

DRAFT

MINUTES – 23 MARCH 2021



PORT STEPHENS COUNCIL

Minutes of Ordinary meeting of the Port Stephens Council held in the Council Chambers, Raymond Terrace on – 23 March 2021, commencing at 5.33pm.

PRESENT:

Mayor R Palmer, Councillors J Abbott, G Arnott, K. Jordan, P. Le Mottee, J Nell, S Smith, S. Tucker, General Manager, Corporate Services Group Manager, Facilities and Services Group Manager, Development Services Group Manager and Governance Section Manager.

053	Councillor Ken Jordan Councillor Jaimie Abbott It was resolved that the apology from Cr Chris Doohan be received and noted, and Cr Glen Dunkley be granted leave of absence.
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On behalf of Councillors and himself, Mayor Ryan Palmer expressed his gratitude to Council staff for their efforts keeping everyone in Port Stephens safe, working 24 hours shifts and keeping the infrastructure in the best position it can be and making those areas safe during the recent weather conditions.

Mayor Palmer congratulated all emergency services, especially the SES, for their efforts during the emergency.

MINUTES ORDINARY COUNCIL - 23 MARCH 2021

054	Councillor Jaimie Abbott Councillor Sarah Smith It that the Minutes of the Ordinary Meeting of Port Stephens Council held on 9 March 2021 be confirmed.
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	There were no Declarations of Interest received.
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SUBJECT

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COUNCIL REPORTS

MINUTES ORDINARY COUNCIL - 23 MARCH 2021

MOTIONS TO CONSIDER BUSINESS FOR WHICH NOTICE HAS NOT BEEN GIVEN

ORDINARY COUNCIL MEETING - 23 MARCH 2021 MOTION

055	<p>Councillor Giacomo Arnott Councillor John Nell</p> <p>It was resolved that Council:</p> <ol style="list-style-type: none">1. Acknowledges the ongoing east coast low weather event battering the East Coast of NSW.2. Notes the impact of this weather event in the Port Stephens LGA, particularly on the Tomaree Peninsula and Raymond Terrace.3. Thanks Council staff who have been providing a 24/7 response to incidents and resident concerns, as well as working to ensure safety for locals where needed.4. Encourages any locals or businesses affected by the weather event to make use of the supports being offered as a result of the disaster declaration for the Local Government Area.5. Writes a letter of thanks to all of the emergency services operating in the LGA and working hard to respond to incidents, particularly the State Emergency Service.
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The Chairperson ruled that the business was a matter of great urgency and the motion was put and carried.

ORDINARY COUNCIL MEETING - 23 MARCH 2021 MOTION

056	<p>Councillor Giacomo Arnott Councillor Paul Le Mottee</p> <p>It was resolved that Council:</p> <ol style="list-style-type: none">1. Notes that there is a drainage problem at Vi Barnett Field in Raymond Terrace, resulting in sewerage overflows that are affecting the athletics field.2. Requests a report be prepared by Council staff for the 13 April 2021 Council meeting, outlining proposals to fix the problem as soon as possible.3. Thanks the team at Raymond Terrace Athletics Club for their ongoing support for sport in Raymond Terrace and beyond.
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The Chairperson ruled that the business was a matter of great urgency and the motion was put and carried.

**ORDINARY COUNCIL MEETING - 23 MARCH 2021
MOTION**

	<p>Councillor Giacomo Arnott</p> <p>That Council:</p> <ol style="list-style-type: none">1. Acknowledges the Federal Government's "airfare initiative", which subsidises 800,000 domestic airfares with the aim of assisting in the economic recovery of tourist areas.2. Notes that Newcastle Airport has no flights in or out being subsidised, and that Port Stephens is not listed as a destination in the initiative.3. Notes the tourism-heavy nature of industry in Port Stephens, particularly in the Tomaree Peninsula, and the negative impact that COVID has had on it.4. Assures the tourism industry in Port Stephens that Council is doing everything it can to support it.5. Writes to Meryl Swanson MP, Federal Member for Paterson, requesting her advocacy to have Newcastle Airport and Port Stephens included in the program.
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The Chairperson ruled that the business was not a matter of great urgency.

ITEM NO. 1

**FILE NO: 21/31889
EDRMS NO: 16-2020-707-1**

DEVELOPMENT APPLICATION 16-2020-707-1 FOR DEMOLITION OF SINGLE STOREY DWELLING, CONSTRUCTION OF 2 SEMI-DETACHED DWELLINGS AND A 1 INTO 2 LOT TORRENS TITLE SUBDIVISION AT 230 SOLDIERS POINT ROAD, SOLDIERS POINT (LOT 156 DP 27047)

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Support the Clause 4.6 variation request to the building height for the reasons outlined within this report.
- 2) Approve Development Application 16-2020-707-1 for the demolition of a single storey dwelling, construction of 2 semi-detached dwellings and a 1 into 2 lot Torrens title subdivision at 230 Soldiers Point Road, Soldiers Point, subject to the conditions contained in **(ATTACHMENT 3)**.

**ORDINARY COUNCIL MEETING - 23 MARCH 2021
MOTION**

057	<p>Councillor Ken Jordan Councillor Steve Tucker</p> <p>It was resolved that Council:</p> <ol style="list-style-type: none">1) Support the Clause 4.6 variation request to the building height for the reasons outlined within this report.2) Approve Development Application 16-2020-707-1 for the demolition of a single storey dwelling, construction of 2 semi-detached dwellings and a 1 into 2 lot Torrens title subdivision at 230 Soldiers Point Road, Soldiers Point, subject to the conditions contained in (ATTACHMENT 3).
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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 Jaimie Abbott, Chris Doohan, Ken Jordan, Paul Le Mottee, John Nell, Sarah Smith and Steve Tucker.

Those against the Motion: Cr Giacomo Arnott.

The motion was carried.

BACKGROUND

The purpose of this report is to present a Development Application (DA) 16-2020-707-1 for the demolition of a single storey dwelling, construction of 2 semi-detached dwellings and a 1 into 2 lot Torrens title subdivision at 230 Soldiers Point Road, Soldiers Point (Lot 156 DP 27047) to Council for determination.

The DA has been reported to Council in accordance with Council's Planning Matters to be Reported to Council Policy as the DA includes a request to vary a development standard by greater than 10%. The development standard is Clause 4.3 – Height of Buildings and the extent of the variation is 18.9%.

A locality plan is provided at **(ATTACHMENT 1)**.

Proposal

The DA proposes the demolition of the existing dwelling and the construction of 2 semi-detached dwellings. Each dwelling includes 4 bedrooms, open plan living, first and second floor balconies, a ground floor alfresco area and garage.

The DA also seeks to create 2 new allotments, each comprising of 369.78m².

Site Description and History

The site is located within the R2 Low Density Residential zone.

The site has an area of 739.56m² and consists of a vacant single dwelling, a shed at the rear of the dwelling and vehicular access from Soldiers Point Road. The topography of the site is relatively flat, with several non-native trees located on the site.

Immediately to the north is a 2 storey multi dwelling housing development. The access driveway to this development is located along the southern boundary, which separates the subject site from the neighbouring development.

To the south and west is the Salamander Haven Retirement Community, which includes a 4 storey seniors housing development.

Access to the site is via Soldiers Point Road to the east.

Key Issues

The key issues identified throughout the assessment of the DA relate to the proposed exceedance of the building height development standard and building design. A

detailed assessment of the DA is contained within the Planners Assessment Report **(ATTACHMENT 2)**.

Building Height

The DA exceeds the maximum allowable building height for the site prescribed under Clause 4.3 of the Port Stephens LEP 2013 (PSLEP). The DA proposes a maximum building height of 10.7m, which exceeds the 9m height limit; representing an 18.9% variation to the development standard.

A request to vary the building height development standard has been submitted by the applicant in accordance with Clause 4.6 of the PSLEP. That request has been reviewed and the following is noted:

- A 4 storey seniors housing development is located immediately to the south of the site and has a maximum building height of 14.37m. In comparison, the proposed development has a lesser height of 10.7m (3 storeys)
- The building height of the DA provides a desirable transition between the 4 storey seniors housing development and the 2 storey residential development located further along Soldiers Point Road
- The proposed building height of the DA is considered to be in keeping with the context and character of the area
- Despite the proposed height variation, amenity impacts relating to overshadowing, privacy, and streetscape setting are adequately addressed. There would be no significant benefit obtained from a reduced building height
- The zone objectives and objectives of Clause 4.3 are achieved despite the non-compliance
- There are sufficient environmental planning grounds to justify the variation.

It is considered that the applicant's Clause 4.6 variation request adequately demonstrates that there are sufficient environmental planning grounds to justify varying the height of buildings standard. On this basis, the building height variation is supported. A detailed assessment against Clause 4.6 is contained within the Planners Assessment Report **(ATTACHMENT 2)**.

Building Design

The design has been amended throughout the assessment of the DA to ensure the bulk and scale is in keeping with the character of the area, despite the variation to the height limit. The incorporation of articulated elements, changes in material finishes and increased setbacks have acted to effectively reduce the perceived bulk and scale of the DA.

As a result of the amendments made to the design, the DA is considered consistent with the provisions of the Port Stephens Development Control Plan 2014 (PSDCP).

Conclusion

As detailed in the Planners Assessment Report (**ATTACHMENT 2**), the application is considered to be consistent with the aims and objectives of the relevant environmental planning instruments applicable to the subject site.

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

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2018-2021
Thriving and Safe Place to Live	Support the amenity and identity of Port Stephens. Provide land use plans, tools and advice that sustainably support the community. Enhance public safety, health and liveability through use of Council's regulatory controls and services.

FINANCIAL/RESOURCE IMPLICATIONS

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

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes		
Reserve Funds	No		
Developer Contributions (S7.11)	Yes		Should Council determine to approve the DA, s.7.11 development contributions would be applicable and would be levied in accordance with conditions of consent.
External Grants	No		
Other	No		

LEGAL, POLICY AND RISK IMPLICATIONS

The DA is consistent with the relevant planning instruments including the Environmental Planning and Assessment Act 1979 (EP&A Act), Port Stephens Local Environmental Plan 2013 (PS LEP), Port Stephens Development Control Plan 2014 (DCP 2014) and associated State Environmental Planning Policies as listed above. A

detailed assessment against these environmental planning instruments is contained within the assessment report contained at **(ATTACHMENT 3)**.

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
If the DA is approved, there is a risk that the determination of the DA may be challenged by a third party in the Land and Environment Court.	Low	Accept the recommendation.	Yes
If the DA is refused, there is a risk that the determination of the DA may be challenged by the applicant in the Land and Environment Court.	Low	Accept the recommendation.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Social and economic impacts

The DA has a contemporary design and will result in additional housing to service the needs of the community.

The construction of the DA will provide employment opportunities in the locality and support the local building and development industries. This will have direct monetary input into the local economy, and the increased number of residents in the locality will provide ongoing economic input through daily living activities. There are no anticipated adverse social or economic impacts as a result of the proposed development.

Built environment

The DA will reinforce the residential nature of the locality and is characteristic of other developments in both the local and wider community. The DA addresses the street and provides logical and convenient connections to the road network and pedestrian facilities in the locality.

The proposed variation to the maximum building height is considered acceptable and there are no anticipated adverse impacts on the built environment as a result of the DA.

Environmental Impacts

The DA includes a drainage system that manages stormwater in accordance with Council's requirements. A condition of consent is proposed that requires the installation and maintenance of erosion and sedimentation controls.

It is noted that no significant vegetation is proposed to be removed and the proposal includes a landscaping plan that utilises native species.

CONSULTATION

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

Internal

Consultation was undertaken with Council's Vegetation Management Team and Spatial Services. The referral comments provided by these officers were considered as part of the Planners Assessment Report (**ATTACHMENT 2**). All internal referral officers supported the DA subject to conditions of consent (**ATTACHMENT 3**).

External

As the DA includes residential subdivision and the site is mapped as bushfire prone land, the DA was referred to the NSW Rural Fire Service (RFS). The comments provided by the RFS were considered during the detailed assessment and are discussed within the Planners Assessment Report (**ATTACHMENT 2**).

Public exhibition

The DA was advertised and notified in accordance with the requirements of the Port Stephens Council Community Participation Plan. The application was exhibited for a period of 14 days from 24 November 2020 to 8 December 2020. During that time, no public submissions were received.

OPTIONS

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

ATTACHMENTS

- 1) Locality Plan.
- 2) Planners Assessment Report.
- 3) Recommended Conditions of Consent.

COUNCILLORS ROOM

1) Development Plans.

TABLED DOCUMENTS

Nil.

ITEM 1 - ATTACHMENT 1 LOCALITY PLAN.





PLANNERS ASSESSMENT REPORT

APPLICATION DETAILS

Application Number	16-2020-707-1
Development Description	Two semi-detached dwellings and subdivision - Demolition of single storey dwelling, construction of two semi-detached dwellings and one into two lot Torrens title subdivision
Applicant	MR L A CONCATO
Land owner	WINPAN PTY LTD & LA & V HOLDINGS PTY LTD
Date of Lodgement	03/11/2020
Value of Works	\$727,177.00
Submissions	Nil

PROPERTY DETAILS

Property Address	230 Soldiers Point Road SALAMANDER BAY
Lot and DP	LOT: 156 DP: 27047
88B Restrictions on Title	Nil
Current Use	Single Dwelling - Vacant
Zoning	R2 LOW DENSITY RESIDENTIAL
Site Constraints	Bushfire Prone Land – Category 1 and 3 Acid Sulfate Soils – Class 4 Koala Habitat Planning – Supplementary
State Environmental Planning Policies	State Environmental Planning Policy (Coastal Management) 2018 State Environmental Planning Policy (Building Sustainability Index BASIX) 2008 State Environmental Planning Policy No. 55 – Remediation of Land State Environmental Planning Policy (Koala Habitat Protection) 2019

PLANNERS PRE-ASSESSMENT CHECKLIST	
OWNERS CONSENT	YES / N/A
Land owners consent	Yes
If the land owned by a corporation/company, relevant signatures have been provided (sole director, or director/director / director/company secretary).	Yes
For works occurring outside property, neighbouring consent provided.	N/A
For works occurring on common property within Strata, owner's consent from Strata body provided (common seal).	N/A
DA FORM AND AUTHORITY	
Applicant's description of proposal consistent with DA plans.	Yes
DA description correct in Authority (i.e. LEP definition).	Yes
DA lodged over all affected properties and Authority correct.	Yes
Satisfactory cost of works.	Yes
S.4.55 APPLICATION	
Check if S.4.55 to be reported to Council (original DA determined by Council)	N/A
Check whether consent is still valid (check lapse date).	N/A
NOTIFICATION	
Application notified correctly (i.e. check properties notified).	Yes
S.4.55 application only - notify previous objectors.	N/A
REFERRALS	
Check referrals are correct and identify if additional required: i.e. Integrated Development (send within 14 days cl.66(2) EPA Regs 2000	Yes
S.4.55 Application only - Integrated referral bodies notified.	N/A
Call applicant and send email acknowledgement.	Yes

ITEM 1 - ATTACHMENT 2 PLANNERS ASSESSMENT REPORT.

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PROPOSAL

The application seeks approval for demolition of existing structures, construction of two semi-detached dwellings (3 storey) and one into two lot Torrens title subdivision. Each proposed dwelling includes four bedrooms, open plan living, kitchen and dining, theatre room, rumpus, three bathrooms, laundry, first and second floor balcony, ground floor alfresco, elevator and a stacked two car garage (**Figure 1**).

