating measures to ensure all works are carried out with minimal environmental impact in relation to project staging, waste management, noise and dust management, traffic management and environmental management.
- (9) **Section 7.11 Development contributions** – A monetary contribution is to be paid to Council for the provision of two additional dwellings pursuant to Section 7.11 of the *Environmental Planning & Assessment Act 1979* and the Port Stephens Local Infrastructure Contributions Plan 2020 towards the provision of the following public facilities:

| Facility                               | Per Lot/Dwelling | Total \$        |
|--|------------------|-----------------|
| Civic Administration – Plan Management | \$593            | \$1,186         |
| Civic Administration – Works Depot     | \$1,546          | \$3,092         |
| Town Centre Upgrades                   | \$4,165          | \$8,330         |
| Public Open Space, Parks & Reserves    | \$929            | \$1,858         |
| Sports & Leisure Facilities            | \$2,207          | \$4,414         |
| Road Works                             | \$5,188          | \$10,376        |
| Shared Paths                           | \$2,510          | \$5,020         |
| Bus Facilities                         | \$17             | \$34            |
| Fire & Emergency Services              | \$34             | \$68            |
| Flood & Drainage                       | \$672            | \$1,344         |
| <b>Total</b>                           |                  | <b>\$35,722</b> |

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

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

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



- (10) **Long service levy** – In accordance with Section 34 of the *Building and Construction Industry Long Service Payments Act 1986*, the applicant must pay a long service levy at the prescribed rate to either the Long Service Payments Corporation or Council for any works that cost \$25,000 or more.
- (11) **Hunter Water Corporation approval** – A Section 49 Application under the *Hunter Water Act 1991* must be lodged with Hunter Water Corporation (HWC) and details of the Notice of Compliance from HWC must be provided to the Certifying Authority.
- (12) **Agency Approval** – Prior to the issue of any Construction Certificate, approval under Section 256 of the *Water Management Act 2000* for works to be undertaken within the vicinity of the levee bank is to be obtained and provided to Council and the Certifying Authority.

### 3.0 - Prior to Commencement of Works

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

- (1) **Public liability insurance** – The owner or contractor must take out a Public Liability Insurance Policy with a minimum cover of \$20 million in relation to the occupation of, and works within, public property (i.e. kerbs, gutters, footpaths, walkways, reserves, etc.) for the full duration of the proposed works.  
Evidence of this Policy must be provided to Council and the Certifying Authority.
- (2) **Notice of Principal Certifying Authority appointment** – Notice must be given to Council at least two days prior to subdivision and/or building works commencing in accordance with Clause 103 of the *Environmental Planning & Assessment Regulation 2000*. The notice must include:
  - a) a description of the work to be carried out;
  - b) the address of the land on which the work is to be carried out;
  - c) the Registered number and date of issue of the relevant development consent;
  - d) the name and address of the Principal Certifying Authority (PCA), and of the person by whom the PCA was appointed;
  - e) if the PCA is an accredited certifier, their accreditation number, and a statement signed by the accredited certifier consenting to being appointed as PCA; and
  - f) a telephone number on which the PCA may be contacted for business purposes.
- (3) **Notice commencement of work** – Notice must be given to Council at least two days prior to subdivision and/or building works commencing in accordance with Clause 104 of the *Environmental Planning & Assessment Regulation 2000*. The notice must include:
  - a) the name and address of the person by whom the notice is being given;
  - b) a description of the work to be carried out;
  - c) the address of the land on which the work is to be carried out;

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- d) the Registered number and date of issue of the relevant development consent and construction certificate;
- e) a statement signed by or on behalf of the Principal Certifying Authority to the effect that all conditions of the consent that are required to be satisfied prior to the work commencing have been satisfied; and
- f) the date on which the work is intended to commence.

(4) **Sign of PCA and contact details** – A sign must be erected in a prominent position on the site stating the following:

- a) that unauthorised entry to the work site is prohibited;
- b) the name of the principal contractor (or person in charge of the site) and a telephone number on which that person can be contacted at any time for business purposes and outside working hours;
- c) the name, address and telephone number of the Principal Certifying Authority.

The sign must be maintained while the work is being carried out and must be removed upon the completion of works.

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

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

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

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

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

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

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





- (8) **Soil erosion and sediment control** – Soil erosion and sediment controls must be implemented prior to works commencing on the site in accordance with 'Managing Urban Stormwater – Soils and Construction (the blue book)' and any Sediment and Erosion plans approved with this Development Consent.

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

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

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

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

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

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

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

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be vented to an elevation above the FPL.

- (12) **Protection of trees /existing street trees** – Protection of trees to be retained must be in accordance with AS490 'Protection of Trees on Development Sites' and the following:
- a) No existing nature strip(s), street tree(s), tree guard(s), protective bollard(s), garden bed surrounds or root barrier installation(s) must be disturbed, relocated, removed or damaged during earthworks, demolition, excavation (including any driveway installation), construction, maintenance and/or establishment works applicable to this consent, without Council agreement and/or consent.

- (13) **Hazardous Building Materials Assessment** – A Hazardous Building Material Assessment (HBMA) must be undertaken on all buildings and structures to be demolished that identifies all hazardous components on site. A HBMA report must be provided to the PCA and Council.

Once hazardous components are identified, all demolition works that involve the demolition and removal of the hazardous materials must ensure that all site personnel are protected from risk of exposure in accordance with relevant SafeWork NSW and NSW Demolition Guidelines. Premises and occupants on adjoining land must also be protected from exposure to any hazardous materials.

#### 4.0 - During Works

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

- (1) **Construction hours** – All work (including delivery of materials) must be restricted to the hours of 7.00am to 5.00pm Monday to Saturday inclusive. Work is not to be carried out on Sundays or Public Holidays.
- (2) **Toilet facilities** – Temporary toilet(s) must be provided and maintained on site from the time of commencement of building work to completion. The number of toilets provided must be one toilet per 20 persons or part thereof employed on the site at any one time.  
The temporary toilet is to be either connected to the sewerage system or an approved septic tank or otherwise may be a chemical toilet supplied by a licensed contractor.
- (3) **Compliance with BCA** – All building work must be carried out in accordance with the requirements of the Building Code of Australia.
- (4) **Excavations and backfilling** – All excavations and backfilling associated with this development consent must be executed safely, and be properly guarded and protected to prevent them from being dangerous to life or property, and in accordance with the design of a suitably qualified Structural Engineer.



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

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

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

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

- (5) **Building height** – A survey report prepared by a Registered Surveyor confirming that the building height complies with the approved plans or as specified by the development consent, must be provided to the Principal Certifying Authority prior to the development proceeding beyond frame stage.
- (6) **Survey report** – The building must be set out by a Registered land surveyor. A peg out survey detailing the siting of the building in accordance with the approved plans must be provided to the Principal Certifying Authority prior to the pouring of concrete.
- (7) **Construction Management Plan implementation** - All construction management procedures and systems identified in the approved Construction Environmental Management Plan (CEMP) must be introduced and maintained during construction to ensure works are undertaken safely and with minimal environmental impact.
- (8) **Stormwater disposal** – Following the installation of any roof, collected stormwater runoff from the structure must be:
  - a) Connected an existing stormwater drainage easement/system/street.
- (9) **Placement of fill** - Filling must not be placed in such a manner that natural drainage from adjoining land will be obstructed or in such a manner that surface water will be diverted.

Further, any alterations to the natural surface contours must not impede or divert natural surface water runoff so as to cause a nuisance to adjoining property owners.
- (10) **Unexpected finds contingency (general)** – Should any suspect materials (identified by unusual staining, odour, discolouration or inclusions such as building rubble, asbestos, ash material, etc.) be encountered during any stage of works (including earthworks, site preparation or construction works, etc.), such works must cease immediately until a qualified environmental specialist has been contacted and conducted a thorough assessment.



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

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

- (11) **Soil, erosion, sediment and water management** – All requirements of the Erosion and Sediment Control Plan or Soil and Water Management Plan must be maintained at all times during the works and any measures required by the plan must not be removed until the site has been stabilised.
- (12) **Offensive noise, dust, odour and vibration** – All work must not give rise to offensive noise, dust, odour or vibration as defined in the *Protection of the Environment Operations Act 1997* when measured at the nearest property boundary.

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

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

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

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

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- (5) **Stormwater/drainage works** – All stormwater and drainage works required to be undertaken in accordance with this consent must be completed.  
The certification/verification must be provided to the satisfaction of the Principal Certifying Authority.
- (6) **Rectification damage to public infrastructure** – The applicant must rectify any new damage to public infrastructure to the satisfaction of the Council as the Roads Authority.
- (7) **Completion of Roads Act Approval works** – All approved road, footpath and/or drainage works, including vehicle crossings, have been completed in the road reserve in accordance with the Roads Act Approval to the satisfaction of the Council as the Roads Authority.
- (8) **Protection and Certification of Electrical Services** – All power points, fittings, electrical connections and the incoming meter box are to be located above the Flood Planning Level (FPL).  
Switches, light fittings and power points may be located below the FPL provided they are capable of being isolated by a single Residual Current Device (RCD) protected switch that is located above the FPL. Certification of these works are to be provided to the Principal Certifying Authority.
- (9) **Works as Executed Plans and Report** – Works As Executed Plans must be prepared and provided to the Principal Certifying Authority in accordance with Council's Infrastructure Specifications confirming all stormwater drainage systems are constructed in accordance with the approved plans/documentation.
- (10) **Flood Risk Management Plan** – A Certificate of Compliance prepared by a suitably qualified Flood engineer must be provided to the Principal Certifying Authority stating that all aspects of the Flood Risk Management Plan have been completed and/or implemented in accordance with the approved Plan.
- (11) **Flood Emergency Response Plan** – A Flood Emergency Response Plan (FERP) for the proposed development must be provided to the Principal Certifying Authority. The FERP must include the following as a minimum:
  - a) A map of the proposed evacuation route to a suitable location above the Probable Maximum Flood (*PMF*) that provides adequate shelter from the storm, including the route direction and description and identification of the depth of floodwater along the evacuation route in the 1% Annual Exceedance Probability flood and *PMF* events;



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

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

- (12) **Car parking requirements** – A minimum of 3 car parking spaces are to be provided in accordance with AS2890 and the approved plans. Parking must be permanently marked on the pavement surface.
- (13) **Bicycle requirements** – Bicycle parking racks to accommodate 3 bicycles must be installed in accordance with the approved plans.
- (14) **Section 88B Instrument** - The applicant must prepare a Section 88B Instrument which incorporates the following easements, positive covenants and restrictions to user where necessary:
  - a) Right of carriageway for footpath access (the owners of the subject properties burdened by the right of carriageway must be responsible for ongoing maintenance and the Public Liability of the right of carriageway).

The drainage easement/s must be in accordance with Council's Infrastructure Specifications. This documentary evidence must include confirmation that the easement has been registered on the title of the relevant lot(s).

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## 6.0 – Ongoing Use

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

- (1) **Maneuvering of vehicles** – All vehicles must enter and exit the site in a forward direction.
- (2) **Removal of graffiti** – The owner/manager of the site is responsible for the removal of all graffiti from the building and fences within 48 hours of its application.
- (3) **Parking areas to be kept clear** – At all times, the loading, car parking spaces, driveways and footpaths must be kept clear of goods and must not be used for storage purposes.
- (4) **Privacy screen** – Any privacy screen/s must be permanently maintained in accordance with the approved plans for the life of the development.
- (5) **Residential air conditioning units** – The operation of air conditioning units must operate as follows:
  - a) be inaudible in a habitable room during the hours of 10pm – 7am on weekdays and 10pm to 8am on weekends and public holidays;
  - b) emit a sound pressure level when measured at the boundary of any neighbouring residential property, at a time other than those specified in (a) above, which exceeds the background (LA90, 15 minutes) by more than 5dB(A). The source noise level must be measured as a LAeq 15 minute; and
  - c) not discharge any condensate or moisture onto the ground surface of the premises or into stormwater drainage system in contravention of the requirements of the *Protection of the Environment Operations Act 1997*.
- (6) **Fire Safety Schedule** – At all times, a copy of the Fire Safety Schedule and Fire Safety Certificate must be prominently displayed in the building and a copy forwarded to the Commissioner of New South Wales Fire Brigades in accordance with the *Environmental Planning & Assessment Regulations 2000*.
- (7) **Waste management and collection** – At all times, the strata management body must make arrangements for the placement of the garbage bins at the kerbside for weekly collection and must ensure the return of the bins to the garbage room as soon as practicable after collection.



**Advice Note(s):**

- (1) **'Dial Before you Dig'** – Before any excavation work starts, contractors and others should phone the "Dial Before You Dig" service to access plans/information for underground pipes and cables.
- (2) **Dividing fences** – The erection of dividing fences under this consent does not affect the provisions of the *Dividing Fences Act 1991*. Under this Act, all relevant parties must be in agreement prior to the erection of any approved dividing fence/s under this consent.  

Council has no regulatory authority in this area and does not adjudicate civil disputes relating to the provision of, or payment for, the erection of dividing fences. If there is a neighbour dispute about the boundary fence and you are seeking mediation, you may contact the Community Justice Centre, or if legal advice or action is required, you may contact the Chamber Magistrate.
- (3) **Disability Discrimination Act** – The Commonwealth Disability Discrimination Act makes it an offence to discriminate against people on the grounds of disability, in the provision of access to premises, accommodation, or services. It is the owner/applicants responsibility to ensure compliance with the requirements of this Act.
- (4) **Aboriginal archaeological deposit** – In the event of any Aboriginal artefact, object or structure being unearthed, all work must cease immediately in the affected area, and the Biodiversity Conservation Division (BCD) shall be informed of the discovery. Work must not recommence until the material has been inspected and permission has been given by BCD to proceed.
- (5) **Flood information is subject to change** – You are advised that flood information is subject to change if more accurate data becomes available to Council. It is the responsibility of the applicant to use the most up-to-date flood information. Prior to applying for a construction certificate, Council should be contacted to verify the currency of the flood information.
- (6) **Flood Emergency Response Plan** – It is the Applicants responsibility to ensure the Flood Emergency Response Plan notes that the mezzanine floor does not provide safe flood refuge during a Probable Maximum Flood event.
- (7) **Flood Evacuation Plan** – A flood evacuation plan indicating that permanent, fail-safe, maintenance free measures are incorporated in the development to ensure that timely, orderly and safe evacuation of people and potential pollutant material from the buildings on-site should a flood occur. Details demonstrating compliance must be provided to the Certifying Authority with the Construction Certificate application.
- (8) **Responsibility for damage for tree removal/pruning** – The applicant is responsible for any damage caused to existing public utilities, footpaths or public

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roads during the cutting down, grinding, removal and disposal of the timber and roots. Care must also be taken by the applicant and the applicant's agents to prevent any damage to adjoining properties. The applicant or the applicants' agent may be liable to pay compensation to any adjoining owner if, due to tree works, damage is caused to such adjoining property.

- (9) **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,
- (10) **Addressing** – Prior to occupying the development the approved units are to be identified as follows:
- a) Commercial Space (Eastern Side) – Shop 1, 26 King Street, RAYMOND TERRACE;
  - b) Commercial Space (Western Side) – Shop 2, 26 King Street, RAYMOND TERRACE;
  - c) Dwelling (Eastern Side) – Unit 3, 26 King Street, RAYMOND TERRACE;
  - d) Dwelling Western Side) – unit 4, 26 King Street, RAYMOND TERRACE; and
  - e) Detached dwelling – 26 A King Street, RAYMOND TERRACE.

Council's Spatial Services Team should be contacted via email at: [addressing@portstephens.nsw.gov.au](mailto:addressing@portstephens.nsw.gov.au) to obtain correct property addressing details. Please state your Development Approval number and property address in order to obtain the correct house numbering.

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

**CONDITIONS OF CONSENT 2 TABLED AT THE MEETING**



**CONDITIONS WITHOUT PREJUDICE**

**1.0 - General Conditions of Consent**

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

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

| Plan reference/<br>drawing no. | Name of plan                   | Prepared by              | Date           |
|--------------------------------|--------------------------------|--------------------------|----------------|
| 19567-7<br>Page 2 of 12        | Site Plan                      | Portside Building Design | 10 June 2020   |
| 19567-7<br>Page 3 of 12        | Ground Floor Plan              | Portside Building Design | 10 June 2020   |
| 19567-7<br>Page 3 of 12        | First Floor Plan               | Portside Building Design | 10 June 2020   |
| 19567-7<br>Page 5 and 6 of 12  | Elevations                     | Portside Building Design | 10 June 2020   |
| 2290-1J<br>Sheet no. 2290-1J-3 | Floor Plan – Two bedroom villa | Uni Plan Group           | 3 October 2019 |
| 2290-1J<br>Sheet no. 2290-1J-3 | Elevations – Two bedroom Villa | Uni Plan Group           | 3 October 2019 |
| 2290-1J<br>Sheet no. 2290-1J-5 | Site Plan – Two bedroom Villa  | Uni Plan Group           | 3 October 2019 |
| 19567-7<br>Page 13 of 12       | Vehicle Turning Circles        | Portside Building Design | 10 June 2020   |

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

- (2) **Amendments to documents and plans** – The development must be amended as follows:
- a) Remove any reference to fencing along the side and rear boundaries of the site. Amended plans or documentation demonstrating compliance must be provided to the Certifying Authority and Council prior to the issue of a Construction Certificate.



- (3) **BASIX Certificate** – The applicant must undertake the development strictly in accordance with the commitments listed in the BASIX certificate(s) for the development to which this consent applies.
- (4) **Building Code of Australia** – All building work must be carried out in accordance with the BCA. In this clause, a reference to the BCA is a reference to that Code as in force on the date the application for the relevant Construction Certificate is made.
- (5) **Home Building Act** – Pursuant to Section 4.17(11) of the *Environmental Planning & Assessment Act 1979*, residential building work within the meaning of the *Home Building Act 1989* shall not be carried out unless the PCA for the development to which the work relates:
- a) In the case of work for which a principal contractor has been appointed:
    - i. Has been informed in writing of the name and licence number of the principal contractor; and
    - ii. Where required has provided an insurance certificate with the name of the insurer by which work is insured under Part 6 of that Act.
  - b) In the case of work to be carried out by an owner-builder:
    - i. Has been informed in writing of the name of the owner-builder; and
    - ii. If the owner-builder is required to hold an owner-builder permit under that Act; has provided a copy of the owner-builder permit.
- (6) **Home Building Act – Insurance** – Building work that involves residential building work within the meaning of the *Home Building Act 1989*, must not commence until such time as a contract of insurance is in force in accordance with Part 6 of that Act.
- This clause does not apply:
- a) to the extent to which an exemption is in force under Clause 187 or 188 of the *Environmental Planning & Assessment Regulation 2000 (EP&A Regulation 2000)*, subject to the terms of any condition or requirement referred to in Clause 198(6) or 188(4) of the *EP&A Regulation 2000*; or
  - b) to the erection of a temporary building, other than a temporary structure to which subclause (1A) of Clause 98 of the *EP&A Regulation 2000* applies.
- (7) **Excavation for residential building works** – If the approved development involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the consent must, at the person's own expense:
- a) protect and support the adjoining premises from possible damage from the excavation; and
  - b) where necessary, underpin the adjoining premises to prevent any such damage.
- This condition does not apply if the person having the benefit of the consent owns the adjoining land or the owner of the adjoining land has given consent in writing that



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

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

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

- (9) **Shoring of adjoining buildings** - Where any excavation required for the development extends below the level of the base of a footing of a building, structure or work on adjoining land (including within a road or rail corridor), the person having the benefit of the consent must protect and support that building, structure or work from possible damage from the excavation, and where necessary underpin the building, structure or work to prevent any such damage.

- (10) **Outdoor lighting** – All lighting must comply with AS 1158 'Lighting for Roads and Public Spaces' and AS 4282 'Control of Obtrusive Effects of Outdoor Lighting'.

- (11) **Roof mounted equipment** – All roof mounted equipment such as air conditioning units, service pipes and vents etc., required to be installed must be concealed within the external walls of the development or adequately screened so as not to be visible from a public place.

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

## 2.0 – Prior to Issue of a Construction Certificate

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

- (1) **Dilapidation report – Adjoining property** - A dilapidation report including a photographic survey of the following adjoining properties must be provided to the Certifying Authority. The dilapidation report must detail the physical condition of those properties, both internally and externally, including walls, ceilings, roof, structural members and other similar items.

The dilapidation report is to be prepared by a qualified Structural Engineer and the owner of the adjoining property. All costs incurred in achieving compliance with this condition must be borne by the applicant.



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

Details demonstrating compliance must be provided to the Certifying Authority.

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

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

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

Details demonstrating compliance must be provided to the Certifying Authority.

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

- (5) **Flood Risk Management Plan** - A Flood Risk Management Plan prepared by a qualified Flood Engineer must be provided to the Certifying Authority demonstrating compliance with the following:

- a) The design must show that the proposed development is capable of withstanding the effects of flood waters, including immersion, structural stability, buoyancy and impact and loading from debris up to and including the 1% Annual Exceedance Probability (AEP) event.
- b) Certification that the proposed development/ building flood refuge is capable of withstanding the force of any flood waters experienced up to the Probable Maximum Flood Event (PMF).
- c) Certification demonstrating that any damage to the proposed development sustained in a flood will not generate debris capable of causing damage to downstream buildings or property
- d) Certification demonstrating that the rainwater tank, finishes, plant fittings and equipment and any other buoyant fixtures will be of materials and functional capacity to withstand the forces of floodwater in events up to and including the 1% AEP event including hydrostatic pressure, hydrodynamic pressure and buoyancy forces.



- (6) **Soil, erosion, sediment and water management** – An Erosion and Sediment Control Plan (ESCP) must be prepared in accordance with Council's Infrastructure Specifications. Details demonstrating compliance must be provided to the Certifying Authority.
- (7) **Roads Act Approval** – For construction/reconstruction of Council infrastructure, including vehicular crossings. Footpath, kerb and gutter, stormwater drainage, an application must be made for a Roadworks Permit under Section 138B of the *Roads Act 1993*.
- (8) **Construction Environment Management Plan** - A Construction Environment Management Plan (CEMP) must be submitted to and approved by to the Certifying Authority and Council. The required CEMP must outline the sequence and construction methodology and specify mitigating measures to ensure all works are carried out with minimal environmental impact in relation to project staging, waste management, noise and dust management, traffic management and environmental management.
- (9) **Section 7.11 Development contributions** – A monetary contribution is to be paid to Council for the provision of two additional dwellings pursuant to Section 7.11 of the *Environmental Planning & Assessment Act 1979* and the Port Stephens Local Infrastructure Contributions Plan 2020 towards the provision of the following public facilities:

| Facility                               | Per Lot/Dwelling | Total \$        |
|--|------------------|-----------------|
| Civic Administration – Plan Management | \$593            | \$1,186         |
| Civic Administration – Works Depot     | \$1,546          | \$3,092         |
| Town Centre Upgrades                   | \$4,165          | \$8,330         |
| Public Open Space, Parks & Reserves    | \$929            | \$1,858         |
| Sports & Leisure Facilities            | \$2,207          | \$4,414         |
| Road Works                             | \$5,188          | \$10,376        |
| Shared Paths                           | \$2,510          | \$5,020         |
| Bus Facilities                         | \$17             | \$34            |
| Fire & Emergency Services              | \$34             | \$68            |
| Flood & Drainage                       | \$672            | \$1,344         |
| <b>Total</b>                           |                  | <b>\$35,722</b> |

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

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

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



- (10) **Long service levy** – In accordance with Section 34 of the *Building and Construction Industry Long Service Payments Act 1986*, the applicant must pay a long service levy at the prescribed rate to either the Long Service Payments Corporation or Council for any works that cost \$25,000 or more.
- (11) **Hunter Water Corporation approval** – A Section 49 Application under the *Hunter Water Act 1991* must be lodged with Hunter Water Corporation (HWC) and details of the Notice of Compliance from HWC must be provided to the Certifying Authority.
- (12) **Agency Approval** – Prior to the issue of any Construction Certificate, approval under Section 256 of the *Water Management Act 2000* for works to be undertaken within the vicinity of the levee bank is to be obtained and provided to Council and the Certifying Authority.

### 3.0 - Prior to Commencement of Works

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

- (1) **Public liability insurance** – The owner or contractor must take out a Public Liability Insurance Policy with a minimum cover of \$20 million in relation to the occupation of, and works within, public property (i.e. kerbs, gutters, footpaths, walkways, reserves, etc.) for the full duration of the proposed works.  
Evidence of this Policy must be provided to Council and the Certifying Authority.
- (2) **Notice of Principal Certifying Authority appointment** – Notice must be given to Council at least two days prior to subdivision and/or building works commencing in accordance with Clause 103 of the *Environmental Planning & Assessment Regulation 2000*. The notice must include:
  - a) a description of the work to be carried out;
  - b) the address of the land on which the work is to be carried out;
  - c) the Registered number and date of issue of the relevant development consent;
  - d) the name and address of the Principal Certifying Authority (PCA), and of the person by whom the PCA was appointed;
  - e) if the PCA is an accredited certifier, their accreditation number, and a statement signed by the accredited certifier consenting to being appointed as PCA; and
  - f) a telephone number on which the PCA may be contacted for business purposes.
- (3) **Notice commencement of work** – Notice must be given to Council at least two days prior to subdivision and/or building works commencing in accordance with Clause 104 of the *Environmental Planning & Assessment Regulation 2000*. The notice must include:
  - a) the name and address of the person by whom the notice is being given;
  - b) a description of the work to be carried out;
  - c) the address of the land on which the work is to be carried out;

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- d) the Registered number and date of issue of the relevant development consent and construction certificate;
- e) a statement signed by or on behalf of the Principal Certifying Authority to the effect that all conditions of the consent that are required to be satisfied prior to the work commencing have been satisfied; and
- f) the date on which the work is intended to commence.

(4) **Sign of PCA and contact details** – A sign must be erected in a prominent position on the site stating the following:

- a) that unauthorised entry to the work site is prohibited;
- b) the name of the principal contractor (or person in charge of the site) and a telephone number on which that person can be contacted at any time for business purposes and outside working hours;
- c) the name, address and telephone number of the Principal Certifying Authority.

The sign must be maintained while the work is being carried out and must be removed upon the completion of works.

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

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

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

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

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

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

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





- (8) **Soil erosion and sediment control** – Soil erosion and sediment controls must be implemented prior to works commencing on the site in accordance with 'Managing Urban Stormwater – Soils and Construction (the blue book)' and any Sediment and Erosion plans approved with this Development Consent.

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

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

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

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

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

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

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



be vented to an elevation above the FPL.

- (12) **Protection of trees /existing street trees** – Protection of trees to be retained must be in accordance with AS490 'Protection of Trees on Development Sites' and the following:
- a) No existing nature strip(s), street tree(s), tree guard(s), protective bollard(s), garden bed surrounds or root barrier installation(s) must be disturbed, relocated, removed or damaged during earthworks, demolition, excavation (including any driveway installation), construction, maintenance and/or establishment works applicable to this consent, without Council agreement and/or consent.

- (13) **Hazardous Building Materials Assessment** – A Hazardous Building Material Assessment (HBMA) must be undertaken on all buildings and structures to be demolished that identifies all hazardous components on site. A HBMA report must be provided to the PCA and Council.

Once hazardous components are identified, all demolition works that involve the demolition and removal of the hazardous materials must ensure that all site personnel are protected from risk of exposure in accordance with relevant SafeWork NSW and NSW Demolition Guidelines. Premises and occupants on adjoining land must also be protected from exposure to any hazardous materials.

#### 4.0 - During Works

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

- (1) **Construction hours** – All work (including delivery of materials) must be restricted to the hours of 7.00am to 5.00pm Monday to Saturday inclusive. Work is not to be carried out on Sundays or Public Holidays.
- (2) **Toilet facilities** – Temporary toilet(s) must be provided and maintained on site from the time of commencement of building work to completion. The number of toilets provided must be one toilet per 20 persons or part thereof employed on the site at any one time.  
The temporary toilet is to be either connected to the sewerage system or an approved septic tank or otherwise may be a chemical toilet supplied by a licensed contractor.
- (3) **Compliance with BCA** – All building work must be carried out in accordance with the requirements of the Building Code of Australia.
- (4) **Excavations and backfilling** – All excavations and backfilling associated with this development consent must be executed safely, and be properly guarded and protected to prevent them from being dangerous to life or property, and in accordance with the design of a suitably qualified Structural Engineer.



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

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

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

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

- (5) **Building height** – A survey report prepared by a Registered Surveyor confirming that the building height complies with the approved plans or as specified by the development consent, must be provided to the Principal Certifying Authority prior to the development proceeding beyond frame stage.
- (6) **Survey report** – The building must be set out by a Registered land surveyor. A peg out survey detailing the siting of the building in accordance with the approved plans must be provided to the Principal Certifying Authority prior to the pouring of concrete.
- (7) **Construction Management Plan implementation** - All construction management procedures and systems identified in the approved Construction Environmental Management Plan (CEMP) must be introduced and maintained during construction to ensure works are undertaken safely and with minimal environmental impact.
- (8) **Stormwater disposal** – Following the installation of any roof, collected stormwater runoff from the structure must be:
  - a) Connected an existing stormwater drainage easement/system/street.
- (9) **Placement of fill** - Filling must not be placed in such a manner that natural drainage from adjoining land will be obstructed or in such a manner that surface water will be diverted.

Further, any alterations to the natural surface contours must not impede or divert natural surface water runoff so as to cause a nuisance to adjoining property owners.
- (10) **Unexpected finds contingency (general)** – Should any suspect materials (identified by unusual staining, odour, discolouration or inclusions such as building rubble, asbestos, ash material, etc.) be encountered during any stage of works (including earthworks, site preparation or construction works, etc.), such works must cease immediately until a qualified environmental specialist has been contacted and conducted a thorough assessment.



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

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

- (11) **Soil, erosion, sediment and water management** – All requirements of the Erosion and Sediment Control Plan or Soil and Water Management Plan must be maintained at all times during the works and any measures required by the plan must not be removed until the site has been stabilised.
- (12) **Offensive noise, dust, odour and vibration** – All work must not give rise to offensive noise, dust, odour or vibration as defined in the *Protection of the Environment Operations Act 1997* when measured at the nearest property boundary.

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

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

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

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

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- (5) **Stormwater/drainage works** – All stormwater and drainage works required to be undertaken in accordance with this consent must be completed.  
The certification/verification must be provided to the satisfaction of the Principal Certifying Authority.
- (6) **Rectification damage to public infrastructure** – The applicant must rectify any new damage to public infrastructure to the satisfaction of the Council as the Roads Authority.
- (7) **Completion of Roads Act Approval works** – All approved road, footpath and/or drainage works, including vehicle crossings, have been completed in the road reserve in accordance with the Roads Act Approval to the satisfaction of the Council as the Roads Authority.
- (8) **Protection and Certification of Electrical Services** – All power points, fittings, electrical connections and the incoming meter box are to be located above the Flood Planning Level (FPL).  
Switches, light fittings and power points may be located below the FPL provided they are capable of being isolated by a single Residual Current Device (RCD) protected switch that is located above the FPL. Certification of these works are to be provided to the Principal Certifying Authority.
- (9) **Works as Executed Plans and Report** – Works As Executed Plans must be prepared and provided to the Principal Certifying Authority in accordance with Council's Infrastructure Specifications confirming all stormwater drainage systems are constructed in accordance with the approved plans/documentation.
- (10) **Flood Risk Management Plan** – A Certificate of Compliance prepared by a suitably qualified Flood engineer must be provided to the Principal Certifying Authority stating that all aspects of the Flood Risk Management Plan have been completed and/or implemented in accordance with the approved Plan.
- (11) **Flood Emergency Response Plan** – A Flood Emergency Response Plan (FERP) for the proposed development must be provided to the Principal Certifying Authority. The FERP must include the following as a minimum:
  - a) A map of the proposed evacuation route to a suitable location above the Probable Maximum Flood (*PMF*) that provides adequate shelter from the storm, including the route direction and description and identification of the depth of floodwater along the evacuation route in the 1% Annual Exceedance Probability flood and *PMF* events;



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

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

- (12) **Car parking requirements** – A minimum of 3 car parking spaces are to be provided in accordance with AS2890 and the approved plans. Parking must be permanently marked on the pavement surface.
- (13) **Bicycle requirements** – Bicycle parking racks to accommodate 3 bicycles must be installed in accordance with the approved plans.
- (14) **Section 88B Instrument** - The applicant must prepare a Section 88B Instrument which incorporates the following easements, positive covenants and restrictions to user where necessary:
  - a) Right of carriageway for footpath access (the owners of the subject properties burdened by the right of carriageway must be responsible for ongoing maintenance and the Public Liability of the right of carriageway).

The drainage easement/s must be in accordance with Council's Infrastructure Specifications. This documentary evidence must include confirmation that the easement has been registered on the title of the relevant lot(s).

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## 6.0 – Ongoing Use

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

- (1) **Maneuvering of vehicles** – All vehicles must enter and exit the site in a forward direction.
- (2) **Removal of graffiti** – The owner/manager of the site is responsible for the removal of all graffiti from the building and fences within 48 hours of its application.
- (3) **Parking areas to be kept clear** – At all times, the loading, car parking spaces, driveways and footpaths must be kept clear of goods and must not be used for storage purposes.
- (4) **Privacy screen** – Any privacy screen/s must be permanently maintained in accordance with the approved plans for the life of the development.
- (5) **Residential air conditioning units** – The operation of air conditioning units must operate as follows:
  - a) be inaudible in a habitable room during the hours of 10pm – 7am on weekdays and 10pm to 8am on weekends and public holidays;
  - b) emit a sound pressure level when measured at the boundary of any neighbouring residential property, at a time other than those specified in (a) above, which exceeds the background (LA90, 15 minutes) by more than 5dB(A). The source noise level must be measured as a LAeq 15 minute; and
  - c) not discharge any condensate or moisture onto the ground surface of the premises or into stormwater drainage system in contravention of the requirements of the *Protection of the Environment Operations Act 1997*.
- (6) **Fire Safety Schedule** – At all times, a copy of the Fire Safety Schedule and Fire Safety Certificate must be prominently displayed in the building and a copy forwarded to the Commissioner of New South Wales Fire Brigades in accordance with the *Environmental Planning & Assessment Regulations 2000*.
- (7) **Waste management and collection** – At all times, the strata management body must make arrangements for the placement of the garbage bins at the kerbside for weekly collection and must ensure the return of the bins to the garbage room as soon as practicable after collection.



**Advice Note(s):**

- (1) **'Dial Before you Dig'** – Before any excavation work starts, contractors and others should phone the "Dial Before You Dig" service to access plans/information for underground pipes and cables.
- (2) **Dividing fences** – The erection of dividing fences under this consent does not affect the provisions of the *Dividing Fences Act 1991*. Under this Act, all relevant parties must be in agreement prior to the erection of any approved dividing fence/s under this consent.  

Council has no regulatory authority in this area and does not adjudicate civil disputes relating to the provision of, or payment for, the erection of dividing fences. If there is a neighbour dispute about the boundary fence and you are seeking mediation, you may contact the Community Justice Centre, or if legal advice or action is required, you may contact the Chamber Magistrate.
- (3) **Disability Discrimination Act** – The Commonwealth Disability Discrimination Act makes it an offence to discriminate against people on the grounds of disability, in the provision of access to premises, accommodation, or services. It is the owner/applicants responsibility to ensure compliance with the requirements of this Act.
- (4) **Aboriginal archaeological deposit** – In the event of any Aboriginal artefact, object or structure being unearthed, all work must cease immediately in the affected area, and the Biodiversity Conservation Division (BCD) shall be informed of the discovery. Work must not recommence until the material has been inspected and permission has been given by BCD to proceed.
- (5) **Flood information is subject to change** – You are advised that flood information is subject to change if more accurate data becomes available to Council. It is the responsibility of the applicant to use the most up-to-date flood information. Prior to applying for a construction certificate, Council should be contacted to verify the currency of the flood information.
- (6) **Flood Emergency Response Plan** – It is the Applicants responsibility to ensure the Flood Emergency Response Plan notes that the mezzanine floor does not provide safe flood refuge during a Probable Maximum Flood event.
- (7) **Flood Evacuation Plan** – A flood evacuation plan indicating that permanent, fail-safe, maintenance free measures are incorporated in the development to ensure that timely, orderly and safe evacuation of people and potential pollutant material from the buildings on-site should a flood occur. Details demonstrating compliance must be provided to the Certifying Authority with the Construction Certificate application.
- (8) **Responsibility for damage for tree removal/pruning** – The applicant is responsible for any damage caused to existing public utilities, footpaths or public

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Page 15 of 16





roads during the cutting down, grinding, removal and disposal of the timber and roots. Care must also be taken by the applicant and the applicant's agents to prevent any damage to adjoining properties. The applicant or the applicants' agent may be liable to pay compensation to any adjoining owner if, due to tree works, damage is caused to such adjoining property.

- (9) **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,
- (10) **Addressing** – Prior to occupying the development the approved units are to be identified as follows:
- a) Commercial Space (Eastern Side) – Shop 1, 26 King Street, RAYMOND TERRACE;
  - b) Commercial Space (Western Side) – Shop 2, 26 King Street, RAYMOND TERRACE;
  - c) Dwelling (Eastern Side) – Unit 3, 26 King Street, RAYMOND TERRACE;
  - d) Dwelling Western Side) – unit 4, 26 King Street, RAYMOND TERRACE; and
  - e) Detached dwelling – 26 A King Street, RAYMOND TERRACE.

Council's Spatial Services Team should be contacted via email at: [addressing@portstephens.nsw.gov.au](mailto:addressing@portstephens.nsw.gov.au) to obtain correct property addressing details. Please state your Development Approval number and property address in order to obtain the correct house numbering.

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

ITEM NO. 2

FILE NO: 20/254833  
EDRMS NO: DA 16-2019-598-1

**DA 16-2019-598-1 FOR A CAMPING GROUND (50 CAMP SITES) WITH AMENITIES AND KITCHEN AT 47 THE BUCKETTS WAY, TWELVE MILE CREEK**

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

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Approve Development Application 16-2019-598-1 for a camping ground (50 camp sites) with amenities and kitchen at 47 The Bucketts Way, Twelve Mile Creek (Lot 9 DP243144) subject to the Recommended Conditions of Consent contained in **(ATTACHMENT 3)**.

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**ORDINARY COUNCIL MEETING - 25 AUGUST 2020  
MOTION**

|            |  |
|------------|--|
| <b>152</b> | <p><b>Councillor John Nell</b><br/><b>Councillor Ken Jordan</b></p> <p>It was resolved that Council approve Development Application 16-2019-598-1 for a camping ground (50 camp sites) with amenities and kitchen at 47 The Bucketts Way, Twelve Mile Creek (Lot 9 DP243144) subject to the Recommended Conditions of Consent contained in <b>(ATTACHMENT 3)</b> subject to the following changes:</p> <p>1) Amendment to condition 6.0(5) to read:</p> <p><b>6.0 (5) Revegetation planting</b> – The applicant must plant within the following areas:</p> <ul style="list-style-type: none"><li>• along the southern boundary;</li><li>• along the northern boundary of the lot between the new shed (east) and the parking area (west). No plating must occur within the areas of the mapped habitat area for <i>Pterostylis chaetophora</i>; and</li><li>• along the northern edge of the access road between the eastern extent of the amenities building camping site 43 (west). Planting in this area should consist of shrubs only.</li></ul> <p>The following plant species must be planted at no cost to Council:</p> |
|------------|--|

**MINUTES ORDINARY COUNCIL - 25 AUGUST 2020**

| Species name                   | Common name                | Pot size                              | Density                |
|--------------------------------|----------------------------|---------------------------------------|------------------------|
| <b>Trees</b>                   |                            |                                       |                        |
| <i>Corymbia maculata</i>       | Spotted Gum                | Tube stock                            | 1 per 6 m <sup>2</sup> |
| <i>Eucalyptus tereticornis</i> | Forest Red Gum             | Mature tree stock (20 litre pot size) | 1 per 10m <sup>2</sup> |
| <i>Eucalyptus fibrosa</i>      | Broad-leaved Ironbark      |                                       |                        |
| <b>Shrubs</b>                  |                            |                                       |                        |
| <i>Melaleuca decora</i>        | White Feather Honey Myrtle | Tube stock                            | 1 per 4 m <sup>2</sup> |
| <i>Melaleuca stypheloides</i>  | Prickly-leaved Paperbark   | Mature tree stock (20 litre pot size) | 1 per 8m <sup>2</sup>  |
| <i>Callistemon salignus</i>    | Willow Bottlebrush         |                                       |                        |
| <b>Groundcover</b>             |                            |                                       |                        |
| <i>Lomandra longifolia</i>     | Spiny-headed Mat-rush      | Tube stock / hiko                     | 1 per 2 m <sup>2</sup> |

Planting must include at least 30% mature tree stock.

Details demonstrating compliance must be provided to the Certifying Authority.

2) Amendment to condition 7.0(9) to read:

**7.0 (9) Use of caravans** – No more than 25 caravans are permitted on site at any one time. A caravan is not to stay onsite for any longer than four (4) consecutive nights.

3) Inclusion of the following additional condition prior to the issue of the construction certificate:

**2.0 (15) Amenity** – The detention basin wall along the southern boundary of the site must be redesigned to have a finished height of 1.2m above existing ground level.

4) Amendment to condition 6.0(7) to read:

**6.0 (7) Operational Plan of Management** – An Operation Plan of Management for the site is to be drafted and provided to Council outlining proposed management actions in relation to:

## MINUTES ORDINARY COUNCIL - 25 AUGUST 2020

|  |  |
|--|--|
|  | <ul style="list-style-type: none"><li>• 24 hour on-site management</li><li>• Noise management and abatement</li><li>• Emergency procedures</li><li>• Emergency and after hours contact numbers for visitors and nearby residents</li><li>• Security</li><li>• Antisocial behaviour of visitors</li><li>• Visitor arrival and departure times</li><li>• Maximum onsite stay of four (4) consecutive nights for visitors</li><li>• Restriction on individual campsite fires</li><li>• Litter Management Strategy (with the intent to reduce the impact on the site and neighbouring sites)</li><li>• Restraining animals at all times.</li></ul> |
|--|--|

In accordance with Section 375 (A) of the Local Government Act 1993, a division is required for this item.

Those for the Motion: Mayor Ryan Palmer, Crs Glen Dunkley, Ken Jordan, John Nell and Sarah Smith.

Those against the Motion: Crs Jaimie Abbott and Giacomo Arnott.

The motion was carried.

### ORDINARY COUNCIL MEETING - 25 AUGUST 2020 AMENDMENT

|  |   |
|--|---|
|  | <p><b>Councillor Giacomo Arnott</b></p> <p>That Council refer The Bucketts Way to the Local Traffic Committee requesting a review of the speed along this section of road, with a view to reducing the speed limit to improve safety.</p> |
|--|---|

The motion lapsed without a seconder.

### ORDINARY COUNCIL MEETING - 25 AUGUST 2020 AMENDMENT

|  |  |
|--|--|
|  | <p><b>Councillor Giacomo Arnott</b></p> <p>That Council add a condition to the consent requiring an internal chain-link fence 6 feet in height with screening and "keep out" signage alongside both properties alongside the property, to deter trespassers, ensure security for neighbours, and protect from animals entering the property from the camping ground.</p> |
|--|--|

**MINUTES ORDINARY COUNCIL - 25 AUGUST 2020**

The motion lapsed without a seconder.

**ORDINARY COUNCIL MEETING - 25 AUGUST 2020  
AMENDMENT**

|  |   |
|--|---|
|  | <p><b>Councillor Giacomo Arnott</b></p> <p>That Council add a condition to the operational management plan to disallow animals from being brought on to the campsite to reduce noise and trespassing.</p> |
|--|---|

The motion lapsed without a seconder.

**ORDINARY COUNCIL MEETING - 25 AUGUST 2020  
AMENDMENT**

|  |   |
|--|---|
|  | <p><b>Councillor Giacomo Arnott</b></p> <p>That Council modify the Conditions of Consent to ensure the intersection of The Bucketts Way and the property has a slipway to enter the property.</p> |
|--|---|

The motion lapsed without a seconder.

**ORDINARY COUNCIL MEETING - 25 AUGUST 2020  
AMENDMENT**

|  |   |
|--|---|
|  | <p><b>Councillor Giacomo Arnott</b></p> <p>That Council add a condition to fix the fence on the western boundary of the property.</p> |
|--|---|

The motion lapsed without a seconder.

**ORDINARY COUNCIL MEETING - 25 AUGUST 2020  
FORESHADOWED MOTION**

|  |  |
|--|--|
|  | <p><b>Councillor Giacomo Arnott</b></p> <p>That Council approve Development Application 16-2019-598-1 for a camping ground (50 camp sites) with amenities and kitchen at 47 The Bucketts Way, Twelve Mile Creek (Lot 9 DP243144) subject to the Recommended Conditions of Consent contained in <b>(ATTACHMENT 3)</b> subject to the following changes:</p> |
|--|--|

1) Amendment to condition 6.0(5) to read:

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

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

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

| Species name                   | Common name                | Pot size                              | Density                |
|--------------------------------|----------------------------|---------------------------------------|------------------------|
| <b>Trees</b>                   |                            |                                       |                        |
| <i>Corymbia maculata</i>       | Spotted Gum                | Tube stock                            | 1 per 6 m <sup>2</sup> |
| <i>Eucalyptus tereticornis</i> | Forest Red Gum             | Mature tree stock (20 litre pot size) | 1 per 10m <sup>2</sup> |
| <i>Eucalyptus fibrosa</i>      | Broad-leaved Ironbark      |                                       |                        |
| <b>Shrubs</b>                  |                            |                                       |                        |
| <i>Melaleuca decora</i>        | White Feather Honey Myrtle | Tube stock                            | 1 per 4 m <sup>2</sup> |
| <i>Melaleuca stypheloides</i>  | Prickly-leaved Paperbark   | Mature tree stock (20 litre pot size) | 1 per 8m <sup>2</sup>  |
| <i>Callistemon salignus</i>    | Willow Bottlebrush         |                                       |                        |
| <b>Groundcover</b>             |                            |                                       |                        |
| <i>Lomandra longifolia</i>     | Spiny-headed Mat-rush      | Tube stock / hiko                     | 1 per 2 m <sup>2</sup> |

Planting must include at least 30% mature tree stock.

Details demonstrating compliance must be provided to the Certifying Authority.

2) Inclusion of the following additional condition prior to the issue of the construction certificate:

|  |   |
|--|---|
|  | <p><b>2.0 (15) Amenity</b> – The detention basin wall along the southern boundary of the site must be redesigned to have a finished height of 1.2m above existing ground level.</p> |
|--|---|

## **BACKGROUND**

Development Application No. 16-2019-598-1 was reported to Council at its meeting on 14 July 2020. At that meeting it was resolved that the application be deferred. The minutes are provided in **(ATTACHMENT 5)** and the resolution is provided below:

Meeting Minute 122: It was resolved that Council defer Item 1 Development Application 16-2019-598-1 for a camping ground (50 camp sites) with amenities and kitchen at 47 The Bucketts Way, Twelve Mile Creek (Lot 9 DP243144).

Subsequent to the 14 July 2020 meeting, and in response to the matters discussed at that meeting, the following additional conditions have been recommended and have been included in the Recommended Conditions of Consent provided in **(ATTACHMENT 3)**.

