

NOTICE OF ORDINARY MEETING

14 JUNE 2022



PORT STEPHENS COUNCIL

The Mayor and Councillors attendance is respectfully requested:

Mayor: R Palmer (Chair).

Councillors: L Anderson, G Arnott, M Bailey, C Doohan, G Dunkley, P Francis, P Kafer, S Tucker, J Wells.

SCHEDULE OF MEETINGS

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

Please Note:

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

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

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

Food and beverages are not permitted in the Council Chamber.

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BUSINESS

- 1) Opening meeting.
- 2) Acknowledgement of Country - Today, we are meeting on Worimi Country, we acknowledge the past, we are working towards a better tomorrow.
- 3) Prayer - We recognise the rich cultural and religious diversity in Port Stephens and pay respect to the beliefs of all members of our community, regardless of creed or faith.
- 4) Apologies and applications for a leave of absence by Councillors.
- 5) Disclosures of interests.
- 6) Confirmation of minutes Ordinary Meeting of 24 May 2022.
- 7) Mayoral minute(s) – if submitted
- 8) Motions to close meeting to the public – if submitted.
- 9) Reports to Council.
- 10) General Manager's reports – if submitted.
- 11) Questions with Notice – if submitted.
- 12) Questions on Notice.
- 13) Notices of motions – if submitted.
- 14) Rescission motions – if submitted.
- 15) Confidential matters – if submitted.
- 16) Conclusion of the meeting.

PRINCIPLES FOR LOCAL GOVERNMENT

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

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

Guiding principles for Council

1) Exercise of functions generally

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

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

2) Decision-making

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

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

3) Community participation

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

Principles of sound financial management

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

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

Integrated planning and reporting principles that apply to Council

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

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

PORT STEPHENS COMMUNITY STRATEGIC PLAN

The Local Government Act requires Council to adopt a Community Strategic Plan (10+ years). The Plan includes a Delivery Program (4 years), Annual Operational Plan and a Resource Strategy, it also includes the Council's budget.

The Community Strategic Plan is organised into 4 focus areas:

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

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

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

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

BUSINESS EXCELLENCE

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

These outcomes align with the following Business Excellence principles:

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

MEETING PROCEDURES SUMMARY

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

Quorum – A quorum at Port Stephens Council is 6.

Declarations of Interest

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

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

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

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

Motions and Amendments

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

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

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

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

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

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

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

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

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

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

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

A Point of Order can be raised where:

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

Declarations of Conflict of Interest – Definitions

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

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

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

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



Form of Special Disclosure of Pecuniary Interest

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

Important information

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

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

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

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

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

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

ORDINARY COUNCIL - 14 JUNE 2022

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

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

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

to be held on the _____ day of _____ 20__

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

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

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

ORDINARY COUNCIL - 14 JUNE 2022

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

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

Mayor/Councillor's signature _____

Date _____

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



Declaration of Interest form

Agenda item No. _____

Report title _____

Mayor/Councillor _____ declared a

Tick the relevant response:

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

in this item. The nature of the interest is _____

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

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

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

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

Mayor/Councillor left the Council meeting at _____ pm.

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

COUNCIL REPORTS

ITEM NO. 1

**FILE NO: 22/117499
EDRMS NO: 16-2021-1067-1**

DEVELOPMENT APPLICATION 16-2021-1067-1 (ALTERATIONS AND ADDITIONS TO SHOP TOP HOUSING COMPRISING THIRD STOREY ADDITION AND STRATA TITLE SUBDIVISION) AT 12 MARKET STREET FINGAL BAY (LOT: 7 DP: 252664)

REPORT OF: KATE DRINAN - DEVELOPMENT 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 DA No. 16-2021-1067-1 for alterations and additions to shop top housing comprising a third storey addition and strata title subdivision at 12 Market Street, Fingal Bay subject to the conditions contained in **(ATTACHMENT 3)**.

BACKGROUND

The purpose of this report is to present Development Application (DA) 16-2021-1067-1 for alterations and additions to shop top housing comprising a third storey addition for a residential apartment and strata title subdivision to Council for determination.

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

Subject Land	12 Market Street Fingal Bay (Lot 7 DP 252664)
Total Area	333m ²
Zoning	B1 Neighbourhood Centre
Submissions	1
Key Issues	The key issues identified throughout the assessment of the DA relate to building height.
Development Plans	Provided to Councillors separately due to privacy and copyright legislation

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 16.6%. The building height standard is 8m and the proposed development is 9.33m.

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

Proposal

The DA proposes alterations and additions to an existing shop top housing development including a third storey addition and strata title subdivision.

The key elements of the DA include the following:

- Construction of third storey residential apartment addition including 2 bedrooms and media room/bedroom, open plan kitchen, dining and living, 2 bathrooms, laundry, small rear balcony and large front balcony on the Market Street Façade
- Minor extension to the balcony of the middle level apartment and inclusion of bi-fold doors
- Relocation of existing stairs and inclusion of lift in the location of the old stairs
- Rooftop solar panels
- Inclusion of at grade stacked parking space accessed via the rear lane
- Strata subdivision of existing ground floor commercial tenancy and residential unit and new residential unit.

Site Description and History

The subject site, identified as 12 Market Street, Fingal Bay is a rectangular site measuring a total area of 333m². The site has a width of 9.1m and a depth of 36.6m.

The site is currently occupied by a 2 storey shop top housing development, including ground floor commercial with alfresco dining, currently operating as a café with a 3 bedroom apartment on level 1. The site also includes a double garage that is accessible via the rear lane and a small outdoor private open space area.

The site frontage is to the north on Market Street. Adjoining the site to the west is a 3 storey shop top housing development and to the east is another 2 storey shop top housing development.

The site to the east (14 Market Street) currently has a DA lodged for a 3 storey shop top housing development that includes demolition of the existing building and construction of 3 apartments and a ground floor commercial premises (DA16-2021-1018-1).

Key Issues

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

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

Building Height

The proposed development exceeds the maximum allowable building height for the site prescribed under Clause 4.3 of the Port Stephens Local Environmental Plan (PSLEP) 2013. The development proposes a maximum height of 9.33 metres, which is above the maximum permissible building height of 8m and represents a 16.6% 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:

- The proposed development is in keeping with the height, bulk and scale of other existing 3 storey shop top housing developments on Market Street
- The largest extent of the height exceedance is from the lift overrun, which would not be visible from Market Street. When viewed from Market Street, the height exceedance is 0.8m, representing a 10% variation to the 8m height limit
- 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
- Other than the exceedance to the height control, the development is generally compliant with all other development controls under the PSDCP
- The objectives of the height of building standard are achieved notwithstanding non-compliance with the standard.

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

Conclusion

As detailed in the Planners Assessment Report (**ATTACHMENT 2**), the DA 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 despite the variation to the building height development standard, will not result in significant overshadowing, privacy or adverse visual impacts.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2018-2022
Thriving and Safe Place to Live	Provide land use plans, tools and advice that sustainably support the community.

FINANCIAL/RESOURCE IMPLICATIONS

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	No		
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), PSLEP 2013, PSDCP 2014 and associated State Environmental Planning Policies. A detailed assessment against these environmental planning instruments is contained within the assessment report contained at **(ATTACHMENT 2)**.

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 addition of a residential unit on the site 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 apartment will provide employment opportunities in the locality and support the local building and development industries. This will have direct monetary input to the local economy, and the increased number of residents in the locality will provide ongoing economic input through daily living activities. There are no anticipated adverse social or economic impacts as a result of the proposed development.

Impacts on the Built Environment

The proposed development will reinforce the mixed-use nature of the locality and is characteristic of other developments in both the local and wider community. The proposed development includes relevant construction methods and services such as an on-site stormwater management system that will prevent adverse impacts on adjoining properties.

The proposed alterations and additions will improve the existing buildings presentation to Market Street through the introduction of new materials and colour finishes with an articulated balcony feature. The design addresses the street and provides logical and convenient connections to the road network and pedestrian facilities in the locality. There are no anticipated adverse impacts on the built environment as a result of the proposed development.

Impacts on the Natural Environment

The development does not require the removal of any vegetation and includes a stormwater system that manages stormwater in accordance with Councils quantity and quality requirements.

There are no anticipated adverse impacts on the locality as a result of the DA.

CONSULTATION

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

Internal

Consultation was undertaken with Council's Building Certification, Development Engineering, Spatial Services and Infrastructure Contributions teams. 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 the recommended conditions of consent (**ATTACHMENT 3**).

External

Consultation was undertaken with Ausgrid due to the sites proximity to overhead power lines. In response, no objection to the DA was made. The comments provided by Ausgrid were considered during the detailed assessment and are discussed within the Planners Assessment Report (**ATTACHMENT 2**).

Public exhibition

The DA was exhibited from 12 January 2022 to 26 January 2022 in accordance with the provisions of the Port Stephens Council Community Engagement Strategy. During this time, 1 submission was received.

A detailed response to the issues raised in the submission is contained within the Planners Assessment Report (**ATTACHMENT 2**).

OPTIONS

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

ATTACHMENTS

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

COUNCILLORS ROOM

- 1) Development Plans.
- 2) Unredacted submission.

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

TABLED DOCUMENTS

Nil.

ITEM 1 - ATTACHMENT 1 LOCALITY PLAN.



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



APPLICATION REFERENCES

Application Number	16-2021-1067-1
Development Description	Alterations and additions to shop top housing comprising a third storey addition for a residential apartment and strata title subdivision
Applicant	PERCEPTION PLANNING PTY LTD
Land owner	MR A M W WATKINS & MS L ELLIOT
Date of Lodgement	16/12/2021
Value of Works	\$358,583.00
Submissions	Nil

PROPERTY DETAILS

Property Address	12 Market Street FINGAL BAY
Lot and DP	LOT: 7 DP: 252664
88B Restrictions on Title	Nil
Current Use	Shop top housing
Zoning	B1 NEIGHBOURHOOD CENTRE
Site Constraints	Acid Sulfate Soils – Class 5 SEPP Coastal Zone Combined Footprint Stormwater Drainage Requirement Area Maximum Building Height – 8m
State Environmental Planning Policies	State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 State Environmental Planning Policy (Resilience and Hazards) 2021 State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development

PROPOSAL

The proposed development is for alterations and additions to shop top housing comprising a third storey addition and strata title subdivision. The key elements of the proposal are as follows:

- Construction of third storey residential apartment addition including 2 bedrooms and media room/bedroom, open plan kitchen, dining and living, two bathrooms, laundry, small rear balcony and large front balcony on the Market Street Façade.
- Minor extension to the balcony of the middle level apartment and inclusion of bi-fold doors.
- Relocation of existing stairs and inclusion of lift in the location of the old stairs.
- Rooftop solar panels.
- Inclusion of at grade stacked parking space accessed via the rear lane.
- Strata subdivision of existing ground floor commercial tenancy and residential unit and new residential unit.

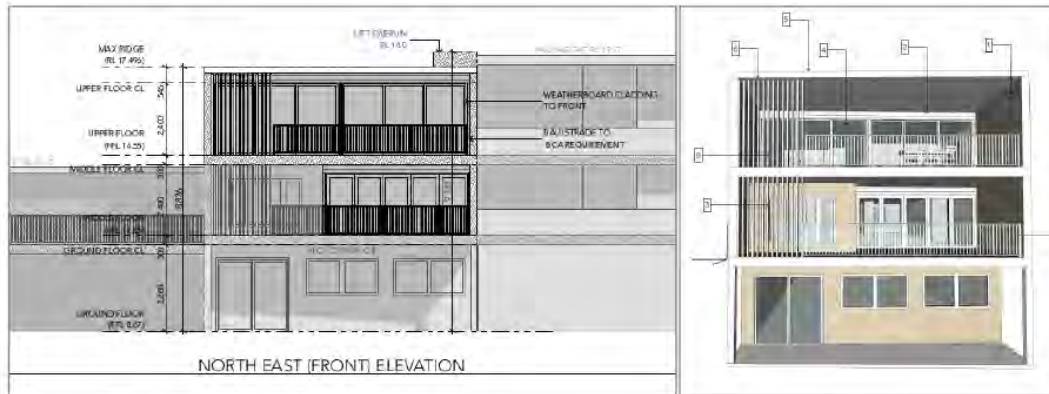


Figure 1: Market Street Elevation

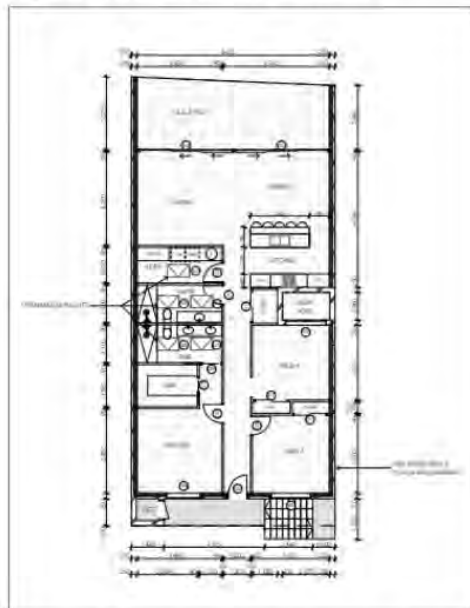


Figure 2: Proposed upper floor apartment layout

SITE DESCRIPTION

The subject site, legally identified as 12 Market Street, Fingal Bay is a rectangular site measuring a total area of 333m². The site has a width of 9.1m and a depth of 36.6m.

The site is currently occupied by a two storey shop top housing development, including ground floor commercial with alfresco dining, currently operating as a café with a 3 bedroom apartment on level 1. The site also includes a double garage that is accessible via the rear lane and a small outdoor private open space area.

The site frontage is to the north on Market Street. Adjoining the site to the west is a 3 storey shop top housing building and to the east is a two storey shop top housing building.

The site to the east (14 Market Street) currently has a DA lodged for a 3 storey shop top housing development that includes 3 apartments and a ground floor commercial premises (DA 16-2021-1018-1).



Figure 2: Satellite Image Overview of Site

SITE HISTORY

The subject site has a number of historic development approvals, including the following:

- 7-1983-60899-1 – Additions to Dwelling – Approved 1983
- 16-1999-1488-1&2 –Use of Road Reserve for Footway Dining – Approved 1999
- 16-2014-537-1 – Change of use to Café and Liquor Store – Approved 2015
- 16-2016-590-1 – Alterations and Additions to Commercial Premises (Deck) – Approved 2016

SITE INSPECTION

A site inspection was carried out on 15 March 2022

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



Image 1: View of existing building from Market Street



Image 2: View of existing building from rear lane

PLANNING ASSESSMENT

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

Internal

Development Engineer – Supported with conditions.

Building Surveyor –Supported with conditions.

Spatial Services – New addressing details provided.

Waste Management – No objections.

Infrastructure Contributions – Outstanding.

External

Ausgrid – Supported with conditions relating to safe separation distances from Ausgrid assets during construction.

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

Section 4.46 EP&A Act provides that development is integrated development if in order to be carried out, the development requires development consent and one or more other approvals. The proposed development is not integrated as it does not require approval under any other acts.

Section 4.15 - Matters for consideration

The proposal has been assessed under the relevant matters for consideration detailed in Section 4.15 of the Environmental Planning and Assessment Act 1979 (EP&A Act).

Section 4.15(a)(i) - any environmental planning instrument

An assessment has been undertaken against each of the applicable environmental planning instruments (EPI's), as follows:

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (SEPP BASIX) was enacted to ensure that dwellings are designed to utilise less potable water and to minimise greenhouse gas emissions by setting energy and water reduction targets for residential houses and units.

A valid BASIX certificate has been submitted with the development application, which demonstrates that the water, thermal comfort and energy requirements for the proposal have been achieved. The proposal is considered to satisfy the relevant provisions of SEPP BASIX.

State Environmental Planning Policy (Resilience and Hazards) 2021 – Chapter 4 Remediation of Land

Clause 7 of SEPP 55 requires the consent authority to consider whether land is contaminated, is in a suitable state despite contamination, or requires remediation to be made suitable for the proposed development.

It is noted that the NSW list of contaminated sites and list of notified sites published by the EPA does not identify the site as being contaminated, nor has previous record of contamination in Council's system. The land is not within an investigation area, there are no records of potentially contaminating activities occurring on the site, and the insert proposed use is not listed as a

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possible contaminating use, per Table 1 of the Guidelines. Noting this, the proposed development satisfies the requirements of SEPP No. 55.

State Environmental Planning Policy (Resilience and Hazards) 2021 – Chapter 2 Coastal Management

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

Division 3 Coastal environment area

As per Section 2.10 of Chapter 2 of the SEPP, development consent must not be granted for development within the coastal environment area unless the consent authority has considered whether the development will cause impact to the integrity of the biophysical and ecological environment, the values and natural coastal processes, marine vegetation, native vegetation and fauna and existing public open space and access to and along the foreshore.

The proposed development is not located with direct access to Fingal Bay Beach or any nearby coastal areas. Accordingly, the proposal will not result in any adverse impacts to the biophysical, ecological environment or natural coastal processes.

Division 4 Coastal use area

As per Section 2.11 of Chapter 2 of the SEPP, development consent must not be granted for development unless the consent authority has considered existing and safe access to and along the foreshore, overshadowing and loss of views, visual amenity and scenic qualities and heritage values. The consent authority must also be satisfied that the development is designed and sited to avoid adverse impacts and to ensure the development has taken into account the surrounding built environment in its design.

The proposed development is an appropriate type and design for the coastal location. The proposed development includes a sustainable and appropriate built form that ensures that the visual amenity of the coastal landscape is maintained. The building envelope and scale of the development is compatible with the natural setting and will not adversely impact views.

Division 5 General

Section 2.12 of Chapter 2 of the SEPP requires consideration to whether the development would increase the risk of coastal hazards.

The proposed development is for a single apartment in the form of a third storey addition to the existing building. There will be no increased risk to coastal hazards.

Therefore, the application would generally comply with the aims of the SEPP and the other matters for consideration stipulated under Clause 2.10, 2.11, and 2.12, and can therefore be supported.

State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development

This Policy (SEPP 65) applies to development for the purpose of a residential flat building, shop top housing or mixed use development with residential accommodation. As the proposed development is alterations and additions to existing shop top housing and not the construction of a new shop-top housing development that does not contain 4 dwellings or more, the provisions SEPP 65 do not apply.

The Apartment Design Guide (ADG), which is implemented under SEPP 65, has the most applicable development controls for this type of development. The ADG specifically deals with shop top apartments under Section 1A. On this basis, the 9 design quality principles of the ADG have been used to inform a merits assessment of the application with regard to design quality. An assessment against these principles is outlined in the table below.

Table 1 – ADG Assessment

Apartment Design Guide	
Quality design principles	
Principle	Assessment
Principle 1: Context and neighbourhood character	<p>Principle 1 identifies that good design responds and contributes to its context, with context being established by the key natural and built features of an area. Responding to context involves identifying the desirable element of an area's existing or future character.</p> <p>The site is zoned B1 Neighbourhood Centre and is located on the southern side of Market Street which is an activated street frontage characterised by mixed use buildings, that include ground floor commercial space with residential units above. The existing mixed-use buildings on Market Street range between 2 and 3 storeys. The northern side of Market Street consists of one and two storey detached dwellings.</p> <p>The site is currently occupied by a two storey shop top housing development, including ground floor commercial with alfresco dining, currently operating as a café and a 3 bedroom apartment on level 1. A double garage adjoining the rear lane and a small outdoor private open space area is located between the building and the garage.</p> <p>Adjoining the site to the north west is a 3 storey shop top housing development and to the east is a small two storey shop top housing development. The site to the south east (14 Market Street) currently has a DA lodged for a 3 storey shop top housing development that includes 3 apartments and a ground floor commercial premises.</p> <p>The proposal is of a lesser scale than the adjoining building to the north and is considered to be compatible with the other larger scale apartment buildings in the locality.</p> <p>The proposed front setback maintains the average building line for the street.</p>
Principle 2: Built form and scale	<p>Principle 2 identifies that good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.</p> <p>The proposed development has a maximum height of 9.33 metres above existing ground level, which is above the maximum permissible building height of 8m metres specified on the LEP Height of Buildings Map. The extent of the variation is 1.33m or 16.6% of the standard. Despite the variation, the proposed building height has been found to be acceptable for the following key reasons:</p> <ul style="list-style-type: none"> • The recent development of several 3 storey shop top housing developments signifies a higher density shift in the context and character of the area, which is reflected by the proposed development, which seeks approval for a third storey addition. • The largest extent of the height exceedance is from the lift

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	<p>overrun which would not be visible from Market Street. When viewed from Market Street, the height exceedance is 0.8m, representing a 10.3% variation to the 8m height limit.</p> <ul style="list-style-type: none"> • Other than the exceedance to the height control, the development is generally compliant with all other development controls under the PSDCP. • 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. • The objectives of the standard are achieved notwithstanding non-compliance with the standard. • The underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable. <p>Overall, the proposal is considered to achieve a scale, bulk and height appropriate for the area. The proposal will result in a similar height to the adjoining development to the north-west and the proposed development to the south-east. The perceived bulk and scale of the building when viewed from Market Street is adequately addressed through the use of varied building materials and colour, and an articulated balcony feature. The side walls of the development would not be visible from the street due to the buildings adjoining either side. The considerable setback from the rear lane ensures the proposal is not of an overbearing scale.</p>
<p>Principle 3: Density</p>	<p>Principle 3 stipulates that good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.</p> <p>In the absence of a FSR control for the site, an appropriate density of development is determined by the achievement of reasonable setbacks and an appropriate height.</p> <p>The proposed third storey addition will be built to the boundary for the front and side setbacks. This floorplate is consistent with the shop top housing typology and existing built form on the site and surrounds.</p> <p>The proposed development maintains acceptable privacy and solar access to neighbouring properties, consistent with the requirements of the ADG, despite the height variation.</p> <p>The proposed top floor unit is generously sized, with open plan dining, living and kitchen. Due to the apartment typology, solar access is compromised by the zero setbacks, however, the design responds to this by concentrating habitable rooms to the northern aspect, which has water views and good solar access. Reduced solar access in rooms towards the rear are adequately mitigated through the use of skylights and a light void.</p>

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	<p>Ground level communal open space is not able to be provided at ground level due to existing site constraints. However, generous sized balconies of 20m² and 25m² provide adequate private open space and screened clothes drying areas. Given the size of the building (2 units) and provision of the large second storey balcony, a ground floor communal space is not considered necessary. An existing small ground floor POS area is also allocated to the middle level apartment.</p> <p>The proposed density of the development is reflective of other existing development in both the immediate locality and broader locality.</p>
<p>Principle 4: Sustainability</p>	<p>Principle 4 identifies that good design combines positive environmental, social and economic outcomes. Further, that good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents.</p> <p>A valid BASIX certificate has been submitted with the development. The proposed apartment achieves adequate levels of solar access and can be cross ventilated to maximise amenity and minimise reliance on powered heating and cooling.</p>
<p>Principle 5: Landscape</p>	<p>Principle 5 specifies that good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity.</p> <p>As noted above, the provision for landscaping in shop top housing developments is limited due to the zero front and side setbacks. The existing rear setback area is occupied by car parking and a small open space area for the middle level unit.</p> <p>Furthermore, there is not opportunity for street tree plantings.</p> <p>Given the proposal is for the addition of a single apartment above the existing building, no additional landscaping is considered necessary.</p>
<p>Principle 6: Amenity</p>	<p>Principle 6 provides that good design positively influences internal and external amenity for residents and neighbours. Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas, and ease of access for all age groups and degrees of mobility.</p> <p>The proposed apartment is generously sized, with open plan dining, living and kitchen. The apartment has access to appropriate levels of sunlight and natural ventilation. Appropriate levels of storage are provided.</p> <p>Generous sized balconies provide private open space and screened clothes drying areas.</p>

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	<p>Overall, the amenity of the proposed development is acceptable, providing for an appropriate level of solar access, natural ventilation, privacy and outlook.</p> <p>The ceiling height of the proposed upper floor is 2.4m, which does not meet the ADG requirement, however, the 2.4m is consistent with the existing middle floor and meets the minimum requirements of the Building Code of Australia. On these grounds, the floor to ceiling height proposed is acceptable.</p>
Principle 7: Safety	<p>Principle 7 identifies that good design optimises safety and security within the development and public domain.</p> <p>The proposed balcony arrangement faces Market Street, providing for good passive surveillance opportunities.</p> <p>The site is fenced to the rear lane and could be locked to improve safety and security.</p>
Principle 8: Housing diversity and social interaction	<p>Principle 8 specifies that good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.</p> <p>The proposal includes one additional apartment, which will improve the local housing mix. The proposed apartment offers a low maintenance property in an accessible area, close to amenities and services.</p> <p>Given the proposal includes only two residential units, a dedicated shared communal space is not considered to be required to encourage social interaction between residents.</p>
Principle 9: Aesthetics	<p>Principle 9 provides that good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design also uses a variety of materials, colours and textures.</p> <p>The proposal is well proportioned and includes the introduction of an appropriate mix of material finishes and colour to the proposed addition of the development, which improves the overall appearance of the building. A balcony screen is provided to both levels to add articulation to the façade, improving the visual presentation of the building to Market Street.</p> <p>By retaining the ground floor commercial space, the existing active street frontage is maintained.</p>

Port Stephens Local Environmental Plan 2013 (LEP)

Clause 2.3 – Zone Objectives and Land Use Table

The proposed development is defined as shop top housing which is permissible with consent in the B1 Neighbourhood Centre zone. The development addresses the objectives of the zone by

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maintaining the approved ground floor commercial use, whilst also expanding the residential component of the development.

Clause 2.7 – Demolition requiring development consent

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

The proposed development requires the demolition of minor internal elements and the existing staircase at the rear of the building.

Accordingly, conditions of consent have been recommended in order to mitigate potential impacts to adjoining properties and the locality during demolition works.

Clause 4.1 – Minimum Subdivision Lot Size

The development is for strata subdivision, therefore the minimum lot sizes under Clause 4.1 do not apply.

Clause 4.3 – Height of Buildings

The proposed development has a maximum height of 9.33 metres above existing ground level, which is above the maximum permissible building height of 8m metres specified on the LEP Height of Buildings Map. The extent of the variation is 1.33m or 16.6% of the standard.

The proposed variation is considered in detail against Clause 4.6 below.

Clause 4.6 – Exceptions to development standards

The proposed development has a maximum height of 9.33 metres above existing ground level, which is above the maximum permissible building height of 8m metres specified on the LEP Height of Buildings Map. The extent of the variation is 1.33m or 16.6% of the standard. Despite the variation, the proposed building height has been found to be acceptable for the following key reasons:

- The development of several 3 storey shop top housing developments on Market Street signifies a higher density shift in the context and character of the area and streetscape. This is reflected by the proposed development, which seeks approval for a third storey addition.
- The largest extent of the height exceedance is from the lift overrun, which would not be visible from Market Street. When viewed from Market Street, the height exceedance is 0.8m, representing only a 10.3% variation to the 8m height limit.
- Despite the proposed height variation, offsite amenity impacts relating to overshadowing, privacy, and streetscape setting are adequately addressed, demonstrating no additional benefit would be derived from a reduced building height.
- Other than the exceedance to the height control, the development is generally compliant with all other development controls under the PSDCP.
- The objectives of the height of building standard are achieved notwithstanding non-compliance with the standard.
- The underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.

On this basis, 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. A detailed clause 4.6 assessment is provided at Attachment 1.

Clause 5.10 – Heritage conservation

The site does not contain any local or state listed heritage items, nor are there any heritage items located in proximity to the site.

An AHIMS search provided with the application confirms there are no previously recorded Aboriginal sites on or in proximity to the site.

Clause 7.1 – Acid Sulfate Soils

The subject land is mapped as containing potential Class 5 acid sulfate soils. The proposed development is not anticipated to entail excavations below 5 metres and therefore, it is not expected that acid sulfate soils would be encountered during works.

Clause 7.2 – Earthworks

Minimal earthworks are required, as the proposal includes a third storey addition on an existing building. No material is proposed to be imported or exported from the subject site and accordingly, the development accords with the requirements of this clause.

Clause 7.6 – Essential Services

The subject site is serviced by reticulated water, electricity and sewer. In addition, the application has demonstrated that stormwater drainage resulting from roof and hard stand areas can be catered for in accordance with Councils requirements. The subject land also maintains direct access to Market Street and the rear lane, meeting the requirements of this clause.

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

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

Section 4.15(a)(iii) – any development control planPort Stephens Development Control Plan 2014

The Port Stephens Development Control Plan 2014 (DCP) is applicable to the proposed development and has been assessed below.

Chapter B3 – Environmental ManagementAcid Sulfate Soils

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

Noise

The noise impacts of the development during construction can be limited through the recommended conditions of consent, which limit construction work hours and mitigate noise derived from ventilation and air conditioning systems. Subject to conditions, the application is satisfactory in regards to noise management.

Earthworks

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

Chapter B4 – Drainage and Water Quality

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

Chapter B7 – Heritage

The site does not contain any local or state listed heritage items, nor are there any heritage items located in proximity to the site.

An AHIMS search provided with the application confirms there are no previously recorded Aboriginal sites on or in proximity to the site.

Chapter B8 – Road Network and Parking

The proposal includes the addition of a two bedroom unit, which requires the provision of a single car parking space, in accordance with Figure BT of the PSDCP. However, the proposal includes a media room that could also reasonably be used as a bedroom. As a result, the proposal generates a demand for 2 parking spaces in accordance with Figure BT.

The proposal includes the provision of two stacked spaces, which satisfies the requirements of Figure BT.

The traffic generation associated with the single additional unit can be accommodated by the existing road network and is not expected to cause a drop in the level of service for any nearby intersections.

Chapter C1 – Subdivision

The proposed development includes a strata subdivision, however there are no controls within this section that apply to the proposal.

Chapter C2 – Commercial

There is no specific chapter with controls for shop-top housing. It is noted that the ground floor of the existing building is a commercial premises, however, given there are no works proposed on the ground floor, this chapter is not applicable to the development.

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

The *Environmental Planning and Assessment Regulations 2021* (EP&A Regs) requires the consent authority to consider the provisions of the National Construction Code – Building Code of Australia (BCA). Should the application be approved, recommended conditions of consent have been provided requiring compliance with the BCA.

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

The addition of a residential unit on the site 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 apartment 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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Impacts on the Built Environment

The proposed development will reinforce the mixed-use 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 proposed building alterations and additions will improve the existing buildings presentation to Market Street through the introduction of new materials and colour finish with an articulated balcony feature. The proposal addresses the street and provides logical and convenient connections to the road network and pedestrian facilities in the locality. There are no anticipated adverse impacts on the built environment as a result of the proposed development.

Impacts on the Natural Environment

The proposed development does not require the removal of any vegetation and includes a stormwater water system that manages stormwater in accordance with Councils quantity and quality requirements. On these grounds, there will be no adverse impact to the natural environment.

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

The subject site is located within an existing urban area and is clear of vegetation. The site has access to all relevant services and the proposed development makes good use of the existing building. The proposal addresses all elements required under the relevant planning instruments and policies and there are no anticipated adverse impacts on the locality as a result of the development.

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

Public Submissions

The application was exhibited from 12 January 2022 to 26 January 2022 in accordance with the provisions of the Port Stephens Council Community Engagement Strategy. During this time, one submission was received. The matters raised in the submission are considered below.

Issue Raised:	Council Response:
<p>Parking and access</p> <p>The rear land does not currently cope with the number of vehicles using it and there is a lack of parking available in the area. The three proposed apartments will exacerbate this problem.</p>	<p>The proposal is for one additional unit, rather than three as there are already two contained in the existing building. As a result, the proposal generates a demand for 2 parking spaces in accordance with car parking section of the PSDCP. The proposal includes the provision of two stacked parking spaces, which satisfies the requirements of the PSDCP.</p>

Section 4.15(1)(e) the public interest

The proposal provides for additional housing choice in the locality to service the needs of the community, whilst not anticipated to have any significant adverse impacts on surrounding properties or the amenity of the locality. The proposed development reinforces the mixed-use nature of the land and is in keeping with the character of surrounding developments. The proposed development is in the public interest.

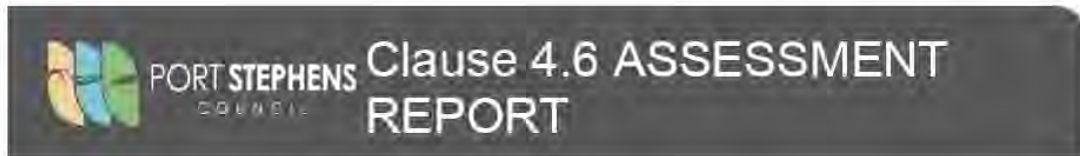
***Section 7.11 – Contribution towards provision or improvement of amenities or services
(developer contributions)***

The proposed development is subject to 7.11 contributions, which have been included as a recommended condition of consent.

DETERMINATION

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

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 (%)
8m	1.33m	16.6%


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

The assessment of the applicant's clause 4.6 variation request is set out below:

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 Application states:

In *Wehbe v Pittwater Council* (2007) LEC 827 (*Wehbe*), the Land and Environment Court identified five ways in which request to vary a development standard may be determined to be well founded. The clause 4.6 request makes reference to the following two reasons identified in the *Wehbe v Pittwater Council* case:


PORT STEPHENS COUNCIL

Clause 4.6 ASSESSMENT REPORT

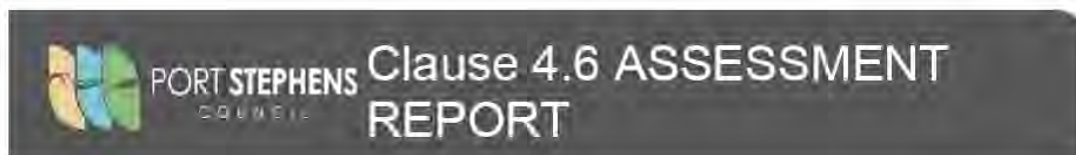
1. The objectives of the standard are achieved notwithstanding non-compliance with the standard.
2. The underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.
3. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.

Having regard to these reasons, the applicant's clause 4.6 variation request provides that compliance with clause 4.3 (building heights) is unreasonable or unnecessary. The key reasons provided by the applicant have been summarised below:

- The impact created by the proposed development will be minor and insignificant to neighbouring sites.
- The height non-compliance does not result in the building being out of scale in the context of surrounding development and is not likely to have an adverse impact on local amenity.
- The proposed development has been designed to meet the existing proportions set by the neighbouring building to the north-west.
- The proposed development does not contravene the objectives of the zone and is considered a good use of the site.
- It provides a contemporary designed residential unit, which provides alternate housing needs for a diverse community.
- The proposal is considered to be in the public benefit as it will provide an additional residential dwelling within a well serviced area.
- Other than the exceedance to the height control, the development in compliance with all other development controls under the PSDCP.
- The proposed development does not impact upon any view sharing of adjoining neighbours. Considering the separation against the residential development to the north, and the provision of privacy screens along the balcony, no privacy impacts have been identified.
- The shadowing impacts on the private open space (POS) of the south-eastern neighbour are considered minor.
- Compliance with the standard would result in inconsistencies with the existing built form context and desired future character, noting the larger 3 storey buildings adjacent the site and the underlying purpose outlined above would not be achieved.

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 environmental planning grounds are met as follows:

"The proposed shop-top housing is permissible in the B1 Neighbourhood Centre zone and is consistent with the relevant objectives of both the zone and the height development standard. The proposal is of a good quality design, which responds well to the preferred character of the zone and provides improved internal amenity. The extent of non-compliance will not create unreasonable impacts on adjoining development. In addition, strict compliance with the standard would unreasonably and unnecessarily compromise the design."

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.

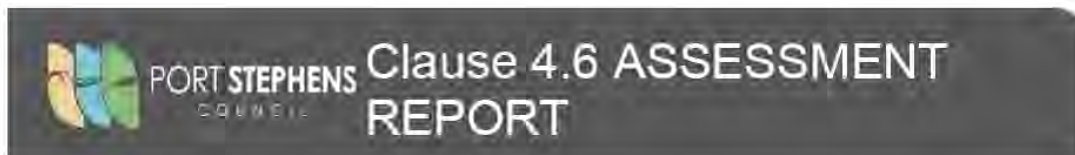
The applicant's Clause 4.6 variation request relies on three of the five ways in which a request to vary a development standard may be determined to be well founded outlined in *Wehbe*. The adequacy of the applicants request is outlined against each of the *Wehbe* tests cited below.

1. 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, it is noted that the Market Street local centre is characterised by an active street frontage created by ground floor commercial tenancies and residential units above, consistent with a 'shop top housing' building typology. The height of buildings on Market Street ranges from 1-3 storeys, with newer buildings typically being larger than older buildings. The recent development of several 3 storey shop top housing developments signifies a higher density shift in the context and character of the area, which is reflected by the proposed development, which seeks approval for a third storey addition, in the form of shop top housing. On this basis, the proposal is considered compatible with the context and character of the area.

With regard to the latter clause objectives relating to hierarchy of centres and land-use structure, the hierarchy of centres is not disrupted given there are several existing 3 storey buildings on Market Street, which establish the hierarchy of the centre.



2. The underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.

The underlying objective of the development standard is to present a building that is contextually compatible with the height and character of the locality. The non-compliance, whilst easily viewed from the public domain, reinforces the established character of the zone by complimenting the height and proportions of the existing development to the north-west of the subject site, which are 3 storeys in height. Compliance with the height standard would not permit a third storey and a second residential unit on the site, which would not be in keeping with this established character. On this basis, the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.

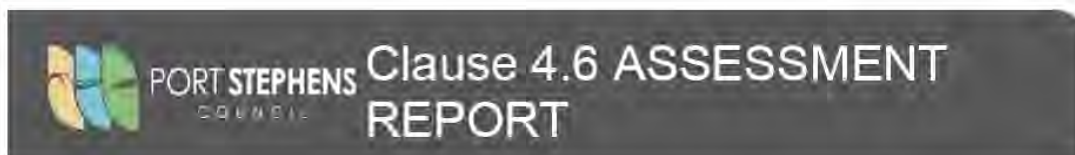
3. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.

The applicant has provided examples of height variations approved for 3 single dwellings between 100m-800m from the site, in the neighbouring R2 Low Density Residential zone, to support that the building height standard has been abandoned. The threshold test required to demonstrate that a development standard has been abandoned or destroyed requires 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' (*Abrams v The Council of the City of Sydney (No 2)* [2018] NSWLEC). Given the 3 developments listed by the applicant are a substantial distance from site and located in a different zone, they are not considered adequate evidence of a pattern of abandonment. On this basis, the applicant's assertion that the development standard has virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard is not accepted.

Based on two of the three *Wehbe* tests identified in the applicant's variation request, the objectives of Clause 4.3 are achieved, despite the numerical non-compliance. Subsequently, compliance with the standard is considered unnecessary in this instance.

As stated above, the third *Wehbe* test referenced by the applicant is not considered to be adequately justified and alone, is not sufficient grounds to justify compliance with the standard is unreasonable.

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.



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 cumulative impacts by way of undermining the objective of the development standard.

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.



RECOMMENDED CONDITIONS OF CONSENT

1.0 - General Conditions of Consent

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

- (1) **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. Ausgrid, Reference: 1900111677, dated 11 January 2022

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

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

Plan No.	Revision No.	Plan Title.	Drawn By.	Dated.
DA.1	B3	Colours & Materials Schedule	YHD	10/02/2022
DA.2	B3	Site Plan	YHD	10/02/2022
DA.3	B3	Stormwater Plan	YHD	10/02/2022
DA.4	B3	Ground & Middle Floor	YHD	10/02/2022
DA.5	B3	Upper Floor Plan	YHD	10/02/2022
DA.6 & DA.7	B3	Elevations	YHD	10/02/2022
DA.8	B3	Section	YHD	10/02/2022
2021015 SS1, Sheet 1 & 2 of 2	-	Plan of Subdivision of Lot7 DP252664	Duggan Mather Surveyors	9/11/2021

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

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

PORT STEPHENS COUNCIL

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- (3) **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.

- (4) **Excavation for residential building works** – If the approved development involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the consent must, at the person's own expense:
 - a) protect and support the adjoining premises from possible damage from the excavation; and
 - b) where necessary, underpin the adjoining premises to prevent any such damage.

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

- (5) **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.

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

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

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) The approved Site Plan, Ref: YDH-285, Page No: DA.3 Rev B3 prepared by YHD and dated 10/02/22 is to be amended to replace the 2000L rainwater tank with an 8000L rainwater tank.