The proposed height of the dwellings is 10.7m, which represents an 18.9% variation to the maximum building height limit (see **Figure 2**). Accordingly, the application includes a Clause 4.6 variation request.



a

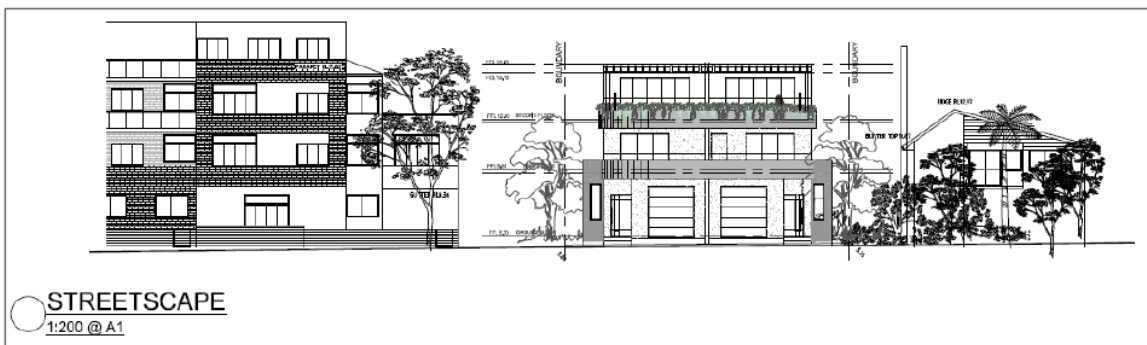


Figure 2: Proposed Front Elevation with adjoining site context

The proposed subdivision would create the following allotments (see **Figure 3** below):

- Lot 1: 369.78m²
- Lot 2: 369.78m²

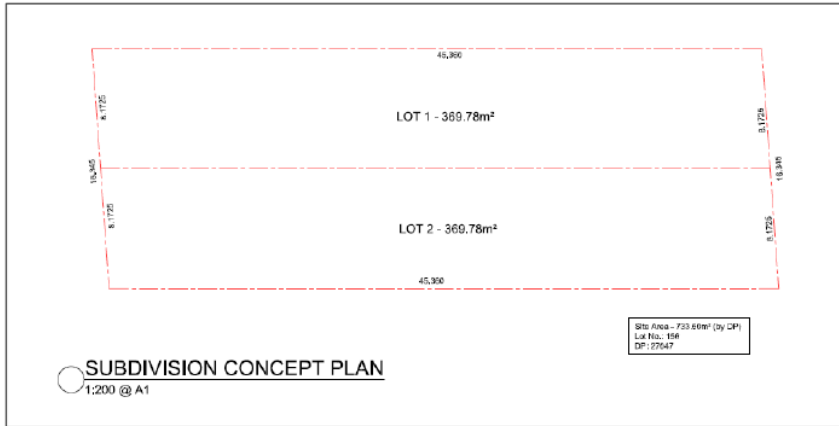


Figure 3: Proposed Subdivision Plan

SITE DESCRIPTION

The site is located at 230 Soldiers Point Road, Salamander Bay, legally identified as Lot 156 DP 27047. The site is approximately 134m from the Salamander Bay Local Centre.

The subject site is 733.50m² in area, and currently consists of a vacant single storey dwelling house, a shed at the rear of the dwelling and vehicular access from Soldiers Point Road. The topography of the site is relatively flat, with several non-native trees located on the northern boundary and one tree located at the rear of the property.

The subject site is located within an established low-density residential area. The immediate surrounds comprise a mix of single, dual occupancy and multi-dwelling housing type developments.

Immediately to the north is a two storey multi dwelling housing development. The access driveway to this development is located along the southern boundary, which separates the subject site from the neighbouring development.

To the south and west is the Salamander Haven Retirement Community, which includes a seniors housing development. The component located along the common boundary consists of a four storey building and pedestrian footpath.

Access to the site is via Soldiers Point Road to the east.



Figure 4: GIS Mapping of the Subject Site

SITE HISTORY

The subject site has historically been used for residential purposes, with a single storey residential dwelling located on the site. Council records indicate a DA was first approved on the site in 1986, (DA 7-1986-60466-1). A further, combined DA/BA for a garage was approved with conditions in 2001 (DA 16-2001-1002-1). No further development applications are listed on Council's records.

Site inspection

A site inspection was carried out on 7 December 2020. The subject site can be seen in the images below:

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Image 1: View of property from Soldiers Point Road



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Image 2: Four storey seniors housing development to the south



Image 3: Adjoining two storey multi dwelling housing development to the north



ITEM 1 - ATTACHMENT 2 PLANNERS ASSESSMENT REPORT.

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Image 4: Adjoining single storey seniors housing to the south

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.

Vegetation Management – The proposal was referred to the Vegetation Management team regarding the landscaping plans. The application was supported subject to conditions.

Spatial Services – The proposal was referred to Spatial Services regarding the numbering of the proposed semi-detached dwellings. Spatial Services designated proposed unit 1, 230A Soldiers Point Road, Salamander Bay and proposed unit 2, 230B Soldiers Point Road, Salamander Bay.

Rural Fire Services – The proposal was referred to the Rural Fire Services as it subdivision of bushfire prone land that could lawfully be used for residential purposes under the *Rural Fires Act 1997* s100b 1(a). A Bush Fire Safety Authority was issued on behalf of the Commissioner of the NSW Rural Fire Service subject to General Terms of Approval.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

S4.46 – what is integrated development

The proposed development required integrated referral under Section 100b of the *Rural Fires Act 1997* as the development includes subdivision of land that could lawfully be used for residential purposes in a bushfire prone area. Per the assessment provided under the referrals section above, the application was referred to the Rural Fire Services and subsequently supported with General Terms of Approval under Section 100b of the *Rural Fires Act 1997*.

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	The subject site is located in the Coastal Environment Area and Coastal Use Area per the Coastal Management SEPP.
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	The development is mapped as being located in the Coastal Environment Area. The development is of an appropriate type and design for the coastal location and is not expected to have any adverse impacts

ITEM 1 - ATTACHMENT 2 PLANNERS ASSESSMENT REPORT.

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	<p>ecological environment, the coastal environmental values and processes or the water quality of the marine estate, and;</p> <p><input checked="" type="checkbox"/> The development is designed and sited to avoid adverse impact on the above mentioned areas.</p>	<p>on the integrity or resilience of the biophysical, hydrological and ecological environment.</p>
14	<p><input checked="" type="checkbox"/> The development is located within the coastal use area, and</p> <p><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;</p> <p><input checked="" type="checkbox"/> The development is designed and sited to avoid adverse impact on the above mentioned areas.</p>	<p>The development is mapped as being located in the Coastal Use Area. The development is not expected to have any adverse impacts on the integrity or resilience of the biophysical, hydrological and ecological environment.</p>

STATE ENVIRONMENTAL PLANNING POLICY (BUILDING SUSTAINABILITY INDEX BASIX) 2008

Clause	Compliant	Notes (where needed or if not compliant)
6	<p><input checked="" type="checkbox"/> The proposed BASIX affected development, or buildings that become BASIX affected development (conversion of garage for example) is accompanied by a BASIX certificate</p> <p><input checked="" type="checkbox"/> Condition of consent recommended relating to BASIX</p>	<p>An approved BASIX certificate has been submitted as part of the application. Date: 24 September 2020 Certificate No: 1135298M</p>

STATE ENVIRONMENTAL PLANNING POLICY NO. 55 – REMEDIATION OF LAND

Clause	Compliant	Notes (where needed or if not compliant)
7	<p><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.</p> <p><input checked="" type="checkbox"/> The land is not within an investigation area, nor are there any records of potentially contaminating activities occurring on the site.</p>	<p>The proposed development site has no previous record of contaminating land uses, nor is it listed on the NSW list of contaminated and notified sites, published by the EPA.</p> <p>The land is not within an investigation area, nor are there any records of potentially contaminating activities occurring on the site.</p>

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	<input checked="" type="checkbox"/> The proposed use is not listed as a possible contaminating use, per Table 1 of the Guidelines.	
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STATE ENVIRONMENTAL PLANNING POLICY (KOALA HABITAT PROTECTION) 2019

Clause	Compliant	Notes (where needed or if not compliant)
3	<input checked="" type="checkbox"/> The proposed development encourages the conservation and management of naturally vegetated areas that provide habitat for koalas.	The proposed development is mapped as containing mainly cleared and supplementary koala habitat. The proposal does not include the removal of any significant vegetation or koala habitat. Therefore, there are no significant impacts on koala habitat expected.
8	<input checked="" type="checkbox"/> The proposed development is consistent with Council's Comprehensive Koala Plan of Management.	

PORT STEPHENS LOCAL ENVIRONMENTAL PLAN 2013

Clause	Compliant	Notes (where needed or if not compliant)
2.1	<input checked="" type="checkbox"/> Permissible in zone and meets zone objectives.	The site is zoned R2 Low Density Residential and the proposal is therefore permissible with consent. The development meets the zone objectives as the construction of two semi-detached dwellings and Torrens title subdivision would provide additional housing supply to meet the housing needs for the community within a low density residential environment. Despite the proposed variation to the maximum building height limit, the proposed dwellings are of an appropriate design and scale when considered within the context of the surrounding area. The area is characterised by a mix of multi-dwelling housing, large dwelling houses and dual occupancy type developments with generous balconies oriented toward the Salamander Bay. The proposal is in keeping with the existing residential character of the area and would not cause any adverse impacts to amenity.

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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 recommended.	<p>The proposal includes the demolition of an existing single storey dwelling, which requires development consent.</p> <p>As a result of visual inspections and due to the age of the dwelling it is considered there is potential for asbestos to be located within the dwelling. Accordingly, a condition of consent is recommended to manage the potential presence asbestos.</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>The development proposes a subdivision in R2 Low Density Residential zoned land and the construction of two semi-detached dwellings. Under this clause a minimum lot size of 500m² is required.</p> <p>Despite this, under clause 4.1C, there is an exemption to the minimum lot size requirement as discussed in further detail below.</p>
4.1B	<input checked="" type="checkbox"/> The proposal meets the relevant lot size with respect to the development type and zoning.	<p>The proposal includes two semi-detached dwellings in the form of a dual occupancy (prior to subdivision) in the R2 low density zone and therefore requires a minimum lot size of 500m². The site has a lot size of 739m² and therefore satisfies the requirements of this clause.</p>
4.1C	<p>The proposal includes the subdivision of land into two lots within the R1, R2, R3 or B4 zone and the size of each lot is equal to or greater than</p> <ul style="list-style-type: none"> (i) attached dwelling—200 square metres, or (ii) dwelling house—250 square metres, or (iii) semi-detached dwelling—250 square metres. 	<p>The site is zoned R2 and the proposed includes two semi-detached dwellings and two lot subdivision with resulting lots of 369.8m². Therefore, the application satisfies the requirements of clause 4.1C.</p>
4.3	<input type="checkbox"/> Proposed development is under maximum building height; OR, <input type="checkbox"/> There is no maximum building height and the development satisfies the objectives of the clause.	<p>The proposed site is mapped as having a maximum height of 9m. The proposal has a maximum building height of 10.7m and is therefore above the maximum height allowable under this clause.</p> <p>To support the non-compliance, the applicant has submitted a written request to vary a development standard which is discussed against clause 4.6 below.</p>
4.6	<input checked="" type="checkbox"/> Applicant has submitted written a written request to vary a development standard.	<p>The Clause 4.6 Assessment Report, following this table finds the proposed</p>

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16-2020-707-1

	<p><input checked="" type="checkbox"/> The proposed development is considered to be consistent with the objectives of clause 4.6 given it will achieve better outcomes for and from the development in these particular circumstances, as outlined in the Clause 4.6 Assessment Report accompanying this report.</p>	<p>development to be consistent with the objectives of clause 4.6.</p>
5.10	<p><input checked="" type="checkbox"/> There are no heritage items / archaeological sites / Aboriginal objects or places / conservation areas located on the subject site; OR</p> <p><input type="checkbox"/> The proposal includes impact on a heritage item / Archaeological site / Aboriginal object or place / conservation area;</p> <p><input type="checkbox"/> The application is supported with a heritage impact assessment;</p> <p><input type="checkbox"/> Impacts on the heritage significance of the site is considered reasonably avoided and/mitigated.</p>	
7.1	<p><input checked="" type="checkbox"/> Potential Class 4 ASS with no works more than 2m below ground level</p>	<p>The site is mapped as containing potential class 4 Acid Sulfate Soils. The development does not propose earthworks more than 2m below the ground level and is not considered likely to lower the water table. Therefore, the application accords with the requirements of this clause and no further investigation is necessary.</p>
7.2	<p><input checked="" type="checkbox"/> Earthworks required, but do not have negative impacts on surrounding properties.</p>	<p>Minimal earthworks are proposed as part of the site preparation for the development. The proposed earthworks are not expected to exceed 2m below the natural ground level. Material excavated will be stock piled on site and removed if required, outlined in the waste management plan supplied with the application. A condition of consent regarding sediment and erosion control has been recommended.</p>
7.6	<p><input checked="" type="checkbox"/> Essential services are available to the site where required.</p>	<p>All utility services are available for connection to the proposed development and have been included as part of the civil plans submitted with the application. Access to emergency services is available to the site via Soldiers Point Road.</p>
7.9	<p><input type="checkbox"/> Subject land contains mapped wetlands, but development does not</p>	<p>Development is located approximately 70m away from coastal wetlands. The</p>

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	result in adverse impacts on ecology or water flows.	development however, is not expected to have any adverse impacts on ecology or water flows.
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Clause 4.6 Assessment

Clause 4.6 provides a mechanism to vary the development standards, such as building height, prescribed within PSLEP2013. The objectives of the clause are to provide an appropriate degree of flexibility in applying certain development standards to particular development, and to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

Clause 4.6(3) – Request to vary development standards

The proposal exceeds the maximum allowable building height for the site prescribed under Clause 4.3 of the Port Stephens LEP 2013 (PSLEP). The DA has a maximum building height of 10.7m, which exceeds the 9m height limit and represents an 18.9% variation to the development standard.

A request to vary the building height development standard has been submitted by the applicant in accordance with Clause 4.6 of the PSLEP. That request has been reviewed and the following is noted:

- A 4 storey seniors housing development is located immediately to the south of the site and has a maximum building height of 14.37m. In comparison, the proposed development has a lesser height of 10.7m (3 storeys)
- The building height of the DA provides a desirable transition between the 4 storey seniors housing development and the typical 2 storey residential development located further along Soldiers Point Road
- The building height of the DA is considered to be in keeping with the context and character of the area
- Despite the proposed height variation, amenity impacts relating to overshadowing, privacy, and streetscape setting are adequately addressed. There would be no benefit from a reduced building height
- The zone objectives and objectives of Clause 4.3 are achieved despite the non-compliance
- There are sufficient environmental planning grounds to justify the contravention.

It is considered that the applicant’s Clause 4.6 variation request adequately demonstrates that there are sufficient environmental planning grounds to justify contravening the height of buildings standard and compliance with the standard is unnecessary in the circumstances of this application.

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

s4.15(1)(a)(ii) – Any Draft EPI

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

s4.15(1)(a)(iii) – Any DCP

PORT STEPHENS DEVELOPMENT CONTROL PLAN 2014		
Clause	Compliant	Notes (where needed or if not compliant)
B1	<input checked="" type="checkbox"/> Trees to be removed do not require approval as outlined in B1.1.	The application requires the removal of all vegetation on the site. The trees proposed for removal are not significant and their removal is supported.
B2	<input checked="" type="checkbox"/> Not in proximity of items of environmental significance. <input checked="" type="checkbox"/> Land does not contain koala habitat or development is consistent with the CKPoM.	
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.	Following on from discussion against clause 7.1 of the PSLEP above, the site is mapped as containing potential class 4 Acid Sulfate Soils. The development does not propose earthworks more than 2m below the ground level and is not considered likely to lower the water table. Therefore, the application accords with the requirements of this clause and no further investigation is necessary.
B4	<input 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 / infiltration proposed or condition for details added. <input type="checkbox"/> Insignificant increases to adversely impact on water quality; OR <input checked="" type="checkbox"/> Stormwater management plan proposed in accordance with this Chapter and Council's standard drawings.	The proposed development exceeds the maximum non-permeable area and so on-site detention tanks have been proposed for each dwelling. A stormwater management plan has been included to support the development which includes the provision of on-site detention tanks, rain water tanks and rainwater overflow to the street network. Water quality can be adequately addressed through the use of a first flush system, which has been recommended as a condition of consent.

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		Subject to the recommended conditions, the proposal is compliant with the objectives of this clause.
B8	<input checked="" type="checkbox"/> The development would not generate significant increases in traffic. <input checked="" 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.	<p>The development would add one additional dwelling to the locality which would cause negligible impacts to traffic</p> <p>Both proposals include enough space for 2 stacked car parking spots and is therefore compliant with this clause.</p>

CHAPTER C1 – SUBDIVISION		
Reference	Control	Assessment
Objective C1.A Requirement C1.6–C1.4	Lot Size and Dimensions <ul style="list-style-type: none"> To ensure all new lots have a size and shape appropriate to their proposed use, and to allow for the provisions of necessary services and other requirements 	The proposed lot sizes are compliant with the PSLEP 2013 under the exemption clause 4.1C. The application, which includes two semi-detached dwellings demonstrated that both lots hold sufficient size and dimensions to support a rectangular building footprint.
Objective C1.B	Street Trees <ul style="list-style-type: none"> To ensure street tree planting is of an appropriate species and undertaken in accordance with Council's guidelines 	A single street tree is provided as indicated on the landscaping plans provided with the application. The street tree is to be in accordance with Council's Tree Technical Specification.
Objective C1.C Requirement C1.7	Solar Access <ul style="list-style-type: none"> To maximise solar access for residential dwellings 	The proposed orientation of the lots provides appropriate solar access to the proposed residential dwellings.
Objectives C1.D Requirement C1.8-C1.10	Public Scale Drainage <ul style="list-style-type: none"> To ensure further guidance is provided for subdivision that is consistent with B4 Drainage and Water Quality and the infrastructure specification – design 	Each lot is capable of gravity drainage to the public system at Soldiers Point Road, as illustrated in the stormwater management plans submitted with the application.