Addition of Condition 2.0 (14) to read:

(14) **Site access/egress** - Prior to the issue of a Construction Certificate, plans are to be prepared demonstrating a BAL/BAR intersection treatment, in accordance with current Austroads Guides, at the proposed main entry to the site (this may include tree removal within the clear zone at the Direction of the Roads Authority).

Condition 3.0 (12) be amended to read:

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

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

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

- Fencing to exclude visitor access
- Backfilling of existing trenches by manual methods
- 'Ecologically Sensitive Area' signage

- Restrictions on maintenance activities (slashing/mowing) i.e. timing, frequency, slashing height
- Weed and pathogen hygiene protocols
- Prohibiting the use of heavy machinery or vehicle parking
- Prohibiting the introduction of fill material or topsoil.

Condition 6.0 (5) be modified to include the following additional wording:

- (5) **Revegetation planting** - The following plant species must be planted at no cost to Council along the southern and northern boundary of the lot (excluding the mapped habitat area of the *Pterostylis chaetophora*):

Condition 6.0 (7) be modified to read:

- (7) **Operational Plan of Management** – An Operation Plan of Management for the site is to be drafted and provided to Council outlining proposed management actions in relation to:

- 24 hour on-site management
- Noise management and abatement
- Emergency procedures
- Emergency and after hours contact numbers for visitors and nearby residents
- Security
- Antisocial behaviour of visitors
- Visitor arrival and departure times
- Maximum onsite stay of four (4) consecutive nights for visitors
- Restriction on individual campsite fires.

Further to the additional conditions subsequent to the 14 July 2020 meeting, Council officers recommend another condition prohibiting the use of the site for the purpose of caravans.

The application proposes camp sites to accommodate tents, campervans, RV's, camp trailers and caravans. Due to the inclusion of caravans as part of the application, the proposal could also be characterised as a Caravan Park (which is not permissible in the zone). A Caravan Park use is defined by the Port Stephens Local Environmental Plan 2013 (LEP 2013) as land on which caravans and other moveable dwellings are installed or placed. If the development was properly characterised as a Caravan Park it provides opportunities for longer term stays, including permanent installations of caravans and other moveable dwellings. To negate any opportunity for the site to be used for the purpose of a Caravan Park, Council has recommended a condition be imposed (**ATTACHMENT 3**) that no caravans be permitted to utilise the site.



Addition of Condition 7.0 (9) to read:

(9) **Use of Caravans** – The use of caravans in the campgrounds is not permitted.

The Council Report from 14 July 2020 is provided below. The only changes made to this report since it was reported on 14 July 2020 are to reflect the land use permissibility matter relating to the characterisation of the site as a Caravan Park.

The purpose of this report is to present a development application (DA) to Council for determination. The subject DA relates to land located at 47 The Bucketts Way, Twelve Mile Creek (Lot: 9 DP: 243144, (the subject site). A locality plan is provided in **(ATTACHMENT 1)**.

The development application is being reported to Council for determination, in accordance with the Development Applications to be reported to Council Policy, as the application was called to Council by Councillor Arnott, Councillor Nell and Councillor Tucker **(ATTACHMENT 4)**.

#### Proposal

The application seeks approval for the establishment of a camping ground, consisting of 50 camp sites, and the construction of an amenities block, camp kitchen area, internal roads and associated servicing infrastructure. The camping ground will permit the pitching of tents, and parking of camper trailers and the like for short term stays.

The application was originally submitted for up to 100 camp sites with an alternative layout and has since been modified as a result of public submissions and the need to comply with the requirements of Council, NSW Rural Fire Service and Transport for NSW.

#### Site Description and History

The subject site is identified as 47 The Bucketts Way, Twelve Mile Creek (Lot 9 DP243144) **(ATTACHMENT 1)**. The site is located in a rural residential area with significant vegetation and waterways and is within close proximity of the Pacific Highway (M1). The land is 10.12 hectares in area and is somewhat clear of vegetation in the eastern portion of the site, becoming more densely vegetated in the western portion. A natural waterway traverses the site along the western boundary. The lot holds 2 existing dwellings and a number of outbuildings.

### Key Issues

The key issues identified throughout the assessment of the proposal and as a result of public submissions relate to the potential impacts of the proposal on the amenity of adjoining rural residential land, land use conflict, site access and environmental impacts as outlined below. A detailed assessment of the development is contained in the Planners Assessment Report provided at **(ATTACHMENT 2)**.

### Land Use

Under the Port Stephens Local Environmental Plan 2013 (LEP) the site is zoned RU2 Rural Landscape. The application proposes camp sites to accommodate tents, campervans, RV's, camp trailers and caravans. The applicant has stated the proposed development will be defined as a Camping Ground, which is permissible with consent in the RU2 Rural Landscape zone. A Camping Ground is defined by the LEP as:

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

Due to the inclusion of caravans as part of the application, the proposal could also be characterised as a Caravan Park (which is not permissible in the zone). A Caravan Park use provides opportunities for longer term stays, including permanent installations of caravans and other moveable dwellings. To negate any opportunity for the site to be used for the purpose of a Caravan Park, Council has recommended a condition be imposed that no caravans be permitted to utilise the site in **(ATTACHMENT 3)**.

Noting a Camping Ground is a permissible use in the zone, the development is considered acceptable in its setting. The development is located a significant distance from The Bucketts Way, behind the existing dwellings on the lot and is setback from the side boundaries with landscape screening provided (existing and proposed) to mitigate any visual impacts to surrounding properties **(ATTACHMENT 2)**.

### Access

The application was referred to and reviewed by Transport for NSW (TfNSW) (formerly RMS) and Council Engineers. The application was supported with a number of conditions requiring the upgrade of the site access to facilitate the safe turning of vehicles on and off the site including a channelized access and removal of some roadside vegetation to enable acceptable sight lines. These recommendations have been incorporated into the recommended conditions of consent **(ATTACHMENT 3)**.

### Environmental Impacts

The land is identified as containing potential koala habitat. The proposed development avoids significant koala habitat removal. Offsetting for the loss of any trees is proposed by replacement planting along the southern boundary to facilitate habitat connection.

The development has been modified to largely avoid areas of likely Tall Rustyhood Orchid habitat, however as certain activities such as bushwalking and asset protection are proposed within the habitat area, a Vegetation Management Plan has been requested via condition to ensure the ongoing management and protection of these areas.

The proposal is located on land identified as wetland under the LEP 2013. Through the assessment it was determined that the development will not have a negative impact on the flora and fauna of the wetland, including native and migratory species, or the characteristics of the ground or surface water with the imposition of the mitigating conditions proposed **(ATTACHMENT 3)**.

### Impacts on surrounding Rural Residential Land

The proposed development borders 2 rural residential lots to the north and south of the site which contain a total of 3 dwellings.

A noise assessment was provided with the application which demonstrates that appropriate noise mitigation measures are able to be installed to ensure acceptable noise levels are maintained. Additionally, the consent has been conditioned such that a management plan for the site is required which provides emergency contact numbers for visitors and neighbours to direct noise concerns **(ATTACHMENT 3)**.

The proposed development will require compulsory lighting in accordance with the Local Government Regulations. A condition has been recommended to ensure the potential impacts from lighting are mitigated to the minimum through the AS1158 'Lighting for Roads and Public Spaces' and AS 4282 'Control of Obtrusive Effects of Outdoor Lighting' **(ATTACHMENT 3)**.

### Stormwater Management

A stormwater management plan was submitted with the application and includes adequate quality and quantity controls as required by Councils policy. The stormwater drainage plan has been assessed as being consistent with the Infrastructure Specification and a condition of consent has been included requiring the provision of detailed engineering plans prior to the issue of a construction certificate **(ATTACHMENT 3)**.

Conclusion

The proposed development is consistent with the relevant environmental planning instruments applicable to the subject site including:

- Section 4.15 of the Environmental Planning and Assessment Act 1979
- State Environmental Planning Policy No. 44 - Koala Habitat Protection
- State Environmental Planning Policy No 55 - Remediation of Land
- State Environmental Planning Policy (Infrastructure) 2007
- Port Stephens Local Environmental Plan 2013 (LEP 2013)
- Port Stephens Development Control Plan 2014 (DCP 2014)

A detailed assessment of the proposal against the provisions of Section 4.15 Environmental Planning and Assessment Act 1979 (EP&A Act) is provided at **(ATTACHMENT 2)**.

The key issues arising through the assessment of the application have been satisfactorily addressed and supported by sufficient mitigation measures as provided within the Recommended Conditions of Consent contained in **(ATTACHMENT 3)**.

On this basis, the proposed development supports and promotes the public interest, and is recommended for approval.

**COMMUNITY STRATEGIC PLAN**

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

**FINANCIAL/RESOURCE IMPLICATIONS**

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

| <b>Source of Funds</b>          | <b>Yes/No</b> | <b>Funding (\$)</b> | <b>Comment</b> |
|---------------------------------|---------------|---------------------|----------------|
| Existing budget                 | No            |                     |                |
| Reserve Funds                   | No            |                     |                |
| Developer Contributions (S7.12) | Yes           |                     |                |
| External Grants                 | No            |                     |                |
| Other                           | No            |                     |                |

**LEGAL, POLICY AND RISK IMPLICATIONS**

The development application is consistent with Section 4.15 of the Environmental Planning and Assessment Act 1979. A detailed assessment against these requirements are contained within the Planners Assessment Report contained in **(ATTACHMENT 2)**.

| <b>Risk</b>   | <b><u>Risk Ranking</u></b> | <b>Proposed Treatments</b>   | <b>Within Existing Resources?</b> |
|---|----------------------------|--|-----------------------------------|
| There is a risk that the determination may be appealed. | Moderate                   | Approve the application as recommended. The assessment carried out details the merits of the proposed development and the recommended conditions of consent reduce the impact of the proposal. | Yes                               |

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

The proposed development is anticipated to have an ongoing positive economic impact on the local area and the broader community through the creation of viable employment and economic activity during both the construction and ongoing operations of the development. The development will allow for the use of existing services and facilities in the locality without requiring significant infrastructure upgrades that burden the public.

The development will result in some impact on the built environment through the construction of the amenities block and camp kitchen, however these buildings are appropriately setback and screened from the road and adjoining development. The impacts on the built environment are considered acceptable.

The development has been modified to largely avoid significant Koala habitat and areas of likely Tall Rustyhood Orchid habitat. Landscape offsets through replanting along the southern boundary and the requirement of a Vegetation Management Plan will allow for the appropriate ongoing management and protection of these areas.

The proposal incorporates appropriate measures to ensure minimal adverse impact on amenity. Air quality, noise, drainage and traffic have been appropriately addressed in the application, with mitigation measures included within the Recommended Conditions of Consent **(ATTACHMENT 3)**. Through development conditions and additional design criteria, the potential impacts are mitigated.

## **CONSULTATION**

Consultation with key stakeholders has been undertaken including through the public notification process.

### Internal

Consultation was undertaken with internal officers, including; Building Surveying, Development Engineering, Vegetation Management, Environmental Health, Natural Resources and Development Contributions. The referral comments from these officers were considered as a part of the Planners Assessment Report contained in **(ATTACHMENT 2)** and accordingly in the Recommended Conditions of Consent contained in **(ATTACHMENT 3)**.

### External

Consultation was undertaken with NSW Rural Fire Service and Transport for NSW. Responses were received from both agencies with a Bush Fire Safety Authority being issued from the Rural Fire Service.

The referral comments from these officers were considered as a part of the Planners Assessment Report contained in **(ATTACHMENT 2)** and accordingly in the Recommended Conditions of Consent contained in **(ATTACHMENT 3)**.

### Public Consultation

In accordance with the requirements of the DCP 2014, the originally submitted application was notified from 27 September 2019 to 13 October 2019. During this period 3 submissions were received. An additional 3 submissions were received following the submission period. The matters raised in all of the submissions have been addressed in detail within the Planners Assessment Report provided at **(ATTACHMENT 2)**.

Following the submission of amended plans, the development was considered to be of lesser impact therefore the application was not required to be re-notified.

## **OPTIONS**

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

**ATTACHMENTS**

- 1) Locality Plan. [↓](#)
- 2) Planners Assessment Report. [↓](#)
- 3) Recommended Conditions of Consent. [↓](#)
- 4) Call to Council Form. [↓](#)
- 5) Draft Minutes 14 July 2020. [↓](#)

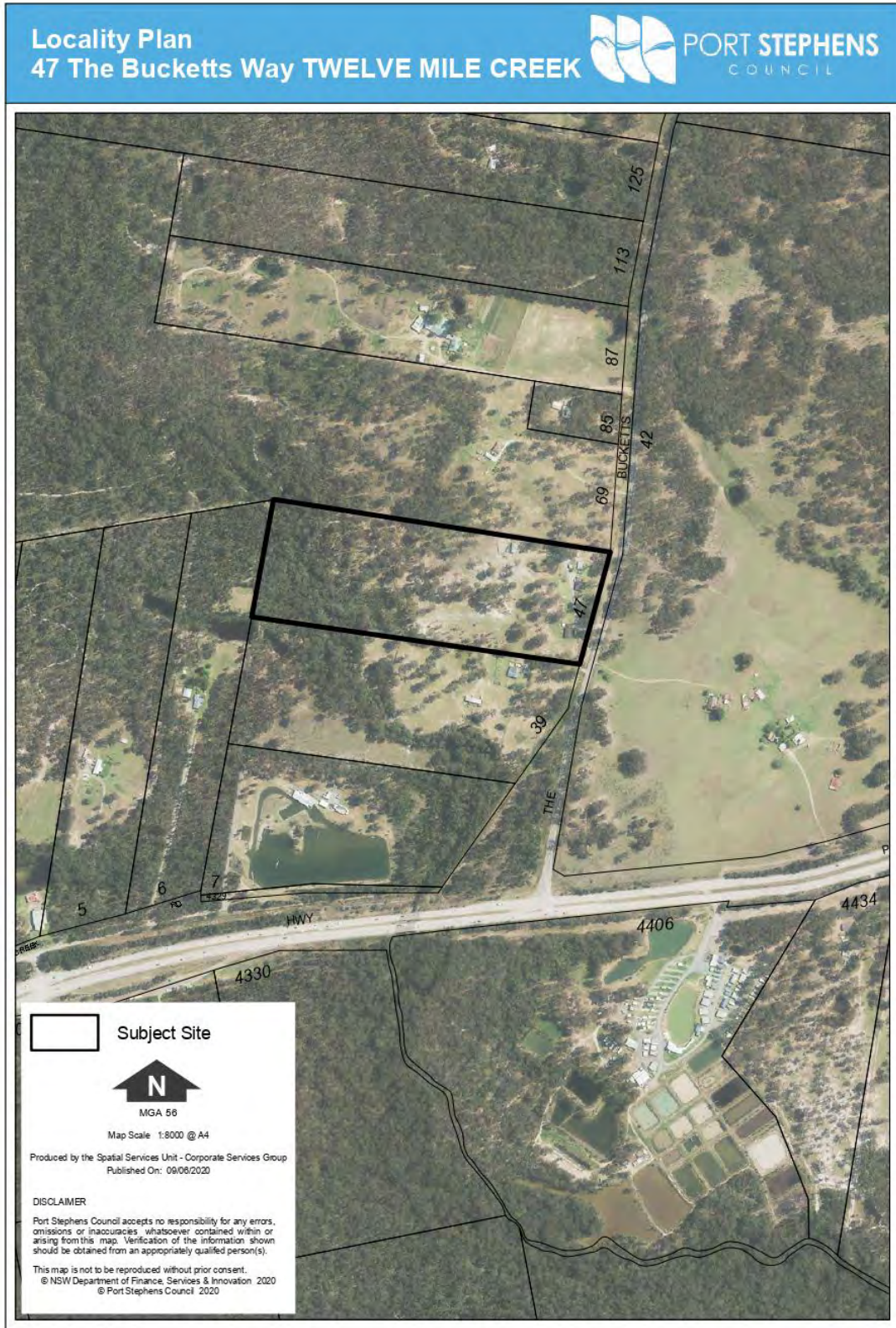
**COUNCILLORS ROOM**

- 1) Development plans.
- 2) Copy of unredacted submissions.

**TABLED DOCUMENTS**

Nil.

ITEM 2 - ATTACHMENT 1 LOCALITY PLAN.





**PORT STEPHENS COUNCIL** **DEVELOPMENT ASSESSMENT REPORT**

**APPLICATION REFERENCES**

|                                |   |
|--------------------------------|---|
| <b>Application Number</b>      | 16-2019-598-1   |
| <b>Development Description</b> | Tourism - camping ground (50 camp sites) with amenities and kitchen |
| <b>Applicant</b>               | PERCEPTION PLANNING PTY LTD   |
| <b>Land owner</b>              | B & C Tudor   |
| <b>Date of Lodgement</b>       | 16/09/2019  |
| <b>Value of Works</b>          | \$150,000.00  |
| <b>Submissions</b>             | 3   |

**PROPOSAL**

The Development Application proposes the establishment of a camping ground, including 50 camp sites, associated amenities and a camp kitchen as shown in the figures below. The development will also require the construction/installation of internal roads, water reticulation system, stormwater management system, electricity connections and an onsite sewage management system.

The application was originally submitted for up to 100 camp sites with an alternative layout and has since been modified as a result of public submissions and the need to comply with the requirements of Council, NSW Rural Fire Service and Transport for NSW.

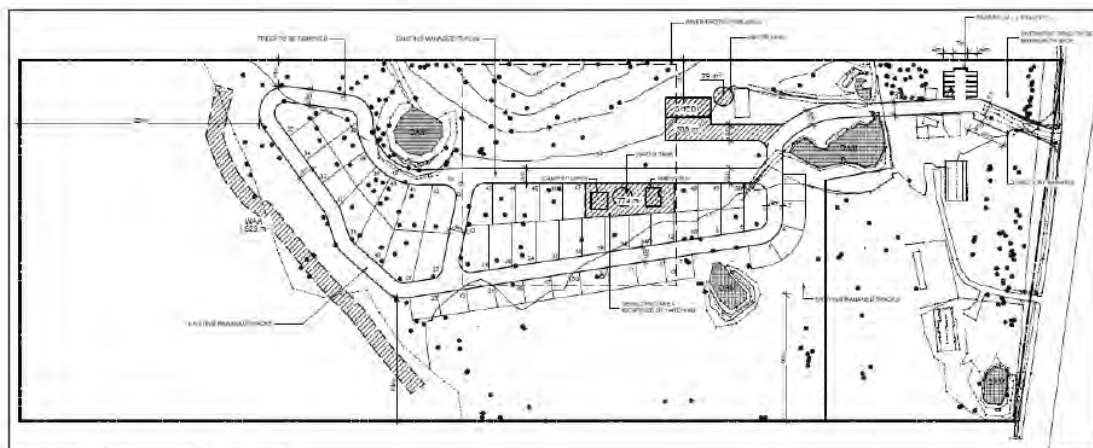


Figure 1 Proposed Site Plan

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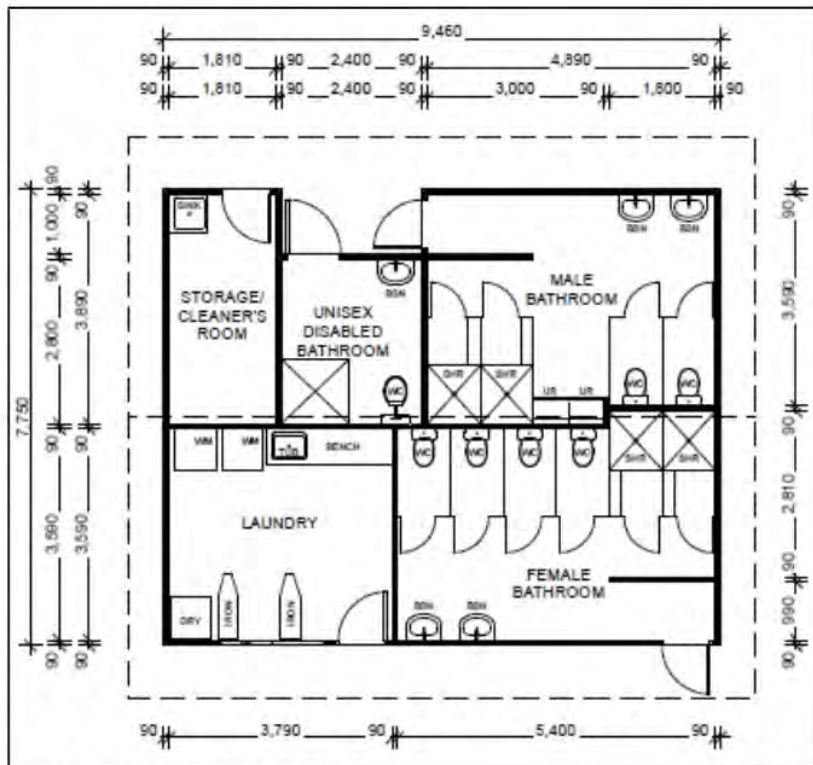


Figure 2 Proposed Amenities Block

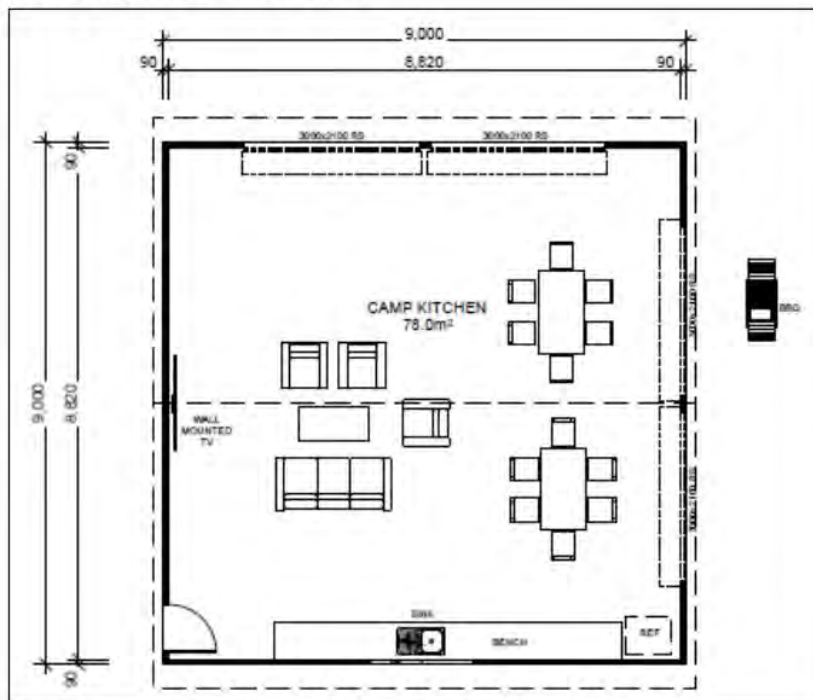


Figure 3 Proposed Camp Kitchen/Community Area

| PROPERTY DETAILS        |  |
|-------------------------|--|
| <b>Property Address</b> | 47 The Bucketts Way TWELVE MILE CREEK  |
| <b>Lot and DP</b>       | LOT: 9 DP: 243144  |
| <b>Current Use</b>      | Residential Dwellings  |
| <b>Zoning</b>           | RU2 RURAL LANDSCAPE  |
| <b>Site Constraints</b> | LEP Wetlands<br>Acid Sulfate Soils - Class 5<br>Bushfire Prone Land – Vegetation Category 1 and Vegetation Buffer<br>Biodiversity Values Mapping<br>Koala Habitat – Marginal Habitat<br>Flood Prone Land – PMF |

**SITE DESCRIPTION**

The subject site is identified as Lot 9 DP243144, 47 The Bucketts Way, Twelve Mile Creek. The site is located in a rural residential area with significant vegetation and waterways and within close proximity of the Pacific Highway (M1). The land is 10.12ha in area and is somewhat clear of vegetation towards the eastern half and heavily vegetated along the western boundary. A natural waterway also traverses the site along the western boundary. The lot holds two existing dwellings and a number of outbuildings towards the east of the site, fronting The Bucketts Way.



Figure 4 Aerial View (Including Indicative Development Area)

**SITE INSPECTION**

Site inspections were carried out on 1 October 2019 and 22 April 2020. The subject site can be seen in figures below:



**Figure 5 View from Development Site Looking North**



**Figure 6 View from the Development Site to the West**



**Figure 7 Proposed Stormwater Disposal Area**



**Figure 8 Stormwater Retention Dam and Development Site**



**Figure 9 Development Site (From West)**



**Figure 10 View from Site Access to Pacific Highway (East)**



Figure 11 View of Site Access from Southern Property (39 The Bucketts Way)

## **REFERRALS**

### Development Contributions

The application was referred to Councils Development Contributions Officer for comment. The application was provided with a condition of consent for s7.12 contributions.

### Development Engineer

The application was referred to Councils Development Engineer for comment. Following the receipt of further information, the application was generally supported with a number of recommended conditions relating to stormwater management, flood protection and vehicle access.

### Environmental Health

The application was referred to Councils Environmental Health team for comment. The application was generally supported with recommended conditions relating to the requirement for additional approvals under s68 of the Local Government Act.

### Natural Resources

The application was referred to Councils Natural Resources team for comment. Initial concerns were raised relating to the likelihood of habitat for the threatened Tall Rustyhood Orchid. Following the receipt of further information and modification of the proposal, the application was generally supported with a number of recommended conditions concerning vegetation management, revegetation and the further modification of site layout and impact area to avoid sensitive habitat areas. Extended consideration of these items is addressed in DCP Chapter B2 below.

### Vegetation Management

The application was referred to Councils Vegetation Management Team for comment. A landscaping plan was requested, however as no additional landscaping is proposed a landscaping plan is not deemed necessary.

### Building & Developer Relations

The application was referred to Councils Building team for comment. The application was generally supported with recommended conditions relating to construction.

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

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

1. S100B - Rural Fires Act - The application was granted a Bushfire Safety Authority (BFSA) with conditions.

The application was referred to the NSW RFS as integrated development under s100B of the Rural Fires Act. The application was generally supported with a Bushfire Safety Authority and number of recommended conditions.

***Section 4.15 - Matters for Consideration******Section 4.15(a)(i) - any environmental planning instrument*****State Environmental Planning Policies****State Environmental Planning Policy No. 55 - Remediation of Land**

The subject site is currently and has historically been predominantly vacant land and used for the purpose of rural residential housing. As such, the likelihood of the site being contaminated is unlikely. Moreover, the NSW list of contaminated sites published by the EPA does not list the site as being a registered contaminated site. Based on this, it is considered that no significant contaminating activities have been undertaken that would inhibit the use of the site for the proposed use.

**State Environmental Planning Policy (Koala Habitat Protection) 2019**

This policy aims to encourage the conservation and management of areas of natural vegetation that provide habitat for koalas to support a permanent free-living population over their present range and reverse the current trend of koala population decline. This Policy commenced on 1 March 2020.

Clause 15 of State Environmental Planning Policy (Koala Habitat Protection) 2019 includes savings provisions stating that a development application made, but not finally determined, before the commencement of this policy in relation to land to which this Policy applies must be determined as if this policy had not commenced. Therefore, as the application was lodged prior to the commencement of this policy, State Environmental Planning Policy No. 44 - Koala Habitat Protection will apply.

**State Environmental Planning Policy No. 44 - Koala Habitat Protection**

The Port Stephens Council Comprehensive Koala Plan of Management (CKPoM), was prepared in accordance with *State Environmental Planning Policy No. 44 - Koala Habitat Protection* (SEPP 44). Compliance with the Port Stephens Council CKPoM will constitute compliance with SEPP 44 for relevant matters in the LGA.

The proposal avoids significant koala habitat removal as defined by the SEPP and therefore does not trigger additional habitat requirements under the SEPP.

**State Environmental Planning Policy No. 21 – Caravan Parks**

As the proposed development is a camping ground, this SEPP applies. The effect of the SEPP is to require development consent for the use of the land of a camping ground and to ensure the orderly and economic use, and proper development of the land for this use. The assessment of the proposal against these criteria is provided in further detail in conjunction with the remainder of the 4.15 assessment below.



State Environmental Planning Policy (Infrastructure) 2007

Due to the proximity of the development to the classified road (M1 Pacific Highway), the application requires consideration of this SEPP and subsequent referral to Transport for NSW.

The referral response advised that:

- Council should consider an appropriate treatment for the vehicular entrance to the property off The Bucketts Way to mitigate safety issues.
- Council should ensure that appropriate traffic measures are in place during the construction phase of the project to minimise the impacts of construction vehicles on traffic efficiency and road safety within the vicinity.
- Council should have consideration for appropriate sight line distances in accordance with Section 3 of the *Austrroads Guide to Road Design Part 4A (Unsignalised and Signalised Intersections)* and the relevant Australian Standards (i.e. AS2890:1:2004) and should be satisfied that the location of the proposed driveway promotes safe vehicle movements.

These advices were reviewed by Councils Development Engineers and appropriate conditions have been included with the development consent.

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

The proposed development is defined as a Camping Ground which is permissible with consent in the RU2 Rural Landscape zone. A Camping Ground is defined by the LEP as:

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

The proposed development includes 50 camp sites to accommodate: tents, campervans, RV's, camp trailers and caravans. Despite the incorporation of caravans on the site, the development is not characterised as a Caravan Park (which is not permissible in the zone) noting that the camp ground will accommodate those above uses for short term stays only. A Caravan Park use allows for longer terms stays, including permanent installations of caravans and other moveable dwellings.

Although ultimately subject to a separate application, Council also considered the likely compliance of the development with the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005. The site layout, demand for utilities, and operational management is considered in the relevant sections of this proposal.

A maximum of 25 caravans as defined by the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005 are permitted on the site.

The proposed development is located within the RU2 Rural Landscape Zone. The objectives of this 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.

As the proposed development does not involve or require the extraction of natural resources or the emission of gross pollutants, the development is unlikely to impact on the natural resource base of the land.

The character of the land is comprised of physical and natural features, land uses and amenity. Concerns were raised through public submissions that the development does not maintain the rural

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landscape character of the land. With consideration that the land use is permissible in the zone, attention is directed to the identification and mitigation of potential visual and aesthetic impacts of the development. The development is located a significant distance from the road, behind the existing dwellings on the lot and is setback from the side boundaries with landscape screening provided (existing and proposed) to mitigate any visual impacts to surrounding properties. Further traffic issues are to be managed through access upgrades. As such the resulting development is unlikely to present unacceptable or unreasonable impacts to the amenity and character of the land.

Through consideration of the above, it is determined that the development is able to demonstrate that it is not inconsistent with the objectives of the land use zone.

**Clause 4.3 – Height of Buildings**

There is no maximum building height limit prescribed for the site.

**Clause 7.1 – Acid Sulfate Soils**

The development site is mapped as potentially containing Class 5 Acid Sulfate Soils (ASS), however the development is unlikely to involve earthworks greater than 2m below natural ground surface. A condition of consent has been included for the provision of an ASSMP, should later design suggest otherwise.

**Clause 7.2 – Earthworks**

Earthworks will be required for the proposed development; however it is noted that these works are not anticipated to entail the import or export of fill material. Specific conditions of consent have been included for the management of fill, should later design suggest otherwise.

**Clause 7.3 – Flood Planning**

The proposed development is located on land outside of the mapped flood planning area, but within the area of the probable maximum flood. The proposed risk mitigations are supported by Councils Flooding Engineers with conditions imposed on the consent.

**Clause 7.6 – Essential Services**

The subject site is proposed to be serviced by a local, reticulated water system, mains electricity and an onsite sewage management system. In addition, the application has demonstrated that stormwater drainage resulting from roof and hard stand areas can be catered for in accordance with Councils requirements. The subject land also maintains direct access to The Bucketts Way, meeting the requirements of this clause.

**Clause 7.9 – Wetlands**

The proposal is located on land identified as wetland under the Port Stephens LEP. The application has been assessed by Councils Natural Resources Officer who has determined that the development will not have a negative impact on the flora and fauna of the wetland, including either native and migratory species, or the characteristics of the ground or surface water should the development comply with the mitigating conditions proposed.

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

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

***Section 4.15(a)(iii) – any development control plan***

Port Stephens Development Control Plan 2014

**Chapter B1 – Tree Management**

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The proposal identifies a number of trees to be removed to facilitate the construction of internal access roads. These trees have been assessed by Councils Natural Resources team and determined to be acceptable for the development subject to appropriate replanting of trees along the southern boundary as conditioned.

**Chapter B2 – Natural Resources**

The land is identified as containing potential koala habitat. The proposed development avoids significant koala habitat removal. Offsetting for the loss of any trees is proposed by replacement planting along the southern boundary to facilitate habitat connection.

The development has been modified to largely avoid areas of likely Tall Rustyhood Orchid habitat, however as certain activities such as bushwalking and asset protection are proposed within the habitat area, a Vegetation Management Plan has been requested via condition to ensure the ongoing management and protection of these areas.

The proposal is located on land identified as wetland. Through the assessment it was determined that the development will not have a negative impact on the flora and fauna of the wetland, including native and migratory species, or the characteristics of the ground or surface water should the development comply with the mitigating conditions proposed.

The applicant has demonstrated that only 0.328ha of clearing is required and therefore does not trigger the requirement for a Biodiversity Development Assessment Report under the Biodiversity Conservation Act 2016.

**Chapter B3 – Environmental Management**Acid Sulfate Soils

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

Noise

A noise assessment was provided with the application which suggests the separation distances incorporated into the development will limit any significant impacts on the adjoining development. The impacts of the development during construction and ongoing management may be limited through conditions of consent which limit construction work hours and mitigate noise derived from the operation of the development. Subject to conditions, the application is satisfactory in regards to noise management.

Earthworks

As discussed at clause 7.2 above the proposed development involves minimal earthworks. The impacts of the proposed earthworks can be mitigated through conditions of consent. The proposal is therefore consistent with requirements outlined in Councils DCP relating to earthworks.

Waste

To ensure ongoing waste is managed responsibly, the development includes waste storage areas catering for both residential and commercial waste. The development can be serviced by Council for waste collection or by private contractors. Conditions of consent are imposed which require waste from building works to be disposed of at an approved facility.

**Chapter B4 – Drainage and Water Quality**

A stormwater management plan was submitted with the application and includes adequate quality and quantity controls as required by Councils policy. The stormwater drainage plan has been assessed as being consistent with the Infrastructure Specification and a condition of consent has

been included in the consent requiring the provision of detailed engineering plans prior to the issue of a construction certificate.

**Chapter B5 – Flooding**

The subject land is not mapped as being within the Flood Planning Area, however subject to a PMF event. Following from the discussion against clause 7.3 of the PSLEP above, the proposed development is acceptable in this regard.

**Chapter B6 – Essential Services**

The application has provided concept plans for the construction of a local reticulated water system, wastewater management system and stormwater management system. Council engineers have considered these designs and have provided preliminary acceptance of the designs subject to further detail. Existing electricity services are available to the subject site, however confirmation is required to demonstrate that the network is able to be extended to cater for the development. The development maintains direct access to The Bucketts Way, however a BAL/BAR (Basic Left Turn/Basic Right Turn) entry is required to improve the safety of vehicles turning into/out of the site.

**Chapter B9 – Road Network and Parking**

The development is not a type which requires a Traffic Impact Assessment under the DCP, however the application was referred to TfNSW and Councils Traffic Engineers. The application was supported with a number of conditions requiring the upgrade of the site access to facilitate the safe turning of vehicles on and off the site and construction risk mitigation strategies. While recommended by TfNSW, the practical sight distances are acceptable as is to Council engineers.

In accordance with the DCP, the development must provide:

- One car space for every site
- One visitor space for every 10 sites

Based on the above, the development must provide:

- 50 parking spaces
- 5 visitor spaces

The development proposes a car space on each camp site and 10 additional visitor spaces and therefore complies with this Chapter.

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

Nil.

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

The proposed development of a camping ground on the site is anticipated to have an ongoing positive economic impact on the local area and the broader community through the creation of viable employment and economic activity during both the construction and ongoing operations of the development. The development will allow for the use of existing services and facilities in the locality without requiring significant infrastructure upgrades that burden the public.

The proposed development will provide employment opportunities in the locality and support the local tourism and supporting hospitality industries. This will have direct monetary input to the local economy, and the increased number of visitors in the locality will provide ongoing economic input through daily activities.

Impacts on the Built Environment

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The development provides for some impact on the built environment through the construction of the amenities block and camp kitchen, however this is seen as minor development in respect to the size of the land and will be suitably screened from the road and adjoining development. The impacts on the built environment are considered minor.

Impacts on the Natural Environment

The proposal incorporates appropriate measures to ensure no adverse impact on the natural environment. Air quality, noise, drainage and traffic have been appropriately addressed in the application, with mitigation measures included as recommended conditions. Through development conditions and additional design criteria, the potential impacts are mitigated.

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

The subject site is located within an existing rural residential area and contains sparse vegetation. The site has access to all relevant services and the proposed development makes good use of the suitable areas on the site. The application design includes all elements required under the relevant planning instruments and policies and any perceived or potential impacts have been reasonably mitigated as per the above. Noting this, the proposed development is considered suitable for the subject site.

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

Public Submissions

The original application was exhibited from 27 September to 13 October 2019 in accordance with the provisions of the Port Stephens Council Development Control Plan. Three submissions were received during this time. An additional four submissions were received following the submission period. The matters raised within these submissions have been detailed in the table below.

| <b>Comment</b>  | <b>Council response</b>   |
|---|---|
| Lack of demand for accommodation  | Commercial viability of the development is not considered in the assessment of the application.   |
| The development is inconsistent with the rural landscape character of the area. | The development provides vegetation preservation and screening and will not be readily visible from the public realm.   |
| Noise levels generated from the site  | The development application is accompanied by a noise assessment. The consent has been conditioned to minimise the residual noise impacts.  |
| Traffic impacts   | Conditions have been included with the consent to require road access upgrades to cater for traffic issues.   |
| Light pollution   | The scale of the development suggests that light impacts will be minimal due to the limited visitors, however additional conditions have been included on the consent to ensure the lighting complies with the Australian Standards |
| Potential for criminal activity   | An operational plan conditioned for the site will provide security arrangements and ongoing management options  |
| Availability of potable water   | The requirement for a potable water supply is conditioned as part of the development consent. Arrangements for the monitoring of potable water quality are coordinated by the NSW Health Water Unit.                                |
| Social issues from long term residents  | The proposal does not permit long term residents.   |

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|  |  |
|--|--|
| Non-compliance with LG Regulations           | The proposed waste water system has been accepted by Council engineers and compliance is to be assessed with a subsequent s68 application.   |
| Non-compliance with waste water requirements | Consideration of Local Government Regulations requirements is undertaken with the assessment of a subsequent s68 application.  |
| Environmental impacts                        | The application has been modified and conditioned to mitigate potential environmental impacts.   |
| Inadequacy of Wastewater Management report   | Council has developed an Onsite Sewage Management Development Assessment Framework. This tool is used to provide guidance to consultants in the preparation of wastewater management reports and the design of wastewater management systems. The report demonstrates that a suitable and sustainable system is available which can satisfactorily comply with this framework. Further design and operation detail is provided with a subsequent s68 application.                      |
| Inadequacy of Stormwater Management Report   | Council has assessed the Stormwater Management Plans and electronic modelling files with the opinion that the development is able to meet Council's infrastructure specifications and Australian Rainfall and Runoff guidelines. The proposed Stormwater Management System manages and treats flows within the site boundary and discharges to Councils stormwater system on The Bucketts Way whereby the post development conditions match the predevelopment conditions of the site. |
| Bushfire Evacuation Hazards                  | The NSW RFS has provided measures to be utilised on the site to protect visitors and residents and mitigate potential spread of bushfire across the land. A site management plan is to be drafted to provide emergency evacuation procedures for visitors. Offsite evacuation options are assessed by the RFS in their consideration of the proposal and recorded with the RFS for their evacuation management procedures.   |

As the application was modified to provide a lesser impact, re-notification of those modifications was not deemed required.

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

While the development raised significant issues with the adjoining and surrounding land owners, these concerns were able to be addressed through the redesign of the development and through the implementation of conditions of development consent. The assessment of an adequate wastewater and drainage strategy has been undertaken and found to be possible with additional design detail to be provided.

The development complies with the requirements of the PSLEP, Councils DCP and therefore the development is deemed to be in the public interest.

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

A condition of development consent was suggested by Councils Development Contributions team as part of the internal referral process. This condition is included with the consent.

**DETERMINATION**

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

KYLIE DORSETT  
Development Planner



**SCHEDULE 1 – CONDITIONS OF CONSENT**

**1.0 - General Conditions of Consent**

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

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

The General Terms of Approval are:

- 1. NSW Rural Fire Service, DA-2019-03512-CL55-1, 25 May 2020

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

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

| Plan reference | Name of plan                            | Prepared by                | Date       |
|----------------|---|----------------------------|------------|
| 1902748        | Proposed Site Plan                      | Sorensen Design & Planning | 24/05/2020 |
| 1902748        | Amenities Plan                          | Sorensen Design & Planning | 24/05/2020 |
| 1902748        | Camp Kitchen Plan                       | Sorensen Design & Planning | 24/05/2020 |
| 190203         | Stormwater Management Plan (Sheets 1-6) | DRB Consulting Engineers   | 15/05/2020 |
| 190203         | Cut/Fill Plan (Sheets 1-6)              | DRB Consulting Engineers   | 15/05/2020 |

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

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

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

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

- (4) **Tree removal/pruning** – The trees identified below are approved for removal:

- a) The trees identified for removal as shown on Proposed Site Plan - Proposed Campground & Eco Tourist Facility (Sheet 2 of 4; Document Reference no. 1902748) prepared by Sorensen Design and Planning, dated 24 May 2019 are approved for removal.
- b) Eucalyptus opposite proposed site entry within the road reserve.

**PORT STEPHENS COUNCIL**

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- (5) **Removal of Vegetation** - No vegetation or natural landscape features other than that authorised for removal or pruning by this Consent must be disturbed, damaged or removed. No additional works or access/parking routes transecting the protected vegetation must be undertaken without Council Approval. A map indicating the location of protected vegetation is available from Council upon request.
  
- (6) **Separate approval for signs** – A separate development application for any proposed signage, must be provide to, and approved by, the Consent Authority or under the provision of the *State Environmental Planning Policy (Exempt and Complying Codes) 2008* if applicable prior to the erection or display of any such signs.
  
- (7) **Building Code of Australia** – All building work must be carried out in accordance with the BCA and where applicable the Disability (Access to Premises – Buildings) Standards 2010. In this clause, a reference to the BCA is a reference to that Code as in force on the date the application for the relevant Construction Certificate is made.
  
- (8) **Sign on building** – Except in the case of work only carried out to the interior of a building or Crown building work, a sign must be erected in a prominent position on the site showing the name, address and telephone number of the Principal Certifying Authority for the work, the name of any principal contractor and their after-hours contact number, and must contain a statement that unauthorised entry to the site is prohibited.  
 The sign must be maintained while the work is being carried out and is to be removed when the work is completed.
  
- (9) **Outdoor lighting** - All lighting must comply with AS 1158 'Lighting for Roads and Public Spaces' and AS 4282 'Control of Obtrusive Effects of Outdoor Lighting'.

**2.0 – Prior to Issue of a Construction Certificate**

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

- (1) **Structural engineer's Certificate** A certificate must be prepared by a qualified Structural Engineer certifying that the building design is capable of withstanding the effects of flood waters, including immersion, structural stability, buoyancy, impact and loading from debris up to and including the future 1% Annual Exceedance Probability (AEP) event.  
 Details demonstrating compliance must be provided to the Certifying Authority.
  
- (2) **Free flow of water** - The location and design of the proposed doors must allow free access and escape of floodwaters without causing damage to the building. Details demonstrating compliance must be provided to the Certifying Authority.



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

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

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

Details demonstrating compliance must be provided to the Certifying Authority.

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

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

Details demonstrating compliance must be provided to the Certifying Authority.

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

- (6) **Flood Risk Management Plan** – A Flood Risk Management Plan prepared by a suitably qualified Engineer must be provided to the Certifying Authority demonstrating compliance with the following:

- a) The design must show that the proposed development is capable of withstanding the effects of flood waters, including immersion, structural stability, buoyancy and impact and loading from debris up to and including the 1% Annual Exceedance Probability (AEP) event.
- b) Certification that the proposed development/ building flood refuge is capable of withstanding the force of any flood waters experienced up to the Probable Maximum Flood Event (PMF).
- c) Certification demonstrating that any damage to the proposed development sustained in a flood will not generate debris capable of causing damage to downstream buildings or property
- d) Certification demonstrating that the rainwater tank, finishes, plant fittings and equipment and any other buoyant fixtures will be of materials and functional capacity to withstand the forces of floodwater in events up to and including the

ITEM 2 - ATTACHMENT 3 RECOMMENDED CONDITIONS OF CONSENT.



1% AEP event including hydrostatic pressure, hydrodynamic pressure and buoyancy forces.

- (7) **Stormwater system Operation and Maintenance Procedure Plan** – An Operation and Maintenance Plan for the stormwater system must be prepared by a qualified engineer detailing a regular maintenance programme for pollution control devices, covering inspection, cleaning and waste disposal.  
Details demonstrating compliance must be provided to the Certifying Authority.
- (8) **Approval of OSMS under LG Act** – An approval under Section 68 of the Local Government Act 1993 is to be obtained from Council for the installation of an on-site sewage management system (OSMS) prior to the issue of a Construction Certificate.
- (9) **Soil, erosion, sediment and water management** – An Erosion and Sediment Control Plan (ESCP) must be prepared in accordance with Council's Infrastructure Specifications. Details demonstrating compliance must be provided to the Certifying Authority.
- (10) **Roads Act Approval** – For construction/reconstruction of Council infrastructure, including vehicular crossings. Footpath, kerb and gutter, stormwater drainage, an application must be made for a Roadworks Permit under Section 138B of the *Roads Act 1993*.
- (11) **Construction Management Plan** - A Construction Management Plan must be submitted to and approved by to the Certifying Authority and Council. The required CMP must outline the sequence and construction methodology and specify mitigating measures to ensure all works are carried out with minimal environmental impact in relation to project staging, waste management, noise and dust management, traffic management and environmental management
- (12) **Section 7.12 development contributions** - A monetary contribution is to be paid to Council, pursuant to Section 7.12 of the *Environmental Planning & Assessment Act 1979* and the Port Stephens Council Fixed Local Infrastructure Contributions Plan, related to the Capital Investment Value (CIV) of the development as determined in accordance with clause 25j of the *Environmental Planning and Assessment Regulation 2000* and outlined in the table below.

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

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ITEM 2 - ATTACHMENT 3 RECOMMENDED CONDITIONS OF CONSENT.



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

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

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

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

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

(13) **Long service levy** – In accordance with Section 34 of the *Building and Construction Industry Long Service Payments Act 1986*, the applicant must pay a long service levy at the prescribed rate to either the Long Service Payments Corporation or Council for any works that cost \$25,000 or more.

(14) **Site access / egress** - Prior to the issue of a Construction Certificate, plans are to be prepared demonstrating a BAL/BAR intersection treatment, in accordance with current Austroads Guides, at the proposed main entry to the site (this may include tree removal within the clear zone at the Direction of the Roads Authority).

**3.0 - Prior to Commencement of Works**

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

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

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

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

- a) a description of the work to be carried out;
- b) the address of the land on which the work is to be carried out;
- c) the Registered number and date of issue of the relevant development consent;

ITEM 2 - ATTACHMENT 3 RECOMMENDED CONDITIONS OF CONSENT.



