

# NOTICE OF ORDINARY MEETING

## 13 OCTOBER 2020



### PORT STEPHENS COUNCIL

The Mayor and Councillors attendance is respectfully requested:

Mayor: R Palmer (Chair).

Councillors: J Abbott, G Arnott, C Doohan, G Dunkley, K Jordan, P Le Mottee, J Nell, S Smith, S Tucker.

#### SCHEDULE OF MEETINGS

TIME	ITEM	VENUE
5:30pm:	Public Access (if applied for)	Council Chambers
Followed by:	Ordinary Meeting	Council Chambers

#### Please Note:

In accordance with the NSW Privacy and Personal Information Protection Act 1998, you are advised that all discussion held during the Open Council meeting is public information. This will include any discussion involving the Mayor, a Councillor, staff member or a member of the public. All persons present should withhold from making public comments about another individual without seeking the consent of that individual in the first instance. Should you have any questions concerning the privacy of individuals at the meeting, please speak with the Governance Section Manager or the General Manager prior to the meeting.

Please be aware that Council webcasts its Open Council meetings via its website. All persons should refrain from making any defamatory remarks. Council accepts no liability for any defamatory remarks made during the course of the Council meeting.

For the safety and wellbeing of the public, no signs, placards or other props made from material other than paper will be permitted in the Council Chamber. No material should be larger than A3 in size.

Food and beverages are not permitted in the Council Chamber.



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## **BUSINESS**

- 1) Opening meeting.
- 2) Prayer - We ask Almighty God to give us wisdom and courage so we can serve our community, and uphold justice and equality in Port Stephens. Amen.
- 3) Acknowledgement of Country - Today, we are meeting on Worimi Country, we acknowledge the past, we are working towards a better tomorrow.
- 4) Apologies and applications for a leave of absence by Councillors.
- 5) Confirmation of minutes. Ordinary Meeting of 22 September 2020.
- 6) Disclosure of interests.
- 7) Mayoral minute(s) – if submitted
- 8) Motions to close meeting to the public – if submitted
- 9) Reports to Council
- 10) General Manager reports – if submitted
- 11) Questions with Notice – if submitted
- 12) Questions on Notice
- 13) Notices of Motions – if submitted
- 14) Rescission Motions – if submitted
- 15) Confidential matters – if submitted
- 16) Conclusion of the meeting.

## **PRINCIPLES FOR LOCAL GOVERNMENT**

Port Stephens Council is a local authority constituted under the Local Government Act 1993. The Act includes the Principles for Local Government for all NSW Councils.

The object of the principles for councils is to provide guidance to enable councils to carry out their functions in a way that facilitates local communities that are strong, healthy and prosperous.

### **Guiding principles for Council**

#### **1. Exercise of functions generally**

The following general principles apply to the exercise of functions by Council. Council should:

- (a) provide strong and effective representation, leadership, planning and decision-making.
- (b) carry out functions in a way that provides the best possible value for residents and ratepayers.
- (c) plan strategically, using the integrated planning and reporting framework, for the provision of effective and efficient services and regulation to meet the diverse needs of the local community.
- (d) apply the integrated planning and reporting framework in carrying out their functions so as to achieve desired outcomes and continuous improvements.
- (e) work co-operatively with other councils and the State government to achieve desired outcomes for the local community.
- (f) manage lands and other assets so that current and future local community needs can be met in an affordable way.
- (g) work with others to secure appropriate services for local community needs.
- (h) act fairly, ethically and without bias in the interests of the local community.
- (i) be responsible employers and provide a consultative and supportive working environment for staff.

#### **2. Decision-making**

The following principles apply to decision-making by Council (subject to any other applicable law). Council should:

- (a) recognise diverse local community needs and interests.
- (b) consider social justice principles.
- (c) consider the long term and cumulative effects of actions on future generations.
- (d) consider the principles of ecologically sustainable development.
- (e) Council decision-making should be transparent and decision-makers are to be accountable for decisions and omissions.

### 3. Community participation

Council should actively engage with their local communities, through the use of the integrated planning and reporting framework and other measures.

#### **Principles of sound financial management**

The following principles of sound financial management apply to Council. Council should:

- (a) spend responsible and sustainable, aligning general revenue and expenses.
- (b) invest in responsible and sustainable infrastructure for the benefit of the local community.
- (c) have effective financial and asset management, including sound policies and processes for the following:
  - (i) performance management and reporting,
  - (ii) asset maintenance and enhancement,
  - (iii) funding decisions,
  - (iv) risk management practices.
- (d) have regard to achieving intergenerational equity, including ensuring the following:
  - (i) policy decisions are made after considering their financial effects on future generations,
  - (ii) the current generation funds the cost of its services.

#### **Integrated planning and reporting principles that apply to Council**

The following principles for strategic planning apply to the development of the integrated planning and reporting framework by Council. Council should:

- (a) identify and prioritise key local community needs and aspirations and consider regional priorities.
- (b) identify strategic goals to meet those needs and aspirations.
- (c) develop activities, and prioritise actions, to work towards the strategic goals.
- (d) ensure that the strategic goals and activities to work towards them may be achieved within council resources.
- (e) regularly review and evaluate progress towards achieving strategic goals.
- (f) maintain an integrated approach to planning, delivering, monitoring and reporting on strategic goals.
- (g) collaborate with others to maximise achievement of strategic goals.
- (h) manage risks to the local community or area or to the council effectively and proactively.
- (i) make appropriate evidence-based adaptations to meet changing needs and circumstances.

## PORT STEPHENS COMMUNITY STRATEGIC PLAN

The Local Government Act requires Council to adopt a Community Strategic Plan (10+ years). The Plan includes a Delivery Program (3 years), Annual Operational Plan and a Resource Strategy, it also includes the Council's budget.

The Community Strategic Plan is organised into four focus areas:

**OUR COMMUNITY** – Port Stephens is a thriving and strong community respecting diversity and heritage.

**OUR PLACE** – Port Stephens is a liveable place supporting local economic growth.

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

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

## BUSINESS EXCELLENCE

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

These outcomes align with the following Business Excellence principles:

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



## MEETING PROCEDURES SUMMARY

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

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

### **Declarations of Interest**

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

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

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

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

### **Motions and Amendments**

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

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

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

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

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

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

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

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

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

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

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

A Point of Order can be raised where:

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

## Declarations of Conflict of Interest – Definitions

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

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

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

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



## Form of Special Disclosure of Pecuniary Interest

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

### Important information

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

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

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

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

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

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

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

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

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

to be held on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

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

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

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

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Proposed change of zone/planning control [Insert name of proposed LEP and identify proposed change of zone/planning control applying to the subject land]	
Effect of proposed change of zone/planning control on councillor or associated person [Insert one of the following: "Appreciable financial gain" or "Appreciable financial loss"]	

[If more than one pecuniary interest is to be declared, reprint the above box and fill in for each additional interest.]

Mayor/Councillor's signature \_\_\_\_\_

Date \_\_\_\_\_

[This form is to be retained by the council's general manager and included in full in the minutes of the meeting]



## Declaration of Interest form

Agenda item No. \_\_\_\_\_

Report title \_\_\_\_\_

Mayor/Councillor \_\_\_\_\_ declared a

Tick the relevant response:

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

in this item. The nature of the interest is \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

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

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

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

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





# COUNCIL REPORTS



ITEM NO. 1

FILE NO: 20/240818  
EDRMS NO: 58-2018-24-1

**NELSON BAY TOWN CENTRE AMENDMENT TO THE PORT STEPHENS LOCAL ENVIRONMENTAL PLAN 2013**

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 5)**.
- 2) Authorise the exercise of delegations to make the amendment to the Port Stephens Local Environmental Plan 2013 under Section 3.36 of the Environmental Planning and Assessment Act 1979 (NSW) **(ATTACHMENT 2)**.

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**BACKGROUND**

The purpose of this report is to advise Council of the outcome of the exhibition of the amendments to the Port Stephens Local Environmental Plan 2013 which will implement significant actions from Progressing the Town Centre and Foreshore Strategy: A revised implementation and delivery program (Delivery Program), as summarised in **(ATTACHMENT 1)**.

Amendments to the Port Stephens Local Environmental Plan 2013 were exhibited concurrently with proposed amendments to the Port Stephens Development Control Plan (the DCP Amendment). As a result of the exhibition process, additional changes are proposed to the DCP Amendment, which will be reported to Council to align with the plan making timeframes for the amendment to the Port Stephens Local Environmental Plan 2013 (LEP 2013) (the LEP Amendment) **(ATTACHMENT 2)**, if endorsed.

The report seeks Council approval for authorisation to exercise delegations to make the LEP Amendment **(ATTACHMENT 2)**. The LEP Amendments are actions in the adopted Delivery Program to change the development standards for building height, and to introduce new requirements for floor space ratio, active street frontages, and appropriate vertical to horizontal proportions for new buildings in the town centre.

Extensive consultation with the community has informed a community vision for Nelson Bay Town Centre that will enhance the character of Nelson Bay and promote a vibrant town centre. The actions to achieve this vision are outlined in the Delivery Program which was adopted by Council on 25 September 2018 (minute no. 095) **(ATTACHMENT 3)**.

Since the Delivery Program was adopted, 23 out of the 33 actions of the Delivery Program have been implemented, including:

- \$1.85million extension of Yacaaba Street to improve connectivity between the town centre and foreshore.
- The Apex Park master plan has created a more attractive, community focused park.
- The Donald Street multi-storey car park has been demolished and replaced with a new ground level car park.
- The Nelson Bay Public Domain Plan has been endorsed and will create a people friendly town centre through a range of actions including car parking, transport and movement improvements, public domain improvements, and public space upgrades.
- The Independent Citizens Parking Panel has prepared a report which is being used to inform traffic and parking improvements including Smart Parking.
- Smart Parking roll out and implementation of the Nelson Bay Public Domain Plan and Citizens Parking Panel has been endorsed by Council in May 2020.
- Establishment of the Port Stephens Urban Design Panel in December 2019.
- Implementation of Council's Economic Development and Tourism Strategy.

These actions, and the outcomes achieved by the DCP and LEP Amendments, will enhance the vitality, viability and sustainability of the Bay as a regional centre in the Hunter.

As envisaged by the Delivery Program, all of these actions are designed to be implemented concurrently with the proposed changes to planning controls to deliver on the future vision for Nelson Bay. As detailed in **(ATTACHMENT 5)**, the implementation of these key actions also address many of the issues raised in objection to the proposed planning controls. In addition, the proposed planning controls are consistent with the regional and local strategic planning framework, including Council's recently adopted Local Strategic Planning Statement and Local Housing Strategy.

At its meeting on 25 September 2018, Council resolved to adopt the planning proposal and forward it to the NSW Department of Planning and Environment (now the NSW Department of Planning, Industry and Environment) (the Department) for a Gateway determination (minute no. 095) **(ATTACHMENT 3)**.

On 17 March 2020, the Department issued a Gateway determination, subject to conditions requiring the planning proposal to be updated prior to exhibition **(ATTACHMENT 4)**. In accordance with the Gateway determination, the planning proposal was updated to:

- Include an urban design analysis;
- Describe how social infrastructure requirements had been considered;
- Describe how traffic and transport had been considered;

- Clarify the intention and wording of clauses proposed to be amended or added to the LEP 2013;
- Address consistency with section 9.1 Direction 2.2 – Coastal Management;
- Provide further details on amended planning controls on land classified as community land; and
- Include an outline of the Nelson Bay Strategy boundary on proposed LEP maps.

The Gateway determination authorises Council to make the necessary amendments to the LEP to give effect to the planning proposal following public exhibition.

The DCP and LEP Amendments were publicly exhibited from 3 July 2020 to 14 August 2020 and 136 submissions were received. In accordance with the Gateway determination, the LEP Amendment was reviewed by a number of public authorities. A summary of submissions is at **(ATTACHMENT 5)**.

### **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		
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 recommendation 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 if the Amendments are not made the community vision for Nelson Bay Town Centre will not be achieved.	High	Authorise the exercise of delegations to make the LEP Amendment.	Yes
There is a risk the LEP Amendment will not commence at the same time as the DCP Amendment.	Low	Reporting the DCP Amendment to Council for adoption will be timed with the gazettal of the LEP Amendment (if made). Gazettal of an LEP amendment generally takes 2 to 3 months after adoption.	Yes

#### Environmental Planning and Assessment Act 1979

Part 3 of the Environmental Planning and Assessment Act 1979 (EP&A Act) provides the framework for amending a local environmental plan. The Department issued a Gateway determination under Section 3.34 of the Act specifying that the planning proposal should proceed to exhibition, subject to conditions and consultation requirements. The planning proposal was updated and exhibited for a minimum of 28 days in accordance with the Gateway determination.

The Gateway determination (**ATTACHMENT 4**) issued by the Department authorises Council to act as the local plan making authority to make the plan. Should Council adopt the recommendations, arrangements will be made for the drafting of the amendment to the LEP 2013 to give effect to the planning proposal.

#### Hunter Regional Plan

The aims of the Hunter Regional Plan (HRP) are to encourage initiatives that revitalise centres, improve housing choice, and make better use of existing infrastructure. The HRP lists Nelson Bay as a regionally significant centre with the following priorities:

- Maintain it as one of the primary tourist centres for the region and a hub for the Tomaree Peninsula.
- Maintain retail and professional services for the surrounding communities.
- Investigate opportunities for high-density development that maintains and enhances the tourist, recreational and residential appeal of the centre.
- Balance the mix of permanent residential and tourist accommodation to enhance the vibrancy and appeal of the centre and surrounds.

The Amendments are consistent with these priorities in the HRP.

#### Port Stephens Local Strategic Planning Statement

The Port Stephens Local Strategic Planning Statement (LSPS) was adopted by Council on 14 July 2020. The LEP Amendment is consistent with Actions 1.3 and 5.1 in the LSPS.

#### Live Port Stephens

Live Port Stephens (LPS) was adopted by Council on 14 July 2020. The LEP Amendment is consistent with action 5, action 15, and priorities 1.3, 3.1, 4.1 and 4.2 of LPS.

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

The Amendment to the LEP will:

1. Change height limits in Nelson Bay Town Centre in accordance with the adopted Delivery Program.
2. Set floor space ratios in Nelson Bay Town Centre in accordance with the adopted Delivery Program.
3. Set minimum vertical to horizontal proportions for new buildings to limit tall and skinny developments by encouraging existing lots that are less than 15m wide and 35m long to amalgamate in order to re-develop in accordance with the adopted Delivery Program.
4. Include provisions for active street frontages in the areas identified in the adopted Delivery Program.

#### Progressing the Nelson Bay Town Centre and Foreshore Strategy: A revised implementation and delivery program

The Delivery Program was adopted by Council on 25 September 2018 (minute no. 95) (**ATTACHMENT 3**). The LEP Amendment is necessary to implement the actions in the Delivery Program to change the development standards for building height, floor space ratio and to introduce new requirements for active street frontages and appropriate vertical to horizontal proportions for new buildings in the town centre. This is detailed in actions 1, 2 and 7 of the Delivery Program.

#### **SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

The LEP Amendment will have overall positive environmental, social and economic implications. It will ensure that the land use planning framework for the Nelson Bay Town Centre accommodates growth and facilitates an activated centre.

The LEP Amendment aims to achieve improved economic and environmental outcomes by promoting built form solutions that are consistent with the NSW Government Architect's Better Placed Guide and by encouraging private investment in the Nelson Bay Town Centre.

## **CONSULTATION**

The LEP Amendment gives effect to the outcomes and actions in the adopted Delivery Program. Community and stakeholder consultation on the vision for the Nelson Bay Town Centre has been ongoing since 2017. In that time, surveys, a discussion paper, letter drops, stakeholder meetings, and other initiatives have been used to inform the community vision in the Delivery Program that the LEP Amendment seeks to achieve.

### Internal

Consultation with internal stakeholders has been undertaken to inform the preparation of the LEP Amendment, including Development Engineering Unit, Development Assessment and Compliance Section, and the Economic Development and Tourism Unit. No objections were identified with the LEP Amendment.

### External

The Amendments were placed on public exhibition for 42 days from 3 July 2020 to 14 August 2020. The Gateway determination required the LEP Amendment to be exhibited for a minimum 28 days.

A notice was placed in the Port Stephens Examiner and copies of the exhibition material were made available on the Council website, at the Council administration building, and Council libraries.

The following public authorities were consulted during exhibition and in accordance with the Gateway determination:

- Ausgrid
- Hunter Water Corporation
- NSW Rural Fire Services
- Transport for NSW
- Crown Land in NSW
- NSW Government Architect.

Transport for NSW (TfNSW) requested additional information in relation to potential impacts to the State main road network, however confirmed that the agency did not object to the planning proposal. A summary of comments is provided at **(ATTACHMENT 5)**.



No comments were received from Ausgrid, Hunter Water Corporation, NSW Rural Fire Service, Crown Land in NSW, and NSW Government Architect.

In response to the exhibition of the Amendment, 136 public submissions were received. A summary and response to the submissions can be found in **(ATTACHMENT 5)**.

No changes were made to the LEP Amendment in response to the submissions. Further amendments are proposed to the DCP in response to submissions. The DCP Amendment will be reported to Council for adoption at a later date and will align with the plan making timeframes for the LEP Amendment, if endorsed.

### **OPTIONS**

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

### **ATTACHMENTS**

- 1) Revitalising Nelson Bay: A Community Guide to the Vision for Nelson Bay Town Centre. [↓](#)
- 2) Nelson Bay Planning Proposal. [↓](#)
- 3) Minute No. 095, 25 September 2018. [↓](#)
- 4) Gateway Determination. [↓](#)
- 5) Submission Summary and Response. [↓](#)

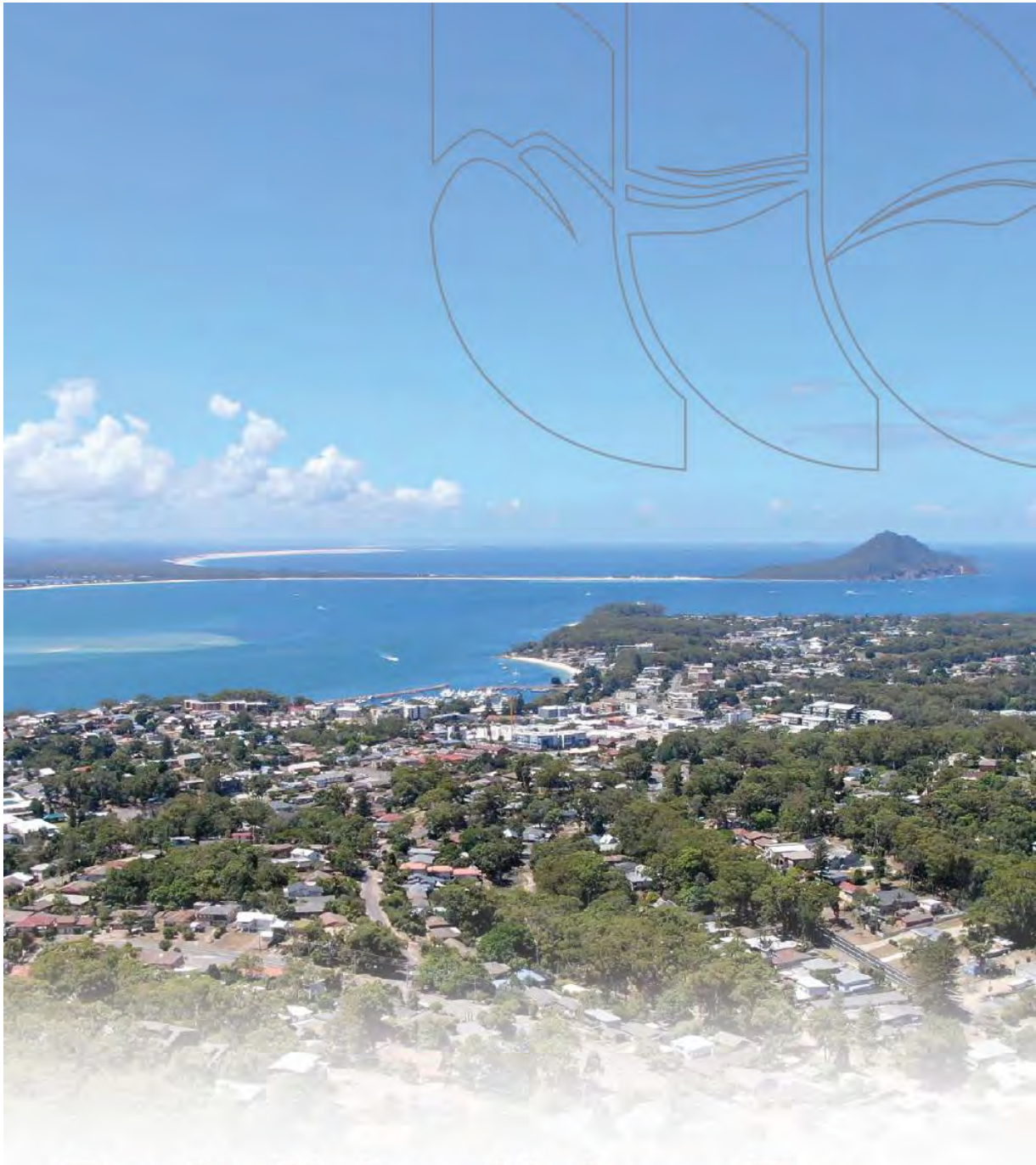
### **COUNCILLORS ROOM**

- 1) Copy of unredacted submissions.

### **TABLED DOCUMENTS**

Nil.

ITEM 1 - ATTACHMENT 1      REVITALISING NELSON BAY: A COMMUNITY  
GUIDE TO THE VISION FOR NELSON BAY TOWN CENTRE.



# Revitalising Nelson Bay

A community guide to the vision for Nelson Bay



PORT STEPHENS  
COUNCIL

ITEM 1 - ATTACHMENT 1 REVITALISING NELSON BAY: A COMMUNITY GUIDE TO THE VISION FOR NELSON BAY TOWN CENTRE.



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**ITEM 1 - ATTACHMENT 1      REVITALISING NELSON BAY: A COMMUNITY GUIDE TO THE VISION FOR NELSON BAY TOWN CENTRE.**



## Introduction

Nelson Bay is surrounded by beautiful beaches and a pristine natural environment. It is a popular destination for visitors, and people looking for a great place to live. People come to the town centre to live, shop, work, gather and be entertained.

There are some really exciting changes happening which will make Nelson Bay an even more inviting and beautiful place than it already is. The changes will sustain the Bay as a major contributor to the Hunter regional economy and revitalise the centre for both residents and visitors.

The community has told us what they want in a reinvigorated centre and the vision for Nelson Bay has been prepared to enhance local character, attract investment, and create vibrant streets to revitalise Nelson Bay.

This guide sets out how proposed changes to the Port Stephens Local Environmental Plan 2013 and Port Stephens Development Control Plan 2014 will combine with other actions and initiatives to achieve the community vision for Nelson Bay.



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## The community vision for Nelson Bay

Council has been regularly consulting with our community since the 1980s to find out what it is about Nelson Bay that people love and what needs to be enhanced.

The community vision for the Bay has not changed over the years - you've told us that the character of the town centre is what makes Nelson Bay a great place to be.

### The character of Nelson Bay

The community has told us they value:

- Sunny and inviting public spaces
- Views of the blue sky and vistas to the Bay
- A friendly village feel in the central commercial area

You've also told us that Nelson Bay needs a makeover and to support an expanded range of local businesses, creating a more vibrant town centre.

### Promoting a vibrant town centre

The community has told us the town centre should:

- Support local shops and businesses
- Stimulate increased economic turnover outside peak holiday periods
- Be a place residents and visitors enjoy with cafes, restaurants, boutique shopping, events and activities

Despite a property boom in the region, and an adopted strategy for growth, there has been a lack of new development in Nelson Bay to support the community vision. In 2018 Council adopted Progressing the Town Centre and Foreshore Strategy: A revised implementation and delivery program (the Delivery Program) to deliver the community vision - available [here](#).

A number of actions in the Delivery Program have already been carried out.

### Recent works

- A \$1.85million extension of Yacaaba Street to improve connectivity between the town centre and foreshore
- The Apex Park master plan has created a more attractive, community focused park
- The Donald Street multi-storey car park has been demolished and replaced with a new ground level car park

Funding has also been secured for car parking and public domain improvements through local infrastructure contributions and paid parking revenue.

This funding will deliver actions from the Nelson Bay Public Domain Plan and the Independent Citizens Car Parking Panel report - available [here](#).

A vibrant town centre needs a local population to support it, which requires new development in Nelson Bay.

Delivery Program actions to increase building heights will improve the feasibility of new residential buildings.

The Delivery Program also includes actions to adopt new planning controls that will enhance the future character of the Bay.

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Nelson Bay Next 5

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### Defining character

Council has carried out a range of urban design studies and community consultation, to determine the important elements of place that will enhance the character of the town centre and achieve the community vision.

#### Sunny and inviting public spaces

Streets that are warm and bright provide activated public spaces, particularly in the winter months, making places where people want to spend time, for example spaces for outdoor dining in the centre.

These spaces become even more inviting when high quality, useful and engaging street furniture, trees, pavements and signage create a pleasant environment where people find it easy to spend time.

#### Views of the blue sky and vistas to the Bay

Nelson Bay is surrounded by pristine natural environment and beautiful waterways. Views can create a sense of connection with the natural environment.

#### A friendly village feel

In the main streets of Nelson Bay, buildings predominantly have two storey front facades with relatively narrow shops that encourage shoppers to continue moving along the street towards new shopping experiences.

Fine grained shop fronts with buildings that do not impose on pedestrians creates a boutique shopping experiences, distinguishing Nelson Bay from the rushed atmosphere experienced in generic shopping centres.



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### Enhancing character

Change is often necessary to retain the vitality, viability and significance of a place.

The Delivery Program proposes changes to the Port Stephens Local Environmental Plan 2013 (the PSLEP) and the Port Stephens Development Control Plan 2014 (PSDCP) to ensure new development incorporates the important elements of the character of Nelson Bay.

### Floor space ratio

New provisions will set maximum floor space ratios (FSR) for new development in the town centre. This promotes upper storey setbacks to maintain a village feel in the centre at street level, view sharing, and increases solar access to surrounding developments and public spaces.

### Minimum street frontages

The ratio of building height to width influences how new development contributes to the streetscape. New provisions for development to have minimum street frontage widths will ensure the height of new buildings do not dominate the streetscape.

### Building heights

Nelson Bay has a natural amphitheatre and changes to building height provisions will reinforce the topography of the town centre. Lower heights in the commercial centre will retain a village feel for pedestrians, whilst surrounding higher development will frame the town centre. Proposed heights have been informed by a visual analysis to ensure that important views and vistas are retained and enhanced.

### Active street frontages

New provisions requiring retail and business uses at street level will provide a more interesting experience for pedestrians and encouraging people to spend time in the town centre.

### Design excellence

New controls for design excellence will ensure that development gives consideration to, and contributes to, the important elements of local character.





ITEM 1 - ATTACHMENT 1 REVITALISING NELSON BAY: A COMMUNITY GUIDE TO THE VISION FOR NELSON BAY TOWN CENTRE.

Promoting a vibrant town centre

The community has told us that the focus for the future of Nelson Bay town centre is to make changes that will sustain a thriving retail, residential, recreational and tourism centre and to enhance the vibrancy of the streets.

Council is facilitating a people friendly town centre through a range of actions including car parking, transport and movement improvements, public domain improvements, and public space upgrades such as Apex Park. Other actions to support small businesses through business leaders luncheons and works, will stimulate the local economy.

The built environment also plays a key role in making a more vibrant place. Engaging buildings that enhance the local character provide a higher quality pedestrian experience, encouraging people to stay longer in the town centre.

Support local shops and businesses

In addition to the actions above, new provisions requiring active street frontages will ensure new development provides improved spaces for new businesses. Design excellence controls will ensure that new development contributes to the village feel of the town centre, reinforcing a boutique shopping and lifestyle experience.

Stimulate increased economic turnover outside peak holiday periods

To reduce the seasonality of economic turnover, there needs to be an increase in the local resident population. Proposed changes to building heights will encourage new development that delivers a population to support businesses outside of peak holiday periods.

Create a place residents and visitors enjoy with cafes, restaurants, boutique shopping, events and activities

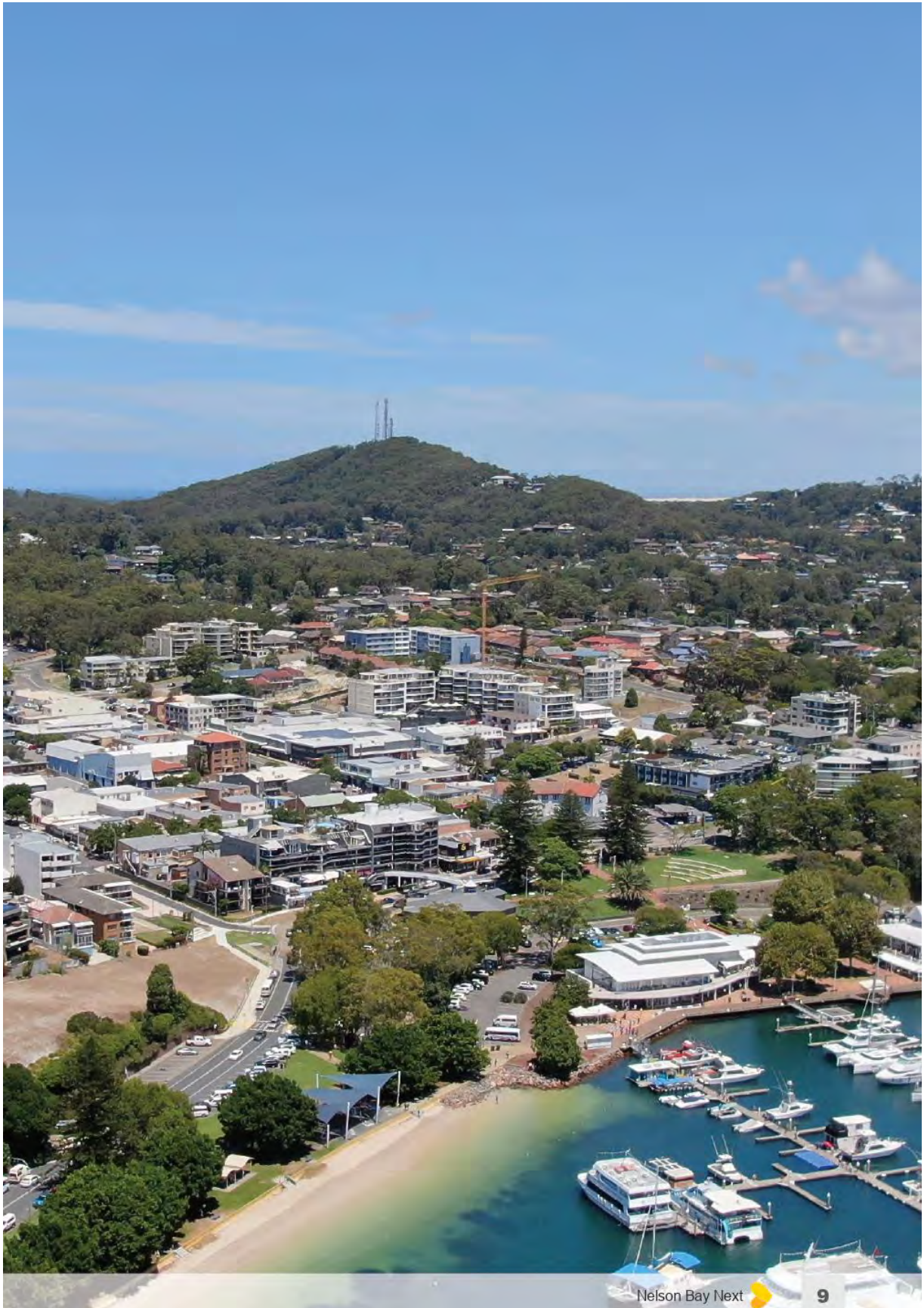
Significant work has been undertaken in relation to the look and feel of the public spaces in Nelson Bay, such as the preparation of the Nelson Bay Public Domain Plan and the Independent Parking Panel report.

In addition, the look and feel of buildings contributes significantly to the future vision. A range of new provisions and controls will ensure that new development enhances the important elements of local character, making Nelson Bay attractive to both residents and visitors into the future.



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**How will planning changes revitalise Nelson Bay?**

Focusing new development in the town centre will provide a local population to support shops and businesses, and deliver a vibrant town centre.

**Building height**

Independent feasibility testing has shown that building height is the biggest constraint on new development in Nelson Bay. The proposed changes will provide a range of heights that respond to local topography and feasibility of development.

The community vision to maintain the village feel in the centre of Nelson Bay is achieved by retaining five storeys in this area.

Increased heights at the edges of the town centre will encourage new development and a resident population to support existing and new businesses.

**Active street frontages**

Continuous business or retail land uses that open directly to the footpath provide active, people-oriented street frontages.

Being able to see occupants inside these businesses provides interest that encourages pedestrian activity, and improves the sense of safety in the public domain.

"Active street frontages along main streets can create a rich street scene and cultural exchanges where buildings contribute to the life of a place." (Local Character and Place Guideline, NSW Department of Planning, Industry and Environment, February 2019).

**Floor space ratio**

New provisions that set maximum total floor space will ensure that new development achieves appropriate setbacks and building separation. This will maintain the village feel and promote solar access at street level.

**Minimum street frontages**

New provisions for minimum street frontages will ensure that new development will enhance the village feel of the town centre.

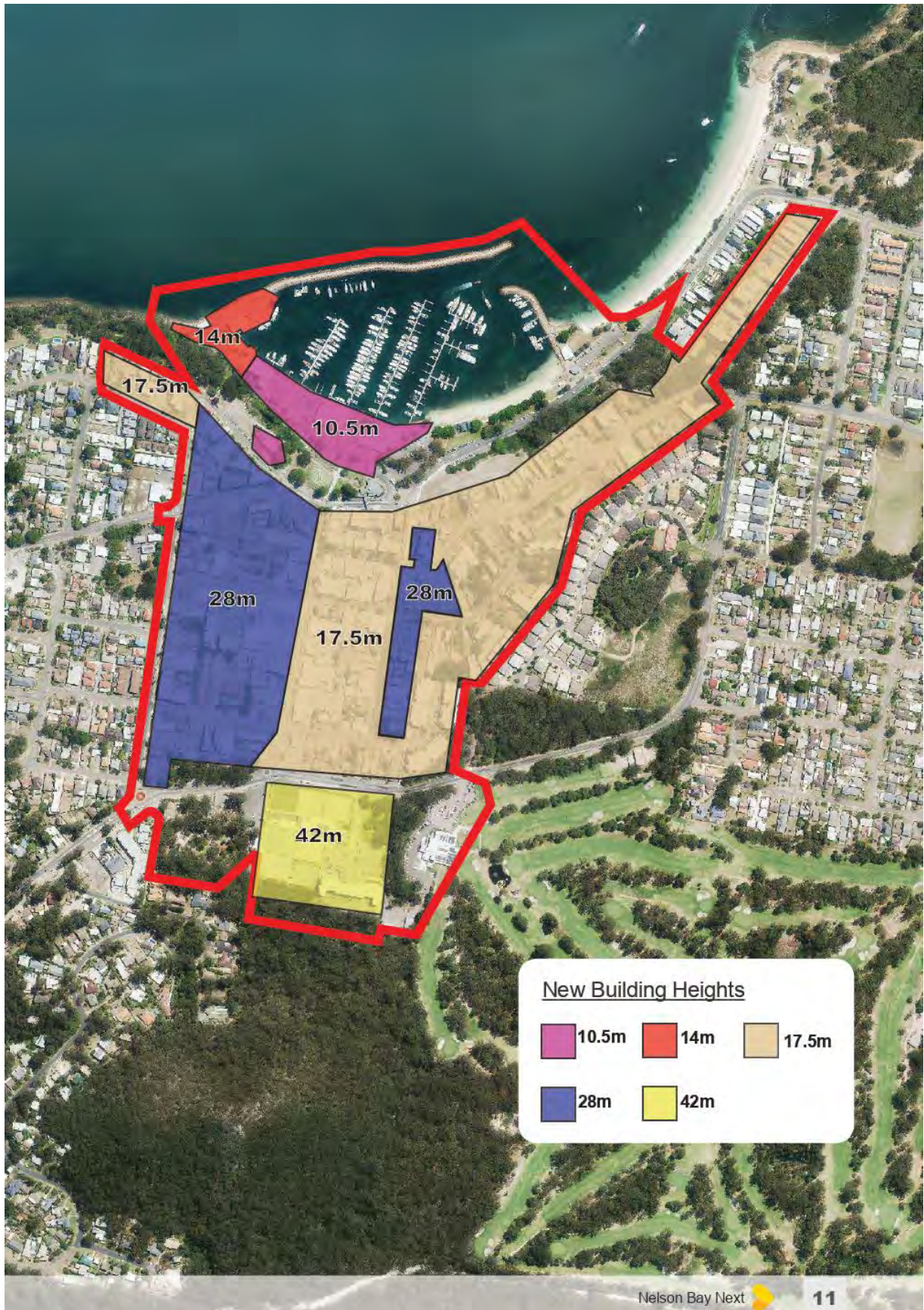
These provisions will avoid tall skinny buildings which can dominate the streetscape, by requiring sufficient width to provide upper storey setbacks.

**Design excellence**

Design excellence requires development to contribute positively to a place. This can mean different things in different places. In Nelson Bay, this means reinforcing the important elements of local character and enabling the future vision.

New controls will require specific consideration of local character, and make reference to the independent Urban Design Panel.

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## What's next

### Next steps

The changes to the Port Stephens Local Environmental Plan 2013 and the Port Stephens Development Control Plan 2014 are now on exhibition until 5pm on 31 July 2020.

### Have your say

You can tell us what you think by sending a submission to Council by

e - [RevitaliseNB@portstephens.nsw.gov.au](mailto:RevitaliseNB@portstephens.nsw.gov.au)

m - PO Box 42, Raymond Terrace NSW 2324


For full details of the exhibition process, see the [Public Exhibition](#) page of Councils website.

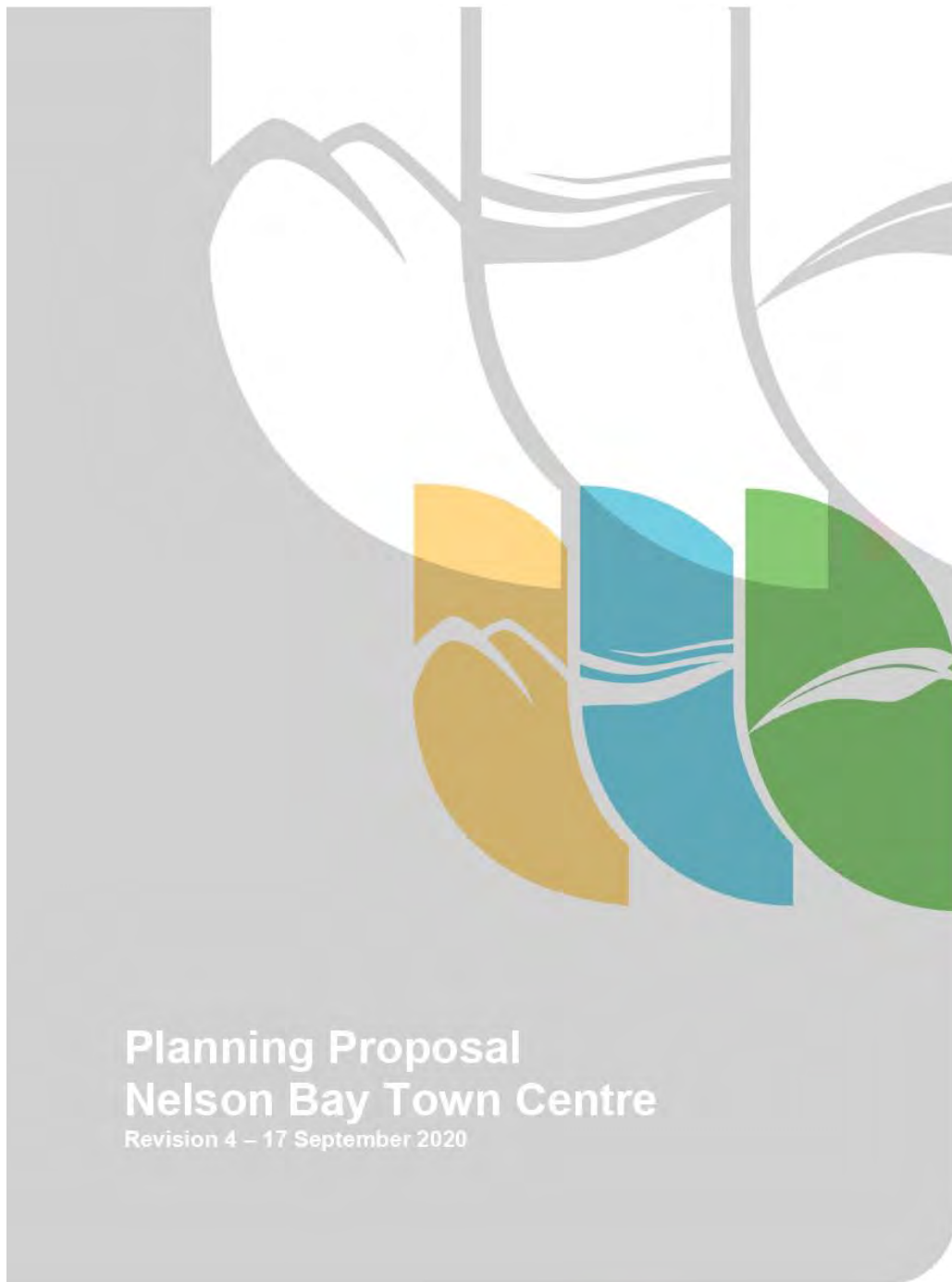
NELSON BAY  
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**APPENDICES**

Appendix 1 – Progressing the Nelson Bay Town Centre and Foreshore Strategy: A revised implementation and Delivery Program 2018
Appendix 2 – Site Identification Map
Appendix 3 – Nelson Bay Town Centre and Foreshore Strategy 2012
Appendix 4 – Proposed PSLEP Maps
Appendix 5 – Existing PSLEP Maps
Appendix 6 – Nelson Bay Town Centre: Feasibility Testing of Residential Development Sites
Appendix 7 – Council Meeting Minutes Excerpt
Appendix 8 – Apex Park Masterplan
Appendix 9 – Nelson Bay Traffic and Parking Study 2013

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- Appendix 10 – Nelson Bay Traffic and Parking Study Update 2017
- Appendix 11 – Pedestrian Access and Mobility Plan
- Appendix 12 – Nelson Bay Public Domain Plan
- Appendix 13 – Nelson Bay Citizens Parking Panel Report
- Appendix 14 – Community and Stakeholder Consultation Report
- Appendix 15 – Frequently Asked Questions (FAQs) to Progressing the Nelson Bay Town Centre and Foreshore Strategy: A Revised Implementation and Delivery Program
- Appendix 16 – Cross Sections
- Appendix 17 – Urban Design Analysis
- Appendix 18 – Submission Summary and Response
- Appendix 19 – Consultation with Transport for NSW



**ITEM 1 - ATTACHMENT 2 NELSON BAY PLANNING PROPOSAL.****FILE NUMBERS**

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**Council:** 58-2018-24-1  
**Department:** To be provided at Gateway Determination.

**SUMMARY**

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- Purpose** The purpose of this Planning Proposal is to amend various built form provisions within the *Port Stephens Local Environmental Plan 2013* (PSLEP) that apply to land within the Nelson Bay Town Centre and Foreshore (the Town Centre) to create opportunities for increased density and achieve the desired built form outcomes as set out in *Progressing the Nelson Bay Town Centre and Foreshore Strategy: A revised implementation and delivery program* (the Delivery Program). A copy of the Delivery Program has been included as Appendix 1.
- The proposed changes are consistent with the Delivery Program, adopted by Council on 25 September 2018, and are necessary to complete Actions 1, 2 and 7.
- The Delivery Program seeks to provide built form controls to create opportunities for the activation of underdeveloped and underutilised sites in the Town Centre whilst maintaining quality public domain spaces and encouraging built forms that complement and enhance the character of the locality.
- Subject land:** Land in the Nelson Bay Town Centre as identified in the Site Identification Map at Appendix 2.
- Proponent:** Port Stephens Council
- Proposed changes:**
- Introduce Floor Space Ratio planning provisions and map;
  - Amendment to the Height of Building map;
  - Introduce Active Street Frontages planning provisions and map; and
  - Introduce minimum street frontage widths for sites in the Town Centre.

**BACKGROUND**

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Nelson Bay is identified as a Strategic Centre in the Hunter Regional Plan 2036, with a number of directions referring to economic and tourism growth.

As the primary tourist centre of the Port Stephens Local Government Area and Service Centre of the Tomaree Peninsula, Nelson Bay contains considerable retail, commercial and service options; however the nearby Salamander Centre has become the focus for weekly retail shopping as well as being the location of a major library and community centre. This has resulted in a shift in Nelson Bay's retail floor space towards boutique and leisure based shopping, along with hospitality offerings such as cafes and dining options. Day-to-day and weekly household shopping has become a secondary focus of the Town Centre, however the recently opened Woolworths supermarket has increased this focus to some degree.

For tourists, Nelson Bay represents the entry point to the Port Stephens waterway and contains the highest concentration of short term accommodation and tourist facilities in the area. This

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results in a high level of seasonal population variations, where low level activity on winter weekdays can contrast with large numbers of tourists visiting during the summer and Easter holidays and special event weekends.

As a tourism destination, Nelson Bay is in competition with other coastal centres in NSW and interstate, and increasingly overseas. To remain competitive in a market where decreasing transport costs make more distant destinations more accessible, Nelson Bay needs to be revitalised and provide a unique experience. The visual appearance and amenity of the Town Centre plays an important role in creating a unique, high quality and identifiable destination.

At the same time, Nelson Bay has a substantial residential population. Over the next 20 years, population and employment are expected to grow in the Tomaree Peninsula including Nelson Bay, which is a main service/tourist centre. Diversification of the economy beyond its high reliance on leisure based tourism will be important in providing for the resident population into the future. It is important that Nelson Bay offers a high amenity environment to residents in order to maintain its existing population and to attract new residents.

On 24 April 2012 Council adopted the Nelson Bay Town Centre and Foreshore Strategy 2012 (the 2012 Strategy), seeking to guide Nelson Bay towards becoming more attractive to tourists, the business community and residents. Since adoption however, there has been limited private investment in the town centre, despite this period being one of significant growth for the housing industry. A copy of the 2012 Strategy has been included as Appendix 3.

In response Council adopted the Progressing the Nelson Bay Town Centre and Foreshore Strategy: A revised implementation and delivery program (the Delivery Program) on 25 September 2018. The Delivery Program sought to review the 2012 Strategy and investigate why this limited investment and economic development had occurred, and how the town centre can be revitalised.

The Delivery Program includes 33 actions to encourage public and private investment and improve the amenity and vibrancy of the town centre. This approach responds to the community's identification that a clear strategy already exists for Nelson Bay, however some revisions would be required to encourage more private investment, such as amendments to planning provisions (e.g. maximum building height limits and the introduction of floor to space ratios) and better quality public spaces.

Delivery of the Actions listed in the Delivery Program will improve the attractiveness of the Town Centre to both tourists and the resident population, re-establishing Nelson Bay as the Strategic Centre on the Tomaree Peninsula.

The community has been engaged throughout the process of reviewing the 2012 Strategy and developing the Delivery Program, including participation in online surveys, community drop-in sessions and stakeholder meetings. This proposal will deliver Actions 1, 2 and 7 of the Delivery Program.

**SITE**

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The proposed amendments apply to land in the Town Centre which is consistent with the defined study area for the Delivery Program as shown in Figure 1 and the Site Identification Map at Appendix 2.

The boundaries of the Town Centre were expanded from the area defined in the 2012 Strategy under Action 9 of the Delivery Program. The resulting site encompasses the land zoned B2 Local Centre, most of the surrounding R3 Medium Density Residential zoned land and other key land identified through community consultation undertaken for the purposes of preparing the Delivery Program.