CHAPTER C4 – Dual Occupancies and Ancillary Development		
Clause	Requirement	Assessment
C4.1	Building height to be max. 8m on land with no maximum building height specified in LEP, or merit based	The proposed height of the dwellings is 10.7m, which is greater than the 8m DCP control and 9m LEP height limit.

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	approach is specified under the PSLEP 2013 clause 4.3.	The proposed variation has been addressed against Clause 4.6 of the PSLEP elsewhere in this report and found to be acceptable.
C4.2	Minimum 4.5m front setback or the average building line from the front property line for an infill site, whichever is less, within a residential or RU5 Rural Village zone	The proposal has a varied front setback, created by the shape of the existing lot. The front setback is between 8.2m (Unit 2) 7.6 (Unit 1). The proposed setback is generally consistent with the setback of developments to the north and south.
	Side setback for ground level (finished) of min 0.9m or 5m in rural (other than RU5 Rural Village) or environmental zones	The proposal includes 1m minimum side setbacks for the ground level of both dwellings and therefore complies with this control.
	Side setback for upper storey of min 2m or 5m in rural (other than RU5 Rural Village) or environmental zones	The proposal includes a minimum upper storey side setback of 2.2m for both dwellings and therefore complies with this control.
	Rear setback for ground level (finished) of min 2m or 5m in rural (other than RU5 Rural Village) or environmental zones	The proposal includes a 7.2m minimum rear setback for ground level of Unit 2 and 8.4m for Unit 1 and therefore complies with this control.
	Rear setback for upper storey of 6m or 5m in rural (other than RU5 Rural Village) or environmental zones	The proposal includes a 13.1m rear upper storey setback for Unit 2 and 14.3 for Unit 1 and therefore complies with this control.
C4.3	Maximum 1.5m encroachment of front setback for architectural features, such as an entry porch or deck.	The proposed front balcony encroaches 1m on the proposed front setback.
C4.6	Garage to be setback min 1m behind building line or setback	The proposed garages are located in front of the building line. The garages are not set behind the building line, however, the variation is considered acceptable in this instance as the visual impacts of the garages are softened by the balconies of each unit which are situated forward of the garage. Furthermore, the proposed variation is in keeping with established building patterns within the locality, which similarly include garages forward of the building line.
C4.12-13	At least one habitable room to front the street boundary to address the street and/ or adjoining public spaces.	Both proposed dwellings front the street, with two levels of balcony located along the frontage to provide passive surveillance and therefore complies with this control.

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	Development on corner lots are to address both street frontages by having habitable rooms facing both streets.	
C4.14	Development to be sympathetic to the street character and built-form with regard to bulk, scale, form, materials and roof configuration.	The proposed dwellings are of contemporary design and is in keeping with the character of the existing streetscape. Both dwellings incorporate the use of articulated elements, and a material finish that effectively reduce the perceived bulk and scale of the development.
C4.16 – C4.18	A balcony to be provided to two storey developments that front the street, at least 1.5m deep and across at least 25% of the dwelling frontage. Privacy screens are required for balconies and patios, which result in unreasonable privacy impacts to properties. Privacy screens, high-light windows or opaque glass is to be used for windows in habitable rooms that are not bedrooms which overlook adjoining property	Balconies have been proposed for the upper storeys of both dwellings and are located at the frontage of the development. All balconies proposed are greater than 1.5m deep and across greater than 25% of the dwelling frontage. The orientation of balconies ensure there are no privacy concerns for neighbouring properties. High-light windows have been utilised where appropriate to mitigate overlooking of adjoining properties from the upper levels. A potential privacy concern remains as a result of the windows located on the third storey theatre which are oriented to the properties at the rear. Accordingly, a condition of consent has been recommended to replace the windows for this room with high-light windows.
C4.19- 20	Min 50m ² of ground floor POS with 35m ² usable. POS to include min dimensions of 4m x 4m, direct access from internal living areas, not located within front setback and has northerly aspect	Adequate private open space has been provided in the plans. Minimum dimensions in excess of 4x4m are achieved and the area is located adjacent to internal living areas, is not within the front setback and has a northerly aspect.
C4.21	Min 2hrs of sunlight to principle POS between 9am to 3pm mid-winter	Solar access requirements for POS are achieved as illustrated on the shadow elevations accompanying the application.
C4.22	Min 30% of POS of adjoining dwelling must receive at least 3hrs sunlight between 9am to 3pm mid-winter	Solar access requirements for POS of the adjoining development to the south are achieved as illustrated on the shadow elevations accompanying the application.

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C4.23	Min driveway width of 3.6m	The application proposes a minimum driveway width of 5.5m in accordance with the requirements of this control.
C4.24	Max 6m garage door width, or 50% of building frontage, whichever is the lesser for residential lots	The proposed garage door width does not exceed 6m for either dwelling.
C4.27	Landscaping coverage is provided as follows for dual occupancy development: <ul style="list-style-type: none"> • 20% of the site area; or • 40% of the site area where development is located within 50m of: <ul style="list-style-type: none"> - a SEPP 14 Wetland; or - koala habitat; or - species or communities listed within the TSC Act; or - a public reserve; and • 30% shading over uncovered car park areas 	The application Includes 20% site landscaping coverage, in accordance with the requirements of this clause. The proposed development was referred to Council's Vegetation Management Officer who has confirmed that the DCP requirements under C4.41 have been met. A condition of consent has been attached requiring the development to be carried out and completed in accordance with the approved landscaping plan.
C4.28	The landscaping area must be at least 1.5m wide and 3m long.	The landscaping areas in the front of each dwelling comply with the requirements of this clause.
C4.29	Landscaping qualities are to be in accordance with the following: <ul style="list-style-type: none"> • Landscape works incorporate adequate screening from the street and adjacent neighbours. • Corner lots provide landscaping to both street frontages. • Front boundary structures (e.g. fencing and retaining walls) provide visual relief with the use of landscape planting. • Street trees are to be within the footpath, verge or in the parking lane and be consistent with the Port Stephens Council tree technical specification. • Landscape planting must provide adequate shading to the eastern and western aspects of private open space. • Structural soil and/or structural cells should be used to reduce competition between specimen trees and infrastructure <p>Note: The canopy coverage of specimen trees can be used to calculate deep soil landscaping.</p>	The proposed development was referred to Council's Vegetation Management Officer who has confirmed that the DCP requirements under C4.41 have been met. A condition of consent has been attached requiring the development to be carried out and completed in accordance with the approved landscaping plan.

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C4.31	Screened waste storage and recycling area to be provided behind the building line.	Suitable waste storage and recycling areas are available for each of the dwellings in a suitable location behind the building line.
C4.32	Clothes drying area to be provided for each dwelling behind the building line with a northerly aspect.	Clothes drying areas have been identified on the plans and there is adequate space behind the building line to provide clothes drying areas for each of the dwellings.

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

	Notes (where needed)
<input checked="" type="checkbox"/> Social and Economic Environment: There would be beneficial impacts as a result of the development.	The proposed development represents modern semi-detached dwellings and will result in additional housing to service the needs of the community. The proposed dwellings will allow for the use of existing services and facilities in the locality without requiring upgrades that burden the public. The construction of the proposed development will provide employment opportunities in the locality and support the local building and development industries. This will have direct monetary input to the local economy, and the increased number of residents in the locality will provide ongoing economic input through daily living activities. There are no anticipated adverse social or economic impacts as a result of the proposed development.

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<p><input checked="" type="checkbox"/> Built Environment: The proposed development would not cause harm to the existing character.</p>	<p>The proposed development will reinforce the residential nature of the locality and is characteristic of other developments in both the local and wider community. The application includes relevant construction methods and services such as an on-site stormwater management system that will prevent adverse impacts on adjoining properties. The proposal addresses the street and provides logical and convenient connections to the road network and pedestrian facilities in the locality.</p> <p>The proposed variation to the maximum height of building standard is considered acceptable and there are no anticipated adverse impacts on the built environment as a result of the proposed development.</p>
<p><input checked="" type="checkbox"/> Natural Environment: There are no adverse impacts expected as a result of the proposed development and appropriate conditions have been added.</p>	<p>The proposed development includes a stormwater water system that manages stormwater in accordance with Councils quantity and quality requirements. In addition, a condition of consent is proposed that requires the installation and maintenance of erosion and sedimentation controls. It is noted that no significant vegetation is proposed to be removed and that the proposal includes a landscaping plan that utilises native species.</p>

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

The application includes a design which responds to the site dimensions and characteristics. There are no site constraints which would prohibit the proposed development. The site is considered suitable for the proposed development.

s4.15(1)(d) – Any submissions

The application was exhibited for 14 days from 24 November 2020 to 8 December 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 provides additional accommodation in the locality to service the needs of the community, with no identifiable significant adverse impacts on surrounding properties or the amenity of the locality. The proposed development reinforces the residential nature of the land and is in keeping with the character of surrounding developments. The proposed development is in the public interest.

The proposed variation to the maximum height of building standard has been assessed against Clause 4.6 of the PSLEP and found to be in the public interest.

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s7.11 – Contribution towards provision or improvement of amenities or services (developer contributions)

A monetary contribution is to be paid to the Council for the provision of 1 lot/dwelling pursuant to Section 7.11 of the *Environmental Planning and Assessment Act 1979* and the Port Stephens Local Infrastructure Contributions Plan 2020. Payment of the contributions must be paid prior to the issue of a Construction Certificate or Subdivision Certificate, whichever occurs first.

DETERMINATION

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



**Attachment 1 - Clause 4.6
Assessment Report**

Clause 4.6 – Exceptions to Development Standards

CLAUSE OBJECTIVES AND EXCLUSIONS

Clause 4.6(1) – Clause Objectives

Clause 4.6 provides a mechanism to vary the development standards, such as building height, prescribed within PSLEP2013. The objectives of the clause are to provide an appropriate degree of flexibility in applying certain development standards to particular development, and to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

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

The development standard(s) is not excluded from the operation of clause 4.6 (Refer clauses 4.6(2); 4.6(6); and 4.6(8) of PSLEP).

PROPOSED REQUEST

Clause 4.6(3) – Request to vary development standards

The development application includes a written request to vary development standard(s) in the *Port Stephens Local Environmental Plan 2013* (PSLEP).

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

Development Standard	Proposed Variation	Extent of Variation (%)
Clause 4.3 of the PSLEP	1.7m	18.9%

As the proposed variation is greater than 10%, the development application will be determined by the elected council

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

Clause 4.6(3)(a) requires the application to justify the contravention of the development standard(s) by demonstrating that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

The Clause 4.6 request makes reference to *Wehbe v Pittwater Council* (2007) LEC 827 (*Wehbe*), which identified ways in which a request to vary a development standard may be determined to be well founded. With reference to the *Wehbe* case, the clause 4.6 request notes that the objectives of the standard are achieved notwithstanding non-compliance with the standard. The key reasons provided by the applicant have been summarised below:

- The proposed built form will reflect the emerging contemporary character of the locality and positively upgrade the existing streetscape;



- The proposed development meets the underlying intent of the controls and is a compatible form of development that does not result in unreasonable environmental amenity impacts;
- The increase in height resulting from non-compliance will not result in any undue impacts on adjoining properties particularly with respect to overshadowing, loss of privacy or loss of views;
- Strict compliance with the standards would not achieve a greater planning or urban design outcome;
- The proposed development satisfies the objectives of the R2 Low Density Residential zone and the objectives of Clause 4.3 Height of Buildings; and
- The proposed development has been architecturally designed with the use of varying materials and landscaping to create interest.

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

Clause 4.6(3)(b) requires an application to justify the contravention of the development standard(s) by demonstrating that there are sufficient environmental planning grounds to justify contravening the development standard.

The applicant notes that sufficient planning grounds are met in that the proposal would be consistent with the objectives of the R2 Low Density Residential zone through the provision of additional low density housing in the area, responding to the needs of the community. The applicant asserts that their assessment of the development finds that the resultant environmental impacts of the proposal are satisfactory. The applicant also submits that, if made to strictly comply with Clause 4.3, there would be no additional benefit to the streetscape, nor the amenity currently afforded.

ASSESSMENT

Clause 4.6(4) – Assessment of request to vary development standards

Clause 4.6(4)(a)(i) - Adequacy of the applicant's request

Clause 4.6(4)(a)(i) requires the consent authority to be satisfied the Clause 4.6 Application has adequately addressed the matters set out in clause 4.6(3) of the PSLEP listed above.

As stated in the preceding section, in *Wehbe* the Land and Environment Court identified five ways in which a request to vary a development standard may be determined to be well founded. These reasons include:

1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard,



2. The underlying objective or purpose of the development standard is not relevant to the development,
3. The objective or purpose of the development standard would be defeated or thwarted if compliance was required,
4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard, and
5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable or unnecessary as applied to the land.

The applicant's clause 4.6 variation request asserts that compliance with clause 4.3 (building heights) is unreasonable or unnecessary having regard to the first test set down in *Wehbe*, being that the objectives of the standard are achieved notwithstanding non-compliance with the standard.

Having regard to the first test set down in *Wehbe* it is noted that the objectives of clause 4.3 is to ensure that that the height of buildings is appropriate for the context and character of the area. Clause 4.3 also seeks to ensure that building heights reflect the hierarchy of centres and land use structure.

With regard to the context and character of the area, a four storey seniors housing development, known as Salamander Haven is located immediately to the south and west of the site which includes a maximum building height of 14.37m. In comparison, the proposed development has a lesser height of 10.7m (three storeys) , which provides for a desirable transition between the four storey seniors housing development and the typical two storey residential development located further along Soldiers Point Road. Taking this into consideration, the proposed height of building is considered to be in keeping with the context and character of the area.

As described above, the proposal is of a lesser height than the adjacent Salamander Haven development, which ensures that the development is not inconsistent with the hierarchy of the area already established by the Salamander Haven development. Moreover, in the absence of the Salamander Haven development, the relative extent of the variation (18.9%) would not adversely impact the established/or future desired hierarchy of centres within the Local Government Area. The three storey nature of the proposal, is not uncharacteristic of the land-use structure for the site, which is zoned R2 Low Density Residential.

On this basis, the objectives of clause 4.3 are achieved, notwithstanding the compliance and therefore compliance with the standard is unnecessary in this instance.

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



- The underlying purpose and objective of the height control are relevant to the development,
- The objective or purpose of the development standard would not be defeated or thwarted if compliance was required,
- The development standard has not been abandoned or destroyed. Despite a large variation to the development standard (59.7%) being approved on the adjacent site, there is not sufficient evidence of a pattern of abandonment such that the development standard can no longer be said to represent the existing and/or desired character of the locality would mean that the development standard had been “virtually abandoned or destroyed”, as outlined in *Abrams v The Council of the City of Sydney (No 2) (2018) NSWLEC 85 (Abrams)*
- The zoning of the subject site is suitable.

Sufficient environmental planning grounds are noted to have been achieved on the basis that despite the proposed height variation, amenity impacts relating to overshadowing, privacy, and streetscape setting are adequately addressed, demonstrating no additional benefit would be derived from a reduced building height. Moreover, resultant environmental impacts of the proposal have been assessed as outlined elsewhere in this report and are satisfactory.

The proposed height variation also provides for a more sympathetic transition of building height between the taller Salamander Haven development to the south and the typical two storey residential developments located further along Soldiers Point Road to the north, resulting in an improved urban design outcome.

Clause 4.6(4)(a)(ii) - Public interest – consistency with objectives of the standard and objectives of the zone

Clause 4.6(4)(a)(ii) requires the consent authority to be satisfied 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.

As outlined above, notwithstanding the non-compliance with the standard, the objectives of clause 4.3 are achieved noting that the proposal is in keeping with the context and character of the area and is reflective of the hierarchy of centres.

Furthermore, the proposal is consistent with the zone objectives, achieved through the provision of housing supply to meet the needs of the community whilst causing no undue amenity impacts as a result of the variation.

The proposed variation, if replicated in future approvals would cause no undue cumulative impacts by way of undermining the objective of the development standard.