- d) the name and address of the Principal Certifying Authority (PCA), and of the person by whom the PCA was appointed;
  - e) if the PCA is an accredited certifier, their accreditation number, and a statement signed by the accredited certifier consenting to being appointed as PCA; and
  - f) a telephone number on which the PCA may be contacted for business purposes.
- (3) **Notice commencement of work** – Notice must be given to Council at least two days prior to subdivision and/or building works commencing in accordance with Clause 104 of the *Environmental Planning & Assessment Regulation 2000*. The notice must include:
- a) the name and address of the person by whom the notice is being given;
  - b) a description of the work to be carried out;
  - c) the address of the land on which the work is to be carried out;
  - d) the Registered number and date of issue of the relevant development consent and construction certificate;
  - e) a statement signed by or on behalf of the Principal Certifying Authority to the effect that all conditions of the consent that are required to be satisfied prior to the work commencing have been satisfied; and
  - f) the date on which the work is intended to commence.
- (4) **Sign of PCA and contact details** – A sign must be erected in a prominent position on the site stating the following:
- a) that unauthorised entry to the work site is prohibited;
  - b) the name of the principal contractor (or person in charge of the site) and a telephone number on which that person can be contacted at any time for business purposes and outside working hours;
  - c) the name, address and telephone number of the Principal Certifying Authority.
- The sign must be maintained while the work is being carried out and must be removed upon the completion of works. Where Council is the PCA, the sign is available from Council's Administration Building at Raymond Terrace or the Tomaree Library at Salamander Bay free of charge.
- (5) **Construction Certificate Required** – In accordance with the provisions of Section 6.7 of the *Environmental Planning & Assessment Act 1979 (EP&A Act 1979)*, construction or subdivision works approved by this consent must not commence until the following has been satisfied:
- a) a Construction Certificate has been issued by a Consent Authority;
  - b) a Principal Certifying Authority (PCA) has been appointed by the person having benefit of the development consent in accordance with Section 6.5 of the *EP&A Act 1979*; and

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## ITEM 2 - ATTACHMENT 3 RECOMMENDED CONDITIONS OF CONSENT.



- c) the PCA is notified in writing of the name and contractor licence number of the owner/builder intending to carry out the approved works.
- (6) **Site is to be secured** – The site must be secured and fenced to the satisfaction of the Principal Certifying Authority. All hoarding, fencing or awnings (associated with securing the site during construction) is to be removed upon the completion of works.
- (7) **Soil erosion and sediment control** – Soil erosion and sediment controls must be implemented prior to works commencing on the site in accordance with 'Managing Urban Stormwater – Soils and Construction ('the blue book') and any Sediment and Erosion plans approved with this Development Consent.
- Soil erosion and sediment control measures must be maintained during construction works and must only be removed upon completion of the project when all landscaping and disturbed surfaces have been stabilised (for example, with site turfing, paving or re-vegetation).
- (8) **All weather access** – A 3m wide all-weather vehicle access is to be provided from the kerb and gutter to the building under construction for the delivery of materials and use by trades people.
- No materials, waste or the like are to be stored on the all-weather access at any time.
- (9) **Rubbish generated from the development** – Where not already available, a waste containment facility is to be established on site. The facility is to be regularly emptied and maintained for the duration of works.
- No rubbish must be stockpiled in a manner which facilitates the rubbish to be blown or washed off site. The site must be cleared of all building refuse and spoil immediately upon completion of the development. Council may issue 'on the spot' fines for pollution/littering offences under the Protection of the Environment Operations Act 1997.
- (10) **Flood design measures** – Evidence of certification demonstrating that the following flood related design precautions have been adhered to in the design must be submitted to the Principal Certifying Authority:
- a) In sewerred areas some plumbing fixtures may be located below the *Flood Planning Level (FPL)*. Where this occurs sanitary drainage is to be fitted with a reflux valve to protect against internal sewage surcharge;
  - b) All materials stored at the site and capable of causing harm to the environment must be stored at a level not less than the *FPL* or suitable bunding must be placed around such materials to a minimum of the *FPL*;
  - c) All building materials, equipment, ducting, etc., below the *FPL* must be flood compatible and ducting must be provided with openings for drainage and cleaning;
  - d) All main power supply, heating and air conditioning service installations, including meters must be located above the *FPL*. All electrical equipment



installed below the *FPL* must be capable of disconnection by a single plug from the power supply;

- e) All electrical wiring below the *FPL* must be suitable for continuous submergence in water. All conduits below the *FPL* must be self-draining. Earth core leakage systems or safety switches are to be installed;
- f) Wherever possible, the premises must be designed to ensure that plant, equipment, storage tanks or other fixtures or fittings liable to damage by floods are located above the *FPL* or be moveable to levels above the *FPL*. Should this not have the ability to occur, they shall be suitable for submergence in water and securely anchored to overcome buoyancy and movement. All storage tanks must be vented to an elevation above the *FPL*.

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

- a) No existing nature strip(s), street tree(s), tree guard(s), protective bollard(s), garden bed surrounds or root barrier installation(s) must be disturbed, relocated, removed or damaged during earthworks, demolition, excavation (including any driveway installation), construction, maintenance and/or establishment works applicable to this consent, without Council agreement and/or consent.

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

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

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

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

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

#### 4.0 - During Works

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ITEM 2 - ATTACHMENT 3 RECOMMENDED CONDITIONS OF CONSENT.



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

- (1) **Construction hours** – Construction work that is likely to cause annoyance due to noise is to be restricted to the following times:-
- Monday to Friday, 7am to 6pm;
  - Saturday, 8am to 1pm;
  - No construction work to take place on Sunday or Public Holidays.

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

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

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

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

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

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

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

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

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

- (5) **Finished floor level** – A survey report prepared by a Registered Surveyor confirming that the finished floor level complies with the approved plans or floor levels specified by the development consent, must be provided to Principal Certifying



ITEM 2 - ATTACHMENT 3 RECOMMENDED CONDITIONS OF CONSENT.



Authority prior to the development proceeding beyond floor level stage. A Flood Certificate is to be sought from Council to determine the finished floor level of the site.

- (6) **Survey report** – The building must be set out by a Registered land surveyor. A peg out survey detailing the siting of the building in accordance with the approved plans must be provided to the Principal Certifying Authority prior to the pouring of concrete.
- (7) **Traffic Management Plan implementation** - All construction traffic management procedures and systems identified in the approved Construction Management Plan must be introduced during construction of the development to ensure safety and to minimise the effect on adjoining pedestrian and traffic systems.
- (8) **Stormwater disposal** – Following the installation of any roof, collected stormwater runoff from the structure must be:
  - a) Dispersed at ground level, so as not to be concentrated or create nuisance flows onto any buildings, or neighbouring properties. The discharge location must be at least 3m down slope of the building and 6m minimum clearance from receiving down slope property boundaries.
- (9) **Placement of fill** - Filling must not be placed in such a manner that natural drainage from adjoining land will be obstructed or in such a manner that surface water will be diverted.  
Further, any alterations to the natural surface contours must not impede or divert natural surface water runoff so as to cause a nuisance to adjoining property owners.
- (10) **Location of stockpiles** – Stockpiles of soil must not be located on / near any drainage lines or easements, natural watercourses or water bodies, footpath or roadway without first providing suitable protective measures adequate to protect these water bodies. All stockpiles of contaminated materials must be suitably covered to prevent dust and odour nuisance.
- (11) **Tree protection measures** – All trees to be retained must be protected in accordance with AS4970 'Protection of Trees on Development Sites' for the duration of construction.
- (12) **Tree Removal** - All approved tree removal/ pruning is subject to all works being undertaken by a qualified arborist with a minimum Australian Qualification Framework Level 3 qualifications or higher. All works are to be undertaken in accordance with the relevant provisions of AS 4373 'Pruning of Amenity trees'.
- (13) **Vegetation Management Plan** - All works must be undertaken in accordance with the approved Vegetation Management Plan.

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

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

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

- (15) **Soil, erosion, sediment and water management** – All requirements of the Erosion and Sediment Control Plan or Soil and Water Management Plan must be maintained at all times during the works and any measures required by the plan must not be removed until the site has been stabilised.
- (16) **Offensive noise, dust, odour and vibration** – All work must not give rise to offensive noise, dust, odour or vibration as defined in the *Protection of the Environment Operations Act 1997* when measured at the nearest property boundary.

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

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

- (1) **Occupation Certificate required** - An Occupation Certificate must be obtained prior to any use or occupation of the development.  
The Principal Certifying Authority must be satisfied that the development has been constructed in accordance with approved plans, specifications and conditions of this consent.
- (2) **Approval to Operate (Waste Treatment)** - An Approval to Operate must be obtained by Council in accordance with the *Local Government Act, 1993* (Section 68A) following the satisfactory installation of the waste treatment device/human waste storage facility.
- (3) **Fire Safety Certificates** - A fire safety certificate as prescribed by Section 174 Environmental Planning & Assessment Regulations 2000 which certifies the performance of the implemented fire safety measures in accordance with Section 170 of the Regulation must be submitted to the Principal Certifying Authority and the Commissioner of New South Wales Fire Brigades. A copy of fire safety certificate needs to be forwarded to Council, If Council is not nominated as the Principal Certifying Authority. A further copy of the certificate must also be prominently displayed in the building.

ITEM 2 - ATTACHMENT 3 RECOMMENDED CONDITIONS OF CONSENT.



- (4) **Survey Certificate** – A Registered Surveyor must prepare a Survey Certificate to certify that the location of the building in relation to the allotment boundaries complies with the approved plans or as specified by this consent. The Survey Certificate must be provided to the satisfaction of the Principal Certifying Authority.
  
- (5) **Services** – Evidence is to be provided to Council demonstrating that sufficient capacity of the following services are available to the development:
  - a) Electricity;
  - b) Water (including potable water), and;
  - c) Gas (where available).

Should any of the above reticulated services not be available to the development site, a detailed statement is to be provided explaining why connection of the relevant service is not possible or practical.
  
- (6) **Stormwater/drainage works** – All stormwater and drainage works required to be undertaken in accordance with this consent must be completed.  
The certification/verification must be provided to the satisfaction of the Principal Certifying Authority.
  
- (7) **Rectification damage to public infrastructure** – The applicant must rectify any new damage to public infrastructure to the satisfaction of the Council as the Roads Authority.
  
- (8) **Completion of Roads Act Approval works** - All approved road, footpath and/or drainage works, including vehicle crossings, have been completed in the road reserve in accordance with the Roads Act Approval to the satisfaction of the Council as the Roads Authority.
  
- (9) **Protection and certification of electrical services** – All power points, fittings, electrical connections and the incoming meter box are to be located above the Flood Planning Level (FPL).  
Switches, light fittings and power points may be located below the FPL provided they are capable of being isolated by a single Residual Current Device (RCD) protected switch that is located above the FPL. Certification of these works are to be provided to the Principal Certifying Authority.
  
- (10) **Flood signage** – A flood marker sign of durable material having minimum dimensions of 600mm x 600mm, is to be installed within a prominent location indicating the expected future 1% Annual Exceedance Probability and Probable Maximum Flood levels, and the date of installation.

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

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



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

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

This certificate must accompany the Works as Executed plans.

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

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

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

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

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

- (1) **Occupation Certificate required** - An Occupation Certificate for the amenities block and camp kitchen must be obtained prior to any issue of an approval to operate the development.

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

- (2) **Site Entry** - A BAL/BAR entry in accordance with current Austroads Guides is to be constructed at the proposed new entry to the site.

- (3) **Local Government Regulations** - The camping ground must be constructed and operated in accordance with the requirements of the Local Government Regulations (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005, excluding any objection approved in accordance with Section 82 of the *Local Government Act 1993*.

- (4) **Ecological Assessment** - Construction of the development must comply with the recommendations of *Ecological Assessment Report for Proposed Campground &*

ITEM 2 - ATTACHMENT 3 RECOMMENDED CONDITIONS OF CONSENT.



*Eco Tourist Facility at 47 The Bucketts Way Twelve Mile Creek, NSW*, prepared for: Tudor Property Services c/- Perception Planning, by Anderson Ecology and Planning, dated March 2020 (Document reference no. 1950), detailed as follows:

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

- (5) **Revegetation planting** - The following plant species must be planted at no cost to Council along the southern and northern boundary of the lot (excluding the mapped habitat area of the *Pterostylis chaetophora*):

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

Details demonstrating compliance must be provided to the Certifying Authority.

- (6) **Construction to be in accordance with Acoustic Report** – Certification is to be submitted to the Principal Certifying Authority to certify that the construction of the



development complies with the recommendations of the Acoustic Assessment Report, prepared by RAPT Consulting dated 11 February 2020.

- (7) **Operational Plan of Management** – An Operation Plan of Management for the site is to be drafted and provided to Council outlining proposed management actions in relation to:
- 24 hour on-site management
  - Noise management and abatement
  - Emergency procedures
  - Emergency and after hours contact numbers for visitors and nearby residents
  - Security
  - Antisocial behaviour of visitors
  - Visitor arrival and departure times
  - Maximum onsite stay of four (4) consecutive nights for visitors
  - Restriction on individual campsite fires

### 7.0 – Ongoing Use

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

- (1) **Manoeuvring of vehicles** – All vehicles must enter and exit the site in a forward direction.
- (2) **Parking areas to be kept clear** – At all times, the loading, car parking spaces, driveways and footpaths must be kept clear of goods and must not be used for storage purposes.
- (3) **Fire Safety Schedule** – At all times, a copy of the Fire Safety Schedule and Fire Safety Certificate must be prominently displayed in the building and a copy forwarded to the Commissioner of New South Wales Fire Brigades in accordance with the *Environmental Planning & Assessment Regulations 2000*.
- (4) **Fire Safety Schedule** - At least once in each twelve (12) month period, fire safety statements as prescribed by Section 175 Environmental Planning & Assessment Regulations 2000 in respect of each required essential fire safety measure installed within the building are to be submitted to Council. Such certificates are to state that:
  - a) The service has been inspected and tested by a person (chosen by the owner of the building) who is competent to carry out such inspection and test; and
  - b) That the service was or was not (as at the date on which it was inspected and tested) found to be capable of operating to a standard not less than that specified in the fire safety schedule for the building.
- (5) **Amenity** – The business must be conducted, and customers controlled at all times so that no interference occurs to the amenity of the area, the footpath, adjoining occupations and residential premises.

## ITEM 2 - ATTACHMENT 3 RECOMMENDED CONDITIONS OF CONSENT.



- (6) **Waste water treatment devices** – All wastewater treatment devices (including drainage systems, sumps, traps and pumps) must be regularly maintained in good working order to ensure that they remain effective.
- A maintenance schedule must be developed and incorporated into a Plan of Management (PoM) and kept on-site at all times for staff to comply with. All liquid and solid wastes collected from the treatment device must be disposed of in accordance with relevant environmental protection and waste control Legislation.
- (7) **Vegetation Management Plan** - Monitoring reports in accordance with the approved Vegetation Management Plan must be prepared and submitted to Council.
- (8) **Maintenance of Plantings** - Commencing from the date of practical completion, a 12-month maintenance establishment period applies. This includes the establishment, care and repair of all plantings.
- The date of Practical Completion is taken to mean completion of all civil works, soil preparation and treatment and initial weed control, and completion of all planting.
- (9) **Use of Caravans** – The use of caravans in the campgrounds is not permitted.

**Advice Note(s):**

- A. **'Dial Before you Dig'** – Before any excavation work starts, contractors and others should phone the "Dial Before You Dig" service to access plans/information for underground pipes and cables.
- B. **Disability Discrimination Act** – The Commonwealth Disability Discrimination Act makes it an offence to discriminate against people on the grounds of disability, in the provision of access to premises, accommodation, or services. It is the owner/applicants responsibility to ensure compliance with the requirements of this Act.
- C. **Aboriginal archaeological deposit** – In the event of any aboriginal artefact, object or structure being unearthed, all work must cease immediately in the affected area, and the Biodiversity Conservation Division (BCD) shall be informed of the discovery. Work must not recommence until the material has been inspected and permission has been given by BCD to proceed.
- D. **Flood information is subject to change** – You are advised that flood information is subject to change if more accurate data becomes available to Council. It is the responsibility of the applicant to use the most up-to-date flood information. Prior to applying for a construction certificate, Council should be contacted to verify the currency of the flood information.





- E. **Flood Evacuation Plan** – A flood evacuation plan indicating that permanent, fail-safe, maintenance free measures are incorporated in the development to ensure that timely, orderly and safe evacuation of people and potential pollutant material from the buildings on-site should a flood occur. Details demonstrating compliance must be provided to the Certifying Authority with the Construction Certificate application.
  
- F. **Signage** – You are advised that any proposed advertising signs that are not shown on the approved plans, or classified as exempt development, are subject to a separate Development Application to Council.
  
- G. **Responsibility for damage for tree removal/pruning** – The applicant is responsible for any damage caused to existing public utilities, footpaths or public roads during the cutting down, grinding, removal and disposal of the timber and roots. Care must also be taken by the applicant and the applicant's agents to prevent any damage to adjoining properties. The applicant or the applicants' agent may be liable to pay compensation to any adjoining owner if, due to tree works, damage is caused to such adjoining property.

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

*The determination decision was reached for the following reasons:*

- The proposed development, subject to the recommended conditions, is consistent with the objectives of the applicable environmental planning instruments, being; Port Stephens Local Environmental Plan 2013 (PSLEP), State Environmental Planning Policy No 55 - Remediation of Land, State Environmental Planning Policy No. 44 - Koala Habitat Protection and State Environmental Planning Policy (Infrastructure) 2007.
- The proposed development is, subject to the recommended conditions, consistent with the objectives of the Port Stephens Council Development Control Plan 2014 (PSDCP).
- Subject to the recommended conditions the proposed development will be provided with adequate essential services required under the PSLEP.
- The proposed development is considered to be of an appropriate scale and form for the site and the character of the locality.
- The proposed development, subject to the recommended conditions, will not result in unacceptable adverse impacts upon the natural or built environments.
- The proposed development is a suitable and planned use of the site and its approval is within the public interest.
- Any submission issues raised have been taken into account in the assessment report and where appropriate conditions of consent have been included in the determination. Council has given due consideration to community views when making the decision to determine the application.

**REASONS WHY THE CONDITIONS HAVE BEEN IMPOSED**

The following conditions are applied to:

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

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

If you are dissatisfied with this decision (including a determination on a review under Section 8.2), Section 8.7 and 8.10 of the Environmental Planning and Assessment Act 1979 gives you the right to appeal to the Land and Environment Court within six months after:

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

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

**RIGHT OF REVIEW**

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

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

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

**SCHEDULE 4 - APPROVALS UNDER SECTION 4.46****ATTACHED**

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Page 20 of 20



# Call to Council form

Development Application

116 Adelaide Street,  
Raymond Terrace NSW 2324

PO Box 42  
Raymond Terrace NSW 2324

p (02) 4988 0255 | f (02) 4987 3612  
e council@portstephens.nsw.gov.au

DX 21406 | ABN 16 744 377 876

## DEVELOPMENT APPLICATION (DA) CALL TO COUNCIL REQUEST

We (Mayor/Councillor/s)

|                         |                                       |
|-------------------------|---------------------------------------|
| Name:                   | Giacomo Arnott                        |
| Name:                   | John Nell                             |
| Name:                   | Steve Tucker                          |
| request that DA number: | 16-2019-598-1                         |
| for DA description:     | Tourism - camping ground              |
| located at:             | 47 The Bucketts Way Twelve Mile Creek |

be reported to Council for determination.

### REASON

Public interest

### SIGNATURE OF APPLICANT/S

|           |  |      |  |
|-----------|--|------|--|
| Signature |  | Date |  |
| Signature |  | Date |  |
| Signature |  | Date |  |

### PRIVACY

Port Stephens Council is committed to protecting your privacy. We take reasonable steps to comply with relevant legislation and Council policy. **Purpose:** The purpose of this form is to enable Council to record the matter raised and taken appropriate action. **Intended recipients:** Council employees, contractors and other third parties where appropriate. **Supply:** Voluntary. **Consequence of Non Provision:** Council may not take action on the matter raised. **Storage and security:** This document will be placed on the relevant file and/or saved in Council's records management system in accordance with Council policy and relevant legislation. **Access:** Please contact Council on 02 4988 0255 to enquire how you can access information.

**MINUTES ORDINARY COUNCIL - 14 JULY 2020**

**ITEM NO. 1**

**FILE NO: 20/159951  
EDRMS NO: DA 16-2019-598-1**

**DA 16-2019-598-1 FOR A CAMPING GROUND (50 CAMP SITES) WITH AMENITIES AND KITCHEN AT 47 THE BUCKETTS WAY, TWELVE MILE CREEK**

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

**RECOMMENDATION IS THAT COUNCIL:**

- 1) Approve Development Application 16-2019-598-1 for a camping ground (50 camp sites) with amenities and kitchen at 47 The Bucketts Way, Twelve Mile Creek (Lot 9 DP243144) subject to the Recommend Conditions of Consent contained in **(ATTACHMENT 3)**.

**ORDINARY COUNCIL MEETING - 14 JULY 2020  
MOTION**

|  |  |
|--|--|
|  | <p><b>Councillor John Nell<br/>Councillor Ken Jordan</b></p> <p>That Council approve Development Application 16-2019-598-1 for a camping ground (50 camp sites) with amenities and kitchen at 47 The Bucketts Way, Twelve Mile Creek (Lot 9 DP243144) subject to the Recommend Conditions of Consent contained in <b>(ATTACHMENT 3)</b>.</p> |
|--|--|

**ORDINARY COUNCIL MEETING - 14 JULY 2020  
AMENDMENT**

|  |  |
|--|--|
|  | <p><b>Councillor Giacomo Arnott</b></p> <p>That Council approve Development Application 16-2019-598-1 for a camping ground (50 camp sites) with amenities and kitchen at 47 The Bucketts Way, Twelve Mile Creek (Lot 9 DP243144) subject to the Recommend Conditions of Consent contained in <b>(ATTACHMENT 3)</b>, and modify condition 6(2) as follows:</p> <ol style="list-style-type: none"><li>1. <b>Condition 6 (2) be modified to read:</b><br/><br/>(2) Roads Act Approval - For construction/reconstruction of public infrastructure, including vehicular crossings, footpath, kerb and gutter, stormwater drainage, an application must be</li></ol> |
|--|--|

**MINUTES ORDINARY COUNCIL - 14 JULY 2020**

|  |   |
|--|---|
|  | <p>made for a Roadworks Permit under Section 138 of the Roads Act 1993.</p> <p>Where road works are required on a State road or Highway, RMS will require the developer to enter into a Works Authorisation Deed (WAD) with RMS. RMS will exercise its powers under the Roads Act 1993 (the Act) and the functions of the roads authority.</p> <p>Works required for completion prior to occupation or operation of the development will include, but not be limited to:</p> <ul style="list-style-type: none"><li>• Intersection treatment, in accordance with current Austroads Guides, is to be constructed at the Pacific Highway intersection to cater for a minimum increase of 50 additional vehicle movements per day in addition to projected traffic increase along the Buckets Way and Pacific Highway</li></ul> |
|--|---|

The amendment lapsed without a seconder.

Cr Glen Dunkley left the meeting at 6.32pm.  
Cr Glen Dunkley returned to the meeting at 6.35pm.

**ORDINARY COUNCIL MEETING - 14 JULY 2020  
AMENDMENT**

|  |  |
|--|--|
|  | <p><b>Councillor Giacomo Arnott</b></p> <p>That Council approve Development Application 16-2019-598-1 for a camping ground (50 camp sites) with amenities and kitchen at 47 The Bucketts Way, Twelve Mile Creek (Lot 9 DP243144) subject to the Recommend Conditions of Consent contained in <b>(ATTACHMENT 3)</b>, and modify condition 6(2) as follows:</p> <p><b>Condition 6 (2) be modified to read:</b></p> <p>(2) Roads Act Approval - For construction/reconstruction of public infrastructure, including vehicular crossings, footpath, kerb and gutter, stormwater drainage, an application must be made for a Roadworks Permit under Section 138 of the Roads Act 1993.</p> <p>Where road works are required on a State road or Highway, RMS will require the developer to enter into a Works Authorisation Deed (WAD) with RMS. RMS will exercise its</p> |
|--|--|

**MINUTES ORDINARY COUNCIL - 14 JULY 2020**

|  |  |
|--|--|
|  | <p>powers under the Roads Act 1993 (the Act) and the functions of the roads authority.</p> <p>Works required for completion prior to occupation or operation of the development will include, but not be limited to:</p> <ul style="list-style-type: none"> <li>• A BAL/BAR intersection treatment, in accordance with current Austroads Guides, is to be constructed at the proposed main entry to the site and this may include tree removal within the clear zone at the Direction of the Roads Authority.</li> <li>• Shoulder widening, to the satisfaction of the Roads Authority, to allow safe waste collection without impeding traffic flows on The Bucketts Way.</li> <li>• The Bucketts Way is to be upgraded to an Austroads compliant dual carriageway, two way, road for a length of 100m in both directions from the centreline of the proposed main entrance.</li> <li>• Demonstration that appropriate sight distances for vehicles entering and exiting the site can be achieved in accordance with Austroads Guide to Road Design.</li> </ul> |
|--|--|

The amendment lapsed without a seconder.

**ORDINARY COUNCIL MEETING - 14 JULY 2020  
AMENDMENT**

|  |   |
|--|---|
|  | <p><b>Councillor Giacomo Arnott<br/>Councillor John Nell</b></p> <p>That Council approve Development Application 16-2019-598-1 for a camping ground (50 camp sites) with amenities and kitchen at 47 The Bucketts Way, Twelve Mile Creek (Lot 9 DP243144) subject to the Recommend Conditions of Consent contained in <b>(ATTACHMENT 3)</b>, and modify condition 6.0(7) as follows:</p> <p><b>Condition 6.0 (7) be modified to read:</b></p> <p><b>(7) Operational Plan of Management</b> – An Operation Plan of Management for the site is to be drafted and provided to Council outlining proposed management actions in relation to:</p> <p>Maximum onsite stay of four consecutive nights for visitors</p> |
|--|---|

In accordance with Section 375 (A) of the Local Government Act 1993, a division is required for this item.

**MINUTES ORDINARY COUNCIL - 14 JULY 2020**

Those for the Motion: Cr Giacomo Arnott.

Those against the Motion: Mayor Ryan Palmer, Crs Chris Doohan, Glen Dunkley, Ken Jordan, John Nell, Sarah Smith and Steve Tucker.

The amendment was lost.

**ORDINARY COUNCIL MEETING - 14 JULY 2020  
MOTION**

|            |   |
|------------|---|
| <b>122</b> | <b>Mayor Ryan Palmer<br/>Councillor Chris Doohan</b><br><br>It was resolved that Council defer item 1 development application 16-2019-598-1 for a camping ground (50 camp sites) with amenities and kitchen at 47 The Bucketts Way, Twelve Mile Creek (Lot 9 DP243144). |
|------------|---|

In accordance with Section 375 (A) of the Local Government Act 1993, a division is required for this item.

Those for the Motion: Mayor Ryan Palmer, Crs Giacomo Arnott, Chris Doohan, Glen Dunkley, Ken Jordan, John Nell, Sarah Smith and Steve Tucker.

Those against the Motion: Nil.

The amendment was put and became the motion which was carried.

In accordance with Section 375 (A) of the Local Government Act 1993, a division is required for this item.

Those for the Motion: Mayor Ryan Palmer, Crs Giacomo Arnott, Chris Doohan, Glen Dunkley, John Nell, Sarah Smith and Steve Tucker.

Those against the Motion: Cr Ken Jordan.

The motion was carried.

**BACKGROUND**

The purpose of this report is to present a development application (DA) to Council for determination. The subject DA relates to land located at 47 The Bucketts Way, Twelve Mile Creek (Lot: 9 DP: 243144, (the subject site). A locality plan is provided in **(ATTACHMENT 1)**.



**MINUTES ORDINARY COUNCIL - 14 JULY 2020**

The DA is being reported to Council for determination, in accordance with the Development Applications to be reported to Council Policy, as the application was called to Council by Councillor Arnott, Councillor Nell and Councillor Tucker (**ATTACHMENT 4**).

Proposal

The application seeks approval for the establishment of a camping ground, consisting of 50 camp sites, and the construction of an amenities block, camp kitchen area, internal roads and associated servicing infrastructure. The camping ground will permit the pitching of tents, and parking of caravans and camper trailers and the like for short term stays.

The application was originally submitted for up to 100 camp sites with an alternative layout and has since been modified as a result of public submissions and the need to comply with the requirements of Council, NSW Rural Fire Service and Transport for NSW.

Site Description and History

The subject site is identified as 47 The Bucketts Way, Twelve Mile Creek (Lot 9 DP243144) (**ATTACHMENT 1**). The site is located in a rural residential area with significant vegetation and waterways and is within close proximity of the Pacific Highway (M1). The land is 10.12 hectares in area and is somewhat clear of vegetation in the eastern portion of the site, becoming more densely vegetated in the western portion. A natural waterway traverses the site along the western boundary. The lot holds 2 existing dwellings and a number of outbuildings.

Key Issues

The key issues identified throughout the assessment of the proposal and as a result of public submissions relate to the potential impacts of the proposal on the amenity of adjoining rural residential land, land use conflict, site access and environmental impacts as outlined below. A detailed assessment of the development is contained in the Planners Assessment Report provided at (**ATTACHMENT 2**).

Land Use

The proposed development is defined as a Camping Ground which is permissible with consent in the RU2 Rural Landscape zone. A Camping Ground is defined by the Port Stephens Local Environmental Plan 2013 (LEP 2013) as:

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

**MINUTES ORDINARY COUNCIL - 14 JULY 2020**

The proposed development includes 50 camp sites to accommodate tents, campervans, RV's, camp trailers and caravans. Despite the incorporation of caravans on the site, the development is not characterised as a Caravan Park (which is not permissible in the zone) noting that the camp ground will accommodate those above uses for short term stays only. A Caravan Park use allows for longer term stays, including permanent installations of caravans and other moveable dwellings.

Noting a Camping Ground is a permissible use in the zone, the development is considered acceptable in its setting. The development is located a significant distance from The Bucketts Way, behind the existing dwellings on the lot and is setback from the side boundaries with landscape screening provided (existing and proposed) to mitigate any visual impacts to surrounding properties (**ATTACHMENT 2**).

Access

The application was referred to and reviewed by Transport for NSW (TfNSW) (formerly RMS) and Council Engineers. The application was supported with a number of conditions requiring the upgrade of the site access to facilitate the safe turning of vehicles on and off the site including a channelized access and removal of some roadside vegetation to enable acceptable sight lines. These recommendations have been incorporated into the recommended conditions of consent (**ATTACHMENT 3**).

Environmental Impacts

The land is identified as containing potential koala habitat. The proposed development avoids significant koala habitat removal. Offsetting for the loss of any trees is proposed by replacement planting along the southern boundary to facilitate habitat connection.

The development has been modified to largely avoid areas of likely Tall Rustyhood Orchid habitat, however as certain activities such as bushwalking and asset protection are proposed within the habitat area, a Vegetation Management Plan has been requested via condition to ensure the ongoing management and protection of these areas.

The proposal is located on land identified as wetland under the LEP 2013. Through the assessment it was determined that the development will not have a negative impact on the flora and fauna of the wetland, including native and migratory species, or the characteristics of the ground or surface water with the imposition of the mitigating conditions proposed (**ATTACHMENT 3**).

Impacts on surrounding Rural Residential Land

The proposed development borders 2 rural residential lots to the north and south of the site which contain a total of 3 dwellings.

**MINUTES ORDINARY COUNCIL - 14 JULY 2020**

A noise assessment was provided with the application which demonstrates that appropriate noise mitigation measures are able to be installed to ensure acceptable noise levels are maintained. Additionally, the consent has been conditioned such that a management plan for the site is required which provides emergency contact numbers for visitors and neighbours to direct noise concerns (**ATTACHMENT 3**).

The proposed development will require compulsory lighting in accordance with the Local Government Regulations. A condition has been recommended to ensure the potential impacts from lighting are mitigated to the minimum through the AS1158 'Lighting for Roads and Public Spaces' and AS 4282 'Control of Obtrusive Effects of Outdoor Lighting' (**ATTACHMENT 3**).

Stormwater Management

A stormwater management plan was submitted with the application and includes adequate quality and quantity controls as required by Councils policy. The stormwater drainage plan has been assessed as being consistent with the Infrastructure Specification and a condition of consent has been included requiring the provision of detailed engineering plans prior to the issue of a construction certificate (**ATTACHMENT 3**).

Conclusion

The proposed development is consistent with the relevant environmental planning instruments applicable to the subject site including:

- Section 4.15 of the Environmental Planning and Assessment Act 1979
- State Environmental Planning Policy No 21 – Caravan Parks
- State Environmental Planning Policy No. 44 - Koala Habitat Protection
- State Environmental Planning Policy No 55 - Remediation of Land
- State Environmental Planning Policy (Infrastructure) 2007
- Port Stephens Local Environmental Plan 2013 (LEP 2013)
- Port Stephens Development Control Plan 2014 (DCP 2014)

A detailed assessment of the proposal against the provisions of Section 4.15 Environmental Planning and Assessment Act 1979 (EP&A Act) is provided at (**ATTACHMENT 2**).

The key issues arising through the assessment of the application have been satisfactorily addressed and supported by sufficient mitigation measures as provided within the Recommended Conditions of Consent contained in (**ATTACHMENT 3**). On this basis, the proposed development supports and promotes the public interest, and is recommended for approval.

**MINUTES ORDINARY COUNCIL - 14 JULY 2020**

**COMMUNITY STRATEGIC PLAN**

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

**FINANCIAL/RESOURCE IMPLICATIONS**

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

| <b>Source of Funds</b>           | <b>Yes/No</b> | <b>Funding (\$)</b> | <b>Comment</b> |
|----------------------------------|---------------|---------------------|----------------|
| Existing budget                  | No            |                     |                |
| Reserve Funds                    | No            |                     |                |
| Developer Contributions (\$7.12) | Yes           |                     |                |
| External Grants                  | No            |                     |                |
| Other                            | No            |                     |                |

**LEGAL, POLICY AND RISK IMPLICATIONS**

The development application is consistent with Section 4.15 of the Environmental Planning and Assessment Act 1979. A detailed assessment against these requirements are contained within the Planners Assessment Report contained in (ATTACHMENT 2).

| <b>Risk</b>   | <b><u>Risk Ranking</u></b> | <b>Proposed Treatments</b>   | <b>Within Existing Resources?</b> |
|---|----------------------------|--|-----------------------------------|
| There is a risk that the determination may be appealed. | Moderate                   | Approve the application as recommended. The assessment carried out details the merits of the proposed development and the recommended conditions of consent reduce the impact of the proposal. | Yes                               |

**MINUTES ORDINARY COUNCIL - 14 JULY 2020****SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

The proposed development is anticipated to have an ongoing positive economic impact on the local area and the broader community through the creation of viable employment and economic activity during both the construction and ongoing operations of the development. The development will allow for the use of existing services and facilities in the locality without requiring significant infrastructure upgrades that burden the public.

The development will result in some impact on the built environment through the construction of the amenities block and camp kitchen, however these buildings are appropriately setback and screened from the road and adjoining development. The impacts on the built environment are considered acceptable.

The development has been modified to largely avoid significant Koala habitat and areas of likely Tall Rustyhood Orchid habitat. Landscape offsets through replanting along the southern boundary and the requirement of a Vegetation Management Plan will allow for the appropriate ongoing management and protection of these areas.

The proposal incorporates appropriate measures to ensure minimal adverse impact on amenity. Air quality, noise, drainage and traffic have been appropriately addressed in the application, with mitigation measures included within the Recommended Conditions of Consent (**ATTACHMENT 3**). Through development conditions and additional design criteria, the potential impacts are mitigated.

**CONSULTATION**

Consultation with key stakeholders has been undertaken including through the public notification process.

Internal

Consultation was undertaken with internal officers, including; Building Surveying, Development Engineering, Vegetation Management, Environmental Health, Natural Resources and Development Contributions. The referral comments from these officers were considered as a part of the Planners Assessment Report contained in (**ATTACHMENT 2**) and accordingly in the Recommended Conditions of Consent contained in (**ATTACHMENT 3**).

External

Consultation was undertaken with NSW Rural Fire Service and Transport for NSW. Responses were received from both agencies with a Bush Fire Safety Authority being issued from the Rural Fire Service.

**MINUTES ORDINARY COUNCIL - 14 JULY 2020**

The referral comments from these officers were considered as a part of the Planners Assessment Report contained in **(ATTACHMENT 2)** and accordingly in the Recommended Conditions of Consent contained in **(ATTACHMENT 3)**.

Public Consultation

In accordance with the requirements of the DCP 2014, the originally submitted application was notified from 27 September 2019 to 13 October 2019. During this period 3 submissions were received. An additional 3 submissions were received following the submission period. The matters raised in all of the submissions have been addressed in detail within the Planners Assessment Report provided at **(ATTACHMENT 2)**.

Following the submission of amended plans, the development was considered to be of lesser impact therefore the application was not required to be re-notified.

**OPTIONS**

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

**ATTACHMENTS**

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

**COUNCILLORS ROOM**

- 1) Development plans.
- 2) Copy of unredacted submissions.

**TABLED DOCUMENTS**

Nil.

**ITEM NO. 3**

**FILE NO: 20/193477  
EDRMS NO: 58-2018-26-1**

**PLANNING PROPOSAL FOR 610 SEAHAM ROAD, NELSONS PLAINS**

REPORT OF: JANELLE GARDNER - ACTING STRATEGY & ENVIRONMENT  
SECTION MANAGER  
GROUP: DEVELOPMENT SERVICES

---

**RECOMMENDATION IS THAT COUNCIL:**

- 1) Adopt the planning proposal (**ATTACHMENT 3**) to amend the Land Zoning Map and Lot Size Map under the Port Stephens Local Environmental Plan 2013 at 610 Seaham Road, Nelsons Plains (Lot 1 DP1191203) to rezone the land from RU1 Primary Production to R5 Large Lot Residential and change the minimum lot size requirement for subdivision from 40 hectares to 8,000m<sup>2</sup>.
- 2) Forward the planning proposal to the NSW Department of Planning, Industry and Environment for a Gateway determination and request authority to make the plan.

---

**ORDINARY COUNCIL MEETING - 25 AUGUST 2020  
MOTION**

|  |   |
|--|---|
|  | <p><b>Councillor Ken Jordan<br/>Councillor Giacomo Arnott</b></p> <p>That Council defer the planning proposal (<b>ATTACHMENT 3</b>) to amend the Land Zoning Map and Lot Size Map under the Port Stephens Local Environmental Plan 2013 at 610 Seaham Road, Nelsons Plains (Lot 1 DP1191203) to the Ordinary Council meeting to be held on 22 September 2020.</p> |
|--|---|

In accordance with Section 375 (A) of the Local Government Act 1993, a division is required for this item.

Those for the Motion: Crs Giacomo Arnott, Ken Jordan and John Nell.

Those against the Motion: Mayor Ryan Palmer, Crs Jaimie Abbott, Glen Dunkley, and Sarah Smith.

The motion was lost.

## MINUTES ORDINARY COUNCIL - 25 AUGUST 2020

### ORDINARY COUNCIL MEETING - 25 AUGUST 2020 PROCEDURAL MOTION

|  |  |
|--|--|
|  | <p><b>Councillor Giacomo Arnott</b></p> <p>That the Council meeting continue beyond 9pm.</p> |
|--|--|

The motion lapsed without a seconder.

### ORDINARY COUNCIL MEETING - 25 AUGUST 2020 FORESHADOWED MOTION

|  |  |
|--|--|
|  | <p><b>Councillor Giacomo Arnott</b></p> <p>That Council take no further action on the planning proposal <b>(ATTACHMENT 3)</b> to amend the Land Zoning Map and Lot Size Map under the Port Stephens Local Environmental Plan 2013 at 610 Seaham Road, Nelsons Plains (Lot 1 DP119120).</p> |
|--|--|

The motion lapsed without a seconder.

### ORDINARY COUNCIL MEETING - 25 AUGUST 2020 MOTION

|            |  |
|------------|--|
| <b>153</b> | <p><b>Mayor Ryan Palmer</b><br/><b>Councillor Sarah Smith</b></p> <p>It was resolved that Council:</p> <ol style="list-style-type: none"><li>1) Adopt the planning proposal <b>(ATTACHMENT 3)</b> to amend the Land Zoning Map and Lot Size Map under the Port Stephens Local Environmental Plan 2013 at 610 Seaham Road, Nelsons Plains (Lot 1 DP1191203) to rezone the land from RU1 Primary Production to R5 Large Lot Residential and change the minimum lot size requirement for subdivision from 40 hectares to 8,000m<sup>2</sup>.</li><li>2) Forward the planning proposal to the NSW Department of Planning, Industry and Environment for a Gateway determination and request authority to make the plan.</li></ol> |
|------------|--|

In accordance with Section 375 (A) of the Local Government Act 1993, a division is required for this item.

Those for the Motion: Mayor Ryan Palmer, Crs Jaimie Abbott, Glen Dunkley and Sarah Smith.



Those against the Motion: Crs Giacomo Arnott, Ken Jordan and John Nell.

The motion was carried.

**ORDINARY COUNCIL MEETING - 25 AUGUST 2020  
AMENDMENT**

|  |   |
|--|---|
|  | <p><b>Councillor Giacomo Arnott</b></p> <p>That Council place the planning proposal (<b>ATTACHMENT 3</b>) to amend the Land Zoning Map and Lot Size Map under the Port Stephens Local Environmental Plan 2013 at 610 Seaham Road, Nelsons Plains (Lot 1 DP1191203 on public exhibition for 28 days, and reconsider the matter following the public exhibition period.</p> |
|--|---|

The motion lapsed without a seconder.

**BACKGROUND**

The purpose of this report is to recommend that Council adopt a planning proposal (**ATTACHMENT 3**) to amend the Port Stephens Local Environmental Plan 2013 (LEP 2013) to enable the subdivision of 610 Seaham Road, Nelsons Plains for rural residential development.

A map showing the location of the subject land is provided at (**ATTACHMENT 1**) and a Strategic Planning Assessment Report is provided at (**ATTACHMENT 2**).

The subject land is currently zoned RU1 Primary Production and the planning proposal seeks to rezone the land to R5 Large Lot Residential, to enable the future subdivision of Lot 1 DP 1191203, creating approximately 38 rural residential lots.

The above changes are justified by the consistency of the planning proposal with the Port Stephens Local Housing Strategy (Live Port Stephens), specifically Appendix 2 – Rural Residential Criteria, and the reports accompanying the planning proposal that demonstrate the suitability of the site for future rural residential use (**ATTACHMENT 3**).

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

|                 |   |
|-----------------|---|
| Date lodged:    | 21 December 2018                                      |
| Proponent:      | Perception Planning (c/o Portree Park Pty Ltd)        |
| Subject land:   | 610 Seaham Road, Nelsons Plains<br>(Lot 1 DP 1191203) |
| Total area:     | 38.9 hectares   |
| Current zoning: | RU1 Primary Production                                |

**MINUTES ORDINARY COUNCIL - 25 AUGUST 2020**

|                            |  |
|----------------------------|--|
| Proposed zoning:           | R5 Large Lot Residential   |
| Current minimum lot size:  | 40 hectares  |
| Proposed minimum lot size: | 8,000m <sup>2</sup>  |
| Relevant local strategy:   | Port Stephens Local Housing Strategy (Live Port Stephens)  |
| Key issues:                | <p><b>Odour</b></p> <p>Existing poultry farms operate near the subject land, which have the potential to be a source of odour pollution. An Odour Assessment and peer review supports the planning proposal and recommends building envelopes on future allotments nearest to the poultry farms to mitigate potential impacts.</p>   |
|                            | <p><b>Lot Size</b></p> <p>The site is identified as ‘rural lifestyle’ in residential character with a recommended minimum lot size of 1 hectares in the Port Stephens Rural Residential Strategy 2015 and Live Port Stephens.</p> <p>Despite this, it is considered that a lot size of 8,000m<sup>2</sup> is appropriate given the proposed mitigation measures for potential odour impacts, avoidance of environmentally sensitive and flood prone land, proximity to the Raymond Terrace town centre, and consistency with surrounding rural residential developments.</p> |
|                            | <p><b>Flooding</b></p> <p>The site is not identified as flood prone land but does become isolated during major flooding events. A Flood Free Access Report supports the planning proposal and identifies sufficient flood free ground available. The report advises that if residents do not choose to stay then adequate warning time exists to permit evacuation prior to the site becoming isolated.</p>  |

Purpose of the amendment

The purpose of the planning proposal is to amend the LEP 2013 to enable the subdivision for rural residential development.

Existing and surrounding uses

The site is currently vacant and has been historically used for cattle grazing and agricultural purposes. It has been largely cleared of native vegetation and has a gentle fall east towards the Williams River and contains scattered vegetation along its western frontage with Seaham Road.

The site is located on the western side of Nelsons Plains, within the rural west of the Port Stephens Local Government Area (LGA). The site has a total area of approximately 38.9 hectares.

The surrounding land use zones are a mixture of RU1 Primary Production, RU2 Rural Landscape and R5 Large Lot Residential. The site is surrounded by a mix of rural residential allotments and larger agricultural allotments with established agricultural activities including grazing land and poultry farms located to the west and south **(ATTACHMENT 1)**.

Suitability of the subject land

The site is considered suitable for a large lot residential zoning given its proximity to the Raymond Terrace town centre and surrounding land uses. The Nelsons Plains community have access to community services and facilities within a short drive of strategic centres at Raymond Terrace and in the Maitland LGA.

Additional demand for services and infrastructure (including community services, education and health facilities) from growth in the rural west could continue to be met by Raymond Terrace. Potential impacts from the proposal will be reduced by limiting development on land in proximity to existing poultry farms, retaining significant trees and implementing evacuation arrangements during significant flooding events as detailed in **(ATTACHMENT 3)**.

**COMMUNITY STRATEGIC PLAN**

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

**FINANCIAL/RESOURCE IMPLICATIONS**

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

| <b>Source of Funds</b>           | <b>Yes/No</b> | <b>Funding (\$)</b> | <b>Comment</b>  |
|----------------------------------|---------------|---------------------|---|
| Existing budget                  | Yes           |                     | The costs associated with the amendment will be recovered as part of Council's fees for processing rezoning requests. |
| Reserve Funds                    | No            |                     |   |
| Developer Contributions (\$7.11) | No            |                     |   |
| External Grants                  | No            |                     |   |
| Other                            | No            |                     |   |

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

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

| <b>Risk</b>  | <b><u>Risk Ranking</u></b> | <b>Proposed Treatments</b>  | <b>Within Existing Resources?</b> |
|--|----------------------------|---|-----------------------------------|
| There is a risk that future rural residential use of the land could create land use conflict with the existing rural uses operating in the locality. | Medium                     | An Odour Assessment and peer review supports the planning proposal and recommends building envelopes on future allotments nearest to the poultry farms to mitigate potential impacts. Land identified as having an unacceptable impact will be excluded from future rural residential development.  | Yes                               |
| There is a risk that residents could become isolated in a flood event.   | Medium                     | The site is not identified as flood prone land but does become isolated during major flooding events. A Flood Free Access Report supports the planning proposal and identifies sufficient flood free ground available. The report advises that if residents do not choose to stay then adequate warning time exists to permit evacuation prior to the site becoming isolated. | Yes                               |

### Environmental Planning and Assessment Act 1979

The planning proposal is being processed in accordance with Part 3 of the Environmental Planning and Assessment Act 1979 (NSW). Should Council resolve to adopt the planning proposal it will be forwarded to the NSW Department of Planning, Industry and Environment (DPIE) for a Gateway determination, including a request for authorisation to make the plan.