- (2) **Stormwater/drainage plans** – Detailed stormwater drainage plans must be prepared by a qualified Engineer in accordance with the approved plans, Council's Infrastructure Specifications and the current Australian Rainfall and Runoff guidelines using the Hydrologic Soil Mapping data for Port Stephens (available from Council).
Details demonstrating compliance must be provided to the Certifying Authority.
Note. Under the Roads Act 1993, only the Roads Authority can approve commencement of works within an existing road reserve.
- (3) **Retaining walls** – All retaining walls within 1m of a boundary and exceeding 600mm in height must be designed and certified by a suitably qualified Structural Engineer.
Details demonstrating compliance must be provided to the Certifying Authority.
- (4) **Erosion and sediment control plan**– Before the issue of a construction certificate or, the applicant is to ensure that an erosion and sediment control plan is prepared in accordance with the following documents before it is provided to and approved by the certifier:
- the guidelines set out in the NSW Department of Housing manual 'Managing Urban Stormwater: Soils and Construction Certificate' (the BlueBook), and
 - the 'Do it Right On-Site, Soil and Water Management for the Construction Industry' (Southern Sydney Regional Organisation of Councils and the Natural Heritage Trust).
- The applicant must ensure the erosion and sediment control plan is kept on-site at all times during site works and construction.
- (5) **Car parking details (if applicable)** – Before the issue of the relevant construction certificate, a suitably qualified engineer must review the plans which relate to parking facilities and provide written evidence, to the certifier's satisfaction, that it complies with the relevant parts of AS 2890 Parking Facilities- Off- Street Carparking and Council's development control plan.
- (6) **Construction site management plan** - Before the issue of a construction certificate, the applicant must ensure a construction site management plan is prepared before it is provided to and approved by the certifier. The plan must include the following matters:
- a) location and materials for protective fencing and hoardings to the perimeter on the site
 - b) provisions for public safety
 - c) pedestrian and vehicular site access points and construction activity zones
 - d) details of construction traffic management, including proposed truck movements to and from the site and estimated frequency of those movements, and measures to preserve pedestrian safety in the vicinity of the site
 - e) protective measures for on-site tree preservation (including in accordance with AS 4970-2009 Protection of trees on development sites and Council's DCP, if

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ITEM 1 - ATTACHMENT 3 RECOMMENDED CONDITIONS OF CONSENT.



- applicable) and trees in adjoining public domain (if applicable)
- f) details of any bulk earthworks to be carried out
- g) location of site storage areas and sheds
- h) equipment used to carry out all works
- i) a garbage container with a tight-fitting lid
- j) dust, noise and vibration control measures
- k) location of temporary toilets.

The applicant must ensure a copy of the approved construction sitemanagement plan is kept on-site at all times during construction.

Note. Condition only applies to dual occupancy developments and above.

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

Facility	Per Lot/Dwelling	Total \$
Civic Administration – Plan Management	\$472	\$472
Civic Administration – Works Depot	\$1,231	\$1,231
Town Centre Upgrades	\$3,316	\$3,316
Public Open Space, Parks and Reserves	\$2,012	\$2,012
Sports & Leisure Facilities	\$1,914	\$1,914
Cultural & Community Facilities	\$1,296	\$1,296
Road Works	\$3,489	\$3,489
Shared Paths	\$3,196	\$3,196
Bus Facilities	\$12	\$12
Fire & Emergency Services	\$240	\$240
Flood & Drainage	\$1,846	\$1,846
Kings Hill Urban Release Area	\$293	\$293
	TOTAL	\$19,317

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 total amount payable may be adjusted at the time the payment is made, in accordance with the provisions of the Port Stephens Local Infrastructure Contributions Plan 2020. A copy of the Plan is available for inspection on Council's website at <https://www.portstephens.nsw.gov.au/>, alternatively contact Council on 02 9228 055.

- (8) **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.

- (9) **Registered Design Practitioners- Class 2 Building Work** - Pursuant to the Design and Building Practitioners Act 2020 and Regulation 2021, plans and other details for all Class 2 building works shall be only designed and endorsed by registered design practitioners. Confirmation shall be provided by the design practitioner/s to the Certifying Authority confirming that the relevant registration is in place, and insurance where required by this legislation.

3.0 - Prior to Commencement of Works

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

- (1) **Home Building Act requirements** - Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the principal certifier for the development to which the work relates (not being the council) has given the council written notice of the following information —
- a) In the case of work for which a principal contractor is required to be appointed—
 - (i) the name and licence number of the principal contractor, and
 - (ii) the name of the insurer by which the work is insured under Part 6 of that Act,
 - b) In the case of work to be done by an owner-builder—
 - (iii) the name of the owner-builder, and
 - (iv) if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified becomes out of date, further work must not be carried out unless the principal certifier for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

- (2) **Payment of development contributions**- In the case of residential building work for which the *Home Building Act 1989* requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.
- (3) **Notice of Principal Certifying Authority appointment** – The Principal Certifier for this development must give notice must be given to the consent authority and Council, where the Council is not the consent authority, at least two days prior to subdivision and/or building works commencing in accordance with Section 6.6 (2) (a) of the Environmental Planning and Assessment Act 1979 and Section 57 of the



Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021. The notice must include:

- 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 Certifier and the person who appointed the principal certifier;
- e) if the principal certifier is a registered certifier
 - i) the certifier's registration number, and
 - ii) a statement signed by the registered certifier to the effect that the certifier consents to being appointed as principal certifier, and
 - iii) a telephone number on which the certifier may be contacted for business purposes.

The notice must be lodged on the NSW planning portal.

- (4) **Notice commencement of work** – Notice must be given to Council and the Principal Certifier, if not the Council, of the person's intention to commence the erection of the building or undertake subdivision work at least two days prior to subdivision and/or building works commencing in accordance with Sections 6.6 (2) and 6.12 (2) (c) of the Environmental Planning and Assessment Act 1979 and Section 59 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021. The notice must include:

- a) the name and address of the person;
- 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 numbers and date of issue of the development consent and construction certificate;
- e) a statement signed by or on behalf of the principal certifier that all conditions of the consent that must be satisfied before the work commences have been satisfied; and
- f) the date on which the work is intended to commence.

The notice must be lodged on the NSW planning portal.

- (5) **Signs on site** – A sign must be erected in a prominent position on any site on which building work or demolition work is being carried out:

- a) showing the name, address and telephone number of the principal certifier for the work, and
- b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and



- c) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work or demolition work is being carried out, but must be removed when the work has been completed.

Note: This does not apply in relation to building work or demolition work that is carried out inside an existing building that does not affect the external walls of the building.

- (6) **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.
- (7) **Site is to be secured** – The site must be secured and fenced to the satisfaction of the Principal Certifying Authority. All hoarding, fencing or awnings (associated with securing the site during construction) is to be removed upon the completion of works.
- An awning is to be erected that would sufficiently prevent any substance from the construction work falling onto public property. The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons on public property.
- (8) **Erosion and sediment controls in place** – Before the commencement of any site or building work, the principal certifier must be satisfied the erosion and sediment controls in the erosion and sediment control plan, (as approved by the principal certifier) are in place until the site is rectified (at least 70% ground cover achieved over any bare ground on site).
- (9) **All weather access** – A 3m wide all-weather vehicle access is to be provided from the kerb and gutter to the building under construction for the delivery of materials and use by trades people.
- No materials, waste or the like are to be stored on the all-weather access at any time.
- (10) **Rubbish generated from the development** – Where not already available, a waste containment facility is to be established on site. The facility is to be regularly emptied and maintained for the duration of works.
- No rubbish must be stockpiled in a manner which facilitates the rubbish to be blown or washed off site. The site must be cleared of all building refuse and spoil immediately upon completion of the development.
- (11) **Hazardous Building Materials Assessment** – A Hazardous Building Material Assessment (HBMA) must be undertaken on all buildings and structures to be

ITEM 1 - ATTACHMENT 3 RECOMMENDED CONDITIONS OF CONSENT.



demolished that identifies all hazardous components on site. A HBMA report must be provided to the PCA and Council.

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

- (12) **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.

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

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

- (14) **Capping linking No. 12 and 14 Market Street** - The person having benefit of this subject development consent shall make appropriate arrangements with the owners of No. 14 Market Street Fingal Bay regarding the capping that links the roofs of No. 12 and 14 Market Street to ensure any works to this capping does not cause damage to the building at No. 14. These arrangements shall be finalised to the satisfaction of the owners of both properties prior to the commencement of any works to this capping.

4.0 - During Works

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

- (1) **Implementation of BASIX commitments** - While building work is being carried out, the applicant must undertake the development strictly in accordance with the commitments listed in the BASIX certificate(s) approved by this consent, for the development to which the consent applies.
- (2) **Shoring and adequacy of adjoining property (if applicable)** - If the development involves an excavation that extends below the level of the base of the footings of a building, structure or work on adjoining land (including any structure or work within a road or rail corridor), the person having the benefit of the development consent must, at the person's own expense —

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- a) Protect and support the building, structure or work from possible damage from the excavation, and
- b) Where necessary, underpin the building, structure or work to prevent any such damage.

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.

- (3) **Hours of work** – The principal certifier must ensure that building work, demolition or vegetation removal is only carried out between:

7.00am to 5.00pm on Monday to Saturday

The principal certifier must ensure building work, demolition or vegetation removal is not carried out on Sundays and public holidays, except where there is an emergency.

Unless otherwise approved within a construction site management plan, construction vehicles, machinery, goods or materials must not be delivered to the site outside the approved hours of site works.

Note: Any variation to the hours of work requires Council's approval.

- (4) **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.

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

- (6) **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.

- (7) **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.
- (8) **Surveys by a registered surveyor** – While building work is being carried out, a registered surveyor is to measure and mark the positions of the following and provide them to the principal certifier —
- a) All footings/ foundations
 - b) At other stages of construction – any marks that are required by the principal certifier.
- (9) **Construction Management Plan implementation** - All construction management procedures and systems identified in the approved Site Construction Management Plan must be introduced during construction of the development.
- (10) **Stormwater disposal** – Following the installation of any roof, collected stormwater runoff from the structure must be:
- a) Connected to the approved storm water management system.
- (11) **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.
- (12) **Unexpected finds contingency (general)** – Should any suspect materials (identified by unusual staining, odour, discolouration or inclusions such as building rubble, asbestos, ash material, etc.) be encountered during any stage of works (including earthworks, site preparation or construction works, etc.), such works must cease immediately until a qualified environmental specialist has been contacted and conducted a thorough assessment.
- In the event that contamination is identified as a result of this assessment and if remediation is required, all works must cease in the vicinity of the contamination and Council must be notified immediately.
- Where remediation work is required, the applicant will be required to obtain consent for the remediation works.

ITEM 1 - ATTACHMENT 3 RECOMMENDED CONDITIONS OF CONSENT.



- (13) **Soil, erosion, sediment and water management** – All requirements of the Erosion and Sediment Control Plan or Soil and Water Management Plan must be maintained at all times during the works and any measures required by the plan must not be removed until the site has been stabilised.
- (14) **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.
- (15) **Construction noise** – While building work is being carried out, the applicant is to ensure that any noise caused by demolition, vegetation removal or construction does not exceed an LAeq (15 min) of 5dB(A) above background noise, when measured at any lot boundary of the property where the construction is being carried out.
- (16) **Cut and fill (if applicable)** – While building work is being carried out, the principal certifier must be satisfied all soil removed from or imported to the site is managed in accordance with the following requirements:
- (a) All excavated material removed from the site must be classified in accordance with the EPA's Waste Classification Guidelines before it is disposed of at an approved waste management facility and the classification and the volume of material removed must be reported to the principal certifier.
- All fill material imported to the site must be Virgin Excavated Natural Material as defined in Schedule 1 of the *Protection of the Environment Operations Act 1997* or a material identified as being subject to a resource recovery exemption by the NSW EPA.
- (17) **Uncovering relics or Aboriginal objects** - While demolition or building work is being carried out, all such works must cease immediately if a relic or Aboriginal object is unexpectedly discovered. The applicant must notify the Heritage Council of NSW in respect of a relic and notify the Secretary of the Department of Planning, Industry and Environment and the Heritage Council of NSW in respect of an Aboriginal object. Building work may recommence at a time confirmed by either the Heritage Council of NSW or the Secretary of the Department of Planning, Industry and Environment.

In this condition:

- "relic" means any deposit, artefact, object or material evidence that:
 - (a) relates to the settlement of the area that comprises New South Wales, not being Aboriginal settlement, and
 - (b) is of State or local heritage significance; and
- "Aboriginal object" means any deposit, object or material evidence (not being a handicraft made for sale) relating to the Aboriginal habitation of the area that comprises New South Wales, being habitation before or concurrent with (or both) the occupation of that area by persons of non-Aboriginal extraction and includes Aboriginal remains.



5.0 - Prior to Issue of a Subdivision Certificate

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

- (1) **Strata Plan of Subdivision** – Sections 37 and 37A of the Strata Schemes (Freehold Development) Act 1973 require an application to be provided to Council for approval prior to the issue of the certified Strata Plan of subdivision.

The applicant will be required to submit documentary evidence that the property has been developed in accordance with the plans approved by this development consent 16-2021-1067-1, and of compliance with the relevant conditions of consent, prior to the issuing of a Strata Plan of Subdivision.

Note: The final Strata Plan of Subdivision must be prepared to a quality suitable for lodgement with the NSW Land Registry Services.

- (2) **Restriction on issue of Strata Plan of Subdivision** – An Occupation Certificate for the building must be issued by the PCA prior to the issue of any Strata Plan of subdivision associated with this development consent 16-2021-1067-1.

Documentary evidence of the issue of the Occupation Certificate must be provided to Council in conjunction with the application for the Strata Plan of Subdivision.

- (3) **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.

- (4) **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.

- (5) **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.
- 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.

6.0 - 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.

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

- (2) **Survey Certificate** – A Registered Surveyor must prepare a Survey Certificate to certify that the location of the building in relation to the allotment boundaries complies with the approved plans or as specified by this consent. The Survey Certificate must be provided to the satisfaction of the Principal Certifying Authority.
- (3) **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.

- (4) **Stormwater/drainage works** – All stormwater and drainage works required to be undertaken in accordance with this consent must be completed.

The certification/verification must be provided to the satisfaction of the Principal Certifying Authority.

- (5) **Repair of infrastructure** – Before the issue of an occupation certificate, the applicant must ensure any public infrastructure damaged as a result of the carrying out of building works (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub-contractors, concreting vehicles) is fully repaired to the written satisfaction of Council, and at no cost to Council.

Note: If the council is not satisfied, the whole or part of the bond submitted will be used to cover the rectification work.

- (6) **Works as Executed Plans and any other documentary evidence** - Before the issue of the relevant occupation certificate, the applicant must submit, to the satisfaction of the principal certifier, works-as-executed plans, any compliance certificates and any other evidence confirming the following completed works:

- (a) All stormwater drainage systems and storage systems

The principal certifier must provide a copy of the plans to Council with the occupation certificate.

- (7) **Hunter Water Corporation approval** - A Section 50 Application under the Hunter Water Act 1991 must be lodged with Hunter Water Corporation (HWC) and details of the Notice of Compliance from HWC must be provided to the Certifying Authority.



- (8) **Section 64 Upgrade Requirements** - Pursuant to Clause 64 of the Environmental Planning and Assessment Regulation 2021 Port Stephens Council as the relevant consent authority for this Development Application has determined it appropriate to bring the existing building into partial conformity with the Building Code of Australia (NCC 2019 Amendment 1). The following matters are to be addressed to the satisfaction of the appointed Principal Certifying Authority prior to the issue of any occupation certificate:
- a) Address CP2 regarding spread of fire between the first and second storeys of the existing building.
 - b) Address CP2 regarding spread of fire from this building to adjoining properties regarding the current fire resistance level of external walls and openings in walls that are required to achieve a fire resistance level for a Class 2 building of Type A construction.
 - c) Address CP8 regarding services that penetrate the current floor that divides the first and second storey.
 - d) Address EP2.1 regarding the provision of smoke detection within the existing part of the building to provide early awareness of smoke.
 - e) Address FP5.1 and FP5.3 regarding sound transmission through the floor that separates the first and second storeys and any services that penetrate this floor.
 - f) Documented proof shall be supplied to Council as part of the occupation certification determination documentation.

Compliance with the above can be by way of a performance based design solution or deemed to satisfy building solution as per A2.1 of the Building Code of Australia.

7.0 – Ongoing Use

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

- (1) **Removal of graffiti** – The owner/manager of the site is responsible for the removal of all graffiti from the building and fences within 48 hours of its application.
- (2) **Parking areas to be kept clear** – At all times, the loading, car parking spaces, driveways and footpaths must be kept clear of goods and must not be used for storage purposes.
- (3) **Residential air conditioning units** – During occupation and ongoing use of the building, the applicant must ensure all subsequently installed noise generating mechanical ventilation system(s) or other plant and equipment that generates noise are in an appropriate location on the site (including a soundproofed area where necessary) to ensure the noise generated does not exceed 5dBa at the boundary adjacent to any habitable room of an adjoining residential premises.

Advice Note(s):

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

Council has no regulatory authority in this area and does not adjudicate civil disputes relating to the provision of, or payment for, the erection of dividing fences. If there is a neighbour dispute about the boundary fence and you are seeking mediation, you may contact the Community Justice Centre, or if legal advice or action is required, you may contact the Chamber Magistrate.
- (3) **Disability Discrimination Act** – The Commonwealth Disability Discrimination Act makes it an offence to discriminate against people on the grounds of disability, in the provision of access to premises, accommodation, or services. It is the owner/applicants responsibility to ensure compliance with the requirements of this Act.
- (4) **Works near/adjoining electricity network assets** – There are electricity network assets adjacent to the proposed development in Mark Street. 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.



SCHEDULE 2 - REASONS FOR DETERMINATION AND REASONS FOR CONDITIONS

REASONS FOR THE DETERMINATION & CONSIDERATION OF COMMUNITY VIEWS

The determination decision was reached for the following reasons:

- The proposed development, subject to the recommended conditions, is consistent with the objectives of the applicable environmental planning instruments, being; Port Stephens Local Environmental Plan 2013 (PSLEP), State Environmental Planning (Resilience and Hazards) 2021 and State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.
- The proposed development is, subject to the recommended conditions, consistent with the objectives of the Port Stephens Council Development Control Plan 2014 (PSDCP).
- Subject to the recommended conditions the proposed development will be provided with adequate essential services required under the PSLEP.
- The proposed development is considered to be of an appropriate scale and form for the site and the character of the locality.
- The proposed development, subject to the recommended conditions, will not result in unacceptable adverse impacts upon the natural or built environments.
- The proposed development is a suitable and planned use of the site and its approval is within the public interest.
- Any submission issues raised have been taken into account in the assessment report and where appropriate conditions of consent have been included in the determination. Council has given due consideration to community views when making the decision to determine the application.

ITEM NO. 2

**FILE NO: 22/102398
EDRMS NO: 58-2021-3-1**

PLANNING PROPOSAL FOR RURAL ECONOMIC DEVELOPMENT

REPORT OF: BROCK LAMONT - STRATEGY & ENVIRONMENT SECTION
MANAGER
GROUP: DEVELOPMENT SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Note the amendments to the Rural Economic Development planning proposal **(ATTACHMENT 1)**.
- 2) Receive and note the submissions **(ATTACHMENT 2)** received during agency consultation and public exhibition of the planning proposal.
- 3) Endorse the submission of the planning proposal **(ATTACHMENT 1)** to the Department of Planning and Environment requesting they exercise their plan making authority to amend the Port Stephens Local Environmental Plan 2013 under section 3.36 of the Environmental Planning and Assessment Act 1979 (NSW).

BACKGROUND

The purpose of this report is to advise Council of the outcome of the exhibition of the Rural Economic Development (RED) planning proposal **(ATTACHMENT 1)** and note the submissions received **(ATTACHMENT 2)**. The report also seeks the endorsement to submit the planning proposal **(ATTACHMENT 1)** to the Department of Planning and Environment (DPE), requesting they exercise their authority to make amendments to the Port Stephens Local Environmental Plan 2013 (LEP).

The planning proposal seeks to amend the LEP to enable economic development in rural areas. It aims to make business growth easier, support tourism development and the attraction of events in Port Stephens by permitting additional uses in the RU1 Primary Production and RU2 Rural Landscape zones.

The planning proposal is responding to the Port Stephens Local Strategic Planning Statement (LSPS), adopted in July 2020. The planning proposal will give effect to actions 3.2, 3.3 and 9.2 in the LSPS, to facilitate land uses that can support the tourist and visitor economy, including enabling farm gate sales, and to review local plans to encourage niche commercial, tourist and recreation activities that complement and promote agricultural industries.

The planning proposal also gives effect to a Notice of Motion dated 14 July 2015 **(ATTACHMENT 3)**.

The planning proposal will make the following amendments:

- Item 1 - incorporate the following additional objective in the RU1 Primary Production Zone
 - To facilitate a variety of tourist and visitor land uses that complement and promote a stronger rural sector appropriate for the area
- Item 2 - incorporate the following additional objective in the RU2 Rural Landscape Zone
 - To facilitate a variety of tourist and visitor land uses that complement and promote a stronger rural sector appropriate for the area
- Item 3 - amend the RU1 Primary Production Land Use Table to permit with consent
 - Artisan food and drink industries, Charter and tourism boating facilities, Recreation facilities (outdoor), Research stations, Rural supplies and Secondary dwellings and prohibit General industry and Heavy Industry
- Item 4 - amend the RU2 Rural Landscape Land Use Table to permit with consent Artisan food and drink industries, Charter and tourism boating facilities, Function centres, Garden centres, High technology industries, Recreation facilities (indoor), Recreation facilities (major), Research stations, Restaurants and cafes, Rural supplies and Secondary dwellings. The proposal will also explicitly prohibit General industry and Heavy industry
- Item 5 - allow Home Businesses to have a maximum floor area of 200sqm instead of 50sqm in the RU1 Primary Production and RU2 Rural Landscape zones
- Item 6 - allow Home Industries to have a maximum floor area of 200sqm instead of 50sqm in the RU1 Primary Production and RU2 Rural Landscape zones
- Item 7 - increase the maximum number of bedrooms for Farm Stay Accommodation from 6 to 12
- Item 8 - amend the LEP to restrict the total floor area of secondary dwellings in rural zones to 100sqm or 40% of the total floor area of the principal dwelling.

On 30 June 2021, the planning proposal was submitted to DPE, in accordance with the Port Stephens Council Rezoning Request Policy, to seek a Gateway determination. A Gateway determination was issued on 20 October 2021 (**ATTACHMENT 4**). The planning proposal must be made by 20 July 2022.

In response to the Gateway determination, the planning proposal was updated to clarify the proposed amendments and update responses to section 9.1 Ministerial directions. In response to agency consultation, the proposed maximum number of bedrooms for farm stay accommodation was reduced to 12 and the proposed additional land uses of garden centres and information and educational facilities were removed from the RU1 Primary Production land use table. An objection from the Department of Primary Industry - Agriculture remains outstanding, and so accordingly, Council does not have delegation to make the plan. Agency submissions are addressed in detail in (**ATTACHMENT 2**).

The planning proposal was placed on public exhibition from 24 March 2022 to 20 April 2022 in accordance with the Gateway determination. During the exhibition period 3 submissions were received (**ATTACHMENT 2**).

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2018-2022
Thriving and Safe Place to Live	Provide land use plans, tools and advice that sustainably support the community.

FINANCIAL/RESOURCE IMPLICATIONS

There are no direct financial/resource implications, for Council as a consequence of the recommendations of this report.

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

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

Part 3 of the EP&A Act provides the framework for amending a Local Environmental Plan. DPE issued a Gateway determination under section 3.34 of the EP&A Act specifying that the planning proposal should proceed to exhibition, subject to conditions and consultation requirements.

The Gateway determination (**ATTACHMENT 4**) delegates plan making authority to Council only in the circumstance that there are no unresolved objections from agencies. In this instance, an objection from Department of Primary Industries – Agriculture (DPI) remains unresolved and so DPE retain plan making authority. Should the recommendations be adopted, arrangements will be made to request DPE exercise plan making authority and give effect to the planning proposal.

State Government Reforms

The planning proposal has resulted from the following State Government studies:

- NSW Government Explanation of Intended Effect - Agritourism and small-scale agricultural development
- Small Business Commissioner's work on agritourism.

These documents propose amendments to the NSW planning system to better enable agritourism and small-scale agricultural development to be approved. The proposed changes are intended to support the recovery and resilience of regional communities and farming by growing emerging industries that are supplementary to or based on agriculture.

The planning proposal has been informed by this work and proposes to go a step further by enabling additional land uses in the rural zones to enable additional economic development opportunities.

Hunter Regional Plan 2036 (HRP)

The planning proposal is consistent with the vision and goals of the HRP. The proposal will facilitate actions to leverage proximity to major global gateways and enable economic diversity and new tourism opportunities that focus on reducing the impacts of the seasonal nature of tourism and its effect on local economies.

Draft Hunter Regional Plan 2041

The planning proposal is consistent with the vision and objectives of the draft Hunter Regional Plan 2041. The proposal will facilitate rural prosperity by promoting rural enterprises and diversification.

Greater Newcastle Metropolitan Plan 2036 (GNMP)

The planning proposal is consistent with the GNMP. The proposal will facilitate actions to encourage niche commercial, tourist and recreation activities that complement and promote a stronger agricultural sector, and build the sector's capacity to adapt to changing circumstances.

Port Stephens Local Strategic Planning Statement (LSPS)

The LSPS identifies the 20-year vision for land use in Port Stephens and sets out the social, economic and environmental planning priorities for the future.

The planning proposal will give effect to the following actions of the LSPS:

- Action 3.2 - facilitate programs for business to encourage accessible tourism across Port Stephens
- Action 3.3 - investigate opportunities to facilitate land uses that can support the tourist and visitor economy, including enabling farm gate sales along the Nelson Bay Road corridor and areas for boat and caravan storage in suitable locations
- Action 9.2 - review local plans to encourage niche commercial, tourist and recreation activities that complement and promote agricultural industries

Port Stephens Local Housing Strategy (Live Port Stephens)

The planning proposal will give effect to the following priorities of Live Port Stephens:

- Priority 2.3 - reduce the cost of new housing
- Priority 3.2 - encourage a range of housing types and sizes

The planning proposal is consistent with Live Port Stephens, as it will enable secondary dwellings in rural zones. Secondary dwellings receive a discount on contributions making them a more affordable housing choice and encouraging a wider diversity of homes.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that priorities in Council's adopted strategies will not be achieved if the amendment is not made.	Low	Adopt the recommendations.	Yes
There is a risk that proposals for inappropriate development will be lodged.	Low	Assess any development applications in accordance with Council policies and legislation, taking compatibility into consideration	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Social and Economic

The planning proposal is expected to deliver a range of social and economic benefits for the existing and future community, including:

- Greater flexibility in the operation of home businesses and home industries in rural areas
- New agritourism and business opportunities for landholders, particularly where agricultural uses are not viable on their own or unsuitable due to per- and polyfluoroalkyl Substances (PFAS) contamination
- New agritourism and recreational activities for locals and visitors to enjoy
- New employment opportunities for residents
- Increased expenditure in the rural areas of Port Stephens
- Permitting secondary dwellings which will provide a more affordable housing choice for land owners.

Environmental

Any future development occurring on land zoned RU1 Primary Production or RU2 Rural Landscape as a result of the planning proposal will require development assessment. Any potential environmental impacts would vary from site to site and would be addressed at the development assessment stage.

CONSULTATION

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

Internal

Consultation was undertaken with Development Planning and Compliance to review the proposed additional land uses and amendments. No objections were raised and associated impacts can be addressed adequately at the development assessment stage.

External

Following issue of the Gateway determination, agency consultation was undertaken prior to public exhibition with the following agencies:

- NSW Rural Fire Service
- Biodiversity Conservation Division
- Heritage NSW
- NSW Local Land Services
- Transport for NSW
- Hunter Water Corporation
- Department of Primary Industries – Agriculture (DPI)

The NSW Rural Fire Service supported the planning proposal. The Biodiversity Conservation Division, Heritage NSW, and NSW Local Land Services made no recommendations or objections to the planning proposal. Transport for NSW and the Department of Primary Industries (DPI) provided submissions which have been summarised and addressed in detail in **(ATTACHMENT 2)**.

Hunter Water Corporation provided a submission raising concerns over the assessment of garden centres, mortuaries, rural supplies and recreation facilities in drinking water catchments. However, following further consultation Hunter Water Corporation confirmed they have no outstanding concerns regarding the planning proposal.

The DPI objected to some items within the planning proposal including the additional zone objective, some of the additional permitted uses and the maximum number of bedrooms permitted as farm stay accommodation. Strategic Planning met with the DPI to discuss the issues and amendments were made to the planning proposal in

response. The planning proposal was amended to reduce the maximum number of permitted bedrooms for farm stay accommodation, and removed garden centres and information and educational facilities from the RU1 zone. A subsequent submission was provided by the DPI following exhibition which is detailed in **(ATTACHMENT 2)**.

Following the above consultation and amendments, the planning proposal was publicly exhibited in accordance with the Gateway determination from 24 March 2022 to 20 April 2022. During the exhibition period, three submissions were received. The matters raised primarily relate to the community consultation process and compatibility concerns around the proposed additional land uses. The matters raised have been summarised and addressed in **(ATTACHMENT 2)**. In response to agency and community submissions mortuaries were removed from the additional permitted land uses in the RU2 zone.

OPTIONS

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

ATTACHMENTS

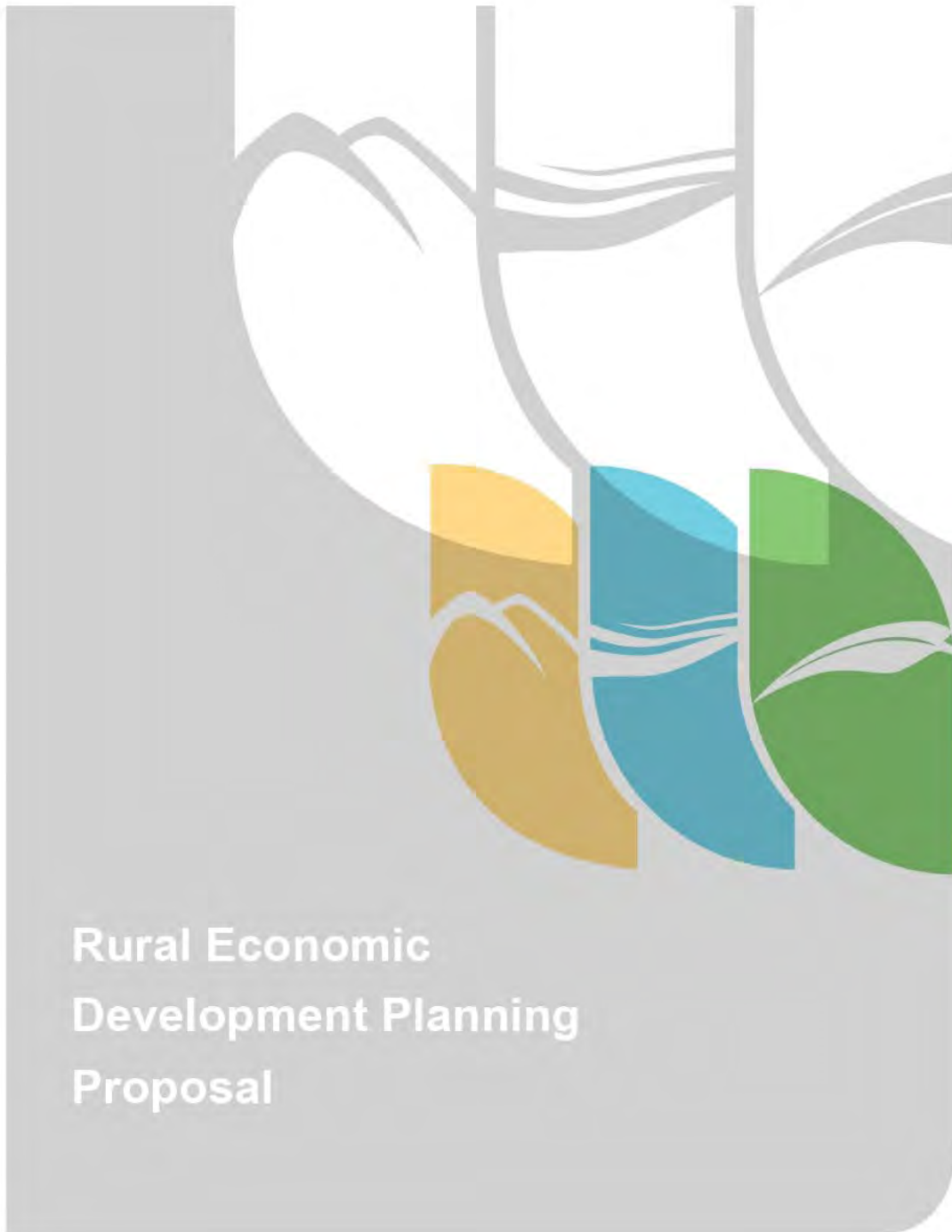
- 1) Planning proposal.
- 2) Response to submissions.
- 3) Notice of Motion.
- 4) Gateway determination.

COUNCILLORS ROOM

- 1) Copy of submissions.

TABLED DOCUMENTS

Nil.



Rural Economic
Development Planning
Proposal

Proposed amendment to Port Stephens Local
Environmental Plan 2013



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ATTACHMENTS

- ATTACHMENT 1** – Notice of Motion
- ATTACHMENT 2** – Place Score Summary
- ATTACHMENT 3** – Response to Submissions

VERSION CONTROL

Version	Date	Details
1	June 2021	Planning proposal (PP) as submitted for gateway determination
2	March 2022	PP revised by Council to address matters raised in the DPE Gateway determination and by State agencies. The main changes include: <ul style="list-style-type: none"> • Updated the proposed additional objective • Clarified the proposed increased footprint will only apply to the RU1 Primary production and RU2 Rural Landscape zones • Removed reference to section 9.1 Ministerial direction 3.3 Home Occupations • Additional analysis provided to respond to 9.1 Ministerial directions • Farm stay accommodation proposed to increase from 6 to 12 bedrooms instead of 6 to 20 • Removed 'Garden centres' and 'Information and educational facilities' from the proposed additional land uses to be permitted in the RU1 zone • Miscellaneous provision 5.5 proposed to be incorporated to restrict the total floor area of secondary dwellings in rural zones to 100sqm or 40% of the total floor area of the principal dwelling • Updated to include responses to State agency comments • Revised timeframe
3	May 2022	PP revised by Council to address matters raised by State agencies and the community. The main changes include: <ul style="list-style-type: none"> • Removed 'Mortuaries' from the proposed additional land uses to be permitted in the RU2 zone

FILE NUMBERS

Council: 58-2021-3-1

Department: PP-2021-4405

SUMMARY

Subject land: Land zoned RU1 Primary Production and RU2 Rural Landscape in the *Port Stephens Local Environmental Plan 2013 (LEP)*.

Proponent: Port Stephens Council.

Proposed changes: The planning proposal seeks to amend the permitted uses within the RU1 Primary Production and RU2 Rural Landscape land use zones and make amendments to the additional local provisions under the LEP.

ITEM 2 - ATTACHMENT 1 PLANNING PROPOSAL.

Specific amendments to the LEP are proposed as follows:

- Amendment to the RU1 Primary Production (RU1) Zone and the RU2 Rural Landscape (RU2) Zone Objectives to incorporate:
 - *To facilitate a variety of tourist and visitor land uses that complement and promote a stronger rural sector appropriate for the area.*
- Amendments to clause 5.4(2) and 5.4(3) to facilitate home business and home industries in the RU1 and RU2 zones by increasing the maximum floor areas for these uses in these zones from 50 to 200 square metres.
- Include General Industry and Heavy Industry as prohibited land uses in the RU1 and RU2 zones.
- Amendment to clause 5.4(5) to increase the maximum number of bedrooms that can be provided as farm stay accommodation in rural areas from 6 to 12.
- Amendments to permit artisan food and drink industries, charter and tourism boating facilities, secondary dwellings, recreation facilities (outdoor), rural supplies and research stations with consent on land zoned RU1 Primary Production.
- Amendments to permit artisan food and drink industries, charter and tourism boating facilities, function centres, garden centres, high technology industries, research stations, restaurants and cafes, secondary dwellings, recreation facility (indoor), recreation facility (major) and rural supplies with consent on land zoned RU2 Rural Landscape.
- Amendment to restrict the total floor area of secondary dwellings in rural zones to 100sqm or 40% of the total floor area of the principal dwelling.

Purpose: The planning proposal seeks to amend the LEP to give effect to priorities to make business growth easier, support tourism development and attract events in Port Stephens.

The planning proposal is responding to the Port Stephens Local Strategic Planning Statement (LSPS), adopted in July 2020. The planning proposal will give effect to actions 3.2, 3.3 and 9.2 in the LSPS, to facilitate land uses that can support the tourist and visitor economy, including enabling farm gate sales, and to review local plans to encourage niche commercial, tourist and recreation activities that complement and promote agricultural industries.

The planning proposal also gives effect to a Notice of Motion dated 14 July 2015 (**ATTACHMENT 1**).

BACKGROUND

In recent years, farmers and farming communities have faced a number of challenges including prolonged drought, land fragmentation and declining terms of trade. Farming communities have had to deal with the unprecedented bushfires of Summer 2019-20 and the economic impacts from COVID-19, including travel and trade restrictions, cancellation of regional events and temporary closure of local businesses.

ITEM 2 - ATTACHMENT 1 PLANNING PROPOSAL.

The Department of Planning and Environment (DPE) has recently proposed changes to simplify the planning process and approval pathways for small business activities and low-impact agricultural development on NSW farms. The changes seek to respond to natural disasters such as droughts and bushfires, as well as the impacts of COVID-19, by supporting the recovery of regional communities and encouraging industries that are supplementary to, or based on, agriculture, such as agritourism.

Agritourism is a tourism-related experience or product that connects agricultural products, people or places with visitors on a farm or rural land for enjoyment, education, or to participate in activities and events. Agritourism activities include direct shopfront outlets with produce tasting, regional markets, farm and winery tours, cooking classes, food and wine festivals, farm stays, restaurants sourcing local produce, self-picking experiences and farm-gate sales, as well as farm stay, camping and other on-farm accommodation, farm tours and activities, and events based on farms, such as weddings.

Agritourism is a growing sector of both the Australian and NSW economies, worth more than \$2 billion in NSW on 2014-15 and is expected to be worth \$18.6 billion in Australia in 2030, up from \$10.8 billion in 2018. Since identifying it as a key sector for the state economy, Tasmania has grown agritourism into a sector worth \$1.1 billion annually. With more than 12 times the land area and 14 times the population, agritourism presents a multi-billion dollar opportunity for the NSW economy.

The amendments proposed to the NSW planning system are informed by the NSW Government's Making Business Easier Program and state-wide agritourism project, led by the NSW Small Business Commission and Service NSW. The proposed amendments aim to make it easier for farmers to establish new complementary businesses on their land, through:

- Supporting more farm stays by:
 - Amending the existing definition of 'farm stay accommodation' in the Standard Instrument LEP Order; and
 - Introducing an optional clause that councils can choose to adopt in their local plans to manage any impacts;
- Enabling events on farms by introducing a new definition for 'farm events';
- Facilitating farm gate businesses by introducing:
 - A new definition for 'farm gate activities', and
 - An optional clause that councils can choose to adopt in their local plans;
- Introducing fast-track approval pathways (exempt and complying development) for agritourism, provided certain development standards are met;
- Allowing other low impact agricultural activities as exempt or complying development, such as small processing plants where certain development standards are met; and
- Making minor changes to existing planning controls to make them more effective, such as increasing the separation required for rural dwellings from intensive livestock agriculture, if carried out as complying development.

Amendments are proposed to the Standard Instrument (Local Environmental Plans) Order 2006 (Standard Instrument LEP Order), State Environmental Planning Policy (Primary Production and Rural Development) 2019 (PPRD SEPP) and State

ITEM 2 - ATTACHMENT 1 PLANNING PROPOSAL.

Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP). Fast track approval pathways, known as exempt and complying development, will also be established for these types of agritourism.

While the above amendments represent a positive change, Council considers that they do not extend far enough in supporting rural landholders to generate an income. The proposed amendments by the State only apply to land which is currently being utilised for agricultural purposes, or land which is normally used for agricultural purposes but that is currently not producing due to drought. However, within Port Stephens there are many landowners with land zoned for agriculture, who do not currently, and have not for a number of years, used the land for agricultural purposes.

The planning proposal seeks to address this issue and support agritourism and other economically viable land uses compatible with agricultural land use zones to stimulate economic development and facilitate home businesses and home industries in rural areas.