PORT STEPHENS
COUNCIL

Attachment 1 - Clause 4.6 Assessment Report

Clause 4.6(4)(b) - Concurrence of the Secretary

In accordance with the assumed concurrence, notified in [Planning Circular PS 08-003](#), the concurrence of the Secretary has been obtained (Clause 4.6(4)(b) of PSLEP).

CONCLUSION

The proposed development is considered to be consistent with the objectives of clause 4.6 as in these particular circumstances the objectives of the development standard are achieved notwithstanding non-compliance and the proposal is considered to be appropriate in the context of the site.



Recommended Conditions of Consent – DA 16-2020-707-1 – 230 Soldiers Point Road, Soldiers Point

1.0 - General Conditions of Consent

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

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

Plan reference/ drawing No.	Name of plan	Prepared by	Date
Project No. 28757, Issue B, Drawing 1 of 6	Demolition, Sedimentation and Waste Management Plan	Idraft Architects JJ/EK	14.10.2020
Project No. 28757, Issue C, Drawing 2 of 6	Site Plan and Streetscape	Idraft Architects JJ/EK	28.01.2021
Project No. 28757, Issue C, Drawing 3 of 6	Floor Plans and Window Schedule	Idraft Architects JJ/EK	28.01.2021
Project No. 28757, Issue C, Drawing 4 of 6	Elevations	Idraft Architects JJ/EK	28.01.2021
Project No. 28757, Issue A, Drawing 5 of 6	Roof Plan, Subdivision Plan, Section and BASIX Note	Idraft Architects JJ/EK	25.08.2020
Issue DA	Colour and Material Scheme	Idraft Architects JJ/EK	25.08.2020
Job No. SS20- 4507, Drawing No. 101, Issue C	Landscape Plan Ground and Level 2	Site Image	25.09.2020
Job No. SS20- 4507, Drawing No. 501, Issue B	Plant Schedule	Site Image	21.09.2020
Job No. 10121, Revision A, Sheet 1	Stormwater Drainage Plan	Mearns Consulting DN	25.09.2020

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

PORT STEPHENS COUNCIL

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ITEM 1 - ATTACHMENT 3 RECOMMENDED CONDITIONS OF CONSENT.



- (2) **External Agency Approvals** - The requirements from the following agencies must be complied with prior to, during, and at the completion of the development.

The Requirements are:

1. RFS General Terms of Approval – Reference no. DA20201204004549-Original-1

A copy of the Requirements is attached to this determination notice.

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

ITEM 1 - ATTACHMENT 3 RECOMMENDED CONDITIONS OF CONSENT.



adjoining land, the person having the benefit of the consent must, at the person's own expense:

- a) protect and support the adjoining premises from possible damage from the excavation; and
- b) where necessary, underpin the adjoining premises to prevent any such damage.

This condition does not apply if the person having the benefit of the consent owns the adjoining land or the owner of the adjoining land has given consent in writing that condition not applying, and a copy of that written consent is provided to the PCA prior to the excavation commencing.

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

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

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

2.0 – Prior to Issue of a Construction Certificate

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

- (1) **Construction Certificate** - The following information must be provided to the Certifying Authority with the Construction Certificate application:
 - a) W32 and W33 must be modified to have a minimum sill height of 1.6m above finished floor level.
- (2) **Driveway gradients and design** - For all driveways that relate to development for the purposes of a dwelling house, the driveway gradient and design must comply with AS 2890.1 'Off street Car Parking' and:
 - a) the driveway must be at least 1m from any street tree, stormwater pit or service infrastructure; and
 - b) a Works on Public Infrastructure (Driveway) approval must be obtained prior to the commencement of any works.

ITEM 1 - ATTACHMENT 3 RECOMMENDED CONDITIONS OF CONSENT.



Details demonstrating compliance must be provided to the Certifying Authority.

- (3) **Retaining walls** – All retaining walls must be designed and certified by a suitably qualified Structural Engineer in accordance with Council's Infrastructure Specifications.

Details demonstrating compliance must be provided to the Certifying Authority.

- (4) **Soil, erosion, sediment and water management** – An Erosion and Sediment Control Plan (ESCP) must be prepared in accordance with Council's Infrastructure Specifications. Details demonstrating compliance must be provided to the Certifying Authority.

- (5) **Bush fire safety – Dwellings** – The site is located within a bushfire prone area and must comply with NSW Rural Fire Service document "Planning for Bushfire Protection 2019." In this regard the following is required:

- a) Proposed dwelling must comply with the construction requirements of Planning for Bushfire Protection on each elevation for a Bushfire Attack Level (BAL) of 12.5.
- b) The entire property/the development site must be managed as an 'Inner Protection Area' as outlined within PBP2019.
- c) Compliance with Appendix 3 of PBP2019.
- d) Compliance with the specific requirements of Chapter 7 of PBP2019.

Details demonstrating compliance must be prepared by a qualified Bushfire Consultant provided to the Certifying Authority.

- (6) **Section 7.11 Development contributions** – A monetary contribution is to be paid to Council for the provision of one additional lot/dwelling, pursuant to Section 7.11 of the *Environmental Planning & Assessment Act 1979* and the Port Stephens Local Infrastructure Contributions Plan 2020 towards the provision of the following public facilities:

Facility	Per Lot/Dwelling	Total \$
Civic Administration – Plan Management	\$596	\$596
Civic Administration – Works Depot	\$1,556	\$1,556
Town Centre Upgrades	\$4,190	\$4,190
Public Open Space, Parks & Reserves	\$1,541	\$1,541
Sports & Leisure Facilities	\$2,329	\$2,329
Cultural & Community Facilities	\$837	\$837
Road Works	\$2,320	\$2,320
Shared Paths	\$3,365	\$3,365
Bus Facilities	\$11	\$11
Fire & Emergency Services	\$230	\$230
Flood & Drainage	\$1,766	\$1,766
Total		\$18,741

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

- a) Subdivision and building work - prior to the issue of the Construction Certificate, or Subdivision Certificate, whichever occurs first.

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

- (7) **Long service levy** – In accordance with Section 34 of the *Building and Construction Industry Long Service Payments Act 1986*, the applicant must pay a long service levy at the prescribed rate to either the Long Service Payments Corporation or Council for any works that cost \$25,000 or more.
- (8) **Hunter Water Corporation approval** - A Section 49 Application under the *Hunter Water Act 1991* must be lodged with Hunter Water Corporation (HWC) and details of the Notice of Compliance from HWC must be provided to the Certifying Authority.

3.0 - Prior to Issue of a Subdivision Works Certificate

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

- (1) **Driveway gradients and design** - For all driveways that relate to development for the purposes of a dwelling house, the driveway gradient and design must comply with AS 2890.1 'Off street Car Parking' and:
 - a) the driveway must be at least 1m from any street tree, stormwater pit or service infrastructure; and
 - b) a Works on Public Infrastructure (Driveway) approval must be obtained prior to the commencement of any works.Details demonstrating compliance must be provided to the Certifying Authority.

- (2) **Retaining walls** – All retaining walls must be designed and certified by a suitably qualified Structural Engineer in accordance with Council's Infrastructure Specifications. Details demonstrating compliance must be provided to the Certifying Authority.

- (3) **Hunter Water Corporation approval** - A Section 49 Application under the *Hunter Water Act 1991* must be lodged with Hunter Water Corporation (HWC) and details of the Notice of Compliance from HWC must be provided to the Certifying Authority.



4.0 - Prior to Commencement of Works

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

- (1) **Notice of Principal Certifying Authority appointment** – Notice must be given to Council at least two days prior to subdivision and/or building works commencing in accordance with Clause 103 of the *Environmental Planning & Assessment Regulation 2000*. The notice must include:
 - a) a description of the work to be carried out;
 - b) the address of the land on which the work is to be carried out;
 - c) the Registered number and date of issue of the relevant development consent;
 - d) the name and address of the Principal Certifying Authority (PCA), and of the person by whom the PCA was appointed;
 - e) if the PCA is an accredited certifier, their accreditation number, and a statement signed by the accredited certifier consenting to being appointed as PCA; and
 - f) a telephone number on which the PCA may be contacted for business purposes.

- (2) **Notice commencement of work** – Notice must be given to Council at least two days prior to subdivision and/or building works commencing in accordance with Clause 104 of the *Environmental Planning & Assessment Regulation 2000*. The notice must include:
 - a) the name and address of the person by whom the notice is being given;
 - b) a description of the work to be carried out;
 - c) the address of the land on which the work is to be carried out;
 - d) the Registered number and date of issue of the relevant development consent and construction certificate;
 - e) a statement signed by or on behalf of the Principal Certifying Authority to the effect that all conditions of the consent that are required to be satisfied prior to the work commencing have been satisfied; and
 - f) the date on which the work is intended to commence.

- (3) **Sign of PCA and contact details** – A sign must be erected in a prominent position on the site stating the following:
 - a) that unauthorised entry to the work site is prohibited;
 - b) the name of the principal contractor (or person in charge of the site) and a telephone number on which that person can be contacted at any time for business purposes and outside working hours;
 - c) the name, address and telephone number of the Principal Certifying Authority.

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

ITEM 1 - ATTACHMENT 3 RECOMMENDED CONDITIONS OF CONSENT.



- (4) **Construction Certificate Required** – In accordance with the provisions of Section 6.7 of the *Environmental Planning & Assessment Act 1979 (EP&A Act 1979)*, construction or subdivision works approved by this consent must not commence until the following has been satisfied:
- a) a Construction Certificate has been issued by a Consent Authority;
 - b) a Principal Certifying Authority (PCA) has been appointed by the person having benefit of the development consent in accordance with Section 6.5 of the *EP&A Act 1979*; and
 - c) the PCA is notified in writing of the name and contractor licence number of the owner/builder intending to carry out the approved works.
- (5) **Site is to be secured** – The site must be secured and fenced to the satisfaction of the Principal Certifying Authority. All hoarding, fencing or awnings (associated with securing the site during construction) is to be removed upon the completion of works.
- (6) **Demolition work** – All demolition works are to be carried out in accordance with Australian Standard AS 2601 'The demolition of Structures'. All waste materials are to be either recycled or disposed of to a licensed waste facility.
- Any asbestos containing material encountered during demolition or works, is to be removed in accordance with the requirements of Safe Work NSW and disposed of to an appropriately licenced waste facility.
- Evidence is to be provided to the Certifying Authority demonstrating that asbestos waste has been disposed of in accordance with this condition.
- (7) **Removal of Waste Materials** - Where there is a need to remove any identified materials from the site that contain fill/rubbish/asbestos, the waste material must be assessed and classified in accordance with the NSW Environmental Protection Agency Waste Classification Guidelines (2008).
- Once assessed, the materials must be disposed to a licensed waste facility suitable for that particular classification of waste. Copies of tipping dockets must be retained and supplied to Council upon request.
- (8) **Soil erosion and sediment control** – Soil erosion and sediment controls must be implemented prior to works commencing on the site in accordance with 'Managing Urban Stormwater – Soils and Construction ('the blue book') and any Sediment and Erosion plans approved with this Development Consent.
- Soil erosion and sediment control measures must be maintained during construction works and must only be removed upon completion of the project when all landscaping and disturbed surfaces have been stabilised (for example, with site turfing, paving or re-vegetation).

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ITEM 1 - ATTACHMENT 3 RECOMMENDED CONDITIONS OF CONSENT.



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

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

5.0 - During Works

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

- (1) **Construction hours** – All work (including delivery of materials) must be restricted to the hours of 7.00am to 5.00pm Monday to Saturday inclusive. Work is not to be carried out on Sundays or Public Holidays.

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

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

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

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

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

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

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

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

ITEM 1 - ATTACHMENT 3 RECOMMENDED CONDITIONS OF CONSENT.



(5) **Building height** – A survey report prepared by a Registered Surveyor confirming that the building height complies with the approved plans or as specified by the development consent, must be provided to the Principal Certifying Authority prior to the development proceeding beyond frame stage.

(6) **Stormwater disposal** – Following the installation of any roof, collected stormwater runoff from the structure must be:

a) Diverted through a first flush system before being connected to an existing stormwater easement/system/street.

(7) **Placement of fill** - Filling must not be placed in such a manner that natural drainage from adjoining land will be obstructed or in such a manner that surface water will be diverted.

Further, any alterations to the natural surface contours must not impede or divert natural surface water runoff so as to cause a nuisance to adjoining property owners.

(8) **Fill Material** - The only fill material that may be received at the development site is:

a) Virgin excavated natural material (VENM) within the meaning of the *Protection of the Environment Operations Act (POEO Act 1997)*;

or

b) Excavated natural material (ENM) within the meaning of the *POEO Act 1997*;

or

c) Any other waste-derived material the subject of a resource recovery exemption under s.91 of the *Protection of the Environment Operations (Waste) Regulation 2014* that is permitted to be used as fill material.

Any waste-derived fill material the subject of a resource recovery exemption received at the development site must be accompanied by documentation as to the material's compliance with the exemption conditions and must be provided to the Principal Certifying Authority.

Any fill, soil, mulch and plant brought onto the site must be certified as free of weeds and weed seeds.

(9) **Offensive noise, dust, odour and vibration** – All work must not give rise to offensive noise, dust, odour or vibration as defined in the *Protection of the Environment Operations Act 1997* when measured at the nearest property boundary.

6.0 - Prior to Issue of a Subdivision Certificate

ITEM 1 - ATTACHMENT 3 RECOMMENDED CONDITIONS OF CONSENT.



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

- (1) **Show easements / restrictions on the Plan of Subdivision** - The developer must acknowledge all existing easements and/or restrictions on the use of the land on the final plan of subdivision.
- (2) **Subdivision Certificate** – The issue of a Subdivision Certificate is not to occur until all conditions of this development consent have been satisfactorily addressed and all engineering works are complete.
Works As Executed Plans must be prepared and provided to the Principal Certifying Authority in accordance with Council's Infrastructure Specifications and approved plans.
- (3) **Dual Occupancy and Subdivision** – Prior to the issue of the subdivision certificate the following is to occur:
 - a) The dwellings shall have a satisfactory frame inspection undertaken; and
 - b) A report/plan shall be provided from a Registered Surveyor showing that:
 - i) The setback of the buildings from the adjacent and proposed boundaries meets the requirements of the BCA; and

All service lines are wholly contained within their respective lots, or an appropriate Easement or Easements have been shown on the plan of survey and suitably described in the 88B instrument.

7.0 - Prior to Issue of an Occupation Certificate

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

- (1) **Occupation Certificate required** - An Occupation Certificate must be obtained prior to any use or occupation of the development.
The Principal Certifying Authority must be satisfied that the development has been constructed in accordance with approved plans, specifications and conditions of this consent.
- (2) **Survey Certificate** – A Registered Surveyor must prepare a Survey Certificate to certify that the location of the building in relation to the allotment boundaries complies with the approved plans or as specified by this consent. The Survey Certificate must be provided to the satisfaction of the Principal Certifying Authority.

ITEM 1 - ATTACHMENT 3 RECOMMENDED CONDITIONS OF CONSENT.



- (3) **Footpath crossing construction** – A footpath crossing and driveway must be constructed in accordance with this consent and the approved Construction Certificate prior to use or occupation of the development.

Note: A Works on Public Infrastructure (Driveway) approval must be obtained prior to the commencement of such works.

- (4) **Services** – Evidence is to be provided to Council demonstrating that the following reticulated services are available to each lot:

- a) Electricity;
- b) Water;
- c) Sewer; and
- d) Gas (where available).

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

- (5) **Tree Planting** - The street tree plantings identified on the approved landscape plan must be planted at no cost to Council.

Details demonstrating compliance must be provided to the Certifying Authority

8.0 – Ongoing Use

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

- (1) **Residential air conditioning units** – The operation of air conditioning units must operate as follows:

- a) be inaudible in a habitable room during the hours of 10pm – 7am on weekdays and 10pm to 8am on weekends and public holidays;
- b) emit a sound pressure level when measured at the boundary of any neighbouring residential property, at a time other than those specified in (a) above, which exceeds the background (LA90, 15 minutes) by more than 5dB(A). The source noise level must be measured as a LAeq 15 minute; and
- c) not discharge any condensate or moisture onto the ground surface of the premises or into stormwater drainage system in contravention of the requirements of the *Protection of the Environment Operations Act 1997*.

Advice Note(s):

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ITEM 1 - ATTACHMENT 3 RECOMMENDED CONDITIONS OF CONSENT.



- (1) **'Dial Before you Dig'** – Before any excavation work starts, contractors and others should phone the “Dial Before You Dig” service to access plans/information for underground pipes and cables.