### Port Stephens Local Environmental Plan 2013

The planning proposal seeks to amend LEP 2013 by rezoning the land from RU1 Primary Production to R5 Large Lot Residential and amending the minimum lot size for subdivision from 40 hectares to 8,000m<sup>2</sup>.

The planning proposal and potential rural residential development on the site is consistent with the objectives of the proposed R5 Large Lot Residential zone:

- To provide residential housing in a rural setting while preserving, and minimising impacts on, environmentally sensitive locations and scenic quality.
- To ensure that large residential lots do not hinder the proper and orderly development of urban areas in the future.
- To ensure that development in the area does not unreasonably increase the demand for public services or public facilities.
- To minimise conflict between land uses within this zone and land uses within adjoining zones.

### Regional Plans

The planning proposal is consistent with the vision and goals outlined in the Hunter Regional Plan 2036 and the Greater Newcastle Metropolitan Plan 2036 (GNMP). The proposal will assist in meeting the dwelling targets identified within the GNMP. It will reinforce the role of Raymond Terrace as a strategic centre identified by the regional plans by providing housing diversity within a short distance of Raymond Terrace.

### Port Stephens Local Strategic Planning Statement

Council adopted the Port Stephens Local Strategic Planning Statement (LSPS) on 14 July 2020. The LSPS identifies the 20-year vision for land use in Port Stephens and sets out social, economic, and environmental planning priorities for the future. Planning proposals are required to include whether the proposed instrument will give effect to the LSPS of the LGA.

The planning proposal is consistent with the vision and priorities of LSPS, in particular 'Planning Priority 4 – Ensure suitable land supply', 'Planning Priority 5 – Increase diversity of housing choice' and 'Planning Priority 9 – Protect and preserve productive agricultural land'. The proposal will increase the supply of land for residential housing and provide housing that is different to that of locations such as Kings Hill and Raymond Terrace because it will be located on larger lots that have a minimum lot size of 8,000m<sup>2</sup>. As detailed in **(ATTACHMENT 3)** there are sufficient supporting studies to demonstrate potential impacts from surrounding agricultural land uses can be mitigated.

#### Port Stephens Local Housing Strategy (Live Port Stephens)

The Port Stephens Local Housing Strategy (Live Port Stephens) was adopted by Council on 14 July 2020. Live Port Stephens is the overarching strategy to guide land use planning decisions for new housing in Port Stephens. Live Port Stephens lists priorities and actions to:

1. Ensure suitable land supply
2. Improve housing affordability
3. Increase diversity of housing choice
4. Facilitate liveable communities

Live Port Stephens includes Rural Residential Criteria that outline the key requirements and constraints requiring consideration in preparing rezoning requests for rural residential development. Rural residential rezoning requests are also required to consider the Port Stephens Rural Residential Strategy (RRS) including any matters for investigation relevant to the proposed land.

The land is within the Osterley/Nelson Plains investigation area identified by the RRS. The RRS notes a potential dwelling yield of 25 dwellings with lot sizes ranging from 1-2 hectares for this area. The planning proposal proposes a minimum lot size of 8,000m<sup>2</sup>, which is inconsistent with the relevant RRS guidance. However, the proposal is suitable given the detailed site specific investigations carried out and the existing mix of lot sizes within the surrounding locality ranging from 8000m<sup>2</sup> to 20,000m<sup>2</sup>.

The planning proposal is consistent with all other requirements of the Rural Residential Criteria. In particular, the site is within 800 metres of an existing R5 Large Lot Residential zone, is unlikely for urban purposes in the future, and is generally unconstrained **(ATTACHMENT 3)**.

The Rural Residential Criteria provides that planning proposals on land within a 1 kilometre 'buffer zone' from existing agricultural industries (eg poultry farms) are required to provide an odour assessment to establish appropriate development setbacks.

An Odour Assessment, along with a peer review, prepared in support of the planning proposal has identified land adjacent to the western boundary as inappropriate for future residential development. An indicative subdivision layout demonstrates the avoidance of this land and building envelopes to ensure future dwellings are appropriately located.

As outlined in **(ATTACHMENT 3)**, the following studies have been completed:

- Aboriginal Heritage Assessment
- Ecological Assessment
- Flood Free Access Report
- Geotechnical Assessment
- Odour Assessment Report
- Peer review of Odour Assessment Report
- Community Survey regarding Odour
- Bushfire Threat Assessment
- Traffic Impact Assessment
- Indicative Subdivision Layout

The planning proposal aligns with Live Port Stephens as it will increase land supply that is close to jobs and services and provides diversity in housing choice.

### **SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

The planning proposal will have overall positive social and economic implications through the future provision of additional housing for approximately 38 dwellings and will assist in meeting regional dwelling targets identified within the GNMP. The additional housing will service the future population needs of the Port Stephens LGA.

Potential environmental impacts have been considered in assessing the planning proposal and include biodiversity, flooding, bushfire and odour from existing poultry farms. The planning proposal provides adequate mitigation measures to each of these issues and further investigations will be undertaken as required, should the planning proposal receive a Gateway determination.

### **CONSULTATION**

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

#### Internal

Internal consultation was undertaken with the Environmental Health, Flooding and Drainage, and Natural Resources units.

External

Consultation with the community and public authorities will be undertaken in accordance with any Gateway determination issued.

It is anticipated that the planning proposal will be exhibited for a minimum 14 days, subject to a Gateway determination.

**OPTIONS**

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

**ATTACHMENTS**

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

**COUNCILLORS ROOM**

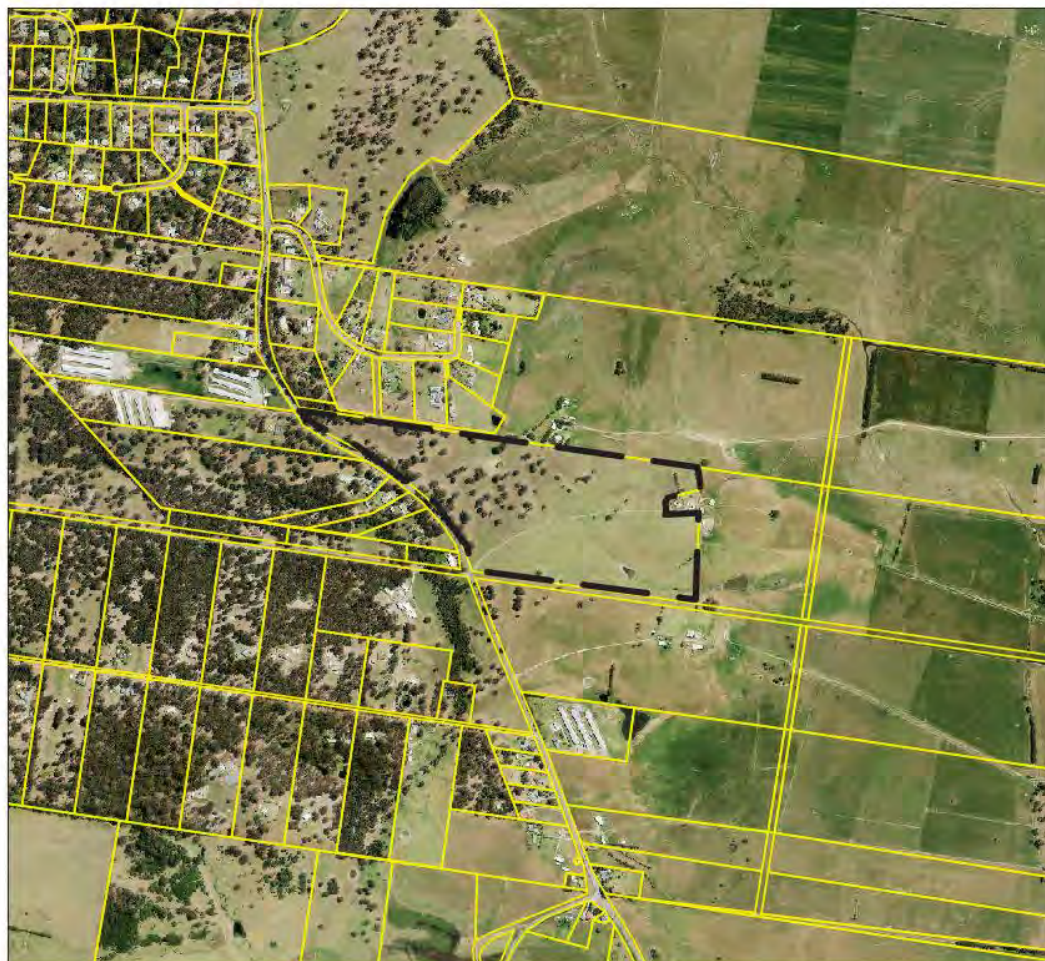
Note: All relevant technical studies referenced in this report can be inspected upon request.

**TABLED DOCUMENTS**

Nil.



## Locality Map 610 Seaham Road Nelsons Plains

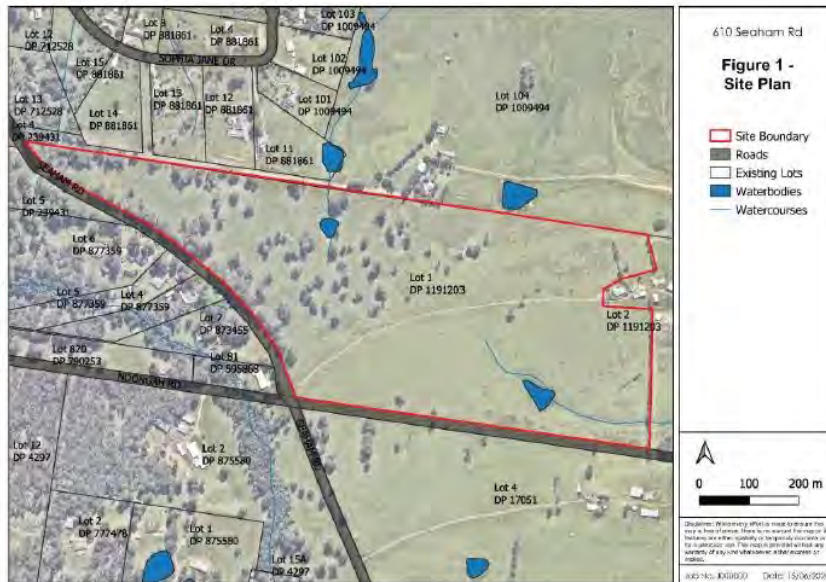


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|--------------------|--|
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| SCALE 1:19800 @ A4 | PRINTED ON: 03.08.20   |



**STRATEGIC PLANNING ASSESSMENT REPORT (SPAR)**

|                              |  |
|------------------------------|--|
| <b>Application No.</b>       | 58-2018-26-1   |
| <b>Applicant Name</b>        | Perception Planning on behalf of Portree Park Pty Ltd  |
| <b>Applicant Address</b>     | PO Box 107 Clarence Town, NSW 2321   |
| <b>Site Location Details</b> | Lot 1 DP 1191203 – 610 Seaham Road, Nelsons Plains   |
| <b>Proposal Summary</b>      | Amend Port Stephens Local Environmental Plan 2013 (LEP 2013) to rezone the site from RU1 Primary Production to R5 Large Lot Residential and reduce the minimum lot size from 40ha to 8,000m <sup>2</sup> . |



The application has been reviewed to determine whether it sufficiently addresses the requirements for preparation of a planning proposal under the EP&A Act and guidelines issued under s3.33(3) of the EP&A Act.



Planning Proposal Assessment

| Information               | Assessment  |
|---------------------------|---|
| <b>Internal referrals</b> |   |
| Development Engineering   | <p>The planning proposal will need to demonstrate it is in accordance with the floodplain risk management plan for the area and the Floodplain Development Manual 2005 or that the provisions of the planning proposal that are inconsistent with Ministerial Direction 4.3 Flood Prone Land are of minor significance, taking into consideration flooding data and the social and economic benefits of the proposal.</p> <p>There will be a requirement for a traffic impact assessment should the proposal progress.</p>  |
| Natural Resources         | <p>The ecological constraints present on site are considered unlikely to be significant due to the following:</p> <ul style="list-style-type: none"> <li>• The degraded nature of native vegetation present</li> <li>• The majority of vegetation is classified as non-threatened</li> <li>• The cleared nature of the landscape around the proposal site</li> <li>• Areas of native vegetation providing habitat links (along the western boundary) would be retained</li> <li>• Visual confirmation by Council's ecologists that the majority of hollows on site are being utilised by non-threatened birds</li> </ul> <p>A Biodiversity Development Assessment Report (BDAR) and updated bushfire assessment will be prepared should the proposal receive a Gateway to proceed.</p>  |
| Environmental Health      | <p>The Development Assessment Framework (DAF) through the OSMS Technical Manual has determined an appropriate lot size for the sustainable treatment and disposal of wastewater at 4000m<sup>2</sup>. It must be recognised that:</p> <ul style="list-style-type: none"> <li>• For the purpose of development planning, a minimum lot size of 4,000 m<sup>2</sup> should be considered the default value for the subdivision of unsewered land.</li> <li>• Applicants should be required to demonstrate that each proposed allotment contains 4,000 m<sup>2</sup> of useable land.</li> <li>• Useable land (for the purpose of on-site sewage management) can be considered to be total allotment area excluding dams, intermittent and permanent watercourses and open stormwater drains and pits in addition to the relevant buffer distances prescribed in the Port Stephens Council Development Assessment Framework for those objects. This means that a lot size may need to be larger than 4000m<sup>2</sup> if there are identified constraints to OSMS.</li> </ul> |

| Information  | Assessment   |
|--|--|
| <b>Department of Planning Guide to preparing planning proposals</b>  |  |
| <b>Part 1 – Statement of objectives or intended outcomes of the proposed instrument</b>  | Adequate. The statement of objectives or intended outcomes of the proposed instrument is adequate  |
| <b>Part 2 – Explanation of the provisions that are to be included in the proposed instrument</b>   | Adequate. The planning proposal relates to mapping only and does not seek inclusion of additional written provisions. The explanation of the proposed amendment is considered adequate in the circumstances of the case.   |
| <b>Part 3 – Justification for the objectives, outcomes and provisions of the proposed instrument, and whether it will give effect to, or is a product of, a local planning priority or action in an endorsed local strategic planning statement.</b> | Adequate. 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 to be appropriate.  |
| <b>Section A – Need for the planning proposal</b>  |  |
| <b>Q1 Is the planning proposal a result of an endorsed local strategic planning statement, strategic study or report?</b>  | The planning proposal is the result of an endorsed local strategic planning statement, strategic study or report as the Port Stephens Local Strategic Planning Statement (LSPS) includes an action to prepare a local housing strategy that includes assessment criteria for new rural residential development to protect existing and potential productive agricultural land. This amendment is the result of the local housing strategy, Lice Port Stephens. |
| <b>Q2 Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?</b>  | Adequate. The planning proposal is the best means of achieving the objectives or intended outcomes.  |
| <b>Section B – Relationship to strategic planning framework</b>  |  |
| <b>Q3. Will the planning proposal give effect to the objectives and actions of the applicable</b>  | Adequate. The planning proposal does give effect to the Hunter Regional Plan 2036  |

| Information   | Assessment   |
|---|--|
| regional, or district plan or strategy (including any exhibited draft plans or strategies)? | (HRP) and Greater Newcastle Metropolitan Plan 2036 (GNMP).   |
| <b>Strategic Planning Context and Strategic Merit</b>                                       |  |
| Assessment of consistency with the Hunter Regional Plan.                                    | Adequate. The planning proposal is consistent with the vision of the HRP to provide greater housing choice. It aligns with Goal 4 of the HRP and Direction 22 to promote housing diversity.  |
| Assessment of consistency with the Greater Newcastle Metropolitan Plan.                     | Adequate. The planning proposal is consistent with the vision of the GNMP for Australia's newest and emerging economic and lifestyle city offering great lifestyles minutes from bushland and the airport.   |
| Give effect to a relevant local strategic planning statement or endorsed local strategy     | Adequate. The planning proposal gives effect to LSPS as it is consistent with 'Planning Priority 4 – Ensure suitable land supply', 'Planning Priority 5 – Increase diversity of housing choice' and 'Planning Priority 9 – Protect and preserve productive agricultural land'. |
| Responding to a change in circumstances   | The planning proposal is not responding to a change in circumstances.  |

**SEPP ASSESSMENT**

Q5. Is the planning proposal consistent with applicable State Environmental Planning Policies?

| SEPP                         | Overview   | Assessment  |
|------------------------------|--|---|
| No. 55 - Remediation of Land | Contains state-wide planning controls for the remediation of contaminated land. The policy requires councils to be notified of all remediation proposals and requires lodgement of information for rezoning proposals where the history of | Adequate. According to the study information for the LEP amendment proposal, the site does not contain contaminated land/potentially contaminated land. |

| SEPP  | Overview  | Assessment  |
|---|---|---|
|   | use of land is unknown or knowledge incomplete.   | The submitted planning proposal considers this SEPP and advises the NSW Environmental Protection Agency database confirms of no applicable notices or declarations. A preliminary contamination report can be provided following a Gateway determination. |
| (Koala Habitat Protection) 2019                 | 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.   | The site is mapped as containing marginal koala habitat in the Port Stephens Comprehensive Koala (CKPoM).<br><br>Further assessment will be undertaken post gateway to ensure consistency with the SEPP and CKPoM.  |
| (Primary Production and Rural Development) 2019 | Contains rural planning principles and rural subdivision principles, which must be taken into consideration before developing rural land.<br><br>Provides for rural land to be subdivided below the minimum lot size for subdivision for the purpose of primary production. | The LEP amendment proposal relates to land within an existing rural zone.<br><br>The information lodged for the proposal is justifiably inconsistent with the SEPP.   |

**CONCLUSION**

The PP has adequately demonstrated consistency with the relevant State Environmental Planning Policies.

**MINISTERIAL DIRECTION ASSESSMENT**

Q6. Is the planning proposal consistent with applicable Ministerial Directions (s.9.1 directions)?

| Ministerial Direction | Overview                 | Assessment |
|-----------------------|--------------------------|------------|
| 1.                    | Employment and Resources |            |

| Ministerial Direction              | Overview  | Assessment   |
|------------------------------------|---|--|
| 1.2 Rural Zones                    | Provides for protection of the agricultural production value of rural land by requiring planning proposals to be justified by a relevant strategy or study if they seek to rezone rural zoned land to a residential, business, industrial, village or tourist zone or increase the permissible density of rural (except RU5) zoned land.  | <p>Adequate.</p> <p>Whilst this zoning does not aim to protect the agricultural production value of the land it is in keeping with the criteria for Rural Residential Development in Live Port Stephens, providing a mix of lot sizes on suitable land within the Brandy Hill / Seaham area. Further, existing large residential lots are adjoining and adjacent to the site.</p> <p>The information lodged for the proposal is justifiably inconsistent with this direction</p> |
| 1.5 Rural Lands                    | <p>Applies to planning proposals that affect land within an existing or proposed rural or environmental zone or changes to the existing minimum lot size on land within a rural or environmental protection zone.</p> <p>By requiring consistency with the rural planning principles and rural subdivision principles of SEPP (Rural Lands) 2008, or justification under a relevant strategy, the direction seeks to protect the agricultural production value of rural land and facilitate the orderly and economic development of rural lands for rural and related purposes.</p> | <p>Adequate.</p> <p>The PP is inconsistent with this direction as it seeks to rezone rural land, however it is considered of minor significance due to the site specific merit and the social and economic benefits.</p>   |
| <b>2. Environment and Heritage</b> |   |  |
| 2.1 Environment Protection Zones   | Applies to all planning proposals. Provides for the protection and conservation of environmentally sensitive areas, by ensuring that planning proposals do not reduce the environmental protection standards applying to such land unless it is suitably justified by a relevant strategy or study or is of minor   | <p>Adequate.</p> <p>The LEP amendment proposal does not relate to land within an existing or proposed environmental protection zone.</p> <p>The information lodged for the proposal demonstrates consistency with the direction.</p>   |

| Ministerial Direction                                   | Overview   | Assessment   |
|---|--|--|
|   | significance in the opinion of the Secretary of the NSW Department of Planning and Environment (or nominated delegate).. |  |
| 2.3   | Heritage Conservation  | Requires relevant planning proposals to contain provisions to facilitate the conservation of items, areas, objects and places of environmental heritage significance and indigenous heritage significance.   |
|   |  | <p>Adequate.</p> <p>According to the study information for the LEP amendment proposal, the site does not contain any heritage items/places. The Port Stephens Local Environmental Plan 2013 contains provisions that facilitate the conservation of heritage.</p> <p>In regard to indigenous heritage, a site assessment will be conducted in consultation and collaboration with the Worimi Local Aboriginal Land Council to consider preservation and protection of Aboriginal heritage, values in the event that Aboriginal objects of significance or potential are identified. The planning proposal is likely to be consistent with this direction subject to further investigation.</p> |
| <b>3. Housing, Infrastructure and Urban Development</b> |  |  |
| 3.1   | Residential Zones  | Applies to planning proposals affecting existing or proposed residential zoned land or other zoned land upon, which significant residential development is or will be permitted.   |
|   |  | <p>Adequate.</p> <p>The LEP amendment proposal relates to land within a proposed residential zone.</p> <p>The information lodged for the proposal is justifiably inconsistent with the direction because it seeks to provide rural residential housing in an established rural residential area.</p> <p>Requires relevant planning proposals to include provisions that encourage housing development, ensures satisfactory arrangements for servicing infrastructure and will not reduce the permissible residential density of land; unless it is suitably justified under a relevant strategy or</p>  |



| Ministerial Direction     | Overview   | Assessment   |   |
|---------------------------|--|--|---|
|                           | study or is of minor significance in the opinion of the Secretary of the NSW Department of Planning and Environment (or nominated delegate). |  |   |
| 3.4                       | Integrating Land Use and Transport   | Requires planning proposals, which seek to create, alter or remove a zone or provision relating to urban land (including land zoned for residential, business, industrial, village or tourist purposes), to be consistent with the aims, objectives and principles of 'Improving Transport Choice – Guidelines for planning and development' and 'The Right Place for Business and Services – Planning Policy' or that they be suitably justified under a relevant strategy or study or be of minor significance in the opinion of the Secretary of the NSW Department of Planning and Environment (or nominated delegate).. | <p>Adequate.</p> <p>The LEP amendment proposal seeks to introduce provisions into the instrument relating to urban land.</p> <p>The information lodged for the proposal does not demonstrate consistency with the direction, however, the proposal is in accordance with the HRP and GNMP therefore the inconsistency is justified.</p> |
| <b>4. Hazard and Risk</b> |  |  |   |
| 4.1                       | Acid Sulfate Soils   | Requires the provisions of planning proposals must be consistent with the Acid Sulfate Soils Planning Guidelines and other such relevant provisions provided by the Director-General of the Department of Planning, except where the proposal is suitably justified under a relevant strategy or study or where non-compliance is of minor significance in the opinion of the Secretary of the NSW Department of Planning and Environment (or nominated delegate).   | <p>Adequate.</p> <p>The site is mapped as containing Acid Sulfate Soils however the proposed LEP amendment is not likely to affect Acid Sulfate Soils.</p> <p>It is appropriate for this to be addressed during the development application stage.</p>  |
| 4.3                       | Flood Prone Land   | Applies requirements for planning proposals that seek to create, remove or alter a zone or a provision that affects flood prone land except where non-   | <p>Adequate.</p> <p>The LEP amendment proposal relates to flood prone land</p>  |

| Ministerial Direction       | Overview   | Assessment  |
|-----------------------------|--|---|
|                             | compliance is of minor significance in the opinion of the Secretary of the NSW Department of Planning and Environment (or nominated delegate). | <p>within the meaning of the NSW Government's 'Floodplain Development Manual 2005'.</p> <p>The inconsistency with this direction is considered to be minor as an insignificant part of the site is flood prone.</p>   |
| 4.4                         | Planning for Bushfire Protection   | <p>Applies requirements for planning proposals affecting land mapped as being bushfire prone land (or land in proximity to such land); except where the Commissioner of the NSW Rural Fire Service has issued written advice to Council that, notwithstanding the noncompliance with the requirements; the NSW Rural Fire Service does not object to progression of the planning proposal.</p> <p>Adequate.</p> <p>The LEP amendment proposal relates to bushfire prone land.</p> <p>A new Bushfire Assessment Report will be provided post Gateway to ensure consideration is provided to Planning for Bushfire Protection 2019. The planning proposal is likely to be consistent with this direction subject to further investigation.</p>        |
| <b>5. Regional Planning</b> |  |   |
| 5.10                        | Implementation of Regional Plans   | <p>Requires that planning proposals be consistent with relevant regional strategies released by the Minister for Planning, except where, in the opinion of the Secretary of the NSW Department of Planning and Environment (or nominated delegate); the inconsistency is considered to be of minor significance and the intent of the strategy is not undermined.</p> <p>Adequate.</p> <p>The Hunter Regional Plan 2036 (HRP) applies to the LEP amendment proposal.</p> <p>This proposal responds to the direction provided by the Hunter Regional Plan and Greater Newcastle Metropolitan Plan by providing housing that is consistent with the Port Stephens Local Housing Strategy. This makes the proposal consistent with that direction.</p> |
| <b>6. Local Plan Making</b> |  |   |
| 6.1                         | Approval and   | <p>The objective of this direction is to ensure that LEP</p> <p>Adequate.</p>   |

| Ministerial Direction                  | Overview   | Assessment  |
|--|--|---|
| Referral Requirements                  | provisions encourage the efficient and appropriate assessment of development.  | The proposal seeks to amend the Local Environmental Plan, which provides an existing framework for appropriate assessment of development. This makes it consistent with this direction.                                   |
| 6.2 Reserving Land for Public Purposes | Applies requirements to planning proposals which seek to create, alter or reduce existing zonings or reservations of land for public purposes. | Adequate.<br><br>The LEP amendment proposal does not seek to create, alter or reduce existing zonings or reservations of land for public purposes.<br><br>Consistency with the direction is not relevant to the proposal. |

| Information  | Assessment   |
|--|--|
| <b>Section C – Environmental, social and economic impact</b>   |  |
| Q7. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal? | Yes<br><br>A Preliminary Ecological Assessment has identified several vegetation communities and the presence of hollow bearing trees on the site. A Biodiversity Development Assessment Report (BDAR) will be prepared should the proposal receive a Gateway to proceed. A bushfire assessment will also be undertaken to determine the extent of clearing that will be required to maintain asset protection zones, and associated ecological impacts, particularly within the areas shown as vegetation to be retained. Given the size of proposed allotments and the opportunity to site dwellings in a manner that reduces the need |

| Information  | Assessment  |
|--|---|
|  | for vegetation clearing, it is not anticipated that the proposal will adversely affect ecological values of the site.   |
| Q8. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?             | Yes.<br>The site is located 500m from an existing poultry shed that is located to the south. The rezoning will not undermine the agricultural activities on nearby lots because a suitable buffer has been provided and investigations have been undertaken in relation to odour, including an odour assessment, which has been peer reviewed, and a separate survey. |
| Q9. Are there any likely social and economic effects as a result of the planning proposal?   | Yes.<br>There will likely be positive social and economic effects as a result of the planning proposal.   |
| <b>Section D – State and Commonwealth interests</b>  |   |
| Q10. Is there adequate public infrastructure for the planning proposal?  | Yes.<br>There is adequate public infrastructure for the planning proposal.  |
| Q11. What are the views of state and Commonwealth public authorities consulted in accordance with the Gateway determination?                   | Consultation with relevant State and Commonwealth agencies can be undertaken following a Gateway Determination to proceed   |
| Part 4 – Maps containing sufficient detail to indicate the substantive effect of the planning proposal.  | The maps included in the planning proposal adequately identify the substantive effect of the planning proposal.   |
| Part 5 – Details of the community consultation that is to be undertaken before consideration is given to the making of the proposed instrument | The community consultation detailed in the planning proposal is considered appropriate.   |

| Information  | Assessment   |
|--|--|
| Part 6 – Projected timeline of the plan making process | The projected timeline as detailed in the planning proposal is considered appropriate. |

**TECHNICAL CONTENT ASSESSMENT**

Assessment of technical information

| Supporting plans and studies     | Assessment                       |
|----------------------------------|----------------------------------|
| Traffic impact assessment        | Yes, to be amended after Gateway |
| Bushfire hazard assessment       | Yes, to be amended after Gateway |
| Odour assessment                 | Yes                              |
| Flora and fauna assessment       | Yes, to be amended after Gateway |
| Geotechnical assessment          | Yes                              |
| Stormwater management analysis   | Yes                              |
| Flood impact assessment          | Yes                              |
| Contamination assessment         | Yes                              |
| Heritage impact assessment       | Yes                              |
| Infrastructure capacity analysis | Yes                              |

**RECOMMENDATION**

Based on the information lodged with the application, the LEP amendment proposal is considered to have sufficient merit to warrant preparation of a planning proposal by Council. It is recommended that a planning proposal be prepared for the LEP amendment proposal and lodged with the NSW Department of Planning, Industry and Environment (DPIE) for a Gateway determination.

**MINUTES ORDINARY COUNCIL - 25 AUGUST 2020**

**ORDINARY COUNCIL MEETING - 25 AUGUST 2020**

**MOTION**

|            |   |
|------------|---|
| <b>154</b> | <b>Councillor Sarah Smith</b><br><b>Councillor Glen Dunkley</b><br><br>It was resolved that Council continue with the Council meeting beyond 9pm. |
|------------|---|

The motion was carried.

**ORDINARY COUNCIL MEETING - 25 AUGUST 2020**

**MOTION**

|            |  |
|------------|--|
| <b>155</b> | <b>Councillor John Nell</b><br><b>Councillor Glen Dunkley</b><br><br>It was resolved that Council consider item 4, 7 and then multiple vote items 5, 6, 8, 10, 11, 12, 13 and 9, as amended. |
|------------|--|

The motion was carried.

Cr Giacomo Arnott requested his vote be recorded against the motion.

**ORDINARY COUNCIL MEETING - 25 AUGUST 2020**

**AMENDMENT**

|  |  |
|--|--|
|  | <b>Councillor Giacomo Arnott</b><br><br>That Council:<br><ol style="list-style-type: none"><li>1) Consider item 4, 7 and then multiple vote items 5, 6, 10, 11, 12, 13 and items 8 and 9, as amended.</li><li>2) Allow each Councillor 10 minutes to speak on the items.</li></ol> |
|--|--|

The motion lapsed without a seconder.

**ITEM NO. 4**

**FILE NO: 20/234295  
EDRMS NO: PSC2019-05146**

**AMENDMENT TO THE PORT STEPHENS DEVELOPMENT CONTROL PLAN 2014  
- CHAPTER B1 TREE MANAGEMENT**

REPORT OF: JANELLE GARDNER - ACTING STRATEGY & ENVIRONMENT  
SECTION MANAGER  
GROUP: DEVELOPMENT SERVICES

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Receive and note the submissions received during the exhibition period **(ATTACHMENT 3)**.
- 2) Approve the Port Stephens Development Control Plan 2014 (Amendment No. 13) **(ATTACHMENT 1)**.
- 3) Provide public notice that the amendment to the Port Stephens Development Control Plan 2014 has been approved in accordance with the Environmental Planning and Assessment Regulation 2000.

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**ORDINARY COUNCIL MEETING - 25 AUGUST 2020  
MOTION**

|            |  |
|------------|--|
| <b>156</b> | <p><b>Councillor John Nell<br/>Councillor Glen Dunkley</b></p> <p>It was resolved that Council:</p> <ol style="list-style-type: none"><li>1) Receive and note the submissions received during the exhibition period <b>(ATTACHMENT 3)</b>.</li><li>2) Approve the Port Stephens Development Control Plan 2014 (Amendment No. 13) <b>(ATTACHMENT 1)</b>.</li><li>3) Provide public notice that the amendment to the Port Stephens Development Control Plan 2014 has been approved in accordance with the Environmental Planning and Assessment Regulation 2000.</li></ol> |
|------------|--|

In accordance with Section 375 (A) of the Local Government Act 1993, a division is required for this item.

Those for the Motion: Mayor Ryan Palmer, Crs Jaimie Abbott, Giacomo Arnott, Glen Dunkley, Ken Jordan, John Nell and Sarah Smith.

Those against the Motion: Nil.

The motion was carried.

## **BACKGROUND**

The purpose of this report is to report on the outcomes of the public exhibition and to seek Council approval for the Port Stephens Development Control Plan 2014 (DCP 2014) (Amendment No. 13) (the Amendment) (**ATTACHMENT 1**), which will align the DCP 2014 with State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (Vegetation SEPP).

The Vegetation SEPP provides that approval is not required to remove trees and vegetation in non-rural areas that the Council is satisfied are:

- dying or dead and is not required as the habitat of native animals, or
- a risk to human life or property.

The Amendment will ensure consistency with the Vegetation SEPP and educational resources have been prepared to assist landowners to identify when removal of vegetation can occur without Council approval.

The Amendment will give effect to the Council resolution on 10 March 2020, Minute Number 055 (**ATTACHMENT 2**) by amending the DCP 2014 to specify that approval to remove vegetation and trees is not required where there is a risk to human life or property.

The Amendment also includes changes to chapters E1 and E3 of the DCP 2014 to clarify references included in chapter B1 of the DCP 2014 (**ATTACHMENT 1**).

The Amendment was publically exhibited for a period of 28 days from 25 June 2020 to 27 July 2020. During public exhibition, 22 submissions were received. The submissions are summarised and addressed in (**ATTACHMENT 3**).

Minor changes to the Amendment have been made following consultation to update references to State agencies. The Amendment will also be supported by educational materials on Council's website. As noted in (**ATTACHMENT 3**) some amendments to the materials will be made in response to matters raised in submissions.

## **COMMUNITY STRATEGIC PLAN**

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

## **FINANCIAL/RESOURCE IMPLICATIONS**

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



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

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

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

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

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

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

Division 2 of Part 3 of the EP&A Regulations specifies the requirements for public participation. The public exhibition of the Amendment has satisfied these requirements.

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

Clause 9 of the Vegetation SEPP enables a development control plan to declare the kinds of vegetation in non-rural areas which require a council permit to be cleared.

The Vegetation SEPP specifies the type and thresholds of vegetation which do not require approval for clearing.

Clause 8(3) of the Vegetation SEPP provides that approval is not required for the removal of vegetation that the council is satisfied is:

- dying or dead and is not required as the habitat of native animals, or
- a risk to human life or property.

The Amendment will give effect to the provisions of the SEPP and will clarify tree removal requirements and exemptions for the community.

Port Stephens Development Control Plan 2014 (DCP 2014)

Chapter B1 of the DCP 2014 declares the kinds of vegetation and trees in non-rural areas that may be cleared with approval and when removal is exempt from approval.

Currently, tree removal that is exempt from requiring approval includes where urgent removal is necessary on account of immediate failure. The Amendment will align the DCP 2014 with the Vegetation SEPP by enabling removal where a tree is dead or dying and is not required as the habitat of native animals, or where there is a risk to human life or property.

The Amendment includes notification requirements where removal is proposed for a tree that is dead or dying and is not required as the habitat of native animals, or where there is a risk to human life or property. Notice is required to be provided to Council 10 days prior to the removal of the tree.

Other amendments are proposed to ensure consistency with the Vegetation SEPP and other relevant legislation.

Port Stephens Local Strategic Planning Statement

The Port Stephens Local Strategic Planning Statement (LSPS) was adopted by Council on 14 July 2020. The Amendment is consistent with Action 7.1 in the LSPS which requires Council to review and update the tree management framework.

Environment Policy

Clause 5.4 of the Environment Policy (the policy) requires Council to meet all its statutory responsibilities under environmental legislation. The Amendment is consistent with the policy as it will align the DCP 2014 with relevant environmental legislation, specifically the Vegetation SEPP.

Port Stephens Comprehensive Koala Plan of Management

Chapter B1 of the DCP 2014 specifies the categories of tree removal that are exempt from approval or require a permit. The Port Stephens Comprehensive Koala Plan of Management applies to the assessment of tree removal and other development that requires development consent. Therefore the Amendment has no impact on the operation of the Port Stephens Comprehensive Koala Plan of Management.

| <b>Risk</b>  | <b><u>Risk Ranking</u></b> | <b>Proposed Treatments</b>   | <b>Within Existing Resources?</b> |
|--|----------------------------|--|-----------------------------------|
| If the Amendment is not made, there is a risk that Council's tree management framework is inconsistent with State legislation. | Medium                     | Adopt the recommendations.   | Yes                               |
| There is a risk that the Amendment results in increased compliance actions for Council.  | Low                        | Adopt the recommendations.<br>Educational materials have been prepared to clarify tree removal requirements and exemptions for the community.<br>The existing provisions of the DCP 2014 note that a landowner bears the onus of proof when undertaking tree removal without a permit. | Yes                               |

### **SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

The Amendment will align Council's tree management framework with State environmental legislation by specifying that approval is not required for the removal of trees or vegetation that Council is satisfied is:

- dying or dead and is not required as the habitat of native animals, or
- a risk to human life or property.

This will be through the Port Stephens Council Exempt Tree Removal Self Certification Form which is required to be provided to Council 10 days prior to the removal of the tree.

There are no changes proposed to the categories of trees and vegetation that can currently be removed without approval under the DCP 2014, Vegetation SEPP or other legislation.

### **CONSULTATION**

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

Internal

Internal consultation has been undertaken with the Facilities and Services Group, Development Assessment and Compliance section, and the Natural Resources unit on the proposal. All stakeholders support the Amendment as it will align the tree management framework with State legislation. The consultation has informed the preparation of the Amendment and the development of additional processes for the tree removal notification requirements outlined in the Amendment.

The Natural Resources unit prepared the educational materials to support the Amendment.

External

The Amendment was placed on public exhibition for 28 days from 25 June 2020 to 27 July 2020. In response to the exhibition of the Amendment, 22 submissions were received. A summary and response to the submissions can be found in **(ATTACHMENT 3)**.

**OPTIONS**

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

**ATTACHMENTS**

- 1) Development Control Plan Amendment. [↓](#)
- 2) Minute No.055, 10 March 2020. [↓](#)
- 3) Submissions Summary. [↓](#)

**COUNCILLORS ROOM**

- 1) Copy of unredacted submissions.
- 2) Vegetation SEPP and Educational Resources.

**TABLED DOCUMENTS**

Nil.

B1

B1 Tree Management

| Application   |  |
|---|--|
| <p>This Part applies to <b>development</b> to remove or prune trees or other vegetation within <b>non-rural areas</b></p> <p><b>Note:</b> Clearing of native vegetation in <b>rural areas</b> is regulated by the <i>Local Land Services Amendment Act 2016</i></p> |  |
| Objective   |  |
| B1.A  | <p><b>Non-rural Areas</b> To give effect to <i>State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017</i> by listing those trees or other vegetation that require approval</p>   |
| Requirement   |  |
| B1.1  | <p>Where any activity specified in Column 2 is proposed, an applicant must attain the corresponding approval type specified in Column 1 except for an activity where no approval is required.</p>  |
| Column 1 – Approval Type Required   | Column 2 – Tree Management Activity  |
| Native Vegetation Panel approval  | <p>Clearing of <b>native vegetation</b> that <b>exceeds</b> <b>is subject to</b> the biodiversity offset scheme threshold-as specified in the <i>Biodiversity Conservation Act 2016</i></p>  |
| Council issued <b>permit</b>  | <ul style="list-style-type: none"> <li>• Removal or pruning of a tree or other vegetation where height exceeds 3m or <b>circumference breast height</b> exceeds 300mm; or</li> <li>• Removal or pruning of a tree or other vegetation, irrespective of the size, that is:                             <ul style="list-style-type: none"> <li>- a NSW Christmas Bush (<i>Ceratopetalum gummiferum</i>);</li> <li>- a Cabbage Tree Palm (<i>Livistona australis</i>);</li> <li>- a species listed under the <i>Biodiversity Conservation Act 2016</i>;</li> <li>- listed under the <b>register of significant trees</b><sup>3</sup>; or</li> <li>- part of a <b>heritage item, heritage conservation area</b>, Aboriginal object or Aboriginal place of significance, which Council is satisfied:                                     <ul style="list-style-type: none"> <li>o is of a minor nature or is for the maintenance of that item, area, object or place; and</li> <li>o will not adversely affect the significance of that item, area, object or place.</li> </ul> </li> </ul> </li> </ul> |
| Council issued <b>development consent</b>   | <p>Removal or pruning of a tree or other vegetation that forms part of a <b>heritage item, heritage conservation area</b>, Aboriginal object or Aboriginal place of significance, which Council is not satisfied:</p> <ul style="list-style-type: none"> <li>• is of a minor nature or is for the maintenance of that item, area, object or place; and</li> <li>• will not adversely affect the significance of that item, area, object or place</li> </ul> <p><b>Note:</b> A <b>development application</b> will need to be lodged</p>  |
| Council approval is not required  | <p>Removal or pruning of a tree or other vegetation:</p>   |

B-1

B1

TREE MANAGEMENT

|   |   |
|---|---|
|   | <ul style="list-style-type: none"> <li>• authorised under other legislation, such as vegetation clearing authorised under the <i>Rural Fires Act 1997</i>; or</li> <li>• where height exceeds 3m or <b>circumference breast height</b> exceeds 300mm, that is:             <ul style="list-style-type: none"> <li>- within 5m of the wall of an approved structure measured from the wall to the trunk of the tree;                 <ul style="list-style-type: none"> <li>— in accordance with a <b>construction certificate</b> or <b>subdivision certificate</b>;</li> </ul> </li> <li>- a tree grown for fruit or nut production;                 <ul style="list-style-type: none"> <li>— vegetation clearing work authorised under the <i>Rural Fires Act 1997</i>;</li> </ul> </li> <li>- maintenance of less than 12 months growth or 10% of foliage in accordance with AS 4373 – Pruning of amenity trees;</li> <li>- an <b>undesirable species</b>; or</li> </ul> </li> <li>• not otherwise listed as requiring Council approval; or</li> <li>• that requires urgent removal on account of immediate failure when Council is provided with a <b>tree removal notification</b> post-event; or</li> <li>• where there is a risk to human life or property, when Council is provided with a <b>tree removal notification</b> 10 days prior to removal; or</li> <li>• where it is dead or dying and it is not required as the habitat of native animals, when Council is provided with a <b>tree removal notification</b> 10 days prior to removal.</li> </ul> <p><b>Note:</b> The onus of proof is on the landowner and photos should be taken before and after removal. Landowners are encouraged to seek the advice of a <b>qualified arborist</b> in determining the direct threat of any tree.</p> |
| <p><b>Note:</b> Applicants for tree clearing and removals will also need to consider the provisions of other legislation including but not limited to the following:</p> <ul style="list-style-type: none"> <li>• <b>Biodiversity Conservation Act 2016 (NSW)</b> – A licence may be required if tree removal would also harm the animals listed in this Act ecological communities, critical habitat, endangered and vulnerable species, key threatening processes, recovery plans. Contact the <b>NSW Environment, Energy and Science</b> Office of Environment and Heritage (<b>OEH</b>).</li> <li>• <b>Biosecurity Act 2015 (NSW)</b> – clearing of weeds. Contact NSW Local Land Services (<b>LLS</b>) – Hunter.</li> <li>• <b>Environment Protection and Biodiversity Conservation Act 1999 (Cth)</b> – protect and manage nationally and internationally important flora, fauna, ecological communities and heritage places. Contact the Commonwealth Department of the Environment.</li> <li>• <b>Fisheries Management Act 1994 (NSW)</b> – prohibits cutting of mangroves. Contact the NSW Department of Primary Industries (<b>DPI</b>).</li> <li>• <b>Heritage Act 1977 (NSW)</b> – sites under conservation orders, relics, etc. Contact <b>NSW Environment, Energy and Science OEH</b>.</li> <li>• <b>Local Land Services Amendment Act 20136 (NSW)</b>– clearing of native vegetation, regional vegetation management plans, property agreements. Contact NSW <b>Local Land Services (LLS)</b> – Hunter <b>OEH</b>.</li> <li>• <b>National Parks and Wildlife Act 1974 (NSW)</b> – fauna habitat, protected plants. <b>Regulates works in Aboriginal places or impacting Aboriginal objects.</b> Contact the National Parks and Wildlife Service at the <b>NSW Environment, Energy and Science OEH</b>.</li> <li>• <b>Rural Fires Act 1997 (NSW)</b> - '10/50 Vegetation Clearing Code of Practice for NSW', and authorised removal of fire hazards. Contact the NSW Rural Fire Service.</li> <li>• <b>Water Management Act 2000 (NSW)</b> – A <b>controlled activity</b> approval under the WMA is required for certain types of <b>development</b> and activities that are carried out in or near a river, lake or estuary (e.g. for the removal of material or vegetation). Contact NSW <b>DPI</b>.</li> </ul> |   |