The planning proposal will leverage the increase in domestic tourism to Port Stephens as a result of the COVID-19 pandemic by enabling agritourism and other activities in rural areas to diversify our tourism market. The planning proposal creates opportunities for local rural businesses to reach a tourist and visitor market that has previously been confined to the coastal parts of the local government area or to surrounding local government areas that already have established rural tourism markets, such as Maitland and Cessnock.

The planning proposal also includes items that will increase the viability of rural land for economic development more generally. This includes opportunities for landholders to open home businesses, which have become increasingly popular since the COVID-19 pandemic. These economic opportunities will reduce the demand for further fragmentation of rural land for residential subdivision and will facilitate greater opportunities for rural landholders located around Nelson Bay Road, where the economic viability of some properties has been adversely affected by per- and polyfluoroalkyl Substances (PFAS) contamination.

The implementation of this planning proposal will be supported by a Place Plan to facilitate agritourism and economic development in the west of Port Stephens. Place planning recognises the knowledge and strengths of local communities, aims to build community capacity and bring together Port Stephens Council, business and residents in planning and delivering desired outcomes.

The Place Plan will communicate the State reforms for agritourism and the changes facilitated by this planning proposal to help residents and landholders understand the opportunities for economic development now available in our rural areas.

The Place Plan and this planning proposal responds to the outcomes of a recent place census where communities in rural areas of Port Stephens told us they wanted more support for economic development and tourism opportunities, small business, activated riverfronts, destinations and things to do, such as a heritage trail and farmers markets, farm gate trails, and community events (**ATTACHMENT 2 - Place Score Summary**).

ITEM 2 - ATTACHMENT 1 PLANNING PROPOSAL.

The Place Plan will include actions for economic development and events that empower the community and local businesses to make spaces more inviting and create opportunities for businesses, residents, and visitors to participate in events that bring people together.

PART 1 – Objectives or intended outcomes

The objectives of this planning proposal are to:

- Support agritourism and other economically viable land uses compatible with agricultural land use zones;
- To stimulate economic development in rural areas; and
- Facilitate home businesses and home industries in rural areas.

The proposed changes will increase opportunities for landowners to maximise the economic potential of their rural land, without restricting agricultural uses. The changes will also support a diversified tourism economy in Port Stephens.

PART 2 – Explanation of provisions

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

1. Amend RU1 Primary Production Zone Objectives

Existing Zone Objectives	Proposed Zone Objectives
<p>RU1 Primary Production</p> <ul style="list-style-type: none"> • <i>To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.</i> • <i>To encourage diversity in primary industry enterprises and systems appropriate for the area.</i> • <i>To minimise the fragmentation and alienation of resource lands.</i> • <i>To minimise conflict between land uses within this zone and land uses within adjoining zones.</i> 	<p>RU1 Primary Production</p> <ul style="list-style-type: none"> • <i>To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.</i> • <i>To encourage diversity in primary industry enterprises and systems appropriate for the area.</i> • <i>To minimise the fragmentation and alienation of resource lands.</i> • <i>To minimise conflict between land uses within this zone and land uses within adjoining zones.</i> • <i>To facilitate a variety of tourist and visitor land uses that complement and promote a stronger rural sector appropriate for the area.</i>

ITEM 2 - ATTACHMENT 1 PLANNING PROPOSAL.

2. Amend RU2 Rural Landscape Zone Objectives

Existing Zone Objectives	Proposed Zone Objectives
<p>RU2 Rural Landscape</p> <ul style="list-style-type: none"> To encourage sustainable primary industry production by maintaining and enhancing the natural resource base. To maintain the rural landscape character of the land. To provide for a range of compatible land uses, including extensive agriculture. 	<p>RU2 Rural Landscape</p> <ul style="list-style-type: none"> To encourage sustainable primary industry production by maintaining and enhancing the natural resource base. To maintain the rural landscape character of the land. To provide for a range of compatible land uses, including extensive agriculture. To facilitate a variety of tourist and visitor land uses that complement and promote a stronger rural sector appropriate for the area.

3. Amend permitted with consent and prohibited land uses in the RU1 Primary Production Land Use Table

Existing Land Use Table	Proposed Land Use Table
<p><u>Permitted with consent</u></p> <p>Agriculture; Airstrips; Animal boarding or training establishments; Aquaculture; Boat launching ramps; Boat sheds; Building identification signs; Business identification signs; Cellar door premises; Dual occupancies; Dwelling houses; Eco-tourist facilities; Environmental facilities; Environmental protection works; Extractive industries; Farm buildings; Flood mitigation works; Forestry; Group homes; Helipads; Home-based child care; Home businesses; Home industries; Intensive livestock agriculture; Jetties; Landscaping material supplies; Open cut mining; Plant nurseries; Recreation areas; Roads; Roadside stalls; Rural industries; Tourist and visitor accommodation; Turf farming; Water recreation structures; Water supply systems</p>	<p><u>Permitted with consent</u></p> <p>Agriculture; Airstrips; Animal boarding or training establishments; Aquaculture; Artisan food and drink industries; Boat launching ramps; Boat sheds; Building identification signs; Business identification signs; Cellar door premises; Charter and tourism boating facilities; Dual occupancies; Dwelling houses; Eco-tourist facilities; Environmental facilities; Environmental protection works; Extractive industries; Farm buildings; Flood mitigation works; Forestry; Group homes; Helipads; Home-based child care; Home businesses; Home industries; Intensive livestock agriculture; Jetties; Landscaping material supplies; Open cut mining; Plant nurseries; Recreation areas; Recreation facilities (outdoor); Research stations; Roads; Roadside stalls; Rural industries; Rural supplies; Secondary dwellings; Tourist and visitor accommodation; Turf farming; Water recreation structures; Water supply systems</p>

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<p><u>Prohibited</u></p> <p><i>Backpackers' accommodation; Hotel or motel accommodation; Serviced apartments; Any other development not specified in item 2 or 3</i></p>	<p><u>Prohibited</u></p> <p><i>Backpackers' accommodation; General industry; Heavy industry; Hotel or motel accommodation; Serviced apartments; Any other development not specified in item 2 or 3</i></p>
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4. Amend permitted with consent and prohibited land uses in the RU2 Rural Landscape Land Use Table

Existing Land Use Table	Proposed Land Use Table
<p><u>Permitted with consent</u></p> <p><i>Agriculture; Airstrips; Animal boarding or training establishments; Aquaculture; Boat launching ramps; Boat sheds; Building identification signs; Business identification signs; Camping grounds; Cellar door premises; Cemeteries; Community facilities; Correctional centres; Crematoria; Dual occupancies; Dwelling houses; Eco-tourist facilities; Environmental facilities; Environmental protection works; Extractive industries; Farm buildings; Flood mitigation works; Forestry; Group homes; Helipads; Home-based child care; Home businesses; Home industries; Information and education facilities; Jetties; Landscaping material supplies; Plant nurseries; Recreation areas; Recreation facilities (outdoor); Roads; Roadside stalls; Rural industries; Tourist and visitor accommodation; Turf farming; Veterinary hospitals; Water recreation structures; Water supply systems</i></p>	<p><u>Permitted with consent</u></p> <p><i>Agriculture; Airstrips; Animal boarding or training establishments; Aquaculture; Artisan food and drink industries; Boat launching ramps; Boat sheds; Building identification signs; Business identification signs; Camping grounds; Cellar door premises; Cemeteries; Community facilities; Charter and tourism boating facilities; Correctional centres; Crematoria; Dual occupancies; Dwelling houses; Eco-tourist facilities; Environmental facilities; Environmental protection works; Extractive industries; Farm buildings; Flood mitigation works; Forestry; Function centres; Garden centres; Group homes; Helipads; High technology industries; Home-based child care; Home businesses; Home industries; Information and education facilities; Jetties; Landscaping material supplies; Plant nurseries; Recreation areas; Recreation facilities (indoor); Recreation facilities (major); Recreation facilities (outdoor); Research stations; Restaurants and cafes; Roads; Roadside stalls; Rural industries; Rural supplies; Secondary dwellings; Tourist and visitor accommodation; Turf farming; Veterinary hospitals; Water recreation structures; Water supply systems</i></p>
<p><u>Prohibited</u></p> <p><i>Backpackers' accommodation; Hotel or motel accommodation; Serviced apartments; Any other development not specified in item 2 or 3</i></p>	<p><u>Prohibited</u></p> <p><i>Backpackers' accommodation; General industry; Heavy industry; Hotel or motel accommodation; Serviced apartments;</i></p>

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	<i>Any other development not specified in item 2 or 3</i>
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'General Industry' and 'Heavy Industry' land uses are proposed to be included as prohibited land uses in the RU1 and RU2 zones in order to provide clarity. In certain circumstances previous interpretations of the LEP have led to certain industrial land uses to be carried out in locations where this type of development was considered to be prohibited.

The proper approach to characterising development is to determine whether the development fits a defined purpose specified in the land use table. If it does, it does not matter that the development may fit other land uses defined in the relevant instrument (i.e., LEP Dictionary) that may be prohibited as innominate or unspecified purposes in the zone.

As a result, certain industrial uses need to be expressly prohibited in the land use tables for the RU1 and RU2 zones.

- Amend the LEP to allow Home Businesses to have a larger floor area in the RU1 Primary Production and RU2 Rural Landscape zones

Existing clause	Proposed additional clause
<p>Clause 5.4(2) Home Businesses <i>If development for the purposes of a home business is permitted under this Plan, the carrying on of the business must not involve the use of more than 50 square metres of floor area.</i></p> <p>Note: No change to the existing clause is proposed</p>	<p>Home Businesses in the RU1 Primary Production and RU2 Rural Landscape zones <i>If development for the purposes of a home business is permitted under this Plan in the RU1 Primary Production or RU2 Rural Landscape zones, the carrying on of the business must not involve the use of more than 200 square metres of floor area.</i></p>

- Amend the LEP to allow Home Industries to have a larger floor area in the RU1 Primary Production and RU2 Rural Landscape zones

Existing clause	Proposed additional clause
<p>Clause 5.4(3) Home industries <i>If development for the purposes of a home industry is permitted under this Plan, the carrying on of the home industry must not involve the use of more than 50 square metres of floor area.</i></p> <p>Note: No change to the existing clause is proposed</p>	<p>Home Industries in the RU1 Primary Production and RU2 Rural Landscape zones <i>If development for the purposes of a home industry is permitted under this Plan in the RU1 Primary Production or RU2 Rural Landscape zones, the carrying on of the home industry must not involve the use of more than 200 square metres of floor area.</i></p>

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7. Amend Clause 5.4(5) to increase the maximum number of bedrooms for Farm Stay Accommodation

Existing clause	Proposed clause
<p>Clause 5.4(5) Farm stay accommodation</p> <p><i>If development for the purposes of farm stay accommodation is permitted under this Plan, the accommodation that is provided to guests must consist of no more than 6 bedrooms.</i></p>	<p>Clause 5.4(5) Farm stay accommodation</p> <p><i>If development for the purposes of farm stay accommodation is permitted under this Plan, the accommodation that is provided to guests must consist of no more than 12 bedrooms.</i></p>

8. Amend the LEP to restrict the total floor area of secondary dwellings in rural zones to 100sqm or 40% of the total floor area of the principal dwelling

PART 3 – Justification

Section A – Need for the planning proposal

Q1. Is the planning proposal a result of any strategic study or report?

The planning proposal has been prepared in response to State Government reforms, a Port Stephens Visitor Survey, the impacts of bushfires, drought and COVID-19, and the desire to increase tourism within rural areas, away from the coast.

State Government reforms

The planning proposal has resulted from the following State Government studies:

- NSW Government Explanation of Intended Effect - Agritourism and small-scale agricultural development
- Small Business Commissioner’s work on agritourism

These documents propose amendments to the NSW planning system to better enable agritourism and small-scale agricultural development to be approved. The proposed amendments to the Standard Instrument LEP Order, PPRD SEPP and the Codes SEPP are intended to support the recovery and resilience of regional communities and farming by growing emerging industries that are supplementary to or based on, agriculture.

Farmers are increasingly seeking options to diversify their income stream or value-add to their core agricultural business to make it more resilient and profitable. Agritourism would allow farmers to diversify their income from farming businesses while maintaining primary production on the land as the principal use.

The planning proposal has been informed by the NSW Government’s Making Business Easier Program and wide agritourism project, led by the NSW Small Business Commission and Service NSW.

NSW Visitor Economy Strategy 2030

In response to the COVID-19 pandemic the NSW Visitor Economy Strategy 2030 was developed by NSW Government to replace the 2030 Visitor Economy Action Plan. The strategy has five core strategic pillars:

- Road to recovery
- Build the brand
- Showcase our strengths
- Invest in world class events
- Facilitate growth

Growing the visitor economy of regional NSW is a key to priority of the strategy. The COVID-19 pandemic has created a positive legacy for the visitor economies for regional NSW by encouraging Sydneysiders and NSW residents to travel domestically. The Strategy states that NSW's strengths today include world class food and drink, including winery, brewery and distiller experiences, agritourism and world class dining in spectacular settings. The aim is for NSW to focus on its existing strengths, therefore Council aims to promote and encourage agritourism land uses.

The planning proposal aims to provide landowners with the opportunity to diversify their income streams in rural areas. An increase in agritourism land uses will increase domestic tourism to regional areas in Port Stephens, which will assist in achieving the regional overnight visitor targets identified in the Strategy.

Port Stephens Visitor Survey 2021

In March, April and May 2021 Council conducted a monthly visitor survey with visitors who had stayed in the Port Stephens area the previous month, in order to establish what people enjoyed about their visit and things which could be done better. In terms of the highlights experienced by visitors, the majority related to tourist attractions and the coastline, and included activities such as the ferry to Tea Gardens, accommodation, eating out, camel rides, quad biking, tobogganing and sand boarding, dolphin and whale watching tours, the beaches and Oakvale Wildlife Park.

The responses to survey questions indicate that 'tours and attractions', 'parks and beaches' and 'food and dining' met and exceeded expectations of visitors. When asked about things which could be improved on, evening entertainment was mentioned.

Port Stephens accommodates a wide variety of beaches and tourist attractions which make it an appealing holiday destination for people from Sydney and further afield. However, while existing tourist attractions will keep pulling in visitors, there is potential to extend this tourist offering further inland, away from the coastline, through the promotion of agritourism.

At present, the majority of attractions are based around the water, the beaches or the Hunter Valley wine region. The planning proposal aims to increase the tourism potential of rural areas in Port Stephens.

Rural Lands Strategy 2011

The Strategy relates to the rural lands within Port Stephens. At the time of the Strategy, the rural lands had a population of 12,713 people, representing 21.5% of the population.

The Strategy was prepared as an outcome from the Port Stephens Rural Lands Study, which provided all the details of the rural environment. The Strategy makes recommendations for the strategic direction of the rural lands of the Port Stephens LGA and how they are to be managed over the next 10-20 years.

The Strategy states that the growth management philosophy for the rural land are to:

- Limit expansion to the towns which have the capacity for growth;
- Encourage a wide range of agricultural and other complementary rural uses such as tourism having regard to environmental impact;
- Ensure that communities have an adequate level of facilities and services to ensure a good quality of life for all residents; and
- Embody the concepts of:
 - Ecologically sustainable development; and
 - Catchment management, including the actions in the Hunter and Central Rivers Catchment Action Plan.

The planning proposal gives effect to the following specific actions from the Strategy:

- Ensure that there is adequate provision for tourist facilities;
- Focus economic development on the key sectors of Tourism and Agriculture;
- Facilitate a wider tourism focus for the rural lands;
- Promote and support the rural culture of the LGA; and
- Support cultural and tourist activities which promote rural heritage e.g. local shows, agricultural days, heritage tourist trails etc.

Port Stephens Commercial & Industrial Land Study 2010

The Port Stephens Commercial and Industrial Lands Study aimed to establish a commercial hierarchy for the Port Stephens LGA, provide a strategic framework to inform the new LEP, provide a framework that establishes the relationship of industrial areas to commercial areas with specific consideration being given to bulky goods retailing, develop individual profiles for each commercial centre and identify capacity and trends of centres to facilitate future growth.

The Study states that within the Hunter region the shift from a traditional primary and secondary economic base to a service based economy is being encouraged by the NSW government through job growth, investment and economic development. Key industries in the area include mining, agriculture and tourism.

Tourism is a major industry in Port Stephens and draws considerable expenditure from outside of the study region. The planning proposal seeks to facilitate agritourism land uses to stimulate the economy in rural areas.

Port Stephens Economic Development and Tourism Strategy 2018-2020

The Port Stephens Economic Development and Tourism Strategy was adopted by Council in 2018. The Strategy provides strategic direction to deliver the following key priority projects:

- making business growth easier
- attracting events that drive economic outcomes
- increasing overnight visitor spend
- creating people friendly spaces

The Strategy estimates that the total tourism output in Port Stephens is \$435 million. The Strategy suggests that there is a need to develop more of a regional approach to tourist packaging and marketing and emphasises the need to develop clusters such as arts/crafts, food and wine, ecotourism, backpacker, agritourism and aboriginal tourism.

The Strategy acknowledges that there are opportunities to leverage the proximity to major global gateways, as well as the attractive and valuable natural environment and coastal and rural settings, can generate economic growth and diversity. The planning proposal is consistent with the Strategy as it will facilitate agritourism land uses and provide more flexibility for home businesses and home industries in rural areas.

Port Stephens Council Place Score Liveability 2020

In September 2020, Port Stephens Council conducted a place census (**ATTACHMENT 2 - Place Score Summary**). Over 3,700 people responded and told us what they value and how they rate their neighbourhoods. The Rural West received a score of 58/100. The national average is 67. The census also collected ideas from the community to improve their localities. Some of the suggestions received in the Rural West include the following:

- More support for tourism operators;
- Recognition of the tourism opportunities;
- Better access to the rivers for kayaks;
- Community garden projects;
- Cultural heritage trail from Hinton with signage;
- More community events for all ages;
- Farm gate trails; and
- Farmers markets.

The planning proposal will facilitate new tourism opportunities in the Rural West by permitting with consent artisan food and drink industries, charter and tourism boating facilities, function centres, garden centres, secondary dwellings, and major and indoor recreation facilities.

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

The amendments to the LEP as described by this planning proposal are the best means of achieving the stated objectives.

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

The planning proposal will give effect to the objectives and actions of the Hunter Regional Plan and Greater Newcastle Metropolitan Plan 2036 as identified below.

The Greater Newcastle Metropolitan Plan 2036 (2018)

The Greater Newcastle Metropolitan Plan 2036 (GNMP) applies to part of the Port Stephens LGA. The GNMP sets out strategies and actions that will drive sustainable growth across Cessnock City, Lake Macquarie City, Maitland City, Newcastle City and Port Stephens communities, which make up Greater Newcastle.

Strategy 13 of the GNMP aims to protect rural amenity outside urban areas and states that agricultural production will remain integral to the supply of Greater Newcastle's fresh food. Action 13.1 of the GNMP sets out that Councils will align local plans to:

- enable the growth of the agricultural sector by directing urban development away from rural areas and managing the number of new dwellings in rural areas;
- *encourage niche commercial, tourist and recreation activities that complement and promote a stronger agricultural sector, and build the sector's capacity to adapt to changing circumstances; and*
- *protect and preserve productive agricultural land to support the growth of agricultural industries and keep fresh food available locally.*

The planning proposal supports the aims of the GNMP by providing rural landowners with opportunities to diversify their income streams to support agricultural land uses and facilitates new commercial, tourist and recreation activities in rural areas.

The Hunter Regional Plan 2036 (2016)

The Hunter Regional Plan 2036 (HRP) identifies a regional priority for Port Stephens to *"leverage proximity to major global gateways – and its attractive and valuable natural environment and coastal and rural communities – to generate economic growth and diversity"*.

Additionally, the HRP indicates that the Hunter will undergo a transition in the context of a changing industry environment, particularly in mining and power generation and emerging trends in agribusiness. The planning proposal is consistent with Direction 6 of

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the GNMP to grow the economy of midCoast and Port Stephens. It will facilitate Action 6.3 “*enable economic diversity and new tourism opportunities that focus on reducing the impacts of the seasonal nature of tourism and its effect on local economies*” as it will facilitate additional tourism opportunities in rural areas that are less reliant on warm weather.

The Planning Proposal is consistent with the HRP 2036 as it will support the development of future agribusiness industries.

Q4. Will the planning proposal give effect to a council’s endorsed local strategic planning statement, or another local strategy or strategic plan?Port Stephens Local Strategic Planning Statement (2020)

The Port Stephens Local Strategic Planning Statement 2020 (LSPS) identifies the 20-year vision for land use in Port Stephens and sets out social, economic and environmental planning priorities for the future.

Port Stephens currently supports a range of economic activities comprising agriculture and aquaculture, manufacturing, tourism and defence, construction and a mix of retail and small businesses. The local economy includes over 4,500 actively trading businesses, with most growth currently occurring in the manufacturing, tourism and defence sectors.

The LSPS states that opportunities should be explored for existing agricultural businesses to capitalise on complementary uses such as artisan food premises, boutique breweries and wedding reception venues, which can provide supplementary income for landowners.

The planning proposal is consistent with:

- **Action 3.2 – Facilitate programs for business to encourage accessible tourism across Port Stephens** as will enable the development of a more diverse range of tourist industries within the LGA
- **Action 3.3 – Investigate opportunities to facilitate land uses that can support the tourist and visitor economy, including enabling farm gate sales along the Nelson Bay Road corridor and areas for boat and caravan storage in suitable locations** as it will facilitate additional land uses within the RU1 and RU2 rural zones to support tourism, provide additional floor space for home businesses and home industries and enable rural landowners to diversify their income
- **Action 9.2 – Review local plans to encourage niche commercial, tourist and recreation activities that complement and promote agricultural industries** as the preparation of this planning proposal incorporated a review of permissible land uses in the RU1 and RU2 zones and will facilitate additional tourism land uses in those zones

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Council is currently in the process of preparing a Place Plan to support and communicate State reforms that support agritourism and these local amendments that facilitate economic development in the rural areas of Port Stephens. The Place Plan aligns with actions in Council's LSPS as outlined above and the Port Stephens Economic Development Strategy and Our Incredible Place: Events, Arts and Cultural Strategy.

Port Stephens has been recognised as a strategic location for economic growth, with a regionally significant tourist and visitor economy. The planning proposal aims to give effect to priorities to make business growth easier, support tourism development and attract events.

Port Stephens Economic Development and Tourism Strategy 2030 (2021)

The planning proposal aims to implement the strategic outcomes of the Port Stephens Economic Development and Tourism Strategy 2030 (EDTS), which describes a tourism and events policy to support a more diverse tourist and visitor economy across Port Stephens.

The Port Stephens EDTS was originally implemented in 2018 to support local economic growth from 2018 to 2020 and is currently being updated. The strategic outcomes of the EDTS are as follows:

- Making business growth easier
- Increase overnight visitor spend
- Attract events that drive economic benefit
- Create people friendly and vibrant spaces

Port Stephens is recognised as one of the key regional tourism destinations in NSW and previously attracted a broad range of domestic and international visitors each year. During the year ending September 2017, Port Stephens welcomed 2,170,700 domestic visitor nights, 723,500 day visitors and 198,600 international visitor nights. These visitors spent an estimated \$534 million (or almost \$1.5 million per day) across the LGA and directly employed approximately 2,221 people.

The EDTS states that tourism was predicted to increase by 1.9% p.a. for domestic markets and 5.4% p.a. for international markets between 2016-17 and 2026-27. However, these predictions were made prior to the COVID-19 pandemic. Despite the lack of international visitors, COVID-19 has resulted in more Australians travelling domestically. Port Stephens is ideally positioned to leverage this increased domestic tourist demand, and eventually, international tourist demand, through the development of high quality tourism products and experiences that increase overnight visitor spend during low and shoulder periods.

The planning proposal will assist in the creation of more rural tourist attractions, increasing the desirability of the area from a tourist perspective.

ITEM 2 - ATTACHMENT 1 PLANNING PROPOSAL.Our Incredible Place: A Strategy for Events, the Arts, and Culture in Port Stephens

Our Incredible Place was adopted by Council on 24 November 2020. The Strategy sets Council's strategic direction for events, arts and culture in Port Stephens. The strategy provides the framework to:

- Create vibrant spaces that enhance a sense of place
- Support the liveability and wellbeing of the Port Stephens community
- Attract and support events and cultural initiatives that create economic growth
- Build capacity across the local community

The Strategy identifies cultural precincts within the LGA, including Precinct 1 - Where Three Rivers Meet, and says the following:

"Water runs through vast farming properties and small historical towns in this Precinct. Experience restored wooden bridges and heritage community halls and houses. The Woodville shop is Australia's oldest continually running business still carrying on the same services it was licensed for in 1844. Residents are intensely proud of their rural environment and the stories from the past as well as opportunities for events and activities for the future."

The planning proposal will give effect to Council's Our Incredible Place strategy, by permitting uses that support tourism and the visitor economy including function centres, artisan food and drink industries, and restaurants and cafes.

Port Stephens Local Housing Strategy 2020 (Live Port Stephens)

Live Port Stephens is the overarching strategy to guide land use planning for new housing in Port Stephens and aims to:

- Ensure suitable land supply
- Improve housing affordability
- Increase diversity of housing choice
- Facilitate liveable communities

In 2018, Port Stephens was the third fastest growing LGA in the Hunter (behind Maitland and Cessnock). The population grew from approximately 64,300 in 2008 to 72,700 in 2018, an increase of 13%.

The planning proposal is consistent with:

- **Priority 2.3 – Reduce the cost of new housing** as it will permit secondary dwellings in the RU1 and RU2 zones. Secondary dwellings are eligible for a contributions discount and are more affordable than dual-occupancies
- **Priority 3.2 – Encourage a range of housing types and sizes** as it will permit secondary dwellings in the RU1 and RU2 zones and encourage smaller homes

The planning proposal is consistent with Live Port Stephens as it will facilitate a more affordable type of housing in rural zones and encourage a wider diversity of homes.

Port Stephens Community Strategic Plan 2018 – 2028 (2018)

The purpose of the Community Strategic Plan (CSP) is to:

- Identify community aspirations and priorities over the next ten years
- Outline Council's role in delivering these priorities
- Identify and plan for the needs of an ageing population
- Work with other governments and agencies to achieve our community's priorities
- Provide for community participation in decision making
- Provide a basis of accountability and consistency in reporting

The CSP has four focus areas as follows:

- Focus Area 1 Our Community – Port Stephens is a thriving and strong economy respecting diversity and heritage
- Focus Area 2 Our place – Port Stephens is a liveable place supporting local economic growth
- Focus Area 3 our Environment – Port Stephens environmental is clean, green, protected and enhanced
- Focus Area 4 Our Council – Port Stephens Council leads, manages and delivers valued community services in a responsible way

The planning proposal will give effect to P1 of the CSP which wants a strong economy, vibrant local businesses, active investment and an adaptable, sustainable and diverse economy.

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

An assessment of the relevant State Environmental Planning Policies (SEPPs) against the planning proposal is provided in the table below.

Table 2 – Relevant State Environmental Planning Policies

SEPP	Consistency and Implications
SEPP (Koala Habitat Protection) 2020	Land subject to the planning proposal, including RU1 and RU2 land are likely to provide habitat for koalas. The SEPP will continue to apply to any relevant development applications to encourage the conservation and management of areas of natural vegetation that provide habitat for koalas to support a permanent free-living population.
SEPP (Koala Habitat Protection) 2021	Koala SEPP 2021 does not apply to land zoned RU1 Primary Production, RU2 Rural Landscape or RU3 Forestry in the Port Stephens LGA.

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SEPP	Consistency and Implications
<p>SEPP (Activation Precincts) 2020</p>	<p>This SEPP applies to Special Activation Precincts (SAPs). The Williamtown SAP is located in the Port Stephens LGA. Some of the land surrounding the Williamtown SAP is zoned RU2 Rural Landscape and will be affected by this planning proposal.</p> <p>The Williamtown SAP investigation area comprises just over 10,000ha, incorporating the existing RAAF Base, Newcastle Airport and Astra Aerolab precinct as well as the rural suburbs of Williamtown, Fullerton Cove and Salt Ash.</p> <p>Land constraints in the vicinity of the SAP have previously acted as a barrier to development. Due to issues such as contamination, flooding and drainage, the land surrounding the SAP is not able to be utilised for agricultural purposes.</p> <p>The facilitation of additional land uses will allow landowners to potentially diversify income streams, benefiting from and supporting the Williamtown SAP and the Nelson Bay Road corridor which is the gateway to Newcastle and the regional tourism hub of the Tomaree Peninsula.</p>
<p>SEPP (Primary Production and Rural Development) 2019</p>	<p>The objectives of the Primary Production and Rural Development SEPP include the facilitation of orderly economic use and development of lands for primary production, and to reduce land use conflict by balancing primary production, residential development and the protection of native vegetation, biodiversity and water resources</p> <p>The planning proposal promotes the orderly and economic use of rural land, particularly by supporting additional viable uses for rural land in Port Stephens that are compatible with agriculture and primary production. These economic opportunities will reduce the demand for further fragmentation of rural land for residential subdivision and will facilitate greater opportunities for rural landholders located around Nelson Bay Road, where the economic viability of some properties has been adversely affected by per- and polyfluoroalkyl Substances (PFAS) contamination.</p> <p>The planning proposal includes changes that will align the uses permitted in the rural areas of Port Stephens with the rural areas in neighbouring local government areas and in other parts of the State.</p>
<p>SEPP (Coastal Management) 2018</p>	<p>The Coastal management SEPP is applicable as there are areas of land zoned RU2 Rural Landscape located within the coastal zone.</p> <p>The Planning Proposal will assist in facilitating a framework for land use planning, while also ensuring environmental assets of the coast are protected.</p>

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SEPP	Consistency and Implications
SEPP (Affordable Rental Housing) 2009	The planning proposal will remain consistent with the SEPP and continue to achieve the aims of the policy. Enabling secondary dwellings in the RU2 zone is consistent with the SEPP.
SEPP Infrastructure 2007	Any infrastructure requirements resulting from future land uses as a result of the planning proposal will be assessed at the DA stage.

Q6. Is the planning proposal consistent with applicable Ministerial Directions?

An assessment of relevant Ministerial Directions against the planning proposal is provided in the table below.

Table 3 – Relevant Ministerial Directions

Ministerial Direction	Consistency and Implications
Focus Area 1: Planning Systems	
1.1 Implementation of Regional Plans	Consistent. The planning proposal is consistent with the HRP and gives effect to Direction 6 under Goal 1, which is to grow the economy of Mid-Coast and Port Stephens. At present, the area's economy and employment base are largely service-based and highly seasonal, reflecting its tourism economy and ageing population. The planning proposal will enable those based in rural areas to diversify their income stream through the inclusion of additional permitted uses within the RU1 and RU2 zones, thereby expanding the economy and employment base. The planning proposal is consistent with the HRP as it will support the development of future agribusiness industries.
1.3 Approval and Referral Requirements	Consistent. The planning proposal would not impact development assessment.
Focus Area 3: Biodiversity and Conservation	
3.2 Heritage Conservation	Consistent. Any proposed future development which applies to a heritage item, is in the vicinity of a heritage item, or is located in a

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	heritage conservation area, will require a Heritage Assessment to be submitted with the development application.
Focus Area 4: Resilience and Hazards	
4.3 (4.1) Flooding	<p>Consistent.</p> <p>This direction applies as the planning proposal affects land in flood prone land.</p> <p><i>(1) A planning proposal must include provisions that give effect to and are consistent with:</i></p> <ul style="list-style-type: none"> <i>(a) the NSW Flood Prone Land Policy,</i> <i>(b) the principles of the Floodplain Development Manual 2005, (c) the Considering flooding in land use planning guideline 2021, and</i> <i>(d) any adopted flood study and/or floodplain risk management plan prepared in accordance with the principles of the Floodplain Development Manual 2005 and adopted by the relevant council.</i> <p><i>(2) A planning proposal must not rezone land within the flood planning area from Recreation, Rural, Special Purpose or Conservation Zones to a Residential, Business, Industrial or Special Purpose Zones.</i></p> <p>The planning proposal does not propose to rezone any land within the flood planning area.</p> <p><i>(3) A planning proposal must not contain provisions that apply to the flood planning area which:</i></p> <ul style="list-style-type: none"> <i>(a) permit development in floodway areas,</i> <i>(b) permit development that will result in significant flood impacts to other properties,</i> <i>(c) permit development for the purposes of residential accommodation in high hazard areas,</i> <i>(d) permit a significant increase in the development and/or dwelling density of that land,</i> <i>(e) permit development for the purpose of centre-based childcare facilities, hostels, boarding houses, group homes, hospitals, residential care facilities, respite day care centres and seniors housing in areas where the occupants of the development cannot effectively evacuate,</i> <i>(f) permit development to be carried out without development consent except for the purposes of exempt development or agriculture. Dams, drainage canals, levees, still require development consent,</i> <i>(g) are likely to result in a significantly increased requirement for government spending on emergency management services, flood mitigation and emergency response measures, which can include but are not limited to the</i>

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	<p><i>provision of road infrastructure, flood mitigation infrastructure and utilities, or</i> <i>(h) permit hazardous industries or hazardous storage establishments where hazardous materials cannot be effectively contained during the occurrence of a flood event.</i></p> <p>The planning proposal will not alter provisions that would permit any of the above listed developments or circumstances in the flood planning area.</p> <p><i>(4) A planning proposal must not contain provisions that apply to areas between the flood planning area and probable maximum flood to which Special Flood Considerations apply which:</i></p> <p><i>(a) permit development in floodway areas,</i> <i>(b) permit development that will result in significant flood impacts to other properties,</i> <i>(c) permit a significant increase in the dwelling density of that land,</i> <i>(d) permit the development of centre-based childcare facilities, hostels, boarding houses, group homes, hospitals, residential care facilities, respite day care centres and seniors housing in areas where the occupants of the development cannot effectively evacuate,</i> <i>(e) are likely to affect the safe occupation of and efficient evacuation of the lot, or</i> <i>(f) are likely to result in a significantly increased requirement for government spending on emergency management services, and flood mitigation and emergency response measures, which can include but not limited to road infrastructure, flood mitigation infrastructure and utilities.</i></p> <p>The planning proposal will not alter provisions that would permit any of the above listed developments or circumstances in areas between the flood planning area and probable maximum flood.</p> <p>The planning proposal is not site specific, nor does it rezone land. Any subsequent proposed development will be required to address flooding on a site specific basis at the development assessment stage.</p>
<p>4.2 Coastal Management</p>	<p>Consistent.</p> <p>This direction applies as there are areas of land zoned RU2 Rural Landscape located within the coastal zone.</p> <p>The direction provides that a planning proposal must not rezone land which would enable increased development or more intensive land-use on land:</p> <p><i>(a) within a coastal vulnerability area identified by the State Environmental Planning Policy (Coastal Management) 2018; or</i></p>

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	<p><i>(b) that has been identified as land affected by a current or future coastal hazard in a local environmental plan or development control plan, or a study or assessment undertaken:</i></p> <p><i>(i) by or on behalf of the relevant planning authority and the planning proposal authority, or</i></p> <p><i>(ii) by or on behalf of a public authority and provided to the relevant planning authority and the planning proposal authority.</i></p> <p><i>A planning proposal must not rezone land which would enable increased development or more intensive land-use on land within a coastal wetlands and littoral rainforests area identified by chapter 3 of the State Environmental Planning Policy (Resilience and Hazards) 2021.</i></p> <p>The planning proposal does not propose to rezone land.</p>
<p>4.3 Planning for Bushfire Protection</p>	<p>Consistent.</p> <p>This direction applies as the planning proposal affects land that is mapped as bushfire prone land.</p> <p><i>(1) In the preparation of a planning proposal the relevant planning authority must consult with the Commissioner of the NSW Rural Fire Service following receipt of a gateway determination under section 3.34 of the Act, and prior to undertaking community consultation in satisfaction of clause 4, Schedule 1 to the EP&A Act, and take into account any comments so made.</i></p> <p>The Rural Fire Service supported the planning proposal.</p> <p><i>(2) A planning proposal must:</i></p> <p><i>(a) have regard to Planning for Bushfire Protection 2019,</i></p> <p><i>(b) introduce controls that avoid placing inappropriate developments in hazardous areas, and</i></p> <p><i>(c) ensure that bushfire hazard reduction is not prohibited within the APZ.</i></p> <p><i>(3) A planning proposal must, where development is proposed, comply with the following provisions, as appropriate:</i></p> <p><i>(a) provide an Asset Protection Zone (APZ) incorporating at a minimum:</i></p> <p><i>(i) an Inner Protection Area bounded by a perimeter road or reserve which circumscribes the hazard side of the land intended for development and has a building line consistent with the incorporation of an APZ, within the property, and</i></p> <p><i>(ii) an Outer Protection Area managed for hazard reduction and located on the bushland side of the perimeter road,</i></p>

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	<p><i>(b) for infill development (that is development within an already subdivided area), where an appropriate APZ cannot be achieved, provide for an appropriate performance standard, in consultation with the NSW Rural Fire Service. If the provisions of the planning proposal permit Special Fire Protection Purposes (as defined under section 100B of the Rural Fires Act 1997), the APZ provisions must be complied with,</i></p> <p><i>(c) contain provisions for two-way access roads which links to perimeter roads and/or to fire trail networks,</i></p> <p><i>(d) contain provisions for adequate water supply for firefighting purposes,</i></p> <p><i>(e) minimise the perimeter of the area of land interfacing the hazard which may be developed,</i></p> <p><i>(f) introduce controls on the placement of combustible materials in the Inner Protection Area.</i></p> <p>The planning proposal is not site specific, nor does it rezone land. Any subsequent proposed development will be required to address risk to bushfire, and demonstrate consistency with Planning for Bushfire Protection 2019 during the development assessment stage.</p>
<p>4.4 Remediation of Contaminated Land</p>	<p>Consistent.</p> <p>The planning proposal applies to land on which development for agricultural activities is known to have been carried out and is therefore potentially contaminated.</p> <p>A planning proposal must not permit a change of zoning on potentially contaminated land unless:</p> <p><i>(a) the planning proposal authority has considered whether the land is contaminated, and</i></p> <p><i>(b) if the land is contaminated, the planning proposal authority is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for all the purposes for which land in the zone concerned is permitted to be used, and</i></p> <p><i>(c) if the land requires remediation to be made suitable for any purpose for which land in that zone is permitted to be used, the planning proposal authority is satisfied that the land will be so remediated before the land is used for that purpose.</i></p> <p>The planning proposal does not propose to rezone land.</p>
<p>4.5 Acid Sulfate Soils</p>	<p>Consistent.</p> <p>This direction applies as some of the land zoned RU1 and RU2 in Port Stephens has a probability of containing acid sulfate soils as shown on the Acid Sulfate Soils Planning Maps.</p>

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	<p><i>(1) The relevant planning authority must consider the Acid Sulfate Soils Planning Guidelines adopted by the Planning Secretary when preparing a planning proposal that applies to any land identified on the Acid Sulfate Soils Planning Maps as having a probability of acid sulfate soils being present.</i></p> <p><i>(2) When a relevant planning authority is preparing a planning proposal to introduce provisions to regulate works in acid sulfate soils, those provisions must be consistent with:</i></p> <p><i>(a) the Acid Sulfate Soils Model LEP in the Acid Sulfate Soils Planning Guidelines adopted by the Planning Secretary, or</i></p> <p><i>(b) other such other provisions provided by the Planning Secretary that are consistent with the Acid Sulfate Soils Planning Guidelines.</i></p> <p><i>(3) A relevant planning authority must not prepare a planning proposal that proposes an intensification of land uses on land identified as having a probability of containing acid sulfate soils on the Acid Sulfate Soils Planning Maps unless the relevant planning authority has considered an acid sulfate soils study assessing the appropriateness of the change of land use given the presence of acid sulfate soils. The relevant planning authority must provide a copy of any such study to the Director-general prior to undertaking community consultation in satisfaction of clause 4 of Schedule 1 to the Act.</i></p> <p><i>(4) Where provisions referred to under 2(a) and 2(b) above of this direction have not been introduced and the relevant planning authority is preparing a planning proposal that proposes an intensification of land uses on land identified as having a probability of acid sulfate soils on the Acid Sulfate Soils Planning Maps, the planning proposal must contain provisions consistent with 2(a) and 2(b).</i></p> <p>The planning proposal is consistent with the direction, as the proposal does not rezone land, and is not site specific, and therefore any subsequent proposed development will be required to address the potential for acid sulfate soil during the development application stage.</p>
Focus Area 5: Transport and Infrastructure	
<p>5.3 Development Near Regulated Airports and Defence Airfields</p>	<p>This direction applies as Newcastle airport is located next to land zoned RU2 Rural Landscape that will be impacted by the planning proposal.</p> <p>The direction requires a planning proposal that sets controls for the development of land near a regulated airport or defence airfield to refer the planning proposal to the relevant authorities. This planning proposal will expand the uses permitted in rural zones, including the zones around the Newcastle airport however it does not set new controls for the development of the land (e.g. height or minimum lot size). Therefore the proposal need not be referred.</p>

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	Existing clause 7.5 of the LEP will satisfy the requirement in 5.3(4) of the direction.
Focus Area 9: Primary Production	
9.1 Rural Zones	<p>Consistent.</p> <p>The planning proposal will not rezone any rural land. The planning proposal aims to support agritourism and other economically viable land uses to stimulate economic development and facilitate home businesses and home industries in rural areas.</p> <p>The use of rural land for agritourism will ensure that any future land uses are compatible with agriculture, in order to ensure it is protected from other development pressures which may be incompatible with agricultural land uses.</p>
9.2 Rural Lands	<p>Consistent.</p> <p>This direction applies because the proposal will affect rural zoned land.</p> <p><i>A planning proposal must:</i></p> <p><i>(a) be consistent with any applicable strategic plan, including regional and district plans endorsed by the Planning Secretary, and any applicable local strategic planning statement</i></p> <p>The planning proposal is necessary to implement the recommendations of the Port Stephens Rural Lands Study and Strategy. It is consistent with the HRP and the GNMP, which has considered the objectives of this direction. The proposal is also consistent with the LSPS.</p> <p><i>(b) consider the significance of agriculture and primary production to the State and rural communities</i></p> <p>The planning proposal will support agriculture and primary production by facilitating alternative income streams to support agricultural land uses. These economic opportunities will reduce the demand for further fragmentation of rural land for residential subdivision and improve the viability of agricultural production. It will also facilitate greater opportunities for rural landholders located around Nelson Bay Road, where the economic viability of some properties has been adversely affected by per- and polyfluoroalkyl Substances (PFAS) contamination.</p> <p><i>(c) identify and protect environmental values, including but not limited to, maintaining biodiversity, the protection of native vegetation, cultural heritage, and the importance of water resources</i></p>

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	<p>Much of the Port Stephens LGA, including land zoned RU1 and RU2 contain important environmental values. Any proposed development in the RU1 and RU2 zones will be subject to detailed assessment that considers environmental values.</p> <p><i>(d) consider the natural and physical constraints of the land, including but not limited to, topography, size, location, water availability and ground and soil conditions</i></p> <p>Much of the Port Stephens LGA, including land zoned RU1 and RU2 have considerable natural and physical constraints. Any proposed development in the RU1 and RU2 zones will be subject to detailed assessment that considers natural and physical constraints.</p> <p><i>(e) promote opportunities for investment in productive, diversified, innovative and sustainable rural economic activities</i></p> <p>The planning proposal seeks to facilitate additional land uses within the rural zones to support rural economic activities including enabling farm gate sales and other forms of agritourism, and to encourage niche commercial, tourist and recreation activities that complement and promote agricultural industries.</p> <p><i>(f) support farmers in exercising their right to farm</i></p> <p>The planning proposal would not result in any impact to the Right to Farm Act 2019 which protects existing agricultural industries from nuisance complaints.</p> <p><i>(g) prioritise efforts and consider measures to minimise the fragmentation of rural land and reduce the risk of land use conflict, particularly between residential land uses and other rural land use</i></p> <p>The planning proposal seeks to facilitate additional land uses that are compatible with and support rural land use.</p> <p><i>(h) consider State significant agricultural land identified in chapter 2 of the State Environmental Planning Policy (Primary Production) 2021 for the purpose of ensuring the ongoing viability of this land</i></p> <p>The planning proposal seeks to support rural landholders by expanding rural zones to include other uses that facilitate economic development in these zones. The planning proposal includes changes that will align the uses permitted in the rural areas of Port Stephens with the rural areas in neighbouring local government areas and in other parts of the State.</p>
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	<p>These land uses will not impact the long-term potential for agricultural productivity on land or surrounding areas.</p> <p><i>(i) consider the social, economic and environmental interests of the community</i></p> <p>The planning proposal responds to feedback received from the Port Stephens Council Place Score Liveability Survey conducted in 2020 as well as the Port Stephens Visitor Survey conducted in 2021. Community responses requested additional tourism opportunities and activities and more community events.</p> <p>The planning proposal will facilitate additional tourism opportunities. The planning proposal also includes items that will increase the viability of rural land for economic development more generally. This includes opportunities for landholders to open home businesses, which have become increasingly popular since the COVID-19 pandemic.</p>
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Section C – Environmental, social and economic impact

Q7. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

Any future development occurring on RU1 and RU2 zoned land as a result of the planning proposal will be require a Development Assessment (DA) or Complying Development Certificate (CDC). Any potential environmental impacts will be required to be assessed at this stage.