- (2) **Dividing fences** – The erection of dividing fences under this consent does not affect the provisions of the *Dividing Fences Act 1991*. Under this Act, all relevant parties must be in agreement prior to the erection of any approved dividing fence/s under this consent.
 Council has no regulatory authority in this area and does not adjudicate civil disputes relating to the provision of, or payment for, the erection of dividing fences. If there is a neighbour dispute about the boundary fence and you are seeking mediation, you may contact the Community Justice Centre, or if legal advice or action is required, you may contact the Chamber Magistrate.

- (3) **Aboriginal archaeological deposit** – In the event of any aboriginal artefact, object or structure being unearthed, all work must cease immediately in the affected area, and the Biodiversity Conservation Division (BCD) shall be informed of the discovery. Work must not recommence until the material has been inspected and permission has been given by BCD to proceed.

- (4) **Works near/adjoining electricity network assets** – There are above ground electricity network assets adjacent to the proposed development]. Any works undertaken adjacent to Ausgrid assets must be undertaken with care in accordance with Ausgrid Network Standard Document NS 156 – Work Near or Around Underground Cables

- (5) **Responsibility for damage for tree removal/pruning** – The applicant is responsible for any damage caused to existing public utilities, footpaths or public roads during the cutting down, grinding, removal and disposal of the timber and roots. Care must also be taken by the applicant and the applicant's agents to prevent any damage to adjoining properties. The applicant or the applicants' agent may be liable to pay compensation to any adjoining owner if, due to tree works, damage is caused to such adjoining property.

- (6) **Street Numbering** - Prior to occupying the development or Subdivision Certificate Release, whichever occurs first, Council's Spatial Services Team should be contacted via email at: addressing@portstephens.nsw.gov.au 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.

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**ORDINARY COUNCIL MEETING - 23 MARCH 2021
MOTION**

058	Councillor Giacomo Arnott Councillor Ken Jordan It was resolved that Items 2 and 3 be determined by multiple vote.
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The motion was carried.

ITEM NO. 2

**FILE NO: 21/10681
EDRMS NO: PSC2013-00406**

POLICY REVIEW - ASBESTOS MANAGEMENT POLICY

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Endorse the revised Asbestos Management policy shown at **(ATTACHMENT 1)**.
 - 2) Place the revised Asbestos Management policy, as amended on public exhibition for a period of 28 days and should no submissions be received, the policy be adopted, without a further report to Council.
 - 3) Revoke the Asbestos Management policy dated 14 May 2019, should no submissions be received.
-

**ORDINARY COUNCIL MEETING - 23 MARCH 2021
MOTION**

059	Councillor Giacomo Arnott Councillor Ken Jordan It was resolved that Council: 1) Endorse the revised Asbestos Management policy shown at (ATTACHMENT 1) . 2) Place the revised Asbestos Management policy, as amended on public exhibition for a period of 28 days and should no submissions be received, the policy be adopted, without a further report to Council.
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MINUTES ORDINARY COUNCIL - 23 MARCH 2021

- | | |
|--|--|
| | 3) Revoke the Asbestos Management policy dated 14 May 2019, should no submissions be received. |
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The motion was carried.

BACKGROUND

The purpose of this report is to present the review of the Asbestos Management Policy (the 'Policy') adopted by Council on 14 May 2019 (Minute No.089).

The review of the Asbestos Management Policy results in no fundamental changes to the Policy adopted in 2019. There have been no major legislative changes that require a revised position of Council. The proposed amendments are administrative in nature as highlighted in **(ATTACHMENT 1)**.

Like many Councils across Australia, a number of our buildings, structures and assets were built or refurbished at a time when asbestos containing materials may have been used during construction. The presence of asbestos containing materials in itself does not constitute a danger. However, there is a potential risk to health if asbestos containing material is damaged or disturbed.

As asbestos and its safe disposal is regulated under numerous pieces of legislation, it is often difficult to determine who is the responsible authority in certain asbestos-related scenarios, when to contact SafeWork NSW or when Council should take the lead role in providing asbestos advice. This can be confusing for the community when dealing with asbestos related matters.

The adoption and regular review of an Asbestos Management Policy formalises Council's approach and will ensure that the organisation is equipped to safely manage asbestos and any associated legislative obligations.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2018-2021
Thriving and Safe Place to Live	Enhance public safety, health and liveability through use of Council's regulatory controls and services.
Governance	Reduce risk across Council.

FINANCIAL/RESOURCE IMPLICATIONS

In accordance with asbestos management practices across Australia, Council will continue to pursue a risk management approach, which is designed to safeguard those persons who occupy, service and visit Council buildings from exposure to asbestos fibres.

MINUTES ORDINARY COUNCIL - 23 MARCH 2021

While the long term objective is for all Council controlled buildings to be free of asbestos contaminated material, it is estimated that the cost to achieve this objective is far beyond the financial reach of Council, in the short to medium term.

Given the highly regulated nature of asbestos and the many existing mechanisms in place to address risks, a full scale program to remove asbestos is prohibitively expensive and is out of step with both Australian and international practice.

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

LEGAL, POLICY AND RISK IMPLICATIONS

Council's legislative functions for minimising the risks from asbestos apply in various scenarios including:

- As a responsible employer
- Educating residents
- Contaminated land management
- Council land, building and asset management
- Emergency response
- Land use planning (including development approvals and demolition)
- Waste management and regulation.

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
There is a risk that Council fails to meet its obligations in relation to the management of asbestos leading to injury and reputation damage and litigation costs.	Medium	Adopt the revised Policy.	Yes

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that Council fails to heighten community awareness on the identification and safe removal of asbestos leading to increased exposure to risk in the Local Government Area (LGA).	Medium	Adopt the revised Policy.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Council has an important dual role in maintaining a safe environment and minimising the risks of exposure to asbestos, as far as is reasonably practicable, for both:

- a) Residents and the public
- b) Workers (employees, volunteers and contractors) in Council workplaces.

An Asbestos Management Policy (and related documents within) is in place to provide direction to Council workers to minimise risks associated with exposure to asbestos in the workplace and ensures that workers are involved in the development of safe systems of work and a safe environment with respect to asbestos management issues.

CONSULTATION

Consultation with key stakeholders has been undertaken by the Development Services Group.

Internal

Consultation has taken place with:

- Officers responsible for administering the Policy
- Executive Team.

External

In accordance with local government legislation, the revised Asbestos Management 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 Asbestos Management Policy.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.



Policy

FILE NO: PSC2013-04879

TITLE: ASBESTOS MANAGEMENT POLICY

OWNER: DEVELOPMENT ASSESSMENT AND COMPLIANCE SECTION MANAGER

1. PURPOSE:

- 1.1 The purpose of this Policy is to outline Council's commitment to maintaining a safe environment and minimising the risks of exposure to asbestos, as far as is reasonably practicable, for local residents, the wider public and workers (employees, volunteers and contractors) in Council workplaces.
- 1.2 This Policy aligns with the following initiatives outlined within the 2018- 2021 Operational Plan:
 - 1.2.1 Our Place: Thriving and safe place to live: Our community supports a healthy, happy and safe place. P 3.2 Enhance public safety, health and liveability through use of Council's regulatory controls and services.
 - 1.2.2 Our Council: Our Council's leadership is based on trust and values Respect, Integrity, Teamwork, Excellence and Safety (RITES). L1.5 – Reduce risk across Council.
- 1.3 The long term objective is for all buildings on Council owned land to be free of asbestos containing material (ACM). The presence of asbestos in premises on Council owned or managed land will be identified, the risk to health evaluated and mitigation measures implemented until the long term objective of removal is completed.
- 1.4 Council also aims to heighten awareness within the community on the identification and safe removal of asbestos ACM to minimise the risk of exposure across the local government area.

2. CONTEXT/BACKGROUND:

- 2.1 Asbestos was used widely in Australian buildings and structures between the 1940's and 1980's because of its durability, fire resistance and excellent insulating properties. Heightened public awareness of asbestos related diseases has increased public concern over the handling and ongoing management of asbestos containing material. However, it was not until 2003 that asbestos was banned in Australia.
- 2.2 Council has no insurance coverage under its Public Liability Policy relating to asbestos matters. The policy excludes any actual or alleged liability

Policy

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Policy



arising directly or indirectly out of, resulting from or in consequence of, or in any way involving asbestos, or any materials containing asbestos in whatever form or quantity.

- 2.3 For sites that are significantly contaminated, the Environment Protection Authority (EPA) and SafeWork NSW are the lead regulatory authorities. The EPA's role is to regulate the classification, storage, transport and disposal of waste in NSW, including asbestos ACM waste.
- 2.4 SafeWork NSW has a major role in ensuring that removal of asbestos ACM is carried out in accordance with legislative requirements and, where necessary, by registered contractors. Legislation, however, only applies to:
- a workplace, or
 - where the type or quantity of asbestos being removed, repaired or disturbed requires the work to be carried out by an asbestos licensed contractor.
- 2.5 Note: A workplace includes a residential property if any person is being employed there, but not if the works are carried out solely by an owner builder who does not employ anyone.
- 2.6 For matters outside of the EPA and SafeWork NSW responsibilities, Council is the appropriate regulatory authority, which typically include demolition, construction sites, residential properties, commercial sites and small to medium sized industrial facilities. Although at times there can be a crossover of responsibilities with Council and other governing bodies.
- 2.7 Council owns and maintains a range of built assets and facilities across the local government area with related obligations to minimise risk of harm to users of these assets and facilities.
- 2.8 The Policy is underpinned by the following principles:
- 2.8.1 The Policy is consistent with and supports the requirements of the Model Asbestos Policy for NSW Councils developed by the Local Government NSW.
- 2.8.2 Council will take all necessary reasonably practicable steps to protect the Health and safety of workers, contractors and the community from the risks associated with asbestos containing material (ACM) within Council controlled and managed buildings.
- 2.8.3 A risk management approach will be adopted for the management and control of ACM.
- 2.8.4 Council should not permit the use of Council owned or controlled buildings and/or other structures, including open spaces, where it is known they

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Policy



contain ACM's unless all reasonable risks have been considered which may include an asbestos management plan developed to address the assessed risk.

2.9 Council aims to manage the risks from ACM and provide a record of actions undertaken with the ultimate aim being to:

- increase awareness
- prevent airborne asbestos fibre exposure
- prevent the spread of asbestos fibres
- increase its competency and experience
- control works likely to disturb ACM in Council owned or managed buildings.

3. SCOPE:

3.1 Council is committed to complying with the Model Asbestos Policy and Guide (links to document under "RELATED DOCUMENTS" section below) developed by Local Government NSW in partnership with the NSW Government and input from industry reference groups.

3.2 Council's responsibilities for asbestos management apply in various scenarios including:

3.3 As a responsible employer

3.4 Council has responsibilities to workers under the Work Health and Safety Act 2011 (NSW) and Work Health and Safety Regulations (NSW) in maintaining a safe work environment through Council's:

- general responsibilities
- education, training and information for workers
- health monitoring for workers
- procedures for identifying and managing asbestos containing materials in Council premises.

3.5 As part of the Integrated Enterprise Risk Management System, an Asbestos Procedure is in place to ensure that workers are involved in the development of safe systems of work and a safe environment to manage any asbestos related risks.

3.6 Educating residents

3.7 Providing education for the community on the identification and safe removal of asbestos ACM is the joint responsibility of Councils and State Government agencies. Council, however, is often the first point of contact for residents who believe they have identified asbestos in their homes or have a

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Policy



concern or complaint regarding a public health hazard. Council also has a role in proactively offering useful information to the community to minimise avoidable incidents that present asbestos health hazards. This could include providing information to residents on lawful/licenced disposal facilities that are located within the Local Government Area (LGA).

3.8 Contaminated land management

3.9 Council has a responsibility to provide information about land contamination on planning certificates issued under Section 10.7 of the EP&A Act. For sites that are significantly contaminated and require a major remediation program independent of any rezoning or development applications, the EPA and SafeWork NSW are the lead regulatory authorities.

3.10 Responsibility for cleaning up contaminated land lies with the person responsible for the contamination or the relevant landowner.

3.11 Council land, building and asset management

3.12 Council has a responsibility to ensure that risk assessments are carried out on any Council owned buildings or assets that may contain asbestos **containing** materials. Like many Councils across Australia, a number of our buildings, structures and assets were built or refurbished at a time when asbestos containing materials may have been used during construction. Control measures are in place to manage these assets.

3.13 Emergency response

3.14 Council may play a role in ensuring that ACM's are cleaned up after an emergency or incident. If the incident occurs at a workplace, SafeWork NSW is the lead agency.

3.15 Council may issue a cleanup, prevention, cost compliance or penalty infringement notice. Alternatively, Council may act under the EPA Act. Council will determine an appropriate response depending on the nature of the situation.

3.16 Land use planning (including development approvals and demolition)

3.17 Council recognises the need to exercise care when changing zoning for land uses, approving development or excavating land due to the potential to uncover known or unknown asbestos material from previous land uses (for example, where a site has been previously used as a landfill or on-site burial of asbestos waste).

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3.18 Council is the consent authority for the majority of development applications in the LGA and may impose conditions of consent and a waste disposal guide in a development consent to ensure the safe removal of asbestos, where asbestos ACM has been identified or may be reasonably assumed to be present.

3.19 Waste management and regulation

3.20 It is illegal to dispose of asbestos waste in kerbside garbage bins or via the kerbside bulky waste collections, it is also illegal to recycle, reuse, bury or illegally dump asbestos waste. Asbestos waste (in any form) must only be disposed of at a facility that is licensed to lawfully receive asbestos waste. Within Port Stephens LGA the only licensed waste facility that can accept asbestos waste is the landfill facility on Newline Road Raymond Terrace. The Salamander Bay Waste Transfer Station is not licensed to accept asbestos waste.

4. DEFINITIONS:

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

Model Asbestos Policy for NSW Councils	The Model Asbestos Policy provides councils with the basis for the preparation of a comprehensive and compliant asbestos policy. It outlines important legislative obligations of councils and provides useful additional information.
Asbestos	Includes chrysotile, amosite, crocidolite, tremolite asbestos, anthophyllite asbestos, actinolite asbestos, and any of these minerals that have been chemically treated and/or altered.
Asbestos-containing material (ACM)	Means any material containing more than 1% asbestos.

5. STATEMENT:

5.1 Council has an important dual role in maintaining a safe environment and minimising the risks of exposure to asbestos, as far as is reasonably practicable, for both:

- residents and the public
- workers (employees, volunteers and contractors) in Council workplaces.

5.2 Council is committed to ensuring that asbestos containing material in

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Policy



Council owned buildings is managed and controlled to protect the health and wellbeing of workers, contractors and the community in accordance with the Model Asbestos Policy and Guide developed by Local Government NSW in partnership with the NSW Government and input from industry reference groups.

6. RESPONSIBILITIES:

- 6.1 Executive Team - Responsible for the overall implementation and review of the policy.
- 6.2 Development Services Group Manager - Responsible for the ongoing communications and engagement of asbestos awareness within the organisation and throughout the community.
- 6.3 Section Managers - Responsible for compliance with the overall objectives and policy statement as outlined within this document as relevant to their section.
- 6.4 Organisation Development Governance Section - Responsible for maintaining safe systems of work and establishing an environment where staff and their supervisors minimise the risks of exposure to asbestos ACM in accordance with the Work Health and Safety Act 2011 (NSW) and Work Health and Safety Regulations (NSW).
- 6.5 Asset owners (Assets, Property & Community Services) - Responsible for ensuring that risk assessments are carried out on any Council owned buildings or assets that may contain asbestos materials ACM and that appropriate control measures are in place to manage these assets.
- 6.6 Strategic Land Use Planning - Responsible for providing information about land contamination on planning certificates issued under Section 10.7 of the EP&A Act.
- 6.7 Development Assessment and Compliance - Responsible for imposing conditions of consent and a waste disposal guide in development consent to ensure the safe removal of asbestos, where asbestos ACM has been identified or may be reasonably assumed to be present.
- 6.8 Environmental Health & Compliance - Responsible for coordinating Councils response to Asbestos related issues such as land contamination, illegal dumping and pollution.

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7. RELATED DOCUMENTS:

- 7.1 Port Stephens Council Guide to the Management of Asbestos Risks.
- 7.2 Port Stephens Council Asbestos Procedure.
- 7.3 [Model Asbestos Policy for NSW Councils](#) (LGNSW).
- 7.4 [Guide to the Model Asbestos Policy for NSW Councils](#) (LGNSW).
- 7.5 Demolition work code of practice 2015 (Catalogue no. WC03841).
- 7.6 Contaminated Land Management Act 1997 (NSW).
- 7.7 Environmental Planning and Assessment Act 1979 (NSW).
- 7.8 Environmental Planning and Assessment Regulation 2000 (NSW).
- 7.9 Local Government Act 1993 (NSW).