Figure 1 - Planning Proposal boundaries

#### **PART 1 – OBJECTIVE OF THE PLANNING PROPOSAL**

The Planning Proposal seeks to use a number of development planning provisions to achieve the following outcomes in the Town Centre:

- To provide for a diverse and compatible mix of land uses supported by sound planning policy to deliver high quality development and urban design outcomes;
- To continue to facilitate economic growth that contributes to long-term and self-sufficient employment locally;
- To provide opportunity for housing choice and support services tailored to the needs of the community;
- To deliver outcomes of the Hunter Regional Plan to grow the Port Stephens economy and tourism; and
- To delivery Action 1, 2 and 7 of the Delivery Program.

**PART 2 – EXPLANATION OF THE PROPOSED PLANNING PROVISIONS**

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

*Floor Space Ratio*

The Planning Proposal introduces floor space ratio (FSR) planning provisions in accordance with the adopted Delivery Program and for the purposes of controlling the bulk and scale of new development in the Town Centre.

The objectives of the new provisions are:

- to ensure that buildings are compatible with the bulk and scale of the desired future character of the locality;
- to provide a suitable balance between landscaping and built form; and
- to minimise the effects of bulk and scale of buildings.

The floor space ratio controls are consistent with the outcomes identified in the Delivery Program for lower density development in the central core of the town centre to retain a 'village atmosphere' and facilitate a more human scale better view sharing. This is also consistent with the analysis set out in the Nelson Bay Public Domain Plan which identifies the area of the town centre where pedestrians and visitors are spending time, meeting, gathering, and walking.

The proposed amendments will achieve higher densities on the edges of the central village precinct. This will assist in viewing sharing, whilst still achieving consolidated development in the town centre and increasing feasibility in the centre.

The proposed controls for both FSR and height have been tested on selected sites in accordance with the Apartment Design Guide for the State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development and as set out in the Frequently Asked Questions – Nelson Bay Revised Implementation and Delivery Program at Appendix 15.

Whilst retaining lower heights in these areas of the town centre will likely have a positive impact towards addressing overshadowing and solar access (particularly in relation to the streetscape and areas where pedestrians will be spending time in the town centre) these matters will also be addressed in the development control plan provisions that will encourage design excellence outlined in the Delivery Program (Action 11)(e.g. The proposed objectives for upper storey setbacks) and addressed in the assessment of new development applications.

In addition, new developments for residential flat buildings will be referred to an Independent Urban Design Panel for review in accordance with the Delivery Program (currently new developments are referred to the Newcastle City Urban Design Panel, however Port Stephens Council will establish a Panel as one of the actions associated with the Delivery Program (Action 3).

Other actions in the Delivery Program that will address design excellence and promote positive outcomes that will work in conjunction with the proposed planning provisions include removing the uncertainty of the development incentives in the 2012 Strategy (Action 10) and providing an urban design education program for Council staff (Action 4). A Floor Space Ratio Map and floor space ratio provisions are proposed in accordance with Figure 2 below and the relevant map included as part of Appendix 4.

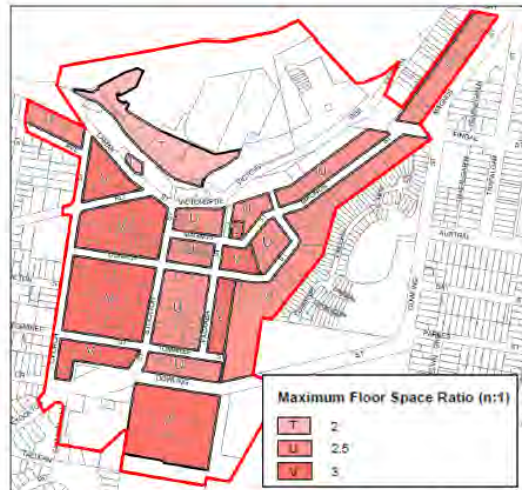


Figure 2 - Proposed Floor Space Ratio provisions

#### *Height of Buildings*

The Planning Proposal amends the existing Height of Buildings Map in accordance with the adopted Delivery Program and for the purposes of:

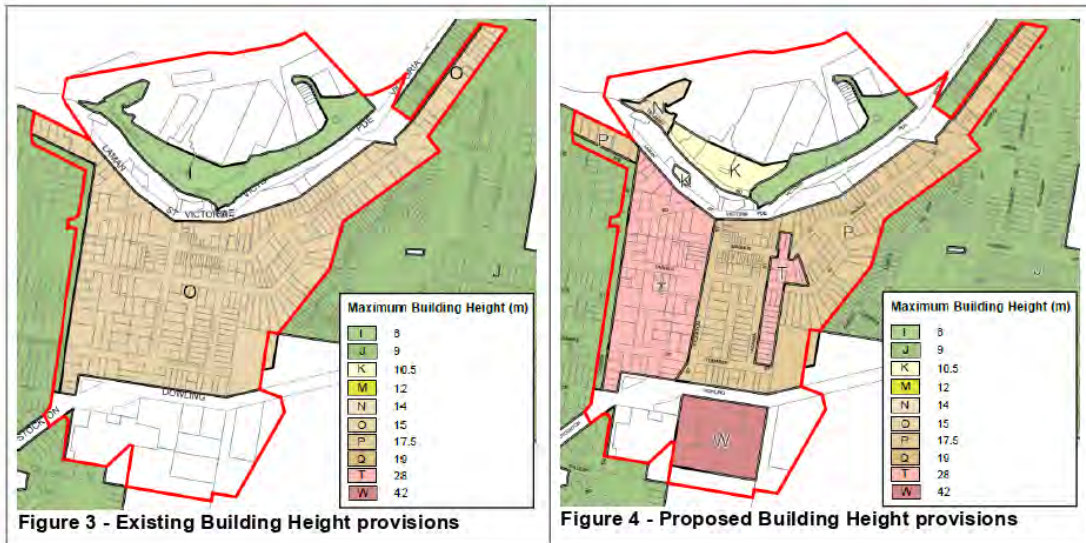
- Facilitating higher densities in the Town Centre to concentrate development rather than zoning further land for increased development;
- Increase the development feasibility of some sites in the Town Centre to attract investment and new development; and
- Retaining lower heights in the central core of the Town Centre to retain a village character in Nelson Bay and to promote view sharing.

The proposed amendments to building heights are also proposed to give effect to actions in the Hunter Regional Plan 2036 to create compact settlements that do not encroach onto sensitive land uses (Direction 21.4), and which require Council to 'investigate high density development that maintains and enhances the tourist, recreational and residential appeal of the centre' for Nelson Bay (p.65).

The proposed amendments are consistent with the outcomes identified in the Delivery Program to retain lower heights (17.5m / 5 storeys) in the central core of the town centre to retain a 'village atmosphere' and a more human scale in this precinct and to better facilitate view sharing. This is also consistent with the analysis set out in the Nelson Bay Public Domain Plan which identifies the area of the town centre where pedestrians and visitors are spending time, meeting, gathering, and walking.

The proposed amendments will achieve greater densities on the edges of the central village precinct, mirroring the topography of the town centre. This will assist in viewing sharing, whilst still achieving consolidated development in the town centre and increasing feasibility in the centre. This is also consistent with the objectives of the current Port Stephens Development Control Plan 2014 to ensure that buildings reinforce the natural amphitheatre landform of the town centre. Cross-sections of the town centre and foreshore demonstrating this landform have been included as Appendix 16.

The amendments to the existing Height of Buildings Map are proposed in accordance with Figure 4 below and the relevant map included as part of Appendix 4.



*Active Street Frontages*

The Planning Proposal introduces provisions to require active street frontages along certain streets zoned B2 Local Centre in accordance with the adopted Delivery Program and for the purposes of providing people-orientated street frontages for new developments.

The objective of the new clause will be to promote uses that attract pedestrian traffic along certain ground floor street frontages in the Town Centre.

Active street frontages (where premises on the ground floor of a building facing the street are used for the purposes of business premises or retail premises) will be a requirement for new developments, including a change of use, along the parts of the streets in the commercial and retail parts of the Town Centre where the Delivery Program and Nelson Bay Public Domain Plan have identified key pedestrian linkages.

Active street frontages will not be required for any part of a building that is used for any of the following:

- entrances and lobbies (including as part of mixed use development);
- access for fire services; or
- vehicular access.

The active street frontage planning provisions will apply to land identified on an active street frontages map in accordance with Figure 5 below and the relevant map included as part of Appendix 4.

Wording of the proposed clause is anticipated to be consistent with the model provision prepared for the Standard Instrument, which has been updated to reflect local zoning and is shown below:

**7.22 Active Street Frontages**

- (1) The objective of this clause is to promote uses that attract pedestrian traffic along certain ground floor street frontages in Zone B2 Local Centre.
- (2) This clause applies to land identified as 'Active street frontage' on the Active Street Frontages Map.

## ITEM 1 - ATTACHMENT 2 NELSON BAY PLANNING PROPOSAL.

- (3) Development consent must not be granted to the erection of a building, or a change of use of a building, on land to which this clause applies unless the consent authority is satisfied that the building will have an active street frontage after its erection or change of use.
- (4) Despite subclause (3), an active street frontage is not required for any part of a building that is used for any of the following:
  - (a) entrances and lobbies (including as part of mixed use development),
  - (b) access for fire services,
  - (c) vehicle access.
- (5) In this clause, a building has an **active street frontage** if all premises on the ground floor of the building facing the street are used for the purposes of business premises or retail premises.

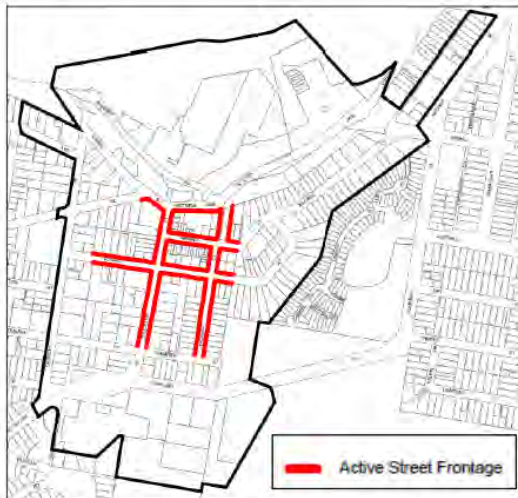


Figure 5 - Proposed Active Street Frontages

#### *Minimum Building Street Frontage*

The Planning Proposal introduces a requirement for new development in the Town Centre to have a minimum primary street frontage.

The objectives of the new clause are:

- to ensure that, visually, buildings have appropriate overall horizontal proportion compared to their vertical proportions;
- to provide appropriate dimensions and spacing to ensure adequate privacy between any residential component and the adjoining land use;
- to provide appropriate dimensions for the design of car park levels and ensure access is reasonably spaced along roads and lanes;
- to encourage consolidation of lots to facilitate development of commercial office, business, residential and mixed use buildings provided for under the PSLEP.

The clause will apply to new development in the Town Centre on land zoned B2 Local Centre and R3 Medium Density Residential, involving the construction of a new building or alterations or additions to an existing building. The boundaries of the Town Centre are as specified in the

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Delivery Program and will be identified on the Precinct Areas Map in the PSLEP, in accordance with Figure 6 below and the relevant map included as part of Appendix 4.

Where the clause applies, new development must have a minimum primary street frontage of 15 metres or more, unless the physical constraints of the land (or the adjoining land) make it not possible for a building to be erected to meet that minimum width and the development is otherwise consistent with the aims and objectives of PSLEP.

Providing a minimum primary street frontage will complement other development standards to ensure appropriate vertical to horizontal proportions of new buildings in the town centre as set out in the Delivery Program.

The proposed provisions is anticipated to result in a clause similar to the following:

**7.23 Minimum street frontages for development in zones B2 and R3 in Nelson Bay Town Centre**

- (1) The objective of this clause is to ensure that, visually, buildings in the Nelson Bay Town Centre have an appropriate overall horizontal proportion compared to their vertical proportions.
- (2) Development consent must not be granted for the erection of a building in Zone B2 Local Centre and R3 Medium Density Residential in the Nelson Bay Precinct identified on the Precinct Areas Map if the land does not have a primary street frontage of at least 15 metres.
- (3) Despite subclause (2), the consent authority may grant consent for development referred to in that subclause if the consent authority is satisfied that—
  - (a) due to the physical constraints of the land or adjoining land, it is not possible for the erection of a building to be carried out on land with a primary street frontage of at least 15 metres, and
  - (b) the development is consistent with the aims and objectives of this Plan.

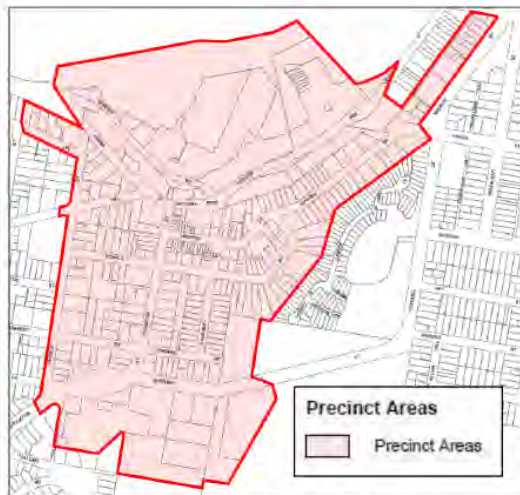


Figure 6 - Proposed Nelson Bay Precinct



**ITEM 1 - ATTACHMENT 2 NELSON BAY PLANNING PROPOSAL.***Design Excellence*

The delivery program requires a range of actions related to design excellence, including:

- Constituting an urban design panel;
- Improving urban design analysis skills for development assessment staff; and
- Including controls in the DCP to require new development to demonstrate design excellence.

A wide range of Council staff attended urban design training in February 2019 where tools were provided on identifying and reinforcing elements of good urban design. This training demonstrated the link between good urban design and the enhancement of experience of a place, such as engendered by the objectives in documents such as the NSW Government Architect's Better Placed.

The Port Stephens Urban Design Panel (UDP) held its first meeting in December 2019, and meets regularly to provide independent urban design advice on a range of developments, including on the ability of development in Nelson Bay to meet design excellence controls.

The Delivery Program outlines the need for additional design excellence controls in the DCP to ensure development in Nelson Bay achieves built form of an appropriate quality. These controls will reinforce important elements of local character that are consistent with the future vision for Nelson Bay. These controls will also provide an appropriate benchmark for the UDP to consider development against.

The existing DCP includes a site specific chapter for Nelson Bay, where local character statements identify design excellence elements that new development should incorporate.

An amendment to the DCP has been prepared, to be exhibited concurrently with this proposal that reinforces the need for development to respond to the character statements. The amendment also includes new objectives adopted from the NSW Government Architect's Better Placed document, and outlines the role of the Urban Design Panel in providing independent advice on design excellence.

It is not proposed to add design excellence provisions to the Port Stephens Local Environmental Plan.

**PART 3 – JUSTIFICATION FOR THE PLANNING PROPOSAL**

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**SECTION A – Need for the Planning Proposal****1. Is the planning proposal a result of any strategic study or report?**

The Planning Proposal is the result of the strategic planning studies and reports that informed the 2012 Strategy and the studies and reports that updated that strategy as part of the adoption of the Delivery Program in 2018.

The studies and reports prepared for this purpose cover a range of matters including traffic and transport, car parking, public domain, and accessibility. Council also commissioned feasibility testing of selected residential sites in the town centre to examine the viability of various development heights and car parking configuration. This feasibility report was subsequently independently reviewed by a development economist. The feasibility analysis and third party review supports the building height planning provisions proposed in the Planning Proposal as outlined in the Delivery Program. A copy of the Feasibility Testing report is included as Appendix 6.

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The Planning Proposal is necessary to give effect to the Delivery Program and relevant actions in the Hunter Regional Plan 2036.

The Delivery Program includes 3 Actions which identify necessary changes to PSLEP so as to achieve the objectives of the 2012 Strategy and the Delivery Program:

- Action 1 – Amend PSLEP to include a clause requiring activated street frontages.
- Action 2 – Amend PSLEP to include a clause requiring appropriate vertical to height proportions.
- Action 7 – Amend the PSLEP to include FSR requirements and to amend the existing Height of Buildings map.

The planning proposal will reinforce the destination as a regionally significant centre as identified in the Hunter Regional Plan 2036.

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

This planning proposal is the only means to amend the Port Stephens Local Environmental Plan 2013 so as to provide certainty for the local community and landowners and deliver the outcomes of the Delivery Program.

Preparation of the Planning Proposal was endorsed by Council at its Ordinary Meeting on 25<sup>th</sup> September 2018. An excerpt of the meeting minutes is included as Appendix 7.

**SECTION B – Relationship to Strategic Planning Framework**

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

Hunter Regional Plan

The Hunter Regional Plan (HRP) applies to the Port Stephens Local Government Area (LGA) and is an applicable consideration for this planning proposal. The relevant actions of the HRP have been considered in the table below:

Action	Description	Comments
6.3	Enable economic diversity and new tourism options that focus in reducing the seasonal nature of tourism and its effects on local economy.	Nelson Bay is subject to highly seasonal population variations, with many businesses experiencing large fluctuations in trade depending on the time of year. The planning proposal will provide increased opportunities for a more permanent resident population, and is anticipated to reduce the seasonality of commercial activity in the Town Centre. This will support local businesses and is anticipated to create demand for additional commercial and retail offerings, along with a corresponding increase in employment opportunities.
21.1	Promote development that respects the landscape attributes and the character of the metropolitan area, towns and villages.	The Nelson Bay Public Domain Plan has been prepared to deliver action 12 of the Delivery Program. The Public Domain Plan defines the desired character of public spaces in the Nelson Bay town centre and foreshore, reinforcing and building on the coastal elements found throughout

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Action	Description	Comments
		the area. The planning proposal will complement the Public Domain Plan by providing appropriate planning provisions for new development outside of the public realm. The proposal introduces floor space ratio provisions, active street frontage requirements, and minimum building width provisions to respond to the desired built form character identified through public consultation for both the 2012 Strategy and the Delivery Program. The planning proposal responds to the topographical characteristics of the Town Centre (see Appendix 16).
21.4	Create a well-planned, functional and compact settlement pattern that responds to settlement planning principles and does not encroach on sensitive land uses, including land subject to hazards, on drinking water catchments or on areas with high environmental values.	The planning proposal will enable new development within the existing urban footprint, preserving the high environmental value of surrounding land. In conjunction with the Nelson Bay Public Domain Plan, the proposal will allow residents of new developments to experience functional movement through, and use of, the town centre. Residents within the town centre will be located within appropriate distances to commercial and retail premises so as to support a pedestrian environment, as envisaged in the Public Domain Plan.
21.6	Provide greater housing choice by delivering diverse housing, lot types and sizes, including small-lot housing in infill and greenfield locations.	The planning proposal will invigorate new development within the town centre, allowing for new diverse housing options to cater for the needs of the community. Recent development approvals granted within the town centre have shown diversity of dwelling size and configuration. It is anticipated that the proposal will enable similar developments throughout the town centre.
21.7	Promote new housing opportunities in urban areas to maximise the use of existing infrastructure.	Infill housing will be facilitated by the planning proposal, which will enable new development within the current urban footprint of the Nelson Bay town centre that utilises existing infrastructure. Concurrent delivery of works to address the outcomes of the Nelson Bay Public Domain Plan, Nelson Bay Independent Citizens Parking Panel report and Nelson Bay Traffic and Parking Study, will ensure that infrastructure continues to appropriately provide for the needs of the community.
23.1	Concentrate growth in strategic centres, local centres and urban renewal corridors to support economic and population growth and a mix of uses.	The planning proposal will enable new development within the town centre of Nelson Bay, which is identified under the HRP as a Strategic Centre. This will support economic growth as the demand for commercial and retail services increases.

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Action	Description	Comments
23.2	Develop precinct plans for centres to take an integrated approach to transport, open space, urban form and liveable neighbourhoods, and investigate the capacity of centres to accommodate additional housing supply and diversity without compromising employment growth.	The Delivery Program and Public Domain Plan represents a precinct planning approach for Nelson Bay consistent with this action. This planning proposal constitutes the statutory process to address the urban form consideration for this action, and is being undertaken concurrently with a range of other Delivery Program actions such as the Nelson Bay Traffic and Parking Study, Nelson Bay Integrated Transport Plan, Independent Citizens Parking Panel, additional DCP controls for design excellence, Nelson Bay Public Domain Plan, review of the Nelson Bay Foreshore Plan of Management, review of facilities to support public events, extension of Yacaaba Street to Victoria Parade, and implementation of the Apex Park Masterplan. The planning proposal will specifically enable the redevelopment of sites within a Strategic Centre identified in the HRP. The planning proposal is supported by the range of actions listed above as part of a precinct planning approach.
LGA Narrative	Maintain Nelson Bay as one of the primary tourist centres for the region and a hub for the Tomaree Peninsula	The planning proposal will support new development in the town centre. Design excellence actions in the Delivery Program will ensure that new development stimulated by the planning proposal will enhance the public domain improvements delivered under the Nelson Bay Public Domain Plan. The parallel delivery of new development and public domain upgrades will revitalise the town centre, making it more attractive to residents, tourists and businesses. Revitalisation of, and expansion of businesses in, the town centre will reinforce Nelson Bay as a tourist centre and a hub for the Tomaree Peninsula.
LGA Narrative	Maintain retail and professional services for the surrounding communities.	The planning proposal is anticipated to facilitate new development that will provide residential opportunities in the town centre. This is anticipated to lead to an increase in economic activity, ultimately facilitating increased retail and commercial offerings. New developments are also expected to facilitate appropriate spaces for existing and new businesses in the town centre, supporting an expansion in retail and food and drink premises to cater for surrounding communities, as well as supporting the existing service based hub in the town centre. These active street frontages facilitated by the planning proposal will have a positive economic impact on

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Action	Description	Comments
		the town centre.
LGA Narrative	Investigate opportunities for high-density development that maintains and enhances the tourist, recreational and residential appeal of the centre.	The planning proposal will facilitate new development within the town centre of Nelson Bay that will provide dwellings and tourist accommodation to support the needs of the local community and tourist industry. A range of building heights are proposed so as to maintain the village feel in the centre of the study area, whilst allowing for greater dwelling and tourist accommodation options in proximity to take advantage of new retail and commercial options. Concurrent works under the Nelson Bay Public Domain Plan and the Nelson Bay Integrated Transport Plan will ensure that an enhanced public realm experience will be available to residents and tourists, enhancing the appeal of the town centre.
LGA Narrative	Balance the mix of permanent residential and tourist accommodation to enhance the vibrancy of the centre and surrounds.	New development within the town centre will increase economic activity, drawing a greater variety of commercial and retail businesses, and making the town centre more attractive to the local community and tourists. Both dwellings and tourist and visitor accommodation are permissible in the town centre, with short term rental accommodation provisions in the <i>Port Stephens Local Environmental Plan 2013</i> providing flexibility in balancing the mix of permanent residential and tourist accommodation.

**4. Will the planning proposal give effect to a council’s endorsed local strategic planning statement, or another endorsed local strategy or strategic plan?**

Integrated Strategic Plan (Port Stephens 2022)

The planning proposal is consistent with Port Stephens Community Strategic Plan as it will:

- Support sustainable business development in Port Stephens. (P1.1 – Strong Economy, vibrant local business, active investment)
- Support and deliver services that attract sustainable visitation to Port Stephens. (P1.2 – Strong Economy, vibrant local business, active investment)
- Provide land use plans, tools and advice that sustainably support the community. (P3.1 – Thriving and safe place to live)
- Enhance public safety, health and liveability through use of Council’s regulatory controls and services. (P3.2 – Thriving and safe place to live)
- Support the amenity and identity of Port Stephens. (P3.3 – Thriving and safe place to live)

Port Stephens Planning Strategy (PSPS)

The PSPS identifies a significant projected increase in demand for housing and commercial/retail floor space in the Nelson Bay Town Centre to 2031. The Planning Proposal is consistent with the directions adopted by the PSPS to address this increased demand:

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- A key element for the economic growth and revitalisation of Nelson Bay will be the likely need to intensify residential development in the Town Centre. Providing more diverse housing choice will assist in attracting permanent residents to the area, as well as supporting the Town Centre outside of the peak tourism season.
- There is insufficient capacity under current land use patterns to accommodate future demand resulting in a need for more intensive development of existing land.
- Development of the existing open car parks could provide additional car spaces, retail, commercial and residential usage and may also provide stimulus for rejuvenation elsewhere in the Town Centre.

Nelson Bay Town Centre and Foreshore Strategy 2012 and Progressing the Nelson Bay Town Centre and Foreshore Strategy: A revised delivery and implementation program 2018

The adoption of the Delivery Program on 25 September 2018 provided a clear nexus that prompted the preparation of this Planning Proposal. The relevant Actions contained within the Delivery Program were formed with the express undertaking to realise the objectives of the 2012 Strategy (as updated by the Delivery Program). Accordingly, the Planning Proposal is consistent with the 2012 Strategy.

Port Stephens Local Infrastructure Contributions Plans

The local infrastructure necessary to support the outcomes of the planning proposal was identified in the preparation of the Port Stephens Local Infrastructure Contributions Plans (LICs) in 2019. The works schedule to the LICs specifies the community and other infrastructure projects such as shared paths and town centre upgrades in the Nelson Bay Town Centre that will be funded by new development in the Town Centre and local catchment. The LICs were prepared based on population data and other projections that took into account the outcomes of the planning proposal. The details of the data and calculations used to determine infrastructure requirements are set out in the LICs. The LICs are published on Council’s website:  
<https://www.portstephens.nsw.gov.au/grow/development-controls-plans-and-strategies/local-infrastructure-contributions>.

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

There are no existing or draft State Environmental Planning Policies that prohibit or restrict the proposed development as outlined in this planning proposal. An assessment of relevant State Environmental Planning Policies against the planning proposal is provided in Table 1 below.

<b>Table 1: Relevant State Environmental Planning Policies (SEPPs)</b>	
<b>SEPP</b>	<b>Consistency and Implications</b>
<b>SEPP No 44 Koala Habitat Protection</b>	<p>The Port Stephens Comprehensive Koala Plan of Management (CKPoM) has been prepared in accordance with Part 3 of SEPP 44, and is applicable in the Port Stephens Local Government Area. Schedule 2 of the CKPoM sets out the performance criteria for planning proposals, which have been addressed below.</p> <p><i>a. Not result in development within areas of preferred koala habitat;</i>                      The proposed amendments to PSLEP do not apply to and will not facilitate development in the portions of the site mapped as containing preferred koala habitat.</p> <p><i>b. Allow only for low impact development within areas of Supplementary Koala Habitat and Habitat Linking Areas;</i></p>

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	<p>Whilst the proposed new and amended planning provisions do apply to portions of the site mapped as containing Supplementary Koala Habitat, it is noted that the relevant land does not contain any vegetation. Accordingly there are no anticipated impacts on areas of Supplementary Habitat or Habitat Linking Areas.</p> <p><i>c. Minimise the removal of any individual preferred koala food trees, where ever they occur on the site;</i> The Planning Proposal will not enable or facilitate the removal of any vegetation.</p> <p><i>d. Not result in development which would sever koala movement across the site generally and for minimising the likelihood of impediments to safe/unrestricted koala movement.</i> The Planning Proposal does not expand the boundaries of existing developed land and will not result in movement pathways for koalas being severed.</p> <p>The Planning Proposal is consistent with the CKPoM and therefore satisfies the provisions of this SEPP.</p>
<p><b>SEPP No 65 Design Quality of Residential Flat Development</b></p>	<p>Residential Flat Buildings are permissible with consent in the majority of the Town Centre and accordingly SEPP65 is a relevant consideration for this Planning Proposal. The Apartment Design Guidelines prepared under SEPP 65 include considerations for setting both height of building controls and floor space ratio controls, which have been addressed below.</p> <p><u>Height of Building Controls</u></p> <p>The proposed height of building provisions have been prepared with consideration to the necessary height allowance required per storey, so as to achieve an effective control on the number of storeys permitted within the different areas of the town centre. The resultant provisions include a variety of applicable maximum heights to take account of local topography and to maximise opportunities for view sharing and solar access. The height of building provisions have also been prepared in conjunction with relevant floor space ratios to maintain solar access, views and appropriate massing as observed from the public realm. The Planning Proposal is consistent with the considerations for setting height controls, contained within the Apartment Design Guidelines.</p> <p><u>Floor Space Ratio Controls</u></p> <p>A range of floor space ratio provisions have been proposed, giving consideration to the predominant existing lot dimensions of different parts of the Town Centre as well as the range of proposed building height provisions. This ensures that resultant buildings throughout the Town Centre will predominantly be capable of achieving the maximum gross floor area whilst not exceeding the building envelope set by existing setback controls and proposed height provisions. It is noted that a large portion of the Town Centre permits mixed use buildings. The proposed planning provisions relating to building width and active street frontages will provide appropriate controls to separately regulate the site coverage of commercial and residential portions of future developments. The Planning Proposal is consistent with the considerations for setting floor place ratio controls, contained within the Apartment Design Guidelines.</p>

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	<p><u>Future Developments</u></p> <p>SEPP 65 also contains criteria for consideration for future development proposals; to achieve high quality built form outcomes. Future development applications will be assessed against these considerations on their merits.</p> <p>The planning proposal satisfies the provisions of this SEPP.</p>
<p><b>SEPP (Coastal Management) 2018</b></p>	<p>Part of the Town Centre is located within the Coastal Zone and so the provisions of this SEPP are an appropriate consideration for this Planning Proposal.</p> <p>The amendments to the PSLEP contained within the Planning Proposal relate to land in an urban context with an established street and pedestrian network. A variety of building height planning provisions have been proposed which decrease within foreshore areas so as to maintain visual amenity and scenic qualities of the coastal area.</p> <p>The proposed planning controls are also anticipated to revitalise the town centre and attract a greater population to enjoy the foreshore and coastal area, enforcing the aim of the SEPP to increase accessibility to and use of the coastal area.</p> <p>Given that the proposed controls relate to land which already contain improvements, the planning proposal is not likely to result in increased risk of coastal hazards.</p> <p>The planning proposal satisfies the provisions of this SEPP.</p>

**6. Is the planning proposal consistent with applicable Ministerial Directions (s.9.1 directions)?**

An assessment of relevant s.9.1 Ministerial Directions against the planning proposal is provided in Table 2 below.

<b>Table 2: Relevant s9.1 Ministerial Directions</b>	
<b>Ministerial Direction</b>	<b>Consistency and Implications</b>
<b>1. EMPLOYMENT AND RESOURCES</b>	
<p><b>1.1 Business and Industrial Zones</b></p>	<p>The Planning Proposal is consistent with the objective of supporting the viability of centres. It seeks to use a number of planning provisions to achieve better development outcomes, support opportunities for increased density and achieve the desired built form in the Town Centre.</p> <p>The planning proposal does not reduce the floor area for employment uses and related public services in business zones, rather it seeks to retain and increase the development potential of the areas and locations of existing business and commercial land use.</p> <p>The Planning Proposal is consistent with this direction.</p>
<b>2. ENVIRONMENT AND HERITAGE</b>	
<p><b>2.1 Environment Protection Zones</b></p>	<p>The Town Centre includes land zoned E3 Environmental Management and so this direction is a relevant consideration for this Planning Proposal.</p>

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The land zoned E3 is occupied by Apex Park and the adjacent buildings comprising the Port Stephens Visitor Information Centre as shown in Figure 7 below.

The Planning Proposal does not include any amendments to the PSLEP provisions relating to the E3 zoned land, and will not reduce the environmental protection standards that apply to that land.

The Planning Proposal is consistent with this direction.

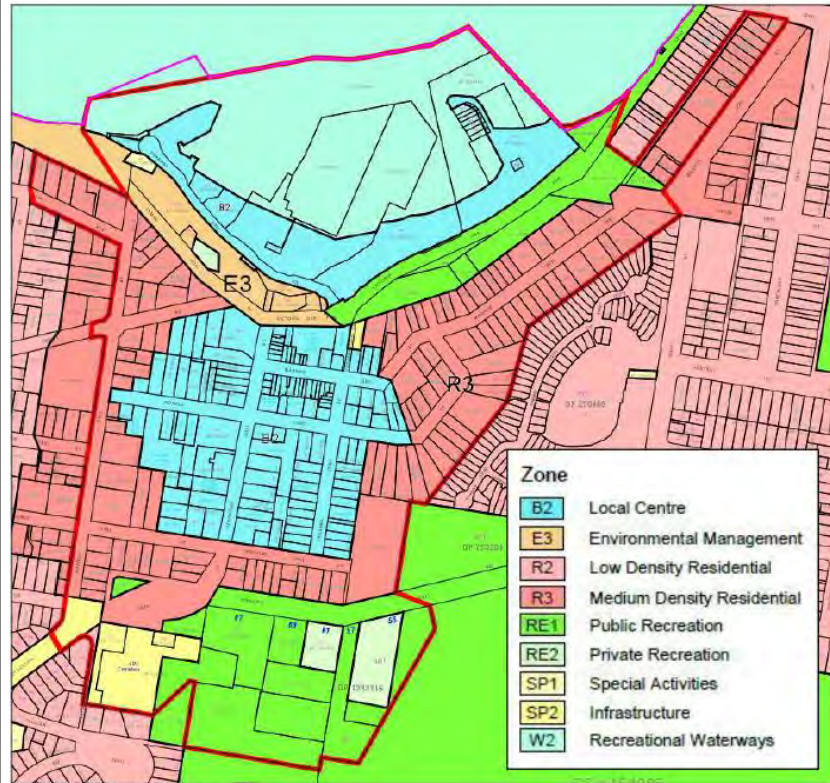


Figure 7 - Zoning Map

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<p><b>2.2 Coastal Management</b></p>	<p>The Port Stephens Local Environmental Plan includes existing provisions relating to the objects of the Coastal Management Act 2016 and related listed documents. This Planning Proposal will not affect these provisions, which will continue to operate in accordance with the objectives of this direction.</p> <p>Further, the Planning Proposal has been prepared to address actions 1, 2 and 7 of the Delivery Program, which updated the 2012 Strategy. The 2012 Strategy gave consideration to, and was consistent with, this Ministerial direction.</p> <p>The Planning Proposal will support the future vision of Nelson Bay of a vibrant coastal town centre. Engendered in this vision is more economically sustainable commercial activity in a strategic centre of importance to both local and surrounding residents, as well as a significant destination for tourists and visitors. A more vibrant centre will increase the use of and access to the coastal zone. In particular, this increased use and access will capitalise on existing infrastructure and built environment, and represents a sustainable method of accessing the coastal zone. Proposed provisions for active street frontages and minimum land widths will increase the amenity of the town centre and provide a stock of adaptable building spaces to cater for the future needs of the community.</p> <p>Nelson Bay Town Centre and Foreshore is not identified in a coastal management plan as being affected by coastal hazards, and does not include areas of coastal wetlands or littoral rainforest.</p> <p>The Planning Proposal will amend provisions applicable to the existing urban footprint and will assist in defining the location and boundaries of the town centre, and will contribute to the revitalisation of an existing urban centre. Further, higher density development within the existing urban footprint will reinforce a compact settlement pattern.</p> <p>The Planning Proposal is consistent with the objects of the <i>Coastal Management Act 2016</i>, the Coastal Management Manual and Toolkit, and the Coastal Design Guidelines, and is consistent with this direction.</p> <p>A detailed assessment of the requirements of this Direction is included below.</p>
	<p><b>4(a) Objects of the Coastal Management Act 2016 and the objectives of the relevant coastal management areas</b></p>
<p>(a) to protect and enhance natural coastal processes and coastal environmental values including natural character, scenic value, biological diversity and ecosystem integrity and resilience</p>	<p>The Planning Proposal (the PP) applies to land within the existing urban footprint of Nelson Bay and will encourage new development. Accordingly, the potential to impact coastal processes is reduced in comparison to proposals to rezone greenfield sites. The scoping study undertaken during the preparation of a Coastal Management Plan (CMP) for Port Stephens identified stormwater runoff as a threat to coastal processes, and is a key impact for consideration in the PP.</p> <p>The Port Stephens Local Infrastructure Contributions Plan (PS LIC) includes a range of improvement devices that will be funded from</p>

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	<p>developer contributions, including those paid by new development in Nelson Bay. This includes upgrades to a number of roads, intersections and open space within the town centre, which will include new water quality control devices.</p> <p>A general Nelson Bay Town Centre Improvements item has been identified in the PS LIC which is intended to deliver additional infrastructure, such as that identified in the Nelson Bay Public Domain Plan. The public domain plan includes three big moves, one being an improved blue-green network, and proposed improvements that respect coastal processes and ecology.</p> <p>Further, a program of works was recently endorsed by Council which will be funded through paid parking revenue to deliver parking, traffic and public domain improvements. These improvements will incorporate improved stormwater management devices, enhancing coastal processes affected by stormwater runoff.</p> <p>The above works will deliver a range of projects aimed at improving the connection of residents and visitors with the coastal area, which will enhance natural character and scenic value.</p> <p>The PP is consistent with this object.</p>
(b) to support the social and cultural values of the coastal zone and maintain public access, amenity, use and safety	<p>As mentioned above, the PP will encourage new development in Nelson Bay, and provide a funding stream to deliver works that will improve access and use of the coastal zone. This includes upgrades works that have been endorsed to the Nelson Bay foreshore reserve, as well as works to improve connectivity between the town centre and foreshore. In addition, works have been identified to improve wayfinding within Nelson Bay, including to more clearly identify foreshore location and access points.</p> <p>The PP will support the social and cultural values of the coastal zone, and is consistent with this object.</p>
(c) to acknowledge Aboriginal peoples' spiritual, social, customary and economic use of the coastal zone	<p>The PP proposes provisions that have been determined in order to enhance the important characteristics of place. This includes promoting connection with the surrounding environment such as by defining building height limits that retain views, as well as focussing the eye towards important natural features such as Kurarra Hill.</p> <p>Council maintains strong relationships with Aboriginal peoples including the Worimi and Karuah Local Aboriginal Land Councils, and will continue to work with these peoples in acknowledging their connection with the coastal zone.</p>

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		The PP is consistent with this object.
(d) to recognise the coastal zone as a vital economic zone and to support sustainable coastal economies		<p>Nelson Bay is identified as a Strategic Centre in the Hunter Regional Plan 2036, and is the service and tourism hub on the Tomaree Peninsula. The visitor led economy creates a severe disparity in the annual income averages, with many businesses relying on peak holiday period income to support them throughout the year. The current economic environment is such that new businesses are susceptible to early closure, severely limiting the potential economic growth of Port Stephens.</p> <p>The PP aims to increase the local resident population, providing more consistent economic activity throughout the year. Better supported businesses have a greater opportunity to utilise sustainable practices which will support a sustainable coastal economy.</p> <p>The PP is consistent with this object.</p>
(e) to facilitate ecologically sustainable development in the coastal zone and promote sustainable land use planning decision-making		<p>The PP promotes infill development, preserving the surrounding natural environment. This is a significantly more sustainable method of land-use planning, and supports State goals for an increase in in-fill housing.</p> <p>In addition, new development will be required to incorporate water and energy efficiency mechanisms, as well as improved stormwater management systems.</p> <p>The PP includes new provisions that will enforce a lower impact on solar access within the built environment, creating more enjoyable places for people.</p> <p>The PP is consistent with this object.</p>
(f) to mitigate current and future risks from coastal hazards, taking into account the effects of climate change		<p>Council is currently preparing a CMP and has engaged a consultant to map current and future coastal hazards identified in our Stage 1 scoping study. The scoping study identified 4 major coastal hazards in Port Stephens being, coastal inundation, beach erosion, Aeolian sand inundation and shoreline recession.</p> <p>Whilst the full extent of the impacts of these hazards has not been conclusively defined at this time, it is noted that the PP relates to land that is already within the urban footprint of Nelson Bay. Management options for the identified coastal hazards will be determined as part of the CMP currently in preparation and will therefore be applicable to the Nelson Bay PP site.</p> <p>As mentioned above, new development resulting from the PP will provide a funding stream for improvement works, which will mitigate current</p>

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	and future risks. The PP is consistent with this object.
(g) to recognise that the local and regional scale effects of coastal processes, and the inherently ambulatory and dynamic nature of the shoreline, may result in the loss of coastal land to the sea (including estuaries and other arms of the sea), and to manage coastal use and development accordingly	The shoreline interface in the area to which the PP applies is almost completely contained within the Nelson Bay marina and supporting man-made structures, with existing management plans in place to ensure the ongoing viability of the existing shoreline. The PP does not engender development within existing undeveloped parts of the foreshore.  The PP is consistent with this object.
(h) to promote integrated and co-ordinated coastal planning, management and reporting	The PP will incentivise new development that will enhance the coastal zone and provide for more sustainable land uses as described above.  Council is currently preparing a coastal management plan which will include coordinated coastal planning, management and reporting functions.  The PP is consistent with this object.
(i) to encourage and promote plans and strategies to improve the resilience of coastal assets to the impacts of an uncertain climate future including impacts of extreme storm events	A CMP is currently being prepared which will provide for the management of the coastal zone and improve resilience of coastal assets to the impacts of changing climate conditions and events.  A scoping study has been prepared which identifies coastal hazards that the CMP is to address to management impacts of climate change.  As noted above, the land to which the PP applies is within the existing urban footprint, and so mitigation options outlined in the CMP will be applicable to Nelson Bay.  The PP is consistent with this object.
(j) to ensure co-ordination of the policies and activities of government and public authorities relating to the coastal zone and to facilitate the proper integration of their management activities	A CMP is being prepared in conjunction with DPIE which will provide for the management of the coastal zone, as well as a framework for coordination with other Council and government policies and activities.  As mentioned above, the PP applies to land which is within the existing urban footprint, and so the management options identified in the CMP for hazards affecting the coastal zone, will be applicable to Nelson Bay.  The PP is consistent with this object.
(k) to support public participation in coastal management and planning and	In preparation of the PP, community consultation undertaken since 1984 was reviewed in order to ensure the proposed provisions are consistent

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	<p>greater public awareness, education and understanding of coastal processes and management actions</p>	<p>with the community vision for Nelson Bay. A key characteristic of this consultation was the interaction between land use, and the coastal environment and processes.</p> <p>The PP includes provisions that emphasise this interaction, with reduced bulk and scale at the interface between the town and foreshore.</p> <p>Additionally, Council is currently preparing a CMP which includes significant community consultation and participation.</p> <p>The PP is consistent with this object.</p>
	<p>(l) to facilitate the identification of land in the coastal zone for acquisition by public or local authorities in order to promote the protection, enhancement, maintenance and restoration of the environment of the coastal zone.</p>	<p>The PP does not identify land for acquisition, however this is an activity outside of the normal operations of a planning proposal. It is also noted that the PP applies to land within the existing urban footprint with very limited opportunities for the acquisition of land. Council continues to work with Crownland on the management of public land through a Plans of Management that expressly set out to protect and enhance the connection of Nelson Bay with the coastal zone.</p> <p>The PP is consistent with this object.</p>
	<p>(m) to support the objects of the <i>Marine Estate Management Act 2014</i>.</p>	<p>The PP supports the objects of the <i>Marine Estate Management Act 2014</i> as described below.</p> <p>Section 3(a) – The PP will promote new development within the existing urban footprint of Nelson Bay, which will be required to incorporate improved stormwater management, as well as improved water and energy usage features. Additionally, development contributions collected from new development will providing a funding stream to deliver public infrastructure upgrades that will further improve the interaction of the built environment with the marine estate. This will promote a biologically diverse, healthy and productive marine estate. Further, the PP will encourage new development, providing economic opportunities through both construction and businesses supporting the consequent population increase. The improved local economy will result in more interaction with the marine estate, and promote the importance of this ecosystem. Increased focus on the importance of the marine estate will also increase awareness within the scientific community, promoting future research and education opportunities.</p> <p>Section 3(b) – The PP is supported by a range of other plans and agreements to coordinate the exercise of functions in relation to the marine estate. This includes Plans of Management for public land, and a CMP currently being prepared. Council will continue to work with relevant public authorities in exercising marine estate functions.</p>

	<p>Section 3(c) – The PP adjoins land declared as a marine park, and includes provisions that respect the importance of the coastal zone and marine park. This includes a smaller bulk and scale of buildings along the foreshore, and the maintenance of public open space.</p> <p>The PP is consistent with this object.</p>
	<p><b>4(b) The NSW Coastal Management Manual and associated Toolkit</b></p> <p>Council is preparing a CMP in conjunction with DPIE and as set out in the NSW Coastal Management Manual. Council is currently finalising Stage 2 studies which will define the extent of coastal hazards in Port Stephens now and in the future. Council will begin Stage 3 of this process once the Stage 2 studies have been finalised. A copy of the Stage 1 Scoping Study is attached as appendix 1.</p> <p>As noted above, the PP does not include the rezoning of greenfield land, and is located entirely within the existing urban footprint of Nelson Bay. Management options defined in the CMP will be applicable to the land in its current form, and will continue to apply to this area.</p> <p>It is noted that the PP retains a lower potential built form in proximity of foreshore areas, and so the potential need to apply management options outlined in the CMP are unlikely to change as a result of the PP.</p> <p>These management options will adequately respond to future risks from coastal hazards, including for an expanded population resulting from the Planning Proposal. It is noted opportunities for addition resident population resulting from the Planning Proposal is constrained to those areas with height of building provisions of 28m and 42m. These locations are significant higher than the 1% AEP flood event identified in proximity of Nelson Bay and it is anticipated that Council’s CMP will identify inundation of the subject land as insignificant. Further, existing features to protect Nelson Bay from coastal erosion and shoreline recession are considered suitable to protect the town centre from this hazard. These features will also ensure that Nelson Bay is protected from Aeolian sand inundation. It is anticipated that the CMP will identify the risks to additional residents resulting from this planning proposal from coastal hazards will be insignificant, and will not increase reliance on emergency responses.</p> <p>The PP is consistent with the NSW Coastal Management Manual and associated Toolkit.</p>
	<p><b>4(c) NSW Coastal Design Guidelines 2003</b></p> <p>Nelson Bay fits within the definition of a coastal town as defined in the NSW Coastal Design Guidelines. The guidelines identify the desired future character as predominantly accommodating growth within existing boundaries. The PP provides for infill development opportunities, consistent with the guideline. In addition, the provisions in the PP enhance access to and definition of views to surrounding vegetated environments, the water and the sky, in accordance with the guidelines.</p> <p>The PP proposes height of building controls that respond to the local topography and site specific characteristics, as identified in the guidelines. A place-specific urban design analysis carried out for the purposes of defining appropriate building heights in Nelson Bay, giving consideration to feasibility, local topography, built form and local character. This has outlined that in order to achieve growth outlined in the Hunter Regional Plan, feasible infill development is achieved at heights above 4 storeys. The urban design analysis prepared for this planning proposal has demonstrate that buildings of 8 and 12 storeys will maintain important elements of character include views to surrounding water and the natural environment, solar access, and when combined with new DCP controls, a village feel to the town</p>

<p>centre.</p> <p>The PP does not proposed to expand the urban footprint of Nelson Bay, instead delivering the objective to create compact settlements in accordance with the desirable practices set out in the guideline.</p> <p>The PP is also supported by other actions outlines in the Nelson Bay delivery program which will improve the quality of, and access to open spaces. Recent upgrades include improvements to Apex Park, and the extension of Yacaaba Street to open space on the Nelson Bay foreshore. Works will continue to be funded through a number of streams including from developer contributions.</p> <p>The PP also includes provisions that will require new development to provide appropriate solar access, access to views, and will contribute to the character of Nelson Bay. This is also supported by draft DCP controls which will require new development to demonstrate enhancement of the local character, ensuring new development meets the objectives of the guidelines.</p> <p>The PP is consistent with the NS Coastal Design Guidelines 2003.</p>	
<p><b>4(d) Any relevant Coastal Management Program that has been certified by the Minister, or any Coastal Zone Management Plan under the Coastal Protection Act 1979 that continues to have effect under clause 4 of Schedule 3 to the Coastal Management Act 2016, that applies to the land</b></p> <p>There is no existing CMP certified by the minister, or any Coastal Zone Management Plans applicable to the PP.</p> <p>As mentioned above, a CMP is currently being prepared in accordance with the NSW Coastal Management Manual in conjunction with DPIE, which would require consideration under this direction. As demonstrated above, the PP is consistent with the objectives for the CMP and will be supported by it.</p> <p>The PP is consistent with this direction.</p>	
<p><b>5 A planning proposal must not rezone land which would enable increased development or more intensive land-use on land:</b></p>	
<p>(a) Within a coastal vulnerability area identified by the State Environmental Planning Policy (Coastal Management) 2018</p>	<p>The PP does not propose to rezone any land within a coastal vulnerability area identified by the State Environmental Planning Policy (Coastal Management) 2018.</p>
<p>(b) that has been identified as land affected by a current or future coastal hazard in a local environmental plan or development control plan, or a study or assessment undertaken:</p> <p>(i) by or on behalf of the relevant planning authority and the planning proposal authority, or</p> <p>(ii) by or on behalf of a public authority and provided to the relevant planning authority and the planning proposal authority.</p>	<p>The PP does not propose to rezone any land identified as being affected by a current or future coastal hazard in a local environmental plan, development control plan, or study or assessment.</p>