Additionally, the Biodiversity Conservation Division of the department of Planning and Environment had no objections or concerns regarding the planning proposal.

Q8. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

There are no readily identifiable environmental impacts as a result of the inclusion of expanded land uses within the RU1 and RU2 zones. Any potential impacts would vary from site to site and would be addressed at the DA stage.

Q9. Has the planning proposal adequately addressed any social and economic effects?

The planning proposal would result in positive social and economic impacts through permitting expanded land uses within the RU1 and RU2 zoned land. The aim of the

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proposed amendment is to provide rural landowners, as well as farmers, with additional opportunities for economic development.

The planning proposal seeks to support agritourism and other economically viable land uses compatible with agricultural land use zones to stimulate economic development and facilitate home businesses and home industries in rural areas. Agritourism is a growing sector of both the Australian and NSW economies, worth more than \$2 billion in NSW in 2014-15 and is expected to be worth \$18.6 billion in Australia in 2030, up from \$10.8 billion in 2018.

The planning proposal will facilitate home businesses and home industries in rural zones by increasing the maximum floor areas for these uses in the RU1 and RU2 zones. It will permit additional uses in the RU1 zone such as artisan food and drink industries, charter and tourism boating facilities and secondary dwellings to support farmers and grow the agritourism industry in Port Stephens. It will also permit additional uses in the RU2 zone such as restaurants and cafes, function centres, information and education facilities, secondary dwellings, and recreation facilities (indoor and major) in order to stimulate economic growth and the agritourism industry.

These economic opportunities will facilitate greater opportunities for rural landholders located around Nelson Bay Road, where the economic viability of some properties has been adversely affected by per- and polyfluoroalkyl Substances (PFAS) contamination.

The planning proposal includes changes that will align the uses permitted in the rural areas of Port Stephens with the rural areas in neighbouring local government areas and in other parts of the State. This will enable Port Stephens to compete and grow a viable rural economy in our region.

The proposed changes will increase opportunities for landowners to maximise the economic potential of their rural land, without restricting agricultural uses. The changes will also support a diversified economy in Port Stephens.

Section D – State and Commonwealth interests**Q10. Is there adequate public infrastructure for the planning proposal?**

The adequacy of public infrastructure to support any additional development that may result from the planning proposal can be addressed at the DA stage.

Q11. What are the views of State and Commonwealth public authorities consulted in accordance with the Gateway determination?

NSW State Government recently released the Agritourism and small-scale agriculture development Explanation of Intended Effect (EIE). The EIE proposes amendments to the NSW planning system to better enable 'agritourism' and small-scale agricultural development to be approved. It also seeks to respond to natural disasters such as droughts and bushfires, and to simplify planning approvals for development or activities that have no or low environmental impact.

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The EIE outlines the intended effect of proposed amendments to:

- the Standard Instrument (Local Environmental Plans) Order 2006 (Standard Instrument LEP Order),
- the State Environmental Planning Policy (Primary Production and Rural Development) 2019 (PPRD SEPP), and
- the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP).

In recent years, NSW farmers have faced many challenges including prolonged drought, land fragmentation and declining terms of trade, as well as unprecedented bushfires and economic impacts arising from COVID-19. The EIE states that with changes in markets, diminishing wholesale returns from traditional agricultural production and the seasonal nature of many agricultural industries, some traditional farms can no longer remain viable by simply providing food for wholesale markets. There is scope for the planning framework to better support farmers' ability to innovate and diversify from purely primary production to other forms of value adding or complementary agribusiness/agritourism.

The following amendments are proposed to the NSW planning system to facilitate agritourism:

- Farm stay accommodation – to support more farm stay accommodation amendments are proposed to the existing definition of 'farm stay accommodation'
- Farm events – to remove existing barriers and support farm events amendments are proposed to introduce a new definition for 'farm events'
- Farm gate activities – to enable farm gate businesses to be established, amendments are proposed to introduce a new definition for 'farm gate activities'.

Exempt and complying development pathways will also be established.

Certainty, confidence and consistency in the planning framework will support investment in agritourism. A robust and flexible land use planning framework can provide strategic direction and a streamlined and efficient process for facilitating land uses that supplement agricultural industries.

The proposed changes seek to:

- Support investment in farms seeking supplementary incomes through other uses on the land
- Facilitate a simple and streamlined approach to gaining approval for uses supplementary to primary production
- Support farmers during times of hardship and following disaster events
- Reduce land use conflicts

To date, many regional businesses have experienced difficulties in setting up agritourism businesses as:

- There is a lack of guidance to understand the planning approvals process
- It can be costly and time consuming to obtain approval
- Some requirements have not kept up with contemporary practices

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- Some existing land use definitions and standards are inappropriate for the proposed use.

As a result, the following amendments are proposed to the NSW planning system to facilitate agritourism:

- Farm stay accommodation: amending the existing definition for farm stay accommodation in the Standard Instrument LEP Order
- New land use terms: introducing two new land use terms for farm gate activities and farm events in the Standard Instrument LEP Order. Including the new term in the Standard Instrument LEP Order will automatically introduce the term into all Standard Instrument LEPs
- New optional LEP clauses - introducing new optional clauses for farm stay accommodation and farm gate activities that councils can apply where a development application is required
- New approval pathways - providing exempt and complying development approval pathways in the Codes SEPP for agritourism activities where certain development standards are met
- Small-scale processing plants - allowing the establishment of small-scale processing plants as complying development for meat, dairy and honey where certain development standards are met
- Rebuilding of farm infrastructure - allowing the reconstruction of farm buildings and other structures as exempt development following natural disaster, where constructed to the same size and contemporary building standards including the Building Code of Australia and relevant Australian Standards.
- Stock containment lots - updating and rationalising existing controls for stock containment lots to reflect current practice, and ensuring stock containment areas used temporarily, such as during drought, do not impact negatively on surrounding uses.
- Farm dams - clarify terminology used in the planning system and provide a consistent approval process across the state
- Biosecurity - updating development standards for poultry farms and pig farms to align with separation distances required under biosecurity standards
- Rural dwelling setbacks - updating controls that allow dwellings on rural lots as complying development to ensure enough separation from adjacent primary production enterprises.
- Recreational beekeeping – providing exempt development pathway for recreational beekeeping to improve certainty.

These changes will allow small-scale agritourism development and other small-scale agricultural activities to occur on land where the primary use of the land is agriculture. While these proposed amendments are supported, it is considered that they do not go far enough in addressing the problem in Port Stephens, as the proposed amendments only apply to those using their land for agricultural purposes. Given the existing fragmented nature of rural land in Port Stephens, the number of rural lots that are not currently operational agricultural enterprises and increasing development pressure it is

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necessary to make the amendments in this planning proposal to achieve the intent of the State reforms. The objectives of this planning proposal are consistent with the State reforms.

Consultation has been undertaken with the following public authorities:

- NSW Rural Fire Service;
- Biodiversity Conservation Division;
- Heritage NSW;
- NSW Local Land Services;
- Transport for NSW;
- Hunter Water Corporation; and
- Department of Primary Industries - Agriculture

The NSW Rural Fire Service supported the planning proposal. The Biodiversity Conservation Division, Heritage NSW, and NSW Local Land Services made no recommendations or objections to the planning proposal. Hunter Water Corporation provided a submission raising concerns over the assessment of garden centres, mortuaries, rural supplies and recreation facilities in drinking water catchments. However, following further consultation HW confirmed they have no outstanding concerns regarding the planning proposal.

Transport for NSW and the Department of Primary Industries provided submissions raising concerns, which have been summarised in the attached Response to Submissions (**ATTACHMENT 3**).

PART 4 – Mapping

No amendments to the existing mapping are required.

PART 5 – Community consultation

Community consultation was undertaken in accordance with the Gateway determination, which requires the planning proposal be made publicly available for a minimum of 28 days. The planning proposal was on public exhibition from 24 March 2022 to 20 April 2022.

Notice of the public exhibition period was placed in the local newspaper, The Examiner on 24 March 2022. The exhibition material was on display at the following locations during normal business hours:

- Council's Administration Building, 116 Adelaide Street, Raymond Terrace
- Raymond Terrace Library: 18A Sturgeon Street, Raymond Terrace
- Tomaree Library: 7 Community Close, Salamander Bay
- Mobile Library (various locations)
- Online

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During the public exhibition period, three submissions were received which have been summarised in the attached Response to Submissions (**ATTACHMENT 3**).

PART 6 – Project timeline

The planning proposal will be completed within the timeframes listed below:

	Nov 2021	Dec 2021	Jan 2022	Feb 2022	Mar 2022	Apr 2022	May 2022	Jun 2022	Jul 2022
Agency Consultation									
Public Exhibition									
Council Report									
Parliamentary Counsel									

ITEM 2 - ATTACHMENT 2 RESPONSE TO SUBMISSIONS.

Planning Proposal for Rural Economic Development – Response to Submissions

No.	Author of submission	Summary	Council response
1	Voice of Wallalong and Woodville	<p>The submission notes the community should be alerted to the exhibition of the planning proposal. It also notes that only development applications are advertised in the Port Stephens Examiner and recommended advertising the exhibition of draft council policies.</p> <p>The submission notes that previous community workshops identified priorities for promoting the area's beauty, history and outdoor sporting potential, but the planning proposal ideas that were not high priorities for the community. It also notes there has been no subsequent communication until a plan has been adopted.</p>	<p>The exhibition of the planning proposal was advertised in the Port Stephens Examiner on the 24 March 2022 and was publicly available in the Tomaree, Tilligerry and Raymond Terrace Libraries.</p> <p>The exhibition of draft council policies and planning proposals are currently advertised in the Port Stephens Examiner. In April 2020, the State Government changed exhibition requirements in response to COVID-19. At this time Council temporarily suspended Newspaper advertising of planning proposals and policies, however have since re-established the process.</p> <p>The planning proposal seeks to support the sporting potential in rural areas by proposing to permit recreation facilities (outdoor) in the RU1 Primary Production zone and recreations facilities (indoor) and (major) in the RU2 Rural Landscape zone.</p> <p>Community workshops were held in November 2021 to inform the Hinterland Place Plan. This plan is still a draft document with further consultation to be undertaken later this year.</p> <p>While the planning proposal has taken the outcomes of this engagement into consideration, it was informed by a number of items including:</p> <ul style="list-style-type: none"> • A Councillor Notice of Motion dated 14 July 2015 (ATTACHMENT 3)

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			<ul style="list-style-type: none"> • The Port Stephens Local Strategic Planning Statement (LSPS) which undertook consultation with the community through drop in sessions and public exhibition of a draft LSPS in 2020 • The Port Stephens Local Housing Strategy (Live Port Stephens) which undertook consultation with the community through a housing survey in 2019, drop in sessions and public exhibition of a draft strategy in 2020 • The Port Stephens Visitor Survey undertaken in 2021 • The Port Stephens Council Place Score Liveability survey undertaken in 2020
		<p>The submission states that the proposed zone objective must not allow land uses that would be detrimental to real farming and notes farm stays, farm gate sales, farm tours and activities are supported but come with added risks such as pollution from septic systems.</p>	<p>Changes to the planning system in relation to farm events and farm gate activities are being undertaken by the State Government, separate to this planning proposal. As a result of this work, farm events and farm gate activities will be made permissible with consent in the RU1 and RU2 zones in Port Stephens. The planning proposal seeks to increase the maximum number of bedrooms permitted as farm stay accommodation from 6 to 12. Development assessment of these land uses will include consideration of on-site sewage systems and contamination risks as well as potential conflicts with existing land uses.</p>
		<p>The submission notes that councils support and facilitation of home businesses and home industries in rural areas should not include light industrial businesses or truck depots that are noisy, likely to pollute or</p>	<p>Home businesses and home industries are currently permissible in the RU1 and RU2 zones in Port Stephens. The planning proposal only seeks to increase the current maximum floor area of 50sqm to 200sqm in the RU1 and RU2 zone to allow rural home businesses and</p>

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	likely to conflict with neighbouring farms.	industries to have a larger footprint than in residential areas. While home industry is a type of light industry, both home industries and home businesses must not 'interfere with the amenity of the neighbourhood because of the emission of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil, traffic generation or otherwise'. By definition home industries and home businesses cannot pollute or conflict with neighbouring farms.
	The submission states that the description of home business and home industry are not prescriptive enough. The submission notes that camping, mud boat racing and motorbike racing tracks could be considered home businesses and industries and have negative impacts on rural amenity.	Home businesses and home industries are clearly defined in the dictionary of the LEP. These definitions are standard across NSW and cannot be amended by Council. Camping, a boat racing track or a motorbike track do not fit within the limitations of the definitions for home businesses or home industries.
	The submission asks if a mortuary would promote agriculture and whether it is a home business.	Following exhibition, the planning proposal has been amended to remove mortuaries from the proposed additional uses in the RU2 zone.
	The submission states that suitable explanations and examples of recreational facilities (indoor) and recreational facilities (major) are needed. The submission also notes that any activity involving motorised propelled vehicles is not compatible with rural lifestyles.	The LEP defines recreational facilities (indoor) and recreational facilities (major) in the dictionary and includes examples of each. Recreational facilities (indoor) can include indoor squash courts, swimming pools and bowling alleys and recreational facilities (major) can include stadiums, showgrounds and racecourses. Recreation facilities (outdoor) are currently permissible with consent in

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			<p>the RU2 zone and can include golf courses, equestrian centres and go-track tracks. The primary difference between outdoor and major recreation facilities relates to the overall scale of development rather than the specific use.</p> <p>Rural zones are considered an appropriate location for such uses as they require larger footprints that can be more easily accommodated than in alternative zones.</p>
	<p>The submission notes that specific land uses that will be prohibited need to be clearly defined.</p> <p>The submission notes that uses such as truck depots and scrap metal yards should be prohibited, particularly in the rural residential areas of Brandy Hill and Seaham.</p>	<p>The planning proposal seeks to expressly prohibit General industry and Heavy industry in the RU1 and RU2 zone. These uses are technically already prohibited in these zones as they are not permitted with or without consent, but will be expressly prohibited to provide clarity. General industry and Heavy industry are defined in the dictionary of the LEP.</p> <p>Truck depots are not a type of industry and are already prohibited in the RU1 and RU2 zones. A scrap metal yard is a type of general industry which is already prohibited in the RU1 and RU2 zone.</p> <p>The planning proposal only relates to land zoned RU1 and RU2 and will not impact rural residential land.</p>	
	<p>The submission stated that home industries must not include businesses that generate visual or noise impacts on the surrounding area.</p>	<p>The submission quoted Council's response to the Transport for NSW submission concerning the impacts of home businesses. By definition home industries cannot interfere with the amenity of a neighbourhood.</p>	
	<p>The submission supports the statement 'The planning proposal will support agriculture and primary production by</p>	<p>Noted.</p>	

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	<p>facilitating alternative income streams to support agricultural land uses. These economic opportunities will reduce the demand for further fragmentation of rural land for residential subdivision and improve the viability of agricultural production.'</p>	
	<p>The submission supports the approach to subject proposed development to detailed assessment that considers environmental values. It notes that development applications should not rely on being justifiably inconsistent to overcome environmental constraints.</p>	<p>Noted.</p> <p>All development applications are assessed having due regard for Council's policy's, development controls and environmental legislative responsibilities.</p>
	<p>The submission states that any future developments, home businesses and home industries must be compatible with and support rural land use.</p>	<p>Noted.</p> <p>The intent of the planning proposal is to allow for a range of additional uses that are considered to be compatible and/or supportive of rural land uses.</p>
	<p>The submission notes that any proposals that have a strong likelihood to have adverse effects on threatened species or their habitants should be automatically rejected.</p>	<p>Planning proposals are assessed in accordance with legislation, State and local planning strategies and the Rezoning Request policy. Planning proposals that have a strong likelihood to adversely affect threatened species or their habitants are not supported.</p>
	<p>The submission asked what definitive studies were undertaken to inform the demand for diversity in the tourism market of Port Stephens.</p>	<p>The planning proposal was informed by the following community surveys which identified a need for more tourism opportunities and activities in Port Stephens:</p> <ul style="list-style-type: none"> • Port Stephens Visitor Survey 2021 • Port Stephens Council Place Score Liveability 2020

ITEM 2 - ATTACHMENT 2 RESPONSE TO SUBMISSIONS.

			<p>The planning proposal was also informed by the following plans, strategies and studies:</p> <ul style="list-style-type: none"> • Port Stephens Local Strategic Planning Statement 2020, • NSW Visitor Economy Strategy 2030, • Port Stephens Local Housing Strategy 2020 • Port Stephens Rural Lands Strategy 2011 • Port Stephens Economic Development and Tourism Strategy 2018-2020 • Our Incredible Place: A Strategy for Events, the Arts, and Culture in Port Stephens 2020 • Port Stephens Commercial & Industrial Lands Study 2010
2	Tomaree Ratepayers and Residents Association Inc.	The submission noted that the preparation of the planning proposal under delegated authority was problematic as it has been progressed prior to coming to notice of the public or Councillors.	<p>The planning proposal was initiated by Council staff in response to a Councillor Notice of Motion dated 14 July 2015, community feedback for tourism opportunities, and State Government reforms to improve the economic viability of rural areas. Councillors were informed of the planning proposal and provided with an opportunity to have it reported to a Council meeting, prior to it being submitted for a Gateway determination on 30 June 2021 under delegated authority. Councillors are updated weekly on the status of all planning proposals that have been lodged with, or by, Council.</p> <p>The planning proposal has been publicly available on the planning portal website here since July 2021 when the Department of Planning and Environment began their formal assessment. Submissions and questions regarding the proposal can be made at any time prior to the</p>

ITEM 2 - ATTACHMENT 2 RESPONSE TO SUBMISSIONS.

			<p>formal exhibition of a planning proposal.</p> <p>Council is currently reviewing the Community Engagement Strategy to improve our approach to engaging with the community on planning matters.</p>
		The submission noted that the proposed new objective could invite inappropriate development.	The proposed objective is intended to support the agritourism industry. The objective can only invite development that is permitted with consent within that zone.
		The submission noted the introduction of recreation facilities (outdoor) in the RU1 Primary Production zone was inappropriate.	<p>Workshops undertaken with the community in November 2021 for the Hinterland Place Plan identified outdoor sporting potential as a priority. Additionally, A review of the existing land uses permitted with consent in the RU1 zone across the State found many already permit recreation facilities (outdoor) in the RU1 zone.</p> <p>Rural zones are considered an appropriate location for recreation facilities (outdoor) such as equestrian centres as they require larger footprints that can be more easily accommodated than in alternative zones.</p>
		The submission noted the introduction of function centres, high technology industries, mortuaries, recreation facilities (indoor), and recreation facilities (major) in the RU2 Rural Landscape zone were inappropriate.	<p>Following exhibition, the planning proposal has been amended to remove mortuaries from the proposed additional land uses in the RU2 zone.</p> <p>In addition to this, a review of the existing land uses permitted with consent in the RU2 zone across comparable Council's found that many already permit Garden centres, high technology industries, recreation facilities (indoor), and recreation facilities (major) in the RU2 zone.</p>
		The submission notes that previous development	Tourist and visitor accommodation in the RU2 zone is limited to bed and

ITEM 2 - ATTACHMENT 2 RESPONSE TO SUBMISSIONS.

	<p>applications for uses that do not maintain the rural landscape character, including eco-tourist facilities, tourist and visitor accommodation, recreation areas and recreation facilities (outdoor) have had community opposition and been approved.</p>	<p>breakfast accommodation and farm stay accommodation.</p>
	<p>The submission notes that a development approved as an eco-tourist facility in Anna Bay does not maintain the rural character and never completed construction.</p>	<p>The site at Anna Bay was not approved as an eco-tourist facility. It was approved as a tourist facility in 2009, under the now repealed Port Stephens Local Environmental Plan (LEP) 2000. This was a permitted use at the time; however, it is now prohibited under the current LEP.</p>
	<p>The submission notes that the addition of extra permitted land uses will lead to major developments in rural zones that are incompatible with the overall objectives of the zoning.</p>	<p>A review of the existing land uses permitted with consent in the RU1 and RU2 zones was undertaken to inform the planning proposal. The review had regard to community feedback, the permitted uses in neighbouring councils and internal consultation.</p> <p>The intent of the planning proposal is to allow for a range of additional uses that are considered to be compatible and/or supportive of rural land uses</p>
	<p>The submission notes that a review of a strategy for rural areas should precede the planning proposal. The submission further notes that insufficient community consultation has been undertaken.</p>	<p>The planning proposal was publicly exhibited from 24 March 2022 to 20 April 2022. The planning proposal has been publicly available on the planning portal website here since July 2021 when the Department of Planning and Environment began their formal assessment. Submissions and questions regarding the proposal can be made at any time prior to the formal exhibition of a planning proposal.</p>

ITEM 2 - ATTACHMENT 2 RESPONSE TO SUBMISSIONS.

			<p>Notwithstanding the above, the planning proposal has been informed by a number of items which had undergone extensive community consultation prior to being formally endorsed by Council, including:</p> <ul style="list-style-type: none"> • A Councillor Notice of Motion dated 14 July 2015 (ATTACHMENT 3) • The Port Stephens Local Strategic Planning Statement (LSPS) which undertook consultation with the community through drop in sessions and public exhibition of a draft LSPS in 2020 • The Port Stephens Local Housing Strategy (Live Port Stephens) which undertook consultation with the community through a housing survey in 2019, drop in sessions and public exhibition of a draft strategy in 2020 • The Port Stephens Visitor Survey undertaken in 2021 • The Port Stephens Council Place Score Liveability survey undertaken in 2020
		The submission urges Council to investigate alternative approaches to community consultation and provided an example of a 6 month consultation undertaken for a Rural Lands Strategy in a neighbouring council.	<p>Council is currently reviewing the Community Engagement Strategy.</p> <p>Strategies typically require more community engagement and longer consultation periods than planning proposals. Planning proposals are informed by the consultation undertaken in the preparation of the plans and strategies that support them.</p>
		The submission objected to the planning proposal in its current form.	Noted.
3	econetwork	The submission supports the submission made by TRRA.	Noted.
		The submission notes that the approval of housing	Noted.

ITEM 2 - ATTACHMENT 2 RESPONSE TO SUBMISSIONS.

		<p>estates as caravan parks has created distrust in the community.</p>	<p>This is not a matter of consideration for this proposal as the proposal does not relate to caravan parks.</p>
		<p>The submission notes that there has been no community pressure to prepare the planning proposal. The submission is concerned the planning proposal will facilitate additional residential development in rural zones.</p>	<p>The planning proposal does not propose any changes to housing limits in rural areas and does not propose to rezone any rural land to residential.</p> <p>The planning proposal was informed by the following community surveys which identified a need for more tourism opportunities and activities in Port Stephens:</p> <ul style="list-style-type: none"> • Port Stephens Visitor Survey 2021 • Port Stephens Council Place Score Liveability 2020
		<p>The submission notes there is a need for more lengthy and extensive community consultation and provided an example of a 6 month consultation undertaken for a Rural Lands Strategy in a neighbouring council.</p>	<p>Council is currently reviewing the Community Engagement Strategy.</p> <p>Strategies typically require more community engagement and longer consultation periods than planning proposals. Planning proposals are informed by the consultation undertaken in the preparation of the plans and strategies that support them.</p>
		<p>The submission objected to the planning proposal in its current form.</p>	<p>Noted.</p>
4	NSW Rural Fire Service	<p>The NSW Rural Fire Service supported the planning proposal.</p>	<p>Noted.</p>
5	Transport for NSW	<p>The submission identified a potential concern relating to traffic impacts due to the proposed increased floor area of home businesses and home industries in the RU1 and RU2 zone as these uses could be carried out as exempt development under the State Environmental</p>	<p>Home industries and home businesses can be undertaken through exempt development but under the Port Stephens LEP must not involve <i>"interference with the amenity of the neighbourhood because of the emission of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil, traffic generation or otherwise"</i>.</p>

ITEM 2 - ATTACHMENT 2 RESPONSE TO SUBMISSIONS.

		Planning Policy (Exempt and Complying Development Codes) 2008.	
6	Department of Primary Industries - Agriculture	The submission objected to the introduction of garden centres and information and education facilities in the RU1 Primary Production zone due to unsuitability.	Following consultation, the planning proposal has been amended to remove garden centres and information and education facilities from the proposed additional uses in the RU1 Primary Production zone.
		The submission objected to the introduction of recreation facilities (outdoor) in the RU1 Primary Production zone due to unsuitability, however noted they may be appropriate in some circumstances.	Workshops undertaken with the community in November 2021 for the Hinterland Place Plan identified outdoor sporting potential as a priority. Additionally, a review of the existing land uses permitted with consent in the RU1 zone across the State found many already permit recreation facilities (outdoor) in the RU1 zone. Rural zones are considered an appropriate location for recreation facilities (outdoor) such as equestrian centres as they require larger footprints that can be more easily accommodated than in alternative zones.
		The submission objected to the introduction of mortuaries in the RU2 zone due to unsuitability.	Following exhibition, the planning proposal has been amended to remove mortuaries from the proposed additional uses in the RU2 zone.
		The submission objected to the introduction of the following land uses in the RU2 Rural Landscape zone due to unsuitability and potential for conflict: <ul style="list-style-type: none"> • Garden centres; • High technology industries; • Recreation facilities (indoor); and 	A review of the existing land uses permitted with consent in the RU2 zone across the State was undertaken to inform the planning proposal. Garden centres, high technology industries, recreation facilities (indoor), and recreation facilities (outdoor) are permitted with consent across many NSW councils, including neighbouring councils with competing tourist industries.

ITEM 2 - ATTACHMENT 2 RESPONSE TO SUBMISSIONS.

		<ul style="list-style-type: none"> • Recreation facilities (outdoor); 	
		<p>The submission objected to the introduction of secondary dwellings (granny flats) in both the RU1 Primary Production and RU2 Rural Landscape zone as dual occupancies are already permitted. The submission noted this could lead to an intensification of development.</p>	<p>The planning proposal seeks to permit secondary dwellings to allow landholders to access a discount on developer contributions that is not available for dual-occupancies and encourage smaller homes.</p> <p>Permitting secondary dwellings in the RU1 and RU2 zone will not result in an intensification of development as dual occupancies and secondary dwellings are mutually exclusive.</p>
		<p>The submission objected to the proposed additional zone objective for the RU1 Primary Production and RU2 Rural Landscape zone.</p>	<p>The new zone objective has been informed by the strategic planning framework including the Port Stephens Local strategic Planning Statement, the Hunter regional Plan 2036 and the Greater Newcastle Metropolitan Plan which all state that tourist and visitor land uses should complement and promote a stronger agricultural sector. Additionally, a review of existing zone objectives for the RU1 and RU2 zones across the State was undertaken which found many NSW councils, including neighbouring councils with competing tourist industries, have this objective.</p>

MINUTES ORDINARY COUNCIL - 14 JULY 2015

NOTICE OF MOTION

ITEM NO. 1

FILE NO: PSC2015-01000/514

TRIM REF NO: PSC2015-01021

**PORT STEPHENS LOCAL ENVIRONMENTAL PLAN 2013 AMENDMENT -
DEPOTS ON RURAL LAND**

COUNCILLOR: MAYOR BRUCE MACKENZIE

THAT COUNCIL:

- 1) Prepare a report identifying the merits of a planning proposal to amend the land use table in part 2 of the Port Stephens Local Environmental Plan 2013 such that depots and or transport depots and or truck depots are permissible uses in the RU1 and RU2 zones.
- 2) Provide appropriate recommendations for any relevant DCP controls relating to depots, transport depots and truck depots in both industrial zones and rural zones.

**ORDINARY COUNCIL MEETING - 14 JULY 2015
MOTION**

203	<p>Mayor Bruce MacKenzie Councillor Ken Jordan</p> <p>It was resolved that Council:</p> <ol style="list-style-type: none">1) Prepare a report identifying the merits of a planning proposal to amend the land use table in part 2 of the Port Stephens Local Environmental Plan 2013 such that depots and or transport depots and or truck depots are permissible uses in the RU1 and RU2 zones.2) Provide appropriate recommendations for any relevant DCP controls relating to depots, transport depots and truck depots in both industrial zones and rural zones.
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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 Bruce MacKenzie, Crs Chris Doohan, Sally Dover, Ken Jordan, Paul Le Mottee, John Morello and Steve Tucker.

Those against the Motion: Cr Geoff Dingle.

MINUTES ORDINARY COUNCIL - 14 JULY 2015

BACKGROUND REPORT OF: Tim Crosdale – Strategy and Environment Section Manager

BACKGROUND

The purpose of this notice of motion is for Council to investigate the merits of enabling depots, transport depots or truck depots on land zoned Primary Production RU1 and Rural Landscape RU2 within the Port Stephens Local Government Area.

The definition of the three types of land uses within the Port Stephens Local Environmental Plan 2013 (PSLEP2013) is reproduced below:

depot means a building or place used for the storage (but not sale or hire) of plant, machinery or other goods (that support the operations of an existing undertaking) when not required for use, but does not include a farm building.

transport depot means a building or place used for the parking or servicing of motor powered or motor drawn vehicles used in connection with a business, industry, shop or passenger or freight transport undertaking.

truck depot means a building or place used for the servicing and parking of trucks, earthmoving machinery and the like.

The relative differences in land uses, and their suitability within RU1 and RU2 zones, will need to be considered during the preparation of a Planning Proposal. Across NSW there over 90 LGA's which enable at least one type of depot permissible in one or more rural zones. As such, there is a level of permissibility of this land use within rural zones across the State, subject to consideration of local planning provisions.

Currently in Port Stephens the various depot land uses are generally contained within General Industrial, Light Industrial and Working Waterfront (IN1, IN2 & IN4), Business Development (B5) and Public Recreation (RE1) zones. Issues including the capacity of this land zones to meet demand for depot land uses, and the hierarchy of industrial land uses (i.e. the most appropriate use of industrial land), would need to be considered as part of the planning proposal.

It is acknowledged that the various depot land uses have the potential to adversely affect rural lands primarily through effect on the amenity of existing rural areas. This potential for land use conflict will need to be considered in the planning proposal, including whether sufficient controls can be utilised to mitigate potential impacts. Other controls such as land use separation through maintenance of existing zoning could also remain for all or some of the depot land uses in the RU1 and RU2 zones.

The specification of detailed controls could be achieved through the Development Control Plan by specifying objectives and controls to minimise potential impacts of these additional land uses. These controls may include details relating to hours of operations, noise, visual amenity, distance to existing dwellings, fuel storage, spillage and traffic matters such as the types of roads suitable for the carriage of trucks and plant, the nature of driveways that must be utilised in different speed zones and any

MINUTES ORDINARY COUNCIL - 14 JULY 2015

other relevant matter. Recommendations detailing these controls will be drafted and reported back to Council.

There being no further business the meeting closed at 6.33pm.



Gateway Determination

Planning proposal (Department Ref: PP-2021-4405): to amend permitted uses and miscellaneous provisions to enable rural economic development.

I, the Director, Central Coast and Hunter at the Department of Planning, Industry and Environment, as delegate of the Minister for Planning and Public Spaces, have determined under section 3.34(2) of the *Environmental Planning and Assessment Act 1979* (the Act) that an amendment to the *Port Stephens Local Environmental Plan 2013* should proceed subject to the following conditions:

1. Prior to public exhibition, the planning proposal must be updated to:
 - (a) identify in the explanation of provisions, that the planning proposal will amend the *Port Stephens Local Environmental Plan 2013*;
 - (b) amend the additional objective to read "*to facilitate a variety of tourist and visitor land uses that complement and promote a stronger rural sector appropriate for the area*";
 - (c) clarify the increased floor area for home businesses and home industries applies only to the RU1 Primary Production and RU2 Rural Landscape zones;
 - (d) remove reference to section 9.1 Ministerial direction 3.3 Home Occupations as it has been revoked; and
 - (e) include analysis against section 9.1 Ministerial directions:
 - i. 1.5 Rural Lands;
 - ii. 2.2 Coastal Management;
 - iii. 2.6 Remediation of Contaminated Land;
 - iv. 4.1 Acid Sulfate Soils;
 - v. 4.3 Flooding; and
 - vi. 4.4 Planning for Bushfire Protection.

2. Public exhibition is required under section 3.34(2)(c) and schedule 1 clause 4 of the Act as follows:
 - (a) the planning proposal is classified as low impact as described in *A guide to preparing local environmental plans* (Department of Planning and Environment, 2018) and must be made publicly available for a minimum of **28 days**; and
 - (b) the planning proposal authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning

ITEM 2 - ATTACHMENT 4 GATEWAY DETERMINATION.

proposals as identified in section 6.5.2 of *A guide to preparing local environmental plans* (Department of Planning and Environment, 2018); and

- (c) public exhibition is to commence **by 1 April 2022**.
3. A public hearing is not required to be held into the matter by any person or body under section 3.34(2)(e) of the Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).
4. Consultation is required with the following public authorities/organisations under section 3.34(2)(d) of the Act and/or to comply with the requirements of relevant section 9.1 Ministerial directions:
- NSW Rural Fire Service;
 - Biodiversity Conservation Division;
 - Department of Primary Industries;
 - Hunter Water Corporation;
 - Transport for NSW;
 - Heritage NSW; and
 - NSW Local Land Services.

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

5. The planning proposal authority is authorised as the local plan-making authority to exercise the functions under section 3.36(2) of the Act subject to the following:
- (a) the planning proposal authority has satisfied all the conditions of the Gateway determination;
 - (b) the planning proposal is consistent with section 9.1 Ministerial directions or the Secretary has agreed that any inconsistencies are justified; and
 - (c) there are no outstanding written objections from public authorities.
6. The time frame for completing the local environmental plan is to be **9 months** following the date of the Gateway determination.

PP-2021-4405/(IRF 21/3575)

Dated 20th day of October 2021.

**Dan Simpkins
Director, Central Coast and Hunter Region
Planning and Assessment
Department of Planning, Industry and
Environment**

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

PP-2021-4405/(IRF 21/3575)

ITEM NO. 3

**FILE NO: 22/114582
EDRMS NO: PSC2017-00180**

POLICY REVIEW: RATE DONATIONS FOR COMMUNITY GROUPS

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Revoke the Rate Donations for Community Groups Policy, dated 14 July 2020, Minute No. 132.

BACKGROUND

The purpose of this report is to seek Council endorsement to revoke the Rate Donations for Community Groups Policy (the policy) as shown at **(ATTACHMENT 1)**.

The policy was first adopted by Council on 27 November 2007, Minute No. 330.

A recent internal review of the policy deemed it no longer necessary on the basis that the policy has historically assisted one community group only. Financial assistance is available to all community groups under a separate policy being the Debt Recovery and Hardship Policy. Additionally, community groups are eligible to apply for particular grant programs and other funding from time to time.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2018-2022
Financial Management	Maintain strong financial sustainability.

FINANCIAL/RESOURCE IMPLICATIONS

There are no significant financial implications as a result of the revocation.

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 approach to providing financial assistance to community groups will be maintained within alternative existing policy and processes.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that community groups may be disadvantaged by the revocation of the Rate Donations for Community Groups Policy.	Low	Community groups are empowered to request financial assistance from Council through alternative existing policy and processes.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

All community groups are eligible to seek financial support from Council through other pathways.

Therefore there are no significant social, economic or environmental implications as a result of the revocation.

CONSULTATION

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

Internal

- Financial Revenue Coordinator
- Executive Team

External

No external consultation is required as there is no requirement to exhibit a policy where revocation is recommended.

OPTIONS

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

ATTACHMENTS

- 1) Rate Donations for Community Groups.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

Policy



FILE NO: PSC2007-3076
TITLE: RATE DONATIONS FOR COMMUNITY GROUPS
POLICY OWNER: FINANCIAL SERVICES SECTION MANAGER

1. PURPOSE:

1.1 To provide clear guidelines for donation of rates and charges to rateable community groups and to provide financial assistance for community groups that are unable to meet the cost of rates and charges.