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EDRMS container No.	PSC2013-04879	EDRMS record No.	21/36458
Audience	Employees, volunteers, contractors and public		
Process owner	Group Manager Development Services		
Author	Group Manager Development Services		
Review timeframe	23 years	Next review date	
Adoption date	26 November 2013		

VERSION HISTORY:

Version	Date	Author	Details	Minute No.
1	26/11/2013	Group Manager Development Services		343
2	23/06/2015	Group Manager Development Services	Transfer to new policy template, greater detail around roles and responsibilities of key service units across Council	172

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3	13/6/2017	Group Manager Development Services	<p>1) All references to "workCover" replaced with "SafeWork NSW"</p> <p>2) Under PURPOSE:</p> <ul style="list-style-type: none"> • Paragraph 2 delete 2015-2019 and replace with 2016-2020. • Second dot point delete 15.1.3 and replace with 5.1.3. • Reword paragraph 3 from "The presence of asbestos in premises on Council owned or managed land will be identified and the risk to health evaluated. " change to "The presence of asbestos in premises on Council owned or managed land will be identified, the risk to health evaluated and mitigating measures implemented until the long term objective of removal is completed." <p>3) Under <u>Educating residents</u> additional sentence added to end of paragraph – "This should include providing information to residents on lawful/licenced disposal facilities that are located within the LGA"</p> <p>4) Under RELATED DOCUMENTS:</p> <ul style="list-style-type: none"> • Updated hyperlinks for documents 3) and 4). • Replace 5) Australian Standard AS2601-2001: The Demolition of Structures with 5) Demolition work code of practice 2015 (catalogue no. WC03841). • Amend 12) Protection of the Environment Operations (Waste) Regulation 2005 	125
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Version	Date	Author	Details	Minute No.
			<p>NSW) to 12) Protection of the Environment Operations (Waste) Regulation 2014 (NSW).</p> <ul style="list-style-type: none"> • Add 16) Work Health and Safety Act 2011 (NSW) and Work Health and Safety Regulations (NSW). 	
4	14/5/2019	Group Manager Development Services	<p>Updated to new Policy template to include paragraph numbering.</p> <p>1.2 - Updated Operation Plan to current year. 1.2.1 - Updated Operation Plan heading and key directions to current year. 1.2.2 - Updated Operation Plan heading and key directions to current year.</p> <p>2.7 – Inserted new paragraph ‘Council owns and maintains a range of built assets and facilities across the local government area with related obligations to minimise risk or harm to users of these assets and facilities.’</p> <p>3.9 - Updated Section 149 to Section 10.7 in accordance with legislation updates.</p> <p>6.6 – Updated Section 149 to Section 10.7 in accordance with legislation updates.</p> <p>6.7 – Added ‘and Compliance’ to the naming convention of the Section.</p>	

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Version	Date	Author	Details	Minute No.
5		Group Manager Development Services	<p>1.4, 2.3, 2.4, 3.7, 3.18, 6.4, 6.5, 6.7 - Replaced asbestos with 'asbestos contaminated material (ACM)'</p> <p>2.6 – Added 'Although at times there can be a crossover of responsibilities with Council and other governing bodies.'</p> <p>2.8.2 – Replaced 'necessary' with 'reasonably practicable'</p> <p>3.5 – Replaced 'Integrated Risk Management System' with 'Enterprise Risk'</p> <p>3.18 – Added 'a'.</p> <p>6.4 – Replaced 'Organisation Development' with 'Governance Section '</p>	

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ITEM NO. 3

**FILE NO: 21/39007
EDRMS NO: PSC2009-02488**

POLICY REVIEW - RELATED PARTY DISCLOSURES POLICY

REPORT OF: TIM HAZELL - FINANCIAL SERVICES SECTION MANAGER
GROUP: CORPORATE SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Endorse the revised Related Party Disclosures Policy shown at **(ATTACHMENT 1)**.
- 2) Place the revised Related Party Disclosures 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 Related Party Disclosures Policy dated 9 April 2019, Minute No. 080 should no submissions be received.

**ORDINARY COUNCIL MEETING - 23 MARCH 2021
MOTION**

060	<p>Councillor Giacomo Arnott Councillor Ken Jordan</p> <p>It was resolved that Council:</p> <ol style="list-style-type: none">1) Endorse the revised Related Party Disclosures Policy shown at (ATTACHMENT 1).2) Place the revised Related Party Disclosures 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 Related Party Disclosures Policy dated 9 April 2019, Minute No. 080 should no submissions be received.
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The motion was carried.

BACKGROUND

The purpose of this report is to seek Council's endorsement of the revised Related Party Disclosures Policy (the policy). This policy has been reviewed as part of Council's ongoing policy review program and is shown at **(ATTACHMENT 1)**.

Following the review, minor formatting and grammatical amendments have been applied. No other material changes have been made.

This policy aims to ensure compliance with disclosure requirements concerning key management personnel, their close family members and entities controlled or jointly controlled by any of them stipulated under the Australian Accounting Standard AASB 124 Related Party Disclosures and the Australian implementation guidance for not-for-profit public sector entities (AASB 124).

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2018-2021
Financial Management	Maintain strong financial sustainability.

FINANCIAL/RESOURCE IMPLICATIONS

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

LEGAL, POLICY AND RISK IMPLICATIONS

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
There is a risk that non-compliance with the Accounting Standard would lead to a qualified Annual Financial Report.	Medium	Adopt the recommendations.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Council must ensure compliance with Australian Accounting Standards and transparency of related party transactions.

CONSULTATION

Consultation with key stakeholders has been undertaken by the Financial Services section.

Internal

The Executive Team were consulted to seek management endorsement.

External

In accordance with local government legislation the revised Related Party Disclosures 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 Related Party Disclosures Policy.
- 2) Related Party Transaction Notification Form.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ITEM 3 - ATTACHMENT 1 REVISED RELATED PARTY DISCLOSURES POLICY.

Policy



FILE NO: PSC2009-02488
TITLE: RELATED PARTY DISCLOSURES
POLICY OWNER: FINANCIAL SERVICES SECTION MANAGER

1. PURPOSE:

1.1 The Related Party Disclosure Policy aims to ensure compliance with disclosure requirements concerning key management personnel, their close family members and entities controlled or jointly controlled by any of them stipulated under the Australian Accounting Standard AASB 124 Related Party Disclosures and the Australian implementation guidance for not-for-profit public sector entities (AASB 124).

2. CONTEXT/BACKGROUND:

2.1 The Local Government Act 1993, section 413, requires Council to prepare its general purpose financial report in compliance with the publications issued by the Australian Accounting Standards Board. AASB 124 comes into effect for annual reporting periods beginning on or after 1 July 2016. Council will disclose in its general purpose financial statements the information specified in AASB 124 regarding related party transactions during the period covered by the financial statements.

2.2 A related party relationship could influence the normal business operations of Council. In some instances, Council may enter into transactions with a related party that unrelated parties would not. For example, goods are supplied to Council on terms that might not be offered to other customers. Also, transactions between related parties may not be made on the same terms as between unrelated parties.

2.3 For these reasons, knowledge of Council's transactions and outstanding balances (including commitments and relationships with related parties) may affect assessments of Council's operations by users of financial statements, including assessments of the risks and opportunities facing Council, this is the background regarding the release of AASB 124.

3. SCOPE:

3.1 This policy applies to related parties of Council including key management personnel and their related party transactions with Council (as defined **detailed** in the definitions section of this policy).

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ITEM 3 - ATTACHMENT 1 REVISED RELATED PARTY DISCLOSURES POLICY.

Policy



4. DEFINITIONS:

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

Related party	<p>A person or entity that is related to Council pursuant to the definition contained in the AASB 124, paragraph 9. Examples of related parties of Council are:</p> <ul style="list-style-type: none"> a) key management personnel b) close family members of key management personnel c) entities that are controlled or jointly controlled by key management personnel or their close family members.
Key management personnel	<p>Person(s) having authority and responsibility for planning, directing and controlling the activities of Council. Specifically, key management personnel of Council are:</p> <ul style="list-style-type: none"> a) Mayor b) Councillors c) General Manager d) Group Managers e) Section Managers
Close family members	<p>A close family member includes:</p> <ul style="list-style-type: none"> a) that persons children and spouse or domestic partner. b) children of that persons spouse or domestic partner. c) dependants of that person or that persons spouse or domestic partner. <p>Close family members could include extended members of a family (such as, (without limitation), parents, siblings, grandparents, uncles/aunts or cousins) if they could be expected to influence, or be influenced by, the key management person in their dealings with Council.</p>
Related party transaction	<p>A transfer of resources, services or obligations between the Council and a related party, regardless of whether a price is charged. Examples of related party transactions are:</p> <ul style="list-style-type: none"> a) purchases or sales of goods. b) purchases or sales of property and other assets. c) rendering or receiving of services. d) rendering or receiving of goods.

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ITEM 3 - ATTACHMENT 1 REVISED RELATED PARTY DISCLOSURES POLICY.

Policy



Ordinary citizen transactions

Transactions that an ordinary citizen would undertake with Council, which is undertaken on arm's length terms and in the ordinary course of carrying out Council's functions and activities. Examples of ordinary citizen transactions assessed to be not material in nature are:

- a) paying rates and utility charges.
- b) using Council's public facilities after paying the corresponding fees.

Materiality

The assessment of whether the transaction, either individually or in aggregate with other transactions, by omitting it or misstating it could influence decisions that users make ~~on the basis of~~ based on an entity's financial statements. For the purpose of this policy, it is not considered appropriate to set either a dollar value or a percentage value to determine materiality.

Key management personnel remuneration

Council shall in its annual financial statements disclose key management personnel remuneration (compensation) in total and for each of the following categories:

- a) short-term employee benefits
- b) post-employment benefits
- c) other long-term benefits
- d) termination benefits

5. POLICY STATEMENT:

5.1 Key management personnel (as defined detailed in the definitions section of this policy) must provide a Related Party Transactions Notification in the form set out in (ATTACHMENT 1) notifying of any existing related party transactions (as defined detailed in the definitions section of this policy) between Council and either themselves, their close family members or entities controlled or jointly controlled by them or any of their close family members to the Financial Services Section Manager by no later than 15 July for each financial year ended 30 June.

5.2 Some examples of the types of transactions that may need to be captured for analysis to be included in the related party disclosure in Council's annual financial statements are as follows:

5.2.1 From Council:

- a) Grants paid by Council to related parties of Council.
- b) Donations, contributions and assistance paid by Council to related parties of Council.
- c) Charges for goods or services paid to related parties of Council from Council.

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ITEM 3 - ATTACHMENT 1 REVISED RELATED PARTY DISCLOSURES POLICY.

Policy



5.2.2 To Council:

- a) Fees and charges paid to Council from related parties of Council that are out of the ordinary.
- b) Infrastructure contributions and development application fees paid to Council from related parties of Council.

5.3 Non-monetary transactions between Council and related parties of Council also need to be captured.

5.4 The notification requirements do not apply to:

- a) To related party transactions that are ordinary citizen transactions (as defined detailed in the definitions section of this policy) not assessed as being material; and
- b) For Councillors, expenses incurred and facilities provided to a Councillor during the financial year, under Council's Payment of Expenses and Provision of Facilities to Mayor/Councillors Policy.

5.5 Council will disclose the following information in Council's general purpose financial statements:

- a) the nature of the related party relationship.
- b) the amount of the transactions.
- c) the amount of outstanding balances, including commitments.
- d) their terms and conditions, including whether they are secured, and the nature of the consideration to be provided in settlement.
- e) details of any guarantees given or received.
- f) provisions for doubtful debts related to the amount of outstanding balances.
- g) the expense recognised during the period in respect of bad or doubtful debts due from related parties.

6 POLICY RESPONSIBILITIES:

6.1 Council's key management personnel are responsible for complying with the Related Party Disclosures Policy.

6.2 The Financial Services Section Manager is responsible for providing advice regarding the Related Party Disclosures Policy and will make the decision whether a related party transaction is disclosed in Council's financial statements.

7 RELATED DOCUMENTS:

7.1 Local Government Act 1993, section 413.

7.2 Australian Accounting Standard AASB 124 Related Party Disclosures.

7.3 Australian implementation guidance for not-for-profit public sector entities for AASB 124.

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ITEM 3 - ATTACHMENT 1 REVISED RELATED PARTY DISCLOSURES POLICY.

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EDRMS container No	PSC2009-02488	EDRMS record No	TBC
Audience	Key management personnel		
Process owner	Financial Services Section Manager		
Author	Financial Services Section Manager		
Review timeframe	Two 3 years	Next review date	TBC
Adoption date	9 May 2017		

VERSION HISTORY:

Version	Date	Author	Details	Minute No.
1.0	09/05/2017	Financial Services Section Manager	Original document. Adopted by Council on 9 May 2017.	104
2.0	09/04/2019	Financial Services Section Manager	No changes to content of policy. Updated into new template and updated EDRMS Record no. in Version History. Attachment 1 - Change 2016-2017 to 'current'.	080
3.0	TBC	Financial Services Section Manager	Updated policy into the current format. Minor grammatical amendments. Amended review timeframe to 3 years as per Council's policy review process.	

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**ITEM 3 - ATTACHMENT 1 REVISED RELATED PARTY DISCLOSURES
POLICY.**

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ITEM 3 - ATTACHMENT 2 RELATED PARTY TRANSACTION NOTIFICATION FORM.



This notification is only required to be completed by Key Management Personnel (KMP)

KMP are person(s) having authority and responsibility for planning, directing and controlling the activities of Council. Specifically, KMP of Council are:

- a) Mayor
- b) Councillors
- c) General Manager
- d) Group Managers
- e) Section Managers

NAME OF THE KEY MANAGEMENT PERSONNEL	ROLE/POSITION OF THE KEY MANAGEMENT PERSONNEL

Please complete the table below **for each related party transaction with Council** that you or a close member of your family, or an entity related to you or a close member of your family:

- a) has previously entered into **and** which will continue in the 2021- 2022 financial year; or
- b) has entered into in the 2021 - 2022 financial year.

ITEM 3 - ATTACHMENT 2 RELATED PARTY TRANSACTION NOTIFICATION FORM.

Related Party's Name (Individual's or entity's name)	Related Party's Relationship/ Reasons why related	Description of Related Party Transaction
	<p>A person or entity that is related to Council pursuant to the definition contained in AASB 124, paragraph 9.</p> <p>Examples of related parties of Council are:</p> <ul style="list-style-type: none"> a) key management personnel; b) close family members of key management personnel; c) entities that are controlled or jointly controlled by key management personnel or their close family members. 	<p>A related party transaction is a transfer of resources, services or obligations between the Council and a related party, regardless of whether a price is charged. Examples of related party transactions are:</p> <ul style="list-style-type: none"> a) purchases or sales of goods; b) purchases or sales of property and other assets; c) rendering or receiving of services; d) rendering or receiving of goods; e) leases; f) transfers under licence agreements; g) transfers under finance arrangements (example, loans); h) provision of guarantees (given or received); i) commitments to do something if a particular event occurs or does not occur in the future; j) settlement of liabilities on behalf of Council or by Council on behalf of that related party. <p>The notification requirements do not apply to:</p> <ul style="list-style-type: none"> a) related party transactions that are ordinary citizen transactions not assessed as being material and b) for councillors, expenses incurred and facilities provided to a councillor during the financial year, under Council's Payment of Expenses and Provision of Facilities to Mayor/Councillors Policy.

ITEM 3 - ATTACHMENT 2 RELATED PARTY TRANSACTION NOTIFICATION FORM.

I notify that, to the best of my knowledge, information and belief, as at the date of this notification, the above list includes all existing related party transactions with Council involving myself, close members of my family, or entities controlled or jointly controlled by me or close members of my family, relevant to the 2021 - 2022 financial year.

I make this notification after reading the Related Party Transactions Policy.

I permit the use the information for the purposes specified in the Related Party Transactions Policy.

SIGNATURE OF THE NAMED KMP: _____ **Date:** _____

This notification is due by 15 July 2021. Please send completed notification to the Financial Services Section Manager.

ITEM NO. 4

**FILE NO: 21/44796
EDRMS NO: PSC2005-2589**

REGIONAL ROADS REVIEW AND ROADS TRANSFER

REPORT OF: JOHN MARETICH - ASSET SECTION MANAGER
GROUP: FACILITIES & SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Endorse the submission of a Round 2 application for each of the roads nominated in Round 1 of the NSW Road Classification Review and Transfer Initiative (**ATTACHMENT 1**).