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	<p><b>6 A planning proposal must not rezone land which would enable increased development or more intensive land-use on land within a coastal wetlands and littoral rainforests area identified by the State Environmental Planning Policy (Coastal Management) 2018</b></p> <p>Consistent – The planning proposal does not apply to any land identified as coastal wetlands or littoral rainforest as identified by the State Environmental Planning Policy (Coastal Management) 2018</p> <p><b>7 A planning proposal for a Local Environmental Plan may propose to amend the maps, including increasing or decreasing the land within these maps, under the State Environmental Planning Policy (Coastal Management) 2018</b></p> <p>Consistent – The planning proposal does not propose to amend any of the maps in the State Environmental Planning Policy (Coastal Management) 2018.</p>
<p><b>2.3 Heritage Conservation</b></p>	<p>The Town Centre includes the Apex Park Group (Including cenotaph, the original town well, and the remains of the memorial steps) which is identified in PSLEP as an item of local significance. These heritage items are identified within the Apex Park Masterplan (included as Appendix 8) and are shown in Figure 7 below.</p> <p>The Town Centre also includes the Nelson Bay Cemetery (shown in Figure 8 below), which is identified in the Port Stephens LEP 2013 as an item of local significance.</p> <div data-bbox="486 869 1189 1527" data-label="Figure"> </div> <p><b>Figure 8 - Heritage Conservation Items Map</b></p> <p>PSLEP already contains provisions that facilitate the conservation of these items, which will not be diminished by the proposed amendments. The existing provisions are consistent with this direction and do not require modification.</p> <p>The Planning Proposal is consistent with this direction.</p>

<b>3. HOUSING, INFRASTRUCTURE AND URBAN DEVELOPMENT</b>	
<p><b>3.1 Residential Zones</b></p>	<p>This direction applies because the planning proposal affects residentially zoned land and land zoned B2 Local Centre where significant residential development is permitted.</p> <p>The planning proposal seeks to use a number of planning provisions to improve the viability of housing developments within the Town Centre, which will broaden the choice of building types and locations available in the housing market. In addition, the proposed provisions relate to the existing urban footprint of the Town Centre where developments can be serviced by existing infrastructure. This will reduce the demand to grow the urban footprint outside the Town Centre. Good design outcomes will be achieved as a consequence of the proposed planning provisions, which provide a framework for appropriate scaling and proportioning of buildings. It is also intended to supplement the provisions the subject of this Planning Proposal, with development controls that encourage appropriate setbacks and massing to ensure appropriate solar access, visual privacy and view sharing are considered when a development application is assessed. The development controls will be developed to deliver action 11 of the Delivery Program. The proposed amendments to the PSLEP do not include changes to land zoning or other provisions which would serve to reduce the permissible residential density of the land.</p> <p>The Planning Proposal is consistent with this direction.</p>
<p><b>3.3 Home Occupations</b></p>	<p>PSLEP includes Home Occupations as permissible without consent in both the R3 Medium Density Residential zone and B2 Local Centre zone where dwellings houses are permissible. The Planning Proposal will not amend this provision.</p> <p>The Planning Proposal is consistent with this direction.</p>
<p><b>3.4 Integrating Land Use and Transport</b></p>	<p>This direction applies because the Planning Proposal relates to land zoned for urban purposes.</p> <p>The proposed amendments to PSLEP will promote increased development density within the walking catchment of transport nodes (such as buses, taxi ranks and paths/cycleways and the like) in Nelson Bay. In addition, the proposed development controls will facilitate increased pedestrian access to the Town Centre where retail and service outlets are located, resulting in a reduced dependence on cars.</p> <p>In consideration of parking and transport matters in the Town Centre, Council commissioned a traffic and parking study which was completed in May 2013. A copy of the study is included at Appendix 9. The study undertook a review of the existing road and transport network and made recommendations to improve accessibility to the town centre and facilitate more efficient vehicle and pedestrian movement. In 2017 Council commissioned an update to the study to review more recent traffic and parking count data, and test the relevance of the recommendations. A copy of the study update is included as Appendix 10. The study update was identified in action 20 of the Delivery Program to develop solutions that improve wayfinding, traffic movement efficiency and car parking utilisation and turnover.</p> <p>Action 20 of the Delivery Program also requires the preparation of an</p>

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	<p>integrated Transport Plan for Nelson Bay Town Centre that combines data contained within the updated traffic and parking study, the Pedestrian Access and Mobility Plan (included as Appendix 11), the Nelson Bay Public Domain Plan and the report of the Nelson Bay Citizens Parking Panel.</p> <p>The Nelson Bay Public Domain Plan has recently been exhibited and Council is currently considering the submissions received. The Public Domain Plan includes a signage and wayfinding strategy and provides specific design concepts which achieve outcomes of the updated traffic and parking study. The Public Domain Plan has been prepared with reference to Transport for NSW's Movement and Place Framework and identifies streets in the town centre where pedestrian movement will be prioritised as well as the streets that will be important corridors for public transport and cars, strengthens connections to parks and open spaces, and supports active movement via walking and cycling in and around the Town Centre. The Public Domain Plan delivers Action 12 of the Delivery Program and has been included as Appendix 12.</p> <p>Action 22 of the Delivery Program required the formation of an independent citizen's car parking panel, which was recently established. The panel prepared a report analysing the car parking needs of both the resident and tourist population, and making recommendations to Council on how car parking access and utilisation could be improved. A copy of the Nelson Bay Citizens Parking Panel Report has been included as Appendix 13.</p> <p>The above reports have been considered in the preparation of this Planning Proposal and support a revitalised and reinvigorated Town Centre.</p> <p>The Planning Proposal was referred to Transport for NSW (TfNSW) in accordance with the conditions of the Gateway determination. TfNSW identified additional information that should be addressed by the Traffic and Parking Study (included as Appendix 10). Following a discussion in relation to the implementation of other traffic and parking related actions in the Nelson Bay Delivery Program, TfNSW advised that it was appropriate to undertake an update to the Traffic and Parking Study as part of the preparation of an Integrated Transport Plan for Nelson Bay. Further, the advice confirmed that the matters raised did not form an objection to the Planning Proposal. A copy of the correspondence undertaken with TfNSW has been included as Appendix 19.</p> <p>The Planning Proposal is consistent with this direction.</p>
<p><b>4. HAZARD AND RISK</b></p>	
<p><b>4.1 Acid Sulfate Soils</b></p>	<p>This direction applies as the site has been identified as potentially containing Class 1, 3, 4 and 5 acid sulfate soils, as shown in figure 9 below.</p> <p>PSLEP contains existing provisions to regulate works in acid sulfate soils, which are not proposed to be amended by this Planning Proposal. These provisions were developed in accordance with the Acid Sulfate Soils Guidelines referenced in this direction and satisfy the direction in this regard. In addition, the Planning Proposal does not propose an intensification of land uses on the site.</p> <p>The Planning Proposal is consistent with this direction.</p>

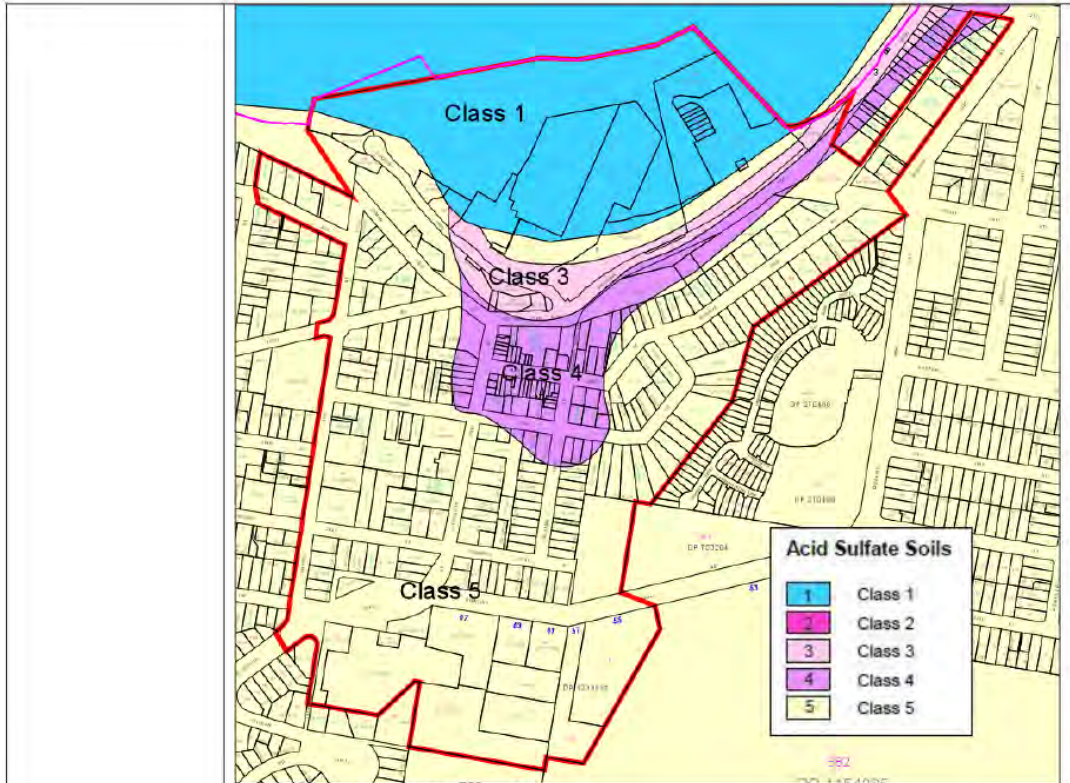


Figure 9 - Acid Sulfate Soils Map

<p><b>4.3 Flood Prone Land</b></p>	<p>This direction applies as land located to the north of Teramby Road and Victoria Parade (Nelson Bay harbour and foreshore) is identified as high hazard flood fringe as shown in Figure 10 below.</p> <p>The Planning Proposal includes an amendment to building heights permitted on a portion of the affected land which will permit an increase in the development of flood prone land. It is noted however that for the majority of affected land, either no building height increase is proposed, or the increase in permissible building height will allow for up to an additional 2.5m. Given that 2.5m of building height is generally not sufficient to contain an additional storey, this amendment is not considered to allow for a significant increase in development of the affected land.</p> <p>The Planning Proposal will allow for up to 6m of additional building height on the remaining flood affected land. This increase is capable of containing two additional storeys compared to the current building height control. However the impacts of any flood experienced in the locality will be minimal given the small footprint of the land benefitting from this increase in building height. The increased development potential of this land is not a significant consideration with regard to flooding.</p> <p>PSLEP contains existing provisions that give effect to and are consistent with the NSW Flood Prone Land Policy, which are not proposed to be amended.</p> <p>The Planning Proposal is consistent with this direction.</p>
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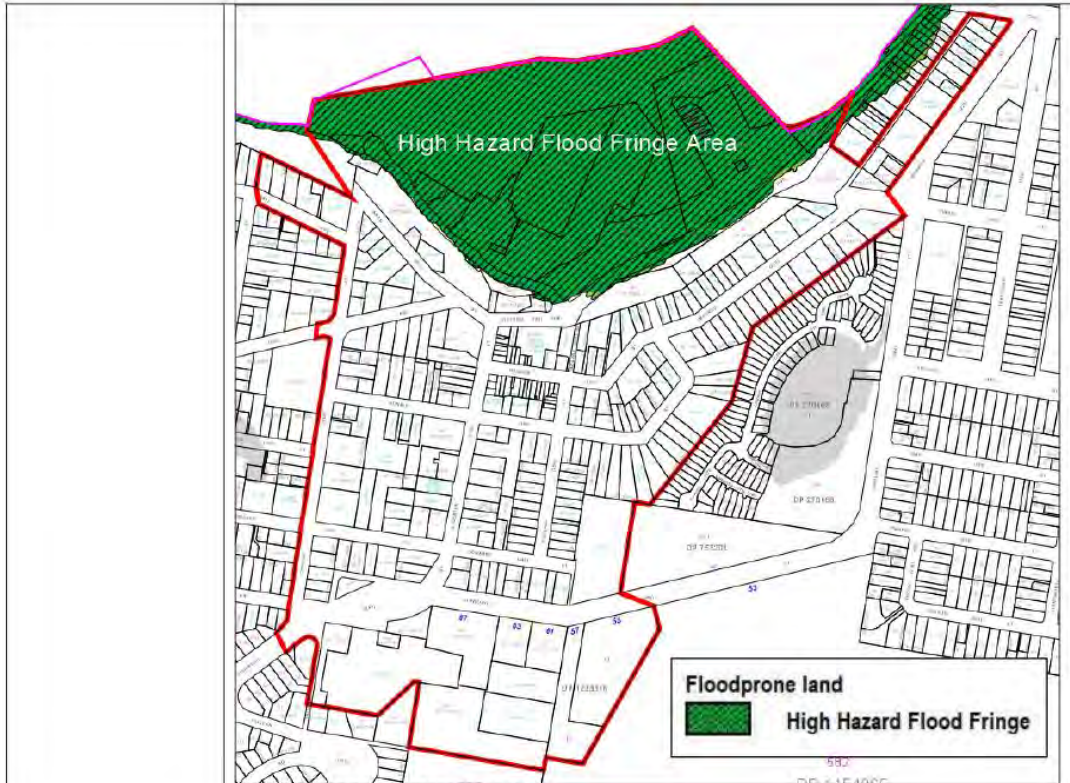


Figure 10 - Flood Prone Land Map

<p><b>4.4 Planning for Bushfire Protection</b></p>	<p>This direction applies as a portion of the subject land is identified as being bushfire prone land as shown in Figure 11 below.</p> <p>The Planning Proposal relates to the existing urban footprint which contains features to reduce the impact of bushfire on developed land, such as access roads, a suitable water supply and asset protection zones.</p> <p>Consultation with the NSW Rural Fire Service was carried in accordance with the relevant Gateway condition. The NSW Rural Fire Service did not object to the planning proposal.</p>
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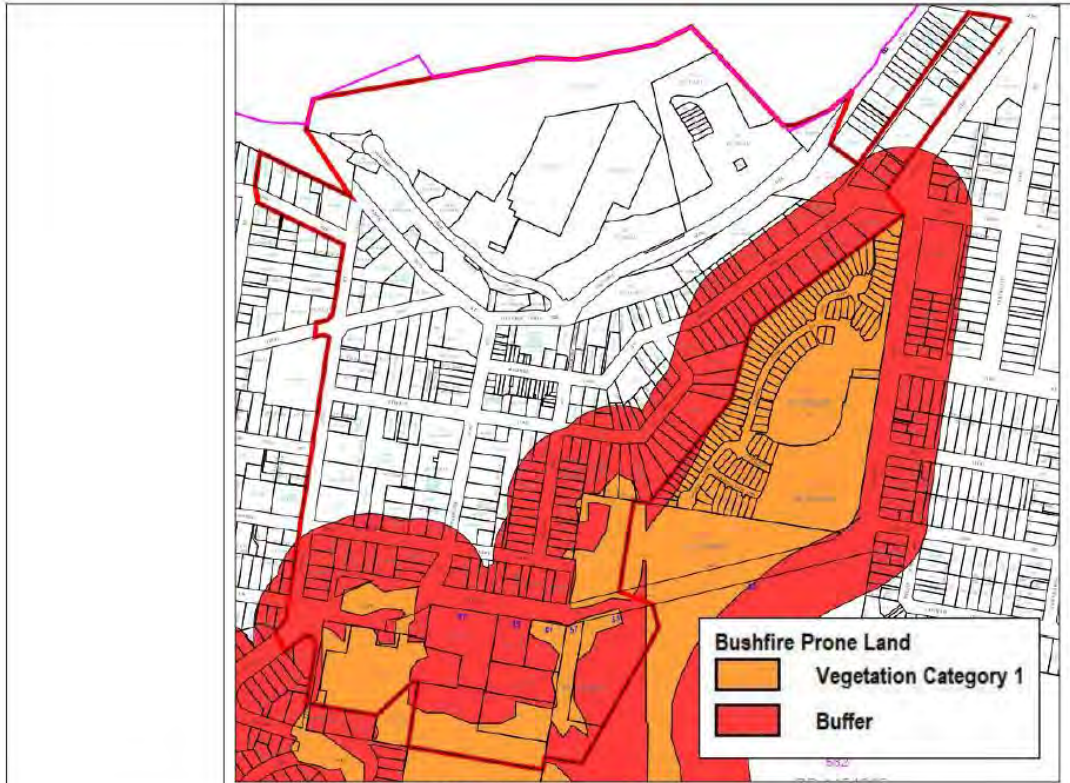


Figure 11 - Bushfire Prone Land Map

**5. REGIONAL PLANNING**

**5.10 Implementation of Regional Plans**

This direction applies as the site is located within the boundaries of the Hunter Regional Plan (HRP). As detailed under Section B(3) above, the planning proposal is consistent with the HRP as it will:

- Enable economic diversity and new tourism options that focus in reducing the seasonal nature of tourism and its effects on local economy.
- Create a well-planned, functional and compact settlement pattern that responds to settlement planning principles and does not encroach on sensitive land uses, including land subject to hazards, on drinking water catchments or on areas with high environmental values.
- Provide greater housing choice by delivering diverse housing, lot types and sizes, including small-lot housing in infill and greenfield locations.
- Promote new housing opportunities in urban areas to maximise the use of existing infrastructure.
- Concentrate growth in strategic centres, local centres and urban renewal corridors to support economic and population growth and a mix of uses.

The Planning Proposal is consistent with this direction.

A detailed assessment of the requirements of this Direction is included

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	<p>below.</p> <p>Goal 1 - The leading regional economy in Australia</p> <p>Nelson Bay is recognised as a strategic centre in the HRP, and is a major tourism contributor. Currently, the local economy relies heavily on periodic tourism trade to sustain businesses throughout the year. The PP will encourage new development in Nelson Bay and increase the local resident population, resulting in a more stable economic environment, contributing to the regional economy. Infill development will also provide residential opportunities in immediate proximity of a strategic centre, aligning with actions under direction 1.</p> <p>Direction 6 specifically sets out an objective to grow the economy of Port Stephens. This includes an action to enable economic diversity and new tourism opportunities that focus on reduced impacts of the seasonal nature of tourism. The PP will contribute to the revitalisation of Nelson Bay, which has specifically been defined to include an improved range of businesses and a more consistent economic trade throughout the year. This will be achieved by an increase in the local resident population resulting from new development enabled by the PP.</p> <p>An increase population will also support growth of health services in Nelson Bay, consistent with the action under Direction 8.</p> <p>Direction 9 sets out an objective to grow tourism in the region, and although Nelson Bay is not identified in this direction, the PP will provide a better economic environment and support revitalisation of Nelson Bay. This will include public domain, car parking and movement upgrades, creating a more attractive centre and incentivising the tourism industry.</p> <p>The PP is consistent with this goal and will deliver the identified actions in the HRP.</p>
	<p>Goal 2 - A biodiversity-rich natural environment</p> <p>The PP applies to land which is within the existing footprint of Nelson Bay urban footprint, enabling infill development and preserving natural environment. In addition, new development will be subject to improved stormwater management requirements, and requirements for improved water and energy efficiency. This will improve environmental outcomes for the adjoining coastal environment.</p> <p>In addition, Council is preparing a CMP which will set out management options to address the impacts of increased hazards and climate change. These management options will apply to Nelson Bay.</p> <p>The PP is consistent with this goal.</p>
	<p>Goal 3 - Thriving communities</p> <p>The provisions proposed in the PP were developed so as to provide an environment that people want to be in. Key characteristics that have been identified for Nelson Bay include solar access, views to the surrounding environment, and the look and feel of the town centre. Height and FSR provisions will improve the opportunity for solar access, whilst active street frontage and minimum building width</p>

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	<p>provisions will deliver appropriate bulk and scale. This will deliver actions under Direction 17 of the HRP.</p> <p>In accordance with Direction 18, the PP will enable new development which will providing a funding stream through developer contributions, to deliver improvements to the Nelson Bay foreshore. Upgrades to this area will increase accessibility to the waters of Nelson Bay.</p> <p>The PP is part of a greater program of actions under the Nelson Bay delivery program to revitalise the town centre, and enhance the amenity and attractiveness of Nelson Bay. This includes actions such as the implementation of the Nelson Bay Public Domain Plan, and upgrade works to public parks and reserves. The PP will contribute to this revitalisation by encouraging new development with contemporary facades to interface with the public realm, delivering actions under Direction 20 of the HRP.</p> <p>In particular, the Local Infrastructure Contributions Plan has recently been revised and now includes specific funding for town centre upgrades in Nelson Bay, accelerating urban revitalisation in this growth area in accordance with Direction 20.1. Council endorsed a program of works in May 2020 that will be partly funded by these contributions, which includes upgrades to public transport and community facilities, and improvements to the public domain.</p> <p>The PP is consistent with this goal and will deliver the identified actions in the HRP.</p>
<p>Goal 4 - Greater housing choice and jobs</p>	<p>The PP will encourage new development in Nelson Bay, providing opportunities for new dwellings within the existing urban footprint. This will deliver a compact settlement pattern in Nelson Bay, consistent with the actions of Direction 21.</p> <p>The PP will encourage apartment type development which has generally been absent from the new housing market in Port Stephens, increasing housing diversity. Anticipated housing will also be well services and connected to the town centre, providing a high quality housing option. This will deliver actions under Direction 22.</p> <p>The PP will encourage development and growth within an existing strategic centre, aligning with the actions under Direction 23. The capacity of the town centre to accommodate growth has been considered in the preparation of the Port Stephens Local Infrastructure Contribution plan, which considers necessary infrastructure upgrades required to support growth in the resident population and employment. This has been underpinned by a traffic and parking study specifically carried out for the purposes of the Planning Proposal. In addition, other actions under the Delivery Program will be undertaken, including the preparation of an Integrated Transport Plan for Nelson Bay.</p> <p>The PP is consistent with this goal and will deliver the identified actions in the HRP.</p>



	Local Character Narrative	The PP will increase density within the Nelson Bay Strategic Centre and enhance the local character. New development will also provide additional housing opportunities for new residents, balancing the mix between residents and tourists and reducing economic seasonality. The PP is consistent with the Local Government Narrative.
<b>Direction 6.1 Local Plan Making</b>	The Planning Proposal does not propose to include any new provisions requiring concurrence, consultation or referral of development applications to a Minister or public authority, and does not identify any development as designated development.  The Planning Proposal is consistent with this direction.	
<b>Direction 6.2 Reserving Land for Public Purposes</b>	The Planning Proposal does not include any provisions to create, alter or reduce existing zonings or reservations of land for a public purpose.  The Planning Proposal is consistent with this direction.	

**SECTION C – Environmental, Social and Economic Impact**

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

The proposed new and amended provisions in PSLEP relate to land within the existing developed urban footprint, which contains only minor areas of high environmental value – see Figure 12 below.



Figure 12 - High Environmental Value Map

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The proposed provisions will not increase the likelihood of development in areas that contain critical habitat or threatened species, populations or their habitats. Future proposed developments will continue to be assessed for ecological impact in accordance with the existing controls contained within PSLEP and the *Biodiversity Conservation Act 2016*.

The Planning Proposal is unlikely to adversely affect any critical habitat, threatened species, populations or their habitats.

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

The proposed provisions will allow developments that would alter the local built environment. The package of proposed provisions will ensure that these changes result in appropriate future development in the town centre, with adequate building separation, proportions and massing. Further, proposed development controls will supplement the PSLEP provisions to improve aesthetics and building quality as viewed from the public realm. Further to this the Delivery Program includes Actions to establish an Independent Urban Design Panel (Action 3), provide Urban Design Training for Council staff (Action 4), and introduces a Clause 4.6 policy for assessment of exceptions to Development Standards (Action 8). Actions 4 and 8 have already been delivered, whilst Action 3 is currently being enacted. In conjunction with this Planning Proposal, these actions establish a design excellence framework for future development in the Town Centre. The Planning Proposal is considered to provide a positive environmental impact in this regard.

Given that the Planning Proposal relates to land within the existing urban footprint, there are no additional anticipated effects to the nature environment.

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

The amendments seek to provide a balance between views, solar access, maintaining prevailing winds and managing the scale of development, without restricting appropriate new development that meets feasibility requirements of the development industry. The introduction of Floor Space Ratio, Active Street Frontages, and minimum vertical to horizontal building width provisions will provide for good design and achieve the desired built form in Nelson Bay. A high quality Town Centre environment will improve the liveability of Nelson Bay and provide for the retail and service based needs of the community. Revitalisation of the Town Centre will also improve the attractiveness of Nelson Bay as a tourism destination into the future.

Significant urban design analysis has been undertaken in Nelson Bay over a 30 year period. Consistently, this analysis has identified views to the surrounding water and verdant ridgelines as important characteristics of Nelson Bay to be preserved. The proposed building heights have been determined with consideration of the potential impacts of development both on view corridors and vistas. The proposed provisions also take into account the role of the built environment in framing important view corridors from key locations throughout the town centre (see Appendix 17 for this analysis).

The urban design analysis has identified locations where the built environment has the ability to impinge on view corridors and vistas, resulting in the introduction of building height limits to some currently unencumbered land, including community land at the southern end of the town centre. This planning proposal does not include actions to reclassify this community land, rather the proposal seeks to ensure these important views are preserved (see proposed height of building map in Appendix 4).

The Planning Proposal will increase the viability of new development within the Town Centre, providing housing opportunities and reducing the population seasonality that currently results from influxes of tourists to the area. New commercial opportunities will contribute to the creation of employment and job opportunities that improve the local economy, whilst additional housing options will increase accessibility to public transport and improve walkability within the Town

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Centre. The planning proposal will have positive social and economic effects by activating the Town Centre, increasing employment opportunities and increasing the consistency of consumer activity.

The amendments to PSLEP are also supported by a number of other actions under the Delivery Program, which will improve traffic and movement efficiency, improve parking utilisation, provide for public domain upgrades, and improve the quality of buildings and developments within the Town Centre.

The local infrastructure necessary to support the outcomes of the planning proposal was identified in the preparation of the Port Stephens Local Infrastructure Contributions Plans (LICs) in 2019. Preparation of the LICs specifically considered the potential future growth in population and employment in the Nelson Bay Town Centre and Foreshore resulting from the proposed amendments to PSLEP, which has informed infrastructure upgrades detailed in the works schedule. The works schedule to the LICs specifies the community and other infrastructure projects such as shared paths and town centre upgrades in the Nelson Bay Town Centre that will be funded by new development in the Town Centre and local catchment. The LICs were prepared based on population data and other projections that took into account the outcomes of the planning proposal. The details of the data and calculations used to determine infrastructure requirements are set out in the LICs. The LICs are published on Council's website: <https://www.portstephens.nsw.gov.au/grow/development-controls-plans-and-strategies/local-infrastructure-contributions>.

This coordinated approach to improvement in Nelson Bay will ensure positive social and economic impacts.

**SECTION D – State and Commonwealth Interests****10. Is there adequate public infrastructure for the planning proposal?**

The Planning Proposal relates to land within the existing urban footprint which is currently serviced by reticulated water, sewer, electricity, telecommunications and public roads. Future developments may require upgrading of the respective distribution networks, which can be determined at the time of development assessment.

Early consultation with relevant service providers has determined that a precinct wide review of existing service provisions would allow for a systematic approach to any required upgrades, reducing ad-hoc solutions that only serve individual developments. Further consultation with service providers following issue of a Gateway determination will facilitate this process.

The Nelson Bay Traffic and Parking Study Update prepared in September 2017 (Appendix 10) has given specific consideration to the traffic and transport impact of development resulting from the current proposal. The study included a number of recommendations, including upgrades for pedestrian movement through the town centre. Many of these upgrades have also been identified in the Nelson Bay Public Domain Plan. A broad range of traffic and transport upgrades have been included in a works program adopted by Council on 12 May 2020 that will be funded by a smart parking scheme in Nelson Bay. In addition the LICs include a range of traffic, parking and town centre improvement works to ensure appropriate traffic and transport infrastructure is provided. This will be funded by developer contributions, including those paid by new development in the Nelson Bay town centre.

**11. What are the views of the State and Commonwealth public authorities consulted in accordance with the gateway determination?**

Consultation with relevant government agencies has been undertaken as part of the preparation of the Delivery Program and more recently in the preparation of the Nelson Bay Public Domain Plan.

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The Planning Proposal has been prepared with reference to preliminary comments received from the NSW Department of Planning and Environment, Crown Lands and NSW Police.

Further consultation with relevant State and Commonwealth Agencies will be undertaken following a Gateway Determination.

**PART 4 - MAPPING**

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The Planning Proposal will result in the following amendments to the maps included in PSLEP:

- Amend Height of Buildings Map HOB\_005D and replace with the Height of Buildings Map included in Appendix 4;
- Amend Additional Permitted Uses Map, Precinct Areas Map, Waste or Resource Facility Map CL1\_005 and replace with the Additional Permitted Uses Map, Precinct Areas Map, Waste or Resource Facility Map included in Appendix 4;
- Introduce the Floor Space Ratio Map FSR\_005D included in Appendix 4; and
- Introduce the Active Street Frontages Map ASF\_005D included in Appendix 4.

In addition to the above maps, the Planning Proposal is also supported by a Site Identification Map which has been included as Appendix 2. Copies of the existing PSLEP Maps to be replaced have also been included as Appendix 5.

**PART 5 - COMMUNITY CONSULTATION**

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Consultation has been undertaken during preparation of the 2012 Strategy and more recently when developing the Delivery Program. The submissions received as a result of this process were incorporated into the outcomes and actions of the Delivery Program, including Actions 1, 2 and 7 which initiated this Planning Proposal.

Community and external stakeholder consultation has been ongoing since the preparation and exhibition of the initial Discussion Paper: Progress of the Nelson Bay Town Centre and Foreshore Strategy in the first half of 2017. This included community consultation initiatives such as:

- Surveys on Engagement HQ (an online consultation tool on Council's website);
- Letter drops to local businesses, special interest groups and other stakeholders; and
- Key stakeholder meetings, including with Tomaree Ratepayers and Residents Association (TRRA), Tomaree Business Chamber, local real estate agents, Destination Port Stephens, the Aboriginal Strategic Committee, the Nelson Bay Pop-Up Shop (Smart Art Program), the NSW Department of Planning and Environment and NSW Crown Lands.

A total of 82 individual and 67 survey submissions were made on the Discussion Paper that were considered in the preparation of the Delivery Program. This was previously reported to Council on 12 December 2017.

The draft Delivery Program was exhibited from 21 February 2018 to 4 April 2018.

A number of supporting documents were also exhibited with these documents, including an updated traffic and transport study, a report on the feasibility testing of residential development sites in Nelson Bay Town Centre, and an independent third party peer review of the feasibility testing.

The information was made publicly available on Council's website and Engagement HQ, notification letters were sent to businesses, key stakeholders and special interest groups, and public notices were published in the local newspaper. Social media promotions (Port Stephens

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Council website, Twitter, Facebook, LinkedIn) were conducted, and articles and interviews with the Mayor were published in the local newspaper.

More than 50 people attended a launch of the 'Nelson Bay Next' brand and over 30 people attended two 'Drop-In Sessions' held in Apex Park, Nelson Bay. Both events took place within the public exhibition period and the community could speak directly to Council Officers at the Drop-In Sessions. Councillors and Council Officers also spoke and answered questions at a TRRA meeting at the Nelson Bay Bowling Club within this period.

Following a review of the submissions received, the Delivery Program was reported to Council on 25 September 2018. A Community and Stakeholder Consultation Report was also submitted to Council, summarising the submissions received and staff responses to the matters raised. A copy of the Community and Stakeholder Consultation Report has been included as Appendix 14.

**Post Gateway Consultation**

The Nelson Bay Planning Proposal and Draft Development Control Plan were exhibited for a period of 42 days, from 3 July 2020 to 14 August 2020.

A total of 136 community submissions were received as a result of the exhibition process, with the majority of submissions relating to changes in height of building provisions. Matters raised in support of these submissions largely related to the impact of new development on local character and the village feel of Nelson Bay.

Height of building provisions are supported by new provisions for active street frontages, minimum building widths and floor space ratios. These provisions were generally supported, however a number of submissions raised a desire to decrease floor space ratios in some areas.

Height of building provisions are also supported by changes to the DCP that strengthen the requirement for new development to demonstrate design excellence. As a result of the submissions received, additional new objectives and controls are proposed to be added to the DCP to require new development to also demonstrate architectural excellence.

1 submission was received from a public authority (Transport for NSW). The submissions did not object to the planning proposal, with the understanding that matters raised would be addressed during implementation of other actions in the delivery program.

A detailed summary of submissions and Council response has been included as Appendix 18.

The proposed provisions contained in this planning proposal have not been amended as a result of post gateway consultation.

**PART 6 – PROJECT TIMELINE**

The Planning Proposal is expected to be reported to Council following the completion of the public exhibition period.

The following timetable is proposed, subject to the requirements of the Gateway Determination:

	Jun	Jul	Aug	Sept	Oct	Nov	Dec
<b>Gateway Determination</b>							
<b>Agency Consultation</b>							
<b>Public Exhibition</b>							
<b>Review of Submissions</b>							
<b>Council</b>							

**ITEM 1 - ATTACHMENT 2 NELSON BAY PLANNING PROPOSAL.**

<i>Report</i>							
<i>Parliamentary Counsel</i>							

**MINUTES ORDINARY COUNCIL - 25 SEPTEMBER 2018****ORDINARY COUNCIL MEETING - 25 SEPTEMBER 2018  
MOTION**

<b>094</b>	<b>Councillor Giacomo Arnott Councillor Chris Doohan</b>
	It was resolved that Council move into Committee of the Whole.

Mayor Ryan Palmer left the meeting at 6:32pm, in Committee of the Whole. The Deputy Mayor, Cr Sarah Smith Chaired the meeting during the absence of the Mayor.

**ITEM NO. 4****FILE NO: 18/109715  
EDRMS NO: PSC2007-1204V3****NELSON BAY TOWN CENTRE & FORESHORE STRATEGY IMPLEMENTATION  
AND DELIVERY PROGRAM**

REPORT OF: STEVEN PEART - STRATEGY & ENVIRONMENT SECTION  
MANAGER  
GROUP: DEVELOPMENT SERVICES

**RECOMMENDATION IS THAT COUNCIL:**

- 1) Note the outcomes of the exhibition of the draft 'Progressing the Nelson Bay Town Centre and Foreshore Strategy: A revised implementation and delivery program (2017)' (Delivery Program) and draft Clause 4.6 Policy - Exceptions to Development Standards summarised in the Community and Stakeholder Consultation Report (**TABLED DOCUMENT 1**).
- 2) Adopt the Delivery Program which recommends raising the height limit in Nelson Bay Town Centre to 10 storeys and other actions to increase investment feasibility, whilst maintaining a high quality public domain and improved design outcomes (**TABLED DOCUMENT 2**).
- 3) Endorse the Clause 4.6 Policy - Exceptions to Development Standards (**ATTACHMENT 1**).
- 4) Endorse the preparation and submission of a planning proposal for a Gateway certificate to the NSW Department of Planning seeking to amend the *Port Stephens Local Environmental Plan 2013* and implement the relevant actions in the adopted Delivery Program.

**ORDINARY COUNCIL MEETING - 25 SEPTEMBER 2018  
COMMITTEE OF THE WHOLE RECOMMENDATION**

	<b>Councillor John Nell Councillor Glen Dunkley</b>
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**MINUTES ORDINARY COUNCIL - 25 SEPTEMBER 2018**

That Council:

- 1) Note the outcomes of the exhibition of the draft 'Progressing the Nelson Bay Town Centre and Foreshore Strategy: A revised implementation and delivery program (2017)' (Delivery Program) and draft Clause 4.6 Policy - Exceptions to Development Standards summarised in the Community and Stakeholder Consultation Report (**TABLED DOCUMENT 1**).
- 2) Adopt a revised version of Tabled Document 3, to retain a height limit of 5 storeys in the core of the town centre, and reduce the height limit of the area proposed at 10 storeys along the edges of the town centre to 8 storeys (28 metres). Make all necessary changes to the Delivery Program to give effect to these height limits.
- 3) Endorse the Clause 4.6 Policy - Exceptions to Development Standards (**ATTACHMENT 1**).
- 4) Endorse the preparation and submission of a planning proposal for a Gateway certificate to the NSW Department of Planning seeking to amend the *Port Stephens Local Environmental Plan 2013* and implement the relevant actions in the adopted Delivery Program.

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

Those for the Motion: Crs Chris Doohan, Glen Dunkley, Paul Le Mottee, John Nell, Sarah Smith and Steve Tucker.

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

The motion was carried.

**ORDINARY COUNCIL MEETING - 25 SEPTEMBER 2018  
PROCEDURAL MOTION**

**Councillor Giacomo Arnott**

That Council allow Nigel Waters from the Tomaree Ratepayers and Residents Association to speak on this item prior to a decision for five minutes and allow questions from Councillors, in accordance with the normal public access process.

The motion lapsed without a seconder.



**MINUTES ORDINARY COUNCIL - 25 SEPTEMBER 2018****ORDINARY COUNCIL MEETING - 25 SEPTEMBER 2018  
PROCEDURAL MOTION**

	<b>Councillor Giacomo Arnott Councillor John Nell</b>  That Council suspend the Council meeting to allow Nigel Waters from the Tomaree Ratepayers and Residents Association to speak for five minutes, in accordance with the normal public access process.
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**ORDINARY COUNCIL MEETING - 25 SEPTEMBER 2018  
MOTION**

	<b>Councillor Giacomo Arnott Councillor John Nell</b>  That a division be recorded.
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Those for the Motion: Crs Jaimie Abbott, Giacomo Arnott, Chris Doohan, Glen Dunkley, John Nell and Steve Tucker.

Those against the Motion: Crs Ken Jordan, Paul Le Mottee and Sarah Smith.

The motion was put and carried in Committee of the Whole. The Council meeting was suspended and Mr Waters presented to Council.

**ORDINARY COUNCIL MEETING - 25 SEPTEMBER 2018  
AMENDMENT**

	<b>Councillor Giacomo Arnott Councillor Jaimie Abbott</b>  That the item be deferred until the next Council meeting to be held on 9 October 2018.
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In accordance with Section 375 (A) of the *Local Government Act 1993*, a division is required for this item.

Those for the Motion: Crs Jaimie Abbott, Giacomo Arnott and John Nell.

Those against the Motion: Crs Chris Doohan, Glen Dunkley, Ken Jordan, Paul Le Mottee, Sarah Smith and Steve Tucker.

The motion on being put was lost.

**MINUTES ORDINARY COUNCIL - 25 SEPTEMBER 2018**

Mayor Ryan Palmer left the meeting at 8:42pm in Open Council. The Deputy Mayor, Cr Sarah Smith Chaired the meeting during the absence of the Mayor.

**ORDINARY COUNCIL MEETING - 25 SEPTEMBER 2018  
MOTION**

<b>095</b>	<p><b>Councillor John Nell</b> <b>Councillor Glen Dunkley</b></p> <p>It was resolved that Council:</p> <ol style="list-style-type: none"><li>1) Note the outcomes of the exhibition of the draft 'Progressing the Nelson Bay Town Centre and Foreshore Strategy: A revised implementation and delivery program (2017)' (Delivery Program) and draft Clause 4.6 Policy - Exceptions to Development Standards summarised in the Community and Stakeholder Consultation Report (<b>TABLED DOCUMENT 1</b>).</li><li>2) Adopt a revised version of Tabled Document 3, to retain a height limit of 5 storeys in the core of the town centre, and reduce the height limit of the area proposed at 10 storeys along the edges of the town centre to 8 storeys (28 metres). Make all necessary changes to the Delivery Program to give effect to these height limits.</li><li>3) Endorse the Clause 4.6 Policy - Exceptions to Development Standards (<b>ATTACHMENT 1</b>).</li><li>4) Endorse the preparation and submission of a planning proposal for a Gateway certificate to the NSW Department of Planning seeking to amend the <i>Port Stephens Local Environmental Plan 2013</i> and implement the relevant actions in the adopted Delivery Program.</li></ol>
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In accordance with Section 375 (A) of the *Local Government Act 1993*, a division is required for this item.

Those for the Motion: Crs Glen Dunkley, Paul Le Mottee, John Nell, Sarah Smith and Steve Tucker.

Those against the Motion: Crs Jaimie Abbott, Giacomo Arnott, Chris Doohan and Ken Jordan.

Mayor Ryan Palmer returned to the meeting at 8:46pm in Open Council and resumed the Chair.

**MINUTES ORDINARY COUNCIL - 25 SEPTEMBER 2018****BACKGROUND**

The purpose of this report is to advise Council of the outcomes of the consultation during the public exhibition of the draft 'Progressing the Nelson Bay Town Centre and Foreshore Strategy: A revised implementation and delivery program (2017)' and draft Clause 4.6 Policy - Exceptions to Development Standards (draft Clause 4.6 Policy). The report recommends Council adopt the final versions of the documents that have been amended in response to submissions, and endorse the preparation of the amendments to the *Port Stephens Local Environmental Plan 2013* (PSLEP) that are necessary to implement the adopted Delivery Program.

The Delivery Program is the end product of the 'Discussion Paper: Progress of the Nelson Bay Town Centre and Foreshore Strategy' prepared in 2016 to examine why limited private investment and economic development has occurred in the Nelson Bay since the preparation of the Nelson Bay Town Centre and Foreshore Strategy (2012). The Discussion Paper was publicly exhibited in the first half of 2017 and a summary of submissions was reported back to Council on 12 December 2017.

The Delivery Program includes actions to introduce new development standards and controls in the legal planning framework that will improve design outcomes, encourage an activated town centre, and stimulate investment. It also contains actions related to planning for a vibrant public domain, addressing traffic and parking management, and actions related to resourcing and implementation.

The Clause 4.6 Policy has been prepared in response to community feedback about managing building heights in Nelson Bay, however the Policy will apply across the entire local government area to guide the assessment of applications that seek to vary any relevant development standard. The Policy seeks to provide greater transparency, community participation and more robust assessments when a variation to a development standard is proposed.

It is noted that Clause 4.6 of the PSLEP is a standard provision of local environmental plans, and provides the necessary criteria for Council to assess variations to development standards.

A frequently asked questions document (FAQs) setting out further details on the principles and objectives of the Delivery Program and Clause 4.6 Policy is attached to this Report (**ATTACHMENT 2**). The FAQs provide information and responses to some of the key issues raised during exhibition period and the next steps for change in Nelson Bay. The FAQs will be made available on Council's website and provided to interested community members.

The draft 'Progressing the Nelson Bay Town Centre and Foreshore Strategy: A revised implementation and delivery program (2017)' and draft Clause 4.6 Policy - Exceptions to Development Standards were exhibited from 21 February 2018 to 4 April 2018.

**MINUTES ORDINARY COUNCIL - 25 SEPTEMBER 2018**

During the public exhibition period, 151 submitters made individual written submissions. Submissions were also received from peak organisations, such as Destination Port Stephens and the Tomaree Business Chamber, community groups such as EcoNetwork and the Tomaree Residents and Ratepayers Association, and a submission was received from the NSW Department of Planning and Environment. There were also 1674 pro forma submissions and one petition with 813 signatures. A detailed report, and response to the issues raised in the submissions is provided in **(TABLED DOCUMENT 1)**.

Overall the key issues raised in submissions related to the proposed increase in building height controls in the town centre. Over 90% of submissions expressed concern over a proposed height increase, however some submitters supported a modest increase in height from the existing five (5) storey height limit. Close to 90% of submissions supported all other recommendations or actions they referred to, including proposed public domain improvements and design excellence initiatives.

The NSW Department of Planning and Environment has expressed support for Council's strategic vision for the revitalisation of Nelson Bay in correspondence dated 11 April 2018:

'Nelson Bay is identified as a strategic centre in the Hunter Regional Plan 2036 because of its role as a tourist centre for the region and as a hub for the Tomaree Peninsula. It is recognised that, among other matters, the delivery plan responds to the Regional Plan's desire for Council to investigate opportunities for high density development that maintains and enhances the tourist, recreation and residential appeal of the centre.'

Further details on the consultation and the submissions received are summarised in the Community and Stakeholder Consultation Report **(TABLED DOCUMENT 1)**.

Whilst it is recommended that the height limits in the Town Centre be raised to 10 storeys to maximise improvements to investment feasibility, a version of the Delivery Program has been prepared to respond to the submissions that expressed concerns about the impact of the proposed changes to height limits **(TABLED DOCUMENT 3)**.

A five (5) storey height limit could be retained in the core of the Town Centre, and height limits of 10 storeys could be confined to along the edges of the Town Centre **(ATTACHMENT 3)**.

Analysis has indicated that 10 storeys, with the incorporation of floor space ratio controls, can be achieved across the Town Centre, particularly along the Town Centre 'edges'. It is acknowledged that the core of Nelson Bay Town Centre is highly fragmented and, without consolidation of multiple lots, analysis shows that there may be limitations to achieving 10 storeys given the proposed controls for floor space ratio.

**MINUTES ORDINARY COUNCIL - 25 SEPTEMBER 2018**

Raising height limits to 10 storeys across the town centre remains the preferred option to respond to the economic analysis and recommendations outlined in the Delivery Program, however given the existing development pattern, a 10 storey height limit in the core of the centre may not have the intended impact on development feasibility to the same extent as within the edges of the Town Centre.

A five (5) storey height limit in the Town Centre core may also retain the natural amphitheatre and ‘coastal village feel’, whilst facilitating greater view sharing.

It is noted that the height limits that currently apply to Nelson Bay Foreshore Reserve are not proposed to be amended, and were shown in the exhibited draft Delivery Program as they currently exist in the *Port Stephens Local Environmental Plan 2013*.

As it is not proposed to amend this development standard, these height limits are not shown in (TABLED DOCUMENT 2, TABLED DOCUMENT 3 and ATTACHMENT 3).

The other key changes to the Delivery Program and Clause 4.6 Policy that have been proposed in response to the issues raised in the submissions include:

<b>Issue</b>	<b>Exhibited</b>	<b>Changes after exhibition</b>
Plan for a vibrant town centre.	Requirements for new buildings to provide an activated street frontage in some parts of the town centre.	The area in the town centre where new buildings will be required to provide an activated street frontage has been extended.
Address solutions for peak season parking and traffic.	New Citizen’s Panel will be established to reach consensus and make recommendations to Council.	Expedited establishment of the Panel to the immediate term and commissioned consultants to establish the Panel following a random survey of residents and visitors. The Panel will consider a range of options to address traffic and parking and give an objective community perspective on what can be done to ease the pressure on parking during peak periods.
Prepare and implement public domain improvements to the town centre and foreshore as a priority.	Prepare Public Domain Plan in medium term (1-3 years from Strategy adoption). In the meantime, Yacaaba St works have been recently completed.	Expedited this action to the immediate term and commissioned consultants to prepare a Public Domain Plan, Street Tree Masterplan, and Wayfinding / Signage package for Nelson Bay Town Centre. This will be subject to public exhibition prior to final adoption.