2. CONTEXT/BACKGROUND:

2.1 This policy identifies those community groups in Port Stephens that are subject to rates and charges to which Council will annually make a donation. Council may donate funds in accordance with section 356 of the Local Government Act 1993 for the purpose of exercising its functions.

2.2 The provision of financial assistance for rates and charges assists community groups to survive financially and direct their financial resources towards their aims and objectives. Community groups act as a social binder for communities providing social opportunities, leadership, positive role models and structure within a community.

2.3 There are very few community groups that are both liable for rates and are not a public charity or public benevolent institution. The cost of providing this annual assistance is not significant and has no economic implications for Council or Port Stephens.

3. SCOPE:

3.1 Council's policy towards making donations to rateable community groups for rates and charges will be documented and transparent.

3.2 Council will recognise potential financial hardship in considering which community groups are to receive rates and charges donations.

3.3 Groups seeking to access assistance under this policy must have a community service objective similar to Council's as their predominant aim or objective under their charter.



Policy

**4. DEFINITIONS:**

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

Public charity	A public charity in accordance with sections 556 and 559 of the Local Government Act 1993.
Public benevolent institution	A public benevolent institution in accordance with sections 556 and 559 of the Local Government Act 1993.

5. POLICY STATEMENT:

- 5.1 Organisations that are public charities or public benevolent institutions receive a rate exemption while other organisations that do good works to benefit the community do not enjoy an exemption.
- 5.2 Council will annually donate the rates and Hunter Local Land Services Catchment Contribution for the organisations and properties specified in this policy. The organisations are still required to pay waste management charges, waste service charges and on-site sewerage management fees if applicable.
- 5.3 The organisations are not required to make an annual application and this donation will be ongoing, subject to normal policy reviews. Donations made under this policy will apply from the commencement of the rating year in which Council resolves to include the organisation in this list of specified organisations.
- 5.4 Should an organisation wish to be included on the list, contact is to be made with Council's Finance Revenue Coordinator who will request the necessary information and make arrangements for a report to be submitted to Council for consideration.
- 5.5 Specified organisations:
- a) Masonic Holdings Limited (Nelson Bay Masonic Centre).

6. POLICY RESPONSIBILITIES:

- 6.1 Finance Officer – Revenue Specialist.
6.1 Finance Revenue Coordinator
6.2 Financial Services Section Manager.

7. RELATED DOCUMENTS

- 7.1 Debt Recovery and Hardship Policy.
7.2 Local Government Act 1993.



Policy

**CONTROLLED DOCUMENT INFORMATION:**

This is a controlled document. Hardcopies of this document may not be the latest version. Before using this document, check it is the latest version; refer to Council's website www.portstephens.nsw.gov.au			
EDRMS container No	PSC2007-3076	EDRMS record No	20/66296
Audience	Council Staff and Community		
Process owner	Financial Services Section Manager		
Author	Financial Services Section Manager		
Review timeframe	2 years	Next review date	14 July 2022
Adoption date	27/11/2007		

VERSION HISTORY:

Version	Date	Author	Details	Minute No.
1	27/11/2007	Financial Services Section Manager	Policy adopted.	330
2	26/06/2012	Financial Services Section Manager	Revised policy adopted.	154
3	12/08/2014	Financial Services Section Manager	Revised policy adopted.	210
4	15/02/2016	Financial Services Section Manager	Policy reviewed and formatted into the new template. Table of definitions added. Position titles updated to reflect current organisational chart. Adopted 24/5/2016.	138
5	12/06/2018	Financial Services Section Manager	Policy reviewed. No changes required. New corporate numbering system has been included. Adopted by Council.	159



Policy



Version	Date	Author	Details	Minute No.
6	14 July 2020	Financial Services Section Manager	6.1 – Updated title to Finance Officer – Revenue Specialist Updated EDRMS record number in version history.	132

Policy

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ITEM NO. 4

**FILE NO: 22/110323
EDRMS NO: PSC2013-00406-053**

**POLICY REVIEW: PLANNING MATTERS TO BE REPORTED TO COUNCIL
POLICY**

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Endorse the revised Planning Matters to be Reported to Council policy shown at **(ATTACHMENT 1)**.
- 2) Place the revised Planning Matters to be Reported to Council policy, as amended on public exhibition for a period of 28 days and should no submissions be received, the policy be adopted, without a further report to Council.
- 3) Revoke the Planning Matters to be Reported to Council policy dated 10 November 2020, (Minute No. 237) should no submissions be received.

BACKGROUND

The purpose of this report is to seek Council's endorsement of the revised 'Planning Matters to be Reported to Council policy (the policy) **(ATTACHMENT 1)**.

Please note that yellow highlighting in the attached policy indicates an amendment has been made and strikethrough text is to be deleted.

The policy was adopted on 26 February 2002 and was last amended on 10 November 2020.

A review of the policy has been undertaken and amendments made to:

- Include changes endorsed by Council on 22 February 2022 which requires Section 4.55(1A) modification applications where the proposed modification is an amendment to a condition moved on the floor of Council and approved by the Council, to be reported to the Council for determination
- Clarify the process of withdrawing support to have a planning matter called to Council for determination
- Various minor grammatical amendments.

The policy continues to ensure the Mayor and Councillors are provided with the opportunity for input into the progression and or determination of various planning matters.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2018-2022
Thriving and Safe Place to Live	Provide land use plans, tools and advice that sustainably support the community.

FINANCIAL/RESOURCE IMPLICATIONS

There are minimal direct financial/resource implications.

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 of making inconsistent decisions as a result of an out-dated policy.		Adopt the Recommendations.	

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

There are minimal direct sustainability implications. The policy enables the effective determination of planning matters on a merits basis considering all respective legislation.

CONSULTATION

Consultation with key stakeholders has been undertaken by the Development and Compliance Section.

In accordance with local government legislation the draft Planning Matters to be Reported to Council 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 Planning Matters to be Reported to Council Policy.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ITEM 4 - ATTACHMENT 1 REVISED PLANNING MATTERS TO BE REPORTED TO COUNCIL POLICY.

Policy



FILE NO: PSC2013-00406
TITLE: PLANNING MATTERS TO BE REPORTED TO COUNCIL
POLICY OWNER: DEVELOPMENT ASSESSMENT & COMPLIANCE SECTION MANAGER

1. PURPOSE:

- 1.1 To ensure that Councillors are provided with the opportunity for input into the determination of development applications (DA's) prior to decisions being finalised and determinations granted.
- 1.2 To ensure that Councillors are provided with the opportunity for input into planning proposals prior to forwarding applications for Gateway determination.

2. CONTEXT/BACKGROUND:

- 2.1 The majority of DA's are determined by Council's assessment officers, utilising delegated authority. ~~and may require review in accordance with Council's Development Assessment Process (DAP)~~ This policy provides Council with an understanding of the types of applications that are mandatory to report to Council for determination and the process involved in calling DA's to Council prior to determination.
- 2.2 Council's Rezoning Request Policy does not require reporting of some planning proposals prior to forwarding proposals to the Department of Planning, Infrastructure and Environment for Gateway determination. This policy provides Council with an understanding of the process involved in calling planning proposals to Council prior to seeking Gateway determination.

3. SCOPE:

- 3.1 The use of delegated authority provides an opportunity for effective and timely decision making; however, it is appropriate that Council is informed of the exercise of delegated authority.
- 3.2 Given the scope of planning decisions, it is appropriate that delegated assessment staff, are able to use their discretion and judgement for those matters which should be reported to Council.



ITEM 4 - ATTACHMENT 1 REVISED PLANNING MATTERS TO BE REPORTED TO COUNCIL POLICY.

Policy



3.3 The Mayor/Councillors may request the delegation be withdrawn and a DA or planning proposal be reported to Council. To do this, the Mayor/Councillor completes the Call to Council Form and obtains ~~2 other~~ **the** supporting of **2 other** Councillors **by** signatures **or** email.

3.4 A total of 3 signatories are required to support the reporting of a planning matter to Council at any one time. The Mayor/Councillors may withdraw their support for calling a planning matter to Council via email at any time, prior to being included in the Council business paper. This would result in the matter being able to be determined by Council officers under delegated authority unless further support is provided to a total of 3 signatories.

4. DEFINITIONS:

DA	Development Application
DAP	Development Assessment Process
Signatories	Mayor / Councillors

5. POLICY STATEMENT:

- 5.1 Council shall be informed with regard to DA's and Section 4.55 modification applications planning matters in the following way:
- a) All current DA's lodged are publicly available and listed on the Council website via the DA Tracker.
 - b) A report is generated weekly of all new DA's lodged and this is circulated weekly via PS Newsletter to the Mayor/Councillors and other relevant internal staff.
 - c) At any time prior to determination of a DA, the Mayor/Councillors may request that the application be reported to Council for determination by completing a Call to Council Form with ~~the 2 other supporting~~ **support of 2 other** Councillors **by** signature **or** email. If a completed Call to Council Form is submitted to Council prior to determination of the DA, a report will be forwarded to Council at the completion of the assessment.
 - d) DA's with a cost of works exceeding \$250,000, with the exception of infrastructure works within Council's road reserve, and Section 4.55(2) modification applications will be reported to Council where Council is the owner of the land on which the development is to be carried out or where the development is being carried out on behalf of Council. Where not reported to Council, those Council DA's with a cost of works of less than \$250,000 or for infrastructure works within a Council road reserve or Section 4.55(1A) modification applications, will be reported in the PS Newsletter prior to determination.

Policy

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ITEM 4 - ATTACHMENT 1 REVISED PLANNING MATTERS TO BE REPORTED TO COUNCIL POLICY.

Policy



- e) DA's and Section 4.55 modification applications will be reported to Council where the application relates to the carrying out of development on Community land, other than where the proposed works comprise amenity buildings and structures such as; toilet facilities, playgrounds, small refreshment kiosks and the like.
- f) Section 4.55(2) modification applications where the original DA was determined by Council, will be reported to Council for determination.
- g) Councillors will be advised via PS Newsletter prior to the determination of Section 4.55(1A) modification applications where the original DA was determined by Council. In the event a Section 4.55(1A) modification application proposes an amendment to a condition moved on the floor of Council and approved by the Council, the application will be reported to the Council for determination.
- h) DA's with a Request to vary a Development Standard, which seeks to vary a development standard by greater than 10%, will be reported to Council for determination.
- i) The Group Manager, Development Services and/or Section Manager, Development Assessment & Compliance, at their discretion, may report any DA to Council for determination.

5.2 Council shall be informed with regard to planning proposals in the following way:

- a) A report is generated of all new planning proposals lodged and this is circulated via PS Newsletter to the Mayor/Councillors and other relevant internal staff.
- b) At any time prior to forwarding a planning proposals for Gateway determination, the Mayor/Councillor may request that the application be reported to Council for determination by completing a Call to Council Form with ~~2 other supporting~~ the support of 2 other Councillors by signature or email . If a completed Call to Council Form is submitted to Council prior to forwarding a planning proposals for Gateway determination, a report will be forwarded to Council.
- c) The Group Manager, Development Services and/or Section Manager, Strategy and Environment, at their discretion, may report any planning proposal to Council.

6. POLICY RESPONSIBILITIES:

- 6.1 Development Services Group is responsible for implementing, complying with, monitoring, evaluating, reviewing and providing advice on the Policy.



ITEM 4 - ATTACHMENT 1 REVISED PLANNING MATTERS TO BE REPORTED TO COUNCIL POLICY.

Policy



3	10/11/2015	Coordinator Planning and Developer Relations	Review and minor updates to policy.	339
4	September 2018	Manager Development Assessment and Compliance	Updated to new policy template to include paragraph numbering and update version control. 3.3: Updated number of Councillors required to call a DA to Council to reflect the DPE Development Assessment Best Practice Guide. 5.1.2: Modified mechanism to report weekly DA list to Mayor/Councillors. 5.1.3: Updated requirements for Call to Council form. 5.1.4, 5.1.5, 5.1.6, 5.1.7, 5.1.8: Included additional DA types to be reported to Council for determination. 7.5 Inclusion of Department Planning and Environment (DPE) – Development Assessment Best Practice Guide.	098

Policy

WADSWORTH CONSULTANTS
 100/102/104/106/108/110/112/114/116/118/120/122/124/126/128/130/132/134/136/138/140/142/144/146/148/150/152/154/156/158/160/162/164/166/168/170/172/174/176/178/180/182/184/186/188/190/192/194/196/198/200/202/204/206/208/210/212/214/216/218/220/222/224/226/228/230/232/234/236/238/240/242/244/246/248/250/252/254/256/258/260/262/264/266/268/270/272/274/276/278/280/282/284/286/288/290/292/294/296/298/300/302/304/306/308/310/312/314/316/318/320/322/324/326/328/330/332/334/336/338/340/342/344/346/348/350/352/354/356/358/360/362/364/366/368/370/372/374/376/378/380/382/384/386/388/390/392/394/396/398/400/402/404/406/408/410/412/414/416/418/420/422/424/426/428/430/432/434/436/438/440/442/444/446/448/450/452/454/456/458/460/462/464/466/468/470/472/474/476/478/480/482/484/486/488/490/492/494/496/498/500/502/504/506/508/510/512/514/516/518/520/522/524/526/528/530/532/534/536/538/540/542/544/546/548/550/552/554/556/558/560/562/564/566/568/570/572/574/576/578/580/582/584/586/588/590/592/594/596/598/600/602/604/606/608/610/612/614/616/618/620/622/624/626/628/630/632/634/636/638/640/642/644/646/648/650/652/654/656/658/660/662/664/666/668/670/672/674/676/678/680/682/684/686/688/690/692/694/696/698/700/702/704/706/708/710/712/714/716/718/720/722/724/726/728/730/732/734/736/738/740/742/744/746/748/750/752/754/756/758/760/762/764/766/768/770/772/774/776/778/780/782/784/786/788/790/792/794/796/798/800/802/804/806/808/810/812/814/816/818/820/822/824/826/828/830/832/834/836/838/840/842/844/846/848/850/852/854/856/858/860/862/864/866/868/870/872/874/876/878/880/882/884/886/888/890/892/894/896/898/900/902/904/906/908/910/912/914/916/918/920/922/924/926/928/930/932/934/936/938/940/942/944/946/948/950/952/954/956/958/960/962/964/966/968/970/972/974/976/978/980/982/984/986/988/990/992/994/996/998/1000

ITEM 4 - ATTACHMENT 1 REVISED PLANNING MATTERS TO BE REPORTED TO COUNCIL POLICY.

Policy



5	10/11/2020	Manager Development Assessment and Compliance	<p>Review and update template to include: Updated title of policy to reflect inclusion of planning proposals into the policy. 1.2, 2.2 - Inclusion of new provisions to reflect inclusion of planning proposals into the policy. 2.1 - Clarify background and process of the policy. 3.3 -Amendment of existing provisions to reflect inclusion of planning proposals into the policy. 5.1 d) - Modified mechanism to report DA's and modification applications on Council land or where the works are to be undertaken on behalf of Council. 5.1 h) - Delete 'Clause 4.6 Variation Request' and replaced with 'Request to vary a Development'. 5.2: a), b) and c) – Added new paragraphs to clarify how Councillors will be informed with regard to planning proposals. 6.1 - Update responsible authority to reflect inclusion of planning proposals into the policy.</p>	237
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ITEM 4 - ATTACHMENT 1 REVISED PLANNING MATTERS TO BE REPORTED TO COUNCIL POLICY.

Policy



			<p>7.1 Delete Sustainability Review – End to End Process. 7.3 Delete Work Practice Note: Development Assessment Process. 7.4 Added Rezoning Request Policy. 7.5 Added Community Engagement Strategy.</p>	
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Policy

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ITEM 4 - ATTACHMENT 1 REVISED PLANNING MATTERS TO BE REPORTED TO COUNCIL POLICY.

Policy



6	TBA	Manager Development & Compliance	<p>Updated position title and section name throughout.</p> <p>Updated the requirement for Councillor Call Up to include email option throughout.</p> <p>2.1 – Deleted - and may require review in accordance with Council’s Development Assessment Process (DAP)</p> <p>3.4 – Added - The Mayor/Councillors may withdraw their support for calling a planning matter to Council via email at any time , prior to being included in the Council business paper.</p> <p>4 – Added – definition of signatories to include Mayor/Councillors</p> <p>5g – Added - . In the event a Section 4.55(1A) modification application proposes an amendment to a condition moved on the floor of Council and approved by the Council, the application will be reported to the Council for determination.</p>	TBA
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Policy

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ITEM NO. 5

**FILE NO: 22/124850
EDRMS NO: PSC2008-1759**

POLICY REVIEW - PARKS AND ROADSIDE MEMORIALS POLICY

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Endorse the revised Parks and Roadside Memorials policy shown at **(ATTACHMENT 1)**.
- 2) Place the revised Parks and Roadside Memorials 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 Parks and Roadside Memorials policy dated 9 June 2020, Minute No. 096 should no submissions be received.

BACKGROUND

The purpose of this report is seek Council's endorsement of the revised Parks and Roadside Memorial Policy (policy) shown at **(ATTACHMENT 1)**.

The purpose of the policy is to provide a framework that documents Council's position on memorials such as crosses, plaques and the placement of tributary items such as flowers, cards and photographs erected on roadsides, as well as memorials such as seats, plantings and plaques within parks.

Council does receive requests from individuals or organisations for the installation of memorial plaques or for the donation of park furniture or the planting of trees in memory of a deceased person/s. The policy has been enacted a number of times in the assessment of new and existing memorials. The policy has also been used for relocation, removal and the downsizing of a number of memorials in or on road reserves in a number of locations. All with positive outcomes for Council and the families involved.

Following the policy and the associated assessment process allows Council Officers to ensure memorials are appropriately applied and monitored. This assessment also allows for a period of mourning and avoidance of anniversaries and birthdays when making contact with families in relation to downsizing, relocations or removals.

Please note that yellow highlighting in the attached policy indicates an amendment has been made and strikethrough text is to be deleted.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2018-2022
Infrastructure and Facilities	Maintain the Council's civil and community infrastructure to support the community.

FINANCIAL/RESOURCE IMPLICATIONS

The full cost of a park memorial installation is borne by the applicant with the Public Domain and Services Section completing installation and maintenance for the life of the asset. Roadside memorials are to be installed by the applicant in line with the Guideline for Assessment of Roadside Memorials.

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 has an obligation to ensure that items within our parks and road reserves are installed safely and the memorials do not place the public in danger. It should be noted that Council does not encourage the placement of memorials within the road reserve. The placement and visiting of a memorial near moving traffic can be considered dangerous at some locations along the road reserve.

Under section 138 of the Roads Act 1993, a person must not:

- Erect a structure or carry out work in, on or over a public road.
- Dig up or disturb the surface of a public road.
- Remove or interfere with a structure, work or tree on a public road, other than with the consent of the appropriate road authority.

While the memorial object and the act of placing a memorial within the road reserve can be considered a risk, this policy does recognise the social and community benefit of memorials if undertaken as per the attached guidelines.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that non-conforming memorials such as distracting non-frangible objects are placed in our road reserve leading to general driving public being placed in danger.	Medium	Adopt the policy so that memorials are consistent and placed in safe locations away from moving traffic.	Yes
There is a risk that Council's reputation may be impacted by removal of roadside memorials if not dealt with in a respectful manner leading to reputation risk to Council.	Low	Adopt the policy so that if any memorial is required to be moved, removed or resized a process is followed that allows for respect for the mourning family.	Yes
There is a risk that Council will not have a consistent approach to the implementation of park memorials leading to Council being provided with various assets/objects of differing size and type in our parklands.	Low	Adopt the policy and apply the reference guidelines to allow a consistent approach to managing memorials.	Yes
There is a risk that Council will have too many assets within parks and reserves leading to increased pressure on maintenance budgets.	Low	Adopt the policy and apply the reference guidelines to allow a consistent approach to managing memorials.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Research conducted into previous memorial policies outlines the effects of driver behaviour in the presence of roadside memorials. The literature review suggests policies allowing the use of memorials helps grieving loved ones, and at the same time, if employed correctly, may also help the driving public understand the objective risk of driving and promote safer driving. The research also revealed memorial use might endanger drivers in the case where distraction is evident and memorials have been allowed to remain present.

Research has revealed:

- Memorials are more likely to slow some drivers down.
- Memorials are more likely to make some drivers more cautious, possibly reducing crashes and crash related costs to the community.
- Incorrectly placed memorials may distract some drivers.
- Drivers prefer policies supporting memorial use.

Overall, drivers appeared to support roadside memorials and reported more positive influences than negative effects.

The continued assessment and regulation of parks and roadside memorials is used to place new or move existing memorials to a safe location. Safe locations increase the distance of persons who may view, visit or maintain a memorial away from moving traffic.

The policy will assist Council to manage the road corridor by providing a safe clear zone for errant vehicles. Additionally, the placement of memorials outside the clear zone assists roadside mowing contractors to carry out their works without obstruction.

Park memorials are a way of recognising the community's connection with their local parks and reserves. This connection can range from local to state or even sometimes national in their significance and park memorials can help educate the public about significant people and events within the community.

CONSULTATION

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

Internal

Public Domain and Services Section.

External

External consultation will be undertaken through the public exhibition process. In accordance with local government legislation the draft Parks and Roadside Memorial Policy will go on public exhibition for 28 days.

OPTIONS

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

ATTACHMENTS

- 1) Draft Parks and Roadside Memorials Policy.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil

ITEM 5 - ATTACHMENT 1 DRAFT PARKS AND ROADSIDE MEMORIALS POLICY.

Policy



FILE NO: PSC2008-1759

TITLE: PARKS AND ROADSIDE MEMORIALS POLICY

OWNER: ASSETS SECTION MANAGER

1. PURPOSE:

- 1.1 To establish a framework that provides Council's position on memorials such as crosses, plaques and the placement of tributary items such as flowers, cards and photographs erected on roadsides, as well as memorials such as seats, plantings and plaques within parks.

2. CONTEXT/BACKGROUND:

- 2.1 Requests for memorials are becoming more prevalent with the changing cultural practices relating to the memorialisation of the deceased.
- 2.2 Roadside memorials symbolically mark a location where a person has died as a result of a motor vehicle crash or other road related incident. Structures such as crosses, seats and garden beds or objects such as wreaths, cards, photographs and ornaments are often placed as close as possible to the location of the crash.
- 2.3 Park memorials are a way of recognising the community's connection with parks. Memorials may add to the cultural and heritage value to the landscape and can help educate the public about significant people and events connected with parks and reserves.

3. SCOPE:

- 3.1 The placement of roadside memorials is a matter for individual families. Council respects the wishes of families wanting to place memorials and will provide sympathetic advice for people making enquiries of this nature.
- 3.2 Road Reserve
- 3.2.1 Council does not encourage the placement of roadside memorials and tributary items, and will not install or maintain memorials on behalf of families or individuals. However, this policy does recognise the social and community benefit of memorials and will approve them if undertaken safely as per the Roadside Memorials Assessment Process, Assessment of Roadside Memorials Guideline and Assessment Template.

Policy

WELCOME TO PORT STEPHENS

PORT STEPHENS COUNCIL



ITEM 5 - ATTACHMENT 1 DRAFT PARKS AND ROADSIDE MEMORIALS POLICY.



Policy

3.2.2 Roadside memorials include:

- a) crosses
- b) wreaths
- c) cards
- d) photographs
- e) ornaments.

3.3 Parks

3.3.1 Council provides a framework which allows families or individuals to place memorials within Council owned or managed parks and reserves. The placement of memorials within Councils Parks and Reserves will be managed in accordance with Park Memorials Guideline and the Park Memorials Application Process.

3.3.2 Park Memorials include:

- a) seats
- b) seats with plaque
- c) trees
- d) trees with plaque.

4. DEFINITIONS:

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

Memorial	An object established in memory of a person or event.
Plaque	A flat tablet of metal, stone or other appropriate material, which includes text and/or images, which commemorate a person or an event and/or provide historical text or information relevant to its location. Such tablet to be affixed to an object, building or pavement.

5. STATEMENT:

5.1 Council recognises the social and community benefits of memorials in our parks and roads.

Council shall:

5.2 ~~Recognise the deep emotions attached to memorials and to be sensitive in dealing with the issues regarding their location within or adjacent to Council's~~



ITEM 5 - ATTACHMENT 1 DRAFT PARKS AND ROADSIDE MEMORIALS POLICY.



Policy

parks and roads.

- 5.3 Provide consistent information on the placement, modification, relocation or removal of memorials.
- 5.4 Limit Council's exposure to the potential road safety and public liability risks.
- 5.5 Follow the relevant guideline in the assessment of memorials.

5.2 Council shall:

- a) Recognise the deep emotions attached to memorials and to be sensitive in dealing with the issues regarding their location within or adjacent to Council's parks and roads.
- b) Provide consistent information on the placement, modification, relocation or removal of memorials.
- c) Limit Council's exposure to the potential road safety and public liability risks.
- d) Follow the relevant guideline in the assessment of memorials.

6. RESPONSIBILITIES:

- 6.1 The key position/s responsible for implementing, complying with, monitoring, evaluating, reviewing and providing advice on the policy are the Civil Assets Manager and Community and Recreation Coordinator.

7. RELATED DOCUMENTS:

- 7.1 Asset Management Policy.
- 7.2 Guideline – Assessment of Roadside Memorials.
- 7.3 Roadside Memorials Assessment.
- 7.4 Guideline – Assessment of Park Memorials.

CONTROLLED DOCUMENT INFORMATION:

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EDRMS container No.	PSC2008-1759	EDRMS record No.	TBA
Audience	Community, Public Domain and Services, Assets Section and Corporate Risk Management		



ITEM 5 - ATTACHMENT 1 DRAFT PARKS AND ROADSIDE MEMORIALS POLICY.

Policy



Process owner	Assets Section Manager		
Author	Assets Section Manager		
Review timeframe	2 3 years	Next review date	TBA
Adoption date	28/01/03		

VERSION HISTORY:

Version	Date	Author	Details	Minute No.
1	28/01/03	Phil Buchan	Roadside Tributes and Memorials Policy	24
2	14/09/10	Assets Section Manager	Roadside Memorials Policy	280
3	08/09/15	Assets Section Manager	Updated Roadside Memorials Policy to incorporate Brand Identity Style Guide V1.0 and introduced parks memorials into the previous Roadside Memorials Policy	268
4	24/04/18	Assets Section Manager	Global Review and updated to policy to new Policy Template. 3.3.2 - Removal of Plaques 7 - Addition of 7.1 and Removal of Assessment and Maintenance of Roads Policy & Assessment and Maintenance of Footpath and Cycleways Policy. Following Public Exhibition 1 Submission was received and comments noted. No change to content of policy however formatted to reflect new template.	095
5	10/07/18	Assets Section Manager	Endorsed by Council at Ordinary Meeting 10/07/18	208



ITEM 5 - ATTACHMENT 1 DRAFT PARKS AND ROADSIDE MEMORIALS POLICY.

Policy



Version	Date	Author	Details	Minute No.
6	09/06/20	Assets Section Manager	Global Review and updated policy to new Policy Template. 2.2 – Further definition regarding the symbolically marked location provided. 5.4 – Updated grammatical error 6.1 – Updated to reflect current template wording 7.4 – 'Guideline – Assessment of Park Memorials' added into the Related Documents Adopted as no submissions received during Public Exhibition period.	096
7	TBA	Assets Section Manager	Policy has been reviewed and updated into the current policy template. Update format of clause 5.2.	TBA



ITEM NO. 6

FILE NO: 22/107098
EDRMS NO: PSC2019-05538

POLICY REVIEW - PUBLIC PROPERTY ENCROACHMENT POLICY

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Receive and note submissions **(ATTACHMENT 1)**.
- 2) Revoke the Public Property Encroachment Policy dated 14 July 2020 (Minute No. 133).
- 3) Adopt the revised Public Property Encroachment Policy shown at **(ATTACHMENT 2)**.

BACKGROUND

The purpose of this report is seek Council's endorsement of the revised Public Property Encroachment Policy (policy) shown at **(ATTACHMENT 2)**.

The policy relates to encroachment of private assets on Council's land, such as road reserves and community or operational land. The policy amongst other things defines what is meant by encroachment and also notes the application process.

Private assets include assets such as water features, steps, retaining walls, garden beds, and landscaping to name a few. The policy does not relate to buildings or structures as these are covered through the Development Application process.

Council acknowledges that the private assets on Council land can beautify an area and can be mutually beneficial to the community and Council. However, in some cases this beautification and encroachment on Council land may have a negative impact to the community, public safety, environment and amenity of the land, hence a Council position and process should be adopted by Council.

During the public exhibition, 2 submissions was received which has been summarised in **(ATTACHMENT 1)**. As a result of the submissions, some of the comments have resulted in a minor modification of policy.

Please note that yellow highlighting in the attached policy indicates an amendment has been made and strikethrough text is to be deleted. Text highlighted in blue shows amendments that have been made following public exhibition.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2018-2022
Infrastructure and Facilities	Plan civil and community infrastructure to support the community.

FINANCIAL/RESOURCE IMPLICATIONS

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

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

While there may be a risk with private assets being built and maintained on Council land, it could be considered to have no more risk than the community mowing the nature strip adjacent to their property. This assumes that the private assets have been through the encroachment application process and have been approved by Council staff.

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
There is a risk that not adopting the policy will lead to an inconsistent management of private assets on public land.	Low	Adopt the policy.	Yes
There is a risk that assets will be built leading to unsafe community areas or access being prevented.	Low	Adopt the policy so the community and Council staff gain clarity on what is allowed and acceptable.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Allowing private assets on Council land through the policy provides beautification on public areas, gives residents ownership and a sense of pride of their surrounding community.

CONSULTATION

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

Internal

- Consultation has been undertaken with Council's operations, enforcement and environment sections.
- The policy has been endorsed by Council's Executive Team.

External

The draft Public Property Encroachment Policy was placed on public exhibition for a period of 28 days from 23 March 2022 to 19 April 2022.

During the public exhibition period, 2 submission was received and are summarised in **(ATTACHMENT 1)**.

OPTIONS

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

ATTACHMENTS

- 1) Draft Public Property Encroachment Policy - Submissions.
- 2) Draft Public Property Encroachment Policy.

COUNCILLORS ROOM

- 1) Public Exhibition – Full Submissions.

TABLED DOCUMENTS

Nil.

ITEM 6 - ATTACHMENT 1 DRAFT PUBLIC PROPERTY ENCROACHMENT POLICY - SUBMISSIONS.

Policy Review - Public Property Encroachment Policy

No.	Author of submission	Comment	Council response
1	Resident.	<p>Agreement needs to be a reasonable balance between private and public stakeholder interests when properties are adjoining. Concern about conservation and habitat values of community land when extending lawns or removing local native plants that provide environmental benefits.</p> <p>Suggest adding in Section 3.3(d): The detracting from aesthetic appearances, <u>biodiversity conservation values</u>, and/or character of the area.”</p>	Comment added into Policy.
2	Tomaree Ratepayers and Residents Association.	<p>Acceptance that encroachment by third parties on public property can sometimes further the public interest, but it can also bring a private benefit at the expense of community interests and/or the environment.</p> <p>Clause 3.3 should add 'impediment of drainage or of natural coastal processes, particularly in foreshore areas' as this is one of the most common and contentious examples of encroachment.</p> <p>There should be an additional Clause in the policy dealing with the various ways in which Council may become aware of unauthorised encroachments including its own monitoring and observation, and receipt of complaints.</p> <p>There should be an additional clause about recording of 'cases' and periodic reporting, to Councillors and the public – reports could where appropriate protect the identity of individuals involved while providing an important measure of transparency and accountability, allowing for an assessment of the extent of encroachment and trends over time.</p>	<p>Noted</p> <p>Added to the Policy, though noting that encroachment can positively impact drainage, hence the requested statement has been modified.</p> <p>This is an operational issue and not part of the Policy.</p> <p>This is an operational issue and not part of the Policy</p>

ITEM 6 - ATTACHMENT 2 DRAFT PUBLIC PROPERTY ENCROACHMENT POLICY.

Policy



FILE NO: PSC2019-05538

TITLE: PUBLIC PROPERTY ENCROACHMENT POLICY

OWNER: ASSET SECTION MANAGER

1. PURPOSE:

- 1.1 The purpose of this policy is to provide Council's position on encroachment of private assets on Council's land such as road reserves and public community or operational land.
- 1.2 This policy is linked to Key Direction P2 Infrastructure and Facilities – Our community's infrastructure and facilities are safe, convenient, reliable and environmentally sustainable.

2. CONTEXT/BACKGROUND:

- 2.1 Council owns and manages a large portfolio of land for the community and public to use. Council recognises that some adjoining private property owners undertake work to beautify and maintain Council's land to the mutual benefit of each party. In some cases these beautifications extend beyond maintenance and result in private assets being placed on Council land.
- 2.2 In some cases this results in a sense of ownership and pride that benefits Council and the public.
- 2.3 In other cases this beautification and encroachment on Council land may have a negative impact to the community, public safety, environment and amenity of the land.
- 2.4 The extent of the encroachment and the organisation's risk appetite will determine Council's ability to accept or deny each encroachment and any further action required.

3. SCOPE:

- 3.1 This policy relates to encroachment on Council's road reserves and public community or operational land.
- 3.2 This policy does not relate to:
 - a. Parks and roadside memorials.
 - b. The encroachment on Council's commercial property portfolio.
 - c. Items covered under Council's Outdoor Trading Policy.



ITEM 6 - ATTACHMENT 2 DRAFT PUBLIC PROPERTY ENCROACHMENT POLICY.

Policy



- d. Bus shelter advertising.
 - e. The Dinghy Foreshore Vessel Storage Policy.
 - f. Private utilities that are covered under Section 611 of the Local Government Act 1993.
 - g. Any other activity or use that is approved or exempt from requiring prior approval. These are covered under other adopted Council policies, fees and charges or legislation.
- 3.3 Where an existing or proposed encroachment results in:
- a. A compromise to the integrity of natural and/or cultural values.
 - b. Prevention of public use or access.
 - c. Impediment of fire management.
 - d. The detraction from aesthetic appearances, biodiversity conservation values, and/or character of the area.
 - e. The diversion and/or encumbrances of Council resources or assets.
 - f. The jeopardy of public safety.
 - g. The social inequity.
 - h. Council's legal liability.
 - i. Traffic and pedestrian safety.
 - j. Negative impediment of drainage or of natural coastal processes.
- 3.4 Council may either not approve the proposed encroachment or order the person who undertook the existing encroachment to remove/make good the area to Council's satisfaction. These works and any associated approvals will be at the cost of the person who has undertaken the encroachment.
- 3.5 If works are not undertaken by the order date Council may take action and invoice the owner of the encroachment to recoup costs.
- 3.6 Should approval be granted, these works and any associated approvals will be at the cost of the applicant is requesting the encroachment works.

4. DEFINITIONS:

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

Private assets	Include but not limited to - water features, steps, retaining walls, fencing or physical barrier, gazebos, garden beds, and landscaping, vegetable patches, seating and furniture, BBQs, fire pits, boat ramps, storage equipment, structures (i.e. decking, patios, concrete/paving works).
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ITEM 6 - ATTACHMENT 2 DRAFT PUBLIC PROPERTY ENCROACHMENT POLICY.

Policy



Public community and operational land	Relates to lands defined as community or operational land held/managed by Council. Does not include Council owned commercial and investment lands.
Community Land	Land owned and managed by Council.
Council managed Community Land	Land managed by Council (ie Crown Trust).
Operational Land for Community Purposes	Operational land owned and managed by Council for community purposes.
Road Reserve	Land owned and managed by Council.
Council managed Road Reserves	Land managed by Council (i.e. RMS roads).

5. STATEMENT:

- 5.1 Council acknowledges that suitable encroachments may have benefits to residents, the community, public and Council by providing a sense of place, ownership, pride and increased maintenance.
- 5.2 Proposed works are to be applied through Council's 'Works on Community Land Application' or Roads Act 1993 approval process.
- 5.3 Encroachment may take many forms and each one will be assessed on its merits, benefits to the public and the organisations risk appetite.
- 5.4 Council may revoke previous approvals as new information become available or if the change of use prevents the space from being used for which it was intended.
- 5.5 Any approval for private assets transfers to the new owners upon sale of the adjoining property.
- 5.6 The applicant of the encroachment asset/adjoining property owner is responsible to remove and restore the private asset should Council or any other public authority require access through the subject area.

6. RESPONSIBILITIES:

- 6.1 Community and Recreation Coordinator for community land.
- 6.2 Civil Assets Planning Manager for road reserves.

7. RELATED DOCUMENTS:

- 7.1 Roads Act 1993.
- 7.2 Local Government Act 1993.



ITEM 6 - ATTACHMENT 2 DRAFT PUBLIC PROPERTY ENCROACHMENT POLICY.

Policy



CONTROLLED DOCUMENT INFORMATION:

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EDRMS container No.	PSC2019-05583	EDRMS record No.	TBA
Audience	Mayor and Councillors, Council Staff and Community.		
Process owner	Community and Recreation Co-ordinator for community land. Civil Assets Planning Manager for road reserves. Property Services Section Manager for Operational land.		
Author	Asset Section Manager		
Review timeframe	2 3 years	Next review date	TBA
Adoption date	14 July 2020		

VERSION HISTORY:

Version	Date	Author	Details	Minute No.
1	14 July 2020	Asset Section Manager	New policy was adopted.	133
2	TBA	Asset Section Manager	Reviewed and updated into the Policy template. 3.2e Updated name of policy. Removed "Dinghy" and replaced with "Foreshore Vessel Storage". 3.3d Added "biodiversity conservation values". 3.3i Added the word "safety". 3.3j Added "Negative impediment of drainage or of natural coastal processes."	TBA



ITEM NO. 7

**FILE NO: 22/130796
EDRMS NO: PSC2006-1589**

POLICY REVIEW - REDUCTION OR WAIVING OF OVERDUE LIBRARY ITEM CHARGES POLICY

REPORT OF: TAMMY GUTSCHE - COMMUNITY SERVICES SECTION
MANAGER
GROUP: FACILITIES & SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Revoke the Reduction or Waiving of Overdue Library Item Charges Policy dated 11 February 2020, Minute No.018 (**ATTACHMENT 1**).

BACKGROUND

The purpose of this report is to seek Council's endorsement to revoke the Reduction or Waiving of Overdue Library Item Charges Policy (policy) (**ATTACHMENT 1**) dated 11 February 2022, Minute No. 018.

As partners in the Regional Joint Library Agreement, Port Stephens Libraries responded during the COVID-19 crisis with community support, which included suspension of library overdue fines from April 2020 to September 2021 inclusive.

In late 2021, the City of Newcastle submitted a proposal to adopt a permanent fines free model for overdue library items, which their Executive endorsed.

This approach is consistent with worldwide trends in the library industry to remove punitive barriers to participation. Research identifies that the cost of administering the collection of fines is often equal to or more than the revenue. eLibrary loans have always been fines free as there is no mechanism to collect overdue charges. As the percentage of eLoans gradually increase, fines will continue to decrease.

An increasing number of Australian and overseas libraries are recognising that fines often act as a barrier to many people utilising the full-service benefits that libraries offer, and can have significant financial implications, particularly to those on fixed or low incomes. Research shows that instead of encouraging the prompt return of library items, being penalised financially for overdue items can discourage people from returning to the library altogether. Fines free is consistent with improving customer trust and experiences.

A report by the peak body for Australian libraries, the Australian Library and Information Association (ALIA), supported the removal of overdue fines citing:

- Library fines undermine one of the core principles of public libraries - the provision of free and universal access to information.
- The people who can least afford to pay fines are often the ones who need the library service the most.
- Library fines create a disproportionate administrative burden on staff.

The full report can be found below:

<https://www.alia.org.au/alia-australian-public-library-alliance-apla-statement-fines-overdue-items-australian-public>

Analysis conducted by Newcastle and Port Stephens libraries has also demonstrated that the cost of collecting overdue fines is greater than the revenue received.

With the City of Newcastle moving to a 'Fines Free' approach across the Regional Library Service, there is no longer a requirement for Port Stephens library staff to reduce or waive overdue charges. It is recommended that the policy be repealed.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2018-2022
Recognised Traditions and Lifestyles	Provide public libraries as vibrant community spaces

FINANCIAL/RESOURCE IMPLICATIONS

The City of Newcastle, by making this change to service levels, is permanently forgoing approximately \$35,000 income in library fines per annum. Port Stephens and Dungog Libraries are associated with Newcastle as partners in the Joint Library Agreement, and while we don't 'opt in' on all services, for this particular service level change, all three Libraries must be aligned and adopt the same approach.