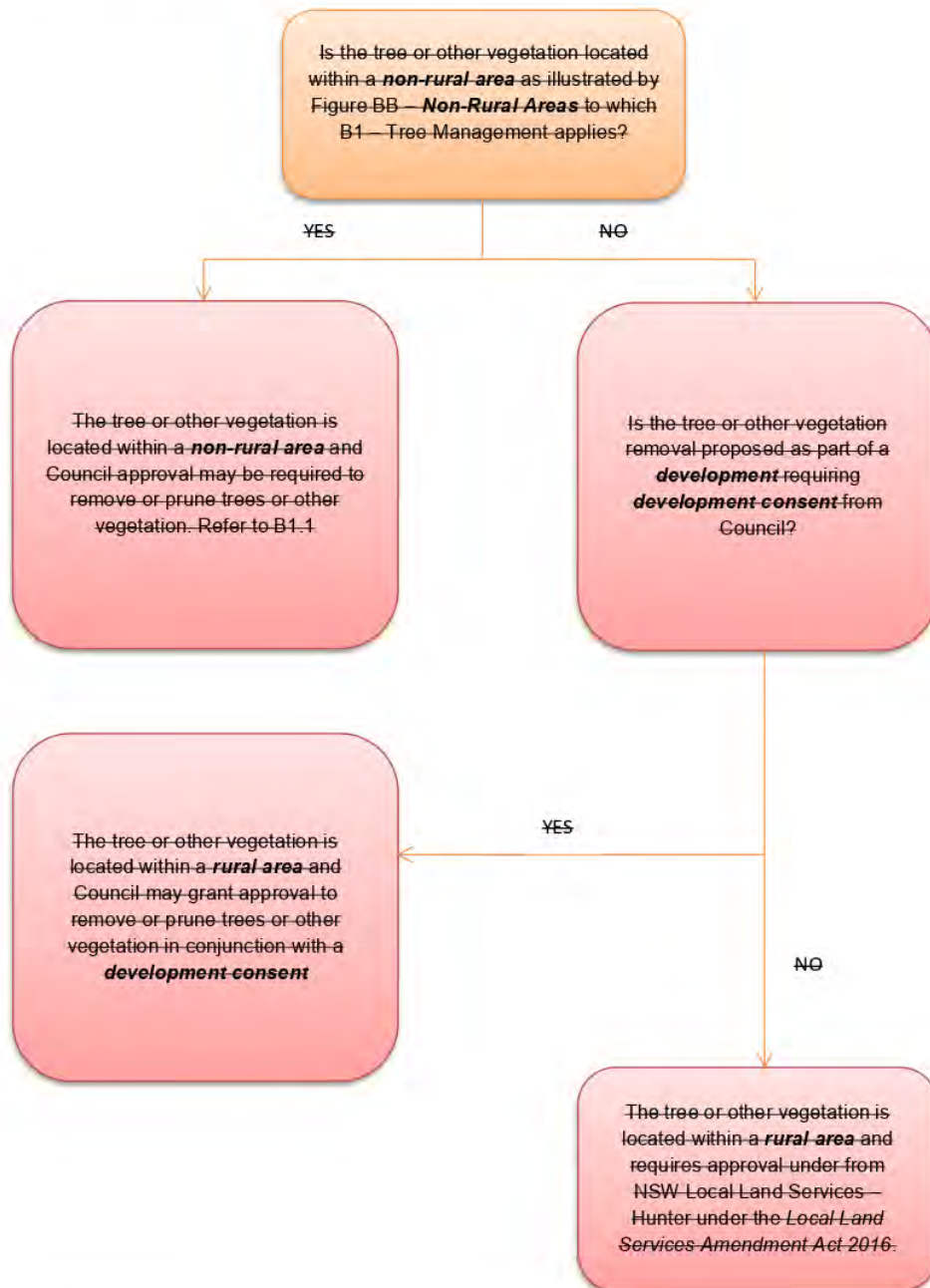
B1

| Objective               |   |                         |  |
|-------------------------|---|-------------------------|--|
| B1.B                    | <table border="1"> <tr> <th>Assessment Requirements</th> <td>To ensure adequate consideration is provided to the relevant matters for the removal or pruning of trees or other vegetation</td> </tr> </table>   | Assessment Requirements | To ensure adequate consideration is provided to the relevant matters for the removal or pruning of trees or other vegetation |
| Assessment Requirements | To ensure adequate consideration is provided to the relevant matters for the removal or pruning of trees or other vegetation  |                         |  |
| Requirement             |   |                         |  |
| B1.2                    | <p>Council assessment of applications to remove or prune trees or other vegetation has regard for:</p> <ul style="list-style-type: none"> <li>• whether the tree is dead and provides habitat</li> <li>• damage to an existing structure or utility service substantiated by a qualified person</li> <li>• interfering with a solar photovoltaic/hot water system</li> <li>• interfering with the amenity of a <b>habitable room</b></li> <li>• threatened by a <b>development consent</b></li> <li>• consistency with a <b>flora, fauna or conservation strategy</b></li> <li>• the tree is interfering, or likely to interfere, with the provision of a public utility or road/<b>driveway</b> construction, provided the impact on the trees has been considered in the design phase</li> <li>• impact on threatened species, populations or ecological communities and their habitats</li> <li>• retention value under the <b>tree technical specification</b><sup>1</sup></li> <li>• other relevant circumstances, as per the <b>tree technical specification</b><sup>1</sup></li> </ul> |                         |  |
| Objective               |   |                         |  |
| B1.C                    | <table border="1"> <tr> <th>Supporting Information</th> <td>To ensure adequate information is provided to determine the application for the removal of trees or vegetation</td> </tr> </table>  | Supporting Information  | To ensure adequate information is provided to determine the application for the removal of trees or vegetation               |
| Supporting Information  | To ensure adequate information is provided to determine the application for the removal of trees or vegetation  |                         |  |
| Requirements            |   |                         |  |
| B1.3                    | <p>An <b>arborist report</b> consistent with <b>tree technical specification</b><sup>1</sup> is required:</p> <ul style="list-style-type: none"> <li>• for a tree or other vegetation listed under <b>register of significant trees</b><sup>3</sup></li> <li>• to assess the impact on existing trees as part of a <b>development application</b> as per AS 4970 – Protection of trees on development sites</li> <li>• to support reassessment of applications for tree removal on a technical basis</li> <li>• to support the release of a tree bond</li> </ul>  |                         |  |
| B1.4                    | <p>A tree bond consistent with the <b>tree technical specification</b><sup>1</sup> is imposed where Council deems a public tree is at risk</p>  |                         |  |
| B1.5                    | <p>A request to remove 20 or more trees requires a <b>vegetation management plan</b> consistent with <b>vegetation technical specification</b><sup>2</sup></p> <p><b>Note:</b> An application to remove 20 or more trees, where tree height exceeds 3m or <b>circumference breast height</b> exceeds 300mm, may require a referral to be provided to Hunter Water by the assessing officer in accordance with the 'Guidelines for developments in the drinking water catchments'</p>  |                         |  |
| B1.6                    | <p><b>Compensatory planting</b> consistent with the <b>tree technical specification</b><sup>1</sup> may be required when council approval to remove trees is provided</p>   |                         |  |
| B1.7                    | <p>A <b>hollow tree assessment</b> is required to remove hollow bearing trees:</p> <ul style="list-style-type: none"> <li>• Two replacement hollows are provided for each hollow tree identified by the <b>hollow tree assessment</b></li> <li>• Salvaged hollows are preferred over nest boxes, which are consistent with the <b>nest box technical specification</b><sup>5</sup></li> </ul> <p><b>Note:</b> B2.1 requires a <b>hollow tree assessment</b> and replacement or salvaged hollows if a <b>Flora and Fauna Survey</b> Report proposes their removal</p>  |                         |  |

**B1**

TREE MANAGEMENT

Figure BA: Explanation of Requirement B1 – When approval is required



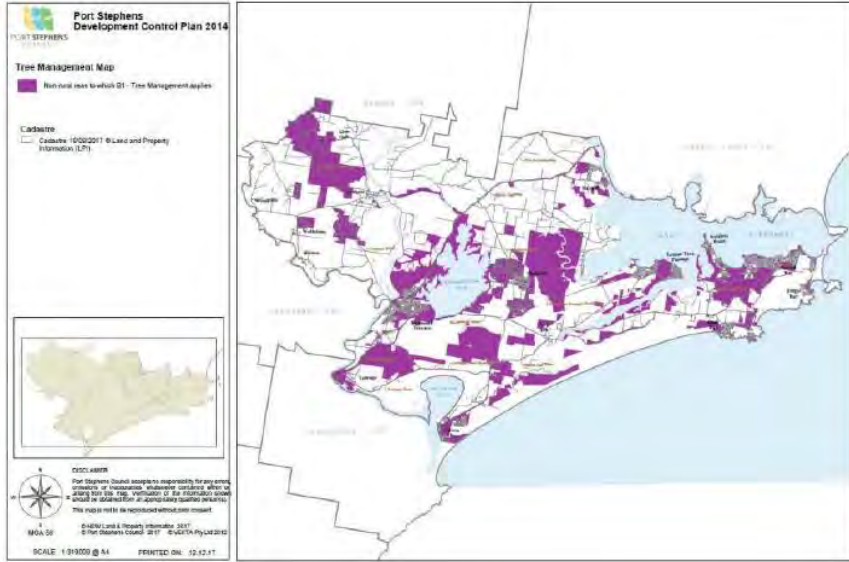
B-4



B1

Figure BB: Non-Rural Areas to which B1 – Tree Management applies

Delete Map



B-13

E

SCHEDULES

E Schedules

| E Schedules |                           |   |       |
|-------------|---------------------------|---|-------|
| No          | Part                      | This Part:  | Page  |
| E1          | Glossary                  | <ul style="list-style-type: none"> <li>defines terms used in this Plan</li> </ul>   | E-170 |
| E2          | Acronyms                  | <ul style="list-style-type: none"> <li>expands acronyms used in this Plan</li> </ul>  | E-195 |
| E3          | Reference List – Endnotes | <ul style="list-style-type: none"> <li>provides a Reference List for those documents referenced throughout this Plan</li> </ul> | E-197 |

E1 Glossary

...  
**exotic species** means the following:

- Tree of Heaven – *Alionthus altissima*
- Camphor Laurel – *Cinnoamomum camphora*
- Cotoneaster – *Cotoneaster spp.*
- Coral Tree – *Erythrina spp.*
- Rubber Tree – *Fiscus elastica*
- Privet – *Ligustrum spp.*
- Oleander – *Nerium oleander*
- Slash pine – *Pinus elliotii*
- Radiata pine – *Pinus radiate*
- Willow – *Salix babylonica, Salix matsudana tortuosa* and *Salix spp*
- Umbrella Trees – *Schefflera spp*
- Cocos Palm – *Syagrus romanzenffianum*
- Rhus Tree – *Toxicodendron succedameum*

...  
**tree removal notification** means the Port Stephens Council **Exempt Tree Removal Self Certification** Form. The Form is available from the Port Stephens Council Website.

...  
**undesirable species** means the following:

- Tree of Heaven – *Alionthus altissima*
- Camphor Laurel – *Cinnoamomum camphora*
- Cotoneaster - *Cotoneaster spp.*
- Coral Tree – *Erythrina spp.*

## E3

## REFERENCE LIST – ENDNOTES

- Rubber Tree – *Ficus elastic*
- Privet – *Ligustrum spp.*
- Oleander – *Nerium oleander*
- Slash pine – *Pinus elliotii*
- Radiata pine – *Pinus radiata*
- Willow – *Salix babylonica, Salix matsudana tortuosa and Salix spp*
- Umbrella Trees – *Schefflera spp*
- Cocos Palm – *Syagrus romanzonffianum*
- Rhus Tree – *Toxicodendron succedameum*

...  
**urban areas non-rural areas** for the purposes of B1 – Tree Management means the following land use zones under the Port Stephens Local Environmental Plan 2013 and as specified in *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017* identified by Figure BA (p. B-17):

- R1 General Residential
- R2 Low Density Residential
- R3 Medium Density Residential
- R5 Large Lot Residential
- B1 Neighbourhood Centre
- B2 Local Centre
- B3 Commercial Core
- B4 Mixed Use
- B5 Business Development
- B7 Business Park
- IN1 General Industrial
- IN2 Light Industrial
- IN4 Working Waterfront
- RU5 Village
- SP1 Special Activities
- SP2 Infrastructure
- RE1 Public Recreation
- RE2 Private Recreation
- E2 Environmental Conservation
- E3 Environmental management
- E4 Environmental Living

**MINUTES ORDINARY COUNCIL - 10 MARCH 2020****NOTICE OF MOTION**

ITEM NO. 2

FILE NO: 20/42371  
EDRMS NO: PSC2017-00019**TREE MORATORIUM****COUNCILLOR:** CHRIS DOOHAN**THAT COUNCIL:**

- 1) Provide a moratorium on the need to obtain pre-approval for the removal of trees or vegetation covered by the Port Stephens Council's tree permit requirements where there is a risk to human life and/or property for a period of 12 months.
- 2) During the 12 month moratorium, Council will develop and roll out an education program and supporting material to clarify tree removal requirements and exemptions for the community.

**ORDINARY COUNCIL MEETING - 10 MARCH 2020  
MOTION**

|            |  |
|------------|--|
| <b>055</b> | <p><b>Councillor Chris Doohan</b><br/><b>Councillor Ken Jordan</b></p> <p>It was resolved that Council:</p> <ol style="list-style-type: none"> <li>1) Provide a moratorium on the need to obtain pre-approval for the removal of trees or vegetation covered by the Port Stephens Council's tree permit requirements where there is a risk to human life and/or property for a period of 12 months.</li> <li>2) During the 12 month moratorium, Council will develop and roll out an education program and supporting material to clarify tree removal requirements and exemptions for the community.</li> </ol> |
|------------|--|

In accordance with Section 375 (A) of the Local Government Act 1993, a division is required for this item.

Those for the Motion: Mayor Ryan Palmer, Crs Jaimie Abbott, Giacomo Arnott, Chris Doohan, Glen Dunkley, Ken Jordan, Paul Le Mottee, John Nell, Sarah Smith and Steve Tucker.

Those against the Motion: Nil.

**MINUTES ORDINARY COUNCIL - 10 MARCH 2020**

The motion was carried.

**ORDINARY COUNCIL MEETING - 10 MARCH 2020  
AMENDMENT**

|  |   |
|--|---|
|  | <p><b>Councillor Giacomo Arnott</b><br/><b>Councillor John Nell</b></p> <p>That a report be prepared outlining the current process for dangerous tree removal, including expected time frames, expected cost to residents, and any barriers which hinder residents' access to existing approval exemptions for dangerous trees. This report should include an outline of any successes and failings of the 2015-16 tree moratorium.</p> |
|--|---|

The amendment on being put was lost.

**BACKGROUND REPORT OF: STEVEN PEART – STRATEGY & ENVIRONMENT  
SECTION MANAGER****BACKGROUND**

The preservation of trees or vegetation within the Port Stephens local government area is provided for by the provisions of the Port Stephens Local Environmental Plan 2013 (LEP 2013), the Port Stephens Development Control Plan 2014 (DCP 2014), and supporting tree management policies and technical specifications (the Tree Management Framework).

Chapter B1 of the DCP 2014, provides the circumstances in which Council consent permission, or approval is required, for the removal or pruning of trees and vegetation in non-rural areas. It also states that applicants wishing to clear or remove trees will also need to consider the provisions of other legislation that governs tree and vegetation management (including, but not limited to, the Biodiversity Conservation Act 2016 (NSW), Rural Fires Act 1997 (NSW), Heritage Act 1977 (NSW)).

Exemptions are currently available in Council's existing controls and other legislative frameworks, including:

- Port Stephens Council Tree Management Framework – Criteria 1 for Assessment of Tree Permit Applications – Damage or Injury: Approval is not required where a tree poses a high risk (as calculated by the International Society of Arboriculture's tree risk assessment process) and that risk that cannot be adequately mitigated by arboricultural treatments, or where a tree is significantly affecting structures including utility services, footpaths, driveways, retaining walls and/or buildings, and it is shown that tree removal is the only reasonable means to avoid further conflict.

**MINUTES ORDINARY COUNCIL - 10 MARCH 2020**

- Port Stephens Council Tree Management Framework – Criteria 6 for Assessment of Tree Permit Applications: Approval is not required where an applicant claims that a tree poses an unacceptable risk to human health and the claim is substantiated by an appropriate medical practitioner.
- The 10/50 Vegetation Clearing Code of Practice for New South Wales under the Rural Fires Act 1997: Approval is not required where the property is in a designated 10/50 Vegetation Clearing Entitlement Area, and the tree is within 10 metres of a home and/or underlying vegetation such as shrubs (but not trees) is within 50 metres of a home.

Should the recommendations be supported, a consequential amendment will be required to the Port Stephens Development Control Plan (DCP 2014). The amendment will be required to be exhibited for a period of 28 days in accordance with the Environmental Planning and Assessment Regulation 2000, subject to a resolution of Council.

Opportunities exist for further education of the community through the provision of structured education programs and supporting material such as guidance notes.

**ATTACHMENTS**

Nil.

**ITEM 4 - ATTACHMENT 3 SUBMISSIONS SUMMARY.**

Submissions summary – Amendment to the Port Stephens Development Control Plan 2014 – Chapter B1 Tree Management

| No. | Author of submission | Comment   | Council response   |
|-----|----------------------|---|--|
| 1   | Resident             | The current tree management framework adequately provides for the removal of dangerous trees.   | <p>Under the Port Stephens Development Control Plan 2014 (DCP 2014), only urgent tree removal on account of immediate failure can be carried out without a tree permit.</p> <p>Under the State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017, a tree permit is not required where there is a risk to human life or property, which can encompass circumstances other than trees at risk of immediate failure.</p> <p>The Amendment to DCP 2014 aligns Council’s tree management framework with State legislation and the educational materials prepared clarify the process and policy for the community. There are no changes proposed to the categories of trees and vegetation that can currently be removed without approval under the DCP 2014, State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 or other legislation.</p> |
|     |                      | The Amendment will result in impacts on the koala population and conflicts with the Port Stephens Comprehensive Koala Plan of Management. | <p>The Amendment to DCP 2014 does not apply to clearing that would trigger an assessment of impacts on threatened species, such as koalas, under the Biodiversity Conservation Act 2016. This category of vegetation removal will continue to be assessed, and offsets imposed, under that legislation.</p> <p>Vegetation removal that requires a permit, or is exempt from requirements to obtain a permit, under the tree management framework are not subject to assessment under the Port Stephens Comprehensive Koala Plan of Management. That plan only applies to the scale and types of clearing that trigger a development application.</p>   |
|     |                      | It is essential environmental protections remain in place to deliver the many benefits provided by trees, including absorbing carbon.     | There are no changes proposed to the categories of trees and vegetation that can currently be removed without approval under the DCP 2014, State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 or other legislation.  |
| 2   | Resident             | The current tree management framework adequately provides for the removal of dangerous trees.   | See response to Submission 1 above.  |
|     |                      | Allowing homeowners to judge the risk to life or property themselves will endanger the general public and homeowners will not be          | Educational materials and an interactive online form have been prepared to assist homeowners in determining when and how they can remove a tree near their home. The guidance specifies when the homeowner needs to obtain the advice  |

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|   |          | able to determine whether native flora or fauna exists in a specific location.  | of a qualified arborist and the notes the Australian Standards that apply to tree pruning etc.  |
|   |          | Council will not be made aware of the indiscriminate removal of trees.  | The Amendment includes requirements to notify Council prior to tree removal that does not require a permit. Council will provide homeowners with advice within 10 days whether or not they can safely remove the tree without a permit. An online interactive form will provide homeowners with clear guidance about the requirements for tree removal.   |
|   |          | The Amendment undermines the objectives of clause 5.9 of the Port Stephens Local Environmental Plan 2013 Preservation of trees or vegetation:<br><br><i>(1) The objective of this clause is to preserve the amenity of the area, including biodiversity values, through the preservation of trees and other vegetation.</i> | Clause 5.9 of the Port Stephens Local Environmental Plan 2013 regulated tree removal under the DCP 2014 prior to the introduction of the State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (SEPP) on 25 August 2017. The SEPP repealed clause 5.9 of the Port Stephens Local Environmental Plan 2013 on commencement.<br><br>The DCP 2014 gives effect to the provisions of the SEPP which provides that a tree permit is not required where there is a risk to human life or property.  |
| 3 | Resident | The State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (SEPP) does not apply in Port Stephens because Port Stephens is not listed in clause 5(1)(a) of the SEPP.  | Clause 5 (1)(b) operates so that the SEPP applies to all land in Port Stephens that is zoned for urban purposes under the Port Stephens Local Environmental Plan 2013.  |
| 4 | Resident | The Amendment will encourage the wholesale removal of unwanted trees.   | There are no changes proposed to the categories of trees and vegetation that can currently be removed without approval under the DCP 2014, State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 or other legislation.<br><br>The Amendment includes requirements to notify Council prior to tree removal that does not require a permit. Council will provide homeowners with advice within 10 days whether or not they can remove the tree without a permit. An online interactive form will provide homeowners with clear guidance about the requirements for tree removal.<br><br>Unauthorised tree removal will continue to be investigated and actioned. |
| 5 | Resident | The current tree management framework adequately provides for the removal of dangerous trees.   | See response to Submission 1 above.   |
|   |          | The Amendment will result in impacts on the koala population and conflicts with the Port Stephens   | See response to Submission 1 above.   |



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|   |          | Comprehensive Koala Plan of Management.   |  |
|   |          | It is essential environmental protections remain in place to deliver the many benefits provided by trees, including absorbing carbon.   | See response to Submission 1 above.  |
| 6 | Resident | The council has a responsibility to oversee and regulate any activity which is going to interfere with or threaten the natural environment. The reasons given for the Amendment appear speculative and should not shift the responsibility of council to land owners. | <p>The purpose of the Amendment is to align Council's tree management framework with the State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (SEPP) which identifies the categories of tree removal that do not require any development application or approval, this includes the removal of vegetation that is a risk to human life or property (clause 8(3) of the SEPP).</p> <p>The Amendment establishes a process for removing trees without approval which requires landowners to notify Council prior to removal, other than where a tree requires immediate removal due to safety (which the current DCP 2014 already provides for). Council then has 10 days to notify the landowner whether the tree can be removed without approval. This places the responsibility on Council to ensure the trees proposed to be removed meet the criteria in the SEPP and the DCP 2014.</p> |
|   |          | We have seen evidence of poisoned trees along the Wanda Beach headland and fear that given a green light some people may make similar selfish decisions in relation to the removal of trees they deem inconvenient.   | <p>As above, the Amendment requires landowners to notify Council prior to removal, other than where a tree requires immediate removal due to safety. Council then has 10 days to notify the landowner whether the tree can be removed without approval.</p> <p>Council will continue to investigate acts of tree vandalism and prosecute perpetrators under the Tree Vandalism Policy and related processes. Council will continue to investigate unauthorised tree removal to ensure all trees removed without approval meet the criteria in the State and local tree management framework.</p>   |
| 7 | Resident | There certainly is a need for a professional to review a Tree Removal Self-Certification Form before removal without approval.  | Educational materials provide guidance to the community about when an arborist report is required to accompany a Tree Removal Self-Certification Form and all forms will be reviewed by Council staff, including a suitably qualified arborist.  |
|   |          | Trees will be removed not because they are sick, diseased or dangerous, but for the uninterrupted views. There will be widespread tree removal without approval.  | As above, the Amendment requires landowners to notify Council prior to removal, other than where a tree requires immediate removal due to safety. Council then has 10 days to notify the landowner whether the tree can be removed without approval. Council will continue to investigate and enforce unauthorised tree removal to ensure all trees removed without approval meet the criteria in the State and local tree management  |

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|   |          |   | framework. Since the provisions that enable urgent tree removal without approval were introduced some years ago, there has not been widespread tree removal or a significant increase in compliance actions. It is anticipated that, given the cost of tree removal, the impact of the Amendment on unauthorised tree removal will likely be similar. |
| 8 | Resident | The Amendment undermines the objectives of clause 5.9 of the Port Stephens Local Environmental Plan 2013 Preservation of trees or vegetation                          | See response to Submission 2 above.   |
|   |          | The Amendment does not meet the requirements under the Environmental Protection and Assessment Act 1979 (EP&A Act), section 5A.                                       | See response to Submission 21 below.  |
|   |          | The Amendment does not support the objectives of the State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (SEPP).                                 | See response to Submission 21 below.  |
|   |          | The Amendment will result in widespread tree removal and destruction of biodiversity in the LGA.  | See response to Submission 7 above.   |
|   |          | Self-certification does not work. A qualified arborist should assess the state of any tree to be removed.   | The Amendment requires Council to be notified prior to removal without approval. Council's arborist will assess the notifications and notify the landowner whether the tree can be removed without approval.  |
|   |          | It is already evident that significant trees have been removed or poisoned without any consultation with Council.   | Since the provisions that enable urgent tree removal without approval were introduced some years ago, there has not been widespread tree removal or a significant increase in compliance actions. It is anticipated that, given the cost of tree removal, the impact of the Amendment on unauthorised tree removal will likely be similar.            |
|   |          | The Environmental Department of PSC works at providing ways of educating the community about biodiversity and habitat while these proposals seem to negate that work. | Council's Natural Resources Unit has informed the Amendment and prepared the supporting materials. The purpose of the Amendment is to align the local tree management framework with the State policy.  |
| 9 | Resident | The exhibition of the amendment should have been advertised in the local paper.   | The public exhibition of the Amendment was notified in accordance with the Environmental Planning and Assessment Amendment (Public Exhibition) Regulation 2020 which amended the planning legislation to no longer require development control plan amendments to be notified in the newspaper.   |

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|    |          | <p>The amendment will allow an individual with no experience or qualifications to remove trees.</p>  | <p>The Amendment requires landowners to notify Council prior to removal, other than where a tree requires immediate removal due to safety. Council then has 10 days to notify the landowner whether the tree can be removed without approval. This change aligns the local tree management framework with the State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (SEPP) which identifies the categories of tree removal that do not require any development application or approval, this includes the removal of vegetation that is a risk to human life or property (clause 8(3) of the SEPP).</p> <p>Council's arborist will assess the notifications and notify the landowner whether the tree can be removed without approval and educational materials have been prepared to provide guidance to the community on the removal of trees, including when approval is required, when an arborist report is required and requirements to comply with Australian Standards for removal.</p> |
| 10 | Resident | <p>The explanation of intended effect of the changes is great.</p>   | <p>Noted.</p>  |
|    |          | <p>Self-certification for tree removal may be open to abuse. It should be made clear how it will be enforced.</p>  | <p>Council's arborist will assess the notifications and notify the landowner whether the tree can be removed without approval and educational materials have been prepared to provide guidance to the community on the removal of trees.</p> <p>Council will continue to investigate and enforce unauthorised tree removal to ensure all trees removed without approval meet the criteria in the State and local tree management framework. Since the provisions that enable urgent tree removal without approval were introduced some years ago, there has not been widespread tree removal or a significant increase in compliance actions. It is anticipated that, given the cost of tree removal, the impact of the Amendment on unauthorised tree removal will likely be similar.</p>   |
|    |          | <p>Council could be more proactive when addressing the community's needs in relation to tree removal and the community has demonstrated strong feelings recently over the removal of certain trees after storm events.</p> | <p>The purpose of the Amendment is to align Council's tree management framework with the State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (SEPP) which identifies the categories of tree removal that do not require any development application or approval, this includes the removal of vegetation that is a risk to human life or property (clause 8(3) of the SEPP). The local tree management framework cannot set out requirements or restrictions that conflict with the State policy.</p>   |

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|    |          |   | Educational materials have been prepared to explain the changes to the community and to set out guidance on the removal of trees in our LGA.  |
|    |          | Council should establish a Significant Tree Register and the community can nominate locally important trees for listing. Council should commit to managing these trees appropriately and provide more certainty for the community around locally important trees. | Council maintains a Significant Tree Register and the community can nominate trees for potential listing. The DCP ensures that trees on this list, and trees that have heritage significance or are identified as an Aboriginal object or within an Aboriginal place of significance generally cannot be removed or pruned without a development consent.   |
|    |          | There could be widespread tree removal which will impact movement corridors for wildlife and the character of our suburbs.  | Council will continue to investigate and enforce unauthorised tree removal to ensure all trees removed without approval meet the criteria in the State and local tree management framework. Since the provisions that enable urgent tree removal without approval were introduced some years ago, there has not been widespread tree removal or a significant increase in compliance actions. It is anticipated that, given the cost of tree removal, the impact of the Amendment on unauthorised tree removal will likely be similar.<br><br>The Amendment only applies to tree removal on non-rural land and does not apply to larger scale clearing, such as clearing associated with new residential subdivisions, which is likely to have a more significant impact on wildlife corridors. These impacts will continue to be assessed under the State's biodiversity assessment framework. |
|    |          | Council should adopt an urban greening strategy that proactively mitigates any impact of the Amendment.   | Council is investigating a more strategic approach to management of trees, and in particular the management of trees on Council land which are currently subject to the same local tree management framework as trees on privately owned land. Council is also looking for opportunities to promote urban greening of public spaces through the Street Tree Masterplan for the Nelson Bay town centre and similar plans being prepared for Raymond Terrace.   |
| 11 | Resident | The current tree management framework adequately provides for the removal of dangerous trees.   | See response above to Submission 1.   |
|    |          | The Tree Removal Self-Certification Form enables landowners to determine whether a tree poses a risk to human life or property and a qualified arborist or Council officer should be required to review and assess the impact of the tree removal.                | The Amendment requires landowners to notify Council prior to removal, other than where a tree requires immediate removal due to safety. Council then has 10 days to notify the landowner whether the tree can be removed without approval. Council's arborist or other officers will assess the notifications and notify the landowner whether the tree can be removed without approval. Educational materials have been prepared to provide guidance to the community on the   |

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|    |          |  | removal of trees, including when approval is required, when an arborist report is required, and requirements to comply with Australian Standards for removal. |
|    |          | The Amendment will result in impacts on the koala population and conflicts with the Port Stephens Comprehensive Koala Plan of Management.  | See response to Submission 1 above.   |
| 12 | Resident | The current tree management framework adequately provides for the removal of dangerous trees.  | See response above to Submission 1.   |
|    |          | The Tree Removal Self-Certification Form enables landowners to determine whether a tree poses a risk to human life or property and a qualified arborist or Council officer should be required to review and assess the impact of the tree removal. | See response above to Submission 11.  |
|    |          | The Amendment will result in impacts on the koala population and conflicts with the Port Stephens Comprehensive Koala Plan of Management.  | See response above to Submission 1.   |
| 13 | Resident | The Tree Removal Self-Certification Form enables landowners to determine whether a tree poses a risk to human life or property and a qualified arborist or Council officer should be required to review and assess the impact of the tree removal. | See response above to Submission 11.  |
| 14 | Resident | The Amendment will result in widespread unauthorised tree removal. During the last tree moratorium, many mature and irreplaceable trees were removed to improve views and left visible bare spaces in our landscape.                               | See response above to Submission 10.  |
|    |          | The Tree Removal Self-Certification Form enables landowners to determine whether a tree poses a risk to human life or property and a qualified arborist or Council officer should be required to review and assess the impact of the tree removal. | See response above to Submission 11.  |

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|    |          | <p>If roots on pathways are a problem there have been some innovative path surfaces that use recycled rubber that moves with the tree roots. Council does not appear to have the appetite to really do everything needed to protect a tree.</p> | <p>The educational materials and Self Certification Form contain guidance for the community on the types of trees that can be removed and the circumstances when trees can be removed without approval. Council staff will assess all notifications and continue to investigate and enforce any unauthorised tree removal to ensure all trees removed without approval meet the criteria in the State and local tree management framework.</p> <p>Council continues to promote greener urban spaces through the strategic management of trees on Council land and the greening of public spaces through the Street Tree Masterplan for the Nelson Bay town centre and similar plans being prepared for Raymond Terrace and Medowie.</p> |
| 15 | Resident | <p>The justification for the Amendment is insufficient, the current arrangements for local tree management are adequate and may be better than the current State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017.</p>        | <p>Council has a responsibility to ensure local planning instruments are consistent with State legislation.</p> <p>Under the State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017, a tree permit is not required where there is a risk to human life or property. The Amendment aligns the local tree management framework with this Policy and sets out a local policy framework for the assessment that risk.</p>   |
|    |          | <p>Self-certification policies do not work and the 10 day notification requirement is not enough time for Council to assess Tree Removal Self-Certification Forms.</p>  | <p>The Amendment requires Council to be notified prior to removal without approval. Council's arborist will assess the notifications and notify the landowner whether the tree can be removed without approval.</p> <p>The Amendment provides that Council will notify landowners within 10 working days whether a tree can be removed without approval. This is considered consistent with community customer service expectations and will be reviewed should it place an unreasonable burden on Council resources.</p>   |
|    |          | <p>A site inspection should be required before a tree can be removed without approval.</p>  | <p>In some cases, Council's arborist will choose to carry out a site inspection during the 10 day notification period. This will be determined at the discretion of Council given in some circumstances where the notification contains adequate evidence (for example a qualified arborist report and sufficient plans), a site inspection may not be deemed necessary.</p>  |
| 16 | Resident | <p>The current tree management framework adequately provides for the removal of dangerous trees.</p>  | <p>See response above to Submission 1.</p>  |
|    |          | <p>Allowing homeowners to judge the risk to life or property themselves will risk</p>   | <p>Educational materials and an interactive online form have been prepared to assist homeowners in determining when and how they can remove a</p>   |

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|    |          | homeowners erroneously removing trees or taking advantage to remove trees without approval for unacceptable reasons.                                       | tree near their home. The Amendment includes requirements to notify Council prior to tree removal that does not require a permit. Council will provide homeowners with advice within 10 days whether or not they can safely remove the tree without a permit.   |
|    |          | Removing the need for approval by a qualified Arborist or Council Officer could see an adverse impact on the environment.                                  | As above, Council, including Council's qualified arborist, will review all Tree Removal Self-Certification Forms and will provide homeowners with advice within 10 days whether or not they can safely remove the tree without a permit.  |
|    |          | The Amendment will result in impacts on the koala population and conflicts with the Port Stephens Comprehensive Koala Plan of Management.                  | See response above to Submission 1.   |
| 17 | Resident | The justification for the Amendment is insufficient and responsibility should not be shifted from Council to landowners.                                   | Council has a responsibility to ensure local planning instruments are consistent with State legislation. Under the State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017, a tree permit is not required where there is a risk to human life or property. The Amendment aligns the local tree management framework with this Policy and sets out a local policy framework for the assessment that risk.<br><br>As above, Council, including Council's qualified arborist, will review all Tree Removal Self-Certification Forms and will provide homeowners with advice within 10 days whether or not they can safely remove the tree without a permit. |
|    |          | Allowing homeowners to judge the risk to life or property will risk homeowners taking advantage to remove trees without approval for unacceptable reasons. | See response to Submission 16 above.  |
| 18 | Resident | The Amendment will make tree removal easier increasing the risk of homeowners taking advantage to remove trees without approval for unacceptable reasons.  | See response to Submission 16 above.  |
|    |          | The Amendment does not support the objectives of the State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (SEPP).                      | See response to Submission 21 below.  |
|    |          | The Amendment will weaken Council's ability to perform its legislated role under the State Environmental   | The Amendment aligns the local tree management framework with State legislation. The State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 expressly   |

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|    |                | Planning Policy (Vegetation in Non-Rural Areas) 2017 (SEPP).   | provides for councils to enable the removal of trees in urban areas that pose a risk to human life or property without approval. There is unlikely to be any significant impact on the legislated role of Council to investigate and enforce the provisions of the DCP that are enabled by the SEPP.   |
|    |                | The DCP needs to be strengthened to ensure it meets the SEPP's declared objective of protecting and preserving trees.  | Any amendment to the local tree management framework must be consistent with the State legislation because a development control plan cannot override State policies. As set out above, the SEPP expressly provides for councils to enable the removal of trees in urban areas that pose a risk to human life or property without approval.  |
|    |                | Self-certification shifts the balance too far in favour of self-certification of risk and away from professional assessment.   | Educational materials provide guidance to the community about when an arborist report is required to accompany a Tree Removal Self-Certification Form and all forms will be reviewed by Council staff, including a suitably qualified arborist.  |
| 19 | Resident       | The statement in the report to the 23 June 2020 Council meeting: <i>'There are no policy changes proposed ...'</i> is misleading. The introduction of a 'self-certification' regime is a significant change to the tree management provisions. | See response to Submission 22 below.   |
|    |                | The current tree management framework adequately provides for the removal of dangerous trees.  | See response to Submission 1 above.  |
|    |                | Trees will be removed unnecessarily by unqualified people.   | Council, including Council's qualified arborist, will review all Tree Removal Self-Certification Forms and will provide homeowners with advice within 10 days whether or not they can safely remove the tree without a permit.<br><br>Educational materials and an interactive online form have been prepared to assist homeowners in determining when and how they can remove a tree near their home. The guidance specifies when the homeowner needs to obtain the advice of a qualified arborist and the notes the Australian Standards that apply to tree pruning etc. |
|    |                | There should be more significant penalties for breaches of the Tree Management Policy.   | The penalties for unauthorised tree removal and other breaches of the planning legislation are as set out in the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, biodiversity legislation and other relevant environmental legislation. Council does not set the penalties that could apply to unauthorised tree removal.   |
| 20 | Climate Change | The Amendment will increase the risk of tree   | Under the State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017, a tree permit is not required where there is a risk to   |



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|    | Action Port Stephens                | removal for inappropriate reasons.   | <p>human life or property, which can encompass circumstances other than trees at risk of immediate failure. The Amendment aligns the local tree management framework with this Policy.</p> <p>Educational materials will be provided to provide guidance to the community about when and how trees can be removed without approval.</p> <p>Since the provisions that enable urgent tree removal without approval were introduced some years ago, there has not been widespread tree removal or a significant increase in compliance actions. It is anticipated that, given the cost of tree removal, the impact of the Amendment on unauthorised tree removal will likely be similar.</p> |
|    |                                     | The Amendment does not support the objectives of the State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (SEPP) - to preserve and protect trees (clause 3). | The SEPP identifies the categories of tree removal that do not require any development application or approval, this includes the removal of vegetation that is a risk to human life or property (clause 8(3) of the SEPP). It is assumed that the provisions of the SEPP are consistent with the aims of the SEPP set out in clause 3.   |
|    |                                     | The Amendment will weaken the Council's ability to perform its legislated role under the SEPP.   | <p>The Amendment aligns the local tree management framework with the State policy, therefore there is unlikely to be any impact on the legislated role of Council to investigate and enforce the provisions of the DCP that are enabled by the SEPP.</p> <p>Since the provisions that enable urgent tree removal without approval were introduced some years ago, there has not been widespread tree removal or a significant increase in compliance actions. It is anticipated that, given the cost of tree removal, the impact of the Amendment on unauthorised tree removal will likely be similar.</p>  |
|    |                                     | The Amendment should include requirements for professional assessment.   | Educational materials provide guidance to the community about when an arborist report is required to accompany a Tree Removal Self-Certification Form and all forms will be reviewed by Council staff, including a suitably qualified arborist.   |
| 21 | Soldiers Point Community Group Inc. | The Amendment undermines the objectives of clause 5.9 of the Port Stephens Local Environmental Plan 2013 Preservation of trees or vegetation.                                    | See response to Submission 2 above.   |
|    |                                     | The proposed exemptions do not meet the requirements under the Environmental Protection and Assessment Act 1979 (EP&A Act), section 5A:  | Former section 5A of the EP&A Act applied to the assessment of development applications and was repealed on the commencement of the Biodiversity Conservation Act 2016. The Biodiversity Conservation Act now contains the matters relevant to assessing impacts on biodiversity for development applications.  |

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|  |  | <p><i>5A Significant effect on threatened species, populations or ecological communities, or their habitats ..</i></p> <p><i>(2)(d)(i) the extent to which habitat is likely to be removed or modified as a result of the action proposed.</i></p>  | <p>The Biodiversity Conservation Act 2016 would apply to the categories of tree removal that require a development application (listed in the DCP 2014).</p> <p>The State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (SEPP) identifies the categories of tree removal that do not require any development application or approval, including clearing that would otherwise be subject to the Biodiversity Conservation Act 2016 (clause 7(4) of the SEPP). This includes the removal of vegetation that is a risk to human life or property (clause 8(3) of the SEPP).</p> |
|  |  | <p>The proposed amendments do not adequately support the objective of State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (SEPP) - to preserve and protect trees (clause 3).</p>   | <p>The SEPP identifies the categories of tree removal that do not require any development application or approval, this includes the removal of vegetation that is a risk to human life or property (clause 8(3) of the SEPP). It is assumed that the provisions of the SEPP are consistent with the aims of the SEPP set out in clause 3.</p>   |
|  |  | <p>The current tree management framework adequately provides for the removal of dangerous trees.</p>  | <p>See response to Submission 1 above.</p>   |
|  |  | <p>The Amendment should include a 'sunset clause' of 12 months in accordance with the Council resolution on the <i>'moratorium on the need to obtain pre-approval for the removal of trees...'</i></p>  | <p>The SEPP identifies the categories of tree removal that do not require any development application or approval, this includes the removal of vegetation that is a risk to human life or property (clause 8(3) of the SEPP). The Amendment aligns the DCP controls with the State legislation which will continue to apply even if a sunset clause was prepared and the provision in the DCP ceased to operate after 12 months.</p>  |
|  |  | <p>The tree management section of the DCP applies only to privately or publicly owned land in 'non rural' areas.</p>  | <p>The SEPP provides for the categories of tree removal that requires approval or can be exempt. This is limited to tree removal in the non-rural areas defined in clause 5 of the SEPP. Clearing on rural land is subject to the Local Land Services Act 2013.</p>  |
|  |  | <p>The DCP enables landowners to remove trees without approval if the tree requires urgent removal on account of immediate failure when Council is provided with a tree removal notification post-event. The DCP notes that landowners bear the onus of proof and are encouraged to seek the advice of a qualified arborist as to the direct threat of any tree. Criteria should be</p> | <p>There are no changes proposed to this provision in the Amendment. Since the provision was introduced some years ago there has not been widespread tree removal as a result. The provision addresses the circumstances when urgent removal is necessary and there are increasing risks if removal is delayed.</p> <p>Educational materials have been prepared to provide guidance to the community on the circumstances when trees do not require approval to be removed.</p>  |

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|  | <p>established for trees that require urgent removal and obtaining arborist advice and notifying Council should be a requirement before removal.</p>  |  |
|  | <p>Landholders may neglect to provide Council with the required evidence before or after removal. Information about the penalties for providing false and misleading information need to be prominently included in the <i>Port Stephens Council Exempt Tree Removal Self Certification Form</i> and in any educational material.</p> | <p>Since the provisions that enable urgent tree removal were introduced, there has not been widespread tree removal or a significant increase in compliance actions. The educational materials provide guidance to the community on the circumstances when trees do not require approval to be removed.</p>  |
|  | <p>State and Commonwealth legislative constraints have not been considered, including the State Environmental Planning Policy 44 Koala Habitat Protection and the Port Stephens Comprehensive Koala Plan of Management. The Amendment is inconsistent with the aim of the Port Stephens Comprehensive Koala Plan of Management.</p>   | <p>The Amendment to DCP 2014 aligns Council's tree management framework with State legislation which expressly provides for councils to enable the removal of trees in urban areas that pose a risk to human life or property without approval, and despite any other legislation (see clauses 7(4) and 8(3) of the State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017). In respect of Commonwealth legislation, only actions likely to have a significant impact on matters of national significance, or a significant impact on the environment in general are required to be referred to the Commonwealth for assessment under the Environment Protection and Biodiversity Conservation Act 1999 (Cth). Whether or not removal of a tree in an urban area is likely to meet these thresholds is a matter for an applicant to determine. There are no restrictions on the preparation of State or local regulations in the Commonwealth environment legislation, or requirements for consistency.</p> <p>In 2019, SEPP 44 was repealed and replaced with State Environmental Planning Policy (Koala Habitat Protection) 2019. This SEPP similarly applies to require councils to prepare koala plans of management that apply to the assessment of development applications. In Port Stephens, Council has adopted the Port Stephens Comprehensive Koala Plan of Management.</p> <p>Vegetation removal that requires a permit, or is exempt from requirements to obtain a permit, under the tree management framework are not subject to assessment under the Port Stephens Comprehensive Koala Plan of Management. That plan only applies to the scale and types of clearing that trigger a development application. Therefore there is no inconsistency between the proposed amendment and the State legislative</p> |

ITEM 4 - ATTACHMENT 3 SUBMISSIONS SUMMARY.

|    |  |  |   |
|----|--|--|---|
|    |  |  | <p>framework for the assessment of impacts on koalas.</p> <p>In respect of any inconsistency with the Port Stephens Comprehensive Koala Plan of Management, see response to Submission 1 above.</p>   |
|    |  | <p>The Amendment enables trees to be removed without approval if they are dead or dying and not required as the habitat of native animals. This provision should be removed because it is subjective.</p>  | <p>The educational materials provide guidance to the community on the circumstances when trees do not require approval to be removed, including when it is appropriate to obtain expert reports to demonstrate whether a tree is dead or dying and not required as the habitat of native animals.</p>   |
|    |  | <p>There has been no major event in Port Stephens to warrant the preparation of the Amendment, such as the super storm or uncontrollable bush fire.</p>  | <p>The Amendment has been prepared to align the local tree management framework with State legislation rather than in response to a major event. The Amendment to DCP 2014 aligns with State legislation which expressly provides for councils to enable the removal of trees in urban areas that pose a risk to human life or property without approval, and despite any other legislation (see clauses 7(4) and 8(3) of the State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017).</p>  |
| 22 | <p>Tomaree Ratepayers and Residents Association Inc.</p> | <p>The statement in the report to the 23 June 2020 Council meeting: '<i>There are no policy changes proposed ...</i>' is misleading. The introduction of a 'self-certification' regime is a significant change to the tree management provisions.</p>  | <p>The Amendment has been prepared to align the local tree management framework with existing State legislation which expressly provides for councils to enable the removal of trees in urban areas that pose a risk to human life or property without approval (see State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017).</p> <p>The educational materials and self-certification form provide guidance to the community on the circumstances when trees do not require approval to be removed, including when it is appropriate to obtain expert reports to demonstrate whether a tree is dead or dying and not required as the habitat of native animals.</p> |
|    |  | <p>Instead of a <i>temporary</i> moratorium as per Council's Notice of Motion on 10 March 2020, the proposed amendments confirm a <i>permanent</i> removal of any requirement for prior approval for removal of trees for health and safety reasons (or where a tree is dead or dying and is not required as the habitat of native animals).</p> | <p>The Amendment aligns with State legislation, which is not temporary. As set out above, the State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 expressly provides for councils to enable the removal of trees in urban areas that pose a risk to human life or property without approval.</p>   |

**ITEM 4 - ATTACHMENT 3 SUBMISSIONS SUMMARY.**

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|  | The Amendment increase the risk of removal for inappropriate reasons.  | <p>Educational materials have been prepared to provide guidance to the community on the circumstances when trees do not require approval to be removed.</p> <p>Further, since the provisions that enable urgent tree removal were introduced some years ago, there has not been widespread tree removal or a significant increase in compliance actions.</p>   |
|  | The Amendment does not adequately support the objective of the 2017 State Government Policy - to preserve and protect trees.   | The Amendment aligns the local tree management framework with State policy.  |
|  | The Amendment will weaken Council's ability to perform its legislated role under the 2017 State Policy.  | See responses above.   |
|  | The Amendment and educational materials should emphasise that the objectives of the local tree management framework are consistent with the State policy.  | Any amendment to the local tree management framework must be consistent with the State legislation because a development control plan cannot override State policies.  |
|  | It needs to be clear that the exemptions are intended to apply only where necessary. It should also encourage persons concerned about safety of a tree to consider a least drastic (and cheaper) solution such as trimming, and/or retaining some branches to encourage hollows, rather than complete removal of a tree. | <p>The Amendment aligns the local tree management framework with State policy which does not specify parameters for when risk to human life or property should justify tree removal.</p> <p>Educational materials have been prepared to provide guidance to the community on the circumstances when trees do not require approval to be removed, including when it is appropriate to obtain expert reports to demonstrate whether a tree is dead or dying and not required as the habitat of native animals.</p> |
|  | The notice period for removal of trees without approval should be increased to 15 working days.  | The Amendment provides that Council will notify landowners within 10 working days whether a tree can be removed without approval. This is considered consistent with community customer service expectations and will be reviewed should it place an unreasonable burden on Council resources.   |
|  | Where a tree is to be removed without approval because it is at risk of immediate failure, an arborist report should be required.  | The purpose of providing for trees to be removed without approval immediately if they pose a risk to human health and safety is to address urgent situations such as after a storm event. It would not achieve the policy intent of the provisions to require expert reports to be obtained in all circumstances before removal in urgent situations.  |
|  | A landowner submitting a Tree Removal Self-  | The suggestion to clearly mark or label any tree to be removed under a notifiable exemption is reasonable and will assist in any follow-up   |

**ITEM 4 - ATTACHMENT 3 SUBMISSIONS SUMMARY.**

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|  |  | <p>Certification Form should also be required to:</p> <ul style="list-style-type: none"> <li>• clearly mark or label any substantial tree proposed for removal,</li> <li>• post a legible notice on the street frontage of the property</li> <li>• notify all immediate neighbours of the submission, and</li> <li>• if requested by a neighbour, supply them with a copy of the completed form and any attachments.</li> </ul> | <p>enquiries by Council to reach satisfaction that the risk is present. This may be noted in the next iteration of the self-certification form and fact sheet.</p> <p>Council already has a Community Participation Plan registered with the Department of Planning, Industry and Environment that sets out its community engagement approach and model. Council may, at its discretion, choose to notify any applications that may significantly impact on the amenity of adjoining land owners.</p> <p>In line with Council's adoption of the International Association of Public Participation Spectrum (IAP2 Spectrum), Council commits to keeping the community informed of exemption notifications and, as per the <i>Government Information (Public Access) Act 2009</i>, may elect to release this information proactively or make it available upon reasonable request.</p> <p>While there will be no formal requirement to post a legible notice of the property's street frontage, notify immediate neighbours, or supply neighbours with documentation upon request, the next iteration of the fact sheet may include "It is recommended that you notify any neighbour whose amenity or privacy may be affected by the removal of the tree(s) in question."</p> |
|  |  | <p>The Form should include a declaration that the landowner has read and understood the explanatory material and satisfies the relevant requirements.</p>   | <p>This suggestion is consistent with the current self-certification form which requires a landowner to sign the form.</p>  |
|  |  | <p>A draft Fact Sheet states that Council reserves the right to require a permit application to be submitted. It should also be confirmed (and stated) that Council may require further information, and Council must have the ability to impose a 'hold' on removal (stop-the-clock) pending receipt and assessment of any additional required information (including a site visit if appropriate).</p>                        | <p>This suggestion is consistent with the need for Council to be satisfied of the risk (with regards to the proposed additional exemptions). The next iteration of the fact sheet may include more specific guidance around the process for requests for further information. Requests for further information will occur within the 10 day notification period.</p>  |
|  |  | <p>Council's internal guidelines should require that if an assessment concludes that a person submitting an <i>Exempt Tree Removal Self Certification Form</i> has not</p>  | <p>This suggestion is able to be incorporated into Council's process for managing the review of, and communications around, self-certification forms.</p>   |

**ITEM 4 - ATTACHMENT 3 SUBMISSIONS SUMMARY.**

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|  | met the criteria for removal, or if additional information is required, then positive contact must be made with the person within the notice period (i.e. not just an email sent or message left, which may not be received in time to prevent removal). |   |
|  | There need to be significant penalties for breaches of the development control plan requirements for tree removal.   | The penalties for unauthorised tree removal and other breaches of the planning legislation are as set out in the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, biodiversity legislation and other relevant environmental legislation. Council does not set the penalties that could apply to unauthorised tree removal.  |
|  | Information about the penalties needs to be prominently included in the Port Stephens Council Exempt Tree Removal Self Certification Form and in any educational materials.  | Given the various offences under different State and Commonwealth legislation that could apply to unauthorised clearing, it would be too onerous to list all circumstances where penalties could apply.<br><br>The Tree Removal Self-Certification Form is similar to the forms for development applications and complying development, which do not list all of the possible offences under different legislation for unauthorised works.                          |
|  | Council should commit to adequate professional staffing levels to assess Forms received, under the overall supervision of a fully qualified arborist.  | A suitably qualified arborist is currently employed by Council.   |
|  | There should be regular monitoring and periodic public reporting of the operation of the Amendment, including statistics on the number of notices and outcomes.  | As above, there will be monitoring in respect of the notice period and the potential impact on Council resources.<br><br>Since the provisions that enable urgent tree removal without approval were introduced some years ago, there has not been widespread tree removal or a significant increase in compliance actions. It is anticipated that, given the cost of tree removal, the impact of the Amendment on unauthorised tree removal will likely be similar. |
|  | The Tree Removal Self Certification Form should make it clear that only a landowner(s) can apply.  | The Tree Removal Self Certification Form requires all relevant landowners to sign the form, and includes instructions for strata properties.  |
|  | The Tree Removal Self Certification Form and education materials should discourage landowners from relying on the existing provisions that enable immediate tree removal without approval.   | These existing provisions are required to meet a specific policy objective. As set out above, changes to the operation and application of this provision would not achieve the policy intent enabling removal in urgent situations. The educational materials detail the process for urgent tree removal to provide for the safety of the community.  |

ITEM 4 - ATTACHMENT 3 SUBMISSIONS SUMMARY.