**MINUTES ORDINARY COUNCIL - 25 SEPTEMBER 2018**

<b>Issue</b>	<b>Exhibited</b>	<b>Changes after exhibition</b>
Plan for an improved pedestrian and visitor experience.	No express actions related to utilising technology to resolve traffic and parking issues or to facilitate better wayfinding.	New action directly related to incorporating 'Smart City' initiatives wherever possible to improve the visitor and pedestrian experience. This may include initiatives such as a Smart parking app and digital information. These initiatives can help resolve traffic and parking issues and facilitate a better visitor experience.
Plan for density with an accompanying focus on design excellence to improve amenity.	Design excellence initiatives included in the Implementation Plan including training for staff and the establishment of an independent urban design panel.	Additional initiatives have been added to the Implementation Plan including a new action to commission a digital 3D model of the existing town centre using digital aerial mapping. The tool will be able to be used by assessment staff to support decision making and to inform the assessment of impacts including overshadowing, bulk and scale, and pedestrian amenity.
Ensure new buildings are designed to maximise view sharing where possible and minimise overshadowing of the public domain.	Bulk and scale of new buildings is to be addressed through floor space ratio controls and side and rear setback requirements.	Development controls will be prepared to include objectives for upper storey setbacks to facilitate view sharing and visual privacy for residential flat buildings. Upper storey setbacks will also increase day light access to the street and improve the quality of the public domain.
The Clause 4.6 Policy - Exceptions to development standards, is too broad. Development standards should be enforced in Nelson Bay.	Proposals that exceed height (or other limits) by greater than 10% will be peer reviewed prior to determination.	Note that Clause 4.6 is a standard clause of the <i>Port Stephens Local Environmental Plan 2013</i> and applies across the local government area. All councils must include this clause in their local environmental plans and cannot amend the clause. The Clause 4.6 Policy has been further strengthened following exhibition and proposals that exceed height (or other limits) by greater than 10% will now be determined by the full Council. The elected Council will have the final say on these variations.

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This report recommends Council endorse the preparation of an amendment to the *Port Stephens Local Environmental Plan 2013*, which is necessary to implement the actions in the Delivery Program to change the development standards for building height, floor space ratio and to introduce new requirements for active street frontages and appropriate vertical to horizontal proportions for new buildings in the Town Centre.

The planning proposal to amend the *Port Stephens Local Environmental Plan 2013* will:

1. Increase height limits in Nelson Bay Town Centre in accordance with the adopted Delivery Program.
2. Set floor space ratios in Nelson Bay Town Centre in accordance with the adopted Delivery Program.
3. Set minimum vertical to horizontal proportions for new buildings to limit tall and skinny developments by encouraging existing lots that are less than 15m wide and 35m long to amalgamate in order to re-develop.
4. Include provisions for active street frontages in the areas identified in the adopted Delivery Program.

The proposed amendment to require 'active street frontages' in Nelson Bay Town Centre will require all premises on the ground floor of the building facing the street to be used for the purposes of business premises or retail premises. This could include amusement centres, community facilities, educational establishments, entertainment facilities, function centres, information and education facilities, medical centres, public administration buildings, recreation facilities (indoor), or registered clubs.

The land use planning objectives of the planning proposal will seek to create a lively Nelson Bay Town Centre with an amenable and pedestrian-focused public domain, activated by building uses that engage with the street.

**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.

**MINUTES ORDINARY COUNCIL - 25 SEPTEMBER 2018**

**FINANCIAL/RESOURCE IMPLICATIONS**

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes	To be determined	Funding will be required to implement a range of actions in the Delivery Program, including works associated with the Public Domain Plan and Apex Park Masterplan and projects related to traffic, transport and parking improvements. This will be implemented consistent with the relevant actions in the Delivery Program.
Reserve Funds	No		
Development Contributions (\$7.11)	Yes	To be determined	Future development will be subject to local infrastructure contributions calculated in accordance with the Port Stephens Development Contributions Plan with a specific action in the Delivery Program to give effect to this.
External Grants	Yes	\$70,000	Grant for the preparation of a Public Domain Plan received from the Tourism Demand Driver Infrastructure grant program. This has been matched through Council funding.
Other	No		

**LEGAL, POLICY AND RISK IMPLICATIONS**

Hunter Regional Plan

The Delivery Program is consistent with the Hunter Regional Plan 2036 (HRP). The HRP lists Nelson Bay as a regionally significant centre with the following priorities:

- Maintain it as one of the primary tourist centres for the region and a hub for the Tomaree Peninsula.
- Maintain retail and professional services for the surrounding communities.
- Investigate opportunities for high-density development that maintains and enhances the tourist, recreational and residential appeal of the centre.



**MINUTES ORDINARY COUNCIL - 25 SEPTEMBER 2018**

- Balance the mix of permanent residential and tourist accommodation to enhance the vibrancy and appeal of the centre and surrounds.

The submission for the NSW Department of Planning and Environment also confirmed the consistency of the Delivery Program as exhibited with the Hunter Regional Plan.

Port Stephens Planning Strategy 2011-2036

The Delivery Program is consistent with the Port Stephens Planning Strategy (PSPS). The PSPS provides a comprehensive planning strategy for the LGA. The PSPS identifies a number of key challenges and opportunities for Nelson Bay which are addressed in the Delivery Program.

Port Stephens Local Environmental Plan 2013

Land use changes envisioned by the Delivery Program will be facilitated by amendments to the *Port Stephens Local Environmental Plan 2013* through the planning proposal process. The planning proposal will be prepared to address the comments received from the NSW Department of Planning and Environment will give effect to the strategic direction outlined in the adopted Delivery Program.

The proposed amendment will follow the relevant processes for all planning proposals, including provision for further public consultation.

The Clause 4.6 Policy is consistent with the model clauses of the Standard Instrument Local Environmental Plan and the guidance published by the NSW Department of Planning and Environment on the administration of the clause.

<b>Risk</b>	<b><u>Risk Ranking</u></b>	<b>Proposed Treatments</b>	<b>Within Existing Resources?</b>
There is a risk that the strategy does not address all State government issues and a planning proposal will not be supported.	Low	Address the comments in the submission provided by the NSW Department of Planning and continue to consult with the Department prior to the submission of a planning proposal.	Yes

**MINUTES ORDINARY COUNCIL - 25 SEPTEMBER 2018**

<b>Risk</b>	<b>Risk Ranking</b>	<b>Proposed Treatments</b>	<b>Within Existing Resources?</b>
There is a risk that future development is not supported by adequate infrastructure.	Medium	Ensure Council's Strategic Asset Management Plan and development contributions plans are updated to align with the Delivery Program, including the Nelson Bay Public Domain Plan (when adopted).	Yes
There is a risk that funding to implement the Delivery Program will not be available.	Medium	Apply for grant funding and commit to reviewing the Delivery Program to monitor whether proposed development standards remain appropriate for market conditions.	Yes

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

Adopting the Delivery Program and Clause 4.6 Policy has broad positive social, economic and environmental implications. It ensures that strategic land use planning in Nelson Bay Town Centre plans to accommodate growth and facilitates an activated centre that includes community infrastructure.

The Delivery Program and Clause 4.6 Policy contain measures that increase opportunities for community participation in planning processes and increase transparency and facilitate improved decision making.

The Delivery Program aims to achieve improved economic and environmental outcomes by encouraging private investment and facilitating better quality public spaces in Nelson Bay Town Centre.

**CONSULTATION**

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

The objective of the consultation was to obtain community and stakeholder feedback on the draft 'Progressing the Nelson Bay Town Centre and Foreshore Strategy: A revised implementation and delivery program (2017)' and the draft Clause 4.6 Policy - Exceptions to Development Standards.

**MINUTES ORDINARY COUNCIL - 25 SEPTEMBER 2018**Internal

Internal consultation was undertaken prior to exhibition and will be ongoing as part of the implementation of the Delivery Program and Policy. This will include the establishment of an Implementation Panel involving the various sections of Council on an 'as needed' basis. Other actions identified in the Delivery Program will also include ongoing internal consultation with the relevant Council sections during implementation.

External

Community and external stakeholder consultation has been ongoing since the preparation and exhibition of the initial Discussion Paper: Progress of the Nelson Bay Town Centre and Foreshore Strategy in the first half of 2017. This included community consultation initiatives such as surveys on Engagement HQ (an online consultation tool on Council's website), letter drops to local businesses, special interest groups and other stakeholders, key stakeholder meetings, including with Tomaree Ratepayers and Residents Association (TRRA), Tomaree Business Chamber, local real estate agents, Destination Port Stephens, meeting with TRRA planning assessment team, the Aboriginal Strategic Committee, the Nelson Bay Pop-

Up Shop (Smart Art Program), the NSW Department of Planning and Environment and NSW Crown Lands. A total of 82 individual and 67 survey submissions were made on the Discussion Paper that were considered in the preparation of the Delivery Program. This was previously reported to Council on 12 December 2017.

The draft 'Progressing the Nelson Bay Town Centre and Foreshore Strategy: A revised implementation and delivery program (2017)' and the draft Clause 4.6 Policy - Exceptions to Development Standards were exhibited from 21 February 2018 to 4 April 2018.

A number of supporting documents were also exhibited with these documents, including an updated traffic and transport study, a report on the feasibility testing of residential development sites in Nelson Bay Town Centre, and an independent third party peer review of the feasibility testing.

The information was made publicly available on Council's website and Engagement HQ, notification letters were sent to businesses, key stakeholders and special interest groups, and public notices were published in the local newspaper. Social media promotions (Port Stephens Council website, Twitter, Facebook, LinkedIn) were conducted, and articles and interviews with the Mayor were published in the local newspaper.

More than 50 people attended a launch of the 'Nelson Bay Next' brand and over 30 people attended two 'Drop-In Sessions' held in Apex Park, Nelson Bay. Both events took place within the public exhibition period and the community could speak directly to Council Officers at the Drop-In Sessions. Councillors and Council Officers also

**MINUTES ORDINARY COUNCIL - 25 SEPTEMBER 2018**

spoke and answered questions at a TRRA meeting at the Nelson Bay Bowling Club within this period.

A summary of the submissions received during the exhibition of the draft 'Progressing the Nelson Bay Town Centre and Foreshore Strategy: A revised implementation and delivery program (2017)' and the draft Clause 4.6 Policy - Exceptions to Development Standards and the responses to the issues raised in submissions is set out in the Community and Stakeholder Consultation Report (**TABLED DOCUMENT 1**).

The FAQ document (**ATTACHMENT 2**) will be made public on adoption of the Delivery Program to provide further details on some of the principles and objectives of the Delivery Program and the Clause 4.6 Policy (**ATTACHMENT 1**), subject to Council adoption.

Further community consultation will be undertaken in accordance with the *Environmental Planning and Assessment Act 1979* should Council endorse the preparation and submission of a planning proposal to the NSW Department of Planning seeking to amend the *Port Stephens Local Environmental Plan 2013* to implement aspects of the adopted Delivery Program.

**OPTIONS**

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

**ATTACHMENTS**

- 1) Clause 4.6 Policy - Exceptions to Development Standards.
- 2) Nelson Bay Frequently Asked Questions.
- 3) Height Map - 10 storeys + five (5) storeys.

**COUNCILLORS ROOM**

- 1) Draft 'Progressing the Nelson Bay Town Centre and Foreshore Strategy: A revised implementation and delivery program (2017)' (Delivery Program) and draft Clause 4.6 Policy - Exceptions to Development Standards – Submissions.

**TABLED DOCUMENTS**

- 1) Community and Stakeholder Consultation Report.
- 2) Nelson Bay Town Centre Delivery Program.
- 3) Nelson Bay Town Centre Delivery Program – 10 storeys + five (5) storeys.

MINUTES ORDINARY COUNCIL - 25 SEPTEMBER 2018

ITEM 4 - ATTACHMENT 1 CLAUSE 4.6 POLICY - EXCEPTIONS TO DEVELOPMENT STANDARDS.

Policy



**FILE NO:** PSC2018-02573-007  
**TITLE:** EXCEPTIONS TO DEVELOPMENT STANDARDS  
**POLICY OWNER:** GROUP MANAGER DEVELOPMENT SERVICES

**1. PURPOSE:**

1.1 The purpose of this Policy is to provide guidance on the application and administration of Clause 4.6 Exceptions to development standards in the *Port Stephens Local Environmental Plan 2013* (PSLEP).

**2. CONTEXT/BACKGROUND:**

2.1 Clause 4.6 Exceptions to development standards enables development standards such as minimum lot sizes, height and floor space ratio to be varied in certain circumstances. This clause is included in all local environmental planning instruments across NSW.

2.2 Clause 4.6 aims to provide an appropriate degree of flexibility in applying development standards to achieve better outcomes for and from development in particular circumstances.

**3. SCOPE:**

3.1 This Policy applies to development applications in the Port Stephens local government area.

3.2 The Policy relates specifically to the following Council functions:

3.2.1 Assessment of development applications; and

3.2.2 Review of provisions in the PSLEP and strategic planning.

**4. DEFINITIONS:**

Development application An application for consent to carry out development, but does not include an application for a complying development certificate.

Development consent Approval to carry out development the subject of a development application.

Development standards The *Environmental Planning and Assessment Act 1979* includes a legal definition of 'development standards' (See section 4).



MINUTES ORDINARY COUNCIL - 25 SEPTEMBER 2018

ITEM 4 - ATTACHMENT 1 CLAUSE 4.6 POLICY - EXCEPTIONS TO DEVELOPMENT STANDARDS.

Policy



Development standards are provisions in an environmental planning instrument that guide development to be carried out in accordance with particular requirements under certain circumstances. For example maximum building heights in residential areas, or minimum lot sizes for subdivision in rural areas.

Development standards are a means to achieve a particular environmental planning objectives in an area. Clause 4.6 of the PSLEP provides flexibility to allow planning objectives to be met by varying development standards in certain circumstances.

Clause 4.6 of the PSLEP applies when applications are made for exceptions to development standards.

Environmental planning instrument

A legal instrument that guides development, such as a Local Environmental Plan (e.g. the PSLEP).

5. POLICY STATEMENT:

- 5.1 This Policy sets out the processes that apply when development applications are lodged that seek to vary the development standards under clause 4.6 of the PSLEP. Applicants are advised to refer to the Policy prior to lodging a development application that includes an application under clause 4.6.
- 5.2 This Policy aims to create opportunities for greater transparency and community participation when decisions are made to vary development standards and to achieve better decision making through robust assessments. It seeks to ensure the assessment and administration of applications to vary development standards includes consideration of the principles established by the NSW Land and Environment Court and the strategic planning context.
- 5.3 This Policy adopts transparent reporting and other recommendations issued by the NSW Department of Planning and Environment and the NSW Independent Commission Against Corruption.
- 5.4 Council will implement the following actions:
  - 5.4.1 Development applications that include a request under clause 4.6 Exceptions to development standards of the PSLEP must be accompanied by the Clause 4.6 Application Form.
  - 5.4.2 Council will exhibit the Clause 4.6 Application Form accompanying a Development Application when advertising or notifying an Application.



## MINUTES ORDINARY COUNCIL - 25 SEPTEMBER 2018

## ITEM 4 - ATTACHMENT 1 CLAUSE 4.6 POLICY - EXCEPTIONS TO DEVELOPMENT STANDARDS.

## Policy



- 5.4.3 Development applications accompanied by a Clause 4.6 Application Form will be assessed in accordance with *Varying Development Standards: A Guide* (published August 2011 by the former NSW Department of Planning and Infrastructure).
- 5.4.4 Development applications which include a Clause 4.6 Application Form seeking to vary a development standard by greater than 10% will be peer reviewed prior to determination. The peer review shall be undertaken by an officer of Council who is not subordinate to the officer making the determination, determined by the Council.
- 5.4.5 Council will maintain a register of development consents that have included exceptions to development standards and the information will be made publicly available.
- 5.4.6 The Development Assessment and Compliance Team will refer development standards that are the subject of frequent development consents that include exceptions to development standards to the Strategic Planning Team for review. A review will be carried out to ensure the development standards in the PSLEP remain relevant to achieving the environmental planning objectives in an area.

## 6. POLICY RESPONSIBILITIES:

- 6.1 Development Assessment and Compliance Team (development application assessment).
- 6.2 Strategic Planning Team (Policy review and local environmental plan review).

## 7. RELATED DOCUMENTS:

- 7.1 Clause 4.6 Application Form.
- 7.2 *Port Stephens Local Environmental Plan 2013* (NSW).
- 7.3 *Environmental Planning and Assessment Act 1979* (NSW).
- 7.4 *Varying Development Standards: A Guide* (Former NSW Department of Planning and Infrastructure).
- 7.5 NSW Department of Planning and Environment Circular PS 08-003 Variations to development standards.
- 7.6 NSW Department of Planning and Environment Circular PS 11-014 Reporting variations to development standards.
- 7.7 NSW Department of Planning and Environment Circular PS 11-018 Monitoring and reporting variations to development standards.
- 7.8 Corruption risks in NSW Development Approval Process: Position Paper (NSW Independent Commission Against Corruption).
- 7.9 Development Assessment Internal Audit Tool (NSW Independent Commission Against Corruption).
- 7.10 Port Stephens Council Discussion Paper – Progress of the Nelson Bay Town Centre & Foreshore Strategy.



MINUTES ORDINARY COUNCIL - 25 SEPTEMBER 2018

ITEM 4 - ATTACHMENT 1 CLAUSE 4.6 POLICY - EXCEPTIONS TO DEVELOPMENT STANDARDS.

Policy



CONTROLLED DOCUMENT INFORMATION:

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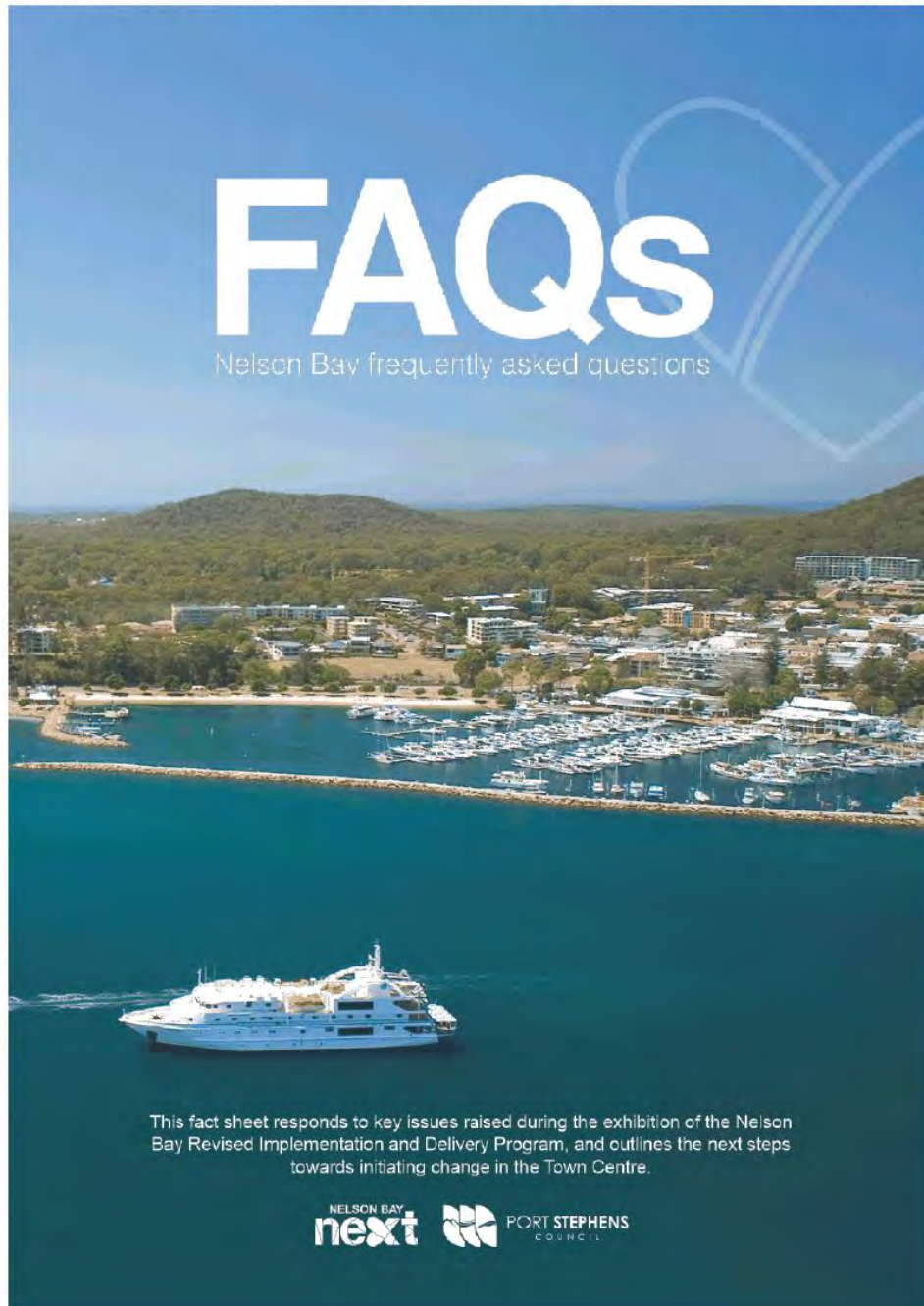
EDRMS container No	PSC2018-02573-007	EDRMS record No	
Audience	Councillors, staff and the community		
Process owner	Group Manager Development Services		
Author	Strategic Planning Coordinator		
Review timeframe	Two years	Next review date	September 2020
Adoption date	TBA		

VERSION HISTORY:

Version	Date	Author	Details	Minute No.
1.	September 2018	Strategic Planning Coordinator	First draft version placed on public exhibition in February 2018. Updated to new template to include paragraph numbering. 5.4.4 – Updated following public exhibition period.	TBA







# Building heights

Current NB Strategy 2011		Proposed	
LEP Height Limit	5 storeys	LEP Height Limit	10 storeys
With bonus incentives under the Strategy	Clause 4.6 (as per Standard Instrument) may be used to gain an additional 2 storeys for outstanding design excellence and public benefit.	No bonus incentives Introduce floor space ratio controls Establish design excellence panel Clause 4.6 (as per Standard Instrument) may be used to exceed limit	If Clause 4.6 is relied on for more than 10% increase, the full Council determines the application
Total	7 storeys	Total	10 storeys

## 1 Why increase heights in Nelson Bay town centre?

Limited private investment and economic development over the past decade has hampered the progress of Nelson Bay. This has impacted both businesses and the community, who are struggling with the lack of services available.

Despite the current housing boom, the residential unit market in Nelson Bay has declined since 2006 due to a number of defaults and stalled development activity. An independent feasibility appraisal and third party peer review by local economists indicates current height limits are unfeasible for re-development.

The State Government has identified Nelson Bay as a 'strategic centre' in the Hunter Regional Plan 2036, suitable for increased densities that will enhance the tourist, recreation and residential appeal of the town centre.

Increasing heights is the most sustainable way to accommodate the growth and density needed to rejuvenate Nelson Bay's town centre, rather than allowing urban sprawl to creep into the precious surrounding bushland.



## 2 Why will increasing building heights benefit the town and the community?

In order to thrive, Nelson Bay needs a larger permanent population and the best way to achieve this is by creating a walkable, liveable town centre. Increasing heights will make new developments and investments in the town centre feasible, which will fund public domain improvements and other community facilities.


Building height can also directly influence access to services. The community has asked for investment in health care facilities, educational services and improved transport infrastructure. Only a higher population density will attract this level of investment in urban infrastructure and services in Nelson Bay.

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ITEM 4 - ATTACHMENT 2 NELSON BAY FREQUENTLY ASKED QUESTIONS.




**Hamlet**  
A cluster of small scale residential development of low to very low density in a rural or coastal setting, with very limited services or facilities.



**Village**  
Lower density areas typically have smaller scale development within a more natural setting with a limited mix of retail, commercial and service needs principally servicing the village.



**Town**  
Towns, like Nelson Bay, include a diverse mix of low to mid-rise building types and offer a range of retail and service needs which often extend beyond the township boundary.



**City**  
Higher density areas include a diversity of building types including high rise development, and wide range of retail and commercial uses and services.

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3 Did Council look at similar seaside towns to inform the Nelson Bay Delivery Plan?

Council planners considered a range of similar seaside towns, their local economies and their planning controls. Most recently, Mid Coast Council has prepared amendments to allow an 11 storey precinct in the Forster civic centre, citing a need for increased services and a greater diversity of accommodation types in the centre. The proposal will stimulate further interest and investment in Forster Tuncurry, activate retail, commercial and community uses in the centre and responds to the land development economics that make development in that location feasible.

4 How can Nelson Bay maintain its character and amenity with 10-storey apartment blocks?

Nelson Bay town centre already contains several apartment buildings of similar size and scale. Design excellence for new buildings in Nelson Bay and improved amenity in the town centre will be achieved by activated street frontages and the appointment of an independent urban design panel who will provide expert advice to Council.

In addition to overall building height, and floor space ratio, a number of other design elements significantly influence the visual appearance of a building and the perception of its overall bulk, scale and mass.



Source: Final Planning Proposal – Civic Precinct Lake and West Forster, Mid Coast Council 2017

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Source: Apartment Design Guide – Planning & Environment, NSW Government 2015

**Strengthening design excellence**

Design excellence will be strengthened by new LEP clauses for activated street frontages and appropriate vertical to horizontal proportions. Multi storey buildings in Nelson Bay will be referred to an independent Urban Design Panel which will consider design elements such as:

**Facade Layering:** Articulated and varied use of materials provides depth and layering to this mixed use development.

**Structure:** Rectilinear form is broken down by deeper upper level deck areas articulated with screens with the top storey set back from the elevation.

**Diversity:** Townhouses with a strong individual vertical articulation creates a sense of diversity and material richness within a unified medium density scheme.

**Scale:** The scale of this larger mixed use building is broken down with a distinctive ground, mid and upper level articulated with blade walls, projecting decks, material and colour.

**Form:** Fluid form, expressed volumes and material differentiation on the upper setback level articulates this contemporary residential flat building.

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5 Existing high rise apartment blocks in Nelson Bay already have high vacancy rates and absentee owners who use their flats only for weekenders and holiday rentals.

A more balanced mix of both residential and visitor accommodation stock will enhance the vibrancy and appeal of the town centre and surrounds. Quality residential units are required to provide confidence in the market. Increasing building heights will enable a mix of residential accommodation, such as townhouses and 1,2,3+ bedroom apartments, that can support mixed use activated street frontages for cafes, restaurants and ground level amenities.

New buildings could be marketed at seniors looking to downsize to live near vital services, young people looking to live and work at the Bay or those looking to buy their first home close to services and the Bay lifestyle.



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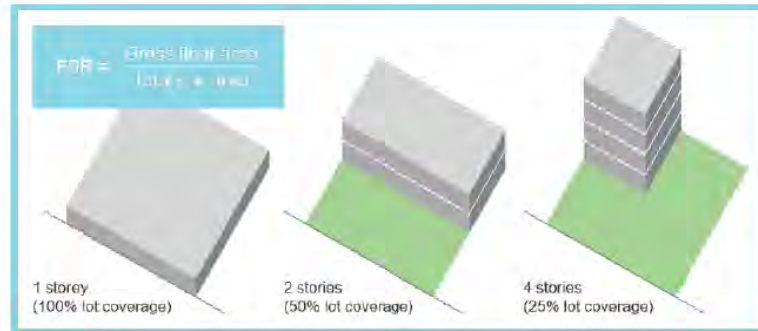
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Steps to change heights



## Floor space ratio



### 1 What is floor space ratio?

Floor space ratios (FSR) are used to control the size of a building and the amount of land it occupies.

If the FSR is set at 1:1, a new building could cover a site as a single storey, 50% of the site as a 2 storey building or 25% of the site as a 4 storey building.

Statutory FSR controls are being proposed in Nelson Bay for the first time to control bulk and scale of new buildings.

It is proposed to amend the *Port Stephens Local Environmental Plan 2013* to introduce an FSR of 3:1 in Nelson Bay town centre. This is on par with the FSR proposed in Forster town centre.

### 2 How does FSR control the scale of development?

By setting a maximum FSR, the overall building size is limited, as demonstrated above. Height controls can also be used in conjunction with FSR. For example, if height controls only permitted 2 storey development, it would not be possible to build the 4 storey building above even though FSR controls would be satisfied.

In Nelson Bay some sites simply won't be able to be developed to 10 storeys because of the FSR controls.

Other controls that limit the scale of development include front and side setbacks, which set the minimum distance a building must be from the boundary, as well as open space and landscaping requirements.

These controls are established in Council's Development Control Plan and other policies.



**3 How can FSR control the scale of development in Nelson Bay town centre?**

Let's examine FSR using a hypothetical site. For this site, FSR, setbacks and landscaping requirements would limit the maximum height of a building to 6 storeys, even if the height limit was set at 10 storeys.

Of the 1,678 sqm, stairs, voids, storage areas, parking, driveways and outdoor terraces do not count towards gross floor area. This takes up about 30% of a building, leaving **1,175 sqm of gross floor area** per storey (1,678 sqm - 30%).

FSR =  $\frac{\text{Gross floor area}}{\text{Total site area}}$

FSR controls in Nelson Bay town centre are 3:1.

FSR =  $\frac{\text{GFA}}{\text{Total site area}}$

FSR =  $\frac{1,175 \times 6 \text{ storeys}}{2396}$

FSR =  $\frac{7050}{2396}$

FSR = 2.9:1

A 7 storey building would exceed the maximum FSR at 3.4:1.

For this site FSR controls limit the height of new development to 6 storeys.

**1 Site area - 2,396sqm**

**2 Development controls stipulate that 30% of a site cannot be built on to meet requirements for setbacks, private open space, landscaped area, etc. This leaves a maximum building footprint of 1,678 sqm (2,396 sqm - 30%).**



## Variations to development standards

Using clause 4.6 of the Port Stephens Local Environmental Plan 2013

**1** Why does Council allow people to vary height limits? Council should set a limit and never let anyone build above that limit.

Every council in NSW is required to include a standard clause in their Local Environmental Plan (LEP) that allows an applicant to request a variation to standards like height or subdivision lot size.

The State Government requires councils to include this clause because it recognises that while some developments might not meet strict numerical standards, they still meet the planning objectives for an area. Clause 4.6 applies to the whole Port Stephens Local Government Area, and not just in Nelson Bay.

**2** Versions of Clause 4.6 and supporting policies adopted by other councils in NSW are much stricter.

Every Local Environmental Plan in NSW includes the same version of Clause 4.6. The State Government does not allow councils to amend Clause 4.6 or change its operation.

If adopted, Port Stephens Council will be the first and only council in NSW that has an adopted policy to guide the assessment of these applications, which will provide opportunities for greater transparency and community participation.

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3 There is no clear criteria for Council to assess variation requests under Clause 4.6.

Clause 4.6 requires an applicant to demonstrate that:

- compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and
- there are sufficient environmental planning grounds to justify contravening the development standard; and
- the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

The Court also requires councils to take into account specific criteria when making a decision to exceed development standards.



4 How will Council's new Clause 4.6 Policy improve decision making?

Council's new Clause 4.6 Policy creates certainty and transparency in decision-making by setting out the processes that apply and further criteria for a more robust assessment.

The Policy requires:

- Applications increasing heights by 10% or more to be determined by the full council;
- Applications to vary a standard to be accompanied by a 'Clause 4.6 form' which lists the criteria that must be addressed;
- Council to exhibit the Clause 4.6 form when an application is advertised; and
- Council to maintain a register of applications that have varied development standards on Council's website.



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ITEM 4 - ATTACHMENT 2      NELSON BAY FREQUENTLY ASKED QUESTIONS.



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ITEM 4 - ATTACHMENT 3 HEIGHT MAP - 10 STOREYS + FIVE (5) STOREYS.

Height Map – 10 storeys + 5 storeys





### Gateway Determination

*Planning proposal (Department Ref: PP\_2019\_PORTS\_001\_00): to amend planning controls for Nelson Bay in the Port Stephens Local Environmental Plan 2013 to revitalise the town centre.*

I, the Executive Director, Local and Regional Planning at the Department of Planning, Industry and Environment, as delegate of the Minister for Planning and Public Spaces, have determined under section 3.34(2) of the *Environmental Planning and Assessment Act 1979* (the Act) that an amendment to the Port Stephens Local Environmental Plan (LEP) 2013 to amend planning controls for Nelson Bay to revitalise the town centre should proceed subject to the following conditions:

1. Council is to update the planning proposal with the following information and forward it to the Department for review prior to exhibition:
  - a. an urban design analysis for the study area that:
    - details how the proposed LEP controls were determined and demonstrate how the controls would create a high-quality built form including testing of the proposed building envelopes in selected strategic locations (in accordance with the Apartment Design Guide);
    - demonstrates how the proposed DCP controls complement the proposed amendments;
    - includes a visual impact analysis of the proposed built form;
    - demonstrates how the proposed heights provide appropriate transitions including consideration of topography, surrounding ridgelines, local character, view sharing and surrounding land uses;
    - demonstrates that solar access requirements can be achieved within the study area with inclusion of shadow diagrams, particularly for public domain areas;
    - outlines the desired future character of the study area in accordance with the *Local Character and Place Guideline* (DPIE, 2019);
    - includes a consistency assessment against *Better Placed* (DPIE, 2017); and
    - updates the DCP to correspond with this urban design analysis;

*Note: It is acknowledged that Council have undertaken significant urban design work and the analysis can build on this work. However, it should be presented in a consolidated document that specifically relates to the proposed amendments in this proposal.*
  - b. update the proposal to describe how social infrastructure requirements have been considered and be informed by estimated population, dwelling and job numbers;

## ITEM 1 - ATTACHMENT 4 GATEWAY DETERMINATION.

- c. update the proposal to describe how traffic and transport in the study area has been considered and detail what upgrades are required (if any) to support the proposed growth;
  - d. clarify the following clauses:
    - active street frontages – provide detail on the proposed wording of the clause;
    - minimum building street frontages – clarify what is defined as new development and what type of development it would apply to;
    - design excellence – clarify if a design excellence clause will be included in the LEP;
  - e. update to proposal to address consistency with the Coastal Design Guidelines and section 9.1 Direction 2.2 – Coastal Management;
  - f. update the proposal to provide further details on the amendment to planning controls for land classified as 'community' land; and
  - g. update the proposed LEP maps to include a legend and outline of the study area.
2. Council is to prepare a summary document (plain English guide) of community consultation to date within the study area and clarify how the planning proposal relates to the various documents prepared by Council. This should be exhibited concurrently with the planning proposal.
  3. The proposed DCP provisions for the study area should be exhibited concurrently with the planning proposal.
  4. Public exhibition is required under section 3.34(2)(c) and schedule 1 clause 4 of the Act as follows:
    - (a) the planning proposal must be made publicly available for a minimum of **28 days**; and
    - (b) the planning proposal authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 6.5.2 of *A guide to preparing local environmental plans* (Department of Planning, Industry and Environment 2016).
  5. Consultation is required with the following public authorities/organisations under section 3.34(2)(d) of the Act and/or to comply with the requirements of relevant section 9.1 Directions:
    - Ausgrid;
    - Hunter Water;
    - Crown Lands (DPIE)
    - NSW Rural Fire Service;
    - Transport for NSW; and
    - Government Architect NSW (DPIE).

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ITEM 1 - ATTACHMENT 4 GATEWAY DETERMINATION.

Each public authority/organisation is to be provided with a copy of the planning proposal and any relevant supporting material and given at least 21 days to comment on the proposal.

6. A public hearing is not required to be held into the matter by any person or body under section 3.34(2)(e) of the Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).
7. The planning proposal authority is authorised as the local plan-making authority to exercise the functions under section 3.36(2) of the Act subject to the following:
  - (a) the planning proposal authority has satisfied all the conditions of the Gateway determination;
  - (b) the planning proposal is consistent with section 9.1 Directions or the Secretary has agreed that any inconsistencies are justified; and
  - (c) there are no outstanding written objections from public authorities.
8. The time frame for completing the LEP is to be **18 months** following the date of the Gateway determination.

Dated 17<sup>th</sup> day of March 2020.



**Monica Gibson**  
**Executive Director**  
**Local and Regional Planning**  
**Department of Planning, Industry and**  
**Environment**

**Delegate of the Minister for Planning**  
**and Public Spaces**

PP\_2019\_PORTS\_001\_00 (IRSF19/6075)






# Nelson Bay Planning Proposal and Draft Development Control Plan

## Submissions Summary



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## Abbreviations

The following abbreviations are used in this document

DCP	Port Stephens Development Control Plan 2014
draft DCP	Draft amendment to Part D5 Nelson Bay Centre and Part D6 Nelson Bay West of the Port Stephens Development Control Plan 2014
the proposal	Nelson Bay Planning Proposal
the delivery program	Progressing the Nelson Bay Town Centre and Foreshore Strategy: A revised implementation and delivery program 2018
FSR	Floor space ratio
LSPS	Port Stephens Local Strategic Planning Statement
LHS	Live Port Stephens (Local Housing Strategy)
LEP	Port Stephens Local Environmental Plan 2013
the Nelson Bay Strategy	Nelson Bay Town Centre and Foreshore Strategy 2012

## Introduction

The Nelson Bay Planning Proposal (the Proposal) and Draft Development Control Plan (draft DCP) were exhibited for a period of 42 days, finishing on 14 August 2020. The proposal and draft DCP have been prepared as part of the revitalisation plan for Nelson Bay and implement specific actions in the adopted Progressing the Nelson Bay Town Centre and Foreshore Strategy: A revised implementation and delivery program 2018.

### Executive Summary

A total of 136 submissions were received during the exhibition, with the majority of submissions relating to changes in height of building provisions in the proposal. Matters raised in submissions largely related to the impact of new development on local character and the village feel of Nelson Bay.

Height of building provisions are supported by new provisions for active street frontages, minimum building widths and floor space ratios in the proposal. These provisions were generally supported, however a number of submissions raised a desire to decrease floor space ratios in some areas.

The amendments in the proposal are supported by changes to the DCP that strengthen requirements for new development to demonstrate design excellence and enhance the character of the Bay. As a result of the submissions received, additional new objectives and controls are proposed to be added to the DCP to ensure the controls meet the vision for the Nelson Bay town centre.



## Submissions on the Nelson Bay Planning Proposal

A total of 136 parties made submissions to the Nelson Bay Planning Proposal. Of these:

- 113 submissions objected to the proposed provisions
- 19 submissions supported some proposed provisions and objected to other proposed provisions
- 3 submissions supported the proposed provisions and sought to increase the extent of the proposed changes, including increased building heights
- 1 submission supported all provisions, as drafted

Of the submissions that objected to the proposed provisions, 14 submitters did not provide explanations or reasons for their objection. A further opportunity was provided to the authors of these submissions to provide additional comments to support their objections, however none of the authors provided any further information to explain the objections.

During the exhibition of the delivery program in 2018, a large number of submissions were made objecting to changes in height of building controls, which similarly did not include provide reasons for the objection. As a result of this, significant investigation was carried out into the impacts of taller buildings and how these impacts might be mitigated. These mitigation measures have been addressed in the planning proposal and draft DCP, which include provisions and controls to maintain and enhance the important elements of character which could be impacted by changes to building heights. Consequently, the planning proposal is considered to have adequately addressed the 14 unsubstantiated objections made during this exhibition.

### Height of Buildings

132 submissions objected to proposed increases in height of building controls. 3 submissions objected to the proposed height changes because they requested that the height of building controls be increased beyond that proposed in the planning proposal.

### Response to submissions

The following table summarises the key issues raised in submissions, identifies the number of submissions that raised that issue, and provides a response.

## ITEM 1 - ATTACHMENT 5 SUBMISSION SUMMARY AND RESPONSE.

Item	Key Issue	No. of Subs	Response
1	A finer grained approach should be taken to building heights along the foreshore, to take advantage of the rise in terrain to the south of Teramby Road, and to accord with the planning priorities in the LSPS to make business growth easier, and to support tourism.	1	<p>Additional investigations would be required in order to amend the planning proposal as proposed by the submission. In particular, an assessment of the visual impact of new development located on the subject land, above the level identified in the planning proposal.</p> <p>As the planning proposal is consistent with proposed height of building provisions on this land that were adopted by Council as part of the delivery program and that were the subject of extensive previous community consultation, it is not proposed to amend the provisions to respond to the submission at this time.</p>
2	The proposed height of building provisions are not consistent with the local character and 'village feel' of the existing town centre	43	<p>Significant consultation has been undertaken by Council over a period of more than 30 years to determine the important elements of character in Nelson Bay. One of these elements is the 'village feel' to the town centre. The feel of the town centre is experienced from street level by pedestrians and is influenced by the visible façade of buildings from this perspective. A village feel can be retained despite tall buildings, if appropriate controls manipulate the pedestrian experience. Existing controls within the DCP enable buildings to interface directly with the public realm for up to two storeys, and then require higher floors to be setback from the front boundary line. This creates a highlighting effect of the lower two floors, that contributes to a village feel as the upper storeys recede. This will be supported by visually attractive public domain works outlined in the adopted Nelson Bay Public Domain Plan, which will draw the eye to street level.</p> <p>To strengthen the visual focus on these lower floors, part D5 Nelson Bay Centre of the DCP includes character statements that identifies this element of character. The draft DCP proposes a number of changes to strengthen the village feel of the Nelson Bay town centre, including a requirement for new development to be consistent with these character statements, and will reinforce and enhance the local character. Following a review of submissions, additional controls will be added to the DCP to further strengthen these aspects of new development, and ensuring the village feel is retained. This will be subject to a further report to Council.</p> <p>The role of the Urban Design Panel is proposed to be strengthened in the draft DCP. The panel will draw design excellence criteria from the controls in the DCP.</p> <p>Whilst it is not proposed to amend the height of the building provisions to respond to these submissions, controls in the draft DCP will be strengthened to retain and enhance the local character of the town centre, in particular as it is experienced by a pedestrian, as described above.</p>

## ITEM 1 - ATTACHMENT 5 SUBMISSION SUMMARY AND RESPONSE.

Item	Key Issue	No. of Subs	Response
3	Height of building provisions that allow 8 and 12 storey buildings are not consistent with the local character and 'village feel' of the town centre	76	<p>These submissions include those that objected to any change to height of building provisions as outlined in item 2 above, and 33 submissions that specifically objected to height of building provisions that would allow 8 storey (28m high) and 12 storey (42m high) buildings.</p> <p>A number of these submissions specifically provided support for the 17.5m height of building provision, to allow for practical construction of a 5 storey building (with 3.5m per storey).</p> <p>A number of these submissions supported provisions that would enable buildings up to 7 storeys (24.5m), where design excellence has been demonstrated.</p> <p>To support design excellence, new DCP controls that were exhibited with the planning proposal outline the role of the Urban Design Panel, which will provide independent design advice on new development. The changes proposed to the draft DCP described in item 2 above will further strengthen the requirements for design excellence in all new development, and will incorporate the need to demonstrate architectural excellence. This will include specific controls in relation to the interface between new development facades and public spaces.</p> <p>The DCP controls will be supplemented by the proposed minimum building width provisions in the proposal which will ensure new development is of appropriate scale so as to allow for suitable setbacks from side and rear boundaries, permitting sunlight penetration to street level. Floor space ratio provisions in the proposal also ensure that the bulk and scale of new buildings is reduced, further contributing to and enhancing a village feel to the town centre.</p> <p>Existing provisions in the NSW Government Apartment Design Guidelines will continue to apply to all relevant new developments (i.e. residential flat buildings), and includes requirements to respect and enhance local character.</p> <p>The supporting provisions, DCP controls and Apartment Design Guidelines, in conjunction with the advice of the Urban Design Panel, will ensure that all new development respects and enhances the local character and village feel of the town centre.</p> <p>It is noted that the proposal for 12 storeys is limited to a relatively small area which is situated some distance to the south of the core of the town centre. This land is not currently subject to height of building provisions. The introduction of height of building provisions for this land was motivated by a need to preserve views from key vantage points to the surrounding vegetated ridgelines. A 42m height of building provision in this location provides a unique opportunity for larger development that is otherwise prejudiced in the town centre given the current fragmentation of lots. The physical separation of this land from the core of the town centre will also reduce the impact of new development on this site. The proposal represents the</p>

ITEM 1 - ATTACHMENT 5 SUBMISSION SUMMARY AND RESPONSE.