The figure Port Stephens Council will forego in fines income is approximately \$8,000 per annum, which represents 2% of our total library income.

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

LEGAL, POLICY AND RISK IMPLICATIONS

There are no issues from the customer perspective and the impact on the overall library budget is minimal, representing a 0.5% loss from our total library budget.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that Port Stephens Libraries will be in breach of the Joint Library Agreement if City of Newcastle's approach to being fine's free is not adopted.	Medium	Revoke the Reduction or Waiving of Overdue Library Item Charges Policy.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The implications as experienced by other library services have only been positive. Other libraries who have implemented the fines free model have already started to see the positive impact that initiatives such as the removal of reservation fees and annual fines amnesties have generated. There has been a surge in recovery of lost books, an improved turnover of stock, and a growing appreciation for the increased emphasis on providing free access to information, resources and public spaces – particularly during these difficult times.

Implementing this initiative across the Port Stephens, Newcastle and Dungog Cooperative will generate increased library membership and encourage lapsed library members to return to their local library.

CONSULTATION

Consultation with key stakeholders has been undertaken by Library Services staff within the Community Services Section.

Internal

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

External

- Australian Library and Information Association (ALIA).
- City of Newcastle.

OPTIONS

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

ATTACHMENTS

- 1) Reduction or Waiving of Overdue Library Item Charges Policy.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

**ITEM 7 - ATTACHMENT 1 REDUCTION OR WAIVING OF OVERDUE LIBRARY
ITEM CHARGES POLICY.**

Policy



FILE NO: **PSC2006-1589**

TITLE: **REDUCTION OR WAIVING OF OVERDUE LIBRARY ITEM
CHARGES**

POLICY OWNER: **LIBRARY SERVICES MANAGER**

1. PURPOSE:

1.1. The policy outlines the criteria under which applications for the reduction or waiving of overdue charges can be made and the circumstances under which applications are considered.

2. CONTEXT/BACKGROUND:

- 2.1 Library staff are often required to respond to customer requests for the reduction or waiving of overdue charges due to the late return of library items. Generally charges are only reduced or waived as a result of extenuating or unforeseen circumstances such as incident or illness.
- 2.2 While the overdue charge per item is minimal, the overall cost incurred by customers may impact on their future use of the library service. Overdue charges are designed to discourage borrowers from keeping materials beyond their allocated loan period, which disadvantages other users. Overdue charges assist in the management and maintenance of library collections and resources, providing equitable access to information and a greater social benefit to the wider community.
- 2.3 The library provides equal opportunity to all individuals and groups within the community to access resources, regardless of financial status.

3. SCOPE:

3.1 This policy enables library staff to make decisions based on individual customer circumstances and provides for staff to refer more complex requests to a branch supervisor or the Library Manager where necessary.

4. DEFINITIONS:

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

Overdue charges	An amount incurred for the late return of library items.
Library items	Books, Audio Books, Audio Navigators, CDs, DVDs and Magazines.
Reduction of charges	To reduce incurred charges to a lesser amount.



ITEM 7 - ATTACHMENT 1 REDUCTION OR WAIVING OF OVERDUE LIBRARY ITEM CHARGES POLICY.

Policy



Waiving of charges

To set aside or dispense with incurred charges.

5. POLICY STATEMENT:

- 5.1. The General Manager has delegation to write-off rates and charges under the Local Government (General) Regulation 2005, once approved by Council.
- 5.2. Library staff are delegated by the General Manager to reduce or waive overdue library item charges as per the following categories:
 - a) General library staff (Library Assistant, Library Technician) – up to \$20
 - b) Branch Library (Team Leader/Supervisor) – Up to \$100
 - c) Library Manager – Up to \$500.
- 5.3. Requests for the reduction or waiving of overdue charges will only be considered once overdue items have been returned to the library.
- 5.4. Overdue charges in an amount that exceeds staff delegation may be waived on the following grounds:
 - a) Serious illness of customer or immediate family member
 - b) Incident involving customer or immediate family member
 - c) Death of customer or immediate family member
 - d) Presentation of Medical Certificate or Statutory Declaration
 - e) Library error
 - f) Library discretion (taking into account library branch guidelines and all circumstances of an individual's explanation for the late return of items).
- 5.5. At times Port Stephens Library Service may run campaigns such as 'Food for Fines' to support charitable organisations. These campaigns invite library customers to donate non-perishable food and toiletry items in lieu of paying accrued overdue charges.

6. POLICY RESPONSIBILITIES:

- 6.1 Library Services Manager - implementing, complying with, monitoring, evaluating, reviewing and providing advice.
- 6.2 Team Leaders/Supervisors - implementing, complying with, reviewing and providing advice.
- 6.3 Library Staff – implementing and complying with.



ITEM 7 - ATTACHMENT 1 REDUCTION OR WAIVING OF OVERDUE LIBRARY ITEM CHARGES POLICY.

Policy



7. RELATED DOCUMENTS:

- 7.1. Local Government Act.
- 7.2. Local Government (General) Regulation 2005.
- 7.3. NSW Library Act 1939.
- 7.4. NSW Library Regulation 2018.
- 7.5. Port Stephens Council Code of Conduct.

CONTROLLED DOCUMENT INFORMATION:

This is a controlled document. Hardcopies of this document may not be the latest version. Before using this document, check it is the latest version; refer to Council's website www.portstephens.nsw.gov.au			
EDRMS container No	PSC2006-1589	EDRMS record No	
Audience	Library users		
Process owner	Community Services Section Manager		
Author	Library Services Manager		
Review timeframe	Two years	Next review date	March 2022
Adoption date	22/08/2006		

VERSION HISTORY:

Version	Date	Author	Details	Minute No.
1	22/08/2006	Library Services Manager	Original policy adopted.	650
2	12/05/2015	Library Services Manager	Policy reviewed.	110
3	15/01/2018	Library Services Manager	Policy review – changes made to format and content updated.	036
4	11/02/20	Library Services Manager	Policy reviewed and updated into new format. Updated item 7.4 to include reference to NSW Library Regulation version 2018 instead of 2010.	018



ITEM NO. 8

FILE NO: 22/118111
EDRMS NO: PSC2014-01768

COMMUNICATIONS & ENGAGEMENT STRATEGY

REPORT OF: JANELLE GARDNER - COMMUNICATIONS SECTION MANAGER
GROUP: DEVELOPMENT SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Endorse the revised draft Communication & Engagement Strategy shown at **(ATTACHMENT 1)**.
- 2) Place the revised draft Communication & Engagement Strategy, as amended on public exhibition for a period of 28 days and should no submissions be received, the strategy be adopted, without a further report to Council.
- 3) Revoke the Community Engagement Strategy 2019 **(ATTACHMENT 2)** should no submissions be received.

BACKGROUND

The purpose of this report is for the consideration and exhibition of a draft Communications and Engagement Strategy (the strategy) **(ATTACHMENT 1)**.

Council's communication is key to successfully engage and involve the community in influencing the future of Port Stephens. Over the past two years, a fundamental shift has occurred in the approach to public sector communications and engagement. Social media has increased the expectations around communications as a conversation and, more recently, the impacts of COVID -19 have heightened the community's awareness of what's important to them and created a greater desire to engage in the planning for their place.

Communication and engagement are directly linked to the liveability and wellbeing of the community. By listening to the community, respecting their values and providing genuine opportunities for engagement, Council can create a greater sense of community ownership and ultimately, improve the delivery of Council services to become aligned to community needs.

To align with the shifts in the sector and Council's focus on liveability and wellbeing, Council needs to deliver a genuinely integrated and inclusive approach to engagement and communications. A combined Communication & Engagement Strategy will strive to meet legislation, business and community requirements.

This Communication and Engagement Strategy creates a blueprint for successful and meaningful communications and engagement, reflecting our organisations commitment to genuinely involve and engage with the community it serves. The

Strategy will help create a consultative culture, embracing conversations where information is shared and feedback encouraged to nurture a relationship built on transparency and trust. The Strategy reflects Council's commitment to not only inform and improve community awareness of programs, activities and services, but also commit to listen and create open channels of communication for meaningful dialogue, idea generation and big thinking to help shape our future direction.

The draft Communications & Engagement Strategy identifies 3 focus areas:

- Community engagement
- Community communications
- Media and public relations

Each focus areas has ten (10) key priorities that are drawn from internal service reviews, community feedback and best practice approaches.

COMMUNITY STRATEGIC PLAN

The Communication and Engagement Strategy forms the framework to support Council's vision outlined in the Community Strategic Plan.

Strategic Direction	Delivery Program 2018-2022
Communication and Engagement	Provide a voice for the community.

FINANCIAL/RESOURCE IMPLICATIONS

There are no direct financial/resource implications, as the strategy will continue to be implemented as part of ongoing operations.

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

LEGAL, POLICY AND RISK IMPLICATIONS

Under the Integration Planning & Reporting (IP&R) requirements, Council is required to review its current Community Engagement Strategy by December 2022 post the recent local government elections and in line with the IP&R cycle.

ORDINARY COUNCIL - 14 JUNE 2022

Subject to adoption, it is proposed that one combined Communications and Engagement Strategy will replace the current Community Engagement Strategy which was last adopted by Council on 26 November 2019 (**ATTACHMENT 2**).

Adopting the recommendations ensures compliance with the Local Government Act 1993 relating to community engagement strategies.

Adopting the recommendations will ensure compliance with the Environment and Planning Assessment Act 1979 - Division 2.6 with Council's Community Participation Plan included as an attachment to the strategy.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that Council may be in breach of the Environment and Planning Assessment Act 1979 if it does not have a Community Participation Plan adopted by 1 December 2019.	Low	Adopt the recommendations.	Yes
There is a risk that Council may be exposed to reputation damage if Council does not have a clear and comprehensive approach to communications and community engagement that aligns with Local Government Act 1993 requirements.	Low	Adopt the recommendations.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Adopting the recommendations ensures that Council will continue to follow best practice when engaging and communicating with the community about the services and activities of Council.

Adopting the recommendations demonstrates Councils greater understanding that engagement and communications are directly linked to the liveability and wellbeing of our community. If our community can participate in the decision making process, are

informed and aware and we broaden the diversity of who we communicate with, we can improve the way people feel about living and working in port Stephens

There are no significant economic or environmental implications resulting from the adoption of the recommendations.

CONSULTATION

Consultation with key stakeholders has been undertaken by the Communication & Engagement Section. The objective of the consultation was to identify a strategic direction and key priorities for communications and engagement and factor into the final draft document prior to reporting to Council.

Internal

Key internal stakeholders have been involved in preparing the draft Communications & Engagement Strategy via a cross-council Project Control Group including representatives from Assets, Development Services, Waste Services, Asset Maintenance, Corporate Services and Communication Engagement. Team workshops were also held with the Communications & Engagement section. The community engagement process has also undergone an internal review with a cross-council project team. Key directions and priorities identified through this consultation and review have been included in the draft strategy.

External

Consultation for the Communications & Engagement Strategy has been integrated into various engagement opportunities over the past 12 months. This has included the Customer Satisfaction Survey, Community Strategic Plan engagement as well as direct feedback received face to face and in written format by Councillors and key community groups.

A community focus group was also established during the development of the draft strategy that included a representatives from key community organisations or individuals across the LGA.

Over 2000 responses have been provided over the past 12 months and the feedback has informed the direction of each focus area as well as key priorities.

In accordance with local government legislation the draft Communication & Engagement Strategy will go on public exhibition from 16 June 2022 to 13 July 2022 for 28 days.

OPTIONS

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

ATTACHMENTS

- 1) Draft Communications and Engagement Strategy.
- 2) Community Engagement Strategy 2019.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

Port Stephens Communication and Engagement Strategy 2022 to 2027



Our vision is to actively communicate and engage in a way that tells our stories, listens to our community, informs our future and improves the wellbeing of those that live, work and holiday in Port Stephens.



GUUDJI YIGU

(GOO-JEE IK-KOO)

We welcome you to Port Stephens – part of the Worimi Aboriginal Nation. Port Stephens Council acknowledges the Worimi people as traditional owners and custodians of the lands and waterways on which we all live, learn, work and play.

We value and respect the Worimi people and the legacy 60,000 years of Aboriginal Nation traditions and culture brings with it. As part of Council's culture of acceptance, diversification and harmony we walk alongside the Worimi people on a journey of listening and learning.

Together we will strive to make this a better place for all peoples. As guardians of these lands, we ask that you tread lightly to help preserve the biodiversity and respect those who came before as well as those who will follow.

Artwork by Regan Lilley.



A message from the Mayor

Communication is key!

We love where we live and we live in one of the nicest places in Australia!

At Council, we understand it's our role to treasure and nurture the place we love and to enrich and improve the lives of those who live here. Some of us are born here and others come from near and far. Our community has a strong sense of pride of place and though we may be different ages, socio-economic groups, cultures or religions it's our common ground – this incredible place – that binds us and provides the foundation for a thriving community. We're privileged to be an integral part of this active, engaged, passionate community and we see the involvement of its members in the planning and decision making process as vital in helping to shape our future.

To successfully engage and involve the community in influencing the future of this region, Council's communication is key. Our Communication and Engagement Strategy will create a blueprint for successful and meaningful communications and engagement, reflecting our organisations commitment to genuinely involve and engage with the community it serves. The Strategy will help create a consultative culture, embracing conversations where information is shared and feedback encouraged to nurture a relationship built on transparency and trust. The Strategy reflects Council's commitment to not only inform and improve community awareness of programs, activities and services, but more importantly, the commitment to listen and create open channels of communication for meaningful dialogue, idea generation and big thinking to help shape our future direction.

We strive for inclusiveness for all in our community and, as such, our communications and engagement needs to be clear, accessible and delivered effectively to meet the needs of a diverse society. The Communication and Engagement Strategy forms the framework to support Council's vision outlined in the Community Strategic Plan and incorporates key objectives and initiatives as well as providing guidelines to ensure ongoing improvement in our organisation's communication and engagement practices.

Ryan Palmer
Mayor of Port Stephens



About the strategy



The Port Stephens Communications and Engagement Strategy has been developed to provide a framework for the delivery of open and effective communication that actively shapes and influences the future of Port Stephens.

The strategy responds to the requirements of the NSW Government Integrated Planning and Reporting Framework, the Local Government Act (1993) and the Environmental Planning and Assessment Act (1979). The strategy also responds to the key priorities of the elected Councillors.

The Communication and Engagement Strategy supports objectives in the Port Stephens Integrated Planning and Reporting documents, including the Community Strategic Plan and the Port Stephens Council Delivery Program.



Strong communication in local government creates trust in its citizens. The hope is that this trust will inspire citizens to become involved in their communities.

Diligent

Communications and Engagement Principles

- 1 We deliver **relevant, timely and easy to understand** information
- 2 We're **honest and transparent**
- 3 We're **inclusive** and encourage a **diversity of voices** to be heard
- 4 We **listen, value and respect community** input and feedback
- 5 We embrace **innovation** and encourage **new ideas**

ITEM 8 - ATTACHMENT 1 DRAFT COMMUNICATIONS AND ENGAGEMENT STRATEGY.

Strategy context

“ Longer periods to digest and respond to documents including Council agendas. Community member

Our Council

As the closest level of government connected to the community, Council has a unique relationship with residents and business – we work with local business, we employ local people and we have a key role in communicating and engaging with our local residents.

With over 60 individual business units across the organisation and almost 600 staff, Council delivers a large number of services to our community. We also provide the link between our community and other levels of government and are responsible for advocating our community's priorities.

Over the past few years, Council has worked hard to engage with and inform our community. However, we know from community feedback that we can do better. We've listened and are committed to working closely with our community to act on this feedback, responding to their needs and priorities.

Legislative Requirements

This Communication and Engagement Strategy has been prepared in accordance with Section 402A of the Local Government Act 1993 supporting an integrated approach to community engagement planning.

Community Participation in land use planning is a requirement under the Environmental Planning and Assessment Act 1979 (EP&A Act). Council now provides a single document where the community can access all of Council's community participation requirements under the planning legislation, including all minimum mandatory requirements. It sets out how and when we'll engage the community across our planning functions under the EP&A Act.

International Association of Public Participation

The International Association for Public Participation (IAP2) is an international federation of member affiliates that seeks to promote and improve the practice of community engagement, incorporating individuals, governments, institutions and other entities that affect the public interest.

IAP2 Australasia is the affiliate for Australia and New Zealand and is the world's leading community engagement association.

This strategy is committed to delivering the communication and engagement activities in line with the IAP2 Public Participation Spectrum. This table outlines the IAP2 principles, outlining the expectations of Council and the community in the delivery of this framework.

	Inform (least impact on decision)	Consult	Involve	Collaborate	Empower (most impact on decision)
Our goal	To provide the public with balanced and objective information to assist them in understanding the problems, alternatives, opportunities and/or solutions.	To obtain public feedback on analysis, alternatives and/or decisions.	To work directly with the public throughout the process to ensure that public concerns and aspirations are consistently understood and considered.	To partner with the public in each aspect of the decision including the development of alternatives and the identification of the preferred solution.	To place final decision-making and/or developed budgets in the hands of the public.
Our role	We'll keep you informed.	We'll keep you informed, listen to and acknowledge concerns and provide feedback on how public input influenced the decision.	We'll work with you to ensure that your concerns and aspirations are directly reflected in the alternatives developed and provide feedback on how public input influenced the decision.	We'll look to you for direct advice and innovation in formulating solutions and incorporate your advice and recommendations into decisions to the maximum extent possible.	We'll implement what you decide.
Community's role	Keep in touch. Follow Council on social media. Subscribe to regular newsletters and updates.	Contribute ideas and feedback. Respond to surveys. Make public submissions.	Actively participate in the workshops and engagement sessions. Share ideas, concerns and aspirations.	Work together to develop solutions. Join committees.	Make decisions and work with Council to implement them.

ITEM 8 - ATTACHMENT 1 DRAFT COMMUNICATIONS AND ENGAGEMENT STRATEGY.

Social Justice Principles

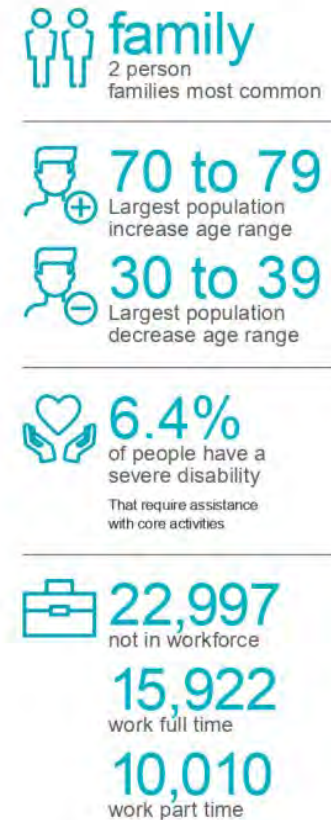
The NSW Government identifies four principles that underpin social justice.

These principles guide the planning, delivery and evaluation of this Communications and Engagement Strategy.

 Equity There should be fairness in the distribution of resources, particularly for those in need. The planning processes should take particular care to involve and protect the interests of people in vulnerable circumstances. The equity implications of proposed activities include the impact on community well-being, as well as who pays and who benefits.	 Access All people should have fair access to economic resources, services and rights essential to improving their quality of life. All residents should be able to get to and use public facilities and services, regardless of their social and economic circumstances.
 Participation All people should have the maximum opportunity to genuinely participate in decisions that affect their lives. This involves a two-way flow of views and information, generally with a focus on decision making.	 Rights Equality of rights should be established and promoted. Opportunities should be provided for positive participation to accommodate linguistic, cultural and religious diversity within the local government area.

Our community

More than 75,500 people call Port Stephens home. This is expected to grow to over 87,933 by 2040. People come to the area for many reasons – whether to visit, raise a family in a safe environment, work in a thriving and diverse economy or retire in this beautiful part of the world. Port Stephens' diverse social, environmental and economic characteristics is what makes this place so unique. This is an important consideration in why our communications and engagement need to be clear, accessible and delivered effectively.



Source: Remplan

What we've heard



“

Opportunities to Have Your Say are numerous but there is little opportunity to find out the result of the engagement or what other people think.

Community member

Community Satisfaction Survey 2021



2187 responses

- Perceived opportunity to provide input in Council projects and decision making has decreased by 19% since 2019
- Preferred ways to receive information from council is email at 56% and mail 34%
- Preferred ways to provide feedback to council is via surveys 62% and direct email/phone 33%

Community Strategic Plan



97 participants

- Workshops and online survey
- More consistent engagement approach across projects and programs
 - Use a variety of engagement methods
 - Improve sharing and transparency of data
 - Actually listen to community feedback
 - Close the loop, connecting feedback with decisions



9 attendees and 8 groups represented

- Community Focus Group
- Community involvement in engagement design
 - Use community groups as an interface between Council and the community
 - Get information out earlier
 - Give more time for considered contributions



6 community groups

- Key Stakeholder commentary
- Perception that council has a lack of genuine and transparent engagement
 - More user friendly website
 - More DA notifications/advertisements
 - More time to consider and respond
 - Better reporting of engagement outcomes

Our strategic approach



Stories of the importance of community engagement range from creating change in local policies and service provisions that not only enrich everyday lives and liveability of communities, but help shape and envision a community's future, bringing with it wider societal change.

Bang The Table

Over the past few years, a fundamental shift has occurred in the approach to public sector communications and engagement – social media has increased the expectations of residents around access to information and two way conversations. While more recently, the impacts of COVID-19 have heightened our community's awareness of place and created a greater desire to engage in planning for their place.

We know that effective communication and engagement are directly linked to the liveability and wellbeing of our community. By listening to our community, respecting their values and providing genuine opportunities for engagement, we can create a greater sense of community ownership and ultimately, improve the delivery of Council services to become aligned to community needs.

To achieve this, Council will deliver a genuinely integrated and inclusive approach to our engagement and communications. We'll create a culture where community is front of mind, where employees are empowered to engage in open and honest dialogue, where we embrace diverse opinions and values and where we actively work to keep our community informed and connected.

By bringing together our communications and engagement approach, Council has already created a shift in thinking – through this strategy, we'll continue to evolve this approach and build a culture that celebrates our stories and informs the future of Port Stephens.



Our purpose

To create a framework for the delivery of transparent and timely communications and meaningful community engagement that builds trust and community participation in decision making for our place.



Our vision

We actively communicate and engage in a way that tells our stories, listens to our community, informs our future, and improves the wellbeing of those that live, work and holiday in Port Stephens.

Strategic
Priority 1
Community
engagement



We will plan and deliver meaningful community engagement that enables community participation and builds trust in Council decision making

Key objectives

1. Embed the principles of the International Association Public Participation (IAP2) into the organisational culture.
2. Implement a community reference group to provide input into the design of engagement strategies for major projects
3. Increase opportunities for the community to engage informally with Councillors and Executive
4. Design engagement opportunities that enable time for considered thought and contribution
5. Ensure engagement opportunities consider place, diversity and accessibility
6. Use technology to increase participation and increase the diversity of voice and opinion in engagement activities
7. Build on the use of social media as a tool for engagement and feedback
8. Report internally and externally on engagement outcomes, connecting community engagement and decision making
9. Improve stakeholder information management to ensure equitable representation across the community
10. Deliver Council's Community Participation Plan (Environmental Planning and Assessment Act 1979)

Strategic
Priority 2
Community
Communications



We will deliver timely, creative and transparent internal and external communications that connect our stories, our people and our place

Key objectives

1. Design communications that are easy to understand and accessible to all
2. Recognise our public website (portstephens.nsw.gov.au) as the core communications channel and continue to invest in its growth and improvement
3. Develop a strong social media profile across a range of channels using audience profiles which encourage conversations and increase awareness of council services
4. Increase staff awareness and capacity to enable effective communication, engagement and promotion of council business
5. Build Council's identity and brand through consistent visual communications
6. Maximise the use of live streaming and video across all communication channels
7. Use data to develop communications that are audience focused
8. Regularly benchmark and review internal and external communications platforms
9. Support elected members by keeping them informed so they can share information and increase awareness of council activities and services through community networks
10. Measure, evaluate and report on all communications activities on a monthly basis

Strategic
Priority 3
Media and
Public Relations



We will build trust and reputation through proactive, consistent and trustworthy information that responds to issues and community priorities

Key priorities

1. Build and maintain strong relationships with media to facilitate informed reporting
2. Promote Port Stephens with positive and proactive media
3. Work across the organisation to identify newsworthy stories
4. Respond promptly to media enquiries to meet news deadlines
5. Develop annual Community Advocacy Priorities and implement campaigns to drive awareness of key priorities
6. Build relationships with key decision makers in state and federal government to increase understanding of local issues
7. Seek opportunities for elected representatives or Executive to speak at corporate, community and networking events
8. Coordinate Council's emergency management communications
9. Improve media record and information management
10. Monitor, evaluate and report on all media and public relations activity on a monthly basis

Measures of success



Our targets

-  Community Satisfaction Survey
49%+ of our community feel they can provide input into decision making
53%+ of our community are satisfied with their contact with Council
-  Port Stephens Liveability Score of 66+
-  1 million+ website visits
-  Have Your Say members increasing at 2.5% annually
-  Participation demographics accurately represent our
-  Facebook followers increasing at 2.5% annually
-  Instagram followers increasing at 2.5% annually
-  LinkedIn followers increasing at 2.5% annually
-  e-newsletter subscribers increasing at 2.5% annually
-  30% of projects have an engagement level of 'involve' or above
-  80%+ employee engagement

Attachment
1
Community
Participation Plan

Community Participation Plan

It is a statutory requirement for councils in New South Wales to prepare a Community Participation Plan that sets out how and when it will undertake community participation when exercising relevant planning functions under the EP&A Act.

How is community participation carried out

The Community Participation Plan specifies requirements including notification and public exhibition. This can include:

- Giving written notice to neighbours, individual landowners or occupiers.
- Advertising on Councils website.
- Making documents publicly available online.

Other methods may be used for notification and exhibition on a case by case basis and depending on statutory requirements.

If the exhibition period is due to close on a weekend or public holiday we may extend the exhibition to finish on the first available work day. In accordance with the planning legislation, the period between 20 December and 10 January (inclusive) is excluded from the calculation of a period of public exhibition.

Plans or applications cannot be made or determined until after the minimum period of public exhibition. If a longer timeframe is placed on public exhibition, the matter cannot be determined until after the specified period.



ITEM 8 - ATTACHMENT 1 DRAFT COMMUNICATIONS AND ENGAGEMENT STRATEGY.

Making a submission

The community can participate during public exhibition by making a submission. The planning legislation sets out some requirements for submissions. In addition to these requirements, when making a submission to Council, the submission should be:

- Received on or before the last day of the nominated timeframe for exhibition.
- Made in writing (through the mail, email or hand delivered to Council).
- Contain the name and address (or email address) of the person making the submission.
- Include the application number for reference (for development applications) or the name of the exhibited planning matter.
- Include a statement of objection or support and reasons.

Community participation requirements

Under the EP&A Act, the following minimum community participation requirements apply to local planning functions:

Table 2

Mandatory timeframes	Minimum community participation requirement
Division 1 — Schedule 1 to the EP&A Act	
Draft community participation plans	28 days
Draft local strategic planning statements	28 days
Planning proposals for local environmental plans subjects to a gateway determination	28 days or as specified by the Gateway Determination
Draft development control plans	28 days
Draft contributions plans	28 days
Division 2 — Schedule 1 to the EP&A Act	
Development Application for designated development	28 days
Environmental Impact Statement obtained under Division 5.1 (An Environmental Impact Statement prepared for certain development such as state significant development.)	28 days
Re-exhibition of any amended application or matter referred to above	The period (if any) determined by the person or body responsible for publicly exhibiting the application or matter.

Exhibition timeframes are measured in calendar days and include weekends.



Development applications

Table 3 outlines Council’s minimum notification requirements for development applications. Where there is an inconsistency between the notification requirements of this Community Participation Plan and legislative requirements, the legislative requirements will prevail.

Table 3 Community Participation Categories (Refer to Appendix A for details)

Exhibition types	
Type	Requirements
A	Not Notified Development Council may at its discretion decide to notify any of this type of development that may significantly impact on the amenity of adjoining land owners.
B	Advertised Development Written notification in accordance with 'type B' requirements and an advertisement published on Councils website. Development Application (DA) information published on DA Tracker. Additional advertisements may be placed in newspapers and/or through such other mechanisms as may be appropriate to ensure that the public is reasonably aware of the proposal. Council may also at its discretion decide not to advertise insignificant development.
Not included in Table 1	Notified Development A 14 day notification period will apply for development types not included in Appendix A. Written notification will be sent to all owners of land directly adjoining or opposite the development site. Additional owners and occupiers may be notified at the discretion of Council staff. Council may at its discretion decide not to notify development where impacts on adjoining land owners are considered minor in nature.

Modification applications

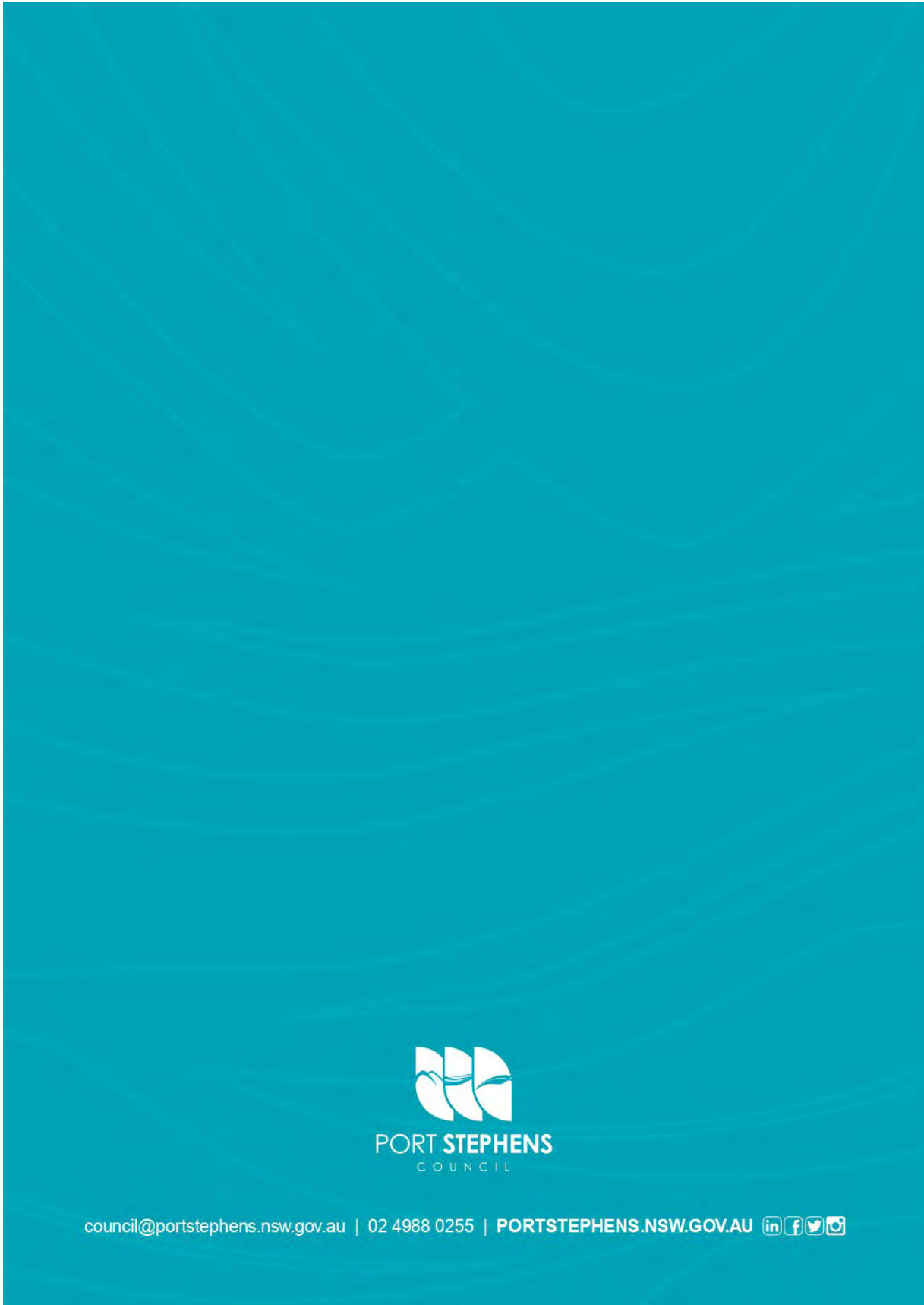
The need or otherwise to notify an application to modify a development consent will be undertaken in accordance with the requirements of the Act and Regulations or at the discretion of Council in consideration of the nature of the modifications proposed.

Appendix A — exhibition periods

Development category	Exhibition types	
	A	B
Rural development		
Agriculture	✓	
Farm buildings	✓	
Forestry		✓
Residential accommodation		
Dwelling — single storey	✓	
Residential ancillary (for example sheds, pools)	✓	
Rural worker's dwellings	✓	
Secondary dwellings	✓	
Subdivision (all types of subdivision)		
Strata subdivision	✓	
More than 10 Torrens or Community title lots		✓
Tourist and visitor accommodation		
Caravan parks and camping grounds		✓
Commercial development		
Home business / occupation	✓	
Entertainment facilities		✓
Function centres		✓
Sex services premises / home occupation (sex services)		✓
Restricted premises		✓
Community and entertainment facilities		
Places of public worship		✓
Recreation facility (major)		✓
Industrial development		
General industry	✓	
Industrial retail outlets	✓	
Industrial training facilities	✓	
Light industry	✓	
Storage premises	✓	
Warehouse or distribution centres	✓	
Freight transport facilities		✓
Miscellaneous		
Boatshed	✓	
Electricity generating works	✓	
Environmental facilities / environmental protection works	✓	
Moorings / mooring pens	✓	
Signage — other than advertising structures	✓	
Extractive industries / open cut mines		✓
Air transport facility		✓
Airstrip		✓
Cemetery / crematorium / mortuaries		✓
Correction centre		✓
Helipad		✓
Marinas		✓
Passenger transport facilities		✓
Port facilities		✓



ITEM 8 - ATTACHMENT 1 DRAFT COMMUNICATIONS AND ENGAGEMENT STRATEGY.



PORT STEPHENS
COUNCIL



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Engaging with our community

Community Engagement Strategy



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¹ Port Stephens Council

About this strategy

The Community Engagement Strategy reflects Port Stephens Council's commitment to involving our community in effective engagement that actively shapes and influences the future of the Port Stephens area.

This Strategy will support us in undertaking quality engagement to ensure our community are informed and we understand what matters most to our community now and into the future.

This Strategy is divided into two distinct parts:

Section 1: Our community engagement approach and principles across a range of Council functions. This section is required under section 402 of the Local Government Act 1993: The council must establish and implement a strategy (its community engagement strategy), based on social justice principles, for engagement with the local community when developing the community strategic plan.

Section 2: Community participation plan. This section is a new requirement under the Environmental Planning and Assessment Act 1979 (EP&A Act). These changes now provide a single document where the community can access all of Council's community participation requirements under the planning legislation, including all minimum mandatory requirements. It sets out how and when we will engage the community across our planning functions under the EP&A Act.

Delivering a best practice approach to engagement means:

- ensuring our community has better access to and understanding of information
- increased participation, allowing for a range of voices to be heard
- stronger community connections and trust.

Why do we need to engage?

- efficient and effective spending and resource allocation
- identification of solutions for complex problems
- social cohesion and reduced conflict
- reduction of unplanned risks
- improved services that meet community needs
- strengthened governance and accountability

Section 1

Our community engagement approach



Our community engagement approach

Engaging with the community is one of the guiding principles for councils under section 8A of the Local Government Act 1993 and is an important part of local democracy.

Our core principles for engagement

Relationships and respect

What this means

- We act with transparency and honesty in a way that values strong relationships and builds trust with our community and stakeholders.
- Good engagement helps us to identify shared values, benefits and outcomes.
- We will close the loop with our community and report back on the engagement process.

How do we do this

- We will say what we are doing, maintain ongoing partnerships and deliver regular updates to our stakeholders and community.
- We cultivate a culture of information sharing to ensure information is accurate and informed.
- We respect people's time and will listen to our community.
- We will accurately define the community's role in the decision making process.

Inclusive and enabling

What this means

- We believe good decisions are grounded in information and input from many sources.
- We will allow for a range of voices to be heard, not just those who are loud, angry or powerful.

How do we do this

- We will actively seek to ensure a range of views are represented.
- We engage appropriately and in a variety of formats to address barriers to participation.
- We will make our information easy to understand, consistent and timely.

Transparency and the right to participation

What this means

- Community input and feedback is recognised as enhancing the quality of our decision making processes.
- The community has the right to access information, be consulted and actively participate in planning and decision making that affects them.

How do we do this

- We make decisions in an open and transparent way. Information is timely, clear and relevant.
- We work towards consistent standards and report back on decisions made.
- We build our community's capacity to contribute through education and empowerment practices.

Continuous Improvement

What this means

- Engagement is a rapidly changing field. We recognise the need to adapt to ensure more effective engagement outcomes.

How do we do this

- New and innovative solutions will be sought to better listen to and communicate with our community.
- We will evaluate the work we do to improve our practice.
- We will use technology to ensure better access and more opportunity to engage.

How we engage

Community engagement model



Engagement is led by both the organisation and the community. The type of engagement is dependent on the nature of the relationships, activities and goals.



Source: International Association of Public Participation

International Association of Public Participation Spectrum (IAP2 Spectrum)

The IAP2 Spectrum is an internationally regarded tool to select the level of participation in any community engagement program. The Spectrum shows that differing levels of participation are required depending on the goals, time frames, resources and levels of concern in the decision to be made.

Increasing the level of public impact 
 Level of community influence over decisions 

Inform	Consult	Involve	Collaborate	Empower
To provide the public with balanced and objective information to assist them in understanding the problems, alternatives, opportunities and/or solutions.	To obtain public feedback on analysis, alternatives and/or decisions.	To work directly with the public throughout the process to ensure that public concerns and aspirations are consistently understood and considered.	To partner with the public in each aspect of the decision including the development of alternatives and the identification of the preferred solution.	To place final decision-making and/or developed budgets in the hands of the public.
We will keep you informed.	We will keep you informed, listen to and acknowledge concerns and provide feedback on how public input influenced the decision.	We will work with you to ensure that your concerns and aspirations are directly reflected in the alternatives developed and provide feedback on how public input influenced the decision.	We will look to you for direct advice and innovation in formulating solutions and incorporate your advice and recommendations into decisions to the maximum extent possible.	We will implement what you decide.

Figure 1: IAP2 Public Participation Spectrum. Source: International Association of Public Participation.

What this looks like at Port Stephens Council

Engagement design

Engagement can take many forms and there is no one size fits all approach. In some cases we are guided by legislation. In other cases we seek informed feedback on a particular plan, policy or project. Each project's level of engagement will be determined by assessing:

- objectives, scope and context of the project (including legislative requirements)
- level of impact including risk and complexity
- level of interest and influence on decisions to be made
- level of resources available including time and budget.

Key elements of engagement design:



Community engagement plans are tailored to the needs of each project. Our approach reflects the social justice principles of equity, access and participation. At all levels of engagement, our objective is to ensure our community can easily access balanced, timely and accurate information on our projects and programs.

Table 1 provides a snapshot of the types of activities and projects undertaken in the framework. The framework is not limited to the example projects and engagement techniques contained in the table.

Refer to Section 2 of this document for statutory decision making obligations and timeframes under the EP&A Act.