**ORDINARY COUNCIL MEETING - 23 MARCH 2021
MOTION**

061	Councillor Paul Le Mottee Councillor Giacomo Arnott It was resolved that Council endorse the submission of a Round 2 application for each of the roads nominated in Round 1 of the NSW Road Classification Review and Transfer Initiative (ATTACHMENT 1).
------------	--

The motion was carried.

BACKGROUND

The purpose of this report is to seek Council's endorsement to submit a Round 2 application (**ATTACHMENT 1**) under the NSW Government Road Classification Review and Transfer Initiative.

In February 2019, the NSW Government announced the transfer of up to 15,000 kilometres of regional roads from NSW Councils to the NSW State Government. This program was a key initiative identified in the Future Transport 2056: Regional NSW Services and Infrastructure Plan.

A road's classification determines who manages the road and what funding is available to undertake ongoing management, maintenance and capital works.

Under this program NSW Councils can request to change a road's classification from:

- Local Road to Regional Road.
- Local Road to State Road.

MINUTES ORDINARY COUNCIL - 23 MARCH 2021

- Regional Road to State Road.
- Regional Road (Council owned) to Regional Road (State owned).

In some cases the reverse may also occur.

The NSW Government has established an expert Independent Panel to receive Council requests and make recommendations to the NSW State Government on the possible road classification changes. The Independent Panel is scheduled to report to the State Government in July 2021. Final decision-making on all recommendations will be determined by the NSW State Government.

A number of Port Stephens Council roads that met the criteria were submitted to the Independent Panel's non-committal Round 1 (**ATTACHMENT 1**). These roads were assessed by the Independent Panel and Council has been invited to submit detailed Round 2 applications for consideration in the Independent Panel's final report.

A number of these roads cross Local Government boundaries. The adjoining Councils have also identified these roads as part of their Round 1 and Round 2 submissions.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2018-2021
Infrastructure and Facilities	Plan civil and community infrastructure to support the community.

FINANCIAL/RESOURCE IMPLICATIONS

There are no additional operational expenses involved in the preparation of a Round 2 submission.

Should the NSW Government adopt Council's Round 2 submission for changes to road classification there will be a change in funds provided to Council through existing recurrent NSW Government road funding programs. At this stage it is not known what the extent of this change will be.

In the case of a full transfer of a road from Council to the NSW Government, there may be a reduction in funds provided to Council through existing recurrent NSW Government programs. At this stage it is not known what the extent of this reduction would be. However, it is anticipated that where the management responsibility of a road is transferred away from Council to NSW Government, there would also be a reduction in both Councils liability and costs to maintain the road over the lifecycle of the asset.

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

LEGAL, POLICY AND RISK IMPLICATIONS

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that roads will be reclassified to a lower classification leading to a reduction in external funding.	Low	Provide strong evidence of the reclassification criteria for each road submitted under the program.	Yes
There is a risk that roads transferred to the NSW Government are not maintained to current levels leading to the level of service for our community being decreased	Low	Design and construction standards are shared between NSW road authorities. The maintenance and inspection standards of Transport for NSW are more stringent than Council standards with a larger availability for funds.	Yes
There is a risk that reclassified roads will require the additional approval of the NSW Government, potentially leading to delays and increased costs.	Medium	Ensure all proposed works have the endorsement of Transport for NSW and any project involves early consultation with them.	Yes
There is a risk that the reclassification of roads will lead to a reduction to recurrent grants.	High	Ensure roads being submitted for reclassification will have a positive life cycle cost benefit to Council.	Yes

SUSTAINABILITY IMPLICATIONS

Council will have difficulty continuing to maintain the roads in the short, medium and/or long term to the standard which allows the roads to perform as intended as part of the broader network. Therefore it is anticipated that there would be positive social, economic and environmental outcomes resulting from the successful reclassification and/or transfer of the roads included in the Round 2 submission.

CONSULTATION

Consultation with key stakeholders has been undertaken by the Assets Section.

Internal consultation was undertaken to assist in identifying the roads which met the criteria for submission under this program.

Internal

Group Manager – Facilities and Services.
Leadership Team – Facilities and Services.
Asset Section Manager – Facilities and Services.

External

Consultation with adjoining Councils who manage cross boundary roads identified for this program were consulted and concurrence for a joint submission gained prior to submission of the application.

Mid Coast Council – joint submission for Tarean Road and The Bucketts Way.
Maitland Council – joint submission Seaham Road and Clarencetown Road.
Dungog Council – joint submission for Clarencetown Road.

OPTIONS

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

ATTACHMENTS

- 1) Round 2 Application for the NSW Road Classification Review and Transfer Initiative.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ITEM 4 - ATTACHMENT 1 ROUND 2 APPLICATION FOR THE NSW ROAD CLASSIFICATION REVIEW AND TRANSFER INITIATIVE.

ROUND 2 SUBMISSION

NSW Government Road Classification Review and Transfer Initiative.

<p>Regional Road requesting reclassification to State Road and transfer.</p>	<ul style="list-style-type: none"> • MR518 (Meadowie Road).
<p>Local Road requesting reclassification to State Road and transfer;</p>	<ul style="list-style-type: none"> • Old Punt Road. • Stockton Street, Dowling Street, Fingal Street, Magnus Street, Shoal Bay Road.
<p>Regional Roads seeking the transfer of management and funding responsibilities (i.e. no reclassification)</p>	<ul style="list-style-type: none"> • MR90 (The Bucketts Way). • MR301 (Seaham Rd/Clarencetown Rd). • MR7765 (Lemon Tree Passage Road).
<p>Local Roads requesting reclassification to Regional Roads and seeking the transfer of management and funding responsibilities</p>	<ul style="list-style-type: none"> • Adelaide Street. • Tarean Road. • Port Stephens Drive. • Clarencetown Road (outside of MR 301 extent).

ITEM NO. 5

**FILE NO: 21/57132
EDRMS NO: PSC2017-00178**

REQUEST FOR FINANCIAL ASSISTANCE

REPORT OF: WAYNE WALLIS - GENERAL MANAGER
GROUP: GENERAL MANAGER'S OFFICE

RECOMMENDATION IS THAT COUNCIL:

- 1) Approves provision of financial assistance under Section 356 of the Local Government Act 1993 from Mayoral funds to the following:-
 - a. Mayoral funds - \$5000 donation towards a pigeon control program in Raymond Terrace town centre to be managed by Council.
 - b. Mayoral funds - \$1000 donation towards sending a team of Karuah Aboriginal Elders (the Indigeco Elders Olympic Team) to the Aboriginal and Torres Strait Islander Elders Olympics.
 - c. Endorse the provision of funds to Suzie West - Mayoral funds - \$1000 donation towards publication of a prose and poetry book and place the proposal on public exhibition for a period of 28 days, in accordance with the Local Government Act 1993 to seek public comment.
- 2) Should no submissions be received as a result of the public exhibition stated in 1c. above, the funds be approved.

**ORDINARY COUNCIL MEETING - 23 MARCH 2021
MOTION**

062	<p>Councillor Sarah Smith Councillor Giacomo Arnott</p> <p>It was resolved that Council approves provision of financial assistance under Section 356 of the Local Government Act 1993 from Mayoral funds to the following:-</p> <ol style="list-style-type: none">a. Mayoral funds - \$5000 donation towards a pigeon control program in Raymond Terrace town centre to be managed by Council.b. Mayoral funds - \$1000 donation towards sending a team of Karuah Aboriginal Elders (the Indigeco Elders Olympic Team) to the Aboriginal and Torres Strait Islander Elders Olympics.c. Endorse the provision of funds to Suzie West - Mayoral funds - \$1000 donation towards publication of a prose and poetry book and place the proposal on public exhibition for a period of 28 days, in accordance with the Local Government Act 1993 to seek public comment. <p>2) Should no submissions be received as a result of the public exhibition stated in 1c. above, the funds be approved.</p>
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The motion was carried.

BACKGROUND

The purpose of this report is to determine and, where required, authorise payment of financial assistance to recipients judged by the Mayor and or Councillors as deserving of public funding. The Grants and Donations Policy gives the Mayor and Councillors a wide discretion either to grant or to refuse any requests.

Council's Grants and Donations Policy provides the community, the Mayor and Councillors with a number of options when seeking financial assistance from Council. Those options being:

- 1) Mayoral Funds
- 2) Rapid Response
- 3) Community Financial Assistance Grants – (bi-annually)
- 4) Community Capacity Building

Council is unable to grant approval of financial assistance to individuals unless it is performed in accordance with the Local Government Act 1993. This would mean that the financial assistance would need to be included in the Operational Plan or Council would need to advertise for 28 days of its intent to grant approval. Council can make donations to community groups.

The requests for financial assistance are shown below:

MAYORAL FUNDS – Mayor Palmer

Raymond Terrace town centre	Council has been approached on behalf of Raymond Terrace businesses to extend the pigeon control program.	\$5000	Donation towards extending the pigeon control program in Raymond Terrace town centre which will be managed by Council staff.
MobReady Pty Ltd	MobReady Pty Ltd is an Indigenous business, which will be administering the finances for the Indigeoco Elders Olympic team.	\$1000	Donation towards sending Karuah Aboriginal Elders to the Aboriginal and Torres Strait Islander Elders Olympics.
Suzie West	Suzie has written a book of short prose and poetry complemented by art works. The book has a message of "We need	\$1000	Donation towards the publication of a prose and poetry book.

MINUTES ORDINARY COUNCIL - 23 MARCH 2021

	one another". This project supports social connection for one another in the community.		
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COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2018-2021
Community Partnerships	Support financially creative and active communities.

FINANCIAL/RESOURCE IMPLICATIONS

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

LEGAL 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.

MINUTES ORDINARY COUNCIL - 23 MARCH 2021

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 recommendations.
- 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. 6

**FILE NO: 21/57954
EDRMS NO: PSC2017-00015**

INFORMATION PAPER

REPORT OF: WAYNE WALLIS - GENERAL MANAGER
GROUP: GENERAL MANAGER'S OFFICE

RECOMMENDATION IS THAT COUNCIL:

Receives and notes the Information Papers listed below being presented to Council on 23 March 2021.

No:	Report Title	Page:
1	Designated Persons' Return	92
2	February 2021 Cash and Investments	93
3	Council Resolutions	96

**ORDINARY COUNCIL MEETING - 23 MARCH 2021
MOTION**

063	Councillor John Nell Councillor Sarah Smith It was resolved that Council receives and notes the Information Papers listed below being presented to Council on 23 March 2021. <hr/> No: Report Title 1 Designated Persons' Return 2 February 2021 Cash and Investments 3 Council Resolutions
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The motion was carried.

INFORMATION PAPERS

ITEM NO. 1

**FILE NO: 21/14114
EDRMS NO: PSC2019-02300**

DESIGNATED PERSONS' RETURN

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

BACKGROUND

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

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

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

- Strategic Planner (PSC072).

ATTACHMENTS

Nil.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

- 1) Designated Persons' Return.

ITEM NO. 2

**FILE NO: 21/59243
EDRMS NO: PSC2006-6531**

FEBRUARY 2021 CASH AND INVESTMENTS

REPORT OF: TIM HAZELL - FINANCIAL SERVICES SECTION MANAGER
GROUP: CORPORATE SERVICES

BACKGROUND

The purpose of this report is to present Council's schedule of cash and investments held at 28 February 2021.

ATTACHMENTS

- 1) February 2021 - Cash and Investments.
- 2) February 2021 - Cashflow Report.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

CASH AND INVESTMENTS HELD AS AT 28 FEBRUARY 2021									
ISSUER	BROKER	RATING*	DESC.	YIELD %	TERM DAYS	MATURITY	AMOUNT INVESTED	MARKET VALUE	
TERM DEPOSITS									
AUSWIDE BANK	FARQUHARSON	BBB	TD	0.75%	168	31-Mar-21	1,000,000	1,000,000	
JUDO BANK	CURVE	NR	TD	1.05%	256	11-May-21	275,000	275,000	
JUDO BANK	CURVE	NR	TD	1.05%	253	11-May-21	300,000	300,000	
AMP BANK	LAMINAR	BBB+	TD	0.80%	295	23-Jun-21	300,000	300,000	
AUSTRALIAN MILITARY BANK	FARQUHARSON	BBB+	TD	1.65%	635	30-Jun-21	1,000,000	1,000,000	
JUDO BANK	CURVE	NR	TD	1.05%	343	4-Aug-21	900,000	900,000	
JUDO BANK	CURVE	NR	TD	1.05%	337	4-Aug-21	300,000	300,000	
MUTUAL BANK	MUTUAL	NR	TD	0.95%	351	18-Aug-21	300,000	300,000	
AMP BANK	LAMINAR	BBB+	TD	0.80%	383	15-Sep-21	1,000,000	1,000,000	
AUSWIDE BANK	CURVE	BBB	TD	1.75%	727	28-Sep-21	1,000,000	1,000,000	
ICBC	IMPERIUM	A	TD	1.62%	729	13-Oct-21	1,000,000	1,000,000	
AUSWIDE BANK	IMPERIUM	BBB	TD	1.65%	731	15-Oct-21	500,000	500,000	
MACQUARIE BANK	LAMINAR	A	TD	0.70%	286	25-Oct-21	1,000,000	1,000,000	
MUTUAL BANK	MUTUAL BANK	NR	TD	0.90%	159	27-Oct-21	700,000	700,000	
AMP BANK	LAMINAR	BBB+	TD	0.75%	365	25-Nov-21	1,250,000	1,250,000	
DEFENCE BANK	CURVE	BBB	TD	0.60%	367	6-Dec-21	600,000	600,000	
AMP BANK	LAMINAR	BBB	TD	0.75%	371	8-Dec-21	550,000	550,000	
AMP BANK	LAMINAR	BBB	TD	0.75%	376	15-Dec-21	350,000	350,000	
JUDO BANK	LAMINAR	NR	TD	0.84%	385	22-Dec-21	350,000	350,000	
JUDO BANK	LAMINAR	NR	TD	0.85%	383	22-Dec-21	550,000	550,000	
NAB	LAMINAR	AA	TD	0.50%	386	23-Dec-21	1,000,000	1,000,000	
DEFENCE BANK	CURVE	BBB	TD	0.60%	399	5-Jan-22	1,000,000	1,000,000	
NAB	LAMINAR	AA	TD	0.50%	399	5-Jan-22	1,000,000	1,000,000	
NAB	LAMINAR	AA	TD	0.50%	413	19-Jan-22	1,000,000	1,000,000	
JUDO BANK	LAMINAR	NR	TD	0.70%	391	19-Jan-22	750,000	750,000	
MACQUARIE BANK	LAMINAR	A	TD	0.70%	385	1-Feb-22	1,000,000	1,000,000	
AUSWIDE BANK	RIM	BBB	TD	1.73%	701	2-Feb-22	1,250,000	1,250,000	
DEFENCE BANK	CURVE	BBB	TD	0.65%	539	22-May-22	1,000,000	1,000,000	
DEFENCE BANK	CURVE	BBB	TD	0.65%	550	7-Jun-22	600,000	600,000	
SUB TOTAL (\$)							21,825,000	21,825,000	
MACQUARIE BANK (AT CALL)	LAMINAR	A+	AT CALL	0.35%			4,000,000	4,000,000	
TCORP SHORT TERM INCOME FUND	TCORP	AAA					4,000,000	4,011,182	
TCORP MEDIUM TERM GROWTH FUND	TCORP	AAA					4,000,000	4,040,248	
TCORP LONG TERM GROWTH FUND	TCORP	AAA					2,000,000	2,035,387	
INVESTMENTS TOTAL (\$)							35,825,000	35,911,817	
CASH AT BANK (\$)							3,501,394	3,501,394	
TOTAL CASH AND INVESTMENTS (\$)							39,326,394	39,413,210	
CASH AT BANK INTEREST RATE				0.20%					
BBSW FOR PREVIOUS 3 MONTHS				0.12%					
AVG. INVESTMENT RATE OF RETURN ON TDs				0.93%					
TD = TERM DEPOSIT									
AC = AT CALL CASH ACCOUNT									
FRTD = FLOATING RATE TERM DEPOSIT									
*STANDARD AND POORS LONG TERM RATING									
CERTIFICATE OF RESPONSIBLE ACCOUNTING OFFICER									
I HEREBY CERTIFY THAT THE INVESTMENTS LISTED ABOVE HAVE BEEN MADE IN ACCORDANCE WITH SECTION 625 OF THE LOCAL GOVERNMENT ACT 1993, CLAUSE 212 OF THE LOCAL GOVERNMENT (GENERAL) REGULATION 2005 AND COUNCIL'S CASH INVESTMENT POLICY									
T HAZELL									