Item	Key Issue	No. of Subs	Response
			<p>introduction of a height restriction in this location and aims to regulate future development of this land to retain important views and vistas.</p> <p>Further, the proposed height of building provisions in the proposal were endorsed by Council following extensive community consultation when the delivery program was adopted on 25 September 2018. The proposal is consistent with Council's adopted policy position for height of building provisions in Nelson Bay town centre at this time and it is not proposed to amend the height of the building provisions to respond to these submissions. Despite this, the draft DCP will be amended to strengthen controls that seek to retain and enhance the local character of the town centre, and set a standard for architectural excellence in new development.</p>
4	Height of building provisions that allow 12 storey buildings are not consistent with the local character and a village feel to the town centre	82	<p>These submissions include those that objected to any change to height of building provisions, changes that would allow 8 and 12 storey buildings, and 6 submissions that specifically objected to height of building provisions that would allow 12 storey (42m high) buildings in the town centre.</p> <p>As described above, it is noted that the area of land subject to a proposed 12 storey (42m high) height of building standard is very limited. The land on which the 42m height of building provision is proposed to apply is also situated some distance to the south of the core of the town centre and does not have a current height restriction. The introduction of height of building provisions for this land was motivated by a need to preserve views from key vantage points to the surrounding vegetated ridgelines. A 42m height of building provision in this location provides a unique opportunity for larger development that is otherwise prejudiced in the town centre given the current fragmentation of lots. The physical separation of this land from the core of the town centre will also reduce the impact of new development on this site. The proposal represents the introduction of a height restriction in this location and aims to regulate future development of this land to retain important views and vistas.</p> <p>Changes to the controls within the draft DCP as outlined in items 2 and 3 above will also ensure that all new development respects and enhances the local character and village feel of the town centre.</p> <p>Whilst it is not proposed to amend the height of the building provisions to respond to these submissions, controls in the draft DCP will be amended to strengthen design controls to retain and enhance local character.</p>



## ITEM 1 - ATTACHMENT 5 SUBMISSION SUMMARY AND RESPONSE.

Item	Key Issue	No. of Subs	Response
5	New development, particularly tall buildings, will unacceptably impact views to the water and surrounding vegetated ridgelines	18	<p>A visual analysis of the impacts of proposed development was undertaken in the preparation of the proposal. The analysis identified that majority of key views and vistas ran along existing street lines, most of which are not terminated by developable land. Therefore proposed provisions will not result in new development in most of the identified key views and vistas.</p> <p>A key view, southward along Yacaaba Street looks across land where a height of building control will be introduced to ensure views of the distant ridgeline are maintained. This new height of building provision will ensure that views from the water retain access to Kurrara Hill.</p> <p>The visual analysis undertaken also demonstrated the ability of new development to frame views along key view corridors, drawing the eye to the water and surrounding vegetated ridgelines, reinforcing the connection of the town to the surrounding environment.</p> <p>As outlined above, some building height provisions have been proposed to retain key views and vistas to the vegetated ridgeline behind the town centre, including the introduction of a 12 storey height control (42m) for the small area south of the town centre core. This area previously had unlimited height potential.</p> <p>It is not proposed to amend the height of building provisions to respond to these submissions.</p>
6	New development, particularly tall buildings, will result in unacceptable loss of solar access and increased overshadowing of the public domain and neighbouring sites	19	<p>To ensure that new development maintains acceptable levels of solar access to neighbouring properties and public places, the planning proposal introduces floor space ratio and minimum building width provisions to the LEP that will limit the bulk and scale of new buildings. The Urban Design Analysis included as Appendix 17 to the Planning Proposal includes indicative diagrams of solar access outcomes resulting from both the existing and proposed provisions. These demonstrate that the maximum built form resulting from the proposed provisions will provide <i>increased</i> penetration of sunlight to ground level compared to development permitted under current provisions.</p> <p>In addition, existing requirements such as those outlined in the Apartment Design Guidelines require new development to demonstrate that solar access is not unacceptably impeded for neighbouring properties and public places. These guidelines continue to apply to development in Nelson Bay, and will be supported by strengthened controls in the draft DCP that identified solar access as a key characteristic to be retained in Nelson Bay.</p> <p>Whilst it is not proposed to amend the height of building provisions to respond to these submissions, controls in the draft DCP will be strengthened to ensure solar access is prioritised during assessment.</p>

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Item	Key Issue	No. of Subs	Response
7	There is insufficient car parking availability and capacity in the road network to cater for population increase likely to occur as a result of the proposed provisions	21	<p>A traffic and parking study undertaken for the purposes of the planning proposal (Appendix 10) has confirmed that the existing road network has sufficient capacity to cater for increased vehicle movements that may result from new development in Nelson Bay.</p> <p>In addition, funding for a range of projects to further improve the road network and car parking supply was endorsed by Council in May 2020. These projects exceed the upgrades identified as necessary to support population and tourism growth anticipated as a result of the planning proposal.</p> <p>It is not proposed to amend the provisions to respond to these submissions.</p>
8	There is insufficient infrastructure such as water supply, power supply, sewer capacity, footpaths, hospitals and suitable fire fighting vehicles to cater for population increase likely to occur as a result of the proposed provisions	14	<p>Consultation was undertaken with relevant service providers and infrastructure authorities during development of the planning proposal, and again during the exhibition period. None of the providers or authorities identified insufficiencies in relevant infrastructure that would occur as a result of the planning proposal.</p> <p>It is not proposed to amend the provisions to respond to these submissions.</p>
9	The provisions will reduce support for local businesses	4	<p>One of the aims of the planning proposal is to provide a framework that makes new development within Nelson Bay feasible and encourage investment in the Bay. This is consistent with Council's adopted delivery program for the town centre, which was informed by extensive community consultation. As stated in the delivery program, one of the aims of the planning proposal (and the other actions in the program) is to revitalise Nelson Bay by stimulating new development in order to realise the significant benefits, with an increased population contributing to the local economy and the revitalisation of Nelson Bay.</p> <p>The submissions identified a range of reasons why people in taller buildings may be less likely to utilise local shops, including that local car parking access will decrease and drive shoppers to other centres and because it is harder for residents to get out of taller buildings to access local shops.</p> <p>New residents in new buildings facilitated by the proposal are more likely to support local business in the Nelson Bay town centre, consistent with the analysis set out in the delivery program.</p> <p>For visitors to the Bay, the outcomes of the planning proposal is supported by a smart parking program, endorsed by Council on 12 May 2020, that will improve access to and utilisation of public car parking spaces. The smart parking program is a result of actions outlined in the</p>

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			<p>delivery program. Additionally, a Council works program has been endorsed that will increase the number of public car parking spaces in the town centre to respond to increased utilisation of the town centre resulting from the planning proposal.</p> <p>Improvements to the public domain will be delivered in accordance with the adopted Public Domain Plan, as part of the endorsed works program. These will provide a street environment that attracts people to the town centre, providing increased support for local businesses and an economic environment that supports new businesses.</p> <p>These improvements will draw a greater number of residents and visitors to the town centre, and will incentivise new residents and visitors to utilise the town centre.</p> <p>The proposed provisions are likely to improve support for local businesses and are not proposed to be amended to respond to these submissions.</p>
10	The provisions will result in impacts to the local environment as a result of an increased population	7	<p>The proposal will encourage infill development to be carried out within an existing urban footprint, reducing the demand for greenfield development that will directly impact the surrounding environment and require clearing of vegetation or disruption of ecosystems. There are also sufficient public spaces in the natural environment such as parks, walking trails and the foreshore to provide access sufficient for an expanded local population.</p> <p>This approach is generally supported by priorities 1.3 and 3.1 in the LHS, and action 5.1 of the Local Strategic Planning Statement to provide infill housing in existing centres.</p> <p>Given urban consolidation represents the most environmentally sustainable option for achieving the objectives of the adopted delivery program, it is not proposed to amend the provisions to respond to these submissions.</p>
11	Changes to the look and feel of the town centre, parking and access, that result from the proposed provisions, will reduce the appeal of Nelson Bay for tourists and visitors	24	<p>The proposed provisions will contribute to the revitalisation of the town centre, and will be supported by public domain and car parking upgrade actions being implemented as per the delivery program. This will result in a town centre where people enjoy spending time and supporting an expansion to the services and retail options available in the town centre. In addition, the proposed provisions will provide additional accommodation options that will attract more visitors to the town centre.</p> <p>It is not proposed to amend the provisions as a result of these submissions.</p>

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Item	Key Issue	No. of Subs	Response
12	There is a lack of demand for dwellings in tall buildings	31	<p>Reasoning provided in these submissions centred almost completely around the lack of progress on developing residential building sites approved in Church Street and Donald Street, and the lack of development applications in general lodged in the town centre.</p> <p>Development has proceeded elsewhere on the Tomaree peninsula at a rate commensurate with the NSW average. The lack of development in Nelson Bay town centre therefore supports the findings of the development feasibility study undertaken in preparation of the delivery program and informing planning proposal.</p> <p>The proposed provisions will make new development more feasible in Nelson Bay, which will service the demand for new housing on the Tomaree peninsula.</p> <p>It is not proposed to amend the provisions to respond to these submissions.</p>
13	Occupancy rates in existing medium rise buildings are low. New buildings will not increase the local population	45	<p>The proposed provisions will increase the feasibility of new development in the town centre, which will provide housing options for residents moving to the Tomaree peninsula. In addition, improvements to the public domain and economic environment will make Nelson Bay an attractive place to live, drawing residents to the area.</p> <p>Given the attractiveness of the locality, new development will attract an increased number of visitors to the town centre. It is not proposed to amend the provisions to respond to these submissions.</p>
14	Other coastal towns have been revitalised without changing height of building provisions	28	<p>These submissions cited a number of examples of coastal towns where existing building heights of 2-4 storeys predominated. Some of these examples actually had height of building provisions permitting development up to 40m, but limited actualised development investment.</p> <p>Existing height of building provisions in Nelson Bay permit development up to 5 storeys, however a feasibility study undertaken in the preparation of the planning proposal identified that this height of building provision does not allow for feasible development in the particular circumstances of Nelson Bay.</p> <p>If development up to only 5 storeys were feasible and provided a reasonable rate of return, a pattern of new development would be evident in the town centre. Instead Council has experienced a pattern of development applications seeking to vary the existing height controls, demonstrating that changes to height of building provisions are an important element of enabling new development in Nelson Bay.</p>

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Item	Key Issue	No. of Subs	Response
			It is not proposed to amend the provisions to respond to these submissions.
15	There has been strong community opposition to changes to height of building provisions in the past, which has been ignored by Council	42	<p>As a result of previous consultation undertaken in relation to planning provisions and controls in Nelson Bay, consideration was given to the impacts of changes in height of building controls.</p> <p>Three key issues were identified as of most concern to the community, being impacts on:</p> <ul style="list-style-type: none"> <li>• the look and feel of the town centre,</li> <li>• solar access, and</li> <li>• views.</li> </ul> <p>Consideration was also given to the future vision for Nelson Bay, defined by the community during consultation, which identified a need to better support local businesses, grow the offering of retail and service options in the town centre, and improve the quality of the public environment.</p> <p>In order to achieve the future community vision, an increased number of people is required to contribute directly to the local economy. Additionally, the variation in economic trade needs to be rationalised between peak and off-peak tourist periods. An increased resident population would support the achievement of this vision.</p> <p>Nelson Bay is surrounded by a highly valued natural environment, which does not support greenfield development. To achieve an increased resident population, infill housing will provide for additional dwellings in the town centre, whilst preserving and protecting the surrounding environment. This is consistent with priorities 1.3 and 3.1 of the LHS, to provide for infill housing in existing centres. This form of development also aligns with the State government direction to provide a compact urban form in and around centres and to plan for an increased population in Nelson Bay to grow the local economy.</p> <p>It is acknowledged that the community has previously expressed strong feelings over how this approach will impact the look and feel of the town centre. Accordingly, additional provisions and controls have been proposed which will ensure that the key impacts of taller buildings will be mitigated, and preserve and enhance the important elements of local character.</p> <p>Floor space ratio controls and minimum building width provisions will ensure that the bulk and scale of new development retains appropriate levels of solar access, and will ensure that the upper storeys of new development do not dominate the streetscape. In addition, controls in the</p>

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Item	Key Issue	No. of Subs	Response
			<p>DCP will ensure that the visual façade of new development maintains a low scale presentation to the street, with requirements for new developments demonstrating design excellence.</p> <p>As a result of these submissions, the proposed controls in the draft DCP will be further strengthened to ensure appropriate presentation to the street, particularly for pedestrians, and to require new development to demonstrate architectural excellence. This will ensure that new development displays strategic public benefit and contributes appropriately to the town centre.</p> <p>Whilst it is not proposed to amend the height of building provisions to respond to these submissions, the provisions in the draft DCP will be amended to strengthen the controls to achieve architectural excellence and streetscapes that retain the village feel in Nelson Bay.</p>
16	The proposed provisions will increase land values in the town centre, resulting in land owners holding out for increased sale prices and consequent stagnation of new development	6	<p>The proposed provisions will also improve feasibility for existing landowners to undertake new development on their land within Nelson Bay, therefore changes to land prices will not necessarily result in stagnation of new development in the town centre. Further if land prices increase there is a greater chance that land will be sold and developed, rather than held for fear of opportunity loss. The value of existing improvements on land will continue to depreciate, with only the land component appreciating in value. As improvements on land depreciate, this can have a negative impact on land appreciation. Consequently, increases in land value are not considered to be a serious impediment to future development of land.</p> <p>The risk of increasing land prices causing development stagnation is not sufficient justification for retaining the current planning provisions in the town centre and it is not proposed to amend the provisions to respond to these submissions.</p>
17	Council should adopt a lower height limit to encourage development. Proposed a building height limit of 2-4 storeys	2	<p>Existing height of building controls allow for 2-4 storey development, however such development has not occurred in the town centre in recent times. A feasibility study carried out for the purposes of the delivery program and used to inform the planning proposal has demonstrated that development of this height is not feasible in Nelson Bay, with height of building controls being a key limiting factor. The planning proposal includes revised height of building controls in order to achieve feasibility to encourage new development.</p> <p>It is not proposed to amend the provisions to respond to these submissions.</p>
18	Council should adopt a 7 storey height limit	2	<p>The submissions raising this issue did not specify the location where 7 storey development was considered acceptable in the Nelson Bay town centre, and it is unknown whether this was intended to apply to all land, or only those areas where height of building provisions are proposed above this height. There is some evidence that these submissions intended that 7</p>

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			<p>storey provisions should apply to all land within the town centre, based on comments relating to the 'additional storeys' provisions originally described in the Nelson Bay Strategy from 2012.</p> <p>A 5 storey height of building provision is being retained through the core of the town centre in the planning proposal to provide an appropriate building form will respond to the village feel of the pedestrianised central business area, and ensure appropriate solar access to street level in these locations.</p> <p>Surrounding 8 storey height of building provisions in the planning proposal will ensure feasibility is achieved for new development in these areas, and reinforces the natural amphitheatre of the town centre.</p> <p>The planning proposal achieves an appropriate mix of building height provisions in the town centre taking into account local character, development feasibility and natural landforms to achieve the objectives of the adopted delivery program for Nelson Bay. Therefore is not proposed to amend the provisions to respond to these submissions.</p>
19	The proposal will only benefit land owners and developers, and will not benefit the broader public	6	<p>The planning proposal will encourage new development within Nelson Bay, providing housing for new residents and supporting the local economy. This will be supported by improvements from delivery of the Nelson Bay Public Domain Plan and Smart Parking works program. A thriving and revitalised town centre is in the public interest as it will help support local business and fund local infrastructure improvements, including the upgrades identified in the Nelson Bay Public Domain Plan.</p> <p>It is not proposed to amend the provisions to respond to these submissions.</p>
20	The proposal will increase density, which can increase the rate of spread of diseases	4	<p>Residential density in Nelson Bay will remain significantly lower than the urban areas that have experienced increased transmission rates during the current COVID-19 pandemic or other health crises as a result of built form. It is considered that there is not enough evidence that density of a scale proposed by the planning proposal has a significant impact on the spread of infectious disease, therefore this issue is not sufficient to warrant amendment to the proposed provisions.</p>
21	The proposal will result in increased AirBnB premises which will create noise nuisance issues	1	<p>The proposal will increase the feasibility for new development that incorporates new dwellings. Owners of new dwellings may choose to make their properties available for short term letting, subject to the relevant regulations. Neighbours of short term letting properties may seek to address noise or other complaints through Council and Police enforcement. It is also noted that the State government has recently announced changes to strengthen the regulation of short</p>

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			term letting, including by introducing stricter measures for repeat nuisance complaints, including a register maintained by NSW Fair Trading. It is not proposed to amend the provisions to respond to this submission.
22	The proposal will increase density which will result in increases to crime rates and drug use	2	Residential density in Nelson Bay will remain significantly lower than many urban areas that experience crime and drug use related to residential density and built form. The evidence from other areas of NSW shows that other social and economic factors are more likely to have an influence on these issues than the densities proposed in the planning proposal. It is not proposed to amend the provisions to respond to these submissions.
23	The proposal will result in buildings that create wind tunnels	5	The planning proposal includes a range of provisions such as minimum building width and FSR which will ensure that new development does not form tunnel-like walls along streets. Sufficient separation between upper floors of development will ensure that wind does not become tunnelled along streets. It is not proposed to amend the provisions to respond to these submissions.
24	The proposal will result in new developments, which are ugly whilst being constructed.	1	The planning proposal is intended to encourage new development in the town centre. The impact of building works of new development is not considered to represent an unacceptable impact and so the provisions are not proposed to be amended as a result of this submission.
25	The proposal will negatively impact property prices	2	The planning proposal will increase the feasibility of redevelopment of existing land, which is not anticipated to negatively impact property prices. It is not proposed to amend the provisions to respond to these submissions.
26	The proposal will increase property prices for new development due to increased construction costs	1	As described in the feasibility study prepared for the purposes of the delivery program and planning proposal, construction costs do not increase linearly as the number of storeys increases. In order to achieve feasibility, development of 8 storeys is required to take advantage of decreased per-floor construction costs. It is not proposed to amend the provisions to respond to this submission.
27	The proposal will set a precedent for changes to height of building controls in surrounding areas	4	Changes to height of building provisions are subject to an assessment of strategic merit and community consultation. Any assessment will respond to local factors, including consistency with



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			<p>Council adopted plans and policies, and precedence in surrounding areas is not a determining or relevant matter in an assessment.</p> <p>It is not proposed to amend the provisions to respond to this submissions.</p>
28	Taller buildings are more expensive to replace and so the provisions will reduce the rate of urban renewal in the future	1	<p>As described in the feasibility study prepared for the purposes of the delivery program and planning proposal, construction costs do not increase linearly as the number of storeys increases. In order to achieve feasibility, development of 8 storeys is required to take advantage of decreased per-floor construction costs.</p> <p>Development resulting from the planning proposal is not anticipated to detrimentally impact the feasibility of future urban renewal and the provisions are not proposed to be amended to respond to this submission.</p>
29	The provisions will de incentivise large format commercial development	3	<p>Nelson Bay town centre provides a boutique shopping experience, generally consisting of smaller footprint shops that provide a more intimate and specialised retail shopping environment. The planning proposal includes new provisions for active street frontages that will require ground floor retail or business premises, which will encourage interactivity between shops and pedestrians on the street to support the boutique shopping experience. These premises can be appropriately provided as an interface between ground floor service areas and parking to service upper floor residences, and the street. This vision for the Nelson Bay town centre is consistent with Council's adopted delivery program which was prepared in consultation with the community.</p> <p>Office space and other uses that may require large floor space tenancies can be provided at first floor or above, where service areas and parking do not impact available floor area.</p> <p>It is not proposed to amend the provisions to respond to these submissions.</p>
30	The provisions will allow for poor development practices which have been noted for tall buildings in other locations	1	<p>Building practices are set out in the National Construction Code and are regulated by the NSW Department of Fair Trading. Buildings constructed in accordance with the National Construction Code achieve some of the highest standards of stability and amenity in the world. It would be inappropriate for a planning proposal to be prejudiced on consideration of the risk of future non-compliance with the code.</p> <p>It is not proposed to amend the provisions to respond to this submission.</p>
31	Changes to height of building provisions along the foreshore will	2	<p>Proposed changes to height of building provisions for foreshore land along Teramby Road were derived in response to local topography, which includes an escarpment rising towards the west.</p>

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Item	Key Issue	No. of Subs	Response
	negatively impact views, solar access and the village feel		The proposed height of building provisions will ensure that new development will not alter the apparent landform when viewed from the water. It is not proposed to amend the provisions to respond to these submissions.
32	The proposed FSR of 3:1 for land with a 42m height provision will make development of that land unfeasible.	1	The land to which this submission relates consists of allotments of significant size, which would allow for feasible new development up to the proposed height of building provision. It is not proposed to amend the provisions as a result of this submission.
33	The proposal has not considered the potential for increased reflected heat resulting from new development	1	The planning proposal is supported by a range of other actions in the adopted delivery program, including a public domain plan which includes a significant increase in street tree plantings. Street trees provide significant micro-climate benefits, including the attenuation of heat. The impact of increase reflected solar heat is not considered to be of significant impact. It is not proposed to amend the provisions to respond to this submission.
34	The principles of environmentally sustainable development have not been considered in the proposal	1	The planning proposal includes provisions that will promote urban infill, significant reducing the impact of the natural environment, consistent with the principles of environmentally sensitive development. The planning proposal also includes provisions such as FSR, minimum building width and active street frontages that will create high amenity public places. These provisions will secure appropriate solar access, provide a built form that engenders a village feel, and provide a high level of interactivity between users of the of the public and business realm. It is not proposed to amend the provisions to respond to this submission.
35	Building heights should be kept lower than the tree lines	1	Building heights already extend beyond the height of existing trees, and so it is assumed that this submission relates to the height of buildings relative to surrounding vegetated ridgelines. A visual analysis prepared as part of the planning proposal has identified important vistas and view corridors. The proposed provisions have been developed with consideration to protecting views of surrounding vegetated ridgelines, consistent with this submission. It is not necessary to amend the provisions to respond to this submission.
36	There is sufficient population to support existing businesses. Struggling	2	Existing businesses face a high variability in seasonal trade, presenting a significant challenge to business operations. Consequently, there has been relatively restrained growth in retail and service offerings in Nelson Bay. The community vision for the future of the town centre as

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	businesses are a result of poor management		described in the adopted delivery program includes increased support for local businesses and an expansion in retail and service offerings.  The planning proposal includes provisions that will increase feasibility for new development, delivering an increased resident population, to help deliver the future vision.  It is not proposed to amend the provisions to respond to these submissions.
37	The proposed provisions will increase land value and make small or medium rise development unfeasible	1	The feasibility study undertaken to inform the delivery program and planning proposal has demonstrated that small and medium rise development is unfeasible under the current planning provisions with existing land values. The planning proposal includes provisions that will increase the feasibility of development, which will help to revitalise Nelson Bay in accordance with the adopted Delivery program.  It is not proposed to amend the provisions to respond to this submission.
38	The proposed provisions should reinforce the natural amphitheatre shape of the town centre	1	Height of building provisions are included in the planning proposal which include a lower height at the bowl of the amphitheatre, with increasing heights towards the top of the amphitheatre. This will accentuate the natural topography and reinforce the natural amphitheatre shape of the town centre.  It is not necessary to amend the provisions to respond to this submission.
39	Lower building heights should be adopted to encourage new development	2	The feasibility assessment undertaken for the preparation of the delivery program and planning proposal has demonstrated that the current height of building provisions make new development unfeasible in Nelson Bay. In the past this has resulted in a number of requests for exceptions to development standards under Clause 4.6 of the LEP. The proposed height of building provisions will increase the feasibility of development, whilst supporting minimum building width and FSR provisions will ensure new development maintains and enhances important elements of character.  The new provisions will also be supported by strengthened DCP controls that require development to demonstrate consistency with the local character.  It is not proposed to amend the provisions to respond to these submissions.
40	New buildings will only be used as tourist accommodation	3	The feasibility study undertaken in the preparation of the planning proposal gave consideration to development that includes dwellings. This is consistent with the development applications that

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Item	Key Issue	No. of Subs	Response
			<p>have been lodged in the last 10 years for new development in the town centre, which have predominantly included residential accommodation.</p> <p>It is not proposed to amend the provisions to respond to these submissions.</p>
41	The block bounded by Dowling Street, Stockton Street and Tomaree Street should have building height provisions increased to 28m, to reinforce the amphitheatre effect of the town centre and provide an appropriate transition to the 42m area to the south of Dowling Street	1	<p>This submission states that the subject land is currently underutilised and is suitable for redevelopment, and the feasibility outcomes acknowledged in the feasibility study undertaken in the preparation of the delivery program and planning proposal, are relevant consideration for the future redevelopment of this site.</p> <p>The submission also states that the topography of the land is such that it forms an upper portion of the amphitheatre land form, consistent with other areas identified for a 28m height limit. In addition, new development on the site will provide a smoother transition with new development on land to the south of the site which is proposed to have a 42m height limit.</p> <p>Additional investigations would be required in order to amend the planning proposal as proposed by the submission. In particular, an assessment of the visual impact of new development located on the subject land, above the level identified in the planning proposal.</p> <p>As the planning proposal is consistent with proposed height of building provisions on this land that were adopted by Council as part of the delivery program and that were the subject of extensive previous consultation, it is not proposed to amend the provisions to respond to the submission at this time.</p>
42	FSR of 3:1 is excessive and exceeds the feasibility recommendation of 2.5:1	20	<p>A feasibility study undertaken for the preparation of the planning proposal has demonstrated that feasibility continues to increase as FSR increases to 3:1. Whilst feasibility may be achieved at lower FSRs, the 3:1 FSR will provide greater flexibility to absorb land price increases. Further, the proposed FSR will allow for a greater variety in built form outcomes, providing more opportunity for development to achieve the architectural excellence controls that will be added to the draft DCP.</p> <p>The feasibility study has been misquoted in the majority of these submissions as recommending a 2.5:1 FSR, over a 3:1 FSR. The feasibility study notes that for 8 storey buildings, 2.5:1 FSRs are more commonly seen than 3:1 FSRs. However it also notes the increased feasibility of 3:1 FSRs compared to 2.5:1 FSRs. This supports the outcomes of the adopted delivery program.</p> <p>Introduction of FSR provisions will ensure new development achieves an acceptable built form and secures appropriate levels of solar access.</p>

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Item	Key Issue	No. of Subs	Response
			It is not proposed to amend the provisions to respond to these submissions.
43	FSR of 2.5:1 is excessive in residential areas with a proposed 17.5m height of building provisions. The FSR should be reduced to 2:1 in these areas	1	Similarly to the response to the use of 3:1 FSRs for areas with 8 and 12 storey height of building control provisions, a 2.5:1 FSR for areas with 5 storey height of building provisions will allow suitable flexibility in building design, and increase feasibility for new development.  It is not proposed to amend the provisions to respond to this submission.
44	Proposed active street frontage provisions are supported	19	The proposed active street frontage provisions will increase interactivity between business and retail premises and the public realm, providing more interest and a sense of activity when visiting the town centre. Active frontages interfacing with the public realm will also reinforce the village feel to the town centre.  It is proposed to endorse the active street frontage provisions included in the proposal.
45	Proposed FSR provisions are supported	11	The FSR provisions included in the planning proposal will ensure that development maintains suitable bulk and scale, and solar access at street level.  It is proposed to endorse the FSR provisions including in the planning proposal.
46	Proposed minimum building width provisions are supported	20	The minimum building width provisions will ensure that development achieves width to height proportions that are consistent with a village feel in the town centre, and ensure suitable solar access to street level.  It is proposed to endorse the minimum building width provisions included in the planning proposal.
47	Proposed height of building provisions are supported	1	The proposed height of building provisions will increase feasibility for new development in the town centre. This will provide additional dwellings that support the local economy, and improve the variety of retail and service offerings available in the town centre.  Other proposed provisions and draft DCP provisions will ensure that new development maintains and enhances important elements of local character.  It is proposed to endorse the height of building provisions included in the planning proposal.
48	Council should reduce rent for businesses rather than increasing economic support through increased	3	Rental properties in Nelson Bay town centre are not within the control of Council.  It is not proposed to amend the provisions to respond to these submissions.

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Item	Key Issue	No. of Subs	Response
	local population and tourist accommodation		
49	The application of the active street frontage provisions should be reduced to the main commercial area so as to not disincentivise new development	1	<p>Active street frontage provisions are proposed to land zoned B2 Local Centre, to ensure that new commercial opportunities are not jeopardised by residential development in the town centre. This provision will also require that ground floor development includes retail or business premises, which provides activity and interest at street level, and contributes to a revitalised town centre.</p> <p>It is not proposed to amend the provisions to respond to this submission.</p>
50	Proposed height of building provisions on land zoned B2 should be increased by 0.5m to allow for adaptable ground floor units	1	<p>The proposed height of building provisions will allow for a range of floor to ceiling heights, and it is anticipated that smaller floor to ceiling heights of upper floors will provide flexibility to allow for adaptable ground floors.</p> <p>It is not proposed to amend the provisions to respond to this submission.</p>
51	The Clause 4.6 Policy will undermine the effectiveness of the proposed provisions	1	<p>The Clause 4.6 Policy does not include any enabling provisions. Rather, the policy sets out the process for consideration of a request for exception to a development standard of the LEP. This provision is standard and mandatory in every council's LEP.</p>
52	The narrative of the character of Nelson Bay should be redefined to attract developments of architectural merit. New buildings should be required to set a defining character of high quality built form within the town centre.	1	<p>Important elements of character in the Nelson Bay town centre relate primarily to the connection to surrounding natural elements (sky, water and vegetated ridgelines), and building mass. Nelson Bay does not feature a building style that is typical to the area, and so this does not currently form an important element of character.</p> <p>The submission states that through this process, a characteristic building style should be defined. The submission further argues that the style should imbue architectural excellence. Architectural excellence differs from design excellence, with a greater emphasis on the look and feel of development, both internally and externally. The Urban Design Panel is well positioned to provide comments in relation to architectural excellence. The proposed DCP includes provisions for the referral of DAs to the Panel.</p> <p>As a result of this submission, additional changes are proposed to the draft DCP to add controls relating to architectural excellence, which will be reported to Council prior to the finalisation of the planning proposal.</p>

## Submissions on the draft Nelson Bay DCP

**DCP** 19 submissions were received that addressed the draft Nelson Bay DCP. 17 of these supported the draft DCP. 2 submissions recommended additional changes.

As a result of the submissions recommending additional changes to the draft DCP, objectives and controls are proposed to be added requiring new development to demonstrate architectural excellence. It is also proposed to include residential parts of Thurlow Avenue and Magnus Street in a precinct that recognises the residential nature of these locations.

### Addressing impacts of increased height of building provisions

The majority of submissions lodged in relation to the Nelson Bay Planning Proposal objected to various aspects of the proposed changes to height of building provisions that were included in the proposal. Justification for this largely related to how resulting development would impact the local character and the village feel of Nelson Bay. In response to these submissions, additional controls are proposed to be added to the draft DCP the further strengthens controls relating to local character and design excellence.

### Response to matters raised in submissions

The following table responds to the matters raised in the submissions, and identifies the number of submissions that raised that issue.

## ITEM 1 - ATTACHMENT 5 SUBMISSION SUMMARY AND RESPONSE.

Item	Issue	Subs	Council Response
1	The proposed changes to the Nelson Bay chapter of the DCP are supported	17	The draft DCP controls enhance existing local character by requiring new development to demonstrate consistency with the local character statements contained within the DCP. The new controls also outline the role of the Urban Design Panel in providing advice on new development, however as outlined below, this control is proposed to be further strengthened.
2	The areas to which the Nelson Bay Strategy boundary has been extended in Thurlow Avenue and Magnus Street should not be included in the Foreshore Precinct	1	This submission identifies requirements for development in the Foreshore precinct that are not appropriate for the identified land. In particular the requirement for public art in these locations. As a result of this submission it is intended to add an additional precinct with similar controls to the Town Centre Living precinct, with a stronger emphasis on residential character of development.
3	The DCP should include controls that set a design character of architectural excellence to ensure new development contributes to revitalisation of Nelson Bay	1	This submission identifies that the important elements of the character of Nelson Bay do not relate to building style or architecture, and states that these elements are critical contributory elements to a revitalised town centre. The submission describes how a lack of consistency of building styles in Nelson Bay presents an opportunity to set a standard of architectural excellence for new development in the town centre.  As a result of this submission, objectives and controls are proposed to be added to the draft DCP to require new development to demonstrate architectural excellence.



## **Public Authority Consultation**

Consultation was undertaken with the following public authorities during the exhibition period:

- Ausgrid
- Hunter Water Corporation
- NSW Rural Fire Service
- Transport for NSW
- Crown Land in NSW
- NSW Government Architect

### **Public Authority Submissions**

Transport for NSW (TfNSW) submitted correspondence advising that the Traffic and Parking Study undertaken for the purposes of the planning proposal should be updated to:

- Consider impacts on midblock and intersection capacities of the road network due to additional trips generated by the planning proposal
- Extend the boundary of the study to the part of Stockton Street identified as a classified State road
- Identify trip generation threshold triggers for any potential upgrades on Stockton Street, including the intersection with Church Street

The submission requested access to traffic data and modelling for review.

TfNSW confirmed in subsequent correspondence that the above matters do not form an objection to the planning proposal, that the planning proposal could proceed to be made, and any of the above matters could be addressed as part of other actions outlined in the delivery program.

No comments were received from other public authorities as a result of this consultation.



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**ITEM NO. 2**

**FILE NO: 20/40185  
EDRMS NO: 16-2019-270-1**

**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**

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 No.16-2019-270-1 for the demolition of the existing structures and construction of a new single storey dwelling and garage subject to the Recommended Conditions of Consent contained in **(ATTACHMENT 3)**.

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**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 862 Paterson Road, Woodville (LOT: 510 DP: 1150491 ('the subject site')). A locality plan is provided at **(ATTACHMENT 1)**.

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

Development Application No. 16-2019-270-1 was reported to Council at its meeting on 11 February 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 006: It was resolved that Development Application No.16-2019-270-1 for the demolition of the existing structures and construction of a new single storey dwelling and garage be deferred.

Subsequent to the 11 February 2020 meeting, additional information was received from the applicant and the application was referred to the Heritage Council of New South Wales (Heritage Council) in accordance with clause 5.10(7) of the Port Stephens Local Environmental Plan 2013 (LEP 2013), as the property is listed as an archaeological site in Schedule 5 of LEP 2013.

The Heritage Council reiterated that the cottage is not a “relic” under LEP 2013 and that a permit is required for ground disturbance that may expose ‘relic’ (artefacts). The Heritage Council provided recommended conditions of consent to be included in the event of an approval. Reflective of the archaeological site listing under the LEP 2013. The recommended conditions of consent reflect the Heritage Council’s comments and are provided in **(ATTACHMENT 3)**.

The Heritage Council provided separate correspondence to Council with respect to an Interim Heritage Order (IHO) application that was received by their office. In that correspondence the Heritage Council advised that they would not be recommending an IHO be issued as the subject property was not likely to be of State heritage significance.

### Proposal

The applicant seeks approval for the demolition of existing structures on site and the construction of a new single storey dwelling and garage. Details of the proposal are as follows:

- Demolition of existing structures on site including the dilapidated Pomfrett’s Cottage. The site is listed as a local archaeological site in the LEP 2013.
- Construction of a new single storey dwelling and garage. The proposed single storey dwelling is designed to be similar in style and proportions to a traditional cottage with a hipped roof, verandah, and timber cladding. The dwelling will also be separated into pavilions to reduce the scale as viewed from the street. A double carport/garage will be located at the rear of the property.

### Site history

The subject site has a total area of 723 m<sup>2</sup>, is generally flat and is zoned RU1 Primary Production. Access to the site is direct from Paterson Road.

The subject site is surrounded by similarly zoned RU1 lots, with the exception of the Iona Public School which is zoned SP2 - Special Activities. The Woodville School of Arts and Community Hall is located adjacent to the subject site. The lot sizes (with dwellings) in the immediate vicinity range from 5000 m<sup>2</sup> to 232,960 m<sup>2</sup>.

The subject site currently contains a dwelling towards the front of the site and a Colorbond shed with an older shed and an outbuilding to the rear.

A site inspection by Council’s building officers identified a number of concerns regarding the structural integrity of the current dwelling. The dwelling was on a significant lean, with compromised structural components. An internal investigation was determined to be too high risk due to concerns of potential collapse.



Photo 1: View of cottage from Clarence Town Road



Photo 2: View of cottage looking west

### Key Issues

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

### Heritage Impact

The subject site is located at 862 Paterson Road, Woodville, which is listed as a locally significant archaeological site in the LEP 2013. The listed site is specifically known as Pomfrett's Cottage (Slab Cottage).

A revised Statement of Heritage Impact for the proposal was submitted to support the application which, amongst other things, noted the following:

- Pomfrett's Cottage was built sometime between 1866 and 1878 and does not predate the settlement of Woodville.
- Since the land subdivision from Albion Farm in 1866, Pomfrett's Cottage appears to have had no ongoing relationship with Albion Farm or the owners of Albion Farm.
- No historical association was found between the school and Pomfrett's Cottage and the cottage predates the building of the school.
- The conservation of this building is not feasible due to the degree of deterioration of the structure. Reconstruction would require the use of a large amount of new structural fabric and cladding.
- The proposed new residence is assessed as not having a detrimental impact on Paterson Road or the School of Arts and the design is suitable in this context.

The revised Statement of Heritage Impact has been reviewed by Council's Heritage Advisor who noted that there appears no opportunity for reconstruction and adaptive reuse of the cottage. Further it was noted that the best approach would be for the owner to pursue a Section 140 permit from Heritage NSW to allow for the removal of the dwelling and properly record the remaining material fabric.

The development application and associated Statement of Heritage Impact was referred to the Heritage Council in accordance with clause 5.10(7) of the LEP. The Heritage Council provided conditions of approval to address the management of the archaeological relics under the Heritage Act 1977 including requiring:

- A detailed Historical Archeological assessment of the site prior to any ground works disturbance.
- A Section 140 application in the event that the Historical Archaeological assessment identifies the proposal will impact archaeological relics.
- Works to cease in the event unexpected archaeological deposits or relics are found.

In addition to the matters considered above, Clause B8 of the Port Stephens Development Control Plan 2014 (DCP 2014) requires that the design of the proposed residence be complementary to the heritage significance of the area. This must also take into account the potential impact the design could have on the neighbouring Woodville School of Arts, which is also a locally listed heritage item in the LEP 2013. As such, the statement of heritage impact has provided design guidelines for the new residence to address this requirement. The design guidelines are outlined in the Recommended Conditions of Consent provided at **(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**

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 consistent with relevant planning instruments, flood development guidelines, the Environmental Planning and Assessment Act 1979 (EP&A Act), the Heritage Act 1977, Port Stephens Local Environment Plan 2013 (LEP 2013), and the Port Stephens Development Control Plan 2014 (DCP 2014).

<b>Risk</b>	<b><u>Risk Ranking</u></b>	<b>Proposed Treatments</b>	<b>Within Existing Resources?</b>
There is a risk that if that the application is refused the applicant may appeal the determination.	Medium	Approve the application as recommended. The assessment carried out details the merits of the proposed development.	Yes

## **SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

The subject site is identified as a local archaeological site and a recommended condition of consent will require a Section 140 application in the event that the Historical Archaeological assessment identifies the proposal will impact archaeological relics.

Pomfrett's Cottage is located on the site, is structurally unstable, and the restoration works required would not be feasible due to the degree of deterioration of the structure. On this basis, the demolition of the structure is supported and the Recommended Conditions of Consent (**ATTACHMENT 3**) are proposed to ensure the new dwelling is sympathetic to the area and surrounding locally significant heritage items.

## **CONSULTATION**

### Internal

Consultation was undertaken with internal officers including Engineering Services, Strategic Planning (Heritage Advisor) and the Planning and Developer Relations team.

### External

The application was referred to the Heritage Council on 13 February 2020 in accordance with clause 5.10(7) of the LEP 2013.

A response was received from the Heritage Council on 9 March 2020, which was taken into consideration by Council in accordance with clause 5.10(7b) of the LEP 2013.

As a result of the response received from the Heritage Council, Council requested additional information from the applicant.

Council received the additional information from the applicant on 28 July 2020, which was reviewed by Council and then referred back to the Heritage Council for comment on 18 August 2020.

A response to the additional information was received from the Heritage Council on 3 September 2020. This response provided Council with recommended conditions to be imposed, should the application be approved. These conditions have been included in the Recommended Conditions of Consent provided at (**ATTACHMENT 3**).



In addition, whilst not a part of a formal referral process, Council received a letter from the Heritage Council on 14 May 2020, which provided an update on an Interim Heritage Order (IHO) application that was received by their office. In that correspondence the Heritage Council advised that they would not be recommending an IHO be issued as the subject property was not likely to be of State heritage significance.

### Notification

In accordance with Council's notification requirements the DA was advertised and notified for a period of 14 days from 27 September 2019 to 11 October 2019. During the exhibition period 5 submissions were received.

The key issues raised within the submissions included; dwelling entitlement, historical value, cultural value, relationship to, and potential social and economic impact to the Woodville School of Arts. These issues have been addressed within the detailed assessment report contained at **(ATTACHMENT 2)**. The assessment of the application has determined that, subject to the Recommended Conditions of Consent **(ATTACHMENT 3)** the issues raised within the submissions have been addressed and the proposed development is recommended for approval.

### **OPTIONS**

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

### **ATTACHMENTS**

- 1) Locality Plan. [↓](#)
- 2) Assessment Report. [↓](#)
- 3) Recommended Conditions of Consent. [↓](#)
- 4) Call to Council form. [↓](#)
- 5) Minute No.006, 11 February 2020. [↓](#)
- 6) Heritage Council of NSW Referral - 3 September 2020. [↓](#)

### **COUNCILLORS ROOM**

- 1) Development Plans.
- 2) Copy of Submissions.

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

### **TABLED DOCUMENTS**

Nil.



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**PORT STEPHENS COUNCIL**

# DEVELOPMENT ASSESSMENT REPORT

**APPLICATION DETAILS**

<b>Application Number</b>	16-2019-270-1
<b>Development Description</b>	Demolition of existing buildings and construction of a new single storey dwelling
<b>Applicant</b>	MS V SOLOMOU
<b>Date of Lodgement</b>	30/04/2019
<b>Value of Works</b>	\$300,000.00

**Development Proposal**

The application proposes the demolition of the existing structures and construction of a new single storey dwelling and carport/garage. The proposed single storey dwelling is designed to be similar in style and proportions to a traditional cottage with a hipped roof, verandah, and timber cladding. The dwelling will also be separated into pavilions to reduce the scale as viewed from the street. A double carport/garage will be located at the rear of the property.

**PROPERTY DETAILS**

<b>Property Address</b>	862 Paterson Road WOODVILLE
<b>Lot and DP</b>	LOT: 510 DP: 1150491
<b>Zoning</b>	RU1 PRIMARY PRODUCTION
<b>Site Constraints</b>	<i>Flooding and drainage, heritage, dwelling entitlement,</i>

**Site Inspection**

A site inspection was carried out on **14 May 2019**. The site can be seen in the photographs below. The subject site has a total area of 723 m<sup>2</sup>, is generally flat and is zoned RU1 Primary Production. Access to the site is direct from Paterson Road.

The subject site is surrounded by similarly zoned RU1 lots, with the exception of the Iona Public School which is zoned SP2 - Special Activities. The lot sizes (with dwellings) in the immediate vicinity range from 232,960 m<sup>2</sup> to 5000 m<sup>2</sup>.

The subject site currently contains a dwelling towards the front of the site and a Colorbond shed with an older shed and an outbuilding to the rear. The current dwelling on the site is in very poor condition and is considered structurally unsound.

Site Photos:



**Photo 1: View of Cottage from Clarence Town Road**



**Photo 2: View of Cottage from Clarence Town Road**



Photo 3: View of Colorbond Shed to be removed



Photo 4: View of Cottage looking West

**REFERRALS**

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

**i) Planning and Developer Relations**

*The application was referred to the Planning and Developer Relations team within Council to ensure that the subject lot benefitted from dwelling entitlement. The referral advised that the subject lot would benefit from dwelling entitlement in accordance with 4.2B of the LEP. As such, this application has been supported unconditionally by the Planning and Developer Relations Team.*

**ii) Drainage and Flooding Engineers**

*The application was referred to the Drainage and Flooding Engineers within Council as the subject site is fully located within the **low hazard flood fringe category**. This referral provided comments relating to finished floor level requirements, egress requirements, and other flood related matters. The application was supported by the Drainage and Flooding Engineers subject to conditions. These conditions have been adopted and proposed for the consent.*

**iii) Strategic Planning – Heritage Officer**

*The application was referred to the Strategic Planning Team, who engaged a heritage officer to conduct the referral. This application was referred as the dwelling to be demolished is a locally listed Archaeological site in the LEP - this site is specifically known as Pomfretts Cottage. Council's heritage consultant assessed the application against the LEP, DCP, and relevant heritage legislation. On the basis of the assessment, the Heritage Officer has supported the application subject to conditions. This condition has been adopted and proposed for the consent.*

*Note: Further details relating to the above matters are found within the body of this report.*

**MATTERS FOR CONSIDERATION – SECTION 4.15**

**s4.15(1)(a)(i) – The provisions of any EPI**

<b>PORT STEPHENS LOCAL ENVIRONMENTAL PLAN 2013</b>		
<b>Clause</b>	<b>Compliant</b>	<b>Notes (where needed or if not compliant)</b>
2.1	<input checked="" type="checkbox"/> Permissible in zone and meets zone objectives.	Site is zoned RU1 Primary Production. Dwelling houses are permissible in this zoning.
2.7	<input checked="" type="checkbox"/> Demolition proposed and is not included as exempt under the SEPP. <input checked="" type="checkbox"/> Potential asbestos contained with condition of consent added.	The current proposal is for the demolition of a locally significant archaeological site (Listed in the LEP – A6).  Asbestos has been further considered through the heritage assessment.  Standard condition of consent required for demolition.
4.2B	<input type="checkbox"/> Dwelling proposed on RU1, RU2, R5, E2 or E3 land where there is no current dwelling on site. <input type="checkbox"/> Site complies with lot size map; OR, <input type="checkbox"/> Land zoned RU1, RU2, E2 or E3 and created before 22 February 2014 with an area of at least 4,000m <sup>2</sup> on which a dwelling was permissible under the previous LEP; OR, <input type="checkbox"/> Would have met the above requirements but for a minor realignment that did not create an additional lot, a subdivision for a public purpose or a consolidation with an adjoining lot for a public purpose. <input checked="" type="checkbox"/> Where an existing consent for a dwelling is valid, the consent will be surrendered.	The Port Stephens Local Environment Plan 2013 (LEP) indicates that the current land use zone applicable to the subject site is RU1 – Primary Production. As the area of the subject site is less than the minimum lot sizes identified under the current LEP, dwellings may only be permissible in this zoning if compliance with Clause 4.2B of the LEP is demonstrated.  More specifically, Clause 4.2B (5) states that Development consent may be granted for the erection of a dwelling house on land to which this clause applies if there is a lawfully erected dwelling house on the land and the dwelling house to be erected is intended only to replace the existing dwelling house.

		<p>The term 'lawfully erect' is taken to mean that either;</p> <ul style="list-style-type: none"> <li>a) The dwelling house was constructed when consent was not required, or</li> <li>b) There is an approval (whether development consent or a building approval) for the dwelling house.</li> </ul> <p>Council records indicate a dwelling approval for the subject site, however, historical records were limited as the current dwelling was constructed when consent was not required. This demonstrates that the dwelling was existing on the lot and that a dwelling was lawfully erected on the site.</p> <p>In addition to the above, one of the objectives of Clause 4.2B(5), as provided by the Department of Planning's drafting direction, is to be able to replace dwelling houses that were lawfully erected but in their current state had become dilapidated or destroyed by flood, fire, or the like. The subject site has a 'lawfully erected' dwelling on the site and therefore, with reference to the above, the subject site benefits from a dwelling entitlement in accordance with Clause 4.2B (5) of the LEP.</p>
4.3	<input checked="" type="checkbox"/> Proposed development is under maximum building height; OR, <input type="checkbox"/> There is no maximum building height and the development satisfies the objectives.	Single Storey Dwelling – meets height requirements.
5.4	<input type="checkbox"/> No more than 4 bedrooms in dwelling used for B&B. <input type="checkbox"/> No more than 50m <sup>2</sup> utilised for home business or home industry. <input type="checkbox"/> Kiosk floor area under 20m <sup>2</sup> .	N/A – proposal is not for any of these uses.



	<input type="checkbox"/> Neighbourhood shop does not exceed 100m <sup>2</sup> . <input type="checkbox"/> Roadside stall does not exceed 10m <sup>2</sup> . <input type="checkbox"/> Secondary dwelling does not exceed the greater of 60m <sup>2</sup> or 40% of primary dwelling.	
5.9AA	<input type="checkbox"/> Trees will be removed that are not prescribed under DCP.	N/A – no significant trees to be removed.
7.1	<input checked="" type="checkbox"/> Potential Class 5 Acid Sulfate Soils (ASS); OR, <input type="checkbox"/> Potential Class 4 ASS with no works more than 2m below ground level; OR, <input type="checkbox"/> Potential Class 3 ASS with no works more than 1m below ground level; OR, <input type="checkbox"/> Potential Class 2 ASS with no works below ground level; OR, <input type="checkbox"/> Potential Class 1 ASS and an acceptable management plan has been submitted.	N/A – watertable is unlikely to be lowered below 1 metre AHD.
7.2	<input type="checkbox"/> Earthworks required, but do not have negative impacts on surrounding properties.	N/A – no significant earthworks proposed.
7.3	<input checked="" type="checkbox"/> Development within flood planning area but no anticipated flood risk to life and property, or change in flood characteristics.	Property deemed to be fully within a <b>low hazard flood fringe area</b> . A detailed flood assessment has been provided in B5 below.
7.5	<input type="checkbox"/> Within ANEF 20 contour or higher but does not result in an increased number of people affected by aircraft noise.	N/A – not mapped as being in this zone.
7.6	<input checked="" type="checkbox"/> Essential services are available to the site where required.	<p>Town water and sewer not available.</p> <p>Potable Water – provided via rainwater tank.</p> <p>Sewer - Port Stephens Councils Development Assessment Framework (DAF) is used to identify the onsite sewage management hazard class applicable to unsewered land. The DAF mapping layers identify the subject lot as being <b>Very High Hazard</b> with regards to wastewater. Given that the lot size</p>

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

16-2019-270-1

		is 722.83 square metres, an effluent pump out system would be permitted in accordance with Section 1.5 of the DAF.
7.8	<input type="checkbox"/> Development is within the drinking water catchment but will not result in a significant adverse impact on water quality or flows.	N/A – not within the catchment
7.9	<input type="checkbox"/> Subject land contains mapped wetlands, but development does not result in adverse impacts on ecology or water flows.	N/A – not relevant to this proposal.
7.15	<input type="checkbox"/> Dual occupancy on land zoned RU1, RU2, E2 or E3 gives the appearance of a single development and shared facilities such as access.	N/A – single storey dwelling proposed.

**s4.15(1)(a)(ii) – Any Draft EPI**

		<b>Notes (what draft EPI if needed and comments where not compliant)</b>
	<input checked="" type="checkbox"/> There are no draft EPI's that are relevant to the proposed development	Acknowledged
	<input checked="" type="checkbox"/> A draft EPI is relevant to the proposed development however the application is consistent with the aims and objectives of the document.	Acknowledged

**s4.15(1)(a)(iii) – Any DCP**

<b>PORT STEPHENS DEVELOPMENT CONTROL PLAN 2014</b>		
<b>Clause</b>	<b>Compliant</b>	<b>Notes (where needed or if not compliant)</b>
A.12	<input checked="" type="checkbox"/> Notification and advertising in line with Figure AA.	In accordance with Council's notification requirements the DA was advertised and notified for a period of 14 days from 27 September 2019 to 11 October 2019. During the exhibition period 5 submissions were received.
B1	<input checked="" type="checkbox"/> Trees to be removed do not require approval as outlined in B1.1.	Acknowledged
B2	<input type="checkbox"/> Not in proximity of items of environmental significance.	N/A  N/A

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ITEM 2 - ATTACHMENT 2 ASSESSMENT REPORT.