Table 1

IAP 2 Level	Description	Engagement techniques examples	Project type examples
Inform	<ul style="list-style-type: none"> share balanced information to increase awareness and understanding one way process can clarify level of impact and help build relationships 	<ul style="list-style-type: none"> advertising newsletters fact sheets displays media website 	<ul style="list-style-type: none"> maintenance, renewal of capital works changes to local activity policy updates
Consult	<ul style="list-style-type: none"> community views and feedback are sought we will listen and acknowledge your concerns 	<ul style="list-style-type: none"> focus groups workshops surveys polls one-on-one meetings public exhibition and hearings plus Inform activities 	<p>Key social planning and strategic documents, for example:</p> <ul style="list-style-type: none"> youth strategy plans of management public domain plans masterplans new policies with broad impact
Involve	<ul style="list-style-type: none"> work with the community throughout the process to ensure your priorities and aspirations are reflected in the decision 	<ul style="list-style-type: none"> advisory committees workshops world cafes community visioning workshops town centre implementation panels plus inform and consult activities 	<ul style="list-style-type: none"> Community Strategic Plan and Operational Plan <p>Other examples:</p> <ul style="list-style-type: none"> placemaking projects early development infrastructure and capital works projects like playgrounds and recreation facilities
Collaborating	<ul style="list-style-type: none"> actively working with community to ensure their aspirations and priorities strongly influence the outcome shared responsibility for decision making 	<ul style="list-style-type: none"> community reference group design workshops advisory committees plus Inform and Consult activities 	<ul style="list-style-type: none"> S355 Advisory Committees
Empowering	<ul style="list-style-type: none"> decision making is in the hands of the community particularly useful in engaging under represented or marginalised groups 	<ul style="list-style-type: none"> project teams 	<ul style="list-style-type: none"> community development programs

Inclusive engagement

We know there are some groups in our community that are harder to reach and less likely to participate in engagement activities. Council is committed to using inclusive methods and settings to make it easy for all of our community to participate. Some of these harder to reach groups identified in Port Stephens are:

- Aboriginal and Torres Strait Islander
- people with a disability
- young people
- young families / primary carers

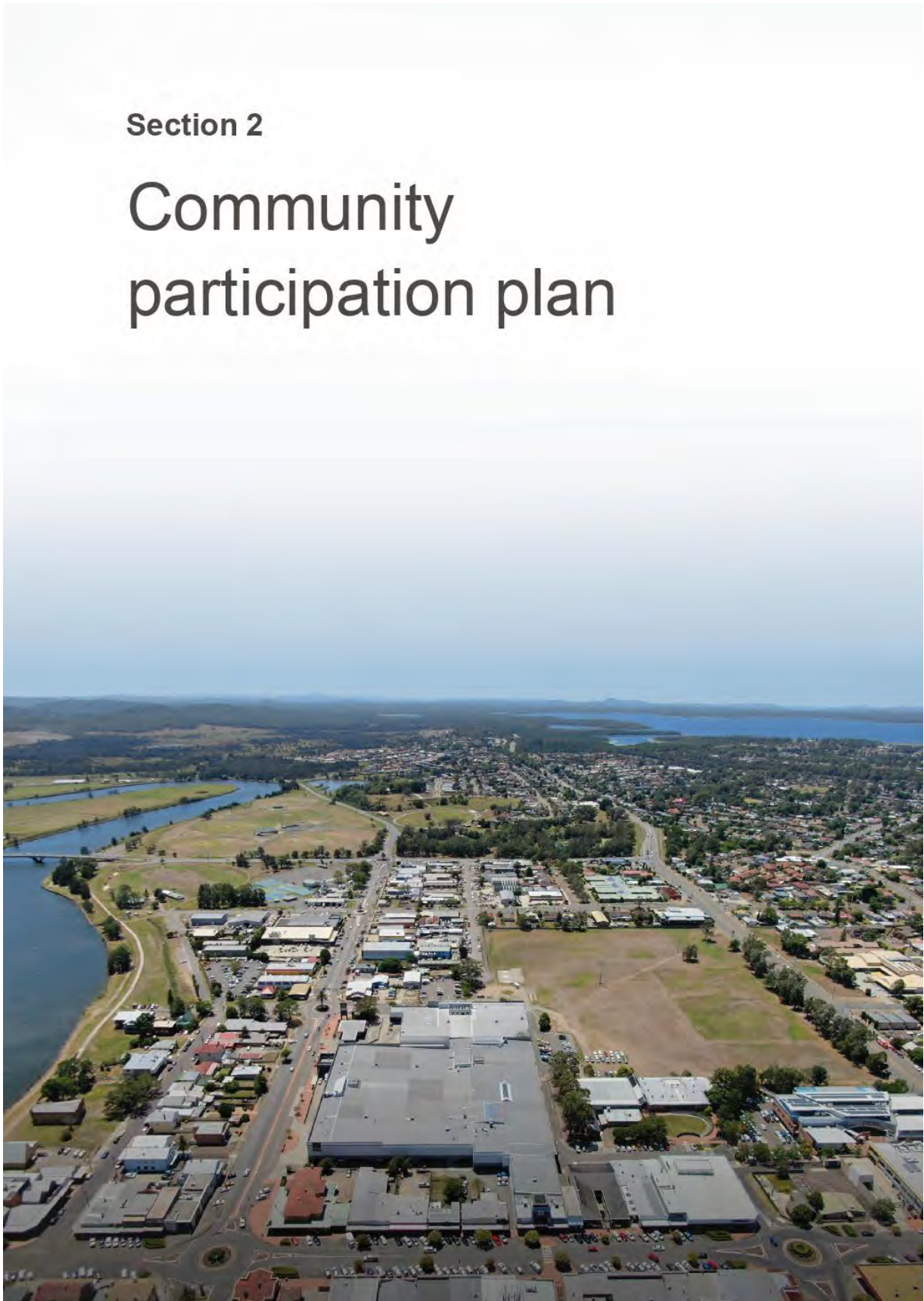
Barriers such as language, physical ability, digital comprehension, lack of time and social isolation are considered in engagement planning.

Key strategies for inclusive engagement:

- adaptation of methods
- make it fun
- go to where the people are and targeted outreach
- make it as easy as possible for people — choose appropriate locations and accessible venues
- provide incentives

Section 2

Community participation plan



Community participation plan

It is a statutory requirement for councils in New South Wales to prepare a Community Participation Plan that sets out how and when it will undertake community participation when exercising relevant planning functions under the EP&A Act.

How is community participation carried out

The Community Participation Plan specifies requirements including notification and public exhibition. This can include:

- Giving written notice to neighbours, individual landowners or occupiers;
- Advertising on Councils website; and
- Making documents publicly available online.

Other methods may be used for notification and exhibition on a case by case basis and depending on statutory requirements.

If the exhibition period is due to close on a weekend or public holiday we may extend the exhibition to finish on the first available work day. In accordance with the planning legislation, the period between 20 December and 10 January (inclusive) is excluded from the calculation of a period of public exhibition.

Plans or applications cannot be made or determined until after the minimum period of public exhibition. If a longer timeframe is placed on public exhibition, the matter cannot be determined until after the specified period.

Making a submission

The community can participate during public exhibition by making a submission. The planning legislation sets out some requirements for submissions. In addition to these requirements, when making a submission to Council, the submission should be:

- Received on or before the last day of the nominated timeframe for exhibition;
- Made in writing (through the mail, email or hand delivered to Council);
- Contain the name and address (or email address) of the person making the submission;
- Include the application number for reference (for development applications) or the name of the exhibited planning matter; and
- Include a statement of objection or support and reasons.

Community participation requirements

Under the EP&A Act, the following minimum community participation requirements apply to local planning functions:

Table 2

Mandatory timeframes	Minimum community participation requirement
Division 1 — Schedule 1 to the EP&A Act	
Draft community participation plans	28 days
Draft local strategic planning statements	28 days
Planning proposals for local environmental plans subjects to a gateway determination	28 days or as specified by the Gateway Determination
Draft development control plans	28 days
Draft contributions plans	28 days
Division 2 — Schedule 1 to the EP&A Act	
Development Application for designated development	28 days
Environmental Impact Statement obtained under Division 5.1 (An Environmental Impact Statement prepared for certain development such as state significant development.)	28 days
Re-exhibition of any amended application or matter referred to above	The period (if any) determined by the person or body responsible for publicly exhibiting the application or matter.

Exhibition timeframes are measured in calendar days and include weekends.

Development applications

Table 3 outlines Council's minimum notification requirements for development applications. Where there is an inconsistency between the notification requirements of this Community Participation Plan and legislative requirements, the legislative requirements will prevail.

Table 3 Community Participation Categories (Refer to Appendix A for details)

Exhibition types	
Type	Requirements
A	<p>Not Notified Development. Council may at its discretion decide to notify any of this type of development that may significantly impact on the amenity of adjoining land owners.</p>
B	<p>Advertised Development, written notification in accordance with 'type B' requirements and an advertisement published on Council's website. Development Application (DA) information published on DA Tracker.</p> <p>At Council's discretion, additional advertisements may be placed in newspapers and/or through such other mechanisms as may be appropriate to ensure that the public is reasonably aware of the proposal. Council may also at its discretion decide not to advertise development.</p>
Not included in Table 1	<p>Notified Development. A 14 day notification period will apply for development types not included in Appendix A. Written notification will be sent to all owners of land directly adjoining or opposite the development site. Additional owners and occupiers may be notified at the discretion of Council staff. Council may at its discretion decide not to notify development where impacts on adjoining land owners are considered minor in nature.</p>

Modification Applications

The need or otherwise to notify an application to modify a development consent will be undertaken in accordance with the requirements of the Act and Regulations or at the discretion of Council in consideration of the nature of the modifications proposed

Appendix A — Exhibition periods

Development category	Exhibition types	
	A	B
Rural Development		
Agriculture		
Farm buildings		
Forestry		
Residential Accommodation		
Dwelling — single storey		
Residential ancillary (sheds, pools, etc.)		
Rural worker's dwellings		
Secondary dwellings		
Subdivision (all types of subdivision)		
Strata Subdivision		
More than ten Torrens or Community title lots		
Tourist and visitor accommodation		
Caravan parks / Camping grounds		
Commercial development		
Home business / occupation		
Entertainment facilities		
Function centres		
Sex services premises / Home occupation (sex services)		
Restricted premises		
Community and entertainment facilities		
Places of public worship		
Recreation facility (major)		
Industrial Development		
General industry		
Industrial retail outlets		
Industrial training facilities		
Light industry		
Storage premises		
Warehouse or distribution centres		
Freight transport facilities		
Miscellaneous		
Boatshed		
Electricity generating works		
Environmental Facilities / Environmental Protection works		
Moorings / Mooring Pens		
Signage — other than advertising structures		
Extractive industries / open cut mines		
Air transport facility		
Airstrip		
Cemetery / crematorium / mortuaries		
Correction centre		
Helipad		
Marinas		
Passenger transport facilities		
Port facilities		



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ITEM NO. 9

**FILE NO: 22/141365
EDRMS NO: A2004-0284**

CODE OF MEETING PRACTICE REVIEW

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Endorse the revised Code of Meeting Practice shown at **(ATTACHMENT 1)** with yellow highlighting and “strike out” feature.
 - 2) Place the revised Code of Meeting Practice on public exhibition for a period of 28 days, allowing 42 days for submissions to be received.
 - 3) Approve the Code of Meeting Practice as publicly exhibited, should no submissions be received, without a further report to Council.
 - 4) Revoke the Code of Meeting Practice dated 9 June 2020, Minute No. 098, should no submissions be received.
-

BACKGROUND

The purpose of this report is to provide Council with the revised Code of Meeting Practice (the Code) **(ATTACHMENT 1)**.

The Code of Meeting Practice was considered at the Council meeting held on 26 April 2022 show at **(ATTACHMENT 2)**.

“It was resolved that item 4 be deferred pending advice from the Office of Local Government on the question of the amendment proposed by Cr Francis, being: “Include the following clause in the Code of Meeting Practice – 11.2.1 – The casting vote be only utilised in all instances of its use to maintain the status quo”.

Section 370 of the Local Government Act 1993 (the Act) states:

- (1) Each councillor is entitled to one vote.
- (2) However, the person presiding at a meeting of the council has, in the event of an equality of votes, a second or casting vote.

Clause 11.2 of the Model Code of Meeting Practice (the Model Code) reflects the Act.

The Office of Local Government (the OLG) has advised that neither the Act nor the Model Code restrict the chairperson in how they exercise their casting vote and this is **entirely at the chairperson’s discretion**.

The OLG agrees that it was open to the Mayor to rule the motion seeking to insert a new clause 11.2.1 into the Code as unlawful. This is because the proposed clause 11.2.1 sought to require the casting vote to only be used to maintain the status quo and is inconsistent with section 370 of the Act and clause 11.2 of the Model Code in that it seeks to fetter the discretion of the chairperson in their use of the casting vote.

A copy of the correspondence from the OLG is shown at **(ATTACHMENT 3)**.

The Port Stephens Council's Code of Meeting Practice is based on the revised Model Code of Meeting Practice released by the Office of Local Government on 29 October 2021 **(TABLED DOCUMENT)**.

The Code applies to meetings of the Council and Committees of Council where members are all elected members. The model Code also applies to boards of joint organisations and county councils.

Council first adopted the Code on 28 May 2019, with further amendments adopted on 9 June 2020. The Code includes mandatory and non-mandatory provisions. Council is also permitted to include supplementary clauses, however any supplementary clauses cannot be inconsistent with the model Code.

The Code has maintained any previously adopted non-mandatory provisions.

Please note that yellow highlighting in the revised Code indicates an amendment has been made and strikethrough text is to be deleted. The blue highlighted text are alternative options provided by Cr Arnott.

The key amendments to the Code are:

- 1) Clause 3.23 – makes provision for the inclusion of a statement of ethical obligations in each business paper to remind Mayor and Councillors of their oath or affirmation of office and appropriate management of conflicts of interest.
- 2) Clause 3.5 – allows pre-meeting briefings to be held by audio-visual link (non-mandatory).
- 3) Clause 3.5 – includes provision specifying timeframe to publish business paper on Council's website, as adopted by Council (non-mandatory).
- 4) Clause 3.7 – changes the timeframe for distribution of business papers to Mayor and Councillors, as adopted by Council.
- 5) Clause 3.10 - changes the timeframe to lodge a notice of motion, as adopted by Council.
- 6) Clause 4.2 – allows public forums (public access) to be held by audio-visual link (non-mandatory).

- 7) Clause 5.2 – includes reference to attendance at meetings by audio-visual link (non-mandatory).
- 8) Clauses 5.15 to 5.17 – makes provision for meetings to be held by audio-visual link (non-mandatory).
- 9) Clauses 5.18 to 5.22 – makes provision for attendance by councillors at a meeting by audio-visual link (non-mandatory).
- 10) Clauses 5.26 to 5.31 – updated to reflect mandatory provisions in the model code.
- 11) Clause 14.20 – makes provision for obligations of a councillor attending a meeting by audio-visual link during closed meetings (non-mandatory).
- 12) Clauses 15.20 to 15.21 – makes provision for dealing with disorder by a councillor if attendance is by audio-visual link (non-mandatory).
- 13) Clause 16.2 – makes provision for managing conflicts of interest when attending a meeting by audio-visual link (non-mandatory).
- 14) Clause 16.3 – includes a new provision, adopted by Council, to include conflict interest forms in the minutes (non-mandatory).
- 15) Clauses 17.12 to 17.14 – makes provision to deal with a rescission motion at the same meeting a motion was considered (non-mandatory).
- 16) Clause 19.2(a) – requires the names of councillors attending a meeting and to record if they attended in person or by audio-visual link (non-mandatory).
- 17) Clause 20.22(a) - requires the names of councillors attending a meeting and to record if they attended in person or by audio-visual link (non-mandatory).

In addition to the amendments above, the Code has been updated to reflect changes in clause numbers and other minor amendments from the revised model Code.

Additional considerations by Council

Council also needs to give consideration to recording a division after each item.

Section 375A of the Local Government Act 1993, requires Council to record those voting 'for' and 'against' each item when the matter relates to a planning decision under the Environment Planning and Assessment Act 1979.

It is not mandatory for Council to record those voting 'for' and 'against' other motions passed by Council. Clause 11.10 and 20.23, shown below, would need to be included in the revised Code of Meeting Practice should Council be of a mind to include recording a division for all items.

- a) Clause 11.10 - makes provision for recording a division (non-mandatory).
- b) Clause 20.23 – makes provision for recording a division (non-mandatory).

Council has been conducting a trial of this approach following the Council meeting of 22 February 2022.

Public Access survey

Council recently conducted a public access survey to engage with speakers from the past 4 years, the Mayor and Councillors, Council staff and the general community, with 55 surveys completed.

The questions included in the survey were:

- 1) How did you find the experience of presenting at Public Access? Were you shaky/nervous/anxious while presenting?
- 2) Would being seated whilst presenting have been helpful with the nervous feeling?
- 3) Thinking about the Public Access process, was the 5 minute time limit sufficient to present, or is it too constraining?
- 4) If you used the presentation display (i.e. PowerPoint presentation), how easy did you find the experience?
- 5) If given the option, would you have agreed to have your presentation broadcast on Council's live webcast to raise awareness?
- 6) Did you find questions from Councillors helpful?
- 7) Please provide any additional comments you might have on the current Public Access process.
- 8) Please provide any suggestions you might have to improve the Public Access process.

The survey graphs are shown at **(ATTACHMENT 4)**. Responses from questions 7 and 8 can be themed as follows:

- Councillor interaction during the sessions – both positive and opportunities for improvement.
- Review time limit for speakers.
- Provide Public Access via audio visual means with the speakers to have an option to present via the webcast.
- Happy with the current process – enjoyed and provided an insight into Council meeting process.
- Provide feedback to speakers on decisions of Council.
- Limit questions from Councillors.
- Speakers to have the ability to manage slide presentation.
- Speakers able to attend by audio-visual link.
- General improvements to the Public Access process.

ORDINARY COUNCIL - 14 JUNE 2022

The following table provides Public Access benchmarking conducted as part of revising the Code.

Council	Speaker time limit	Public access webcast	Questions asked by councillors
Cessnock City	3 minutes with 2 further 1 minute extensions available.	Yes	Yes
Lake Macquarie City	4 minutes. Total of 10 minutes by speaker slot includes questions from councillors.	Yes	Yes
Maitland City	3 minutes with 1 minute extension by resolution.	Yes	No direct questions to speakers – able to seek clarification from the chairperson.
Mid Coast	3 minutes	No	Yes
City of Newcastle	<p>Public Voice (generally DAs only) – 10 minutes each ‘for’ and ‘against’ and 10 minutes for councillor questions.</p> <p>Public briefings (other council related matters once a month) – 2 sessions per month, 20 minutes for speakers and 10 minutes for councillor questions.</p>	Yes	Yes

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2018-2022
Governance	Provide strong civic leadership and government regulations.

FINANCIAL/RESOURCE IMPLICATIONS

The financial and resource implications are within the existing budget.

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

LEGAL, POLICY AND RISK IMPLICATIONS

Council is required to adopt a Code of Meeting Practice based on the model Code to ensure it meets all legislative requirements in relation to conducting a meeting of the Council and a committee meeting of Council. In addition, Council is required to review its Code of Meeting Practice within 12 months of an ordinary local government election.

Section 361 of the Local Government Act 1993, requires Council to publicly exhibit the Code for a period of 28 days and allow 42 days for submissions to be received from the community.

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
There is a risk that Council may be in breach of the Local Government Act 1993 and Local Government (General) Regulation 2021 should it not adopt a Code of Meeting Practice.	Low	Adopt the recommendations.	Yes.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

There are limited sustainability implications associated with this report.

CONSULTATION

Internal

- Executive Team.
- Mayor and Councillors.

External

The revised Code of Meeting Practice is required to be publicly exhibited for a period of 28 days and allow 42 days for submissions to be received from the community. Public exhibition will take place at Council's library network, the Administration Building and be available from Council's website.

OPTIONS

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

ATTACHMENTS

- 1) Draft Code of Meeting Practice.
- 2) Council minutes extract - 26 April 2022.
- 3) Office of Local Government correspondence.
- 4) Public Access survey.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

- 1) Office of Local Government – Model Code of Conduct.



DRAFT Code of Meeting Practice – June 2022

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ITEM 9 - ATTACHMENT 1 DRAFT CODE OF MEETING PRACTICE.**1 INTRODUCTION**

This Model Code of Meeting Practice for Local Councils in NSW (the Model Meeting Code) is made **prescribed** under section 360 of the Local Government Act 1993 (the Act) and the Local Government (General) Regulation 2005 **2021** (the Regulation).

This code applies to all meetings of councils and committees of councils of which all the members are councillors (committees of council). Council committees whose members include persons other than councillors may adopt their own rules for meetings unless the council determines otherwise.

Councils must adopt a code of meeting practice that incorporates the mandatory provisions of the Model Meeting Code.

A council's adopted code of meeting practice may also incorporate the non-mandatory provisions of the Model Meeting Code and other supplementary provisions. However, a code of meeting practice adopted by a council must not contain provisions that are inconsistent with the mandatory provisions of this Model Meeting Code.

A council and a committee of the council of which all the members are councillors must conduct its meetings in accordance with the code of meeting practice adopted by the council.

2 MEETING PRINCIPLES

2.1 Council and committee meetings should be:

Transparent: Decisions are made in a way that is open and accountable.

Informed: Decisions are made based on relevant, quality information.

Inclusive: Decisions respect the diverse needs and interests of the local community.

Principled: Decisions are informed by the principles prescribed under Chapter 3 of the Act.

Trusted: The community has confidence that councillors and staff act ethically and make decisions in the interests of the whole community.

Respectful: Councillors, staff and meeting attendees treat each other with respect.

Effective: Meetings are well organised, effectively run and skilfully chaired.

Orderly: Councillors, staff and meeting attendees behave in a way that contributes to the orderly conduct of the meeting.

3 BEFORE THE MEETING

Timing of ordinary council meetings

- 3.1 The Council shall, by resolution, set the frequency, time, date and place of its ordinary meetings.
- 3.2 Despite clauses 3.1, 3.4, 3.7 and 3.17, an ordinary meeting may be cancelled if there are no operational reports to be considered by Council. The General Manager must inform the Mayor should this situation arise. The Mayor may, after consultation with each Councillor, as far as practicable, cancel the meeting. Where a meeting is cancelled, notice of the cancellation must be published on the Council's website and in such other manner that the Council is satisfied is likely to bring notice of the cancellation to the attention of as many people as possible.

Note: Under section 365 of the Act, councils are required to meet at least ten (10) times each year, each time in a different month unless the Minister for Local Government has approved a reduction in the number of times that a council is required to meet each year under section 365A.

Extraordinary meetings

- 3.3 If the Mayor receives a request in writing, signed by at least 2 Councillors, the Mayor must call an extraordinary meeting of the Council to be held as soon as practicable, but in any event, no more than 14 days after receipt of the request. The Mayor can be 1 of the 2 Councillors requesting the meeting.

Note: Clause 3.3 reflects section 366 of the Act.

Notice to the public of council meetings

- 3.4 The Council must give notice to the public of the time, date and place of each of its meetings, including extraordinary meetings and of each meeting of committees of the Council.

Note: Clause 3.4 reflects section 9(1) of the Act.

- 3.5 For the purposes of clause 3.4, notice of a meeting of the Council and of a committee of Council is to be published before the meeting takes place. The notice must be published on the Council's website, and in such other manner that the Council is satisfied is likely to bring notice of the meeting to the attention of as many people as possible. **The business paper will be published on the Council website by 10am the first Monday after the previous meeting of Council.**
- 3.6 For the purposes of clause 3.4, notice of more than 1 meeting may be given in the same notice.

ITEM 9 - ATTACHMENT 1 DRAFT CODE OF MEETING PRACTICE.

Notice to councillors of ordinary council meetings

- 3.7 The General Manager must send to each Councillor, at least 3 days before each **by close of business on the first Friday after the previous** meeting of the Council, a notice specifying the time, date and place at which the meeting is to be held, and the business proposed to be considered at the meeting.

Note: Clause 3.7 reflects section 367(1) of the Act.

- 3.8 The notice and the agenda for, and the business papers relating to, the meeting may be given to Councillors in electronic form, but only if all Councillors have facilities to access the notice, agenda and business papers in that form.

Note: Clause 3.8 reflects section 367(3) of the Act.

Notice to councillors of extraordinary meetings

- 3.9 Notice of less than 3 days may be given to Councillors of an extraordinary meeting of the Council in cases of emergency.

Note: Clause 3.9 reflects section 367(2) of the Act.

Giving notice of business to be considered at council meetings

- 3.10 A Councillor may give notice of any business they wish to be considered by the Council at its next ordinary meeting by way of a notice of motion. To be included on the agenda of the meeting, the notice of motion must be in writing and must be submitted ~~10 business days before the meeting is to be held.~~ **3 days prior to the distribution of the business paper.**
- 3.11 A Councillor may, in writing to the General Manager, request the withdrawal of a notice of motion submitted by them prior to its inclusion in the agenda and business paper for the meeting at which it is to be considered.
- 3.12 If the General Manager considers that a notice of motion submitted by a Councillor for consideration at an ordinary meeting of the Council has legal, strategic, financial or policy implications which should be taken into consideration by the meeting, the General Manager may prepare a report in relation to the notice of motion for inclusion with the business papers for the meeting at which the notice of motion is to be considered by the Council.
- 3.13 A notice of motion for the expenditure of funds on works and/or services other than those already provided for in the Council's current adopted operational plan must identify the source of funding for the expenditure that is the subject of the notice of motion. If the notice of motion does not identify a funding source, the General Manager must either:
- (a) Prepare a report on the availability of funds for implementing the motion if adopted for inclusion in the business papers for the meeting at which the notice of motion is to be considered by the Council, or

ITEM 9 - ATTACHMENT 1 DRAFT CODE OF MEETING PRACTICE.

- (b) By written notice sent to all Councillors with the business papers for the meeting for which the notice of motion has been submitted, defer consideration of the matter by the Council to such a date specified in the notice, pending the preparation of such a report.

Questions with notice

- 3.14 A Councillor may, by way of a notice submitted under clause 3.10, ask a question for response by the General Manager about the performance or operations of the Council.
- 3.15 A Councillor is not permitted to ask a question with notice under clause 3.14 that comprises a complaint against the General Manager or a member of staff of the Council, or a question that implies wrongdoing by the General Manager or a member of staff of the Council.
- 3.16 The General Manager or their nominee may respond to a question with notice submitted under clause 3.14 by way of a report included in the business papers for the relevant meeting of the Council or orally at the meeting.

Agenda and business papers for ordinary meetings

- 3.17 The General Manager must cause the agenda for a meeting of the Council or a committee of the Council to be prepared as soon as practicable before the meeting.
- 3.18 The General Manager must ensure that the agenda for an ordinary meeting of the Council states:
- (a) All matters to be dealt with arising out of the proceedings of previous meetings of the Council, and
 - (b) If the mayor is the chairperson – any matter or topic that the chairperson proposes, at the time when the agenda is prepared, to put to the meeting, and
 - (c) All matters, including matters that are the subject of staff reports and reports of committees, to be considered at the meeting, and
 - (d) Any business of which due notice has been given under clause 3.10.
- 3.19 Nothing in clause 3.18 limits the powers of the Mayor to put a mayoral minute to a meeting under clause 9.6.
- 3.20 The General Manager must not include in the agenda for a meeting of the Council any business of which due notice has been given if, in the opinion of the General Manager, the business is, or the implementation of the business would be, unlawful. The General Manager must report, without giving details of the item of business, any such exclusion to the next meeting of the Council.
- 3.21 Where the agenda includes the receipt of information or discussion of other matters that, in the opinion of the General manager, is likely to take place when the meeting is closed to the public, the General Manager must ensure that the agenda of the meeting:

ITEM 9 - ATTACHMENT 1 DRAFT CODE OF MEETING PRACTICE.

- (a) Identifies the relevant item of business and indicates that it is of such a nature (without disclosing details of the information to be considered when the meeting is closed to the public), and
- (b) States the grounds under section 10A(2) of the Act relevant to the item of business.

Note: Clause 3.21 reflects section 9(2A)(a) of the Act.

- 3.22 The General Manager must ensure that the details of any item of business which, in the opinion of the General Manager, is likely to be considered when the meeting is closed to the public, are included in a business paper provided to Councillors for the meeting concerned. Such details must not be included in the business papers made available to the public, and must not be disclosed by a Councillor or by any other person to another person who is not authorised to have that information.

Statement of ethical obligations

- 3.23 Business papers for all ordinary and extraordinary meetings of the Council and committees of the Council must contain a statement reminding the Mayor and Councillors of their oath or affirmation of office made under section 233A of the Act and their obligations under the Council's Code of Conduct to disclose and appropriately manage conflicts of interest.

Availability of the agenda and business papers to the public

- 3.234 Copies of the agenda and the associated business papers, such as correspondence and reports for meetings of the Council and committees of Council, are to be published on the Council's website, and must be made available to the public for inspection, or for taking away by any person free of charge at the offices of the Council, at the relevant meeting and at such other venues determined by the Council.

Note: Clause 3.234 reflects section 9(2) and (4) of the Act.

- 3.245 Clause 3.234 does not apply to the business papers for items of business that the General Manager has identified under clause 3.21 as being likely to be considered when the meeting is closed to the public.

Note: Clause 3.245 reflects section 9(2A)(b) of the Act.

- 3.256 For the purposes of clause 3.234, copies of agendas and business papers must be published on the Council's website and made available to the public at a time that is as close as possible to the time they are available to Councillors.

Note: Clause 3.256 reflects section 9(3) of the Act.

- 3.267 A copy of an agenda, or of an associated business paper made available under clause 3.234, may in addition be given or made available in electronic form.

Note: Clause 3.267 reflects section 9(5) of the Act.

ITEM 9 - ATTACHMENT 1 DRAFT CODE OF MEETING PRACTICE.Agenda and business papers for extraordinary meetings

- 3.278 The General Manager must ensure that the agenda for an extraordinary meeting of the Council deals only with the matters stated in the notice of the meeting.
- 3.289 Despite clause 3.278, business may be considered at an extraordinary meeting of the Council, even though due notice of the business has not been given, if:
- (a) A motion is passed to have the business considered at the meeting, and
 - (b) The business to be considered is ruled by the chairperson to be of great urgency on the grounds that it requires a decision by the Council before the next scheduled ordinary meeting of the Council.
- 3.2930 A motion moved under clause 3.289 (a) can be moved without notice but only after the business notified in the agenda for the extraordinary meeting has been dealt with.
- 3.301 Despite clauses 10.20–10.30, only the mover of a motion moved under clause 3.289 (a) can speak to the motion before it is put.
- 3.312 A motion of dissent cannot be moved against a ruling of the chairperson under clause 3.289 (b) on whether a matter is of great urgency.

Pre-meeting briefing sessions

- 3.323 Prior to each ordinary meeting of the Council, the General Manager may arrange a pre-meeting briefing session to brief Councillors on business to be considered at the meeting. Pre-meeting briefing sessions may also be held for extraordinary meetings of the Council and meetings of committees of the Council.
- 3.334 Pre-meeting briefing sessions are to be held in the absence of the public.
- 3.35 Pre-meeting briefing sessions may be held by audio-visual link.**
- 3.346 The General Manager or a member of staff nominated by the General Manager is to preside at pre-meeting briefing sessions.
- 3.357 Councillors must not use pre-meeting briefing sessions to debate or make preliminary decisions on items of business they are being briefed on, and any debate and decision-making must be left to the formal Council or committee meeting at which the item of business is to be considered.
- 3.368 Councillors (including the Mayor) must declare and manage any conflicts of interest they may have in relation to any item of business that is the subject of a briefing at a pre-meeting briefing session, in the same way that they are required to do so at a Council or committee meeting. The Council is to maintain a written record of all conflict of interest declarations made at pre-meeting briefing sessions and how the conflict of interest was managed by the Councillor who made the declaration.

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4 PUBLIC FORUMS (Public Access)

4.1 The Council may hold a public forum prior to each ordinary meeting of the Council for the purpose of hearing oral submissions from members of the public on items of business to be considered at the meeting and/or other matters at the discretion of the Mayor. Public forums may also be held prior to extraordinary Council meetings and meetings of committees of the Council.

4.2 Public forums may be held by audio-visual link.

4.2 (a) Presentations to public forums must be done in person and are not permitted to be written or video presentations unless the presenter is present to respond to questions per clause 4.15.

4.23 Public forums are to be chaired by the Mayor or their nominee.

4.34 To speak at a public forum, a person must first make an application to the Council in the approved form. Applications to speak at the public forum must be received by 12 noon on the Monday before the date on which the public forum is to be held, and must identify the item of business on the agenda of the Council meeting the person wishes to speak on, if applicable, and whether they wish to speak 'for' or 'against' the item.

4.45 A person may apply to speak on no more than 2 items of business on the agenda of the Council meeting.

4.56 Legal representatives acting on behalf of others are not to be permitted to speak at a public forum unless they identify their status as a legal representative when applying to speak at the public forum.

4.67 The Mayor or their delegate may refuse an application to speak at a public forum. The Mayor or their delegate must give reasons in writing for a decision to refuse an application.

4.78 No more than 2 speakers are to be permitted to speak 'for' or 'against' each item of business on the agenda for the Council meeting, with the total number of speakers at any one meeting being 12.

4.89 If more than the permitted number of speakers' apply to speak 'for' or 'against' any matter, those permitted to speak will be determined by the order the applications were received by Council.

4.910 If more than the permitted number of speakers apply to speak 'for' or 'against' any matter, the Mayor or their delegate may, increase the number of speakers permitted to speak on an item of business, where they are satisfied that it is necessary to do so to allow the Council to hear a fuller range of views on the relevant item of business.

4.101 Council may require a Approved speakers at the public forum are to register with the Council any written, visual or audio material to be presented in support of their address to the Council at the public forum, and to identify any equipment needs by 2pm the day of the public forum. The Mayor or their delegate may refuse to allow such material to be presented.

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- 4.142 The Mayor or their delegate is to determine the order of speakers at the public forum.
- 4.123 Each speaker will be allowed 5 minutes to address the Council. This time is to be strictly enforced by the chairperson.
- 4.134 Speakers at public forums must not digress from the item on the agenda, if applicable, of the Council meeting they have applied to address the Council on. If a speaker digresses to irrelevant matters, the chairperson is to direct the speaker not to do so. If a speaker fails to observe a direction from the chairperson, the speaker will not be further heard.
- 4.145 A Councillor (including the chairperson) may, through the chairperson, ask questions of a speaker following their address at a public forum. Questions put to a speaker must be direct, succinct and without argument.
- 4.156 Speakers are under no obligation to answer a question put under clause 4.14. Answers by the speaker, will be regulated by the chairperson.
- 4.167 Speakers at public forums cannot ask questions of the Council, Councillors or Council staff.
- 4.178 The General Manager or their nominee may, with the concurrence of the chairperson, address the Council in response to an address to the Council at a public forum after the address and any subsequent questions and answers have been finalised.
- 4.189 Where an address made at a public forum raises matters that require further consideration by Council staff, the General Manager may recommend that the Council defer consideration of the matter pending the preparation of a further report on the matters.
- 4.1920 When addressing the Council, speakers at public forums must comply with this Code and all other relevant Council codes, policies and procedures. Speakers must refrain from engaging in disorderly conduct, publicly alleging breaches of the Council's Code of Conduct or making other potentially defamatory statements.
- 4.201 If the chairperson considers that a speaker at a public forum has engaged in conduct of the type referred to in clause 4.19, the chairperson may request the person to refrain from the inappropriate behaviour and to withdraw and unreservedly apologise for any inappropriate comments. Where the speaker fails to comply with the chairperson's request, the chairperson may immediately require the person to stop speaking.
- 4.242 Clause 4.201 does not limit the ability of the chairperson to deal with disorderly conduct by speakers at public forums in accordance with the provisions of Part 15 of this Code.
- 4.223 Where a speaker engages in conduct of the type referred to in clause 4.1920, the Mayor or their delegate may refuse further applications from that person to speak at public forums for such a period as the Mayor or their delegate considers appropriate.

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- 4.234 Councillors (including the Mayor) must declare and manage any conflicts of interest they may have in relation to any item of business that is the subject of an address at a public forum, in the same way that they are required to do so at a Council or committee meeting. The Council is to maintain a written record of all conflict of interest declarations made at public forums and how the conflict of interest was managed by the Councillor who made the declaration.

Note: Public forums should not be held as part of a council or committee meeting. Council or committee meetings should be reserved for decision-making by the council or committee of council.

5 COMING TOGETHER

Attendance by councillors at meetings

- 5.1 All Councillors must make reasonable efforts to attend meetings of the Council and of committees of the Council of which they are members.

Note: A councillor may not attend a meeting as a councillor (other than the first meeting of the council after the councillor is elected or a meeting at which the councillor takes an oath or makes an affirmation of office) until they have taken an oath or made an affirmation of office in the form prescribed under section 233A of the Act.

- 5.2 A councillor cannot participate in a meeting of the Council or of a committee of the Council unless personally present at the meeting, unless permitted to attend the meeting by audio-visual link under this Code.
- 5.3 Where a Councillor is unable to attend 1 or more ordinary meetings of the Council, the Councillor should request that the Council grant them a leave of absence from those meetings. This clause does not prevent a Councillor from making an apology if they are unable to attend a meeting. However, the acceptance of such an apology does not constitute the granting of a leave of absence for the purposes of this Code and the Act.
- 5.4 A Councillor's request for leave of absence from Council meetings should, if practicable, identify (by date) the meetings from which the councillor intends to be absent and the grounds upon which the leave of absence is being sought.
- 5.5 The Council must act reasonably when considering whether to grant a Councillor's request for a leave of absence.
- 5.6 A Councillor's civic office will become vacant if the councillor is absent from 3 consecutive ordinary meetings of the Council without prior leave of the Council, or leave granted by the Council at any of the meetings concerned, unless the holder is absent because they have been suspended from office under the Act, or because the Council has been suspended under the Act, or as a consequence of a compliance order under section 438HA.

Note: Clause 5.6 reflects section 234(1)(d) of the Act.

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- 5.7 A Councillor who intends to attend a meeting of the Council despite having been granted a leave of absence should, if practicable, give the General Manager at least 2 days' notice of their intention to attend.

The quorum for a meeting

- 5.8 The quorum for a meeting of the Council is a majority of the Councillors of the Council who hold office at that time and are not suspended from office. The quorum for Port Stephens Council is 6.

Note: Clause 5.8 reflects section 368(1) of the Act.

- 5.9 Clause 5.8 does not apply if the quorum is required to be determined in accordance with directions of the Minister in a performance improvement order issued in respect of the Council.

Note: Clause 5.9 reflects section 368(2) of the Act.

- 5.10 A meeting of the Council must be adjourned if a quorum is not present:
- (a) At the commencement of the meeting where the number of apologies received for the meeting indicates that there will not be a quorum for the meeting, or
 - (b) Within half an hour after the time designated for the holding of the meeting, or
 - (c) At any time during the meeting.
- 5.11 In either case, the meeting must be adjourned to a time, date, and place fixed:
- (a) By the chairperson, or
 - (b) In the chairperson's absence, by the majority of the Councillors present, or
 - (c) Failing that, by the General Manager.
- 5.12 The General Manager must record in the Council's minutes the circumstances relating to the absence of a quorum (including the reasons for the absence of a quorum) at or arising during a meeting of the Council, together with the names of the Councillors present.
- 5.13 Where, prior to the commencement of a meeting, it becomes apparent that a quorum may not be present at the meeting, or that the health, safety and or welfare of Councillors, Council staff and members of the public may be put at risk by attending the meeting because of a natural disaster (such as, but not limited to flood or bushfire) or a public health emergency, the Mayor may, in consultation with the General Manager and, as far as is practicable, with each Councillor, cancel the meeting. Where a meeting is cancelled, notice of the cancellation must be published on the Council's website and in such other manner that the Council is satisfied is likely to bring notice of the cancellation to the attention of as many people as possible.

Alternative to 5.13 - Where, prior to the commencement of a meeting, it becomes apparent that a quorum may not be present at the meeting, or that the health, safety and or welfare of Councillors, Council staff and members of the public may be put at risk by attending the meeting because of a natural disaster

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(such as, but not limited to flood or bushfire) or a public health emergency, the Mayor may only make a determination under this clause with the consensus of all Councillors and the General Manager, cancel the meeting. Where a meeting is cancelled, notice of the cancellation must be published on the Council's website and in such other manner that the Council is satisfied is likely to bring notice of the cancellation to the attention of as many people as possible.

- 5.14 Where a meeting is cancelled under clause 5.13, the business to be considered at the meeting may instead be considered, where practicable, at the next ordinary meeting of the Council or at an extraordinary meeting called under clause 3.3.

Meetings held by audio-visual link

- 5.15 A meeting of the Council or a committee of the Council may be held by audio-visual link where the Mayor determines that the meeting should be held by audio-visual link because of a natural disaster or a public health emergency. The Mayor may only make a determination under this clause where they are satisfied that attendance at the meeting may put the health and safety of Councillors and staff at risk. The Mayor must make a determination under this clause in consultation with the General Manager and, as far as is practicable, with each Councillor.

Alternative to 5.15 - A meeting of the Council or a committee of the Council may be held by audio-visual link where the Mayor determines that the meeting should be held by audio-visual link because of a natural disaster or a public health emergency. The Mayor may only make a determination under this clause where they are satisfied that attendance at the meeting may put the health and safety of Councillors and staff at risk. The Mayor must make a determination under this clause with the consensus of all Councillors and the General Manager.