**Cash flow analysis
28/02/2021**

CASHFLOW STATEMENT

Opening Cash and Investment 1 July 2020
Closing Cash and Investment 28 February 2021
Movement in cash

YTD	Notes
31,502,431	
38,403,513	
6,901,083	

Movement in cash represented by:

Operating Activities

Receipts from ratepayers, customers and government authorities 89,275,696
Payments to suppliers & employees (62,623,866)
Interest received 270,863
Interest paid (308,125)
Total

89,275,696
(62,623,866)
270,863
(308,125)
26,614,569

Investing Activities

Receipts from sale of Infrastructure, Property, Plant & Equipment 124,741
Payments for Property, Plant & Equipment (17,645,983)
Total

124,741
(17,645,983)
(17,521,242)

Financing Activities

Payment of loans (2,192,244)
Receipt of new loans

(2,192,244)
(2,192,244)

Total Cash Movement

Plus: Opening Cash and Investment 1 July 2020
Closing Cash and Investment 28 February 2021

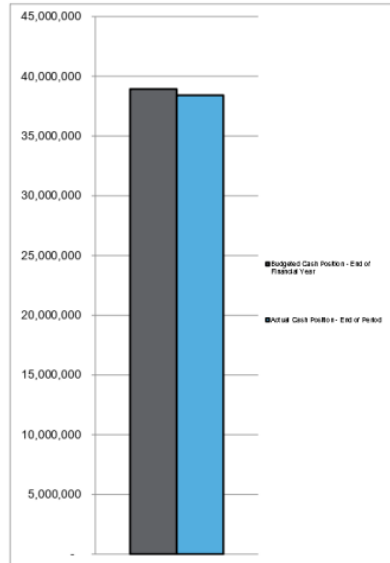
6,901,083
31,502,431
38,403,514

Budgeted Cash Movement for the Financial Year 7,420,913
Plus Opening Cash and Investment 1 July 2020 31,502,431
Budgeted Cash and Investment Position 30 June 2021

7,420,913
31,502,431
38,923,344

In front / (behind) on budget

(519,830)	1
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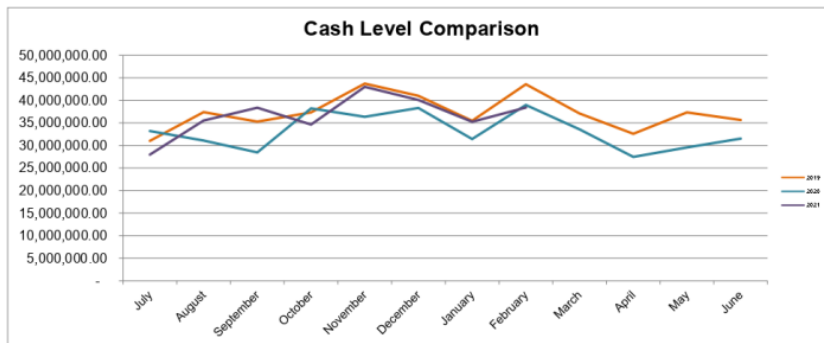


Notes

- 1 Council's cash position is down on the budgeted year end position predominately due to the following reasons:
a) Outstanding debts for the State Roads program is approx \$550k
b) Sale of commercial land is yet to be completed

Significant future cash inflows expected in next few months include various 2021 grants and Easter holiday trade.

Significant future cash outflows expected in next few months include: Fingal Bay new amenities block, depot relocation, Birubi Point aboriginal place tourism interchange, Tomaree sports complex amenities replacement, Seabreeze estate drainage, Lakeside leisure centre heat pump replacement, smart parking signage and pods, Riverflat road realignment, Shoal Bay West amenities replacement, Grahamstown rd Medowie and sundry plants.



ITEM NO. 3

**FILE NO: 21/61842
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 3 - ATTACHMENT 1 CORPORATE SERVICES GROUP REPORT.



Outstanding	Division: Corporate Services	Date From: 27/09/2017
	Committee:	Date To: 9/03/2021
	Officer:	
Action Sheets Report		Printed: Monday, 15 March 2021

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 27/03/2018	Crosdale, Timothy	COMPULSORY ACQUISITION OF AN EASEMENT FOR ACCESS OVER PART OF 6 GOVERNMENT ROAD, SHOAL BAY	30/12/2021	28/03/2018	
13 066		Crosdale, Timothy				18/66656
12 Mar 2021						
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	Crosdale, Timothy	King Street, Raymond Terrace Easements	30/12/2021	14/02/2019	
3		Crosdale, Timothy				19/39843
12 Mar 2021						
The Minister for Local Government has approved Council's application to compulsorily acquire an easement through 24A and 26 King Street, Raymond Terrace, for the purposes of construction of a shared pedestrian pathway. Proposed Acquisition Notices have been served on the land owners.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 28/05/2019	Crosdale, Timothy	COMPULSORY ACQUISITION OF PART OF VICTORIA PARADE RESERVE NELSON BAY FOR ROAD PURPOSES	30/12/2021	29/05/2019	
6 110		Crosdale, Timothy				19/148388
12 Mar 2021						
Waiting on Aboriginal Land Claim determination by Crown Lands.						

ITEM 3 - ATTACHMENT 1 CORPORATE SERVICES GROUP REPORT.



Outstanding	Division: Corporate Services	Date From: 27/09/2017
	Committee:	Date To: 9/03/2021
	Officer:	
Action Sheets Report		Printed: Monday, 15 March 2021

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 23/07/2019	Crosdale, Timothy	GRANT OF EASEMENTS IN FAVOUR OF AGL - PUNT ROAD, TOMAGO	30/06/2021		
7 169		Crosdale, Timothy				19/200498
12 Mar 2021 Still in negotiations between AGL and LGL.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 11/02/2020	Crosdale, Timothy	COMPULSORY ACQUISITION OF PART 879 SWAN BAY ROAD, SWAN BAY FOR ROAD WIDENING PURPOSE	30/12/2021	12/02/2020	
2 028		Crosdale, Timothy				20/39141
12 Mar 2021 Awaiting Minister's approval to proceed with the compulsory acquisition.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 22/09/2020	Crosdale, Timothy	Newline Road, Raymond Terrace	30/06/2021		
2 199		Crosdale, Timothy				20/288489
12 Mar 2021 Approved. Contracts are being prepared by HWC. Awaiting works to be finalised for survey.						

ITEM 3 - ATTACHMENT 1 CORPORATE SERVICES GROUP REPORT.



Outstanding	Division: Corporate Services	Date From: 27/09/2017
	Committee:	Date To: 9/03/2021
	Officer:	
Action Sheets Report		Printed: Monday, 15 March 2021

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 9/02/2021	Crosdale, Timothy	SHOAL BAY CAR PARK	30/04/2021		
6016		Crosdale, Timothy				21/33235
12 Mar 2021 Investigate the use and feasibility to construct a car park on Crown Land and prepare a report for consideration at a future Council meeting.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 23/02/2021	Crosdale, Timothy	Purchase of Property at Shoal Bay	30/04/2021		
2038		Crosdale, Timothy				21/46402
12 Mar 2021 Investigate the feasibility of a potential purchase and prepare a report for consideration at a future Council meeting.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 9/03/2021	Crosdale, Timothy	Proposed sale of land - 77 Dawson Road, Raymond Terrace (Part)	23/03/2021	11/03/2021	
1051		Crosdale, Timothy				21/60805
12 Mar 2021 Recommendation endorsed by Council. Settlement will occur upon registration of lots.						

ITEM 3 - ATTACHMENT 2 DEVELOPMENT SERVICES GROUP REPORT.



Outstanding	Division: Development Services	Date From: 26/09/2017
	Committee:	Date To: 9/03/2021
	Officer:	
Action Sheets Report		Printed: Monday, 15 March 2021

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	22/06/2021		
1		Pearl, Steven				20/265439
151						
11 Mar 2021						
Revised Target Date From: 23 Mar 2021 To: 22 Jun 2021						
Reason: DA 16-2019-679-1 will be reported back to council 22 June 2021.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 9/02/2021	Drinan, Kate	Caravan Parks / Manufactured Housing Estates - Notification of internal residents of alterations and additions to land lease villages	19/03/2021		
1		Pearl, Steven				21/33235
011						
11 Feb 2021						
Revised Target Date changed From: 23 Feb 2021 To: 19 Mar 2021						
Reason: Amend the Community Engagement Strategy to require reasonable attempts be made to notify the relevant residents committee or equivalent in the event that a development application for alterations and additions or a modification application is received for a caravan park/manufactured housing estate.						
Place the revised Community Engagement Strategy on public exhibition for a period of 28 days and should no submissions be received, the strategy be adopted without a further report to Council.						

ITEM 3 - ATTACHMENT 2 DEVELOPMENT SERVICES GROUP REPORT.



Outstanding **Division:** Development Services **Date From:** 26/09/2017
Committee: **Date To:** 9/03/2021
Officer:
Action Sheets **Printed: Monday, 15 March 2021**
Report

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 9/03/2021	Drinan, Kate	DEVELOPMENT APPLICATION 16-2020-357-1 FOR A SINGLE STOREY DWELLING AT 918 NEWLINE ROAD, EAGLETON (LOT 31 DP 840177)	14/04/2021	10/03/2021	
1		Peart, Steven				21/60805
045						
11 Mar 2021						
Revised Target Date changed From: 14 Apr 2021 To: 14 Apr 2021						
Reason: Site inspection has been organised and DA will be reported back to Council 13 April 2021.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 9/03/2021	Drinan, Kate	DEVELOPMENT APPLICATION 16-2020-302-1 FOR A DUAL OCCUPANCY (1 EXISTING) AND FLOOD MOUND AT 814 HINTON ROAD, OSTERLEY (LOT 29 DP 871241)	14/04/2021	10/03/2021	
2		Peart, Steven				21/60805
046						
11 Mar 2021						
Revised Target Date changed From: 14 Apr 2021 To: 14 Apr 2021						
Reason: Site inspection has been organised and DA will be reported back to Council 13 April 2021.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 9/03/2021	Drinan, Kate	DEVELOPMENT APPLICATION 16-2020-477-1 FOR 2 SEMI-DETACHED DWELLINGS & A 1 INTO 2 LOT TORRENS TITLE SUBDIVISION AT 6 BEENONG CLOSE, NELSON BAY (LOT 196 DP 9165)	14/04/2021	10/03/2021	

ITEM 3 - ATTACHMENT 2 DEVELOPMENT SERVICES GROUP REPORT.



Outstanding	Division: Development Services	Date From: 26/09/2017
	Committee:	Date To: 9/03/2021
	Officer:	
Action Sheets Report		Printed: Monday, 15 March 2021

3	Peart, Steven	21/60805
047		
11 Mar 2021		
Revised Target Date changed From: 14 Apr 2021 To: 14 Apr 2021		
Reason: Site inspection has been organised and DA will be reported back to Council 13 April 2021.		

ITEM 3 - ATTACHMENT 3 FACILITIES & SERVICES GROUP REPORT.



Outstanding	Division: Facilities & Services	Date From: 26/09/2017
	Committee:	Date To: 9/03/2021
	Officer:	
Action Sheets Report		Printed: Monday, 15 March 2021

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 10/12/2019	Maretich, John	Solar Infrastructure	31/08/2021	11/12/2019	
6 264		Kable, Gregory				19/388450
12 Mar 2021 External consultants draft report on energy lighting efficiency/solar panels options was reviewed by internal staff and by external 3rd party consultant. Project will proceed through normal procurement methods.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 10/12/2019	Gutsche, Tammy	GREEN WASTE DROP OFF - SALAMANDER BAY	30/06/2021	11/12/2019	
7 265		Kable, Gregory				19/388450
11 Mar 2021 Will be considered as part of the Waste Management Strategy.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 25/02/2020	Lamont, Brock	Indoor Sports Facility	30/06/2021	26/02/2020	
4 042		Kable, Gregory				20/50488
12 Mar 2021 Current discussions with the Dept of Education about co-sharing a single facility has become not viable. Will commence engagement with Sports Council to determine the indoor sporting needs of this community. Business case development and feasibility to be developed once parameters agreed.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 9/06/2020	Stewart, Adam	Naming of Pathway, Gan Gan Road, Anna Bay	2/03/2021	10/06/2020	
1 101		Kable, Gregory				20/164033
12 Mar 2021 Proposals have been received from the contractors, which will then be presented to Central Ward Councillors.						

ITEM 3 - ATTACHMENT 3 FACILITIES & SERVICES GROUP REPORT.



Outstanding	Division: Facilities & Services	Date From: 26/09/2017
	Committee:	Date To: 9/03/2021
	Officer:	
Action Sheets Report		Printed: Monday, 15 March 2021

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 14/07/2020	Lamont, Brock	REVIEW OF THE OFF LEASH DOG AREAS AND TIMES AT ANNA BAY / BIRUBI POINT, FISHERMANS BAY AND BOAT HARBOUR	30/06/2021		
1 138		Kable, Gregory				20/192934
12 Mar 2021 The findings of the investigation will be presented to Council during April/May 2021.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 14/07/2020	Stewart, Adam	Tomaree Headland	31/07/2022		
2 139		Kable, Gregory				20/192934
12 Mar 2021 Council has undertaken a site review with National Parks as part of their footpath design assessment. It should be noted that National Parks are still in design phase of this project and at present Council has not allocated funds. Though options are being assessed for a funding source for this project.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 24/11/2020	Miles, Philip	Disposal of Surplus Excavated Materials at Newcastle Airport Development Project Site.	30/09/2021		
11 261		Kable, Gregory				20/358525
11 Mar 2021 Development modification required and legal contracts to be drawn up.						

ITEM 3 - ATTACHMENT 3 FACILITIES & SERVICES GROUP REPORT.



Outstanding	Division: Facilities & Services	Date From: 26/09/2017
	Committee:	Date To: 9/03/2021
	Officer:	
Action Sheets Report		Printed: Monday, 15 March 2021

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 8/12/2020	Maretich, John	Fly Point and Little Beach Parking/SMART Parking	31/03/2021		
3		Kable, Gregory				20/391301
12 Mar 2021 Report is being prepared and will be reported back to Council in May 2021.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 9/02/2021	Lamont, Brock	5G Small Cell Technology Rollout in Port Stephens	30/06/2021		
3006		Kable, Gregory				21/33235
12 Mar 2021 Works have not commenced given other priorities. Expect this work to be completed by end of June 2021.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 9/02/2021	Maretich, John	Policy Review - Foreshore Vessel Storage Policy	30/04/2021		
5008		Kable, Gregory				21/33235
4 Mar 2021 The public exhibition of the Foreshore Vessel Storage Policy ended on the 10 March 2021. One submission was received therefore a report will be prepared and be presented to Council during April 2021.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 9/02/2021	Maretich, John	MEDOWIE REGIONAL PLAYGROUND AND TOWN CENTRE	31/05/2021		
2012		Kable, Gregory				21/33235
12 Mar 2021 Staff will investigate and prepare a report for Council as per Notice of Motion.						

ITEM 3 - ATTACHMENT 3 FACILITIES & SERVICES GROUP REPORT.



Outstanding	Division: Facilities & Services	Date From: 26/09/2017
	Committee:	Date To: 9/03/2021
	Officer:	
Action Sheets Report		Printed: Monday, 15 March 2021

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 9/02/2021	Maretich, John	ROAD RESEALS ACROSS PORT STEPHENS	30/06/2021		
4 014		Kable, Gregory				21/33235
12 Mar 2021 Staff will prepare a report for Council with road recommendations as per Notice of Motion.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 9/02/2021	Maretich, John	FERN BAY SHARED PATHWAY	31/03/2021		
7 017		Kable, Gregory				21/33235
12 Mar 2021 Staff will start the process to apply for developer contributions.						

MINUTES ORDINARY COUNCIL - 23 MARCH 2021



Outstanding	Division: General Manager's Office	Date From: 26/09/2017
	Committee:	Date To: 9/03/2021
	Officer:	
Action Sheets Report		Printed: Monday, 15 March 2021

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 23/02/2021	Edwards, Ann	Request for Financial Assistance	25/03/2021		
9 035		Wallis, Wayne				21/46402
12 Mar 2021 Request for financial assistance from an individual has been placed on public exhibition until 24 March 2021.						

There being no further business the meeting closed at 6.02pm.