16-2019-270-1

	<input type="checkbox"/> Land does not contain koala habitat or development is consistent with the CKPoM.				
B3	<input type="checkbox"/> Development meets bushfire construction requirements. <input type="checkbox"/> Development would not disturb acid sulphate soils or an acceptable ASSMP has been prepared. <input type="checkbox"/> Earthworks would have minimal environmental impacts with conditions on VENM fill and erosion and sediment controls.	<p>Not considered to be Bushfire Prone – managed land around the subject site.</p> <p>N/A</p> <p>N/A</p>			
B4	<input checked="" type="checkbox"/> Non-permeable area not significantly increased and development consistent with figure BD, on-site detention not required; OR, <input checked="" type="checkbox"/> Non-permeable area above figure BD and acceptable on-site detention proposed or condition for details added. <input checked="" type="checkbox"/> Insignificant increases to adversely impact on water quality.	<p>Current dwelling, colorbond shed, and older shed proposed to be removed. New structure not deemed to be a significant increase of non-permeable area.</p> <p>Addressed via the installation of a rain garden.</p>			
B5	<input checked="" type="checkbox"/> Proposed development is on flood prone land; AND, <input checked="" type="checkbox"/> A flood certificate has been submitted with the application and the finished levels are consistent with Table 2: Development Suitability Table; AND, <input checked="" type="checkbox"/> The submitted documents are consistent with Table 2: Development Suitability Table.	<p>The subject site is mapped as flood prone land. Recent flood data reviewed by Council has revealed that the subject lot is fully located within a <b>low hazard flood fringe area</b>.</p> <p>The adopted flood data for the subject site is as follows:</p> <table border="1" data-bbox="933 1218 1339 1733"> <tr> <td>Flood Planning Level</td> <td>7.6m AHD</td> <td>This level defines the minimum floor level of habitable rooms and land that is subject to flood related development controls (refer to Port Stephens LEP Section 7.3, Port Stephens DCP Section B5)</td> </tr> </table>	Flood Planning Level	7.6m AHD	This level defines the minimum floor level of habitable rooms and land that is subject to flood related development controls (refer to Port Stephens LEP Section 7.3, Port Stephens DCP Section B5)
Flood Planning Level	7.6m AHD	This level defines the minimum floor level of habitable rooms and land that is subject to flood related development controls (refer to Port Stephens LEP Section 7.3, Port Stephens DCP Section B5)			

ITEM 2 - ATTACHMENT 2 ASSESSMENT REPORT.

16-2019-270-1

		Highest Hazard Category	Low Hazard Floor Fringe area	
		Flood levels that may be useful are:		
		Probably maximum flood level	8.9m AHD	The highest flood level that could conceivably occur at this location if required, onsite flood refuges are built at or above this level, to the Port Stephens Development Control Plan B5.2
		Current day 1% AEP flood level	6.6m AHD	This level is useful for insurance purposes, refer to your insurance policy and the Insurance Contracts Regulation 1985 (Cwealth)
		Adaptable minimum floor level	7.4m AHD	The 1% AEP flood level plus 0.5m, 50 years from now, refer to the Port Stephens Development Control Plan B5.2.
Assessment of the proposal has revealed the following key matters that need to be considered with relation to flooding;				

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		<p><u>Finished Floor Levels</u></p> <p>With reference to the above, Section B5 of the DCP specifies that the minimum floor level for habitable rooms must meet the Flood Planning Level (FPL). The proposed finished floor level (FFL) of the dwelling is 7.8m AHD which is above the FPL of 7.6m AHD and is therefore deemed to be acceptable.</p> <p>In addition to the above, Section B5 of the DCP also specifies that a garage or carport must have a FFL that is 0.5m AHD above the 5% AEP level. The proposed FFL of the garage is 6.7m AHD, which is at least 500mm above the 5% AEP flood level, and is therefore deemed to be acceptable.</p> <p><u>Egress and Refuge Requirements</u></p> <p>The subject property has access to Paterson Road that is via land mapped as low hazard flood fringe category. Paterson Road reduces in elevation in both directions south and north and is inundated by the current 1% AEP flood event to depths greater than 3 metres. Hence, 862 Paterson Road essentially becomes a flood island during a current day 1% AEP event.</p> <p>Furthermore, the PMF flood level of 8.9m AHD would inundate the surrounding area including the proposed dwelling to a depth of 1.1m above the finished floor level. Hence there is a risk that the property occupants may not evacuate prior to Paterson Road being cut off (with the low point of Paterson Road to the north being more then 4m below the proposed property floor level).</p> <p>As per the DCP requirements, on-site flood refuge above the PMF</p>
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		<p>level of 8.9m AHD is required for this development. The flood refuge must also be structurally certified to withstand flooding impacts up to the PMF event.</p> <p>The architectural plans submitted with the application have incorporated a flood refuge area within the roof space of the garage located at 9.45m AHD. This refuge is considered to be acceptable subject to engineering certification being provided identifying that the refuge is structurally capable of withstanding a flood event up to the PMF level.</p> <p>The applicant has submitted a Flood effects report for the proposal (from GCA Engineering Solutions dated 30 July 2019). The flood effects report considers the proposal against the Australian Building Codes Board (ABCB) publication 'Construction of Buildings in Flood Hazard Areas'. This report provides recommendations outlining how the proposed residence and garage can structurally withstand a PMF flood event. The recommendations made within this report will be required to be complied with as a condition of consent.</p>
B6	<input checked="" type="checkbox"/> Essential services are available to the site, where required.	<p>See above.</p> <p>Electricity available.</p> <p>Reticulated sewer and water supply not available.</p>
B7	<input type="checkbox"/> Development within noise planning area is consistent with Clause 7.5 of the LEP – Aircraft Noise; AND <input type="checkbox"/> Department of Defence has been notified and no objections have been raised.	<p>N/A – not mapped as being in this zone.</p>
B8	<input checked="" type="checkbox"/> Development relates to a heritage item or conservation area, however is of minor nature or would not impact on the significance of the item; OR,	<p>The subject site is located at 862 Paterson Road Woodville, which is listed as a locally significant archaeological site in the LEP. The listed site is specifically known as</p>

	<ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Development is likely to affect the significance of a heritage item, however it is supported by an acceptable heritage statement.</li> <li><input checked="" type="checkbox"/> Development proposing partial or total demolition of a heritage item or item within conservation area supported by a structural assessment.</li> <li><input checked="" type="checkbox"/> No expected impact to Aboriginal heritage.</li> </ul>	<p>“Pomfrett’s Cottage (Slab Cottage)”.</p> <p>The demolition of structures on a locally significant heritage site is permissible with consent, under Clause 5.10 of the LEP, subject to an assessment against this clause.</p> <p>The following is an extract from Clause 5.10 of the LEP that is relevant to this proposal:</p> <p><u>5.10 Heritage Conservation</u></p> <p>(4) Effect of proposed development on heritage significance The consent authority must, before granting consent under this clause in respect of a heritage item or heritage conservation area, consider the effect of the proposed development on the heritage significance of the item or area concerned. This subclause applies regardless of whether a heritage management document is prepared under subclause (5) or a heritage conservation management plan is submitted under subclause (6).</p> <p>(5) Heritage assessment The consent authority may, before granting consent to any development:</p> <ul style="list-style-type: none"> <li>(a) On land on which a heritage item is located, or</li> <li>(b) On land that is within a heritage conservation area, or</li> <li>(c) On land that is within the vicinity of land referred to in paragraph (a) or (b), require a heritage management document to be prepared that assesses the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item or heritage conservation area concerned.</li> </ul>
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	<p>In addition to Clause 5.10 of the LEP, Council must also consider Section B8 of the Development Control Plan 2014 (DCP). Section B8 of the DCP outlines the requirements relating to development proposals involving heritage. More specifically, this clause requires development applications that are likely to impact on the heritage significance of a heritage item, be accompanied by a heritage impact statement. This heritage impact statement must be consistent with the Office of Environment &amp; Heritage 'Statements of Heritage Impact' document and be prepared by a suitably qualified and experienced consultant. This consultant must be registered and listed on the NSW Office of Environment and Heritage Consultants Directory.</p> <p>To address the relevant requirements in the LEP and the DCP mentioned above, a Statement of Heritage Impact ('the statement') has been completed by a heritage consultant listed on the NSW Office of Environment and Heritage Consultants Directory.</p> <p>As this statement was completed by a consultant engaged by the applicant, an independent review of the statement was also conducted by Councils Heritage advisor. This review has confirmed that the statement is considered to be an adequate assessment for the purposes of the Heritage Act 1977.</p> <p>On the basis of this, the following are key points taken from the Statement of Heritage Impact.</p> <p><u>Historical Significance</u></p> <p>Pomfretts cottage was likely built prior to 1878 and may be</p>
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		<p>associated with the early European settlement in the Woodville and Iona area. The dwelling is representative of a vernacular cottage of the 19<sup>th</sup> century, and is representative of building type and building techniques used in the 1800s. The dwelling has a symmetrical façade, steep pitched roof, verandah, split slab walls and timber shingles. An accurate internal assessment of the dwelling was unable to be conducted, as the dwelling is structurally unsound with a collapse imminent. Ordinarily section B8.C of Councils DCP would require a structural engineers report to accompany applications proposing demolition, but this was not deemed to be necessary as it would not provide any additional information than the external assessment.</p> <p>Given that an internal assessment of the dwelling could not be completed, it was not possible to accurately determine if the dwelling currently contains archaeological relics or items of significance. As such, the applicant will be required, as a condition of consent, to obtain an excavation permit from the Office of Environment &amp; Heritage prior to the commencement of any works. This ensures that if relics or items of significance are found during the demolition of the dwelling, they will be appropriately managed.</p> <p><u>Social Significance</u></p> <p>Pomfretts cottage is listed in the LEP as a locally significant archaeological site, and therefore is deemed to be of value to the community. This value and local significance however, is diminished due to the current condition and imminent collapse of the cottage.</p>
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		<p>The DA was advertised in the Port Stephens Examiner on Thursday 26 September and neighbours notified in accordance with Councils DCP. This gave the community the opportunity to express the value and significance of the cottage to them.</p> <p>During the notification period, Council received a total of 5 submissions from the community. These submissions have been collated in the consultation section of this report.</p> <p>With specific reference to the heritage impact statement, and the comments received from Councils Heritage advisor, it is evident that the dwelling to be demolished has value to the community. This value, however, is significantly diminished due to the structural instability of the building and the imminent collapse. It was also determined that conservation of the dwelling would not be feasible due to the degree of deterioration of the structure. This deterioration would require a large amount of new fabric and building materials to restore. This would even further diminish the historical value. On the basis of the above, it has been deemed that it is appropriate to support the proposed demolition of the dwelling.</p> <p>In addition to the matters considered above, Clause B8 of the DCP also requires that the design of the proposed residence be complementary to the heritage significance of the area. This must also take into account the potential impact the design could have on the neighbouring Woodville School of Arts, which is also a locally listed Heritage Item in the LEP. As such, the statement of heritage impact has provided strict design</p>
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		guidelines for the new residence to address this requirement. The design guidelines have been adopted and will be recommended as a condition of consent.
B9	<input type="checkbox"/> The development would not generate significant increases in traffic. <input type="checkbox"/> On-site parking provision meets the requirements of figure BQ or merit based assessment; AND, <input type="checkbox"/> Suitable disabled parking is provided in line with figure BQ.	N/A
C1	<input type="checkbox"/> The development is a minor subdivision; AND, <input type="checkbox"/> The proposal would result in lot dimensions appropriate for their proposed use whilst not restricting the provision of services. <input type="checkbox"/> The proposal is consistent with the LEP requirements on subdivisions.	N/A
C2	<input checked="" type="checkbox"/> The proposed development would be consistent with the existing development in its form, height, bulk, design and materials. <input checked="" type="checkbox"/> The development would not adversely affect the amenity of neighbouring properties or the public domain. <input checked="" type="checkbox"/> The proposed awning would provide continuity in the street and integrated within the façade of the existing development. <input checked="" type="checkbox"/> Any entry structures are appropriately located so as not to obstruct pedestrians.	In addition to the matters considered above, Clause B8 of the DCP also requires that the design of the proposed residence be complementary to the heritage significance of the area. This must also take into account the potential impact the design could have on the neighbouring Woodville School of Arts, which is also a locally listed Heritage Item in the LEP. As such, the statement of heritage impact has provided strict design guidelines for the new residence to address this requirement. The design guidelines have been adopted and will be recommended as a condition of consent.
C3	<input checked="" type="checkbox"/> The proposed development would be consistent with the existing development in its form, height, bulk, design and materials. <input checked="" type="checkbox"/> Fencing forward of the 6m setback does not exceed 1.2m and is constructed of masonry or dark coloured picket/pool style fencing. Beyond 6m setback, fencing/security gates do not exceed 2m.	The new dwelling is to be designed in accordance with the recommendations made within the Heritage Impact Statement. This will ensure it is sympathetic to the streetscape and neighbouring Woodville School of Arts (Locally significant Heritage site)
C4	<input checked="" type="checkbox"/> BASIX submitted in accordance with SEPP.	Valid BASIX certificate submitted.

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

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	<ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Site coverage is in accordance with figure BD.</li> <li><input checked="" type="checkbox"/> Proposal ensures development provides continuity to the street and setbacks comply with C4.10-C4.19.</li> <li><input checked="" type="checkbox"/> Development appropriately activates the street with habitable rooms where applicable.</li> <li><input checked="" type="checkbox"/> The proposed development would be sympathetic to the streetscene as it is consistent with the existing development in its form, height, bulk, design and materials.</li> <li><input checked="" type="checkbox"/> The development would not adversely affect the amenity of neighbouring properties or the public domain.</li> <li><input checked="" type="checkbox"/> Ancillary development complies with C4.31-C4.43.</li> </ul>	<p>Site coverage compliant. Setbacks deemed to be acceptable.</p> <p>See C3 above.</p> <p>See C3 above</p> <p>Proposed single storey dwelling is not envisaged to impact on the amenity of the neighbouring school of arts or iona public school.</p>
C6	<ul style="list-style-type: none"> <li><input type="checkbox"/> Applicant has adequately justified the development is consistent with the definition of home business/home industry and size limit of LEP.</li> <li><input type="checkbox"/> Proposal does not adversely impact on amenity in terms of noise, smell, traffic generation etc.</li> <li><input type="checkbox"/> No signage, other than a business identification sign, is proposed. Restricted through condition of consent.</li> <li><input type="checkbox"/> Parking is provided in line with figure BQ in Chapter B9 or merit-based assessment established on employees/home occupiers and expected customers.</li> <li><input type="checkbox"/> Applicant indicated hours of operation that are acceptable given the nature of the development within the locality and restricted through condition of consent.</li> <li><input type="checkbox"/> Any storage is appropriately located.</li> <li><input type="checkbox"/> Vehicle repair operations proposed with maximum capacity of two vehicles and one trailer per truck permitted; AND,</li> <li><input type="checkbox"/> Vehicle storage located behind building line.</li> </ul>	N/A – This section does not apply.
C8	<ul style="list-style-type: none"> <li><input type="checkbox"/> Signage is integrated within the building façade; AND,</li> <li><input type="checkbox"/> Development does not include flashing signs, roof signs, vehicular signs (where primary use is for advertising), above awning</li> </ul>	N/A – No signage proposed.

ITEM 2 - ATTACHMENT 2 ASSESSMENT REPORT.

16-2019-270-1

	sign, airborne sign, inflatable sign or hoarding sign.	
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**s4.15(1)(a)(iiiia) – Any planning agreement or draft planning agreement entered into under section 7.4**

	Notes (where needed)
<input checked="" type="checkbox"/> There are no planning agreements that have been entered into under section 7.4 relevant to the proposed development.	N/A - Acknowledged

**s4.15(1)(a)(iv) – The regulations**

	Notes (where needed)
<input checked="" type="checkbox"/> There are no matters within the regulations that are relevant to the determination of the application.	N/A - Acknowledged

**s4.15(1)(a)(v) – Any coastal management plan**

	Notes (where needed)
<input checked="" type="checkbox"/> There are no coastal management plans that are relevant to the determination of the application.	N/A - Acknowledged

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

	Notes (where needed)
<input checked="" type="checkbox"/> <b>Social and Economic Environment:</b> There would be beneficial impacts as a result of the development.	<p>Pomfretts cottage is listed in the LEP as a locally significant archaeological site, and therefore is deemed to be of value to the community. This value and local significance however, is diminished due to the current condition and imminent collapse of the cottage.</p> <p>The DA was advertised in the Port Stephens Examiner on Thursday 26 September and neighbours notified in accordance with Councils DCP. This gave the community the</p>

	<p>opportunity to express the value and significance of the cottage to them.</p> <p>During the notification period, Council received a total of 5 submissions from the community. These submissions have been collated in the consultation section of this report.</p>
<p><input checked="" type="checkbox"/> <b>Built Environment:</b> The proposed development would not cause harm to the existing character.</p>	<p>See C3 above.</p>
<p><input checked="" type="checkbox"/> <b>Natural Environment:</b> There are no adverse impacts expected as a result of the proposed development and appropriate conditions have been added.</p>	<p>Single dwelling not deemed to have any negative impact on the environment. Standard conditions of consent protect the environment during the construction phase.</p>

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

The subject site is considered to be suitable for the development as it is permissible within the zone, and is replacing a current dilapidated dwelling on the site. Dwelling entitlement is permissible as per the assessment above.

**s4.15(1)(d) – Any submissions**

It is noted that Councils notification policy outlined in Chapter A of the DCP 2014, that developments that involve significant works to heritage items and that may be of significant community interest, will be required to be advertised and notified. As such, the Development Application has been advertised in the Port Stephens Examiner on 26 September 2019 and Neighbour Notified. The advertisement and notification period was from 27 September 2019 to 11 October 2019 for 14 days.

Council received a total of **5 submissions** during the advertising and notification period. The submissions are summarised as follows;

<b>No.</b>	<b>Concerns</b>	<b>Comments</b>
1	- Dwelling entitlement	The property has been identified to have a dwelling entitlement, this has been addressed within body of the assessment report.
2	- Historical, cultural, Local Heritage value	The historical, and cultural issues have been addressed in detail within the body of the report.

	<ul style="list-style-type: none"> <li>- Potential for conservation/ reconstruction to complement the heritage aspects of the site</li> </ul>	<p>A Statement of Heritage Impact ('the statement') has been completed by a heritage consultant listed on the NSW Office of Environment and Heritage Consultants Directory to accompany the application. The report was assessed by Council's heritage officer whom agreed with the assessment and listed recommendation.</p> <p>The new dwelling is to be designed in accordance with the recommendations made within the Heritage Impact Statement.</p>
3	<ul style="list-style-type: none"> <li>- Financial/economic impact on the Woodville School of Arts.</li> <li>- Potential future complaints from the new owners relating to the activities held at the Woodville School of Arts</li> <li>- Potential for future owners to object to future events held at the Woodville School of Arts.</li> <li>- Proximity and relationship with the Woodville School of Arts and restriction on operational use.</li> </ul>	<p>The use of the land as a residence is unchanged. To not allow residential development would be to sterilise the use of the land. Any potential future complaints would need to be investigated if they arise.</p> <p>The development of the subject site is not considered to give rise to a financial or operational impact to the Woodville School of Arts. Further, this is not a matter for consideration under Section 4.15 of the Environmental Planning Assessment 1979.</p>
4	<ul style="list-style-type: none"> <li>- Inadequate notification of the Development Application</li> </ul>	<p>Notification was carried out in accordance with Council's advertising and notification policy.</p>

**s4.15(1)(e) – The public interest**

The proposal has been assessed (as indicated by the assessment above) against relevant legislation and Council policies. The legislation and policies assessed against have been developed and implemented with public interest in mind. Given this proposal meets all relevant legislation and Council Policies, Council can be satisfied that the proposal will not have an adverse effect with regards to public interest.

**DETERMINATION**

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

TRISTAN SULLIVAN



### CONDITIONS THAT IDENTIFY APPROVED PLANS

1. The development shall be carried out in accordance with the stamped approved plans and documentation as listed below, except where modified by any condition of this consent or as shown in red colour on the plans.

Plan/Doc.Title	Plan Ref. No	Sheet.	Date	Drawn By
Architectural Plans	4073	2-8	27/7/2020	Advantage

**Note 1:** In the event of any inconsistency between the:

- Approved plans and the conditions, the conditions will prevail; or
- Approved plans and supplementary documentation, the plans will prevail.

**Note 2:** The consent relates only to those works indicated as proposed on the approved plans. No assessment has been undertaken of those structures marked as existing, and this consent does not extend to include any such structures.

**Note 3:** The consent relates only to those works indicated as proposed on the approved plans. No assessment has been undertaken of those structures marked as existing, and this consent does not extend to include any such structures.

### CONDITIONS THAT IDENTIFY OTHER APPROVALS REQUIRED

3. **A Construction Certificate is required prior to commencement of works** approved by this application. The person having the benefit of this consent must appoint a principal certifying authority. If Council is not appointed as the Principal Certifying Authority then Council must be notified of who has been appointed. Note: at least two (2) days' notice must be given to Council of intentions to start works approved by this application.
4. **Prior to the commencement of works**, a Driveway Construction Application is to be lodged with Council as the Roads Authority.
5. **Prior to the issue of the Construction Certificate** a separate wastewater application for the installation of a waste treatment device/human waste storage facility shall be approved by Council. The wastewater management system proposed for the development shall be in accordance with Councils On-site Sewage Management Policy and the Local Government Act, 1993. The application is to be accompanied by





full details of the proposed system and site assessment complying with the relevant section of the Development Assessment Framework (DAF).

6. **Prior to the commencement of works**, the person having the benefit of this consent shall contact Hunter Water Corporation (HWC) to ensure that the approved works do not impact upon existing or proposed HWC infrastructure. A copy of the information received by HWC shall be provided to Council within 10 days of receipt. Should HWC require modification to the approved development a Section 4.55 Modification Application and/or modified Construction Certificate Application should be lodged.

#### CONDITIONS THAT ARE PRESCRIBED

7. All building work shall be carried out in accordance with the requirements of the Building Code of Australia.
8. **Prior to the commencement of works**, a contract of insurance is to be in force in the case of residential building work for which the *Home Building Act 1989* requires there to be a contract of insurance in force in accordance with Part 6 of that Act.
9. **Prior to the commencement of works**, for any residential building work within the meaning of the Home Building Act 1989, (the HB Act) except for Crown building works certified in accordance with section 6.28 of the Act, the principal certifying authority must provide to the Council (unless Council is the principal certifying authority) a written notice of:
  - a. In the case where a principle contractor is required to be appointed, the name and licence number of the principal contractor and the name of the insurer by which the work is insured under the HB Act;
  - b. In the case of work to be done by an owner builder, the name of the owner builder and their permit number if required under the HB Act.
10. Except in the case of work only carry out to the interior of a building or Crown building work certified in accordance with section 6.28 of the Act, 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 principle contractor and their after-hours contact number, and must contain a statement that unauthorised entry to the site is prohibited.
11. 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.



12. All demolition works are to be carried out in accordance with Australian Standard AS 2601-2001. All waste materials are to be either recycled, or disposed of to a licenced 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.

#### PRIOR TO ISSUE OF A CONSTRUCTION CERTIFICATE

13. **Prior to the issue of the Construction Certificate** the following information shall be submitted to the Principle Certifying Authority and must be prepared and certified by a Chartered Professional Structural Engineer,
- a. Detailed structural engineering design of the proposed development, having regard for the SES Building Guidelines and ABCB Construction of Buildings in Flood Hazard Areas Standard, unless otherwise permitted by conditions of this consent. The design must show that the proposed development is capable of withstanding the effects of flood waters, including immersion, structural stability, buoyancy and impact from debris up to and including the 1% Annual Exceedance Probability (AEP) event. The 1% AEP flooding characteristics are 7.1metres AHD;
  - 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). The PMF flooding characteristics are 8.9metres AHD and 1.5metres per second velocity;
  - 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; and
  - 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.
  - e. The flood refuge area must comply with Section B5.3 of Port Stephens Councils Development Control Plan 2014.
  - f. The development shall incorporate all relevant construction or structural recommendations listed in the GCA Engineering Solutions '*Proposed new residence and garage, 862 Paterson Road, Woodville, Flood effects (reference number 19164S), dated 30 July 2019.*



- g. The finished floor level of the dwelling is to be above the Flood Planning level (FPL). The FPL for this site is 7.6m AHD.
- h. The finished floor level (FFL) of the garage is to be a minimum 6.7m AHD. The designated flood refuge area is to have a minimum FFL of 9.45m AHD.

#### CONDITIONS TO BE SATISFIED PRIOR TO DEMOLITION, EXCAVATIONS OR CONSTRUCTION

14. **At least two days prior to the commencement of works**, the applicant shall submit to Council a "Notice of Commencement and Appointment of Principal Certifying Authority" form.
15. **Prior to the commencement of works**, the applicant is required to notify Council in writing of any existing damage to public infrastructure (including landscaping) within the vicinity of the development, the absence of such notification signifies that no damage exists.
16. **Prior to the commencement of work**, 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 except with the agreement of the Principle Certifying Authority.
17. **Prior to the commencement of works**, 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 shall be stockpiled in a manner which facilitates the rubbish to be blown or washed off site. The site shall be cleared of all building refuse and spoil immediately upon completion of the development.
18. **Prior to the commencement of works**, the property shall be protected against soil erosion, such that sediment is not carried from the construction site by the action of stormwater, wind or "vehicle tracking". Protection measures may include erosion and sedimentation controls as required. All protection measures are to be installed to the satisfaction of Council and must be regularly maintained for the duration of works and until the site is stabilised by vegetation or the like.
19. **Prior to any ground disturbance works occurring on the site**, the Applicant shall engage a suitably qualified historical archaeologist to undertake a detailed Historical Archaeological Assessment of the site. The Assessment shall comply with Heritage Council of NSW guidelines including but not limited to, Assessing Significance for Historical Archaeological sites and Relics 2009 and Archaeological Assessments 1996. This assessment should identify what relics, if any, are likely to be present, assess their significance and consider the impacts from the proposal on this potential resource.



20. In the event the Historical Archaeological Assessment, noted in condition 18 of this consent, identifies the proposal will impact archaeological relics, the Applicant must obtain an approved s140 application under the *Heritage Act 1977* prior to any ground disturbing activities commencing. This application must clearly outline what mitigation measures are proposed to avoid harm to any significant deposits.

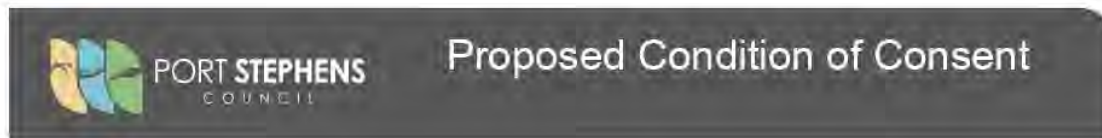
#### CONDITIONS TO BE SATISFIED DURING WORKS – SITE REQUIREMENTS

21. Unless otherwise approved by Council in writing, all general building/demolition work shall be carried out between the hours of:
- a 7.00am to 5.00pm Monday to Friday
  - b 7.00am to 5.00pm Saturday
- Any work performed outside the abovementioned hours or on a public holiday that may cause offensive noise, as defined under the Protection of the Environment Operations Act 1997, is prohibited.
22. A temporary toilet(s) shall be provided and maintained on site from the time of commencement of building work to completion. The number of toilets provided shall 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.
23. No building materials, plant, equipment, refuse or spoil is to be deposited on or be allowed to remain on Council's footpath or outside the boundaries of the development site unless approved by Council in writing. Where building activity cannot avoid occupation of the public road reserve, (such as, for the erection of hoarding, scaffolding, partial closure) separate approval from Council for the use of the road reserve is required.
24. Dust suppression is to be actively undertaken during works, through the use of wetdown water tankers or an alternative method which adequately prevents dust from affecting the amenity of the neighbourhood and the environment.
25. The Applicant must ensure that if any unexpected archaeological deposits or relics not identified and considered in the supporting documents for this approval are discovered, work must cease in the affected area(s) and the Heritage Council of NSW must be notified, as required by s146 of the Heritage Act 1977. Additional assessment and approval may be required prior to works continuing in the affected area(s) based on the nature of the discovery.



### CONDITIONS TO BE SATISFIED PRIOR TO ISSUE OF AN OCCUPATION CERTIFICATE

26. **Immediately following the installation of any roof**, collected stormwater runoff shall be piped to an infiltrating raingarden in accordance with Council's standard Drawing S161. It is to be located in the landscaped area(s) with an overflow pipe connected to the existing easement/system.
27. **Prior to the issue of a Final Occupation Certificate**, the commitments listed in BASIX Certificate No. 1002671S (or an amended version of this certificate, or a replacement certificate particular to the approved development) are to be installed in the development. Should an amended or replacement certificate be issued, a copy is to be forwarded to the principle certifying authority immediately following its issue.
28. **Prior to the issue of any Occupation Certificate**, the applicant shall rectify any new damage to public infrastructure to the satisfaction of the Council as the Roads Authority.
29. **Prior to occupying the development**, a driveway footway crossing is to be constructed in accordance the approved Driveway Construction Approval. A compliance certificate must also be obtained from the Roads Authority.
30. **Prior to occupying the development**, 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.
31. **Prior to occupying the development**, a house address number shall be displayed in a prominent area, visible from the adjacent road.
32. **Prior to the issue of any Occupation Certificate**, the Principal Certifying Authority shall be satisfied that the development has been constructed in accordance with approved plans, specifications and conditions of this consent. No occupational use is permitted until the Principal Certifying Authority issues an Occupation Certificate.  
  
**Note:** The Principal Certifying Authority must submit a copy of the Occupation Certificate to Council, with all associated documentation, within two days of it being issued.
33. **Prior to the issue of any Occupation Certificate**, an on-site sewage management system is to be installed and a satisfactory final inspection completed by Council.
34. **Prior to the issue of any Occupation Certificate**, the Applicant must supply to the principle certifying authority, a copy of written correspondence from the Heritage



Council of NSW or its delegate confirming that their requirements under any Heritage Act 1977 approval have been satisfied.

**CONDITIONS TO BE SATISFIED AT ALL TIMES**

35. The development must be carried out in accordance with the recommendations made within the Statement of Heritage Impact Report titled *'Demolition and New Dwelling, 862 Paterson Road Woodville, prepared by Elizabeth Evans of Shillington Planning and Heritage (dated July 2020).*



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# Call to Council form

Development Application

## DEVELOPMENT APPLICATION (DA) CALL TO COUNCIL REQUEST

We (Mayor/Councillor/s)

Name:	Cr Arnott
Name:	Cr Le Mottee
Name:	Cr Jordan
request that DA number:	16-2019-270-1
for DA description:	Demolition of buildings & construction of and new dwelling
located at:	862 Paterson Rd Woodville

be reported to Council for determination.

### REASON

Heritage concerns

### SIGNATURE OF APPLICANT/S

Signature		Date	1	9	2019
Signature		Date	1	9	2019
Signature		Date	1	9	2019

### 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 - 11 FEBRUARY 2020**

**ITEM NO. 1**

**FILE NO: 20/8454  
EDRMS NO: 16-2019-270-1**

**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**

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

**RECOMMENDATION IS THAT COUNCIL:**

- 1) Approve Development Application No.16-2019-270-1 for the demolition of the existing structures and construction of a new single storey dwelling and garage subject to the conditions contained in **(ATTACHMENT 3)**.

**ORDINARY COUNCIL MEETING - 11 FEBRUARY 2020  
MOTION**

<b>006</b>	<b>Councillor Ken Jordan Mayor Ryan Palmer</b>  It was resolved that Development Application No.16-2019-270-1 for the demolition of the existing structures and construction of a new single storey dwelling and garage be deferred.
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In accordance with Section 375 (A) of the Local Government Act 1993, a division is required for this item.

Those for the Motion: Mayor Ryan Palmer, Crs Giacomo Amott, Chris Doohan, Ken Jordan, Paul Le Mottee, John Nell and Sarah Smith.

Those against the Motion: Cr Jaimie Abbott.

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 862 Paterson Road, Woodville (LOT: 510 DP: 1150491 ('the subject site')). A locality plan is provided at **(ATTACHMENT 1)**.



**MINUTES ORDINARY COUNCIL - 11 FEBRUARY 2020**

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

Proposal

The applicant seeks approval for the demolition of existing structures on site and the construction of a new single storey dwelling and garage. Details of the proposal are as follows:

- Demolition of existing structures on site including the dilapidated Pomfrett's Cottage which is identified as an item of local heritage significance in the Port Stephens Local Environmental Plan 2013 (LEP 2013).
- Construction of a new single storey dwelling and garage. The proposed single storey dwelling is designed to be similar in style and proportions to a traditional cottage with a hipped roof, verandah, and timber cladding. The dwelling will also be separated into pavilions to reduce the scale as viewed from the street. A double carport/garage will be located at the rear of the property.

Site history

The subject site has a total area of 723 m<sup>2</sup>, is generally flat and is zoned RU1 Primary Production. Access to the site is direct from Paterson Road.

The subject site is surrounded by similarly zoned RU1 lots, with the exception of the Iona Public School which is zoned SP2 - Special Activities. The Woodville School of Arts and Community Hall is located adjacent to the subject site. The lot sizes (with dwellings) in the immediate vicinity range from 5000 m<sup>2</sup> to 232,960 m<sup>2</sup>.

The subject site currently contains a dwelling towards the front of the site and a Colorbond shed with an older shed and an outbuilding to the rear.

A site inspection by Council's building officers identified a number of concerns regarding the structural integrity of the current dwelling. The dwelling was on a significant lean, with compromised structural components. An internal investigation was determined to be too high risk due to concerns of potential collapse.

**MINUTES ORDINARY COUNCIL - 11 FEBRUARY 2020**



Photo 1: View of cottage from Clarence Town Road



Photo 2: View of cottage looking west

**MINUTES ORDINARY COUNCIL - 11 FEBRUARY 2020**Key Issues

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

Heritage Impact

The subject site is located at 862 Paterson Road, Woodville, which is listed as a locally significant archaeological site in the LEP 2013. The listed site is specifically known as Pomfrett's Cottage (Slab Cottage).

The demolition of structures on a locally significant heritage site is permissible with consent, under Clause 5.10 of the LEP 2013, subject to an assessment against this clause.

In addition to Clause 5.10 of the LEP 2013, Council must also consider Section B8 of the Development Control Plan 2014 (DCP 2014). Section B8 of the DCP 2014 outlines the requirements relating to development proposals involving heritage. More specifically, this clause requires development applications that are likely to impact on the heritage significance of a heritage item, be accompanied by a heritage impact statement. This heritage impact statement must be consistent with the Biodiversity Conservation Division (formerly Office of Environment and Heritage) 'Statements of Heritage Impact' document and be prepared by a suitably qualified and experienced consultant. This consultant must be registered and listed on the NSW Biodiversity Conservation Division Consultants Directory.

To address the relevant requirements in the LEP 2013 and the DCP 2014 mentioned above, a Statement of Heritage Impact ('the statement') has been completed by a heritage consultant listed on the NSW Biodiversity Conservation Division Consultants Directory and was submitted to support the application.

An independent review of the statement was also conducted by Council's heritage advisor. This review has confirmed that the statement is considered to be an adequate assessment for the purposes of the Heritage Act 1977.

The following outlines the key points from that assessment.

Historical Significance

Pomfrett's Cottage was likely built prior to 1878 and may be associated with the early European settlement in the Woodville and Iona area. The dwelling is representative of a vernacular cottage of the 19<sup>th</sup> century, and is representative of the building type and building techniques used in the 1800s. The dwelling has a symmetrical façade, steep pitched roof, verandah, split slab walls and timber shingles.

**MINUTES ORDINARY COUNCIL - 11 FEBRUARY 2020**

An internal assessment of the dwelling was unable to be conducted, as the dwelling was considered structurally unsound with a collapse imminent. Given that an internal assessment of the dwelling could not be completed, it was not possible to accurately determine if the dwelling currently contains archaeological relics or items of significance. As such, the applicant will be required, as a condition of consent, to obtain an excavation permit from the Biodiversity Conservation Division (formerly Office of Environment and Heritage) prior to the commencement of any works. This ensures that if relics or items of significance are found during the demolition of the dwelling, they will be appropriately managed.

Social Significance

Pomfrett's Cottage is listed in the LEP 2013 as a locally significant archaeological site, and therefore is deemed to be of value to the community. This value and local significance however, is significantly diminished due to the current condition and imminent collapse of the cottage.

It was also determined that conservation of the dwelling would not be feasible due to the degree of deterioration of the structure. This deterioration would require a large amount of new fabric and building materials to restore. This would even further diminish the historical value. On the basis of the above, it has been deemed that it is appropriate to support the proposed demolition of the dwelling.

During the notification period, Council received a total of 5 submissions from the community. These submissions are addressed in the detailed Assessment Report contained at **(ATTACHMENT 2)**.

In addition to the matters considered above, Clause B8 of the DCP also requires that the design of the proposed residence be complementary to the heritage significance of the area. This must also take into account the potential impact the design could have on the neighbouring Woodville School of Arts, which is also a locally listed heritage item in the LEP 2013. As such, the statement of heritage impact has provided strict design guidelines for the new residence to address this requirement. The design guidelines have been adopted and recommended as a condition of consent **(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**

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

**MINUTES ORDINARY COUNCIL - 11 FEBRUARY 2020**

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

**LEGAL, POLICY AND RISK IMPLICATIONS**

The development application is consistent with relevant planning instruments, flood development guidelines, the Environmental Planning and Assessment Act 1979 (EP&A Act), the Heritage Act 1977, Port Stephens Local Environment Plan 2013 (LEP 2013), and the Port Stephens Development Control Plan (DCP 2014).

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
There is a risk that if that the application is refused the applicant may appeal the determination.	Medium	Approve the application as recommended. The assessment carried out details the merits of the proposed development.	Yes

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

The dwelling to be demolished has value to the community and is identified as a local heritage item. Despite this, the dwelling is structurally unstable and the restoration works required would not be feasible due to the degree of deterioration of the structure. On this basis, the demolition of the structure is supported and conditions of consent are proposed to ensure the new dwelling is sympathetic to the sites historic past.

**CONSULTATION**

Internal

Consultation was undertaken with internal officers including Engineering Services, Strategic Planning (Heritage Advisor) and the Planning and Developer Relations team.

**MINUTES ORDINARY COUNCIL - 11 FEBRUARY 2020**

External

Referral to external agencies was not required.

Notification

In accordance with Council's notification requirements the DA was advertised and notified for a period of 14 days from 27 September 2019 to 11 October 2019. During the exhibition period 5 submissions were received.

The key issues raised within the submissions included; dwelling entitlement, historical value, cultural value, relationship to, and potential social and economic impact to the Woodville School of Arts. These issues have been addressed within the detailed assessment report contained at **(ATTACHMENT 2)**. The assessment of the application has determined that, subject to the recommended conditions of consent, the issues raised within the submissions have been addressed and the proposed development is recommended for approval.

**OPTIONS**

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

**ATTACHMENTS**

- 1) Locality Plan.
- 2) Assessment Report. (Provided under separate cover)
- 3) Conditions of Consent.
- 4) Call to Council form.

**COUNCILLORS ROOM**

- 1) Development Plans.
- 2) Copy of Submissions.

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

**TABLED DOCUMENTS**

Nil.

## ITEM 2 - ATTACHMENT 6 HERITAGE COUNCIL OF NSW REFERRAL - 3 SEPTEMBER 2020.



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Parramatta NSW 2150  
Locked Bag 5020  
Parramatta NSW 2124  
DX 8225 PARRAMATTA

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Mr Tristan Sullivan  
Port Stephens Council  
116 Adelaide Street  
Raymond Terrace NSW 2324

Our File No: EF20/2399  
Our Ref: DOC20/721199  
Your ref: DA 16-2019-270-1

Email: [Tristan.Sullivan@portstephens.nsw.gov.au](mailto:Tristan.Sullivan@portstephens.nsw.gov.au)

Dear Mr Sullivan,

**DEVELOPMENT APPLICATION REFERRAL 862 Paterson Road, Woodville NSW 2321, Port Stephens LGA (DA 16-2019-270-1) – Revised SOHI and draft Revised Assessment**

I refer to your email received by Heritage NSW, Department of Premier and Cabinet on 02/09/2020 referring revised documents for the above named development application for comment under the terms of the Port Stephens Local Environment Plan (LEP) 2013 [PSCLEP 2013 Cl. 5.10 (7)]. I also note that the documents were uploaded to the CNR portal but as Heritage NSW has provided advice back in March 2020, there are no actions available to us in the portal to upload further advice or correspondence.

The following documents were reviewed in the preparation of this response:

- *Statement of Heritage Impact: Demolition and New Dwelling 862 Paterson Road Woodville, Elizabeth Evans, July 2019, REVISED July 2020*
- *Advantage Building Design DA Documentation, Mrs Solomou, 4073 Proposed Residence Lot 510, DP 1150491 862 Patterson Road, Woodville, 2321 (8 drawings/images) July 2020*
- *Pomfret's Cottage assessment of revised SOHI, 13 August 2020, Port Stephens Council*

The site is located at 862 Paterson Road, Woodville NSW Lot 510 / DP 1150491 and is listed as Archaeological Site 'Pomfret's Cottage (slab cottage)' within the Port Stephens LEP 2013 (Listing no. A6). It is unclear whether that LEP listing was intended to protect the actual building or any archaeology that may be present at the site which is associated with the building and the historic occupation of the site from the late 1870s.

In any event, the building is not a 'relic' within the meaning of the NSW Heritage Act, 1977. In this regard, the suggested action in the 'assessment' document referred to above which is to apply for a S140 permit prior to deconstruction or demolition of the building is not a specific requirement of the Heritage Act, 1977, which refers to the excavation of land. A permit is not required for the demolition of a building down to ground level, and a S140 permit would not be 'varied' after the demolition of the building to allow for archaeological excavation. A permit is needed for ground disturbance that may expose 'relics' (artefacts).

S139-146 of the Heritage Act comprise the 'relics' provisions for land that is not listed on the State Heritage Register. Specifically S139 states (in part) that:

**139 Excavation permit required in certain circumstances**

- (1) A person must not disturb or excavate any land knowing or having reasonable cause to suspect that the disturbance or excavation will or is likely to result in a relic being discovered, exposed, moved, damaged or destroyed unless the disturbance or excavation is carried out in accordance with an excavation permit.
- (2) A person must not disturb or excavate any land on which the person has discovered or exposed a relic except in accordance with an excavation permit.
- (3) This section does not apply to a relic that is subject to an interim heritage order made by the Minister or a listing on the State Heritage Register.

ITEM 2 - ATTACHMENT 6 HERITAGE COUNCIL OF NSW REFERRAL - 3  
SEPTEMBER 2020.

Heritage NSW also notes that the revised SoHI still has not assessed the character and potential for archaeological relics at the site. There is only a general recommendation to obtain a S140 permit. Therefore the impact of the proposed works on any surviving archaeological resources still has not been specifically considered, even though it is a listed archaeological site on the LEP.

Therefore, Heritage NSW reiterates its prior advice that if Council approves this Development Application, the following conditions of approval would be recommended to address management of archaeological relics under the *Heritage Act 1977*:

1. Prior to any ground disturbance works occurring on the site, the Applicant shall engage a suitably qualified historical archaeologist to undertake a detailed Historical Archaeological Assessment of the site. The Assessment shall comply with Heritage Council of NSW guidelines including but not limited to, *Assessing Significance for Historical Archaeological sites and Relics 2009 and Archaeological Assessments 1996*. This assessment should identify what relics, if any, are likely to be present, assess their significance and consider the impacts from the proposal on this potential resource.
2. In the event the Historical Archaeological Assessment identifies the proposal will impact archaeological relics, the Applicant will need to obtain an approved s140 application under the *Heritage Act 1977* prior to any ground disturbing activities commencing. This application will need to clearly outline what mitigation measures are proposed to avoid harm to any significant deposits.  
*Reason for conditions 1 and 2: The subject site has potential to contain historical archaeological relics, which are protected under s139 of the Heritage Act 1977. The Applicant must obtain an approval under s141 of the Heritage Act 1977 prior to any disturbance occurring to relics.*
3. Prior to the issue of the occupation certificate by Council and/or the Principal Certifying Authority, the Applicant shall supply a copy of written correspondence from the Heritage Council of NSW or its delegate confirming that their requirements under any *Heritage Act 1977* approval have been satisfied.  
*Reason: This is consistent with requirements of s146(B) of The Heritage Act 1977.*
4. The Applicant must ensure that if any unexpected archaeological deposits or relics not identified and considered in the supporting documents for this approval are discovered, work must cease in the affected area(s) and the Heritage Council of NSW must be notified as required by s146 of the *Heritage Act 1977*. Additional assessment and approval may be required prior to works continuing in the affected area(s) based on the nature of the discovery.  
*Reason: To comply with s146 of the Heritage Act 1977.*

It should be noted, that the key first step is to have an Historical Archaeological Assessment prepared. Such a document is needed to support an application for a S140 permit under the *Heritage Act*. In the event that the Assessment found there were no 'relics' in the land, then it could recommend an alternate pathway under S139 (4) of the *Heritage Act, 1977*.

If you have any questions please contact me at Heritage NSW, Department of Premier and Cabinet by email at [siobhan.lavelle@environment.nsw.gov.au](mailto:siobhan.lavelle@environment.nsw.gov.au) or on 02 9873 8546.

Yours sincerely



03 September 2020

**DR SIOBHAN LAVELLE OAM**  
Senior Team Leader, Specialist Services  
Heritage NSW, Community Engagement  
Department of Premier and Cabinet  
**AS DELEGATE OF THE NSW HERITAGE COUNCIL**

Helping the community conserve our heritage



**ITEM NO. 3**

**FILE NO: 20/184600  
EDRMS NO: 16-2020-215-1**

**DEVELOPMENT APPLICATION 16-2020-215-1 (2 INTO 2 LOT TORRENS TITLE SUBDIVISION - BOUNDARY ADJUSTMENT) AT 898 AND 898A SWAN BAY ROAD, SWAN BAY (LOT B DP 101997 AND LOT 1 DP 1155908)**

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 DA No. 16-2020-215-1 for a 2 into 2 lot Torrens Title subdivision – boundary adjustment at 898 and 898A Swan Bay Road, Swan Bay (Lot B DP101997 and Lot 1 DP 1155908) for the Reasons for Refusal contained in **(ATTACHMENT 3)**.

---

**BACKGROUND**

The purpose of this report is to present Development Application (DA) 16-2020-215-1 for a 2 into 2 lot Torrens Title subdivision – boundary adjustment at 898 and 898A Swan Bay Road, Swan Bay (Lot B DP101997 and Lot 1 DP 1155908) to Council for determination.

The DA has been reported to Council in accordance with Council’s Development Applications to be Reported to Council Policy, as the DA has been called up by Mayor Palmer, Councillor Jordan and Councillor Dunkley **(ATTACHMENT 4)**.

The subject DA relates to land located at 898 and 898A Swan Bay Road, Swan Bay and is legally described as Lot 1 DP 1155908 and Lot B DP 101997.

The site is zoned RU2 Rural Landscape and is currently used for rural residential and agricultural activities. A locality plan is provided at **(ATTACHMENT 1)**.

Proposal

The application seeks approval for a boundary adjustment between a closed road (Lot 1 DP 1155908) and a rural lot (Lot B DP 101997). The proposal would create new Lots 1 and 2, and result in the following changes in lot area:

<b>Proposed Lot No.</b>	<b>Existing Lot Area</b>	<b>Proposed Lot Area</b>
Lot 1	0.5 hectares	26.5 hectares
Lot 2	32 hectares	5.9 hectares

### Site Description and History

The subject site, legally identified as Lot 1 DP 1155908 and Lot B DP 101997, is located within the RU2 Rural landscape zone, approximately 11.7 kilometres from the Pacific Highway.

Existing Lot 1 DP 1155908 is rectangular in shape, reflecting the historic unformed road alignment that comprises 0.5 hectares. Existing Lot B DP 101997 is irregular in shape and measures an area of 32 hectares. The subject site is currently used for rural residential and agricultural purposes.

To the north, east and west, the site is bounded by rural living and agricultural land. A coastal wetland area zoned E1 National Parks and Nature Reserves is located to the south of the site. There are 2 small rural lots located directly to the south, accessible via a right of carriageway through the subject site.

### Key Issues

The key issues identified throughout the assessment of the proposal relate to the legal use of Clause 4.1E of the Port Stephens Local Environmental Plan 2013 (LEP 2013), impacts to dwelling entitlements and fragmentation of rural land, as outlined below. A detailed assessment of the development is contained in the Planners Assessment Report provided at **(ATTACHMENT 2)**.