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|  | <p>The Tree Removal Self Certification Form should not give the impression that the relationship of the height of a tree to the distance from any 'at-risk' structure or area is a simple indicator of risk, but rather only one factor in risk assessment.</p> | <p>For the proposed exemption that allows for "the removal of vegetation that the council is satisfied is a risk to human life or property", one of the circumstances where Council is likely to be satisfied there is such a risk is where a tree is at a distance from property or a frequently occupied areas that is equal to or less than the height of the tree. For the purposes of the self-certification form, 'property' is defined as "an approved and lawfully constructed building, excluding minor ancillary structures such as garden sheds, cubby houses, detached carports, gazebos, barbecues, etc", and 'frequently occupied area' is defined in line with the International Society of Arboriculture's risk assessment process, as "a target zone that is occupied for a large portion of the day or week". This is consistent with the current DCP that also uses tree height and distance from structures as a risk measure for exemptions to tree permits where trees over 3 metres in height, or 300mm in diameter, are "within 5m of the wall of an approved structure measured from the wall to the trunk of the tree."</p> |
|  | <p>The relationship between 'direct threat'; 'immediate failure' and 'risk to human life or property' should be clarified in the Tree Removal Self Certification Form.</p>  | <p>The Tree Removal Self Certification Form sets out the circumstances when approval is required to removal a tree and the circumstances when it is not, including when urgent removal is necessary. As is currently the case, landowners may seek advice from Council before submitting a form or removing a tree.</p>   |
|  | <p>The requirement for photos and a clear sketch or plan is an important safeguard, which should be included in the substantive provisions of the DCP not just in a Note, as well as on the Form and in Fact Sheets.</p>  | <p>The Amendment refers to the submission of the Tree Removal Self Certification Form which includes the requirement for a plan or sketch. It would unnecessarily duplicate this requirement if the Amendment referred to it.</p>   |
|  | <p>The flowchart removed from the DCP should be included in the educational materials.</p>  | <p>The Tree Removal Self Certification Form provides this information. This is the only form that can be submitted prior to removal, therefore it is unnecessary to provide an additional flowchart.</p>  |
|  | <p>Online property information sites should be promoted in the educational materials.</p>   | <p>The Tree Removal Self Certification Form includes this information.</p>  |
|  | <p>A summary map of where the provisions apply should be included in education material.</p>  | <p>The policy applies to land zoned for non-rural purposes as specified in the State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017. The most up to date information on zoning is available on the State's legislation website (the local environmental plan mapping) and the NSW planning portal, which is referred to in the educational materials. This avoids the need to maintain a separate detailed map of land zonings every time a property is rezoned.</p>  |



**ITEM 4 - ATTACHMENT 3 SUBMISSIONS SUMMARY.**

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|  |  | <p>Education material about the Amendment should make it clear that significant new areas of the LGA are now covered by this Policy rather than the alternative regime for rural areas under the Local Land Services Amendment Act 2016.</p> | <p>The Amendment corrects an error in the DCP and these zones were always covered by the State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 since it was commenced. The educational materials include references to the zones covered by the local tree management framework. As above these zones can be viewed in the mapping that accompanies the Port Stephens Local Environmental Plan 2013 on the NSW legislation website and on the NSW Planning Portal.</p> |
|  |  | <p>In the 'Note' on page B2, corrections have been made to 2 references to the OEH to reflect new administrative arrangements, but 2 other references remain unchanged.</p>  | <p>The Amendment has been changed to replace the references to 'OEH' with the correct agencies responsible.</p>   |

**ITEM NO. 7**

**FILE NO: 20/234567  
EDRMS NO: PSC2018-02448**

**KING PARK SPORTS COMPLEX MASTERPLAN**

REPORT OF: JOHN MARETICH - ASSET SECTION MANAGER  
GROUP: FACILITIES & SERVICES

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Endorse the draft King Park Sports Complex Masterplan as shown at **(ATTACHMENT 1)**.
- 2) Place the draft King Park Sports Complex Masterplan on public exhibition for a period of 28 days, and should no submissions be received, the masterplan be adopted without a further report to Council.

---

**ORDINARY COUNCIL MEETING - 25 AUGUST 2020  
MOTION**

|            |   |
|------------|---|
| <b>157</b> | <p><b>Councillor Giacomo Arnott<br/>Mayor Ryan Palmer</b></p> <p>It was resolved that Council:</p> <ol style="list-style-type: none"><li>1) Endorse the draft King Park Sports Complex Masterplan as shown at <b>(ATTACHMENT 1)</b>.</li><li>2) Place the draft King Park Sports Complex Masterplan on public exhibition for a period of 28 days, and should no submissions be received, the masterplan be adopted without a further report to Council.</li></ol> |
|------------|---|

The motion was carried.

**BACKGROUND**

The purpose of this report is to seek the endorsement of Council to publicly exhibit the draft King Park Sports Complex Masterplan as noted in **(ATTACHMENT 1)**.

The purpose of the masterplan is to establish a consolidated strategic vision for the future development of the King Park Sports Complex.

The masterplan deliverables included a demand analysis, the development of concept options, the development of the masterplan documentation and the development of an implementation strategy. There is no current masterplan for the site. The draft masterplan focuses on the formalisation of recreational activities through the introduction of hardcourts and additional playing fields.

The masterplan has been developed in partnership with the West Ward Sports Council. At its 13 July 2020 meeting, the West Ward Sports Council resolved to endorse the masterplan for Council’s consideration and endorsement for public exhibition. Council staff will consider any submissions made during this period and make requisite changes before reporting the masterplan back to Council seeking adoption.

The exhibition of the masterplan by Council will provide an opportunity for the community to comment on the planned development of King Park Sports Complex as a regionally significant facility.

The masterplan has a preliminary estimated implementation value of \$40million. The masterplan will be used to assist staff in advocating for funding assistance through grants available for sports and event infrastructure projects.

**COMMUNITY STRATEGIC PLAN**

| <b>Strategic Direction</b>    | <b>Delivery Program 2018-2021</b>                                 |
|-------------------------------|---|
| Infrastructure and Facilities | Plan civil and community infrastructure to support the community. |

**FINANCIAL/RESOURCE IMPLICATIONS**

Council staff engaged GHD Woodhead to undertake the project in 2019. The consultant fees have been paid for by the West Ward Sports Council. Council's investment in the project has been and will continue to be the management of the development of the masterplan and advocacy to funding bodies for grant funding.

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

**LEGAL, POLICY AND RISK IMPLICATIONS**

Potential risks to Council have been identified within the below table with appropriate treatments noted. It should be noted that the masterplan considered the presence of a retired landfill at this location and the area is deemed a high hazard flood zone due to the proximity to the river.

| <b>Risk</b>   | <b><u>Risk Ranking</u></b> | <b>Proposed Treatments</b>   | <b>Within Existing Resources?</b> |
|---|----------------------------|--|-----------------------------------|
| There is a risk that the master plan is not placed on public exhibition leading to reduced public input and also reduced ability to gain grant funding. | Low                        | Adopt the recommendation.  | Yes                               |
| There is a risk that the scope of the master plan is beyond Councils ability to fund, leading to the community's immediate expectations not being met.  | Low                        | The masterplan has been developed as a long term strategic vision for the site. Its development will serve to guide future decision making and support advocacy for grants through funding bodies. The itemisation of projects through the implementation plan ensures the ability to continue to improve the site annually at a lesser scale should transformation funding from external sources not be received. | Yes                               |

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

The project will have positive social implications for the Port Stephens community by providing a consolidated, strategic vision for the development of the King Park Sports Complex. The improvement and increased capacity of sporting and events infrastructure will cater for the growing needs of the local government area.

The masterplan also considered and compliments existing sporting facilities within Raymond Terrace.

The realisation of the masterplan will increase the capacity of the complex to attract regional sporting events which provides flow on economic benefits to local business.

A number of environmental outcomes were considered in the development of the masterplan. A key factor was the appreciation and protection (as far as practicable) of the natural riverside setting that makes the King Park Sports Complex unique. To reduce our environmental footprint, the master plan incorporates water sensitive urban design to improve water quality, limited electrical consumption through the use of LED field lighting systems and multifunctional surfaces to limit the requirement for field expansion.

## **CONSULTATION**

Consultation with key stakeholders has been undertaken by Council's Community and Recreation Assets Unit. The objective of the consultation was to ensure a collaborative and inclusive approach to the development of the masterplan.

The key stakeholders include the West Ward Sports Council, Council operational and events staff and State Sporting Organisations.

To inform the master plan a preliminary mapping tool was made available online to receive suggestions from the broader community. A total of 38 suggestions were received.

In accordance with local government legislation the draft King Park Sports Complex Masterplan would be placed on public exhibition for a minimum of 28 days.

## **OPTIONS**

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

## **ATTACHMENTS**

- 1) Draft King Park Sports Complex Masterplan - August 2020. [↓](#)

## **COUNCILLORS ROOM**

Nil.

## **TABLED DOCUMENTS**

- 1) Draft King Park Sports Complex Masterplan – August 2020.



GHDWOODHEAD



AUGUST 2020  
Draft for Public Exhibition

# King Park Sports Complex Masterplan

Port Stephens Council



Context Plan

For Information

Job No: 22-20017

Original Size: A3

Approved: LA

Date: 01/09/20

Rev: B

Drawing No: 22-20017-SK010

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Existing site conditions and constraints

For Information

KING PARK SPORTS COMPLEX MASTERPLAN

Job No: 22-20017

Original Size: A3

Drawing No: 22-20017-SK015

Approved: LA

Date: 01/09/20

Rev: B

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**Opportunities**

The following master plan opportunities are supported by the recommendations of the Demand Analysis Report (Dec 2019) and other statutory frameworks and policy documents.¹

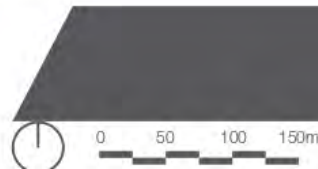
- 1. Foreshore Reserve - Boat launch** Improved facilities for recreational boat use
- 2. Foreshore Reserve - Unstructured recreational areas** Including: Seating; Shading; Water fountains; Public toilets; Fishing jetty. The foreshore will provide a connection from the main boat launch and the informal family boat mooring area. This linear section of open space will include a variety of destinations/seating areas and links for pedestrians and cyclists
- 3. Foreshore Reserve - Informal family boat mooring area** Secondary temporary mooring area for recreational boating. Additional parking to be considered
- 4. Walking trail** Located at the perimeter of the site to provide continuous connection around the playing fields. To include raised walkway for flood prone areas. Distance markers/ signage suggested.



**5. View corridor** A strong vista connection is suggested to enhance sense of place and improve orientation. Highlighting river/ activity/ topography.

**6. Roundabout to boat ramp** Improve vehicle access to boat launch

**7. Wetland upgrade** To include: elevated walkways for all weather access /egress; educational signage; covered areas with chairs and tables; formalized car park; Increase water storage capacity through increased depth; Incorporate improved bio-retention outcomes; refurbish wetlands to improve hydraulic functionality and increase attraction for native fauna



- 8. Children playgrounds** Including: Catering for various age groups, district standard; all abilities accessible; soft-fall; shading; seating
- 9. Screening** Planted screen to hide view of adjacent industrial area
- 10. Event space** To support community events of up to 10,000 spectators including: concert zone; spectator mounds & potential grass amphitheater; temporary staging ground level platform to support bump-in staging; power, water and lighting to staging platform; back of house operational space and access
- 11. Spectator seating** Install small seating and shaded areas for spectators around the sports fields. Consider flexibility for expansion
- 12 Gateways** To be clearly defined with appropriate branding. Consider main and secondary gateways; way finding and interpretation to be integrated throughout the site.
- 13. Footpath network** To be connected and including: proposed footpath upgrade; primary footpath; secondary footpath; paths to consider separated pedestrian and cycle infrastructure and supporting facilities (drinking fountains, rest areas, fitness nodes)
- 14. Pedestrian crossing infrastructure** Includes crossings points to be coordinated with internal footpath network; suggested Signalized intersection at Newline Road/ Bailey Street
- 15. Increased parking** Demand study to quantify additional parking requirements and preferred locations
- 16. Bus drop off area** Include provision for buses and taxis
- 17. Green infrastructure** Provide a green connection corridor at ground level and through the canopy to support movement for flora and fauna. Consider safe fauna crossing points.
- 18. Lighting** Provision of lighting for orientation, safety, illumination of sporting fields/courts and car parking. To be energy efficient and support CPTED principles
- 19. Temporary food & beverage, merchandise points** Lighting; Power (Including 3-phase); Water; Concrete pads
- 20. Maintenance access** All pathways to accommodate maintenance vehicle movement
- 21. Structure trees** To be located along road corridor and key internal routes to define circulation, create 'place', screen, enclose, provide edge definition and provided shading and improved air quality
- 22. Bus stop** Opportunity for bus stop on Newline Road
- 23. Path connection** to link with Mount Hall Road via unformed road.



**Master plan opportunities**

For Information  
 KING PARK SPORTS COMPLEX MASTERPLAN  
 Job No: 22-20017  
 Original Size: A3  
 Drawing No: 22-20017-SK020  
 Approved: LA  
 Date: 01/05/20  
 Rev: B  
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Photos Location Map

For Information

KING PARK SPORTS COMPLEX MASTERPLAN

Job No: 22-20017

Original Size: A3

Drawing No: 22-20017-SK030

Approved: LA

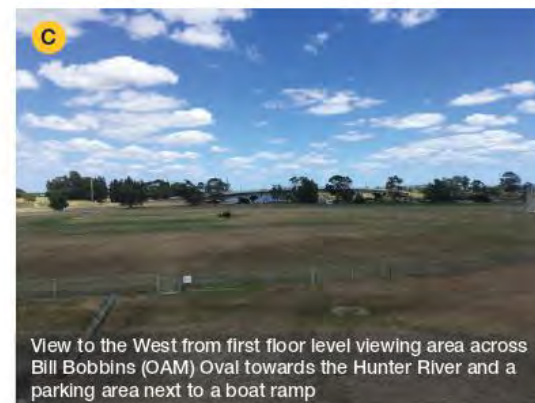
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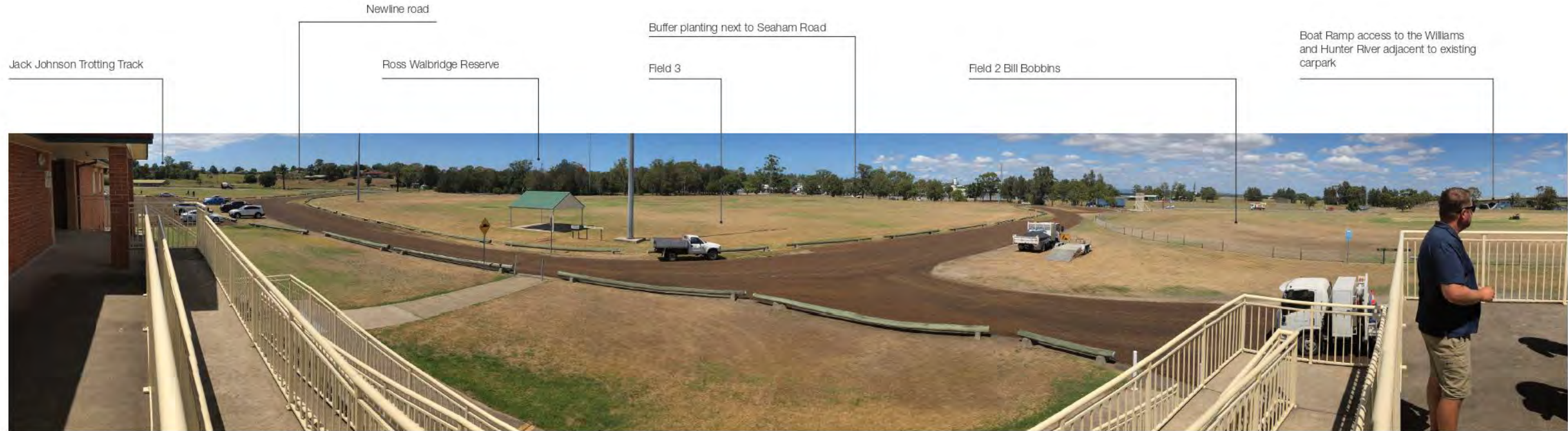
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Site Photos

|                                     |                            |                |   |
|-------------------------------------|----------------------------|----------------|---|
| For Information                     | Job No: 22-20017           | Approved: LA   | <b>GHDWOODHEAD</b>  |
|                                     | Original Size: A3          | Date: 01/09/20 |   |
| KING PARK SPORTS COMPLEX MASTERPLAN | Drawing No: 22-20017-SK040 | Rev: B         | Level 15, 133 Castlereagh Street, Sydney NSW 2000<br>T 61 2 9239 7100 E ghdmail@ghd.com W www.ghd.com |

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Site Photos

For Information

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Original Size: A3

Approved: LA

Date: 01/09/20

Rev: B

Drawing No: 22-20017-SK050

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**Contamination and capping** (Author: Alison Monkly)

**Opportunities**

We believe that capping works were undertaken circa 1990s, possibly involving Egis Consulting Australia. No records of the capping material or construction have been obtained.

Intrusive investigations anticipated for geotechnical and contamination assessment for detailed design and construction of structures (including flood lights) and buildings. The investigations may also serve as an indication of the capping condition across the site. Issues of capping performance during flooding are not known.

**Constraints**

The King Park landfill was operated by Port Stephens Council from 1978 through to 1989 for the disposal of putrescible refuse such as domestic waste.

Environmental monitoring currently comprises five groundwater monitoring wells, one surface water monitoring location and four gas monitoring locations (including the club house, amenities building, and two light poles).

Groundwater levels are typically 0.5-2 metres below ground level. The most recent monitoring program review (GHD, 2018) concluded:

- Elevated ammonia and metals were reported in groundwater sampled between December 2013 and March 2018.
- Exceedances at the surface water monitoring location were primarily metals and nitrate.
- Increasing trends of ammonia were reported at three groundwater monitoring locations along with the surface water location, indicating that contaminated groundwater and surface water may be migrating off site.

The design would need to consider potential human health risks (associated with encountering contaminated soils/waste/groundwater) and subsequent waste management (e.g. classification and disposal). Therefore, intrusive investigations are recommended prior to excavation works expected to exceed 0.5 metres below ground level.

Disturbance of capping to be assessed during geotechnical/contamination investigations prior to design and construction. Should the capping be breached (e.g. for light pole footing), ongoing gas monitoring would be required at representative locations (as currently undertaken as part of the environmental monitoring program).

Slab construction may be suitable to minimise capping disturbance, however ground settlement issues would need to be assessed as part of the geotechnical investigations.

Screw piling may also be an option, though may require ongoing maintenance due to settlement, as well as ongoing gas monitoring due to capping breach.

**Water** (Author: Adam Wyatt)

**Opportunities**

Design could incorporate features such as elevated walkways for all weather access / egress, pavilion style structures to minimise loss of flood storage and permit flows through.

Civil design should consider incorporating lowered areas into the design to add more flood storage (ie reduce local flooding). These areas could be integrated with constructed wetlands to improve local stormwater quality during smaller storm events, that could harvest irrigation water for the site.

**Constraints**

Council's mapping indicates that the site is mostly located with high hazard flood storage area – pedestrian risk and risk of significant damage to buildings; removal of flood storage (eg by filling) can increase flood severity in the surrounding area.

This hazard category generally prohibits filling, development, and habitation, and requires additional consideration of emergency management.

**Geotech** (Author: Joanna Sylvester)

**Areas underlain by fill**

Design of buildings and infrastructure on a capped landfill cell poses significant challenges due to the compounding effects of uncontrolled compaction, variability of the fill (waste) material, the effects of biodegradation of organic material in the landfill and the effects of increased loads on alluvial sediments underlining the landfill.

Additionally, construction of utility trenches and footings for structures may interfere with the capping, jeopardising its effectiveness with respect to providing a low permeability seal over the waste. Foundations for structures may require excavation through the waste with difficulties associated with waste contamination and obstructions. Opportunities to manage these challenges could include:

- Locating buildings and infrastructure away from areas of landfill
- Bespoke designs to mitigate the impact of settlement
- Acceptance of ongoing maintenance to manage ongoing settlement
- High level footings to avoid breaching the capping.

Further desktop studies on the previous landfill activities as well as geotechnical investigations will be required to assess subsurface conditions, provide data for landfill settlement analysis and recommendations for design.

An understanding of the total and differential settlement likely to be encountered at the site will be necessary to facilitate design. A preliminary assessment could be used to assess the known risks associated with development in this area.

An understanding of the total and differential settlement likely to be encountered at the site will be necessary to facilitate design. A preliminary assessment could be used to assess the known risks associated with development in this area.

We anticipate that any buildings (and possibly other infrastructure) may require deep piled footing, extending below the waste into the natural soils and founded in a suitable bearing unit. Obstructions in the waste may preclude certain types of driven piles.

**Areas not underlain by fill**

In areas of natural subsurface (not covered with fill), the following opportunities exist:

- Limit excavation depth and extent into the natural subsurface to mitigate the volume of acid sulfate soil impacted
- Shallow groundwater conditions should be considered in final design levels, footing options and construction methods.

In areas of alluvium, constraints are associated with the variable nature of alluvium and the potential for soft or loose surficial soils, which may require deeper foundations or ground improvement.

Further desktop studies on the previous landfill extent as well as geotechnical investigations will be required to assess subsurface conditions and provide recommendations for design.

**Transport** (Author: Mark Lucas)

**Opportunities**

**Traffic and Transport**

Previous analysis undertaken in the region indicates that roundabout at the New Line Road, Seaham Road and William Bailey Street will cease to operate with a good level of service between 2022 and 2027. The current configuration does not provide any priority for pedestrians. Further analysis indicates an upgrade to signalisation would improve intersection operation while facilitating a safer environment for pedestrians.

The proposed development is on either side of Seaham Road. There are opportunities to provide a mid-block pedestrian crossing to improve connectivity between the two sites. This could potentially be a raised "wombat crossing" which would also serve to reduce vehicle speeds.

Additionally, the pedestrian facilities adjacent to the site are generally of a poor condition and there is an opportunity to provide formal footpaths adjacent to the site on New Line Road and Seaham Road.

Bicycle parking should be provided on site.

It is anticipated that the facility will be accessed by coaches i.e. school groups. Suitable facilities should be provided onsite or on-road i.e. an indented bay to accommodate buses.

A pick-up/drop-off facility should be provided on-site. The provision of a roundabout at the intersection of the site access and New Line Road to encourage vehicles to slow down near the facility.



**Constraints**

Port Stephens Development Control Plan (Part B General Provisions) does not provide parking rates for all the proposed components of the master plan. Parking demand would need to be assessed on a "first principles" basis to ensure a suitable supply could be provided on site. The costs associated with the proposed upgrades to the traffic and transport infrastructure to be recognised.

**WSUD's** (Author: Tom Patterson)

A water balance model was prepared to undertake a preliminary assessment of options. This model has not been calibrated and should only be used as an initial guide, more detailed modelling is required to refine these initial results.

The sports fields require approximately 0.5 ML/day irrigation water, averaged over the year. Two preliminary concepts are suggested to supply this water.

**Preliminary Option 1**

The upgrade of wetlands adjacent to and south east of the sports fields. This would allow the storage of Stormwater from the upstream catchment for reuse. Examination of the wetland area suggests that between 5 ML and 10 ML of storage could be used if the wetland areas were upgraded. Preliminary analysis suggests this could reduce reliance on potable water between 50-80%.

**Opportunities**

- Could improve Stormwater quality discharged to Hunter River

**Constraints**

- Cost of upgrading wetlands
- Water quality in wetlands is reportedly poor, there may be a need to upgrade Stormwater quality treatment devices in the catchment. It also may not be economically feasible to treat water to the required level.
- Potentially other sources of pollution that may be expensive to treat.
- Grey-headed Flying fox colony

**Preliminary Option 2**

Raymond Terrace Wastewater Treatment Works is located two kilometres away and has a treatment capacity of 7.3 ML/day. Therefore, potentially all of the irrigation demand of the sports fields could be met using this source. Some of the water from the treatment plant is currently used for irrigation, the majority is discharged to Windeyers Creek.

**Opportunities**

- Constant supply of water
- This recycled water could also supply:
  - Boomerang Park Sports Fields
  - Muree golf course
  - Industrial areas
- Use areas are geographically close to each other, minimising piping requirements.

**Constraints**

- Cost of piping and improved treatment
- Potential community concerns with use of recycled water

**Preliminary Option 3**

A third option has been discussed with Council that includes Capturing storm water from Carmichael St/CBD and running to Ross Walbridge Reserve.

**Opportunities**

- Improves quality of storm water discharge in to the river
- Water supply at minimal cost

**Constraints**

- Relies on the upgrade of Ross Walbridge Reserve, and any quality processing
- Cost of upgrade storm water network for conveyance
- Inconsistent supply

**Social infrastructure** (Author: Claire Edwards)

**Opportunities**

Engaging with the broader community on the masterplan will create community buy-in to how the complex and foreshore takes shape and its future uses. It will provide the Council and project team with a quick understanding of any current issues at the site related to safety, community values, as well as identifying community needs and aspirations.

This, along with socio-economic and cultural analysis of the existing and projected population of the local and regional community, will identify their existing and future needs that could be incorporated into the design. For example, ensuring there is a range of play facilities, and adequate seating and amenities. Additionally analysis of the sports complex and foreshore reserve events programs will identify current use of the complex and generate ideas for future event opportunities at the complex and reserve.

Together, these approaches will help to maximise use of the site throughout the year by the broader community, activating the spaces and creating a multipurpose, multiuse facility.

By incorporating the community's ideas in the master plan, and engaging them in the design process, they are much more likely to take ownership of, and feel attachment to the space. This can increase community use of the spaces, and with it natural surveillance, higher attendance to events and a sense of belonging to the community. Providing a user-influenced design that appeals to all ages, is inclusive and accessible creates longer term economic and social benefits and better outcomes for the community.

Technical Opportunities and Constraints

For Information

Job No: 22-20017

Approved: LA

Original Size: A3

Date: 01/05/20

Drawing No: 22-20017-SK060

Rev B

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- LEGEND**
- 3.0m shared path (ped/cycle/maintenance)
  - Proposed council cycle path
  - Sports turf
  - Maintained turf areas
  - Habitat restoration areas
  - Existing trees
  - Structure Trees
  - Gateway signage/entry feature
  - Parking
  - Bus stop
  - Temp power supply, food and beverage and concrete pads
  - Pedestrian crossing points
  - Flood lights
  - Shaded rest area and may include fitness, BBQ, public art, drinking fountain cycle maintenance and parking
  - End of Trip bike facilities
  - Arboreal corridor (Ross Wall Res. to foreshore)
  - Riparian corridor
  - Solar panels, bioremediation, organic processing facility

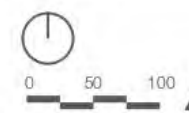


- Notes:**
1. Include lighting for orientation and safety for pedestrian/cycle paths, fields/courts & car parking
  2. All pathways to accommodate maintenance and operational vehicle movement
  3. Integrity of earth mound to mitigate flooding to be retained
  4. Flooding and Landfill currently constraining some proposed development elements i.e. flood lights and tree planting
  5. Include internal signage and way-finding
  6. Include public art elements
  7. Design to be DDA compliant

- Sporting facilities**
- 1** Premier Oval (retain turf wicket, upgrade of existing inc. tiered seats, 300/200 lux flood lights)
  - 2** Senior soccer field 100 x 75m with existing turf wicket block and 3m safety runoff, 100 lux flood lights
  - 3** Premier Rectangular Field 105 x 64m, 3m run off, with perimeter fencing, tiered seating, 200 lux flood lights. Additional warm-up field 105 x 64m, 3m run off with 100 lux flood lights.
  - 4** Event Space with cricket oval, synthetic wicket. Drainage to be resolved
  - 5** 2x Existing Formalised soccer fields (105 x 68m) with turf cricket pitch, 100 lux flood lights

- 6** Playing Field or rectangular field on existing location
- 7** Option one: Athletics/Rectangle Pitch; Option two: Cricket / 2 rectangle pitches. Chosen configuration of this site will be subject to demonstrated demand.
- 8** Junior Cricket Oval with synthetic wicket
- 9** Additional 3 netball courts, with 100 lux flood lights. Tennis courts extended to north, with 250 lux flood lights
- 10** Cricket Nets 2-4 (synthetic), 3.6m x 27m per net area.

- Buildings**
- A** Vi Barnett Athletics building
  - B** Tennis building
  - C** Netball building
  - D** Main clubhouse
  - E** Field 5 building



For Information

KING PARK SPORTS COMPLEX MASTERPLAN

Job No: 22-20017  
Original Size: A3  
Drawing No: 22-20017-SK120

Approved: LA  
Date: 01/09/20  
Rev: B

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**ITEM NO. 5**

**FILE NO: 20/188171  
EDRMS NO: PSC2020-02059**

**PORT STEPHENS COUNCIL COMMUNITY SATISFACTION SURVEY 2020  
REPORT**

REPORT OF: CARMEL FOSTER - GROUP MANAGER CORPORATE SERVICES  
GROUP: CORPORATE SERVICES

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Receive the Port Stephens Council 2020 Community Satisfaction Survey Report (**ATTACHMENT 1**).

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**ORDINARY COUNCIL MEETING - 25 AUGUST 2020  
MOTION**

|            |  |
|------------|--|
| <b>158</b> | <b>Councillor John Nell<br/>Councillor Glen Dunkley</b><br><br>It was resolved that Council receive the Port Stephens Council 2020 Community Satisfaction Survey Report ( <b>ATTACHMENT 1</b> ). |
|------------|--|

The motion was carried.

**BACKGROUND**

The purpose of this report is to provide to Council the outcomes of a survey of a sample of residents across the Port Stephens local government area (LGA).

The survey comprises questions on satisfaction with overall and individual Council facilities and services, participation in activities and Council programs, perceptions of places and access to services and infrastructure and communication with Council.

This year 5 new questions regarding COVID-19 were also added to the survey. This is to assist as part of the Restart Port Stephens plan which aims to provide a coordinated framework to managing the short and long term impacts of the COVID-19 pandemic and map Council's response.

The satisfaction results of a separate survey conducted by Children's Services were also included in the Community Satisfaction Survey report.

Ordinarily, a separate Library User survey would also be conducted however due to the Libraries and Administration building being closed for part of this period, this survey was not carried out and questions were asked of residents regarding libraries in the Community Satisfaction Survey.

To determine statistical validity, with 95% confidence, 1,095 survey responses were required for the Community Satisfaction Survey. Council received 1,542 responses, making the survey sample statistically valid, however the sample is not representative of the Port Stephens population in terms of demographics.

Community Satisfaction is one of Council's key result measures and is part of our commitment to continuous improvement. Overall satisfaction with Council's services for 2020 was 80%, meeting our corporate target of 80% and up on last year's score of 76%.

**COMMUNITY STRATEGIC PLAN**

|                            |  |
|----------------------------|--|
| <b>Strategic Direction</b> | <b>Delivery Program 2018-2021</b>              |
| Governance                 | Provide a strong ethical governance structure. |

**FINANCIAL/RESOURCE IMPLICATIONS**

The community satisfaction survey is routinely conducted as part of Council's commitment to continuous improvement and to ensure Council's services are at an acceptable level.

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

**LEGAL, POLICY AND RISK IMPLICATIONS**

Although community satisfaction surveys are not mandated by legislation, the Office of Local Government recommends in its Integrated Planning and Reporting Manual (page 32) such surveys as a valuable tool to gauge the community's views on how Councils are performing in such areas as service delivery of facilities and governance.



Port Stephens commenced formal community satisfaction surveys in 2007, using external providers until 2011 when following the sustainability review process a decision was made to conduct the survey in house. Since then the survey methodology has been enhanced to expand the reach of the survey.

| <b>Risk</b>   | <b><u>Risk Ranking</u></b> | <b>Proposed Treatments</b>   | <b>Within Existing Resources?</b> |
|---|----------------------------|--|-----------------------------------|
| There is a risk that the statistical sample could be inadequate to support the findings in the Survey Report. | Low                        | The Australian Bureau of Statistics sample size calculator recommended the sample size for the Port Stephens population should be 1,095. Actual responses were 1542. | Yes                               |

### **SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

Port Stephens Council conducts its operations across the spectrum of social, economic, environmental and governance indicators and measures. The 2020 Community Satisfaction Survey was designed to ensure that Council is aware of the level of community satisfaction with all aspects of its operations. Whilst the report demonstrates overall satisfaction, there are also opportunities to enhance Council's operations and service delivery.

As part of our commitment to continuous improvement, each section of Council will review the feedback provided by the community and will build on this as we review the Community Strategic Plan and related Council integrated plans over the coming year.

### **CONSULTATION**

#### External

To ensure that the opportunity to participate was afforded to the largest number of residents, the following channels were used:

- email to more than 14,000 residents
- Facebook and Instagram
- media releases, promotion and advertisements in the local paper
- PSToday, EHQ Newsletter
- promotion on Council's website.
- hard copy surveys were made available upon request

Internal

The survey questions (prior to distribution) and the survey results were reviewed by the Senior Leadership Team.

**OPTIONS**

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

**ATTACHMENTS**

- 1) Port Stephens Council 2020 Community Satisfaction Survey Report. (Provided under separate cover)

**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

Nil.

**ITEM NO. 6**

**FILE NO: 20/188174  
EDRMS NO: PSC2011-02657**

**SIX MONTHLY REPORT JANUARY TO JUNE 2020 AGAINST PORT STEPHENS  
COUNCIL DELIVERY PROGRAM 2018-2021**

REPORT OF: CARMEL FOSTER - GROUP MANAGER CORPORATE SERVICES  
GROUP: CORPORATE SERVICES

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Adopt the Six Monthly Report January to June 2020 on the progress of Council's Delivery Program 2018-2021 (**ATTACHMENT 1**).

---

**ORDINARY COUNCIL MEETING - 25 AUGUST 2020  
MOTION**

|            |  |
|------------|--|
| <b>159</b> | <b>Councillor John Nell<br/>Councillor Glen Dunkley</b><br><br>It was resolved that Council adopt the Six Monthly Report January to June 2020 on the progress of Council's Delivery Program 2018-2021 ( <b>ATTACHMENT 1</b> ). |
|------------|--|

The motion was carried.

**BACKGROUND**

The purpose of this report is to provide Council and the community with an update of the progress of Council's Delivery Program 2018-2021.

This is the fourth progress report of the Delivery Program 2018-2021 adopted by Council in June 2018.

**COMMUNITY STRATEGIC PLAN**

| <b>Strategic Direction</b> | <b>Delivery Program 2018-2021</b>              |
|----------------------------|--|
| Governance                 | Provide a strong ethical governance structure. |

**FINANCIAL/RESOURCE IMPLICATIONS**

This Six Monthly Report (**ATTACHMENT 1**) is generated from a combination of information and data provided from across Council's operations. There are no financial or resource implications in providing this report.

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

**LEGAL, POLICY AND RISK IMPLICATIONS**

Section 404(5) of the Local Government Act stipulates that: 'The General Manager must ensure that regular progress reports are provided to the Council reporting as to its progress with respect to the principal activities detailed in its delivery program. Progress reports must be provided at least every six months.'

| <b>Risk</b>  | <b><u>Risk Ranking</u></b> | <b>Proposed Treatments</b>  | <b>Within Existing Resources?</b> |
|--|----------------------------|-----------------------------|-----------------------------------|
| There is a risk that Council will not adopt the Six Monthly Report January to June 2020 placing Council in breach of legislation leading to reputational loss. | Low                        | Endorse the recommendation. | Yes                               |

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

The Community Strategic Plan, Delivery Program and Operational Plan are founded on a basis of social, economic, environmental and governance principles through 4 focus areas Our Community, Our Place, Our Environment and Our Council. The report reflects these factors and provides a comprehensive progress report according to each focus area along with a scorecard of Council's key result measures.

Council has achieved its targets for service delivery, community satisfaction, employee engagement, governance and risk management. As a result of COVID-19 and the forced closure of a number of Council facilities it is anticipated that the underlying financial result will move from a surplus to a deficit. Careful management of cash flow projections has ensured that Council has remained able to meet financial obligations but a short term deficit has been unavoidable.

## **CONSULTATION**

Consultation with key stakeholders has been undertaken by the Office of the Group Manager.

### Internal

Information and data has been sought and provided from across Council's operations and reviewed by the Senior Leadership Team in order to compile the Six Monthly Report.

### External

Following Council consideration of the Six Monthly Report, the report will be made available to the community on Council's website.

## **OPTIONS**

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

## **ATTACHMENTS**

- 1) Six Monthly Report January to June 2020. (Provided under separate cover)

## **COUNCILLORS ROOM**

Nil.

## **TABLED DOCUMENTS**

Nil.

**ITEM NO. 8**

**FILE NO: 20/236910  
EDRMS NO: PSC2019-05143**

**SMART PARKING FEES AND CHARGES AMENDMENT**

REPORT OF: JOHN MARETICH - ASSET SECTION MANAGER  
GROUP: FACILITIES & SERVICES

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Place the amended and additional items for the 2020 to 2021 Fees and Charges schedule on public exhibition for a period of 28 days, and should no submissions be received, the additional items be adopted as outlined without a further report to Council.

---

**ORDINARY COUNCIL MEETING - 25 AUGUST 2020  
MOTION**

|            |   |
|------------|---|
| <b>160</b> | <b>Councillor John Nell<br/>Councillor Glen Dunkley</b><br><br>It was resolved that Council place the amended and additional items for the 2020 to 2021 Fees and Charges schedule on public exhibition for a period of 28 days, and should no submissions be received, the additional items be adopted as outlined without a further report to Council. |
|------------|---|

The motion was carried.

**ORDINARY COUNCIL MEETING - 25 AUGUST 2020  
AMENDMENT**

|  |   |
|--|---|
|  | <b>Councillor Giacomo Arnott</b><br><br>That Council: <ol style="list-style-type: none"><li>1) Place the amended and additional items for the 2020 to 2021 Fees and Charges schedule on public exhibition for a period of 28 days, and should no submissions be received, the additional items be adopted as outlined without a further report to Council.</li><li>2) Not implement any of the fees &amp; charges outlined until COVID restrictions are entirely revoked.</li></ol> |
|--|---|

The amendment lapsed without a seconder.

**ORDINARY COUNCIL MEETING - 25 AUGUST 2020  
AMENDMENT**

|  |  |
|--|--|
|  | <p><b>Councillor Giacomo Arnott</b></p> <p>That Council:</p> <ol style="list-style-type: none"><li>1) Place the amended and additional items for the 2020 to 2021 Fees and Charges schedule on public exhibition for a period of 28 days, and should no submissions be received, the additional items be adopted as outlined without a further report to Council.</li><li>2) Not implement any of the fees &amp; charges until a one month warning is provided to the local community of the impending implementation of the fees &amp; charges.</li></ol> |
|--|--|

The amendment lapsed without a seconder.

**BACKGROUND**

The purpose of this report is to seek Council’s endorsement to place the Car Parking 2020 to 2021 Fees and Charges on public exhibition.

The existing Car Parking Fees and Charges need to be modified to align with the Smart Parking Scheme adopted by Council at the 12 May 2020 Ordinary Meeting of Council.

The smart parking scheme includes an expansion of the paid parking area into the Nelson Bay town centre and concurrently delivers a free parking permit scheme for residents, ratepayers and employees of Nelson Bay town centre businesses.

The adopted parking meter fees and charges are specific to the restrictions and fee structure associated with the existing ticketed foreshore parking area. The current parking meter fees and charges schedule is attached as **(ATTACHMENT 1)**. The proposed amendments allow the rescindment of the current parking meter fees and charges schedule, and the implementation of the adopted smart parking scheme. The proposed smart parking fees and charges schedule is attached as **(ATTACHMENT 2)**.

**COMMUNITY STRATEGIC PLAN**

| <b>Strategic Direction</b>    | <b>Delivery Program 2018-2021</b>                                 |
|-------------------------------|---|
| Infrastructure and Facilities | Plan civil and community infrastructure to support the community. |

**FINANCIAL/RESOURCE IMPLICATIONS**

Council is subject to no negative financial implications as a result of these additions to the 2020 to 2021 Fees and Charges schedule.

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

**LEGAL, POLICY AND RISK IMPLICATIONS**

There is a legal risk in that failing to adopt these fees will render Council unable to charge for them as part of the 2020 to 2021 Fees and Charges schedule.

| <b>Risk</b>  | <b><u>Risk Ranking</u></b> | <b>Proposed Treatments</b>                | <b>Within Existing Resources?</b> |
|--|----------------------------|---|-----------------------------------|
| There is a risk that if Council does not adopt the paid parking fees that Council will not be able to charge for these items nor deliver the free parking permit scheme. | Medium                     | That Council adopt the paid parking fees. | Yes                               |

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications.

It is anticipated that there will be positive social, economic and environmental implications resulting from the implementation of these fees.

The proposed amendment to fees is an administrative amendment to deliver the smart parking scheme, with revenues being used to deliver the Smart Parking Infrastructure Program.

**CONSULTATION**

Consultation with key stakeholders has been undertaken by the Financial Services Section.



Internal

- Civil Assets Manager
- Asset Section Manager

External

In accordance with local government legislation the additional items for the 2020 to 2021 Fees and Charges schedule will go on public exhibition for a period of 28 days.

**OPTIONS**

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

**ATTACHMENTS**

- 1) Current Parking Meter Fees and Charges Schedule. [↓](#)
- 2) Proposed Smart Parking Fees and Charges Schedule. [↓](#)

**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

Nil.