### Use of Clause 4.1E

The proposal does not meet the requirements of Clause 4.1 of the LEP 2013 as proposed Lot 2 does not meet the 20 hectares minimum lot size requirement. To address the inconsistency with the minimum lot size, the application identifies the use of Clause 4.1E - Boundary Adjustments for land in certain rural, residential and environment protection zones of the LEP 2013, which in certain circumstances can enable boundary adjustment of lots below the minimum lot size.

However, the proposal cannot reasonably be characterised as a 'boundary adjustment', due to the significant scale and nature of the proposal, which would result in lots of largely different shape, size and configuration when compared to that existing. This position is supported by recent case law relating to boundary adjustments which are relevant to the proposal. On this basis, the use of Clause 4.1E of the LEP 2013 is not valid and there is no statutory pathway to support the proposal, therefore the application cannot be supported.

### Dwelling Entitlements

Clause 4.2B of the LEP 2013, includes certain requirements which must be met to enable the erection of dwellings in rural and environmental land. The objective of the clause is to minimise unplanned rural residential development.

Due to the application including a lot under the minimum lot size, in the event the application is approved, newly created Lot 2 would not have a dwelling entitlement, in accordance with Clause 4.2B of the LEP 2013. As such, a future application for a dwelling on this site could not legally be approved. Notwithstanding, Council has previously resolved to investigate amending the LEP to enable dwellings to be erected where, amongst other things, the lot has been created following a boundary adjustment under clause 4.1E of the LEP. The finalisation of this resolution may impact on the dwelling entitlement of the newly created Lot 2 in the event of an approval.

### Fragmentation of Rural Land

The proposed development would result in the fragmentation of rural land, as proposed Lot 2 includes a lot area of 5.9 hectares which does not meet the 20 hectares minimum lot size requirement for the land. As a result, the proposal would compromise the sites ability to support primary industry and extensive agriculture, contrary to the objectives of the RU2 Rural Landscape Zone.

### Conclusion

The proposed development is not consistent with the Environmental Planning and Assessment Act 1979, including:

- The Environmental Planning and Assessment Act 1979, including Section 4.15(1)(b) regarding social and economic impacts and Section 4.15(1)(e) regarding the public interest.
- Port Stephens Local Environmental Plan 2013; Clause 2.3 (Zone Objectives), Clause 4.1 (Minimum Lot Size) and Clause 4.1E (Boundary Adjustments).

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

The key issues arising through the assessment of the application cannot be overcome (as discussed above) and for these reasons the proposed development is recommended for refusal for the reasons contained within **(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**

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	Yes		
Reserve Funds	No		
Developer Contributions (\$7.11)	No		
External Grants	No		
Other	No		

**LEGAL, POLICY AND RISK IMPLICATIONS**

The proposed development is not consistent with the relevant planning instruments, including the Environmental Planning and Assessment Act 1979 and LEP 2013. A detailed assessment against these requirements are contained within the Planners Assessment Report provided at **(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 a third party or the applicant may appeal the determination.	Medium	Adopt the recommendation.	Yes
There is a risk that a precedent could be set which is inconsistent with the relevant planning instruments.	Medium	Adopt the recommendation.	Yes

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

There are no adverse impacts expected to occur to the natural environment as a result of the proposed development.

The resulting fragmentation of rural land would adversely impact the potential use of the land for extensive agriculture and primary production, thereby forgoing the associated resource outputs and employment related benefits. On this basis, the proposal would have adverse social and economic impacts.

## **CONSULTATION**

Consultation with key stakeholders has been undertaken, both internal and external to Council, including the public notification process.

### Internal referral

Consultation was undertaken internally with Council's Natural Resources unit, which did not object subject to conditions. The referral comments from these officers were considered as part of the Planners Assessment Report contained at **(ATTACHMENT 2)** and accordingly the DA is recommended for refusal for the reasons contained within **(ATTACHMENT 3)**.

### External agency

Consultation was undertaken with the NSW Rural Fire Service (RFS), due to the bushfire prone nature of the site. In response, RFS made no objection to the development, subject to conditions requiring compliance with the document 'Planning for Bushfire Projection 2019'.

### Public Consultation

In accordance with the provisions of the Port Stephens Council Community Participation Plan, the application was exhibited from 15 May 2020 to 29 May 2020. No submissions were received with relation to the subject development proposal.

## **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. [↓](#)

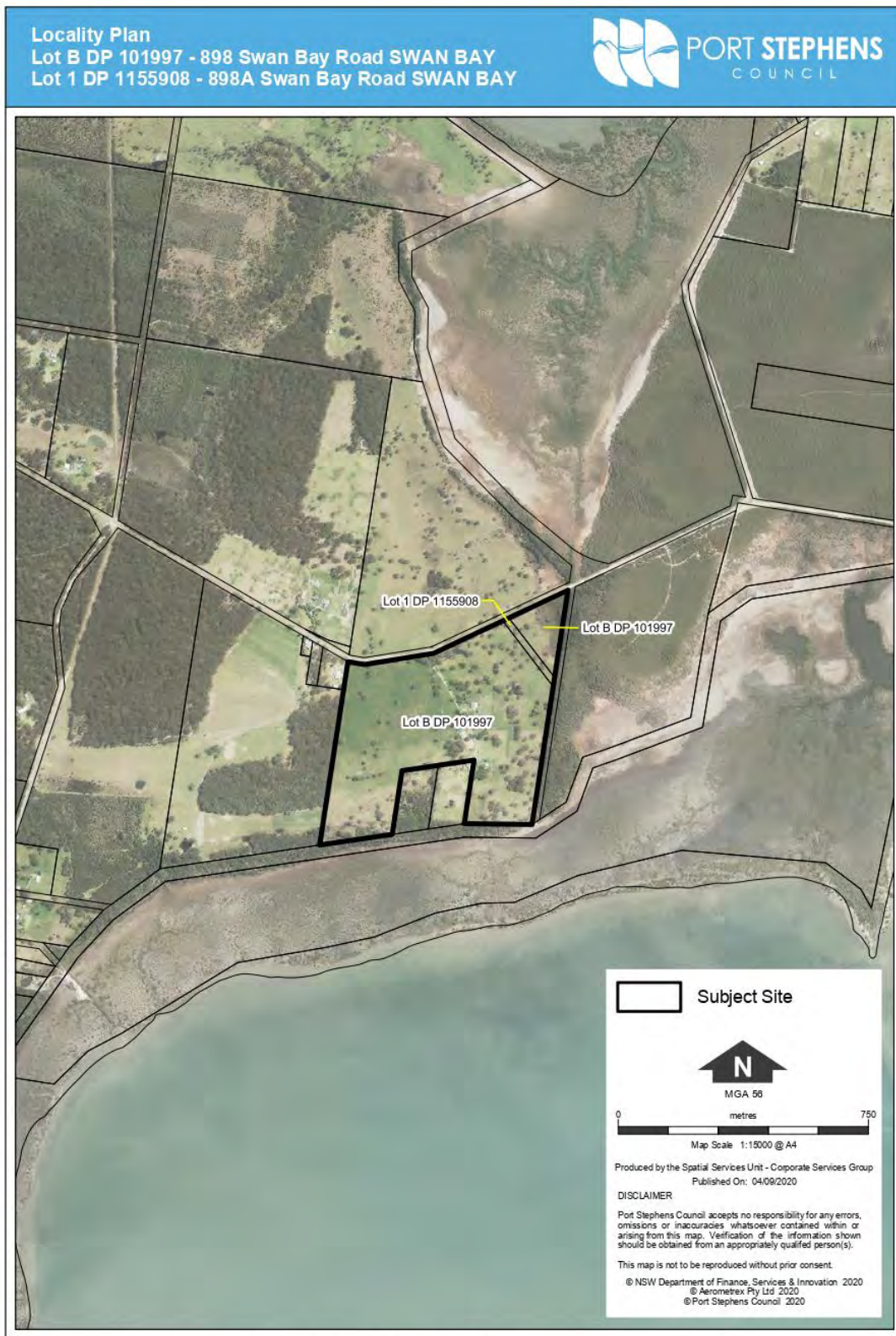
## **COUNCILLORS ROOM**

- 1) Development Plans.

## **TABLED DOCUMENTS**

Nil.

ITEM 3 - ATTACHMENT 1 LOCALITY PLAN.



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


**PORT STEPHENS COUNCIL**

# DEVELOPMENT ASSESSMENT REPORT

**APPLICATION DETAILS**

<b>Application Number</b>	16-2020-215-1
<b>Development Description</b>	Two into two lot Torrens title subdivision - boundary adjustment
<b>Applicant</b>	MR B G HOPPE
<b>Land owner</b>	MR B G HOPPE
<b>Date of Lodgement</b>	04/05/2020
<b>Value of Works</b>	\$0.00
<b>Submissions</b>	Nil

**PROPERTY DETAILS**

<b>Property Address</b>	898A Swan Bay Road SWAN BAY, 898 Swan Bay Road SWAN BAY
<b>Lot and DP</b>	LOT: 1 DP: 1155908, LOT: B DP: 101997
<b>88B Restrictions on Title</b>	Right of way benefitting Lot: A DP: 412595
<b>Current Use</b>	Rural living/Agricultural
<b>Zoning</b>	RU2 RURAL LANDSCAPE
<b>Site Constraints</b>	<p>Bushfire Prone Land – Category 1, 2 and 3 (buffer);</p> <p>Acid Sulfate Soils – Class 5 and 3;</p> <p>Koala Habitat Planning Map (2000) – Marginal, clear, other</p> <p>Endangered Ecological Community Mapping - Swamp Schlerophyll Forest, Coastal Slatmarsh;</p> <p>Biodiversity Values Map;</p> <p>Noise planning area (ANEF 2025);</p> <p>RAAF Base Williamtown and Salt Ash Weapons Range Height Trigger Map – 45m;</p> <p>Prime Agricultural land (Classes 1-3); and</p> <p>Combined Corridor Map – Landscape habitat link and landscape link.</p>

ITEM 3 - ATTACHMENT 2 PLANNERS ASSESSMENT REPORT.

16-2020-215-1

Flood Prone Land – Low hazard fringe, high hazard floodway, High hazard flood fringe, Probable maximum flood level.

Minimum Lot size – 20 ha

**State Environmental Planning Policies**

SEPP (Coastal Management) 2018 – Coastal zone combined footprint, Coastal wetlands proximity area.

SEPP No. 55 – Remediation of Land

SEPP (Koala Habitat Protection) 2019

**PROPOSAL**

The application seeks consent for a boundary adjustment between the two subject lots (Lot B DP 101997 and Lot 1 DP 1155908); creating new Lots 1 and 2, as illustrated in **Figure 1** below. The proposal will result in two lots, with the following total area:

- Lot 1: 26.5ha
- Lot 2: 5.857ha



Figure 1: Proposed Lot layout



**SITE DESCRIPTION**

The subject site, legally identified as Lot B DP 101997 and Lot 1 DP 1155908, is located within the RU2 Rural Landscape zone, approximately 11.7km from the Pacific Highway. To the north, east, and west the site is bounded by rural living and agricultural pursuits, as illustrated in **Figure 2** below. A coastal wetland area zoned E1 National Parks and Nature Reserve is located to the south of the site.

Existing Lot 1 DP 1155908 is rectangular in shape and measures an area of 4725m<sup>2</sup> (0.5ha). Existing Lot B DP 101997 is irregular in shape and measures an area of 32ha. To the rear of Lot B are two rural lots, accessed via a right of carriageway.



**Figure 2:** Satellite Image Overview of Site

**SITE HISTORY**

Existing Lot 1 DP 1155908 was created as a result of a road closure and first title creation in 2010. There are no records of development approval on this site.

There are two records of approval for Lot B DP 101997, including the following:

- Combined BA/DA 7-1982-61230-1 – approved in January 1983
- Dwelling – Combined BA/DA 7-1982-1629-1 – approved in January 1982

Site inspection

A site inspection was carried out on 25 June 2020.

The subject site can be seen in the images below:



**Image 1:** Existing driveway access from Swan Bay Road



**Image 2:** Location of proposed driveway access for Lot 2 (adjacent 876 Swan Bay Road)



Image 3: Central view of Proposed Lot 2

**REFERRALS**

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

Natural Resources - The natural Resources Officer made no objection to the application, subject to conditions.

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979**

**S4.46 – what is integrated development**

The proposed development required Integrated referral under s100B of the Rural Fires Act 1993 as the development includes subdivision of land used for residential purposes. As previously discussed, the application was referred to the Rural Fire Service. In response, RFS made no objection to the development and the application was supported with conditions.

**S4.15 – Matters for Consideration**

**s4.15(1)(a)(i) – The provisions of any EPI**

STATE ENVIRONMENTAL PLANNING POLICY (COASTAL MANAGEMENT) 2018		
Clause	Compliant	Notes (where needed or if not compliant)

4	<input checked="" type="checkbox"/> Development is within the Coastal Management Areas and the SEPP applies <input type="checkbox"/> Development outside Coastal Management Areas and SEPP does not apply	<p>The proposal is a paper subdivision with physical works limited to driveway construction only. Furthermore, there would be no additional dwelling entitlements created as a result of the subdivision and therefore no further impacts associated with future building footprints.</p>
13	<input checked="" type="checkbox"/> The development is located within the coastal environment area, and; <input checked="" type="checkbox"/> The development is unlikely to cause impact to the integrity and resilience of the biophysical, hydrological and ecological environment, the coastal environmental values and processes or the water quality of the marine estate, and; <input checked="" type="checkbox"/> The development is designed and sited to avoid adverse impact on the above mentioned areas.	<p>No impacts are anticipated to occur to the natural environment, given the minimal physical works proposed.</p>
14	<input checked="" type="checkbox"/> The development is located within the coastal use area, and <input checked="" type="checkbox"/> The development is unlikely to cause impact to the integrity and resilience of the biophysical, hydrological and ecological environment, the coastal environmental values and processes or the water quality of the marine estate, and; <input checked="" type="checkbox"/> The development is designed and sited to avoid adverse impact on the above mentioned areas.	<p>No impacts are anticipated to occur to the natural environment, given the minimal physical works proposed.</p>

<b>STATE ENVIRONMENTAL PLANNING POLICY NO. 55 – REMEDIATION OF LAND</b>		
<b>Clause</b>	<b>Compliant</b>	<b>Notes (where needed or if not compliant)</b>
7	<input checked="" type="checkbox"/> The proposed development site has no previous record of contamination, nor is it listed on the NSW list of contaminated and notified sites, published by the EPA. <input type="checkbox"/> The land is not within an investigation area, nor are there any records of potentially contaminating activities occurring on the site. <input checked="" type="checkbox"/> The proposed use is not listed as a possible contaminating use, per Table 1 of the Guidelines.	<p>The site has previously been used for agricultural purposes, which is a possible contaminating use, as listed within Table 1 of the Guidelines. Despite this, the application does not involve a change of use, nor enable the future erection of any additional dwellings, as there would be no dwelling entitlement on resulting lot 2.</p>

<b>STATE ENVIRONMENTAL PLANNING POLICY (KOALA HABITAT PROTECTION) 2019</b>		
<b>Clause</b>	<b>Compliant</b>	<b>Notes (where needed or if not compliant)</b>
3	<input checked="" type="checkbox"/> The proposed development encourages the conservation and management of naturally vegetated areas that provide habitat for koalas.	The proposal does not involve the clearing of any koala habitat, or supplementary habitat links.
8	<input checked="" type="checkbox"/> The proposed development is consistent with Council's Comprehensive Koala Plan of Management.	The proposal does not involve the clearing of any koala habitat, or supplementary habitat links.

<b>PORT STEPHENS LOCAL ENVIRONMENTAL PLAN 2013</b>		
<b>Clause</b>	<b>Compliant</b>	<b>Notes (where needed or if not compliant)</b>
2.1	<input checked="" type="checkbox"/> Permissible in zone and meets zone objectives.	<p>The objectives of the RU2 Rural Landscape zone are:</p> <ul style="list-style-type: none"> <li>• To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.</li> <li>• To maintain the rural landscape character of the land.</li> <li>• To provide for a range of compatible land uses, including extensive agriculture.</li> </ul> <p>The proposed development is not consistent with the zone objectives, as the proposal would result in the fragmentation of rural land thereby compromising the sites ability to support primary industry.</p>
4.1	<input type="checkbox"/> The proposal is consistent with the Lot Size Map; OR, <input type="checkbox"/> Proposal is a strata title subdivision or community title scheme not located in land zoned R1, RU2, RU5, R5, E2, E3 or E4.	<p>Proposed lot 1 includes a total area of 26.5 ha, which meets the 20ha minimum lot size requirement.</p> <p>Proposed lot 2 includes a total area of 5.857ha, which does not meet the minimum lot size requirement.</p>
4.1E	<input type="checkbox"/> Boundary adjustment proposed within land zoned RU1, RU2, RU3, R5, E2, E3 or E4; AND,	It is considered that the proposal cannot be appropriately characterised as a 'boundary adjustment' and therefore the application of clause 4.1E to enable subdivision below the minimum lot size is not valid.

	<ul style="list-style-type: none"> <li><input type="checkbox"/> The resulting lot size is below LEP standard, but is consistent with subclause 3 of the Clause; AND,</li> <li><input type="checkbox"/> Development satisfies subclause 4 of the Clause.</li> </ul>	<p>The relevant LEC cases to the proposal are McCabe &amp; Others v Blue Mountains City Council [2006] NSWLEC 176 and Barnes v Dungog Shire Council [2012] NSWLEC 1021. The findings in these cases identify that the words 'boundary adjustment' do not embrace all alterations of a boundary but would generally be taken to mean alteration of a boundary by correction or regularisation to reflect actual conditions (such as the physical features of the land) or to make the use of land feasible or more practical. Both cases also establish that the Court will only consider a subdivision to be a boundary adjustment where the resulting lots bear some resemblance to the existing lots characteristics.</p> <p>The proposal involves the adjustment of Lot 1 DP 1155908 (created as part of a road closure) from 0.5ha to 26.5ha and Lot B 101997 from 32ha to 5.9ha. As a result, the proposed lots bear no resemblance to the original lots. Furthermore, the proposed lot layout does not regularise physical features of the land, with the exception of Lot 1 DP 1155908 no longer being wholly on flood prone land.</p> <p>On this basis, the proposal does not conform to the definition of a boundary adjustment in accordance with legal precedence and the provisions of Clause 4.1E does therefore not apply to the proposal.</p>
4.2B	<ul style="list-style-type: none"> <li><input type="checkbox"/> Dwelling proposed on RU1, RU2, R5, E2 or E3 land where there is no current dwelling on site.</li> <li><input type="checkbox"/> Site complies with lot size map; OR,</li> <li><input type="checkbox"/> Land zoned RU1, RU2, E2 or E3 and created before 22 February 2014 with an area of at least 4,000m<sup>2</sup> on which a dwelling was permissible under the previous LEP; OR,</li> <li><input type="checkbox"/> Would have met the above requirements had it not been affected by a minor realignment that did not create an additional lot, a subdivision for a public purpose or a</li> </ul>	<p>No dwellings are proposed as part of the application.</p> <p>Notwithstanding, it is noted that in accordance with the provisions of this clause, proposed Lot 2 would not have a dwelling entitlement, in the event the application is approved. Proposed Lot 2 does not meet the minimum lot size and would be a lot created after the commencement of the PS LEP 2013.</p>

	<p>consolidation with an adjoining lot for a public purpose.</p> <p><input type="checkbox"/> Where an existing consent for a dwelling is valid, the consent will be surrendered.</p>	
7.1	<p><input checked="" type="checkbox"/> Potential Class 5 Acid Sulfate Soils (ASS); OR,</p> <p><input type="checkbox"/> Potential Class 4 ASS with no works more than 2m below ground level; OR,</p> <p><input checked="" type="checkbox"/> Potential Class 3 ASS with no works more than 1m below ground level; OR,</p> <p><input type="checkbox"/> Potential Class 2 ASS with no works below ground level; OR,</p> <p><input type="checkbox"/> Potential Class 1 ASS and an acceptable management plan has been submitted.</p>	
7.2	<p><input checked="" type="checkbox"/> Earthworks required, but do not have negative impacts on surrounding properties.</p>	<p>Minor earthworks are proposed to facilitate the proposed driveway for Lot 2. These works are not likely to result in any changes to drainage patterns, soil stability or environmentally sensitive areas.</p>
7.3	<p><input checked="" type="checkbox"/> Development within flood planning area but no anticipated flood risk to life and property, or change in flood characteristics.</p>	<p>The subject site is affected by flood hazard on the southern and eastern portions of the site. Notwithstanding, both resulting lots would contain suitable flood free land to enable future development. Each new lot contains flood free access to Swan Bay Road to the north of the site.</p>
7.5	<p><input checked="" type="checkbox"/> Within ANEF 20 contour or higher but does not result in an increased number of people affected by aircraft noise.</p>	
7.6	<p><input checked="" type="checkbox"/> Essential services are available to the site where required.</p>	
7.9	<p><input checked="" type="checkbox"/> Subject land contains mapped wetlands, but development does not result in adverse impacts on ecology or water flows.</p>	<p>The physical works associated with the driveway construction would not impact the wetlands, located toward the south of the site.</p>

**s4.15(1)(a)(ii) – Any Draft EPI**

**ITEM 3 - ATTACHMENT 2 PLANNERS ASSESSMENT REPORT.**

16-2020-215-1

		<b>Notes (what draft EPI if needed and comments where not compliant)</b>
	<input type="checkbox"/> There are no draft EPI's that are relevant to the proposed development	
	<input checked="" type="checkbox"/> A draft EPI is relevant to the proposed development however the application is consistent with the aims and objectives of the document.	The Draft Remediation of Land SEPP is relevant to the development. Related matters have been considered against SEPP 55 elsewhere in this report.

**s4.15(1)(a)(iii) – Any DCP**

<b>PORT STEPHENS DEVELOPMENT CONTROL PLAN 2014</b>		
<b>Clause</b>	<b>Compliant</b>	<b>Notes (where needed or if not compliant)</b>
B2	<input type="checkbox"/> Not in proximity of items of environmental significance. <input type="checkbox"/> Land does not contain koala habitat or development is consistent with the CKPoM.	The site is mostly cleared and the proposal would require only minimal clearing, associated with the driveway handle access.  The proposed clearing would not exceed the clearing threshold for the site (which is 0.5ha) and no adverse impacts are expected to occur to any items of environmental significance.
B3	<input checked="" type="checkbox"/> Development would not disturb acid sulphate soils or an acceptable ASSMP has been prepared. <input checked="" type="checkbox"/> Earthworks would have minimal environmental impacts with conditions on VENM fill and erosion and sediment controls.	
B4	<input checked="" type="checkbox"/> Non-permeable area not significantly increased and development consistent with figure BD, on-site detention not required; OR, <input type="checkbox"/> Non-permeable area above figure BD and acceptable on-site detention / infiltration proposed or condition for details added. <input type="checkbox"/> Insignificant increases to adversely impact on water quality; OR	



**ITEM 3 - ATTACHMENT 2 PLANNERS ASSESSMENT REPORT.**

16-2020-215-1

	<input type="checkbox"/> Stormwater management plan proposed in accordance with this Chapter and Council's standard drawings.	
B5	<input checked="" type="checkbox"/> Proposed development is on flood prone land; AND, <input type="checkbox"/> A flood certificate has been submitted with the application and the finished levels are consistent with Table 2: Development Suitability Table; AND, <input type="checkbox"/> The submitted documents are consistent with Table 2: Development Suitability Table.	The subject site is affected by the flood hazard on the southern and eastern portions of the site. Notwithstanding, both resulting lots would contain suitable flood free land to enable future development. Furthermore, each new lot contains flood free access to Swan Bay Road to the north of the site. On this basis, the proposal satisfies the requirements of Chapter B5.
B6	<input checked="" type="checkbox"/> Essential services are available to the site, where required.	
B7	<input checked="" type="checkbox"/> Development within noise planning area is consistent with Clause 7.5 of the LEP – Aircraft Noise; AND <input type="checkbox"/> Department of Defence has been notified and no objections have been raised.	
B9	<input checked="" type="checkbox"/> The development would not generate significant increases in traffic. <input type="checkbox"/> On-site parking provision meets the requirements of figure BQ or merit based assessment; AND, <input type="checkbox"/> Suitable disabled parking is provided in line with figure BQ.	The development includes suitable access to Lot 2 via the proposed driveway handle.
C1	<input type="checkbox"/> The development is a minor subdivision; AND, <input checked="" type="checkbox"/> The proposal would result in lot dimensions appropriate for their proposed use whilst not restricting the provision of services. <input type="checkbox"/> The proposal is consistent with the LEP requirements on subdivisions.	The proposed lot size does not satisfy the minimum lot size requirements of clause 4.1 of the PSLEP. However, the proposal is generally compliant with the other relevant provisions of Chapter C1.

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

	Notes (where needed)
<input checked="" type="checkbox"/> There are no planning agreements that have been entered into under section 7.4 relevant to the proposed development.	

**s4.15(1)(a)(iv) – The regulations**

	Notes (where needed)
<input checked="" type="checkbox"/> There are no matters within the regulations that are relevant to the determination of the application.	

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

*Social and Economic Environment:*

The resulting fragmentation of rural land would adversely impact the potential use of the land for extensive agriculture and primary production, thereby forgoing the associated resource outputs and employment related benefits. On this basis, the proposal would have adverse social and economic impacts.

*Built Environment:*

The proposed development would not cause harm to the existing character. The proposed development is for subdivision and associated works only, accordingly there would be no adverse impacts on the built environment.

*Natural Environment:*

There are no adverse impacts expected as a result of the proposed development and appropriate conditions have been added. The site is mostly cleared and the proposal would require only minimal clearing, associated with the driveway handle for access.

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

Notwithstanding, the issues relating to fragmentation of land identified in this report, the subject site is generally suitable for the development, noting that there are no physical or environmental constraints which would prohibit the proposed development.

**s4.15(1)(d) – Any submissions**

The application was exhibited from 15 May 2020 to 29 May 2020, in accordance with the provisions of the Port Stephens Council Community Participation Plan. No submissions were received with relation to the subject development proposal.

**s4.15(1)(e) – The public interest**

The proposal would result in the fragmentation of rural land, which would adversely impact the potential use of the land for extensive agriculture and primary production, contrary to the zone objectives. Subsequently, the application is inconsistent with the adopted principles and strategies which seek to promote the appropriate development of land. On this basis, the proposal fails to promote the public interest.

**DETERMINATION**

The application is recommended to be refused by Council, subject to the recommended reasons for refusal.



**RECOMMENDED REASONS FOR REFUSAL**

1. Port Stephens Local Environmental Plan 2013 Clause 2.3 Zone objectives and Land Use Table – The proposal is not consistent with the objectives of the RU2 Rural Landscape zone (s.4.15(1)(a)(i) of the EP&A Act).
2. Port Stephens Local Environmental Plan 2013 Clause 4.1 Minimum subdivision lot size – Proposed lot 2 does not meet the 20ha minimum lot size requirement (s.4.15(1)(a)(i) of the EP&A Act).
3. Port Stephens Local Environmental Plan 2013 Clause 4.1E Boundary adjustments of land in certain rural residential and environment protection zones – The proposal is not consistent with the grammatical meaning of a boundary adjustment, as established in legal precedence, therefore the use of clause 4.1E to enable subdivision below the minimum lot size is not valid (s.4.15(1)(a)(i) of the EP&A Act).
4. The proposed development would result in the fragmentation of rural land resulting in adverse social and economic impacts (s.4.15(1)(b) of the EP&A Act 1979).
5. 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 land (s.4.15(1)(e) of the EP&A Act).



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# Call to Council form

Development Application

## DEVELOPMENT APPLICATION (DA) CALL TO COUNCIL REQUEST

We (Mayor/Councillor/s)

Name:

Ryan Palmer

Name:

Ken Jordan

Name:

Alan Dunkley

request that DA number:

16-2020-21571

for DA description:

Boundary Readjustment.

located at:

898 Swan Bay Rd, Swan Bay

be reported to Council for determination.

## REASON

Public interest due to potential changes to LEP.

## SIGNATURE OF APPLICANT/S

Signature



Date

01 07 2020

Signature

Date

01 07 2020

Signature

Date

01 07 2020

## 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.

**ITEM NO. 4**

**FILE NO: 20/260356  
EDRMS NO: PSC2014-01768**

**COMMUNITY ENGAGEMENT STRATEGY AMENDMENT**

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

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Receive and note the submission received during the exhibition of the revised Community Engagement Strategy (**ATTACHMENT 2**).
  - 2) Endorse the revised Community Engagement Strategy (**ATTACHMENT 1**).
- 

**BACKGROUND**

The purpose of this report is to provide detail of a submission received during the public exhibition of the revised Community Engagement Strategy (the revised strategy) and to endorse the amended version of the Community Engagement Strategy (**ATTACHMENT 1**).

The adopted Strategy includes two distinct sections, being Section 1 – ‘Our Community Engagement Approach’ and Section 2 – ‘Community Participation Plan’. The proposed amendments are only applicable to Section 2 – ‘Community Participation Plan’ (CPP) that outlines how and when Council, as a planning authority, engages with the community across its planning functions.

Changes have been made to the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation) which, amongst other things, amended the advertising requirements for certain planning matters to require advertising on Council’s website or the NSW Planning Portal as opposed to the local newspaper.

As a result of the changes to the EP&A Regulations, Council’s CPP requires updating to ensure consistency with the public notification amendments. The CPP currently requires certain local development to be advertised in the local newspaper. The revised CPP amends this to require advertising to occur on Council’s website in accordance with the changes in legislation.

The centralisation of all advertised planning matters onto Council’s website provides a single place for the public to view matters on exhibition and enables links to more detailed information associated with those matters. In addition, it provides a cost saving for the applicant as the advertising fees can be reduced.

**COMMUNITY STRATEGIC PLAN**

<b>Strategic Direction</b>	<b>Delivery Program 2018-2021</b>
Communication and Engagement	Provide a voice for the community.

**FINANCIAL/RESOURCE IMPLICATIONS**

There are no financial or 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**

Adopting the recommendations will ensure compliance with the Environment and Planning Assessment Act 1979 - Division 2.6.

<b>Risk</b>	<b><u>Risk Ranking</u></b>	<b>Proposed Treatments</b>	<b>Within Existing Resources?</b>
There is a risk that Council may be in breach of the Environment and Planning Assessment Act 1979 if it does not have a Community Participation Plan reflective of relevant legislation.	Low	Adopt the recommendations.	Yes
There is a risk that Council may be exposed to reputational damage if Council does not have a clear and comprehensive approach to community engagement that aligns with Environment and Planning Assessment Regulations 2000 requirements.	Low	Adopt the recommendations.	Yes

## **SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

To ensure a high level of engagement, Council will continue to provide hardcopies of the public notices at the Raymond Terrace and Salamander Bay Libraries. Council also provides a service that mails a copy of notices to residents registered with Council.

## **CONSULTATION**

Consultation with key stakeholders has been undertaken. The objective of the consultation was to ensure all professional advice has been factored into the final revised document prior to reporting to Council.

### Internal

Key internal stakeholders involved in preparing the revised Community Engagement Strategy including all sections in the Development Services Group.

### External

Following Council's endorsement of the draft strategy on 14 July 2020, the draft strategy was placed on public exhibition for 28 days from 24 July 2020 to 21 August 2020. Submissions were invited via a notification was placed on Council's website.

During this period, 1 submission was received. A summary and response to the submission can be found at **(ATTACHMENT 2)**.

## **OPTIONS**

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

## **ATTACHMENTS**

- 1) Revised Community Engagement Strategy. [↓](#)
- 2) Summary of Submissions and Response. [↓](#)

## **COUNCILLORS ROOM**

- 1) Copy of submission.

## **TABLED DOCUMENTS**

Nil.



# Engaging with our community

Community Engagement Strategy



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<sup>1</sup> Port Stephens Council

## ITEM 4 - ATTACHMENT 1 REVISED COMMUNITY ENGAGEMENT STRATEGY.

### About this strategy

The Community Engagement Strategy reflects Port Stephens Council's commitment to involving our community in effective engagement that actively shapes and influences the future of the Port Stephens area.

This Strategy will support us in undertaking quality engagement to ensure our community are informed and we understand what matters most to our community now and into the future.

This Strategy is divided into two distinct parts:

**Section 1: Our community engagement approach** and principles across a range of Council functions. This section is required under section 402 of the Local Government Act 1993: The council must establish and implement a strategy (its community engagement strategy), based on social justice principles, for engagement with the local community when developing the community strategic plan.

**Section 2: Community participation plan.** This section is a new requirement under the Environmental Planning and Assessment Act 1979 (EP&A Act). These changes now provide a single document where the community can access all of Council's community participation requirements under the planning legislation, including all minimum mandatory requirements. It sets out how and when we will engage the community across our planning functions under the EP&A Act.

**Delivering a best practice approach to engagement means:**

- ensuring our community has better access to and understanding of information
- increased participation, allowing for a range of voices to be heard
- stronger community connections and trust.

#### Why do we need to engage?

- efficient and effective spending and resource allocation
- identification of solutions for complex problems
- social cohesion and reduced conflict
- reduction of unplanned risks
- improved services that meet community needs
- strengthened governance and accountability

Section 1

# Our community engagement approach



## Our community engagement approach

Engaging with the community is one of the guiding principles for councils under section 8A of the Local Government Act 1993 and is an important part of local democracy.

### Our core principles for engagement

#### Relationships and respect

##### What this means

- We act with transparency and honesty in a way that values strong relationships and builds trust with our community and stakeholders.
- Good engagement helps us to identify shared values, benefits and outcomes.
- We will close the loop with our community and report back on the engagement process.

##### How do we do this

- We will say what we are doing, maintain ongoing partnerships and deliver regular updates to our stakeholders and community.
- We cultivate a culture of information sharing to ensure information is accurate and informed.
- We respect people's time and will listen to our community.
- We will accurately define the community's role in the decision making process.

#### Inclusive and enabling

##### What this means

- We believe good decisions are grounded in information and input from many sources.
- We will allow for a range of voices to be heard, not just those who are loud, angry or powerful.

##### How do we do this

- We will actively seek to ensure a range of views are represented.
- We engage appropriately and in a variety of formats to address barriers to participation.
- We will make our information easy to understand, consistent and timely.

#### Transparency and the right to participation

##### What this means

- Community input and feedback is recognised as enhancing the quality of our decision making processes.
- The community has the right to access information, be consulted and actively participate in planning and decision making that affects them.

##### How do we do this

- We make decisions in an open and transparent way. Information is timely, clear and relevant.
- We work towards consistent standards and report back on decisions made.
- We build our community's capacity to contribute through education and empowerment practices.

#### Continuous Improvement

##### What this means

- Engagement is a rapidly changing field. We recognise the need to adapt to ensure more effective engagement outcomes.

##### How do we do this

- New and innovative solutions will be sought to better listen to and communicate with our community.
- We will evaluate the work we do to improve our practice.
- We will use technology to ensure better access and more opportunity to engage.

ITEM 4 - ATTACHMENT 1 REVISED COMMUNITY ENGAGEMENT STRATEGY.

How we engage

Community engagement model

Engagement is led by both the organisation and the community. The type of engagement is dependent on the nature of the relationships, activities and goals.





Source: International Association of Public Participation

**ITEM 4 - ATTACHMENT 1 REVISED COMMUNITY ENGAGEMENT STRATEGY.**

**International Association of Public Participation Spectrum (IAP2 Spectrum)**

The IAP2 Spectrum is an internationally regarded tool to select the level of participation in any community engagement program. The Spectrum shows that differing levels of participation are required depending on the goals, time frames, resources and levels of concern in the decision to be made.

Increasing the level of public impact   
 Level of community influence over decisions 

<b>Inform</b>	<b>Consult</b>	<b>Involve</b>	<b>Collaborate</b>	<b>Empower</b>
To provide the public with balanced and objective information to assist them in understanding the problems, alternatives, opportunities and/or solutions.	To obtain public feedback on analysis, alternatives and/or decisions.	To work directly with the public throughout the process to ensure that public concerns and aspirations are consistently understood and considered.	To partner with the public in each aspect of the decision including the development of alternatives and the identification of the preferred solution.	To place final decision-making and/or developed budgets in the hands of the public.
We will keep you informed.	We will keep you informed, listen to and acknowledge concerns and provide feedback on how public input influenced the decision.	We will work with you to ensure that your concerns and aspirations are directly reflected in the alternatives developed and provide feedback on how public input influenced the decision.	We will look to you for direct advice and innovation in formulating solutions and incorporate your advice and recommendations into decisions to the maximum extent possible.	We will implement what you decide.

Figure 1: IAP2 Public Participation Spectrum. Source: International Association of Public Participation.

## ITEM 4 - ATTACHMENT 1 REVISED COMMUNITY ENGAGEMENT STRATEGY.

### What this looks like at Port Stephens Council

#### Engagement design

Engagement can take many forms and there is no one size fits all approach. In some cases we are guided by legislation. In other cases we seek informed feedback on a particular plan, policy or project. Each project's level of engagement will be determined by assessing:

- objectives, scope and context of the project (including legislative requirements)
- level of impact including risk and complexity
- level of interest and influence on decisions to be made
- level of resources available including time and budget.

#### Key elements of engagement design:



Community engagement plans are tailored to the needs of each project. Our approach reflects the social justice principles of equity, access and participation. At all levels of engagement, our objective is to ensure our community can easily access balanced, timely and accurate information on our projects and programs.

Table 1 provides a snapshot of the types of activities and projects undertaken in the framework. The framework is not limited to the example projects and engagement techniques contained in the table.

**Refer to Section 2 of this document for statutory decision making obligations and timeframes under the EP&A Act.**

ITEM 4 - ATTACHMENT 1 REVISED COMMUNITY ENGAGEMENT STRATEGY.

Table 1

JAP 2 Level	Description	Engagement techniques examples	Project type examples
<b>Inform</b>	<ul style="list-style-type: none"> <li>share balanced information to increase awareness and understanding</li> <li>one way process</li> <li>can clarify level of impact and help build relationships</li> </ul>	<ul style="list-style-type: none"> <li>advertising</li> <li>newsletters</li> <li>fact sheets</li> <li>displays</li> <li>media</li> <li>website</li> </ul>	<ul style="list-style-type: none"> <li>maintenance, renewal of capital works</li> <li>changes to local activity</li> <li>policy updates</li> </ul>
<b>Consult</b>	<ul style="list-style-type: none"> <li>community views and feedback are sought</li> <li>we will listen and acknowledge your concerns</li> </ul>	<ul style="list-style-type: none"> <li>focus groups</li> <li>workshops</li> <li>surveys</li> <li>polls</li> <li>one-on-one meetings</li> <li>public exhibition and hearings</li> <li>plus Inform activities</li> </ul>	<p>Key social planning and strategic documents, for example:</p> <ul style="list-style-type: none"> <li>youth strategy</li> <li>plans of management</li> <li>public domain plans</li> <li>masterplans</li> <li>new policies with broad impact</li> </ul>
<b>Involve</b>	<ul style="list-style-type: none"> <li>work with the community throughout the process to ensure your priorities and aspirations are reflected in the decision</li> </ul>	<ul style="list-style-type: none"> <li>advisory committees</li> <li>workshops</li> <li>world cafes</li> <li>community visioning</li> <li>workshops</li> <li>town centre implementation panels</li> <li>plus inform and consult activities</li> </ul>	<ul style="list-style-type: none"> <li>Community Strategic Plan and Operational Plan</li> </ul> <p>Other examples:</p> <ul style="list-style-type: none"> <li>placemaking projects</li> <li>early development infrastructure and capital works projects like playgrounds and recreation facilities</li> </ul>
<b>Collaborating</b>	<ul style="list-style-type: none"> <li>actively working with community to ensure their aspirations and priorities strongly influence the outcome</li> <li>shared responsibility for decision making</li> </ul>	<ul style="list-style-type: none"> <li>community reference group</li> <li>design workshops</li> <li>advisory committees</li> <li>plus Inform and Consult activities</li> </ul>	<ul style="list-style-type: none"> <li>S355 Advisory Committees</li> </ul>
<b>Empowering</b>	<ul style="list-style-type: none"> <li>decision making is in the hands of the community</li> <li>particularly useful in engaging under represented or marginalised groups</li> </ul>	<ul style="list-style-type: none"> <li>project teams</li> </ul>	<ul style="list-style-type: none"> <li>community development programs</li> </ul>



ITEM 4 - ATTACHMENT 1      REVISED COMMUNITY ENGAGEMENT STRATEGY.

**Inclusive engagement**

We know there are some groups in our community that are harder to reach and less likely to participate in engagement activities. Council is committed to using inclusive methods and settings to make it easy for all of our community to participate. Some of these harder to reach groups identified in Port Stephens are:

- Aboriginal and Torres Strait Islander
- people with a disability
- young people
- young families / primary carers

Barriers such as language, physical ability, digital comprehension, lack of time and social isolation are considered in engagement planning.

**Key strategies for inclusive engagement:**

- adaptation of methods
- make it fun
- go to where the people are and targeted outreach
- make it as easy as possible for people — choose appropriate locations and accessible venues
- provide incentives

Section 2

# Community participation plan



## Community participation plan

It is a statutory requirement for councils in New South Wales to prepare a Community Participation Plan that sets out how and when it will undertake community participation when exercising relevant planning functions under the EP&A Act.

### How is community participation carried out

The Community Participation Plan specifies requirements including notification and public exhibition. This can include:

- Giving written notice to neighbours, individual landowners or occupiers;
- Advertising in a local newspaper notice
- Advertising on Councils website; and
- Making documents publicly available online.

Other methods may be used for notification and exhibition on a case by case basis and depending on statutory requirements.

If the exhibition period is due to close on a weekend or public holiday we may extend the exhibition to finish on the first available work day. In accordance with the planning legislation, the period between 20 December and 10 January (inclusive) is excluded from the calculation of a period of public exhibition.

Plans or applications cannot be made or determined until after the minimum period of public exhibition. If a longer timeframe is placed on public exhibition, the matter cannot be determined until after the specified period.

### Making a submission

The community can participate during public exhibition by making a submission. The planning legislation sets out some requirements for submissions. In addition to these requirements, when making a submission to Council, the submission should be:

- Received on or before the last day of the nominated timeframe for exhibition;
- Made in writing (through the mail, email or hand delivered to Council);
- Contain the name and address (or email address) of the person making the submission;
- Include the application number for reference (for development applications) or the name of the exhibited planning matter; and
- Include a statement of objection or support and reasons.

**ITEM 4 - ATTACHMENT 1 REVISED COMMUNITY ENGAGEMENT STRATEGY.**

**Community participation requirements**

Under the EP&A Act, the following minimum community participation requirements apply to local planning functions:

**Table 2**

<b>Mandatory timeframes</b>	<b>Minimum community participation requirement</b>
<b>Division 1 — Schedule 1 to the EP&amp;A Act</b>	
Draft community participation plans	28 days
Draft local strategic planning statements	28 days
Planning proposals for local environmental plans subjects to a gateway determination	28 days or as specified by the Gateway Determination
Draft development control plans	28 days
Draft contributions plans	28 days
<b>Division 2 — Schedule 1 to the EP&amp;A Act</b>	
Development Application for designated development	28 days
Environmental Impact Statement obtained under Division 5.1 (An Environmental Impact Statement prepared for certain development such as state significant development.)	28 days
Re-exhibition of any amended application or matter referred to above	The period (if any) determined by the person or body responsible for publicly exhibiting the application or matter.

Exhibition timeframes are measured in calendar days and include weekends.

**ITEM 4 - ATTACHMENT 1 REVISED COMMUNITY ENGAGEMENT STRATEGY.**

**Development applications**

Table 3 outlines Council's minimum notification requirements for development applications. Where there is an inconsistency between the notification requirements of this Community Participation Plan and legislative requirements, the legislative requirements will prevail.

**Table 3 Community Participation Categories (Refer to Appendix A for details)**

Exhibition types Type	Requirements
<b>A</b>	<p><b>Not Notified Development.</b> Council may at its discretion decide to notify any of this type of development that may significantly impact on the amenity of adjoining land owners.</p>
<b>B</b>	<p><b>Advertised Development,</b> written notification in accordance with 'type B' requirements and an advertisement published in the local newspaper advertisement published on Councils website. Development Application (DA) information published on DA Tracker</p> <p>At Council's discretion, additional advertisements may be placed in newspapers and/or through such other mechanisms as may be appropriate to ensure that the public is reasonably aware of the proposal. Council may also at its discretion decide not to advertise development.</p>
<b>Not included in Table 1</b>	<p><b>Notified Development.</b> A 14 day notification period will apply for development types not included in Appendix A. Written notification will be sent to all owners of land directly adjoining or opposite the development site. Additional owners and occupiers may be notified at the discretion of Council staff. Council may at its discretion decide not to notify development where impacts on adjoining land owners are considered minor in nature.</p>

**Modification Applications**

The need or otherwise to notify an application to modify a development consent will be undertaken in accordance with the requirements of the Act and Regulations or at the discretion of Council in consideration of the nature of the modifications proposed.

ITEM 4 - ATTACHMENT 1 REVISED COMMUNITY ENGAGEMENT STRATEGY.

Appendix A — Exhibition periods

Development category	Exhibition types	
	A	B
<b>Rural Development</b>		
Agriculture		
Farm buildings		
Forestry		
<b>Residential Accommodation</b>		
Dwelling — single storey		
Residential ancillary (sheds, pools, etc.)		
Rural worker's dwellings		
Secondary dwellings		
<b>Subdivision (all types of subdivision)</b>		
Strata Subdivision		
More than ten Torrens or Community title lots		
<b>Tourist and visitor accommodation</b>		
Caravan parks / Camping grounds		
<b>Commercial development</b>		
Home business / occupation		
Entertainment facilities		
Function centres		
Sex services premises / Home occupation (sex services)		
Restricted premises		
<b>Community and entertainment facilities</b>		
Places of public worship		
Recreation facility (major)		
<b>Industrial Development</b>		
General industry		
Industrial retail outlets		
Industrial training facilities		
Light industry		
Storage premises		
Warehouse or distribution centres		
Freight transport facilities		
<b>Miscellaneous</b>		
Boatshed		
Environmental Facilities / Environmental Protection works		
Moorings / Mooring Pens		
Signage — other than advertising structures		
Extractive industries / open cut mines		
Electricity generating works		
Air transport facility		
Airstrip		
Cemetery / crematorium / mortuaries		
Correction centre		
Helipad		
Marinas		
Passenger transport facilities		
Port facilities		

ITEM 4 - ATTACHMENT 1      REVISED COMMUNITY ENGAGEMENT STRATEGY.



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PORTSTEPHENS.NSW.GOV.AU  
A row of four small social media icons: LinkedIn, Facebook, Twitter, and Instagram.

**ITEM 4 - ATTACHMENT 2 SUMMARY OF SUBMISSIONS AND RESPONSE.**

Submitter	Issues Raised	Comment
<p>Tomaree Ratepayers and Residents Association (TRRA)</p>	<p>Exhibition of development applications online will limit the reach of the community consultation as The Examiner has a very large reach estimated at 49,000 readers per month (PS population is 72,000) skewed to older and less advantaged.</p>	<p>The proposed changes to Community Engagement Strategy (CES) reflects legislative changes. Residents adjoining land that is subject to proposed development, that requires notification, will still be notified via posted letter in accordance with Council's existing Community Participation Plan (included in the CES). This ensures that those residents likely to be most affected by development are notified even if they do not have access to a computer.</p>
	<p>Council's subscription service to receive public notices via mail or email list is not anything new.</p>	<p>The subscription service was introduced by Council and allows for the opportunity to reach a section of residents that do not have access to online services. This is considered effective and Council will continue with the service.</p>
	<p>Providing public notices and making computers available at libraries are problematic as:</p> <ul style="list-style-type: none"> <li>• Many people are not comfortable either using library computers themselves or asking for help</li> <li>• It is simply not as easy to quickly scan for matters of interest online as compared to viewing a single familiar page in the local newspaper</li> <li>• Many older and disabled residents are housebound, even more so with recent isolation measures and pandemic fears. Going to the library is not an option.</li> </ul>	<p>The proposed amendments to the CES will only result in changes to the exhibition of a small proportion of the applications received by Council. All information relating to these are currently available via the internet or visiting Council's administration building. No additional information relating to individual development applications are published in the public notices. Further, Council's library staff are experienced in customer service and trusted by the community meaning that utilising the library is not an impediment to accessing information.</p>



**ITEM 4 - ATTACHMENT 2 SUMMARY OF SUBMISSIONS AND RESPONSE.**

	<p>In the context of Council's overall budget, the saving of \$90,000 is a surprisingly low cost-benefit.</p>	<p>Although the figure may seem insignificant when compared to Council's overall budget, the saving will allow Council to reallocate funds to other programs.</p> <p>Further, during times of economic uncertainty all saving measures contribute to the overall financial health of Council. It should also be noted that the costs associated with newspaper advertising has also been reduced resulting in lower input cost to applicants.</p>
	<p>Although the 'Have your say' option is a useful supplement, the registration requirement is a deterrent to many people.</p>	<p>This comment is not relevant to the proposed modifications to the CES.</p>
	<p>Utilising Facebook is not a substitute for a regular weekly notice in the local newspaper as it has become a forum that those residents concerned about privacy are avoiding.</p>	<p>This comment is not relevant to the proposed modifications to the CES.</p>

**ITEM NO. 5**

**FILE NO: 20/282048  
EDRMS NO: PSC2007-3163**

**POLICY REVIEW: WASTE MANAGEMENT AND RESOURCE RECOVERY**

REPORT OF: TAMMY GUTSCHE - COMMUNITY SERVICES SECTION  
MANAGER  
GROUP: FACILITIES & SERVICES

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Endorse the revised Waste Management and Resource Recovery Policy shown at **(ATTACHMENT 1)**.
- 2) Place the revised Waste Management and Resource Recovery 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 Waste Management and Resource Recovery Policy dated 27 February 2018 (Minute No: 35), should no submissions be received.

---

**BACKGROUND**

The purpose of this report is to endorse the review of the Waste Management and Resource Recovery Policy (the 'policy').

Port Stephens Council currently provides domestic and non-domestic waste services in accordance with sections 496 and 501 of the Local Government Act 1993.

Council's existing Waste Management and Resource Recovery Policy was adopted on 27 November 2007 and has undergone amendments on 24 November 2009, 23 June 2015 and 27 February 2018. The policy defines Council's position on solid waste management and resource recovery as well as outlining the waste services that are provided to residents, businesses and visitors of Port Stephens.

**COMMUNITY STRATEGIC PLAN**

<b>Strategic Direction</b>	<b>Delivery Program 2013-2017</b>
Waste Management.	Provide waste and recycling services.

**FINANCIAL/RESOURCE IMPLICATIONS**

There are no additional financial or resource implications created by this revised policy in excess of those already provided under the previous version of the policy.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes		
Reserve Funds	No		
Section 94	No		
External Grants	No		
Other	No		

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

There are no legal or policy impediments to adopting the recommendations.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that Council's reputation could be damaged if it is using a policy that is not up to date.	Low	Adopt the recommendations.	Yes

### **SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

There are no sustainability implications created by this revised policy in excess of those already accounted for under the previous version of the policy.

### **CONSULTATION**

Consultation with key stakeholders has been undertaken by the Community Services Section. This consultation with both internal and external stakeholders was undertaken to ensure that the position taken by Council on waste management and resource recovery practices was in line with current trends in the industry as well as safe, convenient and affordable for the residents and businesses of Port Stephens.

#### Internal

All internal staff associated with the delivery of the suite of waste services were consulted in person during the drafting of this revised policy.

External

As part of this policy review Waste Services Unit staff consulted with a number of peers at other Councils to benchmark waste services. This consultation process showed that waste services provided by Council are either on par with or exceed those provided by other Councils in the surrounding geographical area.

In accordance with local government legislation the revised policy for Waste Management and Resource Recovery will go on public exhibition for 28 days.

**OPTIONS**

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

**ATTACHMENTS**

- 1) Revised Waste Management and Resource Recovery Policy. [↓](#)

**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

Nil.

**ITEM 5 - ATTACHMENT 1 REVISED WASTE MANAGEMENT AND RESOURCE RECOVERY POLICY.**

Policy



**FILE NO:** PSC2007-3163

**TITLE:** WASTE MANAGEMENT AND RESOURCE RECOVERY POLICY

**OWNER:** WASTE MANAGEMENT COORDINATOR  
COMMUNITY SERVICES SECTION MANAGER

**1. PURPOSE:**

1.1. The purpose of this policy is to detail Council's position on solid waste management within the Port Stephens Council Local Government Area in order to facilitate the delivery of a Waste Management and Resource Recovery Plan: waste services that are both convenient and cost effective and that maximise the diversion of waste from landfill.

**2. CONTEXT/BACKGROUND:**

2.1 Port Stephens Council currently provides domestic and non-domestic waste services in accordance with sections 496 and 501 of the Local Government Act 1993.

2.2 These services include:

- a) the provision of mobile garbage bins
- b) weekly residual waste (red bin) collection service
- c) fortnightly dry recycling (yellow bin) collection service
- d) on-call bulky and green waste collection
- e) processing of recyclables
- f) processing of residual waste via an Advanced Resource Recovery Technology (ARRT) Facility
- g) green waste drop off days
- h) where required, the land filling of residual wastes
- i) environmental monitoring of decommissioned landfills
- j) community education about waste services provided by Council, how to correctly use the provided services and how waste generation can be reduced.

2.3 Port Stephens Council also coordinates the collection of certain hazardous and problem waste not suitable for collection in either waste or recycling household bins. These include the provision of permanent drop off sites or drop off events for the collection of household chemicals, paints, oils, gas bottles, electronic waste, mattresses, tyres, car and household batteries, mobile phones printer cartridges and fluorescent tubes.



**ITEM 5 - ATTACHMENT 1 REVISED WASTE MANAGEMENT AND RESOURCE RECOVERY POLICY.**

**Policy**



- 2.4 Port Stephens Council also provides waste and recycling services to events held within Port Stephens and in public places such as parks and reserves, sporting fields and streets where Council's asset owners have determined the need for this service.
- 2.5 Residents and businesses of Port Stephens have self-haul access to one Council-owned Waste Transfer Station at Salamander Bay. Waste delivered to the transfer station is sorted and separated for reuse, recycling or disposal.
- 2.6 The management of waste provides significant outcomes for human health and for the quality of our environment. Since the mid 1990's Council's approach to waste management has moved from simple landfilling of all wastes to kerbside recycling and the utilisation of technology designed to efficiently collect and sort waste for maximum resource recovery. Through these actions Port Stephens Council has improved the sustainability of its waste management services to the community.

**3. SCOPE:**

- 3.1 The policy outlines what **waste** services are provided to the residents, ratepayers and businesses of Port Stephens as well as Council's **overall** position on solid-waste management.

**4. DEFINITIONS:**

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

Domestic Waste Management	Collection, processing and disposal of solid waste collected from the kerbside of residential properties.
Non-Domestic Waste Management	Collection, processing and disposal of solid waste collected from non-domestic (commercial) properties.
Public Place Waste Management	Collection, processing and disposal of waste collected from streets, parks and central business districts.
<b>Problem Waste</b>	<b>Waste streams such as mattresses, electronic waste, tyres, medical sharps and household chemicals such as paints, oils, batteries etc.</b>

**5. STATEMENT:**

- 5.1 Council provides the following waste management to the residents, ratepayers and businesses of Port Stephens.



ITEM 5 - ATTACHMENT 1 REVISED WASTE MANAGEMENT AND RESOURCE RECOVERY POLICY.

## Policy



### 5.2 Domestic and Non-domestic (Commercial) Waste Management

5.2.1 Council is committed to:

- a) providing convenient and accessible waste services that meet the needs of the community
- b) reasonable costing of waste services in accordance with Sections 496 and 501 the Local Government Act 1993
- c) the source separation of commercially viable recyclables from residual waste both in its kerbside collections and bulk waste collections
- d) processing residual waste via Advanced Resource Recovery Technology (ARRT) Facility until at least 2027
- e) the disposal of inert domestic waste to licensed landfill sites
- f) the provision of waste collection services via contracts with commercial operators
- g) the provision of alternative waste technology via contracts with commercial operators
- h) continually educating the community about its range of waste services and how to correctly use them.

### 5.2.2 Toxic/Hazardous/Medical Waste

5.2.2.1 Council is committed to:

- a) creating solutions that source separate these wastes from the domestic/commercial waste streams
- b) supporting extended producer responsibility schemes for the collection and disposal of hazardous and medical wastes
- c) run drop off events for problem wastes such as chemicals, mattresses, tyres and electronic waste
- d) continue to operate the Community Recycling Centre (CRC) at the Salamander Bay Waste Transfer Station that accepts hazardous household chemicals free of charge from residents of Port Stephens
- e) continue to have medical sharp collection points in amenities across Port Stephens LGA to allow safe disposal of these items in public places.

### 5.2.3 Public Place Waste Management

5.2.3.1 Council is committed to:

- a) providing mobile garbage bins and bulk containers in public places where the need is determined by Council's asset owners including:
  - o CBD areas
  - o Streets
  - o Parks & Reserves
  - o Sporting Facilities



ITEM 5 - ATTACHMENT 1 REVISED WASTE MANAGEMENT AND RESOURCE RECOVERY POLICY.

Policy



- b) the source separation of commercially viable recyclables in locations where trials have deemed it successful
- c) the provision of waste services for special events where Council has approved the waste management plans for these events
- d) the maintenance of all public place waste infrastructure to ensure that it is safe and clean for the users of the area
- e) the collection and disposal of unidentifiable illegal dumped waste in public spaces
- f) the collection and disposal of litter within public spaces.

5.2.4 Management of Waste Transfer Stations

5.2.4.1 Council is committed to:

- a) the provision and operation of Salamander Bay Waste Transfer Station at 4 Tarrant Road Salamander Bay as per Council's Community Strategic Plan.

5.2.5 Landfill Management

5.2.5.1 Council is committed to:

- a) the rehabilitation of decommissioned landfills to meet or exceed the licence requirements
- b) the continued monitoring of decommissioned landfill sites for due diligence purposes so that the environmental impacts are known
- c) reducing the community's reliance on land filling as the primary waste management method.

5.2.6 Financial Assistance for the Disposal of Waste in Port Stephens

5.2.6.1 Council is committed to:

- a) The provision of financial assistance for the disposal of waste to charitable, not for profit or benevolent organisations in accordance with Council's Policy "Financial Assistance for the Disposal of Waste in Port Stephens" under section 356 of the Local Government Act 1993.

5.2.7 Illegal Dumping

5.2.7.1 Council is committed to:

- a) minimising illegal dumping as it is an offence under the NSW Protection of the Environment Operations Act 2001 and those carrying out such activities may be fined. Council's Compliance Policy addresses the issues surrounding illegal





## ITEM 5 - ATTACHMENT 1 REVISED WASTE MANAGEMENT AND RESOURCE RECOVERY POLICY.

### Policy



dumping, in terms of its regulation and the need to prioritise activities that educate the community.

#### 5.2.8 Information/Education

5.2.8.1 Council is committed to:

- a) providing clear and concise information on the range, cost and availability of waste services provided
- b) providing education to residents and visitors to the area in order to maximise the potential of its services
- c) working with Environmental Services **the Strategy and Environment Section** to educate the community via its association with community groups, schools and other interest groups.

#### 5.2.9 Development Planning

5.2.9.1 Council is committed to:

- a) ensuring that waste management issues are managed in the Local Environment Plan and related Development Control Plans **Plan**.

#### 5.2.10 Legislative compliance

5.2.10.1 ~~In pursuing this policy~~ Council will comply with **relevant** legislation, specifically **including**:

- a) ~~in the management of waste services Council will observe~~ observing the principles of ecological sustainable development (as defined in the Local Government Amendment (Ecologically Sustainable Development) Act 1997) **in the management of waste services**, specifically:
  - o inter-generational equity
  - o improved valuation
  - o pricing and incentive mechanisms (eg: polluter pays and full life cycle costing)
  - o the precautionary principle and the conservation of ecological integrity.
- b) ~~Council will comply with~~ NSW Environment Protection Licences for the Salamander Bay Waste Transfer Stations and the surrender notices for all decommissioned landfill sites
- c) ~~Council will comply with~~ the Local Government Act 1993 by continuing to provide waste services to domestic and non-domestic properties under sections 496 and 501 of the Act
- d) ~~Council will comply with~~ the Work Health and Safety Act 2011 (NSW)
- e) ~~Council will give~~ **giving** due consideration to state and commonwealth guidelines and strategies including but not limited to:
  - o NSW Waste Avoidance and Resource Recovery Act 2001



## ITEM 5 - ATTACHMENT 1 REVISED WASTE MANAGEMENT AND RESOURCE RECOVERY POLICY.

### Policy



- o NSW Waste Avoidance and Recovery Strategy 2014-21.
- f) the NSW Waste Hierarchy of Avoid, **Reduce** Reuse, **Repair**, Recycle, **Recover**, Dispose, will guide decision making processes (Waste Avoidance & Resource Recovery Act 2001)
- g) Council will comply **complying** with Australian Standards relating to mobile garbage bin design and standard colours (AS4123.6 2006 and AS4123.7 2006)
- h) Council will provide **providing** services and education material that is consistent with regional, state and national strategies and programs
- i) where opportunities exist, Council will participate **participating** in local and regional initiatives to address waste issues **where opportunities exist**.

#### 6. RESPONSIBILITIES:

- 6.1 Overall review and evaluation of this policy lies with the Community Services Section Manager.
- 6.2 Key areas for implementation are delegated to the following positions:
- 6.3 Waste Management Coordinator — Domestic and non-domestic waste management; toxic hazardous and medical wastes; public place waste management; landfill management; Financial Assistance for the Disposal of Waste in Port Stephens.
- 6.4 Waste Transfer Station Coordinator — Management of waste transfer stations.
- 6.5 Waste Management Officer information/education.
- 6.6 Waste Projects Officer Customer Service/Information.
- 6.7 Waste Compliance and Strategy Coordinator — illegal dumping and litter management.

#### 7. RELATED DOCUMENTS:

- 7.1 Financial Assistance for the disposal of waste in Port Stephens Policy. (Adopted 24/04/20017, Minute No. 268 — Amendment (currently being reviewed).
- 7.2 Compliance Policy. (Adopted 28/8/07, Minute No. 235 — Amended 28/03/2017, Minute No. 065).



ITEM 5 - ATTACHMENT 1 REVISED WASTE MANAGEMENT AND RESOURCE RECOVERY POLICY.

Policy



**CONTROLLED DOCUMENT INFORMATION:**

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<b>EDRMS container No.</b>	PSC2007-3163	<b>EDRMS record No.</b>	18/86846 <b>20/275597</b>
<b>Audience</b>	Residents, Ratepayers and Businesses of Port Stephens		
<b>Process owner</b>	Community Services Section Manager		
<b>Author</b>	Waste Management Coordinator		
<b>Review timeframe</b>	2 years	<b>Next review date</b>	31/03/2020
<b>Adoption date</b>	27/11/2007		

**VERSION HISTORY:**

Version	Date	Author	Details	Min. No
1	27/11/2007	Steve Bernasconi	Policy Adopted.	337
2	24/11/2009	Steve Bernasconi	Amended Policy Adopted.	396
3	23/6/2015	Aaron Malloy	Amended Policy Adopted.	176
4	27/02/2018	Steve Bernasconi	<ul style="list-style-type: none"> <li>• Reformatting the policy into the new format.</li> <li>• Inclusion of additional information to cover new services under Toxic/Hazardous/Medical Waste and Public Place Waste Management.</li> <li>• Some minor wording changes through the document to make if reflect current trends in the waste industry and levels of services provided.</li> </ul>	035



ITEM 5 - ATTACHMENT 1 REVISED WASTE MANAGEMENT AND RESOURCE RECOVERY POLICY.

Policy



			<ul style="list-style-type: none"> <li>Revised draft policy for review and endorsement by Executive Leadership Team.</li> <li>Draft for Public Exhibition.</li> </ul>	
5		Community Services Section Manager	<p>Reformatted policy into the new template.</p> <p>Updated Policy owner from Waste Management Coordinator to Community Services Section Manager.</p> <p>1.1 Deleted 'solid', 'a Waste Management and Resource Recovery Plan.' Added 'waste services that are both convenient and cost effective and that maximise the diversion of waste from landfill.'</p> <p>3.1 Added 'waste' and 'overall'. Deleted 'solid'.</p> <p>4.1 Added definition for Problem Waste.</p> <p>5.2.2.1a Deleted 'source'.</p> <p>5.2.3.1 Added lines 'e' and 'f'.</p> <p>5.2.8.1c Deleted 'Environmental Services'. Added 'the Strategy and Environment Section'.</p> <p>5.2.9.1 remove 'Plans' and replace with 'Plan'.</p> <p>5.2.10 Added line.</p> <p>5.2.10.1 Deleted 'In pursuing this policy'. Added 'relevant'. Replaced 'specifically' with 'including'.</p>	



ITEM 5 - ATTACHMENT 1 REVISED WASTE MANAGEMENT AND RESOURCE RECOVERY POLICY.

Policy



			<p>5.2.10.1a Reworded sentence</p> <p>5.2.10.1b Deleted 'Council will comply with'</p> <p>5.2.10.1c Deleted 'Council will comply with'</p> <p>5.2.10.1d Deleted 'Council will comply with'</p> <p>5.2.10.1e Deleted 'Council will give'. Added 'giving'.</p> <p>5.2.10.1f Added 'Reduce, Repair, Recover'.</p> <p>5.2.10.1g Deleted 'Council will comply'. Added 'compliance'.</p> <p>5.2.10.1h Deleted 'Council will provide'. Added 'providing'.</p> <p>5.2.10.1i – reworded sentence.</p> <p>6.2 to 6.7 have been deleted.</p> <p>6.8 Added line.</p> <p>6.9 Added line.</p> <p>6.10 Added 'is responsible for'.</p> <p>7.1 – deleted reference to date and minute number.</p> <p>7.2 – deleted reference to date and minute number.</p> <p>Updated EDRMS record number from 18/86846 to 20/275597.</p>	
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**ITEM NO. 6**

**FILE NO: 20/282375  
EDRMS NO: PSC2005-2795**

**POLICY REVIEW: INFORMATION & DIRECTION SIGNS IN ROAD RESERVES**

REPORT OF: JOHN MARETICH - ASSET SECTION MANAGER  
GROUP: FACILITIES & SERVICES

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Endorse the revised Information and Direction Signs in Road Reserve Policy shown at **(ATTACHMENT 1)**.
- 2) Place the revised Information and Direction Signs in Road Reserve 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 Information and Direction Signs in Road Reserve Policy dated 9 October 2018, Minute No 123, should no submissions be received.

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**BACKGROUND**

The purpose of this report is to endorse the review of the Information and Direction Signs in Road Reserve Policy (the 'policy').

The intent of the policy is to manage the type and number of information, advertising and directional signs that may be displayed within Council's road reserves.

This policy refers to advertising within the road reserve only and does not relate to advertising on private property or in Council recreation reserves, which is dealt with in separate policies and NSW legislation. The types of signs covered by this policy are advertising locality and facility, directional, advertising structures, regulatory/warning and advisory and parks and reserves.

The regulation of information and direction signs is a function of Council and contributes to the orderly display of signs across the Local Government Area. Control of signs within the road reserve is necessary to reduce visual clutter that could otherwise detract from the natural environment of Port Stephens and potentially reduce the effectiveness of essential traffic and road safety signs.

**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**

This policy review will not require any additional budget or resources for the management of information and directional signs if the existing levels of service continue. The minimal income gained from introducing and installing new signs is placed into the local road recurrent road maintenance 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	Yes		

**LEGAL, POLICY AND RISK IMPLICATIONS**

There are no legal implications in reviewing this policy.

It should be noted that there is sometimes conflict between the desired state of 'having minimal signs' the policy promotes and the actual enforcement when an illegal sign appears. The enforcement of illegal signage is guided by Council's Compliance Policy which seeks to ensure fair and balanced outcomes.

<b>Risk</b>	<b><u>Risk Ranking</u></b>	<b>Proposed Treatments</b>	<b>Within Existing Resources?</b>
There is a risk that signage will not meet requirements in terms of type and placement resulting in visual clutter and reduced effectiveness of required signs on the road reserve.	Low	Adopt the policy.	Yes
There is a risk that without a consistent hierarchy of signs this will lead to the community not having a sense of place or visitors not taking the most direct route to the desired location.	Low	Adopt the policy.	Yes

## **SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

The continued regulation of the placement of information, advertising and directional signs within Council's road reserves will assist in reducing visual clutter while allowing business operators to display essential information for potential customers. Reasonable limitation on the size and number of advertising signs that can be displayed will ensure that the visual amenity of the Port Stephens environment is maintained.

Council seeks to assist in the creation of a vibrant business community by implementation of a fair and equitable advertising signs policy. Driver safety, awareness and focus will all be improved through proper management of sign clutter.

## **CONSULTATION**

Consultation with key stakeholders has been undertaken by the Assets Section.

### Internal

Review has been undertaken with Development Assessment and Compliance.

### External

In accordance with local government legislation the revised Information and Direction Signs in Road Reserve 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 Information & Direction Signs in Road Reserves Policy. [↓](#)

## **COUNCILLORS ROOM**

Nil.

## **TABLED DOCUMENTS**

- 1) Information and Direction Signs in Road Reserve Code.



**ITEM 6 - ATTACHMENT 1      REVISED INFORMATION & DIRECTION SIGNS IN ROAD RESERVES POLICY.**

## Policy



**FILE NO:** PSC2005-2795

**TITLE:** INFORMATION & DIRECTION SIGNS IN ROAD RESERVES POLICY

**OWNER:** ASSETS SECTION MANAGER

### 1. PURPOSE:

- 1.1 To provide a safe, effective and efficient network of signs to guide motorists to tourist services, community facilities and natural features within Port Stephens.
- 1.2 To meet Council's statutory requirements under the Local Government Act, the Roads Act and other relevant legislation in relation to the use of Council's road reserve.
- 1.3 To control the type, size and position of advertising that may be displayed within Council's road reserves.
- 1.4 To provide a level of detail that is not covered in other forms of legislation and instruments such as State Environmental Planning Policy Infrastructure (SEPP) Infrastructure and State Environmental Planning Policy Infrastructure (SEPP) 64 – Advertising and Signage.

### 2. CONTEXT/BACKGROUND:

- 2.1 ~~This policy was previously named the Advertising Signs in Road Reserve Policy. The title of this policy has been changed to better reflect the content of the associated code.~~
- 2.1 The types of signs covered by this policy are locality and facility, directional, advertising structures, regulatory/warning/advisory and parks and reserves.
- 2.2 The regulation of signs is a function of Council. This policy contributes to the orderly display of signs in Council's road reserves. Control of signs is necessary to reduce visual clutter that could otherwise detract from the natural environment of Port Stephens and potentially reduce the effectiveness of essential traffic and road safety signs.
- 2.3 The Information and Direction Signs in Road Reserves Policy refers to signs within the road reserve only and does not relate to advertising on private property or in Council Recreation Reserves.

### 3. SCOPE:

- 3.1 Council is responsible for controlling or monitoring activities being undertaken in its road reserves.
- 3.2 Council will adopt clear and consistent procedures when dealing with applications for signs within the road reserve.
- 3.3 Signs situated on private property are controlled by the Port Stephens Council Development Control Plan.



**ITEM 6 - ATTACHMENT 1 REVISED INFORMATION & DIRECTION SIGNS IN ROAD RESERVES POLICY.**

**Policy**



3.4 Council will assess all applications for signs within the road reserve in accordance with the Information and Direction Signs in Road Reserve Code.

**4. DEFINITIONS:**

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

Road Reserves	An area of land set aside for potential road construction on which building is not allowed
SEPP	State Environmental Planning Policy

**5. STATEMENT:**

- 5.1 The policy is to provide a consistent approach to the approval of a safe, effective and efficient network of signs to guide motorists to Tourist Services, Community Facilities and natural features within Port Stephens. Motorists should be guided to the Suburb, then the Street and then Facility.
- 5.2 Reasonable limitation on the size and number of signs displayed within Council's road reserve will ensure that the visual amenity of the Port Stephens environment is maintained.
- 5.3 Information and directional signage must conform to relevant legislations and the requirements of the Information and Direction Signs in Road Reserve Code.
- 5.4 Advertising signs on buildings or awnings is controlled by the Port Stephens Council Development Control Plan.
- 5.5 All signage associated with any election must comply with local government, NSW State and Australian Commonwealth laws

**6. RESPONSIBILITIES:**

- 6.1 The continued regulation of the placement of advertising within Council's road reserves will assist in reducing visual clutter while allowing business operators to display essential information for potential customers.
- 6.2 Council seeks to assist in the creation of a vibrant business community by implementation of a fair and equitable advertising signs policy.
- 6.3 Council will charge any applicable fee for installation and management of signs as noted in Council's adopted Fees & Charges.
- 6.4 Installation and maintenance costs are to be met by the applicant.
- 6.5 Enforcement of illegal signage within the road reserve will be carried out in accordance with Council's Compliance Policy.



**ITEM 6 - ATTACHMENT 1 REVISED INFORMATION & DIRECTION SIGNS IN ROAD RESERVES POLICY.**

**Policy**



**7. RELATED DOCUMENTS:**

- 7.1 Local Government Act 1993.
- 7.2 Roads Act 1993.
- 7.3 State Environmental Planning Policy Infrastructure.
- 7.4 State Environmental Planning Policy 64 – Advertising and Signage.
- 7.5 Bus Shelter Policy.
- 7.6 Outdoor Trading Policy.
- 7.7 Information & Direction Signs in Road Reserve Code.
- 7.8 Port Stephens Council Development Control Plan.
- 7.9 Port Stephens Council Compliance Policy.

**CONTROLLED DOCUMENT INFORMATION:**

This is a controlled document. Hardcopies of this document may not be the latest version. Before using this document, check it is the latest version; refer to Council's website: <a href="http://www.portstephens.nsw.gov.au">www.portstephens.nsw.gov.au</a> .			
<b>EDRMS container No.</b>	PSC2005-2795	<b>EDRMS record No.</b>	20/281016
<b>Audience</b>	Community, Assets Section, Civil Assets, Staff and General Manager		
<b>Process owner</b>	Assets Section Manager		
<b>Author</b>	Civil Assets Planning Manger		
<b>Review timeframe</b>	2 years	<b>Next review date</b>	
<b>Adoption date</b>	04/11/1995		

**VERSION HISTORY:**

Version	Date	Author	Details	Minute No.
1	04/11/1995	Civil Assets Manager	Adopted	147
2	25/11/2014	Civil Assets Manager	Amended	318



ITEM 6 - ATTACHMENT 1 REVISED INFORMATION & DIRECTION SIGNS IN ROAD RESERVES POLICY.

Policy



Version	Date	Author	Details	Minute No.
3	9 Oct 2018	Civil Assets Planning Manager	Reviewed and updated in to the new Policy Template. New Title and EDERMS File. 1.1, 1.2, 1.4, 2.1, 2.2 ,3.3, 5.1, 5.2, 5.4, 5.5, 6.4 & 6.6 – New points added. 1.4, 2.3, 2.4, 3.2, 3.4, 5.1, 5.3, 6.3 – Reworded to improve purpose. 4 – Removal of definition. 7.3, 7.4, 7.7 & 7.9 – Added Related Documents.	123
4		Civil Assets Manager	Reviewed and updated in to the new Policy Template. Removed - 2.1 This policy was previously named the Advertising Signs in Road Reserve Policy. The title of this policy has been changed to better reflect the content of the associated code.	



**ITEM NO. 7**

**FILE NO: 20/41915  
EDRMS NO: PSC2017-02839**

**2020 LOCAL GOVERNMENT NSW ANNUAL CONFERENCE**

REPORT OF: WAYNE WALLIS - GENERAL MANAGER  
GROUP: GENERAL MANAGER'S OFFICE

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Nominate Council delegates to attend the half day 2020 Local Government NSW Annual Conference to be held via video conference on 23 November 2020.
- 2) Nominate four (4) voting delegates.

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**BACKGROUND**

The purpose of this report is to inform Council of the half day 2020 Local Government NSW Annual Conference to be held on 23 November 2020 via video conference.

Each member Council of LGNSW has a voting entitlement at the conference. The voting entitlement for Port Stephens Council is four (4) delegates. Council is requested to nominate its four (4) voting delegates that will attend the conference.

This conference is the annual policy-making event for NSW general-purpose councils and associate members. It is the pre-eminent event of the local government year where local elected members come together to share ideas and debate issues that shape the way local government is governed. A draft conference program is attached for Elected Members information (**ATTACHMENT 1**).

The conference is open to all Elected Members.

**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 registration fee for the conference is \$66 per delegate.

The costs associated with registration are covered within existing budget – subject to an Elected Member not exceeding budget limits set out in the Payment of Expenses and Provision of Facilities to Mayor and Councillors Policy. Council will also meet the reasonable cost of meals when they are not included in the conference fees.

Each Elected Member has an annual conference budget of \$3000 per year.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes		As per the Payment of Expenses and Provision of Facilities to Mayor and Councillors Policy.
Reserve Funds	No		
Developer Contributions (\$7.11)	No		
External Grants	No		
Other	No		

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

As per the Payment of Expenses and Provision of Facilities to the Mayor and Councillors Policy, approval to participate in a conference or seminar is subject to approval of a full Council.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that Council may have its reputation damaged by not participating in the national debate on key Local Government matters in NSW.	Low	Adopt the recommendation.	Yes

#### **SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

The Port Stephens community would benefit from Elected Members participating in this video conference to ensure the local government area has a voice in the national development of policy and initiatives.

**CONSULTATION**

Nil.

**OPTIONS**

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

**ATTACHMENTS**

- 1) 2020 LGNSW Annual Conference Program. [↓](#)

**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

Nil.



**Annual Conference 2020**  
 Monday 23rd November 2020

**DRAFT PROGRAM** (as of 21 Sept 2020) for website

<b>MONDAY 23 NOVEMBER 2020 – Business Session</b>	
8.45am	Demonstration of voting procedure and getting online
8.50am	Message from Distinguished sponsor Landcom
8.55am	Message from Distinguished sponsor Local Government Super
9.00am – 9.05am	Conference introduction by <b>Scott Phillips</b> , Chief Executive, LGNSW
9.05am – 9.45am (15 min speech, 15 mins motions, 10 mins treasurer)	President's Welcome: Address by <b>Cr Linda Scott</b> , President, LGNSW Acknowledgement of Country and Opening of conference  Opening of the Federal Conference: adoption of standing orders, presentation of the auditor's report, general financial report and operating report to members, business session and consideration of motions.  Opening of the State Conference including adoption of standing orders, presentation of the auditor's report, general financial report and operating report to members, business sessions, and consideration of motions. Chaired by <b>Cr Linda Scott</b> Treasurer's report, <b>Cr Jerome Laxale</b> , Treasurer, LGNSW (In-studio) Adoption of the Treasurer's report



9.45am – 10.35am	<p><b>Meet the Politicians Forum</b> with Masters of Ceremony: <b>Cr Linda Scott, President</b> and <b>Scott Phillips, CE, LGNSW</b></p> <p>Presentation from Premier of NSW, <b>The Hon Gladys Berejiklian (15 mins) pre-record</b></p> <p>Followed by the <b>Politicians’ panel &amp; Q&amp;A:</b> What is the best way for State Government to partner with councils to assist in a locally led recovery?</p> <ul style="list-style-type: none"> <li>• <b>The Hon Shelley Hancock MP</b>, Minister for Local Government (In-studio)</li> <li>• <b>Ms Jodi McKay</b>, Leader of the Opposition (Live stream)</li> <li>• <b>Mr David Shoebridge, MLC</b> (In-studio)</li> </ul>
10.35am – 11.15am	<p>Presentation: Facilitated by Linda Scott</p> <p>Keynote address: <b>Building resilience through partnership.</b></p> <p>Presented by Commissioner of Resilience NSW, <b>Shane Fitzsimmons (sponsor) (10 mins) (In-studio)</b></p> <p>Panel: <b>Recovery and Resilience &amp; Q&amp;A:</b> local strategies and actions to prepare for, recover from and build resilience to disasters and crisis.</p> <ul style="list-style-type: none"> <li>• <b>Leanne Barnes OAM</b>, GM, Bega Shire Council (Live stream)</li> <li>• <b>Mick Willing</b>, NSW Assistant Police Commissioner, Bushfire Recovery (In-studio)</li> <li>• <b>Shane Fitzsimmons</b>, Commissioner of Resilience NSW</li> </ul>
11.15am – 11.30am	<ul style="list-style-type: none"> <li>• Premier Sponsor address</li> <li>• <b>Presentation of the AR Bluett Awards by the Trustees</b></li> </ul>
11.30am – 11.45am	<p>LGNSW President and Elite Sponsor StateCover presents Outstanding Service Awards to elected members</p>
12.00pm – 12.30pm	<p>StateCover General Manager’s Virtual Lunch (exclusive to GMs)</p> <p>Delegates break for lunch</p>
12.30pm-4.30pm	<p><b>Conference business if required</b></p>

**ITEM NO. 8**

**FILE NO: 20/287730  
EDRMS NO: PSC2017-00178**

**REQUEST FOR FINANCIAL ASSISTANCE**

REPORT OF: WAYNE WALLIS - GENERAL MANAGER  
GROUP: GENERAL MANAGER'S OFFICE

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Approves provision of financial assistance under Section 356 of the Local Government Act 1993 from Mayoral funds to the following:
  - a. Family Action Centre, University of Newcastle - Mayoral funds - \$300 donation towards a cooking program for Aboriginal families living in Karuah.
  - b. Nelson Bay Girl Guides - Mayoral funds - \$884.80 donation towards installing outdoor lighting around the hall.
  - c. Artisan Collective Port Stephens Incorporated - Mayoral funds - \$1100 donation towards a new project of an artist drawn map of Port Stephens for visitors.
  - d. Maitland District Cricket Umpires Association Inc. - Mayoral funds - \$50 donation towards 2020-2021 season expenses.

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**BACKGROUND**

The purpose of this report is to determine and, where required, authorise payment of financial assistance to recipients judged by the Mayor and or Councillors as deserving of public funding. The Grants and Donations Policy gives the Mayor and Councillors a wide discretion either to grant or to refuse any requests.

Council's Grants and Donations Policy provides the community, the Mayor and Councillors with a number of options when seeking financial assistance from Council. Those options being:

1. Mayoral Funds
2. Rapid Response
3. Community Financial Assistance Grants – (bi-annually)
4. Community Capacity Building

Council is unable to grant approval of financial assistance to individuals unless it is performed in accordance with the Local Government Act 1993. This would mean that the financial assistance would need to be included in the Operational Plan or Council would need to advertise for 28 days of its intent to grant approval. Council can make donations to community groups.

**ORDINARY COUNCIL - 13 OCTOBER 2020**

The requests for financial assistance are shown below:

**MAYORAL FUNDS – Mayor Palmer**

Family Action Centre, University of Newcastle	The Family Action Centre coordinates programs which are supported by The Smith Family under the Communities for Children initiative.	\$300	Donation towards a cooking program for Aboriginal families living in Karuah.
Nelson Bay Girl Guides	Girl Guides is a unique girls-only environment that provides a safe place to learn and grow.	\$884.40	Donation towards installing outdoor lighting around the hall.
Artisan Collective Port Stephens Incorporated	The Artisan Collective is a group of local artists committed to sharing works of art created in the Port Stephens community.	\$1100	Donation towards a new project of an artist drawn map of Port Stephens for visitors.
Maitland District Cricket Umpires Association Inc.	Members of the Association umpire in the Port Stephens area.	\$50	Donation towards 2020-2021 season expenses.

**COMMUNITY STRATEGIC PLAN**

<b>Strategic Direction</b>	<b>Delivery Program 2018-2021</b>
Community Partnerships	Support financially creative and active communities.

**FINANCIAL/RESOURCE IMPLICATIONS**

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

**ORDINARY COUNCIL - 13 OCTOBER 2020**

Source of Funds	Yes/No	Funding (\$)	Comment
Developer Contributions (S7.11)	No		
External Grants	No		
Other	No		

**LEGAL AND POLICY IMPLICATIONS**

To qualify for assistance under Section 356(1) of the Local Government Act 1993, the purpose must assist the Council in the exercise of its functions. Functions under the Act include the provision of community, culture, health, sport and recreation services and facilities.

The policy interpretation required is whether the Council believes that:

- a) applicants are carrying out a function, which it, the Council, would otherwise undertake.
- b) the funding will directly benefit the community of Port Stephens.
- c) applicants do not act for private gain.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that Council may set a precedent when allocating funds to the community and an expectation those funds will always be available.	Low	Adopt the recommendations.	Yes

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

Nil.

**CONSULTATION**

Consultation with key stakeholders has been undertaken by the General Manager's Office.

Consultation has been taken with the key stakeholders to ensure budget requirements are met and approved.

**OPTIONS**

- 1) Accept the recommendation.
- 2) Vary the dollar amount before granting each or any request.
- 3) Decline to fund all the requests.

**ATTACHMENTS**

Nil.

**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

Nil.



**ITEM NO. 9**

**FILE NO: 20/293152  
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 13 October 2020.

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<b>No:</b>	<b>Report Title</b>	<b>Page:</b>
1	Council Resolutions	252

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# INFORMATION PAPERS



**ITEM NO. 1**

**FILE NO: 20/293142  
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 1 - ATTACHMENT 1 CORPORATE SERVICES GROUP REPORT.**



**Outstanding**      **Division:** Corporate Services      **Date From:** 26/09/2017  
**Action Sheets**      **Date To:** 22/09/2020  
**Report**      **Printed:** Tuesday, 6 October 2020

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 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	
13 066		Hazell, Tim				18/66656
1 Oct 2020 - Awaiting Minister's approval to proceed with the compulsory acquisition.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 12/02/2019	Peart, Steven	King Street, Raymond Terrace Easements	28/02/2021	14/02/2019	
3		Hazell, Tim				19/39843
1 Oct 2020 - Awaiting Minister's approval to proceed with the compulsory acquisition.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 28/05/2019	Peart, Steven	PROPOSED ACQUISITION OF FORMER FIRE STATION SITE - 51 WILLIAM STREET, RAYMOND TERRACE	28/02/2021	29/05/2019	
5 109		Hazell, Tim				19/148388
1 Oct 2020 - Minister's approval granted. Proposed Acquisition Notices have been issued to stakeholders.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 28/05/2019	Peart, Steven	COMPULSORY ACQUISITION OF PART OF VICTORIA PARADE RESERVE NELSON BAY FOR ROAD PURPOSES	28/02/2021	29/05/2019	
6 110		Hazell, Tim				19/148388
1 Oct 2020 - Minister's approval received and Proposed Acquisition Notices served. Anticipate Gazettal November 2020.						

**ITEM 1 - 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> 22/09/2020
		<b>Printed:</b> Tuesday, 6 October 2020

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 23/07/2019	Peart, Steven	GRANT OF EASEMENTS IN FAVOUR OF AGL - PUNT ROAD, TOMAGO	30/09/2020		
7 169		Hazell, Tim				19/200498
1 Oct 2020 - Still in negotiations between AGL and LGL.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 11/02/2020	Peart, Steven	RENEWAL OF OPTUS LEASE - 9 TARRANT ROAD, SALAMANDER BAY	30/09/2020	12/02/2020	
1 027		Hazell, Tim				20/39141
1 Oct 2020 - Leases signed and in process of being registered.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 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	
2 028		Hazell, Tim				20/39141
1 Oct 2020 - Awaiting Minister's approval to proceed with the compulsory acquisition.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 14/07/2020	Hazell, Tim	Policy Review: Debt Recovery and Hardship	30/10/2020		
9 131		Hazell, Tim				20/192934
10 Sep 2020 - Two Way Conversation scheduled for 20 October 2020.						

**ITEM 1 - 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> 22/09/2020
		<b>Printed:</b> Tuesday, 6 October 2020

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 22/09/2020	Peart, Steven	Applications for Rent Waivers - COVID-19	6/10/2020		
1 198		Hazell, Tim				20/288489
1 Oct 2020 - Waivers being implemented:- Tenants advised and credits being raised in the system.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 22/09/2020	Peart, Steven	Newline Road, Raymond Terrace	6/10/2020		
2 199		Hazell, Tim				20/288489
1 Oct 2020 - Approved. Contracts being prepared.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 22/09/2020	Peart, Steven	Settlement of outstanding debt	6/10/2020		
3 200		Hazell, Tim				20/288489
1 Oct 2020 - Payment due 7 October 2020.						

**ITEM 1 - 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> 22/09/2020
		<b>Printed:</b> Tuesday, 6 October 2020

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 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						
11 Sep 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 25/08/2020	Drinan, Kate	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	30/10/2020		
1		Crosdale, Timothy				20/265439
151						
11 Sep 2020 - Council resolved to defer this item. A further report will be reported to Council once feedback from the applicant has been received.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 8/09/2020	Gardner, Janelle	Planning Proposal for 17 Fairlands Road and 2 Ferodale Road, Medowie	30/10/2020		
1		Crosdale, Timothy				20/277432
170						
11 Sep 2020 - Council resolved to defer this item. A further report is scheduled for Council in October 2020.						

**ITEM 1 - 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> 22/09/2020
		<b>Printed:</b> Tuesday, 6 October 2020

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 10/12/2019	Maretich, John	Solar Infrastructure	8/12/2020	11/12/2019	
6 264		Kable, Gregory				19/388450
<p>2 Oct 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. Another company has presented another option to create a solar farm in Williamtown. This is a very conceptual idea at this stage.</p>						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 10/12/2019	Gutsche, Tammy	GREEN WASTE DROP OFF - SALAMANDER BAY	26/03/2021	11/12/2019	
7 265		Kable, Gregory				19/388450
<p>24 Sep 2020 - Feasibility report will be prepared with the Waste Management Strategy.</p>						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 25/02/2020	Maretich, John	Indoor Sports Facility	30/06/2021	26/02/2020	
4 042		Kable, Gregory				20/50488
<p>2 Oct 2020 - Currently having discussions with another agency around mixed use facility. Two Way to be scheduled during October.</p>						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 12/05/2020	Maretich, John	Smart Parking Infrastructure Program	30/10/2020	14/05/2020	
7		Kable, Gregory				20/138521
<p>2 Oct 2020 - Program for installation is progressing and is currently on schedule. Noting importing of parts may be problematic due to COVID-19.</p>						



**ITEM 1 - 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> 22/09/2020
		<b>Printed:</b> Tuesday, 6 October 2020

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 9/06/2020	Maretich, John	Naming of Pathway, Gan Gan Road, Anna Bay	2/03/2021	10/06/2020	
1		Kable, Gregory				20/164033
101						
2 Oct 2020 - The specifications and request for quote have been prepared. These documents will be released to Contractors in September. Final designs & proposals will be presented in November.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 14/07/2020	Maretich, John	REVIEW OF THE OFF LEASH DOG AREAS AND TIMES AT ANNA BAY / BIRUBI POINT, FISHERMANS BAY AND BOAT HARBOUR	2/03/2021		
1		Kable, Gregory				20/192934
138						
2 Oct 2020 - Consultation proposed to be November with report to Council early in the new year.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 14/07/2020	Maretich, John	Tomaree Headland	31/12/2020		
2		Kable, Gregory				20/192934
139						
2 Oct 2020 - Preliminary work involves consultation with land owners and agencies. Report will be provided.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 25/08/2020	Maretich, John	Smart Parking Fees and Charges Amendment	30/11/2020		
8		Kable, Gregory				20/265439
160						
2 Oct 2020 - Public exhibition has now ended. Submissions are currently being collated and will be reported back to Council.						

**ITEM 1 - 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> 22/09/2020
		<b>Printed:</b> Tuesday, 6 October 2020

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 25/08/2020	Maretich, John	King Park Sports Complex Masterplan	31/12/2020		
7 157		Kable, Gregory				20/265439
2 Oct 2020 - Public Exhibition ended on 24 September. Submissions will be collated and a report will be prepared for Council in November.						



**ITEM NO. 2**

**FILE NO: 20/295376  
EDRMS NO: PSC2019-02300**

**ANNUAL DESIGNATED PERSONS RETURNS - PECUNIARY INTEREST 1 JULY  
2019 TO 30 JUNE 2020**

REPORT OF: WAYNE WALLIS - GENERAL MANAGER  
GROUP: GENERAL MANAGER'S OFFICE

**BACKGROUND**

The purpose of this report is to advise Council of designated persons who have submitted returns for the 2019 to 2020 period.

Mayor Ryan Palmer  
Councillor Jaimie Abbott  
Councillor Giacomo Arnott  
Councillor Christopher Doohan  
Councillor Glen Dunkley  
Councillor Ken Jordan  
Councillor Paul Le Mottee  
Councillor John Nell  
Councillor Sarah Smith  
Councillor Steve Tucker

GENERAL MANAGER'S OFFICE

General Manager  
Governance Section Manager  
Legal Services Manager  
Lawyer (2)

CORPORATE SERVICES GROUP

Commercial Investments Manager  
Corporate Analyst  
Facilities Manager  
Financial Services Section Manager  
Group Manager Corporate Services  
Holiday Parks Section Manager  
Marketing and Promotions Manager  
Organisation Support Section Manager

DEVELOPMENT SERVICES GROUP

Building and Developer Relations Coordinator  
Communication Section Manager  
Development Assessment and Compliance Section Manager  
Development Compliance Officer  
Development Planner (3)  
Economic Development and Tourism Coordinator  
Environmental Health and Compliance Coordinator  
Environmental Health Officer (3)  
Environmental Health Team Leader  
Environmental Planner  
Group Manager Development Services  
Health and Building Surveyor (4)  
Natural Resources Coordinator  
Planning and Developer Relations Coordinator  
Principle Building Surveyor  
Principal Planner  
Principal Strategic Planner  
Ranger (3)  
Ranger Team Leader and Compliance  
Senior Building Surveyor (3)  
Senior Development Planner (2)  
Senior Environmental Health Officer  
Senior Environmental Planner (2)  
Senior Ranger  
Senior Strategic Planner (2)  
Strategic Planner (4)  
Strategic Planning Coordinator  
Strategy and Environment Section Manager  
Vegetation Management Officer

FACILITIES & SERVICES GROUP MANAGER

Assets Section Manager  
Capital Works Section Manager  
Community Services Section Manager  
Group Manager Facilities & Services  
Public Domain and Services Manager

**ATTACHMENTS**

Nil.

**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

Nil.

# NOTICES OF MOTION





**NOTICE OF MOTION**

**ITEM NO. 1**

**FILE NO: 20/283121  
EDRMS NO: PSC2017-00019**

**5G SMALL CELL TECHNOLOGY ROLLOUT WITHIN PORT STEPHENS**

**COUNCILLOR: JOHN NELL**

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**THAT COUNCIL:**

- 1) Prepare a report on the 5G Small Cell 'low impact' technology rollout within Port Stephens. This report is to consider the visual impact as well as the radiation risk to human health of this new technology.
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**BACKGROUND REPORT OF: JANELLE GARDNER – ACTING STRATEGY & ENVIRONMENT SECTION MANAGER**

**BACKGROUND**

Council officers will prepare a report on the rollout of Fifth Generation (5G) Small Cell technology in Port Stephens and provide information on the statutory framework that applies to the assessment and management of potential visual and health impacts.

5G relates to mobile network technology and is the next generation of mobile phone services. 'Small Cell' refers to the physical infrastructure that facilitates 5G, being smaller than the macro cells required for third generation (3G) and fourth generation (4G) technology.

The rollout of 5G technology will facilitate faster downloads and data transfers. So far in Port Stephens, 5G has been delivered to the rural west, Raymond Terrace and Medowie. It is expected that the technology will shortly be available in other parts of the local government area.

The rollout of 5G infrastructure is being led by telecommunication companies such as Telstra, Optus and Vodafone. Unless the installation requires the construction of a telecommunications tower, 5G infrastructure is generally exempt from local and State government approval under the federal Telecommunications Act 1997(Cth). Therefore, Council has limited statutory involvement in the planning, assessment and activation of 5G technology in Port Stephens.

Notwithstanding this, there are standards to protect human health and telecommunication companies installing 5G infrastructure can be required to undertake community consultation. This information will be provided in the report to Council.

**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		

**ATTACHMENTS**

Nil.