**ITEM 8 - ATTACHMENT 1 CURRENT PARKING METER FEES AND CHARGES SCHEDULE.**

**CURRENT PARKING METER FEES AND CHARGES SCHEDULE**

|            | Description  | Year 19/20 Fee (incl. GST) | Fee (excl. GST) | Year 20/21 GST | Fee (incl. GST) | Unit     | Legislation | Pricing Policy |
|------------|--|----------------------------|-----------------|----------------|-----------------|----------|-------------|----------------|
| Off-Peak A | 4P & 8P Mon-Fri outside periods of time noted below. (No fee on Victoria Pde due to Council resolution)  | \$3.20                     | \$2.91          | \$0.29         | \$3.20          | Per Hour |             | Market pricing |
| Off-Peak B | 4P & 8P Sat-Sun and Public Holidays  | \$4.20                     | \$3.82          | \$0.38         | \$4.20          | Per Hour |             | Market pricing |
| Off-Peak C | 4P & 8P Mon - Fri; and for the periods; 00:00am 12th April - 11.59pm 24th April and 00:00am 5th July - 11.59pm 17th July and 00:00am 27th September - 11.59pm 9th October. | \$3.20                     | \$2.91          | \$0.29         | \$3.20          | Per Hour |             | Market pricing |
| Peak       | 4P & 8P Mon-Sun for the period 00:00am 21st December - 00:00am 27th January  | \$4.20                     | \$3.82          | \$0.38         | \$4.20          | Per Hour |             | Market pricing |

**ITEM 8 - ATTACHMENT 2 PROPOSED SMART PARKING FEES AND CHARGES SCHEDULE.**

**PROPOSED SMART PARKING FEES AND CHARGES SCHEDULE**

|                      | Description   | Year 19/20 Fee (incl. GST) | Fee (excl. GST) | Year 20/21 GST | Fee (incl. GST) | Unit     | Legislation             | Pricing Policy |
|----------------------|---|----------------------------|-----------------|----------------|-----------------|----------|-------------------------|----------------|
| 15 Minutes Park Free | Parking sessions 15 minutes or less are free  | NA                         | \$0.00          | \$0.00         | \$0.00          | Per Hour | Road Transport Act 2013 | Market pricing |
| Off-Peak A           | Mon-Fri outside periods of time noted below. No fee for the permit holders of Smart Parking Permit  | \$3.20                     | \$2.91          | \$0.29         | \$3.20          | Per Hour | Road Transport Act 2013 | Market pricing |
| Off-Peak B           | Sat-Sun and Public Holidays. No fee for permit holders of Smart Parking Permit.   | \$4.20                     | \$3.82          | \$0.38         | \$4.20          | Per Hour | Road Transport Act 2013 | Market pricing |
| Peak                 | Mon-Sun for the period 21st December - 27th January. No fee for permit holders of Smart Parking Permit  | \$4.20                     | \$3.82          | \$0.38         | \$4.20          | Per Hour | Road Transport Act 2013 | Market pricing |
| Smart Parking Permit | All ratepayers and residents of Port Stephens Local Government Area, and employees of businesses within the metered parking scheme zone are eligible. | NA                         | \$0.00          | \$0.00         | \$0.00          | Per Hour | Road Transport Act 2013 | Market pricing |

**ITEM NO. 9**

**FILE NO: 20/187449  
EDRMS NO: PSC2013-00406**

**POLICY REVIEW: DEVELOPMENT APPLICATIONS TO BE REPORTED TO COUNCIL**

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

---

**RECOMMENDATION IS THAT COUNCIL:**

- 1) Endorse the revised Planning matters to be reported to Council Policy shown at **(ATTACHMENT 1)**.
- 2) Place the revised Planning matters to be reported to Council Policy, as amended on public exhibition for a period of 28 days and should no submissions be received, the policy be adopted as amended, without a further report to Council.
- 3) Revoke the Development Applications to be reported to Council Policy dated 25 September 2018, Minute No. 098, should no submissions be received.

---

**ORDINARY COUNCIL MEETING - 25 AUGUST 2020  
MOTION**

|            |   |
|------------|---|
| <b>161</b> | <p><b>Councillor John Nell<br/>Councillor Glen Dunkley</b></p> <p>It was resolved that Council:</p> <ol style="list-style-type: none"><li>1) Endorse the revised Planning matters to be reported to Council Policy shown at <b>(ATTACHMENT 1)</b>.</li><li>2) Place the revised Planning matters to be reported to Council Policy, as amended on public exhibition for a period of 28 days.</li></ol> |
|------------|---|

The motion was carried.

**ORDINARY COUNCIL MEETING - 25 AUGUST 2020  
AMENDMENT**

|  |   |
|--|---|
|  | <p><b>Councillor Giacomo Arnott</b></p> <p>That Council:</p> <ol style="list-style-type: none"><li>1) Endorse the revised Planning matters to be reported to Council Policy shown at <b>(ATTACHMENT 1)</b>.</li></ol> |
|--|---|

## MINUTES ORDINARY COUNCIL - 25 AUGUST 2020

|  |  |
|--|--|
|  | <ol style="list-style-type: none"><li>2) Place the revised Planning matters to be reported to Council Policy, as amended on public exhibition for a period of 28 days.</li><li>3) The policy be amended at 5.1(d) to read "\$75,000" instead of "\$250,000".</li></ol> |
|--|--|

The motion lapsed without a seconder.

### ORDINARY COUNCIL MEETING - 25 AUGUST 2020 AMENDMENT

|  |  |
|--|--|
|  | <p><b>Councillor Giacomo Arnott</b></p> <p>That Council:</p> <ol style="list-style-type: none"><li>1) Endorse the revised Planning matters to be reported to Council Policy shown at <b>(ATTACHMENT 1)</b>.</li><li>2) Place the revised Planning matters to be reported to Council Policy, as amended on public exhibition for a period of 28 days.</li><li>3) The value of proposals part of the policy be removed completely, with the infrastructure part to remain at 5.1(d).</li></ol> |
|--|--|

The motion lapsed without a seconder.

### BACKGROUND

The purpose of this report is to provide Council with the revised Planning matters to be reported to Council Policy (the policy) **(ATTACHMENT 1)** following a review.

The policy was adopted on 26 February 2002 and was last amended in September 2018.

A review of the policy has been undertaken and amendments made to:

- change the name of the policy to Planning matters to be reported to Council Policy.
- add planning proposals into the policy as a matter to be reported to Council.
- alter the mandatory call up requirements for development on Council land or development undertaken by or on behalf of Council.
- various minor grammatical amendments.

The policy continues to ensure the Mayor and Councillors are provided with the opportunity for input into the progression and or determination of various planning matters.

As stated above, planning proposals are included into the policy. This was necessitated by changes to the adopted Rezoning Request Policy that removed the requirement to report some planning proposals to Council prior to forwarding proposals to the Department of Planning, Industry and Environment (DPIE) for Gateway determination.

It is proposed that this policy be expanded to include a Councillor call up for planning proposals consistent with the approach used for development applications.

In accordance with the adopted Rezoning Request Policy, the Mayor and Councillors will be notified of these proposals via PS Newsletter.

To improve the efficiency of the development assessment process, and ensure consistency with DPIE objectives, it is proposed that the mandatory reporting requirements for development on Council owned land or works undertaken by or on behalf of Council be amended to exclude minor development and infrastructure works on Council's road reserve.

It is proposed that minor types of development where the cost of works is less than \$250,000 or where the development application is for infrastructure works on Council's road reserve or modifications with minor environmental impact (section 4.55(1A)) be determined under delegation. Any development identified above will be circulated via PS Newsletter to the Mayor and Councillors, providing an opportunity to have those development applications called to Council.

The changes have been proposed in response to minor works and modification applications on Council land that have required reporting to Council since the changes to the policy were made in 2018, which has added a minimum of 6 weeks onto the assessment timeframes. Examples include the installation of an NBN cable along Mustons Road, Karuah, a 1 into 2 lot subdivision at Diemars Road, Salamander Bay and minor internal design and car parking modifications at the Koala Sanctuary. It is noted that prior to the revised policy in 2018, no Council development applications required reporting to Council unless called up by the Mayor/Councillors.

It is also noted section 4.55(1A) modification applications can be determined under delegated authority where the Hunter and Central Coast Regional Planning Panel (HCCRPP) were the original consent authority. As such, the changes made to this policy reflects the HCCRPP practice for regionally significant development.

## **COMMUNITY STRATEGIC PLAN**

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

**FINANCIAL/RESOURCE IMPLICATIONS**

There are minimal direct financial/resource implications.

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

**LEGAL, POLICY AND RISK IMPLICATIONS**

There are positive legal, policy and risk implications in reviewing existing policies and this policy is considered to assist in facilitating more efficient and robust decision making.

| <b>Risk</b>  | <b><u>Risk Ranking</u></b> | <b>Proposed Treatments</b> | <b>Within Existing Resources?</b> |
|--|----------------------------|----------------------------|-----------------------------------|
| There is a risk of making inconsistent decisions as a result of an out-dated policy. | Medium                     | Adopt the recommendations. | Yes                               |

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

There are minimal direct sustainability implications. The policy enables the effective determination of development applications on a merits basis considering all respective legislation.

**CONSULTATION**

Internal

Consultation has been undertaken with the Mayor and Councillors, Executive Team and within the Development Assessment and Compliance section, including both the Planning and Developer Relations and Building and Developer Relations teams that directly implement this policy.

External

In accordance with local government legislation the revised Planning matters to be reported to Council Policy will be placed on public exhibition for 28 days.

**OPTIONS**

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

**ATTACHMENTS**

- 1) Revised Planning matters to be reported to Council Policy. [↓](#)

**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

Nil.



ITEM 9 - ATTACHMENT 1 REVISED PLANNING MATTERS TO BE REPORTED TO COUNCIL POLICY.

Policy



**FILE NO:** PSC2013-00406  
**TITLE:** **PLANNING MATTERS DEVELOPMENT APPLICATIONS TO BE REPORTED TO COUNCIL**  
**POLICY OWNER:** **DEVELOPMENT ASSESSMENT & COMPLIANCE SECTION MANAGER**

**1. PURPOSE:**

1.1 To ensure that Councillors are provided with the opportunity for input into the determination of development applications (DA's) prior to decisions being finalised and determinations granted.

1.2 To ensure that Councillors are provided with the opportunity for input into planning proposals prior to forwarding applications for Gateway determination.

**2. CONTEXT/BACKGROUND:**

2.1 The majority of DA's are determined by Council's assessment officers, utilising delegated authority and may require review in accordance with Council's Development Assessment Process (DAP). This Policy is aimed at ensuring that Councillors are aware of how they can access information on the receipt and determination of DA's. This policy provides Council with an understanding of the types of applications that are mandatory to report to Council for determination and the process involved in calling DA's to Council prior to determination.

2.2 Council's Rezoning Request Policy does not require reporting of some planning proposals prior to forwarding proposals to the Department of Planning, Infrastructure and Environment for Gateway determination. This policy provides Council with an understanding of the process involved in calling planning proposals to Council prior to seeking Gateway determination.

**3. SCOPE:**

3.1 The use of delegated authority provides an opportunity for effective and timely decision making; however, it is appropriate that Council is informed of the exercise of delegated authority.



**ITEM 9 - ATTACHMENT 1 REVISED PLANNING MATTERS TO BE REPORTED TO COUNCIL POLICY.**

Policy



- 3.2 Given the scope of planning decisions, it is appropriate that delegated assessment staff, are able to use their discretion and judgement for those matters which should be reported to Council.
- 3.3 The delegations are drafted such that the Mayor/Councillors may request the staff delegation be withdrawn and a DA or planning proposal be reported to Council for determination. To do this, the Mayor/Councillor completes the DA-Call to Council Up-Form and obtains two (2) other supporting Councillor signatures.

**4. DEFINITIONS:**

|     |                                |
|-----|--------------------------------|
| DA  | Development Application        |
| DAP | Development Assessment Process |

**5. POLICY STATEMENT:**

- 5.1 Council shall be informed with regard to DA's and Section 4.55 modification applications planning matters in the following way:
  - a) All current DA's lodged are publicly available and listed on the Council website via the DA Tracker.
  - b) A report is generated weekly of all new DA's lodged and this is circulated weekly via PS Newsletter to the Mayor/Councillors and other relevant internal staff.
  - c) At any time prior to determination of a DA, the Mayor/Councillor may request that the application be reported to Council for determination by completing a DA-Call Up-Form Call to Council Form with two (2) other supporting Councillor signatures. If a completed DA-Call Up-Form Call to Council Form is submitted to Council prior to determination of the DA, a report will be forwarded to Council at the completion of the assessment.
  - d) DA's with a cost of works exceeding \$250,000, with the exception of infrastructure works within Council's road reserve, and Section 4.55(1A) and (2) modification applications will be reported to Council where Council is the owner of the land on which the development is to be carried out or where the development is being carried out on behalf of Council. Where not reported to Council, those Council DA's with a cost of works of less than \$250,000 or for infrastructure works within a Council road reserve or Section 4.55(1A) modification applications, will be reported in the PS Newsletter prior to determination.
  - e) DA's and Section 4.55 modification applications will be reported to Council where the application relates to the carrying out of development on Community land, other than where the proposed works comprise amenity buildings and structures such as; toilet facilities, playgrounds, small refreshment kiosks and the like.

Policy

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ITEM 9 - ATTACHMENT 1 REVISED PLANNING MATTERS TO BE REPORTED TO COUNCIL POLICY.

Policy



- f) Section 4.55(2) modification applications where the original DA was determined by Council, will be reported to Council for determination.
- g) Councillors will be advised via PS Newsletter prior to the determination of Section 4.55(1A) modification applications where the original DA was determined by Council.
- h) DA's with a **Request to vary a Development Standard**, ~~Clause 4.6 Variation Request~~ which seeks to vary a development standard by greater than 10%, will be reported to Council for determination.
- i) The Group Manager, Development Services and/or Section Manager, Development Assessment & Compliance, at their discretion, may report any DA to Council for determination.

**5.2 Council shall be informed with regard to planning proposals in the following way:**

- a) A report is generated of all new planning proposals lodged and this is circulated via PS Newsletter to the Mayor/Councillors and other relevant internal staff.
- b) At any time prior to forwarding a planning proposals for Gateway determination, the Mayor/Councillor may request that the application be reported to Council for determination by completing a Call to Council Form with 2 other supporting Councillor signatures. If a completed Call to Council Form is submitted to Council prior to forwarding a planning proposals for Gateway determination, a report will be forwarded to Council.
- c) The Group Manager, Development Services and/or Section Manager, Strategy and Environment, at their discretion, may report any planning proposal to Council.

**6. POLICY RESPONSIBILITIES:**

- 6.1 Development **Services Group** ~~Assessment and Compliance section~~ is responsible for implementing, complying with, monitoring, evaluating, reviewing and providing advice on the Policy.



**ITEM 9 - ATTACHMENT 1 REVISED PLANNING MATTERS TO BE REPORTED TO COUNCIL POLICY.**

Policy



**7. RELATED DOCUMENTS:**

- 7.1 Sustainability Review – End to End Process
- 7.2 Development Control Plan
- 7.3 Work Practice Note: Development Assessment Process
- 7.4 Environmental Planning & Assessment Act 1979
- 7.5 Department Planning and Environment (DPE) – Development Assessment Best Practice Guide – March 2017
- 7.6 Rezoning Request Policy

**CONTROLLED DOCUMENT INFORMATION:**

|   |  |                         |                |
|---|--|-------------------------|----------------|
| This is a controlled document. Hardcopies of this document may not be the latest version. Before using this document, check it is the latest version; refer to Council's website <a href="http://www.portstephens.nsw.gov.au">www.portstephens.nsw.gov.au</a> |  |                         |                |
| <b>TRIM container No</b>  | PSC2013-00406                                    | <b>TRIM record No</b>   | TBA            |
| <b>Audience</b>   | Elected Council, Public and Development Services |                         |                |
| <b>Process owner</b>  | Manager Development Assessment & Compliance      |                         |                |
| <b>Author</b>   | Coordinator Planning & Developer Relations       |                         |                |
| <b>Review timeframe</b>   | 2 Years  | <b>Next review date</b> | September 2022 |
| <b>Adoption date</b>  | 26/02/2002                                       |                         |                |

**VERSION HISTORY:**

| Version | Date      | Author                             | Details   | Minute No. |
|---------|-----------|------------------------------------|---|------------|
| 1       | 26/2/2002 | Group Manager Sustainable Planning | Original planning matters to be reported to Council policy. | 048        |



**ITEM 9 - ATTACHMENT 1 REVISED PLANNING MATTERS TO BE REPORTED TO COUNCIL POLICY.**

Policy



|   |                |   |  |     |
|---|----------------|---|--|-----|
| 2 | 23/6/2013      | Manager Development Assessment and Compliance | Updated policy to Development applications to be reported to Council.  | 217 |
| 3 | 10/11/2015     | Coordinator Planning and Developer Relations  | Review and minor updates to policy.  | 339 |
| 4 | September 2018 | Manager Development Assessment and Compliance | Updated to new policy template to include paragraph numbering and update version control.<br>3.3: Updated number of Councillors required to call a DA to Council to reflect the DPE Development Assessment Best Practice Guide.<br>5.1.2: Modified mechanism to report weekly DA list to Mayor/Councillors.<br>5.1.3: Updated requirements for Call to Council form.<br>5.1.4, 5.1.5, 5.1.6, 5.1.7, 5.1.8: Included additional DA types to be reported to Council for determination.<br>7.5 Inclusion of Department Planning and Environment (DPE) – Development Assessment Best Practice Guide. | 098 |



ITEM 9 - ATTACHMENT 1 REVISED PLANNING MATTERS TO BE REPORTED TO COUNCIL POLICY.

Policy



|   |     |   |   |  |
|---|-----|---|---|--|
| 5 | TBA | Manager Development Assessment and Compliance | <p>Review and update template to include:<br/>                 Updated title of policy to reflect inclusion of planning proposals into the policy.<br/>                 1.2, 2.2 - Inclusion of new provisions to reflect inclusion of planning proposals into the policy.<br/>                 2.1 - Clarify background and process of the policy.<br/>                 3.3 -Amendment of existing provisions to reflect inclusion of planning proposals into the policy.<br/>                 5.1 d) - Modified mechanism to report DA's and modification applications on Council land or where the works are to be undertaken on behalf of Council.<br/>                 5.1 h) - Delete 'Clause 4.6 Variation Request' and replaced with 'Request to vary a Development'.<br/>                 5.2: a), b) and c) – Added new paragraphs to clarify how Councillors will be informed with regard to planning proposals.<br/>                 6.1 - Update responsible authority to reflect inclusion of planning proposals into the policy.</p> |  |
|---|-----|---|---|--|

Policy

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**ITEM 9 - ATTACHMENT 1 REVISED PLANNING MATTERS TO BE REPORTED TO COUNCIL POLICY.**

Policy



|  |  |  |                                      |  |
|--|--|--|--------------------------------------|--|
|  |  |  | 7.6 - Added Rezoning Request Policy. |  |
|--|--|--|--------------------------------------|--|

Policy

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A smaller version of the Port Stephens Council logo, consisting of the stylized graphic and the text "PORT STEPHENS COUNCIL".

**ITEM NO. 10**

**FILE NO: 20/187300  
EDRMS NO: PSC2005-2646**

**POLICY REVIEW: BUS SHELTER POLICY**

REPORT OF: JOHN MARETICH - ASSET SECTION MANAGER  
GROUP: FACILITIES & SERVICES

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Endorse the revised Bus Shelter Policy shown at **(ATTACHMENT 1)**.
- 2) Place the revised Bus Shelter Policy as amended on public exhibition for a period of 28 days and should no submissions be received, the policy be adopted as amended, without a further report to Council.
- 3) Revoke the Bus Shelter Policy dated 26 June 2018 (Minute No. 180), should no submissions be received.

---

**ORDINARY COUNCIL MEETING - 25 AUGUST 2020  
MOTION**

|            |  |
|------------|--|
| <b>162</b> | <p><b>Councillor John Nell<br/>Councillor Glen Dunkley</b></p> <p>It was resolved that Council:</p> <ol style="list-style-type: none"><li>1) Endorse the revised Bus Shelter Policy shown at <b>(ATTACHMENT 1)</b>.</li><li>2) Place the revised Bus Shelter Policy as amended on public exhibition for a period of 28 days and should no submissions be received, the policy be adopted as amended, without a further report to Council.</li><li>3) Revoke the Bus Shelter Policy dated 26 June 2018 (Minute No. 180), should no submissions be received.</li></ol> |
|------------|--|

The motion was carried.

**BACKGROUND**

The purpose of this report is to seek Council's endorsement to place the revised Bus Shelter Policy as shown in **(ATTACHMENT 1)** on public exhibition.

The intent of the Bus Shelter Policy is to allow community groups to provide bus shelters for the Port Stephens Council community and use revenue gained from advertising to maintain the structure.



The provision of shelters at bus stops plays an important part in increasing public transport patronage in Port Stephens while improving the comfort passengers. This policy seeks to ensure consistency and equity in the provision of bus shelters across the Local Government Area.

This policy requires that community groups enter into a formal agreement with Council. The agreement shall document who is responsible for the installation and ongoing maintenance of the shelter, who will benefit from the advertising rights and who will own the shelter at the end of the agreement. Each agreement will vary, depending on the needs and abilities of the organisation involved.

This review updates the existing policy into the current policy format to ensure conformity across Council's range of policy documents. The existing bus shelter policy works well, hence there are no material changes to the content of the original policy.

### **COMMUNITY STRATEGIC PLAN**

| <b>Strategic Direction</b>    | <b>Delivery Program 2018-2021</b>   |
|-------------------------------|---|
| Infrastructure and Facilities | Maintain the Council's civil and community infrastructure to support the community. |

### **FINANCIAL/RESOURCE IMPLICATIONS**

This policy review will not require any additional budget or resources for the provision of bus shelters. Requests for bus shelters under this policy are infrequent with costs able to be covered by the existing administration budget.

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

**LEGAL, POLICY AND RISK IMPLICATIONS**

| <b>Risk</b>  | <b><u>Risk Ranking</u></b> | <b>Proposed Treatments</b>   | <b>Within Existing Resources?</b> |
|--|----------------------------|--|-----------------------------------|
| There is a risk that Council will fail to meet legislative requirements for policy review resulting in community dissatisfaction.  | Low                        | Adopt the recommendation.  | Yes                               |
| There is a risk that bus shelters will not meet the requirements of the community in terms of type, safety, accessibility and placement resulting in reduced public transport patronage. | Low                        | Adopt the recommendation. Ensure that all new bus shelters meet Council's Infrastructure Specifications.   | Yes                               |
| There is a risk that the community group fail to maintain the bus shelters resulting in unsafe shelters for bus users.   | Low                        | Adopt the recommendation. The agreement between Council and community group specifies who is responsible for maintenance and documents the expectation. Council also monitors the condition of all bus shelters. | Yes                               |
| There is a risk that the advertising on the bus shelter is considered inappropriate to the community leading to reputation damage to Council.  | Low                        | Adopt the recommendation. The agreement between Council and community group specifies the type of advertising to ensure that is not offensive or against the vision or values of the organisation.               | Yes                               |

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

The continuing provision of bus shelters funded by community groups increases the number of transport assets for our community and visitors. This in turn improves passenger comfort and safety.

Community owned assets have been historically well maintained as the community group have pride and ownership in the asset.

## **CONSULTATION**

Consultation with key stakeholders has been undertaken by the Assets Section.

### Internal

- Traffic Engineer.
- Civil Assets Manager
- Civil Infrastructure Engineer

### External

- External consultation will be undertaken through the public exhibition process

In accordance with local government legislation the draft Bus Shelter Policy will go on public exhibition for 28 days.

## **OPTIONS**

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

## **ATTACHMENTS**

- 1) Revised Bus Shelter Policy. [↓](#)

## **COUNCILLORS ROOM**

Nil.

## **TABLED DOCUMENTS**

Nil.

ITEM 10 - ATTACHMENT 1 REVISED BUS SHELTER POLICY.

Policy



**FILE NO:** PSC2005-2646  
**TITLE:** BUS SHELTER POLICY  
**OWNER:** ASSETS SECTION MANAGER

**1. PURPOSE:**

- 1.1 The Bus Shelter Policy purpose is to allow community groups to provide bus shelters for the community, public transport patrons and assist Council to maintain the shelter and the revenue gained through advertising on these bus shelters will be used by community groups for their purposes such as providing the community with services to allow advertising on the bus shelter as a revenue source. The inclusion of advertising on bus shelters is a way for Council and community groups to fund the capital cost and maintain the shelter.
- 1.2 This policy and related documents will also allow the display of advertising on bus shelters in accordance with Council's document: Advertising on Bus Shelters in Port Stephens – Term of Agreement which seeks to ensure consistency and equity in the provision of bus shelters across the Local Government Area.
- 1.3 The community group will be responsible for the installation, maintenance and care of the structure.
- 1.4 The community group will be able to advertise to generate income to provide this service.

**2. CONTEXT/BACKGROUND:**

- 2.1 The provision of shelters at bus stops plays an important part in increasing public transport patronage in Port Stephens and providing shelter and comfort of existing bus passengers. This policy seeks to ensure consistency and equity in the provision of bus shelters across the Local Government Area.
- 2.2 Installation of the privately funded shelters has generally been initiated by the community groups organisations involved and has resulted in more shelters being installed in the local area. than would otherwise be the case if Council funding alone were relied upon.

**3. SCOPE:**

- 3.1 Council is responsible for controlling and monitoring activities being undertaken in its road reserves.
- 3.2 Council provides public transport infrastructure to the community such as bus shelters and seating.
- 3.3 3.2 Community groups can assist Council in the provision of bus shelter infrastructure within the road reserve as mutually agreeable in accordance with Council requirements.



Policy



3.4 3.3 Council will have clear and consistent guidelines regarding the provision of transport related infrastructure by other bodies or organisations.

4. DEFINITIONS:

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

Bus Shelter A roofed structure for people to wait under in at a bus stop.

5. STATEMENT:

5.1 Council's intent is for to allow community groups to provide bus shelters for the Port Stephens community and to use the revenue gained from advertising on the shelters to pay for the capital cost and ongoing maintenance costs.

5.2 Council's requirements and priorities for the provision of bus shelters are to be assessed as part of the Capital Works Program.

5.3 5.2 Priority for the provision of transport infrastructure shall be determined based on an assessment of the existing standard of transport infrastructure in the vicinity.

a. The level of demand for a facility, both existing and potential future demand.

b. the existing standard of transport infrastructure in the vicinity.

5.4 5.3 Once priorities are confirmed, expressions of interest for the supply and erection of appropriately designed bus shelter structures will be sought through Council's normal procurement process.

5.5 5.4 Community groups will retain ownership and associated advertising rights of any bus shelters constructed by them and will be required to enter into a formal agreement with Council.

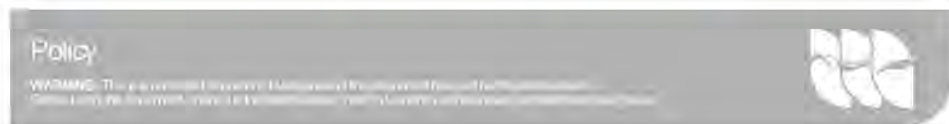
5.6 5.5 From time to time Council will purchase bus shelters. Council will retain the ownership and associated advertising rights of any bus shelters constructed by them.

5.6 Council reserves the right to favour offers from external providers that will promote community involvement and enhance community ownership of public infrastructure.

5.7 Bus shelters shall conform to Council Design requirements and shall be compliant with the Commonwealth Disability Discrimination Act 1992.

6. RESPONSIBILITIES:

6.1 Civil Asset Planning Manager is responsible for complying with implementing, monitoring, evaluating and reviewing the policy. The key position responsible for implementing, complying with, monitoring, evaluating, reviewing and providing advice on the policy is the Civil Assets Manager.



**Policy**



**7. RELATED DOCUMENTS:**

- 7.1 Roads Act 1993.
- 7.2 Local Government Act 1993.
- 7.3 Code of Conduct.
- 7.4 Signage Policy.
- 7.5 Sustainable Procurement.
- 7.6 Public Arts Policy and Guidelines.
- 7.7 Commonwealth Disability Discrimination Act 1992.
- 7.8 Disability Standards for Accessible Public Transport 2002.

**CONTROLLED DOCUMENT INFORMATION:**

|  |  |                         |             |
|--|--|-------------------------|-------------|
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| <b>EDRMS container No.</b>   | PSC2005-2646   | <b>EDRMS record No.</b> | 18/142224   |
| <b>Audience</b>  | Community, Assets Section, Civil Assets, Staff and General Manager |                         |             |
| <b>Process owner</b>   | Assets Section Manager   |                         |             |
| <b>Author</b>  | Civil Assets Manager   |                         |             |
| <b>Review timeframe</b>  | 2 years  | <b>Next review date</b> | August 2022 |
| <b>Adoption date</b>   |  |                         |             |

**VERSION HISTORY:**

| Version | Date        | Author                        | Details |
|---------|-------------|-------------------------------|---------|
| 1       | 25 Nov 2014 | Civil Assets Planning Manager | Adopted |



Policy



| Version | Date        | Author                        | Details  |
|---------|-------------|-------------------------------|--|
| 2       | 28 Aug 2018 | Civil Assets Planning Manager | Created in New Policy Template & Global Review with following changes<br>1.2 & 1.2 – Reworded to improve purpose.<br>2.1 – Removal of sentence.<br>7.1, 7.2 & 7.6 - Additional Related Documents.<br>7.3 – Removal of Related Document.<br>Adopted By Council. |



Policy



|   |  |  |  |
|---|--|--|--|
| 3 |  | Civil Infrastructure Engineer and Civil Assets Manager | <p>Updated to 2019 Policy Template including global review of policy and following changes:</p> <p>1.1 &amp; 1.2 – Reworded to improve sentence structure.</p> <p>1.3 &amp; 1.4 – Addition of two new purposes.</p> <p>2.1 – Removal of words 'and' and 'existing'.</p> <p>2.2 – Reworded to improve sentence structure.</p> <p>3.2 – Deleted previous Clause 3.2 – no longer relevant.</p> <p>3.3 - Replaced with digits 3.2 to align with correct formatting and deleted wording 'as mutually agreeable' and replaced with 'in accordance with Council requirements'.</p> <p>3.4 – Replaced with digits 3.3 to align with correct formatting.</p> <p>4.1 – Formatting update to new template. Removed word 'under', replaced with 'in'.</p> <p>5.1 – Removal of word 'for' replaced with 'to allow' and removal of word 'cost' in sentence.</p> <p>5.2 - Deleted as no longer relevant</p> <p>5.3 – Replaced with digits 5.2 to align with correct formatting. Point 'a.' removed and point 'b.' now forming part of the sentence following 5.2.</p> <p>5.4 – Replaced with digits 5.3 to align with correct formatting.</p> <p>5.5 – Replaced with digits 5.4 to align with correct formatting.</p> <p>5.6 – Replaced with digits 5.5 to align with correct formatting and new sentence added.</p> <p>5.7 – Addition of the year the Act was executed '1992'.</p> |
|---|--|--|--|





ITEM 10 - ATTACHMENT 1 REVISED BUS SHELTER POLICY.



Policy

| Version | Date | Author | Details  |
|---------|------|--------|--|
|         |      |        | 6.1 – Removal of sentence and replaced with updated version and position title.<br>7.7 & 7.8 – Additional Related Documents. |

Policy

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**ITEM NO. 11**

**FILE NO: 20/250520  
EDRMS NO: PSC2009-09420**

**POLICY REVIEW: ACCESS TO INFORMATION**

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

---

**RECOMMENDATION IS THAT COUNCIL:**

- 1) Endorse the revised Access to Information Policy shown at **(ATTACHMENT 1)**.
  - 2) Place the revised Access to Information Policy, as amended, on public exhibition for a period of 28 days and should no submissions be received, the policy be adopted as amended, without a further report to Council.
  - 3) Revoke the Access to Information Policy dated 14 August 2018, Minute No. 247, should no submissions be received.
- 

**ORDINARY COUNCIL MEETING - 25 AUGUST 2020  
MOTION**

|            |   |
|------------|---|
| <b>163</b> | <p><b>Councillor John Nell<br/>Councillor Glen Dunkley</b></p> <p>It was resolved that Council:</p> <ol style="list-style-type: none"><li>1) Endorse the revised Access to Information Policy shown at <b>(ATTACHMENT 1)</b>.</li><li>2) Place the revised Access to Information Policy, as amended, on public exhibition for a period of 28 days and should no submissions be received, the policy be adopted as amended, without a further report to Council.</li><li>3) Revoke the Access to Information Policy dated 14 August 2018, Minute No. 247, should no submissions be received.</li></ol> |
|------------|---|

The motion was carried.

**BACKGROUND**

The purpose of this report is to provide Council with the revised Access to Information Policy ('policy'). The policy has been reviewed as part of Council's ongoing policy review program and is shown at **(ATTACHMENT 1)**.

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).

The policy is presented for Council's consideration.

**COMMUNITY STRATEGIC PLAN**

| <b>Strategic Direction</b> | <b>Delivery Program 2018-2021</b>                           |
|----------------------------|---|
| Governance                 | Provide strong civic leadership and government regulations. |

**FINANCIAL/RESOURCE IMPLICATIONS**

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

**LEGAL, POLICY AND RISK IMPLICATIONS**

As part of good governance, this policy will assist Council in its obligations under the Act.

| <b>Risk</b>  | <b><u>Risk Ranking</u></b> | <b>Proposed Treatments</b> | <b>Within Existing Resources?</b> |
|--|----------------------------|----------------------------|-----------------------------------|
| 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.

**CONSULTATION**

Consultation with key stakeholders has been undertaken by the Governance Section.

Internal

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

External

- Following Council endorsement, the Policy will be place on public exhibition for 28 days.

**OPTIONS**

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

**ATTACHMENTS**

- 1) Revised Access to Information Policy. [↓](#)

**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

Nil.

Policy



**FILE NO:** PSC2009-09420  
**TITLE:** ACCESS TO INFORMATION POLICY  
**POLICY OWNER:** GOVERNANCE SECTION MANAGER

**1. PURPOSE:**

1.1 The Access to Information Policy (the 'Policy') ensures Port Stephens Council is committed to the following principles regarding public access to documents and information:

- Open and transparent government.
- Consideration of the overriding public interest in relation to access requests.
- Proactive disclosure and dissemination of information.
- Respect for the privacy of individuals.

- a) Open and transparent government.
- b) Consideration of the overriding public interest in relation to access requests.
- c) Proactive disclosure and dissemination of information.
- d) Respect for the privacy of individuals.

**2. CONTEXT/BACKGROUND:**

2.1 From 1 July 2010, the *Government Information (Public Access) Act 2009 (NSW)* ('GIPA Act') commenced providing four mechanisms to access Council information – mandatory disclosure, proactive disclosure, informal release and formal access.

2.2 Section 12 of the *Local Government Act 1993 (NSW)* and the *Freedom of Information Act 1982 (Cth)* ceased on 30 June 2010.

2.1 The Government Information (Public Access) Act 2009 (NSW) ('GIPA Act') provides four pathways to access Council information – mandatory disclosure, proactive disclosure, informal release and formal access.

**3. SCOPE:**

3.1 Port Stephens Council publishes specific open access information on our website, free of charge unless to do so would impose unreasonable additional costs to Council. Council will facilitate public access through this and other appropriate mediums. Also, Council

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publishes the inspection documents listed under Schedule 5 of the GIPA Act held by it, unless there is an overriding public interest not to do so. Council will keep a record of all open access information that is not published due to an overriding public interest against disclosure.

- 3.2 Council also makes as much other information as possible publicly available in an appropriate manner, including on the internet. Such information is also available free of charge or at the lowest reasonable cost.
- 3.3 The 'Access to Information Guidelines' as shown at Appendix 1 of this Policy identifies the documents and types of information that are available for public access and any restrictions that may apply.
- 3.4 Some documents may require a formal access application in accordance with the GIPA Act. Council will assess all requests for access to documents and information in a timely manner and in accordance with the 'Access to Information Guidelines' and relevant legislation.
- 3.5 Depending upon the nature of the request and the form of access requested charges may be applied in accordance with Council's Schedule of Fees and Charges and relevant legislation.
- 3.6 Broad requests for access to a large number of unspecified documents which, if processed, would divert substantial Council resources from dealing with other requests, or from performing other Council functions may be refused on the grounds that such a diversion of resources is contrary to the public interest. Council will endeavour to assist in defining the request to a more manageable one.
- 3.7 Council also endeavours to release information in response to an informal request, subject to any reasonable conditions Council may impose having regard to the circumstances of the request, in accordance with the GIPA Act.
- 3.8 Where information is released to an applicant under a formal access application and Council considers that it will be of interest to other members of the public, Council will provide details of the information in a disclosure log for inspection by the public.
- 3.9 The General Manager has authority to approve Guidelines for Information Access, which is to be available to members of the public.



Policy



**4. DEFINITIONS:**

|                         |   |
|-------------------------|---|
| Application             | A Formal Access Application made under the GIPA Act.  |
| Disclosure log          | A disclosure log published on Port Stephens Council's website, as required by the GIPA Act.   |
| Formal access           | An applicant is required to lodge a Formal Access Application under the GIPA Act, if the requested information cannot be provided by way of mandatory release, proactive release or informal release. |
| GIPA Act                | The <b>Government Information (Public Access) Act 2009 (NSW)</b>  |
| Informal release        | Means a request to access information where a formal access application is not required under the GIPA Act.   |
| Mandatory release       | Means information classified as open access information, in accordance with the GIPA Act.   |
| Open access information | Means information that is publicly available unless there is no public interest against disclosure, in accordance with the GIPA Act.  |
| Proactive release       | Means government information that Council decides to release outside other release provisions under the GIPA Act.   |
| Public interest         | Means considerations under the GIPA Act either in favour of release or against release.   |
| Request for information | An informal request for information under section 8 of the GIPA Act.  |

**5. POLICY STATEMENT:**

- 5.1 The objective of this Policy is to describe Council's principles regarding public access to information and to facilitate the processing of requests and applications for such access.
- 5.2 The GIPA Act provides greater access to Council records through accessibility on Council's website where possible, and where this does not create an unreasonable additional cost to Council to publish these documents on the website.

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## Policy



5.3 This Policy is to be read in conjunction with the Access to Information Guidelines for Local Government.

### 6. POLICY RESPONSIBILITIES:

6.1 The Governance **Section** Manager is responsible for implementing, complying with, monitoring, evaluating, reviewing and providing advice on this policy.

### 7. RELATED DOCUMENTS:

7.1 Government Information (Public Access) Act 2009 (NSW)

7.2 Government Information (Public Access) Regulation 2009 (NSW)

7.3 Privacy and Personal Information Protection Act 1998 (NSW)

7.4 Health Records and Information Privacy Act 2002 (NSW)

7.5 State Records Act 1998 (NSW)

7.6 Local Government Act 1993 (NSW)

7.7 Environmental Planning and Assessment Act 1979 (NSW)

7.8 Companion Animals Act 1998 (NSW)

7.9 Access to Information Guidelines for Local Government

7.10 Code of Conduct

## Policy

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| <b>EDRMS container No</b>   | PSC2009-09420                                 | <b>EDRMS record No</b>  | xxxxxxx                       |
| <b>Audience</b>   | Port Stephens community and Council employees |                         |                               |
| <b>Process owner</b>  | Governance Section Manager                    |                         |                               |
| <b>Author</b>   | Governance Section Manager                    |                         |                               |
| <b>Review timeframe</b>   | Two years                                     | <b>Next review date</b> | August 2020<br>31 August 2022 |
| <b>Adoption date</b>  | 23 August 2016                                |                         |                               |

**VERSION HISTORY:**

| Version | Date              | Author             | Details                             | Minute No. |
|---------|-------------------|--------------------|-------------------------------------|------------|
| 1       | 16 September 1997 | Governance Manager | Original policy adopted by Council. | 1282       |
| 2       | 19 October 2004   | Governance Manager | Adopted by Council.                 | 375        |
| 3       | 28 March 2006     | Governance Manager | Adopted by Council.                 | 462        |
| 4       | 13 July 2010      | Governance Manager | Adopted by Council.                 | 208        |
| 5       | 11 February 2014  | Governance Manager | Adopted by Council.                 | 016        |

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|     |            |                    |   |     |
|-----|------------|--------------------|---|-----|
| 6   | 23/8/2016  | Governance Manager | Policy formatted into new template. Changes made to legislation references and definitions added. Also included the guidelines.   | 241 |
| 6.1 | 14/08/2018 | Governance Manager | Reviewed the policy, included numbering to each paragraph and updated version control.<br>1.1 – inserted the word 'the policy'.<br>3.1 – delete 'because of' and insert 'due to'.<br>3.7 – delete the word 'other'.<br>4.0 – amended the definition of 'informal request', updated 'mandatory release', 'open access information', proactive release' and inserted 'for information' under the 'Request' definition.<br>7.2 – inserted new clause and re-numbered subsequent numbering 7.3 to 7.9.<br><u>Guidelines update</u><br>1.2 – updated telephone number. | 247 |

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|   |    |                            |   |    |
|---|----|----------------------------|---|----|
| 7 | XX | Governance Section Manager | <p>Reviewed the policy, reformatted bullet points removed italics from all legislation to align with the current style guide.</p> <p>Updated Policy owner to reflect title changes as well as in 6.1.</p> <p>1.1-replaced 'Policy' with 'policy' and deleted the bullet points with alphabetical listing.</p> <p>2.1 and 2.2- deleted.</p> <p>2.1 – new clause.</p> <p><u>Guidelines update</u></p> <p>Reviewed the guideline, reformatted bullet points removed italics from all legislation to align with the current style guide</p> <p>2.1-inserted "viewing a".</p> <p>5.1-delete 'know'.</p> <p>6.2-inserted "refusing access to information" and insert 'may', delete 'will'.</p> <p>6.4-inserted further information regarding public interests against disclosure</p> <p>8.1-delete 'on' and insert 'of'</p> | XX |
|---|----|----------------------------|---|----|

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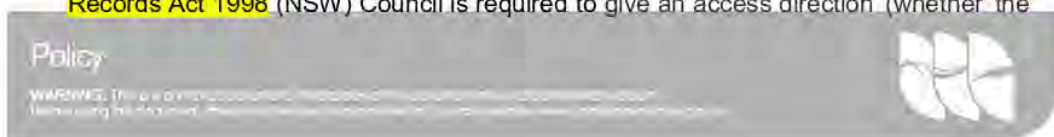
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## APPENDIX 1

**Access to Information Guidelines for Local Government****1. Accessing Information**

- 1.1 Port Stephens Council is subject to NSW legislation that requires it to be open and accountable in the exercise of its functions, and to handle personal and health information in a fair and reasonable manner. Council will seek to ensure that legitimate requests for access to information are handled promptly and that members of the public are able to access information, subject to the public interest. In doing so, Council recognises that it must take into account the privacy of others, legal and commercially sensitive information.
- 1.2 These guidelines set out the documents and types of information that are available to members of the public as a matter of routine, and those that will not generally be available for inspection and copying. Where practicable, Council will deal with requests to inspect documents in accordance with the **Government Information (Public Access) Act 2009** (NSW) ('GIPA Act') free of charge but a reasonable photocopying fee may be payable under the GIPA Act and for access to versions of documents that are neither current nor immediately preceding versions of the document and are not reasonably accessible. All charges are detailed in Council's Schedule of Fees and Charges – Council's Fees and Charges are available from the Council website or by contacting Council on 4988 0255.
- 1.3 There is a right of access under the GIPA Act to certain documents held by Council unless there is an overriding public interest not to do so. Any applications under the GIPA Act will be processed in accordance with the Act's requirements and a determination made to release the documents or refuse access on the basis of the relevant considerations under that Act. Charges for formal applications are in accordance with the GIPA Act Fees and Charges and include a \$30 application fee. In some circumstances processing charges may also be applied.
- 1.4 Council also may provide access to information under other legislation. Under the **Privacy and Personal Information Protection Act 1998** (NSW) ('PPIPA') and the **Health Records and Information Privacy Act 2002** (NSW) ('HRIPA'), an individual also has a right to access and amend records held by Council which contain their personal details, matters related to their business affairs and any records containing information about their health. Where information about an individual is held in documents, files or systems that include information about other persons, any request should be made under the GIPA Act. The Act provides for consultation with other affected parties prior to disclosure of information concerning their personal or business affairs. Under the **State Records Act 1998** (NSW) Council is required to give an access direction (whether the



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records are open or closed) for all Council's records that are at least thirty (30) years old in what is described as the "open access period". Under the **Environmental Planning and Assessment Act 1979** (NSW) and **Environmental Planning and Assessment Regulations 2000** (NSW) there is a right to access Development Application registers and documents held by Council subject to restrictions set out in section 268(3).

**2. Information Available**

2.1 Council publishes open access, or mandatory release, information on its website unless there is an overriding public interest against disclosure or to do so would impose an unreasonable additional cost on Council. In respect of the latter the Council will make the information freely available in another format eg. **viewing a** hard copy at the Council Administration Building. The open access information is:

- Council's policy documents;
- a publication guide with information about the council's structure and functions, and listing the type of information that is publicly available;
- a disclosure log of formal access applications where in Council's opinion the information released may be of interest to other members of the public;
- a register of contracts worth more than \$150,000 that councils have with private sector bodies;
- a record of open access information that council does not make publicly available on the basis of an overriding public interest against disclosure.

2.2 In addition schedule 5 of the GIPA Act requires that certain documents held by Council, are to be made publicly available for inspection, free of charge. The public is entitled to inspect these documents either on Council's website (unless there is an unreasonable additional cost to Council to publish these documents on the website) or at the offices of the Council during ordinary office hours or at any other place as determined by the Council. Any current and previous documents of this type may be inspected by the public free of charge. Copies can be supplied for reasonable copying charges.

2.3 These documents are:

- Information about Council;
- The model code of conduct prescribed under section 440(1) of the **Local Government Act 1993** (NSW) ('LGA');
- Council's adopted Code of Conduct;
- Code of Meeting Practice;
- Annual Report;
- Annual Financial Reports;
- Auditor's Report;



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- Integrated Plans – comprises of the Community Strategic Plan, Delivery Program, Operational Plan, Workforce Strategy, Long Term Financial Plan and the Asset Management Plan;
- EEO Management Plan;
- Policy concerning the payment of expenses and provision of facilities to the mayor and councillors;
- Annual Reports of Bodies Exercising Functions Delegated by Council (e.g. Section 355/377 Committees);
- Any codes referred to in the **Local Government Act**;
- Returns of the Interests of Councillors, Designated Persons and Delegates;
- Agendas, business papers and minutes of council/committee meetings (except meetings that are closed to the public);
- Office of Local Government, NSW Department of Premier and Cabinet Representative Reports presented at a meeting of Council;
- Land Register;
- Register of Investments;
- Register of Delegations;
- Register of Graffiti removal works;
- Register of current Declarations of Disclosures of Political donations;
- Register of Voting on Planning Matters.

**3. Plans and Policies**

- Local Policies adopted by Council concerning approvals and orders.
- Plans of Management for Community Land.
- Environmental Planning Instruments, Development Control Plans and Contribution Plans.

**4. Information about Development Applications**

4.1 Development Applications and any associated documents received in relation to a proposed development, ie:

- Home Warranty Insurance documents;
- Construction Certificates;
- Occupation Certificates;
- Structural Certification Documents;
- Town Planner Reports;
- Submissions received on Development Applications – subject to the provision of the **Privacy and Personal Information Protection Act 1998** (NSW);
- Heritage Consultant Reports;

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- Tree Inspections Consultant Reports;
- Acoustic Consultant Reports;
- Land Contamination Consultant Reports;
- Records of decisions on Development Applications including decisions on appeals;
- Records describing the general nature of documents that Council decides to exclude from public view after application of public interest test considerations.

**5. Approvals, Orders and Other Documents**

- Applications for approvals under part 7 of the LGA
- Applications for approvals under any other Act and any associated documents received
- Records of approvals granted or refused, any variation from Council Policies with reasons for the variation, and decisions made on appeals concerning approvals
- Orders given under Part 2 of Chapter 7 of the LGA, and any reasons given under section 136 of the LGA
- Orders given under the Authority of any other Act
- Records of Building Certificates under the **Environmental Planning and Assessment Act 1979** (NSW)
- Plans of land proposed to be compulsorily acquired by Council
- Compulsory Acquisition Notices
- Leases and Licenses for use of Public Land classified as Community Land

5.1 It should be noted that there is other legislation that can apply to the release of Council records such as, but not limited to, the **Privacy and Personal Information Protection Act 1998** (NSW) and **Copyright Act 1968** (Cth). Council's Right to **Information Know** officers will consider all relevant legislation applicable to any request for information.

5.2 Copies of documents provided are given for information purposes only and are provided by Council to meet its requirements under relevant legislation. Copyright laws still apply to each document. The consent of copyright owners is required for documents where copyright applies such as documents on development applications. This information would generally be available for inspection however may not be able to be copied.

5.3 In addition, from time to time Council will make as much other information as possible publicly available in an appropriate manner, including on their website. The information will be available free of charge or at the lowest reasonable cost. Such other information includes frequently requested information or information of public interest that has been released as a result of other requests.

5.4 Council will endeavour to release other information in response to an informal request, subject to any reasonable conditions as Council thinks fit to impose. However,

notwithstanding the lodgement of an informal request, Council may require a formal access application to be submitted where the information sought:

- is of a sensitive nature that requires careful weighing of the considerations in favour of and against disclosure, or
- contains personal or confidential information about a third party that requires consultation, or
- would involve an unreasonable amount of time and resources to produce.

**6. Exemptions to Access**

- 6.1 Council may refuse a request for information if there is an overriding public interest against disclosure or if searching for the requested information would require unreasonable and substantial diversion of the Council's resources.
- 6.2 Council will always explain to the applicant its reasons for **refusing access to information when** applying an exemption. Council will not classify information as exempt unless there are clear reasons for doing so. Where documents contain exempt information, any remaining information contained within the requested document **may** will be available under the Act.
- 6.3 In determining whether there is an overriding public interest against the disclosure of the information, Council will fully consider the Public Interest Test.
- 6.4 The GIPA Act provides an exhaustive list of public interest considerations against disclosure **that may be taken into account when determining if there is an overriding public interest against releasing the information.** These are the **only** considerations against disclosure that Council will consider in applying the public interest test.
- 6.5 Considerations are grouped under the following headings:
- responsible and effective government;
  - law enforcement and security;
  - individual rights, judicial processes and natural justice;
  - business interests of agencies and other persons;
  - environment, culture, economy and general matters;
  - secrecy provisions (in legislation other than those listed in Schedule 1);
  - exempt documents under interstate Freedom of Information legislation.
- 6.6 In applying the public interest test, Council will **not** take into account:
- that disclosure might cause embarrassment to, or loss of confidence in, the Council;



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- that any information disclosed might be misinterpreted or misunderstood by any person.
- 6.7 Council will consider any submissions made by an applicant in relation to public interest considerations, as well as any factors personal to the applicant.
- 6.8 Under the GIPA Act there are 12 categories of information (eight of which appear to affect local government) for which there is a conclusive presumption of an overriding public interest against disclosure. These eight are:
- Information subject to an overriding secrecy law (26 specifically named Acts);
  - Information subject to the direction or order of a court or other body with the power to receive evidence on oath;
  - Information subject to legal professional privilege;
  - Excluded information' (judicial and prosecutorial information, information about complaints handling and investigative functions, competitive and market sensitive information and information in relation to specific functions of the Public Trustee);
  - Documents affecting law enforcement and public safety;
  - Specific information relating to transport safety;
  - Specific reports concerning the care and protection of children;
  - Specific information relating to Aboriginal and environmental heritage.
- 6.9 Generally under the GIPA Act, Council must not publish and must refuse requests to disclose information in the above categories. Formal applications for 'excluded information' are invalid under the Act.
- 6.10 In dealing with informal requests Council will apply a similar decision making framework.

**7. Accessing Information and Making an Application**

- 7.1 The public may obtain access to information as follows:
- by searching the Council's website to see if it is already available
  - by contacting Council and requesting the information. Council will advise whether the information requested:
    - is *open access*, or *mandatory release* information that is readily available and where and how to get the information.
    - should be made available as part of a *proactive release* of information.
    - can be disclosed through an *informal release*, for example where no third party personal information is involved.
    - requires a *formal access application*, for example because consultation with a third party is required.

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- 7.2 To make an informal request for access to information under the GIPA Act, Council may require the completion of an 'Informal Access Request Form'. No fee is required on application.
- 7.3 To make a formal application for access to information under the GIPA Act, the 'Formal Access Application Form' should be completed. The Formal Application fee is \$30.00 and processing charges may be applicable (there is no GST in relation to these charges). An acknowledgement of such application will be provided by Council within five working days.
- 7.4 If a fee for photocopies of documents provided under the GIPA Act is payable, it will be listed in Council's adopted Fees and Charges and is GST inclusive.

**8. Time Limits**

- 8.1 In respect of formal applications, Council will notify applicants of the decision of an application within 20 working days, unless the applicant agrees to extend the time. Council may also extend the time by up to 15 working days where consultation with a third party is required or if Council needs to retrieve records from archives.
- 8.2 If access is deferred by Council, then Council will notify the applicant and include the reason for deferral and the date on which the applicant will be given access. A decision to defer access is reviewable (see Rights of Review and Appeal). If Council does not decide the applicant's access application within the above timeframes, it is deemed 'refused'. Council will refund the application fee and the applicant may seek internal or external review (see Rights of Review and Appeal) of this refusal. This will not apply if an extension of time has been arranged or payment of an advance deposit is pending.

**9. Rights of Review and Appeal**

- 9.1 Where a member of the public is refused access under a formal application under the GIPA Act, staff will provide details of the reasons for refusal to the member of the public in writing. An applicant who has been refused access by Council to information requested under a formal application for access to information under the GIPA Act has three options of review available.
  - 9.1.1 Applicants can apply to Council for an **internal review**. This is review by someone more senior than the original decision maker and there is a \$40 fee. Applicants have 20 working days from receiving notice of a decision to ask for an internal review.



Policy



- 9.1.2 If an applicant is not satisfied with the internal review, or does not want one, they can ask for a **review by the Information Commissioner**. Applicants have eight weeks from being notified of a decision to ask for this review.
- 9.1.3 If an applicant is not satisfied with the decision of the Information Commissioner or the internal reviewer or if they do not want to take these options they can **apply to the NSW Civil and Administrative Tribunal (NCAT)**. If the applicant has already had a review by the Information Commissioner they have four weeks from notification of the decision to make this application. If they have not had a review by the Information Commissioner they have eight weeks from notification of the decision to make this application.
- 9.2 It is noted that there are no rights of review in respect of informal requests, but the applicant may make a formal application at any time.

Policy

WARRIAGE: This is a preliminary document. It is subject to change without notice. It is not intended to be a contract.



**ITEM NO. 12**

**FILE NO: 20/250460  
EDRMS NO: A2004-0135**

**PRIVACY MANAGEMENT PLAN**

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

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Revoke the Privacy Management Plan dated 28 March 2017 (Minute No. 069);
  - 2) Endorse the revised Privacy Management Plan shown at **(ATTACHMENT 1)**.
- 

**ORDINARY COUNCIL MEETING - 25 AUGUST 2020  
MOTION**

|            |  |
|------------|--|
| <b>164</b> | <p><b>Councillor John Nell<br/>Councillor Glen Dunkley</b></p> <p>It was resolved that Council:</p> <ol style="list-style-type: none"><li>1) Revoke the Privacy Management Plan dated 28 March 2017 (Minute No. 069);</li><li>2) Endorse the revised Privacy Management Plan shown at <b>(ATTACHMENT 1)</b>.</li></ol> |
|------------|--|

The motion was carried.

**BACKGROUND**

The purpose of this report is to seek Council adoption of the revised Privacy Management Plan (the 'PMP').

The Privacy and Personal Information Protection Act 1998 (the 'PPIPA') requires all councils to prepare a Privacy Management Plan outlining their policies and practices to ensure compliance with the requirements of that Act and the Health Records and Information Privacy Act 2002 (the 'HRIPA').

In particular, the object of this plan is to inform:

- The community about how their personal information will be used, stored and accessed after it is collected by the Council; and
- Council staff of their obligations in relation to handling personal information and when they can and cannot disclose, use or collect it.

The Privacy and Personal Information Protection Act 1998 ('PPIPA') provides for the protection of personal information and for the protection of the privacy of individuals.

The Information and Privacy Commission provides a number of online resources and information to assist when reviewing the PMP. Council has accessed these resources when conducting this review.

The changes are relative minor in nature however they assist with ongoing compliance with PPIPA:

- Ensuring alignment with the Privacy Code of Practice.
- Including links throughout the document to Council's website for ease of the reader.
- Ensuring the document is in accordance with the corporate style guide.
- Updating references to Council policies.
- Updating contact details.
- Conducted an overall administrative review, including version control consist with the organisational approach.

**COMMUNITY STRATEGIC PLAN**

| <b>Strategic Direction</b> | <b>Delivery Program 2018-2021</b>                           |
|----------------------------|---|
| Governance                 | Provide strong civic leadership and government regulations. |

**FINANCIAL/RESOURCE IMPLICATIONS**

The implementation of the PMP will be undertaken within existing budget.

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

**LEGAL, POLICY AND RISK IMPLICATIONS**

Council is required to prepare a Privacy Management Plan under Section 33 of the Privacy and Personal Information Act 1998.

| <b>Risk</b>  | <b><u>Risk Ranking</u></b> | <b>Proposed Treatments</b> | <b>Within Existing Resources?</b> |
|--|----------------------------|----------------------------|-----------------------------------|
| There is a risk that Council would be in breach of the Privacy and Personal Information Act 1998, if the Privacy Management Plan is not adopted. | Low                        | Adopt the recommendations. | Yes                               |
| There is a risk that Council may face compliance action without the Privacy Management Plan in place.  | Low                        | Adopt the recommendations. | Yes                               |

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

Nil.

**CONSULTATION**

Consultation with key stakeholders has been undertaken by the Governance Section, through the Information and Privacy Commission's on line resources.

The PMP is not required to be publicly exhibited.

**OPTIONS**

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

**ATTACHMENTS**

- 1) Revised Privacy Management Plan. (Provided under separate cover)

**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

Nil.

**ITEM NO. 13**

**FILE NO: 20/250808  
EDRMS NO: PSC2017-00015**

**INFORMATION PAPERS**

REPORT OF: WAYNE WALLIS - GENERAL MANAGER  
GROUP: GENERAL MANAGER'S OFFICE

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**RECOMMENDATION IS THAT THAT COUNCIL:**

Receives and notes the Information Papers listed below being presented to Council on 25 August 2020.

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| <b>No:</b> | <b>Report Title</b>            | <b>Page:</b> |
|------------|--------------------------------|--------------|
| 1          | July 2020 Cash and Investments | 257          |
| 2          | Council Resolutions            | 260          |

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**ORDINARY COUNCIL MEETING - 25 AUGUST 2020  
MOTION**

|            |   |
|------------|---|
| <b>165</b> | <b>Councillor John Nell<br/>Councillor Glen Dunkley</b><br><br>It was resolved that Council receives and notes the Information Papers listed below being presented to Council on 25 August 2020.<br><hr/> <b>No: Report Title:</b><br><br>1 July 2020 Cash and Investments<br>2 Council Resolutions |
|------------|---|

The motion was carried.

# INFORMATION PAPERS



**ITEM NO. 1**

**FILE NO: 20/244649  
EDRMS NO: PSC2006-6531**

**JULY 2020 CASH AND INVESTMENTS**

REPORT OF: TIM HAZELL - FINANCIAL SERVICES SECTION MANAGER  
GROUP: CORPORATE SERVICES

**BACKGROUND**

The purpose of this report is to present Council's schedule of cash and investments held at 31 July 2020.

**ATTACHMENTS**

- 1) July 2020 Cash and Investments Report. [↓](#)
- 2) July 2020 Cashflow Report. [↓](#)

**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

Nil.

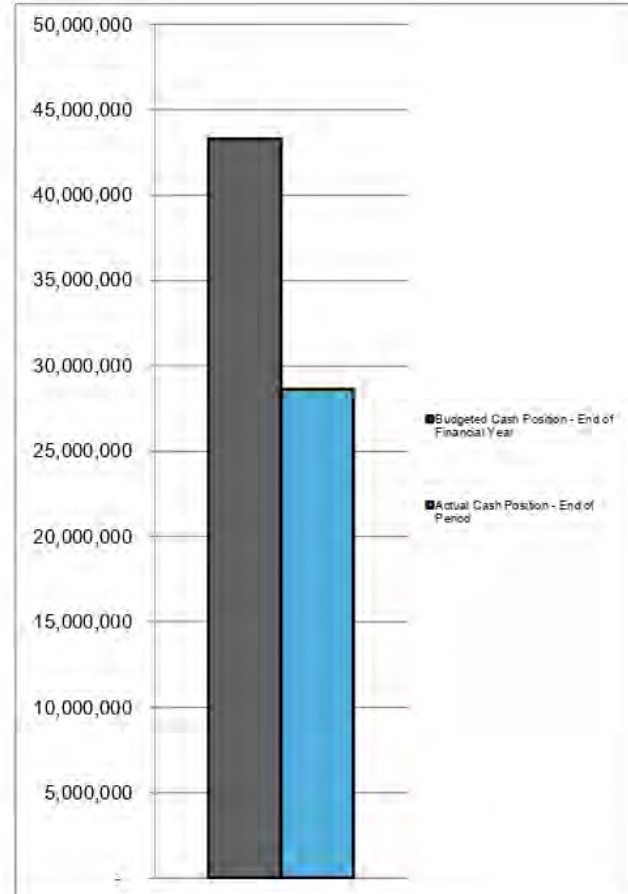
| <b>CASH AND INVESTMENTS HELD AS AT 31 JULY 2020</b>  |               |                |              |                |                  |                 |                        |                     |
|--|---------------|----------------|--------------|----------------|------------------|-----------------|------------------------|---------------------|
| <b>ISSUER</b>  | <b>BROKER</b> | <b>RATING*</b> | <b>DESC.</b> | <b>YIELD %</b> | <b>TERM DAYS</b> | <b>MATURITY</b> | <b>AMOUNT INVESTED</b> | <b>MARKET VALUE</b> |
| <b>TERM DEPOSITS</b>   |               |                |              |                |                  |                 |                        |                     |
| DNISTER UKRANIAN CREDIT UNION CO-OP  | FIIG          | NR             | TD           | 3.00%          | 525              | 5-Aug-20        | 1,000,000              | 1,000,000           |
| AMP BANK   | CURVE         | BBB+           | TD           | 1.90%          | 173              | 10-Aug-20       | 600,000                | 600,000             |
| JUDO BANK  | CURVE         | NR             | TD           | 2.05%          | 362              | 26-Aug-20       | 800,000                | 800,000             |
| JUDO BANK  | CURVE         | NR             | TD           | 2.00%          | 182              | 31-Aug-20       | 300,000                | 300,000             |
| AMP BANK   | LAMINAR       | BBB+           | TD           | 1.65%          | 182              | 25-Nov-20       | 1,250,000              | 1,250,000           |
| JUDO BANK  | CURVE         | NR             | TD           | 2.10%          | 371              | 9-Dec-20        | 600,000                | 600,000             |
| BNK BANK LTD   | CURVE         | NR             | TD           | 1.80%          | 371              | 9-Dec-20        | 1,000,000              | 1,000,000           |
| AMP BANK   | LAMINAR       | BBB+           | TD           | 1.55%          | 188              | 10-Dec-20       | 1,000,000              | 1,000,000           |
| BNK BANK LTD   | CURVE         | NR             | TD           | 1.80%          | 384              | 22-Dec-20       | 1,000,000              | 1,000,000           |
| AUSTRALIAN UNITY BANK  | CURVE         | NR             | TD           | 1.70%          | 337              | 7-Jan-21        | 1,000,000              | 1,000,000           |
| JUDO BANK  | CURVE         | NR             | TD           | 1.60%          | 211              | 7-Jan-21        | 1,000,000              | 1,000,000           |
| BANK OF SYDNEY   | CURVE         | NR             | TD           | 1.99%          | 365              | 18-Feb-21       | 750,000                | 750,000             |
| JUDO BANK  | CURVE         | NR             | TD           | 2.00%          | 363              | 18-Feb-21       | 200,000                | 200,000             |
| AUSTRALIAN MILITARY BANK **  | FARQUHARSON   | NR             | TD           | 1.65%          | 635              | 30-Jun-21       | 1,000,000              | 1,000,000           |
| AUSWIDE BANK   | CURVE         | BBB            | TD           | 1.75%          | 727              | 28-Sep-21       | 1,000,000              | 1,000,000           |
| ICBC   | IMPERIUM      | A              | TD           | 1.62%          | 729              | 13-Oct-21       | 1,000,000              | 1,000,000           |
| AUSWIDE BANK   | IMPERIUM      | BBB            | TD           | 1.65%          | 731              | 15-Oct-21       | 500,000                | 500,000             |
| AUSWIDE BANK   | RIM           | BBB            | TD           | 1.73%          | 701              | 2-Feb-22        | 1,250,000              | 1,250,000           |
| <b>SUB TOTAL (\$)</b>  |               |                |              |                |                  |                 | <b>15,250,000</b>      | <b>15,250,000</b>   |
| TCORP CASH FUND  | TCORP         | AAA            |              |                |                  |                 | 500,000                | 501,795             |
| TCORP MEDIUM TERM GROWTH FUND  | TCORP         | AAA            |              |                |                  |                 | 3,000,000              | 2,977,492           |
| TCORP LONG TERM GROWTH FUND  | TCORP         | AAA            |              |                |                  |                 | 1,000,000              | 982,344             |
| <b>INVESTMENTS TOTAL (\$)</b>  |               |                |              |                |                  |                 | <b>19,750,000</b>      | <b>19,711,631</b>   |
| <b>CASH AT BANK (\$)</b>   |               |                |              |                |                  |                 | <b>8,814,591</b>       | <b>8,814,591</b>    |
| <b>TOTAL CASH AND INVESTMENTS (\$)</b>   |               |                |              |                |                  |                 | <b>28,564,591</b>      | <b>28,526,222</b>   |
| CASH AT BANK INTEREST RATE   |               |                |              | 0.65%          |                  |                 |                        |                     |
| BBSW FOR PREVIOUS 3 MONTHS   |               |                |              | 0.17%          |                  |                 |                        |                     |
| AVG. INVESTMENT RATE OF RETURN ON TDS  |               |                |              | 1.84%          |                  |                 |                        |                     |
| TD = TERM DEPOSIT  |               |                |              |                |                  |                 |                        |                     |
| AC = AT CALL CASH ACCOUNT  |               |                |              |                |                  |                 |                        |                     |
| FRTD = FLOATING RATE TERM DEPOSIT (0.98% ABOVE RBA CASH RATE)  |               |                |              |                |                  |                 |                        |                     |
| *STANDARD AND POORS LONG TERM RATING   |               |                |              |                |                  |                 |                        |                     |
| <b>CERTIFICATE OF RESPONSIBLE ACCOUNTING OFFICER</b>   |               |                |              |                |                  |                 |                        |                     |
| I HEREBY CERTIFY THAT THE INVESTMENTS LISTED ABOVE HAVE BEEN MADE IN ACCORDANCE WITH SECTION 625 OF THE LOCAL GOVERNMENT ACT 1993, CLAUSE 212 OF THE LOCAL GOVERNMENT (GENERAL) REGULATION 2005 AND COUNCIL'S CASH INVESTMENT POLICY |               |                |              |                |                  |                 |                        |                     |
| <b>T HAZELL</b>  |               |                |              |                |                  |                 |                        |                     |



**Cash flow analysis  
31/07/2020**

**CASHFLOW STATEMENT**

|   | YTD                | Notes |
|---|--------------------|-------|
| Opening Cash and Investment 1 July 2020                           | 31,556,475         |       |
| Closing Cash and Investment 31 July 2020                          | 28,607,760         |       |
| <b>Movement in cash</b>   | <b>(2,948,715)</b> |       |
| <b>Movement in cash represented by:</b>                           |                    |       |
| <u>Operating Activities</u>                                       |                    |       |
| Receipts from ratepayers, customers and government authorities    | 10,746,218         |       |
| Payments to suppliers & employees                                 | (11,715,534)       |       |
| Interest received   | 29,988             |       |
| Interest paid   | (52,525)           |       |
| <b>Total</b>  | <b>(991,853)</b>   |       |
| <u>Investing Activities</u>                                       |                    |       |
| Receipts from sale of Infrastructure, Property, Plant & Equipment | -                  |       |
| Payments for Property, Plant & Equipment                          | (1,721,798)        |       |
| <b>Total</b>  | <b>(1,721,798)</b> |       |
| <u>Financing Activities</u>                                       |                    |       |
| Payment of loans  | (235,063)          |       |
| Receipt of new loans  | -                  |       |
| <b>Total</b>  | <b>(235,063)</b>   |       |
| <b>Total Cash Movement</b>  | <b>(2,948,715)</b> |       |
| Plus: Opening Cash and Investment 1 July 2020                     | 31,556,475         |       |
| <b>Closing Cash and Investment 31 July 2020</b>                   | <b>28,607,761</b>  |       |
| Budgeted Cash Movement for the Financial Year                     | 11,708,000         |       |
| Plus Opening Cash and Investment 1 July 2020                      | 31,556,475         |       |
| <b>Budgeted Cash and Investment Position 30 June 2021</b>         | <b>43,264,475</b>  |       |
| In front / (behind) on budget                                     | (14,656,715)       | 1     |

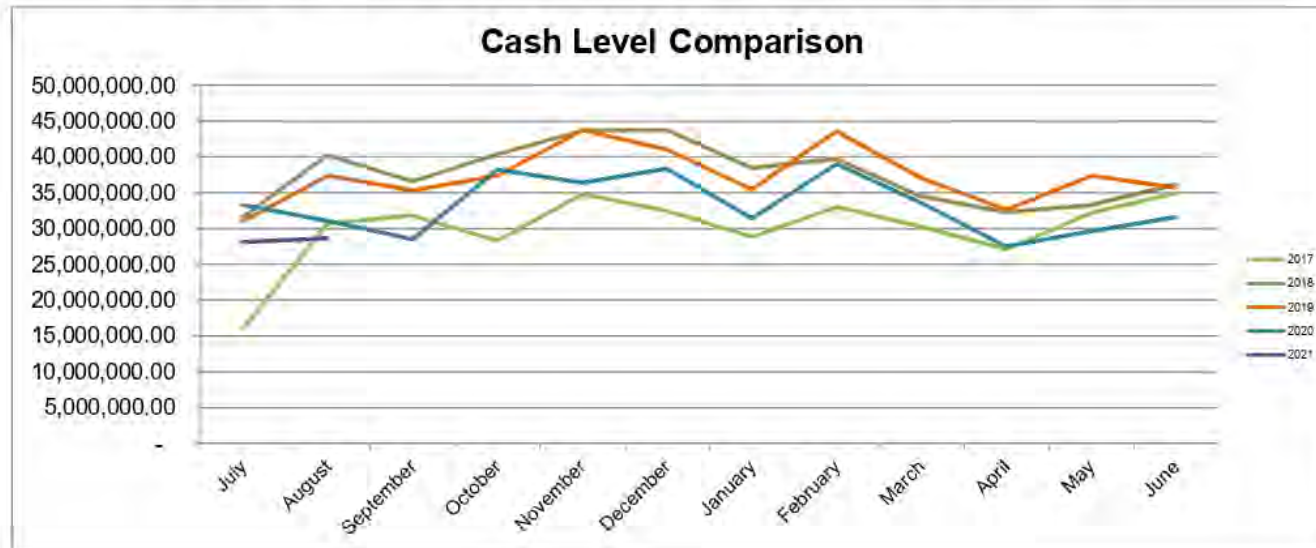


**Notes**

- Council's cash position is down on the budgeted year end position predominately due to the following reasons:
  - Receipt of 1st quarter rates is yet to occur
  - Sale of commercial land sales is yet to be completed

Significant future cash inflows expected in next few months include 2020 1st quarter rates, state road program service charges and new financial year operating grants.

Significant future cash outflows expected in next few months include: smart parking meters, old landfill on Newline rd, James Scott bridge lighting upgrade, smart parking signage and pods, Masonite Rd Tomago upgrade and Korora Oval cricket training facilities.



**ITEM NO. 2**

**FILE NO: 20/246612  
EDRMS NO: PSC2017-00106**

**COUNCIL RESOLUTIONS**

REPORT OF: WAYNE WALLIS - GENERAL MANAGER  
GROUP: GENERAL MANAGER'S OFFICE

**BACKGROUND**

The purpose of this report is to inform the Mayor and Councillors of the status of all matters to be dealt with arising out of the proceedings of previous meetings of the Council in accordance with the Code of Meeting Practice.

**ATTACHMENTS**

- 1) Corporate Services Group report. [↓](#)
- 2) Development Services Group report. [↓](#)
- 3) Facilities & Services Group report. [↓](#)
- 4) General Manager's Office report. [↓](#)

**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

Nil.

**ITEM 2 - ATTACHMENT 1 CORPORATE SERVICES GROUP REPORT.**



|                             |                                     |  |
|-----------------------------|-------------------------------------|--|
| <b>Outstanding</b>          | <b>Division:</b> Corporate Services | <b>Date From:</b> 26/09/2017           |
| <b>Action Sheets Report</b> |                                     | <b>Date To:</b> 11/08/2020             |
|                             |                                     | <b>Printed:</b> Monday, 17 August 2020 |

| Type   | Meeting                        | Officer/Director | Subject  | Est. Compl. | Emailed    | Completed |
|--|--------------------------------|------------------|--|-------------|------------|-----------|
| Report   | Ordinary Council<br>27/03/2018 | Peart, Steven    | COMPULSORY ACQUISITION OF AN EASEMENT FOR ACCESS OVER PART OF 6 GOVERNMENT ROAD, SHOAL BAY | 28/02/2021  | 28/03/2018 |           |
| 13<br>066  |                                | Foster, Carmel   |  |             |            | 18/66656  |
| 17 Aug 2020 - Awaiting Minister's approval to proceed with the compulsory acquisition. |                                |                  |  |             |            |           |

| Type   | Meeting                        | Officer/Director | Subject                                | Est. Compl. | Emailed    | Completed |
|--|--------------------------------|------------------|--|-------------|------------|-----------|
| Report   | Ordinary Council<br>12/02/2019 | Peart, Steven    | King Street, Raymond Terrace Easements | 28/02/2021  | 14/02/2019 |           |
| 3  |                                | Foster, Carmel   |  |             |            | 19/39843  |
| 17 Aug 2020 - Awaiting Minister's approval to proceed with the compulsory acquisition. |                                |                  |  |             |            |           |

| Type   | Meeting                        | Officer/Director | Subject   | Est. Compl. | Emailed    | Completed |
|--|--------------------------------|------------------|---|-------------|------------|-----------|
| Report   | Ordinary Council<br>28/05/2019 | Peart, Steven    | PROPOSED ACQUISITION OF FORMER FIRE STATION SITE - 51 WILLIAM STREET, RAYMOND TERRACE | 28/02/2021  | 29/05/2019 |           |
| 5<br>109   |                                | Foster, Carmel   |   |             |            | 19/148388 |
| 17 Aug 2020 - Approval granted. Proposed Acquisition Notices have been issued to stakeholders. |                                |                  |   |             |            |           |

| Type   | Meeting                        | Officer/Director | Subject  | Est. Compl. | Emailed    | Completed |
|--|--------------------------------|------------------|--|-------------|------------|-----------|
| Report   | Ordinary Council<br>28/05/2019 | Peart, Steven    | COMPULSORY ACQUISITION OF PART OF VICTORIA PARADE RESERVE NELSON BAY FOR ROAD PURPOSES | 28/02/2021  | 29/05/2019 |           |
| 6<br>110   |                                | Foster, Carmel   |  |             |            | 19/148388 |
| 17 Aug 2020 - Awaiting Minister's approval to proceed with the compulsory acquisition. |                                |                  |  |             |            |           |

**ITEM 2 - ATTACHMENT 1 CORPORATE SERVICES GROUP REPORT.**



|                             |                                     |  |
|-----------------------------|-------------------------------------|--|
| <b>Outstanding</b>          | <b>Division:</b> Corporate Services | <b>Date From:</b> 26/09/2017           |
| <b>Action Sheets Report</b> |                                     | <b>Date To:</b> 11/08/2020             |
|                             |                                     | <b>Printed:</b> Monday, 17 August 2020 |

| Type   | Meeting                        | Officer/Director | Subject   | Est. Compl. | Emailed | Completed |
|--|--------------------------------|------------------|---|-------------|---------|-----------|
| Report   | Ordinary Council<br>23/07/2019 | Peart, Steven    | GRANT OF EASEMENTS IN FAVOUR OF AGL - PUNT ROAD, TOMAGO | 30/09/2020  |         |           |
| 7<br>169   |                                | Foster, Carmel   |   |             |         | 19/200498 |
| 17 Aug 2020 - Legal negotiations over contractual terms are ongoing. |                                |                  |   |             |         |           |

| Type  | Meeting                       | Officer/Director | Subject   | Est. Compl. | Emailed   | Completed |
|---|-------------------------------|------------------|---|-------------|-----------|-----------|
| Report  | Ordinary Council<br>8/10/2019 | Peart, Steven    | EASEMENT TO DRAIN WATER - KINGSLEY DRIVE AND CORYULE STREET, BOAT HARBOUR | 30/12/2020  | 9/10/2019 |           |
| 1<br>191  |                               | Foster, Carmel   |   |             |           | 19/331292 |
| 17 Aug 2020 - Plans have been registered with Land Registry Services. |                               |                  |   |             |           |           |

| Type  | Meeting                        | Officer/Director | Subject   | Est. Compl. | Emailed    | Completed |
|---|--------------------------------|------------------|---|-------------|------------|-----------|
| Report  | Ordinary Council<br>11/02/2020 | Peart, Steven    | RENEWAL OF OPTUS LEASE - 9 TARRANT ROAD, SALAMANDER BAY | 30/08/2020  | 12/02/2020 |           |
| 1<br>027  |                                | Foster, Carmel   |   |             |            | 20/39141  |
| 17 Aug 2020 - Documents remain with Optus Legal for execution and registration. |                                |                  |   |             |            |           |

| Type   | Meeting                        | Officer/Director | Subject  | Est. Compl. | Emailed    | Completed |
|--|--------------------------------|------------------|--|-------------|------------|-----------|
| Report   | Ordinary Council<br>11/02/2020 | Peart, Steven    | COMPULSORY ACQUISITION OF PART 879 SWAN BAY ROAD, SWAN BAY FOR ROAD WIDENING PURPOSE | 25/02/2021  | 12/02/2020 |           |
| 2<br>028   |                                | Foster, Carmel   |  |             |            | 20/39141  |
| 17 Aug 2020 - Awaiting Minister's approval to proceed with the compulsory acquisition. |                                |                  |  |             |            |           |

**ITEM 2 - ATTACHMENT 1 CORPORATE SERVICES GROUP REPORT.**



|                             |                                     |  |
|-----------------------------|-------------------------------------|--|
| <b>Outstanding</b>          | <b>Division:</b> Corporate Services | <b>Date From:</b> 26/09/2017           |
| <b>Action Sheets Report</b> |                                     | <b>Date To:</b> 11/08/2020             |
|                             |                                     | <b>Printed:</b> Monday, 17 August 2020 |

| Type  | Meeting                        | Officer/Director | Subject   | Est. Compl. | Emailed | Completed |
|---|--------------------------------|------------------|---|-------------|---------|-----------|
| Report  | Ordinary Council<br>14/07/2020 | Hazell, Tim      | Additional items for 2020/2021 Fees and Charges | 25/08/2020  |         |           |
| 6   |                                | Foster, Carmel   |   |             |         | 20/192934 |
| 127   |                                |                  |   |             |         |           |
| 17 Aug 2020 - Serving public exhibition period. |                                |                  |   |             |         |           |

| Type  | Meeting                        | Officer/Director | Subject                                   | Est. Compl. | Emailed | Completed |
|---|--------------------------------|------------------|---|-------------|---------|-----------|
| Report  | Ordinary Council<br>14/07/2020 | Hazell, Tim      | Policy Review: Debt Recovery and Hardship | 28/08/2020  |         |           |
| 9   |                                | Foster, Carmel   |   |             |         | 20/192934 |
| 131   |                                |                  |   |             |         |           |
| 17 Aug 2020 - Further investigation into funding sources ongoing. |                                |                  |   |             |         |           |

| Type   | Meeting                        | Officer/Director | Subject                                       | Est. Compl. | Emailed | Completed |
|--|--------------------------------|------------------|---|-------------|---------|-----------|
| Report   | Ordinary Council<br>11/08/2020 | Pattison, Zoe    | POLICY REVIEW: WORKPLACE SURVEILLIANCE POLICY | 10/09/2020  |         |           |
| 5  |                                | Foster, Carmel   |   |             |         | 20/252451 |
| 144  |                                |                  |   |             |         |           |
| 17 Aug 2020 - Policy now serving public exhibition period. |                                |                  |   |             |         |           |

**ITEM 2 - ATTACHMENT 2 DEVELOPMENT SERVICES GROUP REPORT.**



|                             |                                       |  |
|-----------------------------|---------------------------------------|--|
| <b>Outstanding</b>          | <b>Division:</b> Development Services | <b>Date From:</b> 26/09/2017           |
| <b>Action Sheets Report</b> |                                       | <b>Date To:</b> 11/08/2020             |
|                             |                                       | <b>Printed:</b> Friday, 14 August 2020 |

| Type  | Meeting                        | Officer/Director  | Subject  | Est. Compl. | Emailed    | Completed |
|---|--------------------------------|-------------------|--|-------------|------------|-----------|
| Report  | Ordinary Council<br>11/02/2020 | Drinan, Kate      | Development Application 16-2019-270-1 for the demolition of existing structures and construction of a new single storey dwelling and garage at 862 Paterson Road, WOODVILLE Lot:510 DP:1150491 | 30/10/2020  | 12/02/2020 |           |
| 1   |                                | Crosdale, Timothy |  |             |            | 20/39141  |
| 006   |                                |                   |  |             |            |           |
| 13 Aug 2020 - Council resolved to defer this item. A further report is scheduled for Council in October 2020. |                                |                   |  |             |            |           |

| Type   | Meeting                        | Officer/Director  | Subject  | Est. Compl. | Emailed | Completed |
|--|--------------------------------|-------------------|--|-------------|---------|-----------|
| Report   | Ordinary Council<br>14/07/2020 | Drinan, Kate      | DA 16-2019-598-1 for a camping ground (50 camp sites) with amenities and kitchen at 47 The Bucketts Way, Twelve Mile Creek | 30/08/2020  |         |           |
| 1  |                                | Crosdale, Timothy |  |             |         | 20/192934 |
| 13 Aug 2020 - Council resolved to defer this item. A further report is scheduled for Council in August 2020. |                                |                   |  |             |         |           |



**ITEM 2 - ATTACHMENT 3 FACILITIES & SERVICES GROUP REPORT.**



|                             |  |  |
|-----------------------------|--|--|
| <b>Outstanding</b>          | <b>Division:</b> Facilities & Services | <b>Date From:</b> 26/09/2017           |
| <b>Action Sheets Report</b> |  | <b>Date To:</b> 11/08/2020             |
|                             |  | <b>Printed:</b> Friday, 14 August 2020 |

| Type  | Meeting                     | Officer/Director | Subject   | Est. Compl. | Emailed    | Completed |
|---|-----------------------------|------------------|---|-------------|------------|-----------|
| Report  | Ordinary Council 27/03/2018 | Gutsche, Tammy   | Lease of grounds of 43, 45, 47 and 47A Tanilba Avenue Tanilba Bay (Lot 238, Lot 270 and Lot 271 DP753194, Lot 342 DP704442) to Calvary Retirement Communities Hunter-Manning Limited ACN 102625212. | 31/08/2020  | 28/03/2018 |           |
| 14<br>067   |                             | Kable, Gregory   |   |             |            | 18/66656  |
| 7 Aug 2020 - Signed lease received from Crown Lands to be signed by Calvary Care. Written consent has been received from NSW Local Aboriginal Land Council. |                             |                  |   |             |            |           |

| Type   | Meeting                    | Officer/Director | Subject  | Est. Compl. | Emailed | Completed |
|--|----------------------------|------------------|--|-------------|---------|-----------|
| Report   | Ordinary Council 9/07/2019 | Maretich, John   | ROCK REVETMENT AT KANGAROO POINT, SOLDIERS POINT | 1/07/2021   |         |           |
| 2<br>155   |                            | Kable, Gregory   |  |             |         | 19/186501 |
| 14 Aug 2020 - • NSW Department of Planning, Industry and Environment (DPIE) have made clear that State funding for coastal protection works is contingent on the development and endorsement of the Port Stephens Coastal Management Program (CMP). • In terms of CMP priorities, it is expected that this area will be a low priority for protective works given the width of the foreshore reserve, the relatively sheltered location and the peaty makeup of the natural shoreline. |                            |                  |  |             |         |           |

| Type  | Meeting                     | Officer/Director | Subject  | Est. Compl. | Emailed    | Completed |
|---|-----------------------------|------------------|--|-------------|------------|-----------|
| Report  | Ordinary Council 10/12/2019 | Maretich, John   | Exemption for environmental approvals for non-maintenance road improvement works | 31/08/2020  | 11/12/2019 |           |
| 2<br>259  |                             | Kable, Gregory   |  |             |            | 19/388450 |
| 14 Aug 2020 - Currently compiling information to form part of letter to the NSW State Government requesting an exemption for environmental approvals for non-maintenance road improvement works that occur in coastal management (or buffer) areas. |                             |                  |  |             |            |           |

**ITEM 2 - ATTACHMENT 3 FACILITIES & SERVICES GROUP REPORT.**



|                             |  |  |
|-----------------------------|--|--|
| <b>Outstanding</b>          | <b>Division:</b> Facilities & Services | <b>Date From:</b> 26/09/2017           |
| <b>Action Sheets Report</b> |  | <b>Date To:</b> 11/08/2020             |
|                             |  | <b>Printed:</b> Friday, 14 August 2020 |

| Type  | Meeting                        | Officer/Director | Subject              | Est. Compl. | Emailed    | Completed |
|---|--------------------------------|------------------|----------------------|-------------|------------|-----------|
| Report  | Ordinary Council<br>10/12/2019 | Maretich, John   | Solar Infrastructure | 8/12/2020   | 11/12/2019 |           |
| 6<br>264  |                                | Kable, Gregory   |                      |             |            | 19/388450 |
| <p>14 Aug 2020 - External consultant has undertaken a review of Council's facilities to determine where the energy consumption could be reduced. Methods to reduce energy consumption includes light replacement and also the expansion of solar panels to change where we gain energy from. The external consultant has presented a draft report that does show the potential to reduce our carbon footprint and reduce energy consumption expenditures. The draft report requires further work to check the assumptions used. There are also a number of options to fund the project that also need some investigation.</p> |                                |                  |                      |             |            |           |

| Type  | Meeting                        | Officer/Director | Subject                               | Est. Compl. | Emailed    | Completed |
|---|--------------------------------|------------------|---------------------------------------|-------------|------------|-----------|
| Report  | Ordinary Council<br>10/12/2019 | Gutsche, Tammy   | GREEN WASTE DROP OFF - SALAMANDER BAY | 26/03/2021  | 11/12/2019 |           |
| 7<br>265  |                                | Kable, Gregory   |                                       |             |            | 19/388450 |
| <p>7 Aug 2020 - Feasibility report will be prepared with the Waste Management Strategy.</p> |                                |                  |                                       |             |            |           |

| Type   | Meeting                        | Officer/Director | Subject                | Est. Compl. | Emailed    | Completed |
|--|--------------------------------|------------------|------------------------|-------------|------------|-----------|
| Report   | Ordinary Council<br>25/02/2020 | Maretich, John   | Indoor Sports Facility | 30/06/2021  | 26/02/2020 |           |
| 4<br>042   |                                | Kable, Gregory   |                        |             |            | 20/50488  |
| <p>14 Aug 2020 - Undertake community consultation and needs analysis as per the background of the NOM. Noting that COVID 19 has made this consultation difficult for this project.</p> |                                |                  |                        |             |            |           |

**ITEM 2 - ATTACHMENT 3 FACILITIES & SERVICES GROUP REPORT.**



|                             |  |  |
|-----------------------------|--|--|
| <b>Outstanding</b>          | <b>Division:</b> Facilities & Services | <b>Date From:</b> 26/09/2017           |
| <b>Action Sheets Report</b> |  | <b>Date To:</b> 11/08/2020             |
|                             |  | <b>Printed:</b> Friday, 14 August 2020 |

| Type  | Meeting                        | Officer/Director | Subject                              | Est. Compl. | Emailed    | Completed |
|---|--------------------------------|------------------|--------------------------------------|-------------|------------|-----------|
| Report  | Ordinary Council<br>12/05/2020 | Maretich, John   | Smart Parking Infrastructure Program | 30/10/2020  | 14/05/2020 |           |
| 7   |                                | Kable, Gregory   |                                      |             |            | 20/138521 |
| <p>14 Aug 2020 - The finer details of Smart Parking are still underway. Works including:</p> <ul style="list-style-type: none"> <li>* Digital Signage Design</li> <li>* Finalisation of sensor pad locations</li> </ul> <p>Hardware for the Rangers module (Senforce) is expected to be delivered early next week. This will allow Rangers and ICT staff to test the Senforce equipment in a test environment prior to rolling out in a live environment. Ongoing discussions continue with Civil Assets, ICT and Ranger staff.</p> |                                |                  |                                      |             |            |           |

| Type   | Meeting                       | Officer/Director | Subject                                   | Est. Compl. | Emailed    | Completed |
|--|-------------------------------|------------------|---|-------------|------------|-----------|
| Report   | Ordinary Council<br>9/06/2020 | Maretich, John   | Naming of Pathway, Gan Gan Road, Anna Bay | 30/09/2020  | 10/06/2020 |           |
| 1  |                               | Kable, Gregory   |   |             |            | 20/164033 |
| 101  |                               |                  |   |             |            |           |
| <p>14 Aug 2020 - Civil Assets Manager - Adam Stewart extended target date due to project priorities.</p> |                               |                  |   |             |            |           |

| Type  | Meeting                        | Officer/Director | Subject   | Est. Compl. | Emailed | Completed |
|---|--------------------------------|------------------|---|-------------|---------|-----------|
| Report  | Ordinary Council<br>14/07/2020 | Maretich, John   | REVIEW OF THE OFF LEASH DOG AREAS AND TIMES AT ANNA BAY / BIRUBI POINT, FISHERMANS BAY AND BOAT HARBOUR | 31/01/2021  |         |           |
| 1   |                                | Kable, Gregory   |   |             |         | 20/192934 |
| 138   |                                |                  |   |             |         |           |
| <p>14 Aug 2020 - A review to identify suitable sites for fenced off lead areas. A report will be provided as per the background of the NOM. This is currently scheduled for completion in September 2020.</p> |                                |                  |   |             |         |           |

| Type  | Meeting                        | Officer/Director | Subject          | Est. Compl. | Emailed | Completed |
|---|--------------------------------|------------------|------------------|-------------|---------|-----------|
| Report  | Ordinary Council<br>14/07/2020 | Maretich, John   | Tomaree Headland | 31/12/2020  |         |           |
| 2   |                                | Kable, Gregory   |                  |             |         | 20/192934 |
| 139   |                                |                  |                  |             |         |           |
| <p>14 Aug 2020 - Preliminary work involves consultation with land owners and agencies. Report will be provided.</p> |                                |                  |                  |             |         |           |

**ITEM 2 - ATTACHMENT 4 GENERAL MANAGER'S OFFICE REPORT.**



|                             |   |  |
|-----------------------------|---|--|
| <b>Outstanding</b>          | <b>Division:</b> General Manager's Office | <b>Date From:</b> 26/09/2017           |
| <b>Action Sheets Report</b> |   | <b>Date To:</b> 11/08/2020             |
|                             |   | <b>Printed:</b> Friday, 14 August 2020 |

| Type   | Meeting                        | Officer/Director | Subject  | Est. Compl. | Emailed | Completed |
|--|--------------------------------|------------------|--|-------------|---------|-----------|
| Report   | Ordinary Council<br>11/08/2020 | Wickham, Tony    | POLICY REVIEW:<br>MANAGING<br>UNREASONABLE<br>COMPLAINANT<br>CONDUCT | 25/08/2020  |         |           |
| 6<br>145   |                                | Wallis, Wayne    |  |             |         | 20/252451 |
| 14 August 2020 – On public exhibition until 11 September 2020. |                                |                  |  |             |         |           |

# NOTICES OF MOTION

**NOTICE OF MOTION**

**ITEM NO. 1**

**FILE NO: 20/250790  
EDRMS NO: PSC2017-00019**

**NATIONAL CABINET**

**COUNCILLOR: GIACOMO ARNOTT**

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**THAT COUNCIL:**

- 1) Send a letter to the Hon. Gladys Berejiklian – Premier of NSW, Meryl Swanson MP – Federal Member for Paterson and Kate Washington – State Member for Port Stephens, which highlights the Council’s disappointment that local government is not represented on the newly formed National Cabinet and seeks their assistance in requesting that the Premier and Prime Minister review the decision to exclude local government.
- 2) Notes that the Australian Local Government Association, Local Government NSW and other state/territory local government associations will continue to advocate for local government representation on the National Cabinet and for local government’s interests in all relevant forums.

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**ORDINARY COUNCIL MEETING - 25 AUGUST 2020  
MOTION**

|            |  |
|------------|--|
| <b>166</b> | <p><b>Councillor Giacomo Arnott<br/>Mayor Ryan Palmer</b></p> <p>It was resolved that Council:</p> <ol style="list-style-type: none"><li>1) Send a letter to the Hon. Gladys Berejiklian – Premier of NSW, Meryl Swanson MP – Federal Member for Paterson and Kate Washington – State Member for Port Stephens, which highlights the Council’s disappointment that local government is not represented on the newly formed National Cabinet and seeks their assistance in requesting that the Premier and Prime Minister review the decision to exclude local government, post COVID.</li><li>2) Notes that the Australian Local Government Association, Local Government NSW and other state/territory local government associations will continue to advocate for local government representation on the National Cabinet and for local government’s interests in all relevant forums.</li></ol> |
|------------|--|

The motion was carried.

**BACKGROUND REPORT OF: TONY WICKHAM – GOVERNANCE SECTION MANAGER****BACKGROUND**

On 13 March 2020, as the Coronavirus pandemic took hold around the world, the Council of Australian Governments (COAG) met in Sydney to discuss a range of issues of national importance. At that meeting First Ministers (the Prime Minister, Premiers and Chief Ministers) agreed to establish a National Cabinet to meet at least weekly to address the country's response to the coronavirus.

The focus was primarily on the health and wellbeing of Australians and managing the health response. Over time National Cabinet has broadened its agenda to include a focus on managing coronavirus impacts across Australia. There was no Local Government representation on National Cabinet when it was established on the basis that its focus was on health.

On 29 May 2020, First Ministers, through the Prime Minister, announced the continuation of National Cabinet, which they considered to be a much more effective body than COAG for taking decisions in the national interest. Local Government was not given a seat at the National Cabinet table. However, Australian Local Government Association (ALGA) as the national representative body of Local Government, was given a seat on the National Federation Reform Council (NFRC). The NFRC will meet once a year to focus on priority national federation issues such as Closing the Gap and Women's Safety. In addition to ALGA, the NFRC is comprised of the National Cabinet and the Council of Federal Financial Relations – Federal and State/Territory Treasurers.

The ALGA Board is advocating strongly for the inclusion of a local government representative in the National Cabinet: a representative whose first and foremost consideration is the impact of decisions on councils and the communities they represent.

**FINANCIAL/RESOURCE IMPLICATIONS**

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

**ATTACHMENTS**

Nil.

There being no further business the meeting closed at 9.53pm.