- 5.16 Where the Mayor determines under clause 5.15 that a meeting is to be held by audio-visual link, the General Manager must:

- (a) give written notice to all Councillors that the meeting is to be held by audio-visual link, and
- (b) take all reasonable steps to ensure that all Councillors can participate in the meeting by audio-visual link, and
- (c) cause a notice to be published on the Council's website and in such other manner the General Manager is satisfied will bring it to the attention of as many people as possible, advising that the meeting is to be held by audio-visual link and providing information about where members of the public may view the meeting.

- 5.17 This code applies to a meeting held by audio-visual link under clause 5.15 in the same way it would if the meeting was held in person.

Note: Where a council holds a meeting by audio-visual link under clause 5.15, it is still required under section 10 of the Act to provide a physical venue for members of the public to attend in person and observe the meeting.

Attendance by Councillors at meetings by audio-visual link

5.18 Councillors may attend and participate in meetings of the Council and committees of the Council by audio-visual link.

Alternative to 5.18 above – Councillors may attend and participate in meetings of the Council and committees of the Council by audio-visual link for no more than 2 consecutive meetings. Attempt to attend for more than 2 consecutive meetings will result in a refusal to admit the Councillor to the audio-visual link.

5.18(a) – any attendees via audio-visual link may not serve as the Chairperson of the meeting for which they attend via audio-visual link.

Drafting note – the proposed clause 5.18(a) is inconsistent with clause 6.1 of the Code and section 369(1) of the Local Government Act. Therefore cannot be included in the Code. Section 369(1) of the Act states that the Mayor presides at a meeting when in attendance.

5.19 The Council must comply with the Health Privacy Principles prescribed under the Health Records and Information Privacy Act 2002 when collecting, holding, using and disclosing health information in connection with a request by a Councillor to attend a meeting by audio-visual link.

5.20 This code applies to a Councillor attending a meeting by audio-visual link in the same way it would if the Councillor was attending the meeting in person. When a Councillor attends a meeting by audio-visual link under this code, they are to be taken as attending the meeting in person for the purposes of the code and will have the same voting rights as if they were attending the meeting in person.

5.21 A Councillor must give their full attention to the business and proceedings of the meeting when attending a meeting by audio-visual link. The Councillor's camera must be on at all times during the meeting except as may be otherwise provided for under this code.

5.22 A Councillor must be appropriately dressed when attending a meeting by audio-visual link and must ensure that no items are within sight of the meeting that are inconsistent with the maintenance of order at the meeting or that are likely to bring the Council or the committee into disrepute.

Entitlement of the public to attend council meetings

5.45²³ Everyone is entitled to attend a meeting of the Council and committees of the Council. The Council must ensure that all meetings of the Council and committees of the Council are open to the public.

Note: Clause 5.45²³ reflects section 10(1) of the Act.

5.46²⁴ Clause 5.45²³ does not apply to parts of meetings that have been closed to the public under section 10A of the Act.

5.47²⁵ A person (whether a Councillor or another person) is not entitled to be present at a meeting of the Council or a committee of the Council if expelled from the meeting:

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- (a) By a resolution of the meeting, or
- (b) By the person presiding at the meeting if the Council has, by resolution, authorised the person presiding to exercise the power of expulsion.

Note: Clause 5.47~~25~~ reflects section 10(2) of the Act.

Note: Clause 15.15~~4~~ authorises chairpersons to expel persons other than councillors from a council or committee meeting.

Webcasting of meetings

~~5.18~~²⁶ All meetings of the Council and committees of the Council are to be webcast on the Council's website. Each of the meeting of the Council or committee of the Council is to be recorded by means of audio or audio-visual device.

5.27 At the start of each meeting of the Council or a committee of the Council, the chairperson must inform the persons attending the meeting that:

- (a) the meeting is being recorded and made publicly available on the council's website, and
- (b) persons attending the meeting should refrain from making any defamatory statements.

5.28 The recording of a meeting is to be made publicly available on the Council's website:

- (a) at the same time as the meeting is taking place, or
- (b) as soon as practicable after the meeting, and
- (c) a meeting may only not be webcast live in the case of technical issues or technical limitations.
- (d) in case of issues per 5.28 (c), the meeting will be paused for 5 minutes to enable troubleshooting to occur. If the issue is not fixed after 5 minutes, the meeting may continue so long as it is still being recorded for the recording to be made available after the meeting.

5.29 The recording of a meeting is to be made publicly available on the Council's website for at least 12 months after the meeting or to the limit of Council's Information Technology storage capacity, whichever is greater.

5.30 Clauses 5.28 and 5.29 do not apply to any part of a meeting that has been closed to the public in accordance with section 10A of the Act.

Note: Clauses 5.26 – 5.30 reflect section 236 of the Regulation.

5.31 Recordings of meetings may be disposed of in accordance with the State Records Act 1998.

5.19 Council will audio-visual record (livestream) all Council meetings held in the Council Chamber at 116 Adelaide Street, Raymond Terrace.

5.20 Any meetings held outside the Council Chambers at 116 Adelaide Street, Raymond Terrace, will be either audio-visual recording or an audio recording, and made available on Council's website following the meeting.

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- 5.21 ~~Clause 5.18 does not apply to parts of a meeting that have been closed to the public under section 10A of the Act.~~
- 5.22 ~~At the start of each meeting the chairperson is to make a statement informing those in attendance that the meeting is being webcast and that those in attendance should refrain from making any defamatory statements.~~
- 5.23 ~~A recording of each meeting of the Council and committee of the Council is to be retained on the Council's website for a minimum of 12 months or to the limit of Council's Information Technology storage capacity, whichever is greater. Recordings of meetings may be disposed of in accordance with the State Records Act 1998.~~

Attendance of the general manager and other staff at meetings

- 5.24³² The General Manager is entitled to attend, but not to vote at, a meeting of the Council or a meeting of a committee of the Council of which all of the members are Councillors.

Note: Clause 5.24³² reflects section 376(1) of the Act.

- 5.25³³ The General Manager is entitled to attend a meeting of any other committee of the Council and may, if a member of the committee, exercise a vote.

Note: Clause 5.25³³ reflects section 376(2) of the Act.

- 5.26³⁴ The General Manager may be excluded from a meeting of the Council or a committee while the Council or committee deals with a matter relating to the standard of performance of the General Manager or the terms of employment of the General Manager.

Note: Clause 5.26³⁴ reflects section 376(3) of the Act.

- 5.27³⁵ The attendance of other Council staff at a meeting, (other than as members of the public) shall be with the approval of the General Manager.

6 THE CHAIRPERSON

The chairperson at meetings

- 6.1 The Mayor, or at the request of or in the absence of the Mayor, the Deputy Mayor (if any) presides at meetings of the Council.

Note: Clause 6.1 reflects section 369(1) of the Act.

- 6.2 If the Mayor and the Deputy Mayor (if any) are absent, a councillor elected to chair the meeting by the Councillors present presides at a meeting of the Council.

Note: Clause 6.2 reflects section 369(2) of the Act.

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Election of the chairperson in the absence of the Mayor and Deputy Mayor

- 6.3 If no chairperson is present at a meeting of the Council at the time designated for the holding of the meeting, the first business of the meeting must be the election of a chairperson to preside at the meeting.
- 6.4 The election of a chairperson must be conducted:
- (a) By the General Manager or, in their absence, an employee of the Council designated by the General Manager to conduct the election, or
 - (b) By the person who called the meeting or a person acting on their behalf if neither the General Manager nor a designated employee is present at the meeting, or if there is no General Manager or designated employee.
- 6.5 If, at an election of a chairperson, 2 or more candidates receive the same number of votes and no other candidate receives a greater number of votes, the chairperson is to be the candidate whose name is chosen by lot.
- 6.6 For the purposes of clause 6.5, the person conducting the election must:
- (a) Arrange for the names of the candidates who have equal numbers of votes to be written on similar slips, and
 - (b) Then fold the slips so as to prevent the names from being seen, mix the slips and draw one of the slips at random.
- 6.7 The candidate whose name is on the drawn slip is the candidate who is to be the chairperson.
- 6.8 Any election conducted under clause 6.3, and the outcome of the vote, are to be recorded in the minutes of the meeting.

Chairperson to have precedence

- 6.9 When the chairperson rises or speaks during a meeting of the Council:
- (a) Any Councillor then speaking or seeking to speak must cease speaking and, if standing, immediately resume their seat, and
 - (b) Every Councillor present must be silent to enable the chairperson to be heard without interruption.

7 MODES OF ADDRESS

- 7.1 If the chairperson is the Mayor, they are to be addressed as 'Mr Mayor' or 'Madam Mayor'.
- 7.2 Where the chairperson is not the Mayor, they are to be addressed as either 'Mr Chairperson' or 'Madam Chairperson'.
- 7.3 A Councillor is to be addressed as 'Councillor [surname]'.
- 7.4 A Council officer is to be addressed by their official designation or as Mr/Ms [surname].

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8 ORDER OF BUSINESS FOR ORDINARY COUNCIL MEETINGS

- 8.1 At a meeting of the Council, the general order of business is as fixed by resolution of the Council.
- 8.2 The order of business as fixed under clause 8.1 may be altered for a particular meeting of the Council if a motion to that effect is passed at that meeting. Such a motion can be moved without notice.

Note: If adopted, Part 13 allows Council to deal with items of business by exception.

- 8.3 Despite clauses 10.20–10.30, only the mover of a motion referred to in clause 8.2 may speak to the motion before it is put.

9 CONSIDERATION OF BUSINESS AT COUNCIL MEETINGS

Business that can be dealt with at a Council meeting

- 9.1 The Council must not consider business at a meeting of the Council:
- (a) Unless a Councillor has given notice of the business, as required by clause 3.10, and
 - (b) Unless notice of the business has been sent to the Councillors in accordance with clause 3.7 in the case of an ordinary meeting or clause 3.9 in the case of an extraordinary meeting called in an emergency.
- 9.2 Clause 9.1 does not apply to the consideration of business at a meeting, if the business:
- (a) Is already before, or directly relates to, a matter that is already before the Council, or
 - (b) Is the election of a chairperson to preside at the meeting, or
 - (c) Subject to clause 9.9, is a matter or topic put to the meeting by way of a mayoral minute, or
 - (d) Is a motion for the adoption of recommendations of a committee, including, but not limited to, a committee of the Council.
- 9.3 Despite clause 9.1, business may be considered at a meeting of the Council even though due notice of the business has not been given to the Councillors if:
- (a) A motion is passed to have the business considered at the meeting, and
 - (b) The business to be considered is ruled by the chairperson to be of great urgency on the grounds that it requires a decision by the Council before the next scheduled ordinary meeting of the Council.
- 9.4 A motion moved under clause 9.3(a) can be moved without notice. Despite clauses 10.20–10.30, only the mover of a motion referred to in clause 9.3(a) can speak to the motion before it is put.
- 9.5 A motion of dissent cannot be moved against a ruling by the chairperson under clause 9.3(b).

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Mayoral minutes

- 9.6 Subject to clause 9.9, if the Mayor is the chairperson at a meeting of the Council, the Mayor may, by minute signed by the Mayor, put to the meeting without notice any matter or topic that is within the jurisdiction of the Council, or of which the Council has official knowledge.
- 9.7 A mayoral minute, when put to a meeting, takes precedence over all business on the Council's agenda for the meeting. The chairperson (but only if the chairperson is the Mayor) may move the adoption of a mayoral minute without the motion being seconded.
- 9.8 A recommendation made in a mayoral minute put by the Mayor is, so far as it is adopted by the Council, a resolution of the Council.
- 9.9 A mayoral minute must not be used to put without notice matters that are routine and not urgent, or matters for which proper notice should be given because of their complexity. For the purpose of this clause, a matter will be urgent where it requires a decision by the Council before the next scheduled ordinary meeting of the Council.

9.9 (a) A mayoral minute must include a statement within the motion, the report, or in the Mayor's speech, outlining why the motion is not considered to be "routine and not urgent" per clause 9.9.

- 9.10 Where a mayoral minute makes a recommendation which, if adopted, would require the expenditure of funds on works and/or services other than those already provided for in the Council's current adopted operational plan, it must identify the source of funding for the expenditure that is the subject of the recommendation. If the mayoral minute does not identify a funding source, the Council must defer consideration of the matter, pending a report from the General Manager on the availability of funds for implementing the recommendation if adopted.

Staff reports

- 9.11 A recommendation made in a staff report is, so far as it is adopted by the Council, a resolution of the Council.

Reports of committees of council

- 9.12 The recommendations of a committee of the Council are, so far as they are adopted by the Council, resolutions of the Council.
- 9.13 If in a report of a committee of the Council distinct recommendations are made, the Council may make separate decisions on each recommendation.

Questions

- 9.14 A question must not be asked at a meeting of the Council unless it concerns a matter on the agenda of the meeting or notice has been given of the question in accordance with clauses 3.10 and 3.14.

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- 9.15 A Councillor may, through the chairperson, put a question to another Councillor about a matter on the agenda.
- 9.16 A Councillor may, through the General Manager, put a question to a Council employee about a matter on the agenda. Council employees are only obliged to answer a question put to them through the General Manager at the direction of the General Manager.
- 9.17 A Councillor or Council employee to whom a question is put is entitled to be given reasonable notice of the question and, in particular, sufficient notice to enable reference to be made to other persons or to documents **information**. Where a Councillor or Council employee to whom a question is put is unable to respond to the question at the meeting at which it is put, they may take it on notice and report the response to the next meeting of the Council.
- 9.18 Councillors must put questions directly, succinctly, respectfully and without argument.
- 9.19 The chairperson must not permit discussion on any reply to, or refusal to reply to, a question put to a Councillor or Council employee.

10 RULES OF DEBATEMotions to be seconded

- 10.1 Unless otherwise specified in this code, a motion or an amendment cannot be debated unless or until it has been seconded.

Notices of motion

- 10.2 A Councillor who has submitted a notice of motion under clause 3.10 is to move the motion the subject of the notice of motion at the meeting at which it is to be considered.
- 10.3 If a Councillor who has submitted a notice of motion under clause 3.10 wishes to withdraw it after the agenda and business paper for the meeting at which it is to be considered have been sent to Councillors, the Councillor may request the withdrawal of the motion when it is before the Council.
- 10.4 In the absence of a Councillor who has placed a notice of motion on the agenda for a meeting of the Council:
- (a) Any other Councillor may, with the leave of the chairperson, move the motion at the meeting, or
 - (b) The chairperson may defer consideration of the motion until the next meeting of the Council.

Chairperson's duties with respect to motions

- 10.5 It is the duty of the chairperson at a meeting of the Council to receive and put to the meeting any lawful motion that is brought before the meeting.

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- 10.6 The chairperson must rule out of order any motion or amendment to a motion that is unlawful or the implementation of which would be unlawful.
- 10.7 Before ruling out of order a motion or an amendment to a motion under clause 10.6, the chairperson is to give the mover an opportunity to clarify or amend the motion or amendment.
- 10.8 Any motion, amendment, or other matter that the chairperson has ruled out of order is taken to have been lost.

Motions requiring the expenditure of funds

- 10.9 A motion or an amendment to a motion which if passed would require the expenditure of funds on works and/or services other than those already provided for in the Council's current adopted operational plan must identify the source of funding for the expenditure that is the subject of the motion. If the motion does not identify a funding source, the Council must defer consideration of the matter, pending a report from the General Manager on the availability of funds for implementing the motion if adopted.

Amendments to motions

- 10.10 An amendment to a motion must be moved and seconded before it can be debated.
- 10.11 An amendment to a motion must relate to the matter being dealt with in the original motion before the Council and must not be a direct negative of the original motion. An amendment to a motion which does not relate to the matter being dealt with in the original motion, or which is a direct negative of the original motion, must be ruled out of order by the chairperson.
- 10.12 The mover of an amendment is to be given the opportunity to explain any uncertainties in the proposed amendment before a seconder is called for.
- 10.13 If an amendment has been lost, a further amendment can be moved to the motion to which the lost amendment was moved, and so on, but no more than 1 motion and 1 proposed amendment can be before Council at any one time.
- 10.14 While an amendment is being considered, debate must only occur in relation to the amendment and not the original motion. Debate on the original motion is to be suspended while the amendment to the original motion is being debated.
- 10.15 If the amendment is carried, it becomes the motion and is to be debated. If the amendment is lost, debate is to resume on the original motion.
- 10.16 An amendment may become the motion without debate or a vote where it is accepted by the councillor who moved the original motion.

10.16 (a) – An amendment put forward that becomes the motion at clause 10.16, is to be noted in the minutes as being accepted by the mover and seconder of the original motion.

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- 10.17 A Councillor may propose a foreshadowed motion in relation to the matter the subject of the original motion before the Council, without a seconder during debate on the original motion. The foreshadowed motion is only to be considered if the original motion is lost or withdrawn and the foreshadowed motion is then moved and seconded. If the original motion is carried, the foreshadowed motion lapses.
- 10.18 Where an amendment has been moved and seconded, a Councillor may, without a seconder, foreshadow a further amendment that they propose to move after the first amendment has been dealt with. There is no limit to the number of foreshadowed amendments that may be put before the Council at any time. However, no discussion can take place on foreshadowed amendments until the previous amendment has been dealt with and the foreshadowed amendment has been moved and seconded.
- 10.19 Foreshadowed motions and foreshadowed amendments are to be considered in the order in which they are proposed. However, foreshadowed motions cannot be considered until all foreshadowed amendments have been dealt with.

Limitations on the number and duration of speeches

- 10.20 A Councillor who, during a debate at a meeting of the Council, moves an original motion, has the right to speak on each amendment to the motion and a right of general reply to all observations that are made during the debate in relation to the motion, and any amendment to it at the conclusion of the debate before the motion (whether amended or not) is finally put.
- 10.21 A Councillor, other than the mover of an original motion, has the right to speak once on the motion and once on each amendment to it.
- 10.22 A Councillor must not, without the consent of the Council, speak more than once on a motion or an amendment, or for longer than 5 minutes at any one time.
- 10.23 Despite clause 10.22, the chairperson may permit a Councillor who claims to have been misrepresented or misunderstood to speak more than once on a motion or an amendment, and for longer than 5 minutes on that motion or amendment to enable the Councillor to make a statement limited to explaining the misrepresentation or misunderstanding.
- 10.24 Despite clause 10.22, the Council may resolve to shorten the duration of speeches to expedite the consideration of business at a meeting.
- 10.25 Despite clauses 10.20 and 10.21, a Councillor may move that a motion or an amendment be now put:
- (a) If the mover of the motion or amendment has spoken in favour of it and no Councillor expresses an intention to speak against it, or
 - (b) If at least 2 Councillors have spoken in favour of the motion or amendment and at least 2 Councillors have spoken against it.

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- 10.26 The chairperson must immediately put to the vote, without debate, a motion moved under clause 10.25. A seconder is not required for such a motion.
- 10.27 If a motion that the original motion or an amendment be now put is passed, the chairperson must, without further debate, put the original motion or amendment to the vote immediately after the mover of the original motion has exercised their right of reply under clause 10.20.
- 10.28 If a motion that the original motion or an amendment be now put is lost, the chairperson must allow the debate on the original motion or the amendment to be resumed.
- 10.29 All Councillors must be heard without interruption and all other Councillors must, unless otherwise permitted under this code, remain silent while another Councillor is speaking.
- 10.30 Once the debate on a matter has concluded and a matter has been dealt with, the chairperson must not allow further debate on the matter.
- 10.31 If any debate on an item, the Chairperson must ask the mover if they wish to utilise their right of reply prior to the item being put.

11 VOTING

Voting entitlements of councillors

- 11.1 Each Councillor is entitled to 1 vote.

Note: Clause 11.1 reflects section 370(1) of the Act.

- 11.2 The person presiding at a meeting of the Council has, in the event of an equality of votes, a second or casting vote.

Note: Clause 11.2 reflects section 370(2) of the Act.

- 11.3 Where the chairperson declines to exercise, or fails to exercise, their second or casting vote, in the event of an equality of votes, the motion being voted upon is lost.

Voting at council meetings

- 11.4 A Councillor who is present at a meeting of the Council but who fails to vote on a motion put to the meeting is taken to have voted against the motion.
- 11.5 If a Councillor who has voted against a motion put at a Council meeting so requests, the General Manager must ensure that the Councillor's dissenting vote is recorded in the Council's minutes.
- 11.6 The decision of the chairperson as to the result of a vote is final, unless the decision is immediately challenged and not fewer than 2 Councillors rise and call for a division.
- 11.7 When a division on a motion is called, the chairperson must ensure that the division takes place immediately. The General Manager must ensure that the

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names of those who vote for the motion and those who vote against it are recorded in the Council's minutes for the meeting.

- 11.8 When a division on a motion is called, any Councillor who fails to vote will be recorded as having voted against the motion in accordance with clause 11.4 of this Code.
- 11.9 Voting at a meeting, including voting in an election at a meeting, is to be by open means (such as on the voices, by show of hands or by a visible electronic voting system). However, the Council may resolve that the voting in any election by Councillors for Mayor or Deputy Mayor is to be by secret ballot.

11.10 All voting at council meetings, (including meetings that are closed to the public), must be recorded in the minutes of meetings with the names of councillors who voted for and against each motion or amendment, (including the use of the casting vote), being recorded.

Note: If clause 11.10 is adopted, clauses 11.5 – 11.8 and clause 11.11 may be omitted.

Clauses 11.10 to 11.13 to be re-numbered if 11.10 above is adopted.

Voting on planning decisions

- 11.10 The General Manager must keep a register containing, for each planning decision made at a meeting of the Council or a Council committee (including, but not limited to a committee of the Council), the names of the Councillors who supported the decision and the names of any Councillors who opposed (or are taken to have opposed) the decision.
- 11.11 For the purpose of maintaining the register, a division is taken to have been called whenever a motion for a planning decision is put at a meeting of the Council or a Council committee.
- 11.12 Each decision recorded in the register is to be described in the register or identified in a manner that enables the description to be obtained from another publicly available document.
- 11.13 Clauses 11.10-11.12 apply also to meetings that are closed to the public.

Note: Clauses 11.10-11.13 reflect section 375A of the Act.

Note: The requirements of clause 11.10 may be satisfied by maintaining a register of the minutes of each planning decision.

12 COMMITTEE OF THE WHOLE

- 12.1 The Council may resolve itself into a committee to consider any matter before the Council.

Note: Clause 12.1 reflects section 373 of the Act.

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12.2 All the provisions of this Code relating to meetings of the Council, so far as they are applicable, extend to and govern the proceedings of the Council when in committee of the whole, except the provisions limiting the number and duration of speeches.

Note: Clauses 10.20–10.30 limit the number and duration of speeches.

12.3 The General Manager or, in the absence of the General Manager, an employee of the Council designated by the General Manager, is responsible for reporting to the Council the proceedings of the committee of the whole. It is not necessary to report the proceedings in full but any recommendations of the committee must be reported.

12.4 The Council must ensure that a report of the proceedings (including any recommendations of the committee) is recorded in the Council's minutes. However, the Council is not taken to have adopted the report until a motion for adoption has been made and passed.

13 DEALING WITH ITEMS BY EXCEPTION

13.1 The Council or a committee of Council may, at any time, resolve to adopt multiple items of business on the agenda together by way of a single resolution.

13.2 Before the Council or committee resolves to adopt multiple items of business on the agenda together under clause 13.1, the chairperson must list the items of business to be adopted and ask councillors to identify any individual items of business listed by the chairperson that they intend to vote against the recommendation made in the business paper or that they wish to speak on.

13.3 The Council or committee must not resolve to adopt any item of business under clause 13.1 that a Councillor has identified as being one they intend to vote against the recommendation made in the business paper or to speak on.

13.4 Where the consideration of multiple items of business together under clause 13.1 involves a variation to the order of business for the meeting, the Council or committee must resolve to alter the order of business in accordance with clause 8.2.

13.5 A motion to adopt multiple items of business together under clause 13.1 must identify each of the items of business to be adopted and state that they are to be adopted as recommended in the business paper.

13.6 Items of business adopted under clause 13.1 are to be taken to have been adopted unanimously.

13.7 Councillors must ensure that they declare and manage any conflicts of interest they may have in relation to items of business considered together under clause 13.1 in accordance with the requirements of the Council's Code of Conduct.

14 CLOSURE OF COUNCIL MEETINGS TO THE PUBLICGrounds on which meetings can be closed to the public

14.1 The Council or a committee of the Council may close to the public so much of its meeting as comprises the discussion or the receipt of any of the following types of matters:

- (a) Personnel matters concerning particular individuals (other than Councillors),
- (b) The personal hardship of any resident or ratepayer,
- (c) Information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business,
- (d) Commercial information of a confidential nature that would, if disclosed:
 - (i) Prejudice the commercial position of the person who supplied it, or
 - (ii) Confer a commercial advantage on a competitor of the Council, or
 - (iii) Reveal a trade secret,
- (e) Information that would, if disclosed, prejudice the maintenance of law,
- (f) Matters affecting the security of the Council, Councillors, Council staff or Council property,
- (g) Advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege,
- (h) Information concerning the nature and location of a place or an item of Aboriginal significance on community land,
- (i) alleged contraventions of the Council's Code of Conduct.

Note: Clause 14.1 reflects section 10A(1) and (2) of the Act.

14.2 The Council or a committee of the Council may also close to the public so much of its meeting as comprises a motion to close another part of the meeting to the public.

Note: Clause 14.2 reflects section 10A(3) of the Act.

Matters to be considered when closing meetings to the public

14.3 A meeting is not to remain closed during the discussion of anything referred to in clause 14.1:

- (a) Except for so much of the discussion as is necessary to preserve the relevant confidentiality, privilege or security, and
- (b) If the matter concerned is a matter other than a personnel matter concerning particular individuals, the personal hardship of a resident or ratepayer or a trade secret – unless the Council or committee concerned is satisfied that discussion of the matter in an open meeting would, on balance, be contrary to the public interest.

Note: Clause 14.3 reflects section 10B(1) of the Act.

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- 14.4 A meeting is not to be closed during the receipt and consideration of information or advice referred to in clause 14.1(g) unless the advice concerns legal matters that:
- (a) Are substantial issues relating to a matter in which the Council or committee is involved, and
 - (b) Are clearly identified in the advice, and
 - (c) Are fully discussed in that advice.

Note: Clause 14.4 reflects section 10B(2) of the Act.

- 14.5 If a meeting is closed during the discussion of a motion to close another part of the meeting to the public (as referred to in clause 14.2), the consideration of the motion must not include any consideration of the matter or information to be discussed in that other part of the meeting other than consideration of whether the matter concerned is a matter referred to in clause 14.1.

Note: Clause 14.5 reflects section 10B(3) of the Act.

- 14.6 For the purpose of determining whether the discussion of a matter in an open meeting would be contrary to the public interest, it is irrelevant that:
- (a) A person may misinterpret or misunderstand the discussion, or
 - (b) The discussion of the matter may:
 - (i) Cause embarrassment to the Council or committee concerned, or to Councillors or to employees of the Council, or
 - (ii) Cause a loss of confidence in the Council or committee.

Note: Clause 14.6 reflects section 10B(4) of the Act.

- 14.7 In deciding whether part of a meeting is to be closed to the public, the Council or committee concerned must consider any relevant guidelines issued by the **Departmental** Chief Executive of the Office of Local Government.

Note: Clause 14.7 reflects section 10B(5) of the Act.

Notice of likelihood of closure not required in urgent cases

- 14.8 Part of a meeting of the Council, or of a committee of the Council, may be closed to the public while the Council or committee considers a matter that has not been identified in the agenda for the meeting under clause 3.22 as a matter that is likely to be considered when the meeting is closed, but only if:
- (a) It becomes apparent during the discussion of a particular matter that the matter is a matter referred to in clause 14.1, and
 - (b) The Council or committee, after considering any representations made under clause 14.9, resolves that further discussion of the matter:
 - (i) Should not be deferred (because of the urgency of the matter), and
 - (ii) Should take place in a part of the meeting that is closed to the public.

Note: Clause 14.8 reflects section 10C of the Act.

ITEM 9 - ATTACHMENT 1 DRAFT CODE OF MEETING PRACTICE.Representations by members of the public

14.9 The Council, or a committee of the Council, may allow members of the public to make representations to or at a meeting, before any part of the meeting is closed to the public, as to whether that part of the meeting should be closed.

Note: Clause 14.9 reflects section 10A(4) of the Act.

14.10 A representation under clause 14.9 is to be made after the motion to close the part of the meeting is moved and seconded.

14.11 Where the matter has been identified in the agenda of the meeting under clause 3.21 as a matter that is likely to be considered when the meeting is closed to the public, in order to make representations under clause 14.9, members of the public must first make an application to the Council in the approved form. Applications must be received by 2pm the day before the meeting at which the matter is to be considered.

14.12 The General Manager (or their delegate) may refuse an application made under clause 14.11. The General Manager or their delegate must give reasons in writing for a decision to refuse an application.

14.13 No more than 2 speakers are to be permitted to make representations under clause 14.9.

14.14 If more than the permitted number of speakers apply to make representations under clause 14.9, the General Manager or their delegate may request the speakers to nominate from among themselves the persons who are to make representations to the Council. If the speakers are not able to agree on whom to nominate to make representations under clause 14.9, the General Manager or their delegate is to determine who will make representations to the Council.

14.15 The General Manager (or their delegate) is to determine the order of speakers.

14.16 Where the Council or a committee of the Council proposes to close a meeting or part of a meeting to the public in circumstances where the matter has not been identified in the agenda for the meeting under clause 3.21 as a matter that is likely to be considered when the meeting is closed to the public, the chairperson is to invite representations from the public under clause 14.9 after the motion to close the part of the meeting is moved and seconded. The chairperson is to permit no more than 2 speakers to make representations in such order as determined by the chairperson.

14.17 Each speaker will be allowed 5 minutes to make representations, and this time limit is to be strictly enforced by the chairperson. Speakers must confine their representations to whether the meeting should be closed to the public. If a speaker digresses to irrelevant matters, the chairperson is to direct the speaker not to do so. If a speaker fails to observe a direction from the chairperson, the speaker will not be further heard.

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Expulsion of non-councillors from meetings closed to the public

- 14.18 If a meeting or part of a meeting of the Council or a committee of the Council is closed to the public in accordance with section 10A of the Act and this Code, any person who is not a Councillor and who fails to leave the meeting when requested, may be expelled from the meeting as provided by section 10(2)(a) or (b) of the Act.
- 14.19 If any such person, after being notified of a resolution or direction expelling them from the meeting, fails to leave the place where the meeting is being held, a police officer, or any person authorised for the purpose by the Council or person presiding, may, by using only such force as is necessary, remove the first-mentioned person from that place and, if necessary restrain that person from re-entering that place for the remainder of the meeting.

Obligations of councillors attending meetings by audio-visual link

- 14.20 Councillors attending a meeting by audio-visual link must ensure that no other person is within sight or hearing of the meeting at any time that the meeting is closed to the public under section 10A of the Act.

Information to be disclosed in resolutions closing meetings to the public

- 14.20¹ The grounds on which part of a meeting is closed must be stated in the decision to close that part of the meeting and must be recorded in the minutes of the meeting. The grounds must specify the following:
- (a) The relevant provision of section 10A(2) of the Act,
 - (b) The matter that is to be discussed during the closed part of the meeting,
 - (c) The reasons why the part of the meeting is being closed, including (if the matter concerned is a matter other than a personnel matter concerning particular individuals, the personal hardship of a resident or ratepayer or a trade secret) an explanation of the way in which discussion of the matter in an open meeting would be, on balance, contrary to the public interest.

Note: Clause 14.20¹ reflects section 10D of the Act.

Resolutions passed at closed meetings to be made public

- 14.21² If the Council passes a resolution during a meeting, or a part of a meeting, that is closed to the public, the chairperson must make the resolution public as soon as practicable after the meeting, or the relevant part of the meeting, has ended, and the resolution must be recorded in the publicly available minutes of the meeting.
- 14.22³ Resolutions passed during a meeting, or a part of a meeting that is closed to the public must be made public by the chairperson under clause 14.21² during a part of the meeting that is webcast.

ITEM 9 - ATTACHMENT 1 DRAFT CODE OF MEETING PRACTICE.**15 KEEPING ORDER AT MEETINGS**Points of order

- 15.1 A Councillor may draw the attention of the chairperson to an alleged breach of this Code by raising a point of order. A point of order does not require a seconder.
- 15.2 A point of order cannot be made with respect to adherence to the principles contained in clause 2.1.
- 15.3 A point of order must be taken immediately it is raised. The chairperson must suspend the business before the meeting and permit the Councillor raising the point of order to state the provision of this Code they believe has been breached. The chairperson must then rule on the point of order – either by upholding it or by overruling it.

Questions of order

- 15.4 The chairperson, without the intervention of any other Councillor, may call any Councillor to order whenever, in the opinion of the chairperson, it is necessary to do so.
- 15.5 A Councillor who claims that another Councillor has committed an act of disorder, or is out of order, may call the attention of the chairperson to the matter.
- 15.6 The chairperson must rule on a question of order immediately after it is raised but, before doing so, may invite the opinion of the Council.
- 15.7 The chairperson's ruling must be obeyed unless a motion dissenting from the ruling is passed.

Motions of dissent

- 15.8 A Councillor can, without notice, move to dissent from a ruling of the chairperson on a point of order or a question of order. If that happens, the chairperson must suspend the business before the meeting until a decision is made on the motion of dissent.
- 15.9 If a motion of dissent is passed, the chairperson must proceed with the suspended business as though the ruling dissented from had not been given. If, as a result of the ruling, any motion or business has been rejected as out of order, the chairperson must restore the motion or business to the agenda and proceed with it in due course.
- 15.10 Despite any other provision of this Code, only the mover of a motion of dissent and the chairperson can speak to the motion before it is put. The mover of the motion does not have a right of general reply.

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Acts of disorder

- 15.11 A Councillor commits an act of disorder if the Councillor, at a meeting of the Council or a committee of the Council:
- (a) Contravenes the Act, ~~the or any r~~Regulation in force under the Act or this code, or
 - (b) Assaults or threatens to assault another Councillor or person present at the meeting, or
 - (c) Moves or attempts to move a motion or an amendment that has an unlawful purpose or that deals with a matter that is outside the jurisdiction of the Council or the committee, or addresses or attempts to address the Council or the committee on such a motion, amendment or matter, or
 - (d) Insults, ~~or makes personal reflections~~ unfavourable personal remarks about, ~~or~~ imputes improper motives to any other Council official, or alleges a breach of the Council's Code of Conduct, or
 - (e) Says or does anything that is inconsistent with maintaining order at the meeting or is likely to bring the Council or the committee into disrepute.

Note: Clause 15.11 reflects section 182 of the Regulation.

- 15.12 The chairperson may require a Councillor:
- (a) To apologise without reservation for an act of disorder referred to in clauses 15.11(a), ~~or (b)~~, or (e), or
 - (b) To withdraw a motion or an amendment referred to in clause 15.11(c) and, where appropriate, to apologise without reservation, or
 - (c) To retract and apologise without reservation for any statement that constitutes an act of disorder referred to in clauses 15.11(d) and (e).

Note: Clause 15.12 reflects section 233 of the Regulation.

How disorder at a meeting may be dealt with

- 15.13 If disorder occurs at a meeting of the Council, the chairperson may adjourn the meeting for a period of not more than 15 minutes and leave the chair. The Council, on reassembling, must, on a question put from the chairperson, decide without debate whether the business is to be proceeded with or not. This clause applies to disorder arising from the conduct of members of the public as well as disorder arising from the conduct of Councillors.

Expulsion from meetings

- 15.14 All chairpersons of meetings of the Council and committees of the Council are authorised under this Code to expel any person other than a Councillor, from a Council or committee meeting, for the purposes of section 10(2)(b) of the Act. Councillors may only be expelled by resolution of the Council or the committee of the Council.
- 15.15 Clause 15.14, does not limit the ability of the Council or a committee of the Council to resolve to expel a person, including a Councillor, from a Council or committee meeting, under section 10(2)(a) of the Act.

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- 15.16 A Councillor may, as provided by section 10(2)(a) or (b) of the Act, be expelled from a meeting of the Council for having failed to comply with a requirement under clause 15.12. The expulsion of a Councillor from the meeting for that reason does not prevent any other action from being taken against the Councillor for the act of disorder concerned.

Note: Clause 15.16 reflects section 233(2) of the Regulation.

- 15.17 A member of the public may, as provided by section 10(2)(a) or (b) of the Act, be expelled from a meeting of the Council for engaging in or having engaged in disorderly conduct at the meeting.
- 15.18 Where a Councillor or a member of the public is expelled from a meeting, the expulsion and the name of the person expelled, if known, are to be recorded in the minutes of the meeting.
- 15.19 If a Councillor or a member of the public fails to leave the place where a meeting of the Council is being held immediately after they have been expelled, a police officer, or any person authorised for the purpose by the council or person presiding, may, by using only such force as is necessary, remove the Councillor or member of the public from that place and, if necessary, restrain the Councillor or member of the public from re-entering that place for the remainder of the meeting.

How disorder by councillors attending meetings by audio-visual link may be dealt with

15.20 Where a Councillor is attending a meeting by audio-visual link, the chairperson or a person authorised by the chairperson may mute the Councillor's audio link to the meeting for the purposes of enforcing compliance with this code.

15.21 If a Councillor attending a meeting by audio-visual link is expelled from a meeting for an act of disorder, the chairperson of the meeting or a person authorised by the chairperson, may terminate the Councillor's audio-visual link to the meeting.

Use of mobile phones and the unauthorised recording of meetings

- 15.202 Councillors, Council staff and members of the public must ensure that mobile phones are turned to silent during meetings of the Council and committees of the Council.
- 15.243 A person must not live stream or use an audio recorder, video camera, mobile phone or any other device to make a recording of the proceedings of a meeting of the Council or a committee of the Council without the prior authorisation of the Council or the committee.
- 15.224 Without limiting clause 15.17, a contravention of clause 15.23 or an attempt to contravene that clause, constitutes disorderly conduct for the purposes of clause 15.17. Any person who contravenes or attempts to contravene clause 15.243, may be expelled from the meeting as provided for under section 10(2) of the Act.

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- 15.23⁵ If any such person, after being notified of a resolution or direction expelling them from the meeting, fails to leave the place where the meeting is being held, a police officer, or any person authorised for the purpose by the Council or person presiding, may, by using only such force as is necessary, remove the first-mentioned person from that place and, if necessary, restrain that person from re-entering that place for the remainder of the meeting.

16 CONFLICTS OF INTEREST

- 16.1 All Councillors and, where applicable, all other persons, must declare and manage any conflicts of interest they may have in matters being considered at meetings of the Council and committees of the Council in accordance with the Council's Code of Conduct. All declarations of conflicts of interest and how the conflict of interest was managed by the person who made the declaration must be recorded in the minutes of the meeting at which the declaration was made.

16.2 Councillors attending a meeting by audio-visual link must declare and manage any conflicts of interest they may have in matters being considered at the meeting in accordance with the Council's Code of Conduct. Where a Councillor has declared a pecuniary or significant non-pecuniary conflict of interest in a matter being discussed at the meeting, the Councillor's audio-visual link to the meeting must be suspended or terminated and the Councillor must not be in sight or hearing of the meeting at any time during which the matter is being considered or discussed by the Council or committee, or at any time during which the Council or committee is voting on the matter.

16.3 The full form that was filled out by the Councillor to declare their conflict of interest will be displayed in the meeting minutes, with any confidential or personal information redacted.

17 DECISIONS OF THE COUNCIL

Council decisions

- 17.1 A decision supported by a majority of the votes at a meeting of the Council at which a quorum is present is a decision of the Council.

Note: Clause 17.1 reflects section 371 of the Act.

- 17.2 Decisions made by the Council must be accurately recorded in the minutes of the meeting at which the decision is made.

Rescinding or altering council decisions

- 17.3 A resolution passed by the Council may not be altered or rescinded except by a motion to that effect of which notice has been given under clause 3.10.

Note: Clause 17.3 reflects section 372(1) of the Act.

- 17.4 If a notice of motion to rescind a resolution is given at the meeting at which the resolution is carried, the resolution must not be carried into effect until the motion of rescission has been dealt with.

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Note: Clause 17.4 reflects section 372(2) of the Act.

- 17.5 If a motion has been lost, a motion having the same effect must not be considered unless notice of it has been duly given in accordance with clause 3.10.

Note: Clause 17.5 reflects section 372(3) of the Act.

- 17.6 A notice of motion to alter or rescind a resolution, and a notice of motion which has the same effect as a motion which has been lost, must be signed by 3 Councillors if less than 3 months has elapsed since the resolution was passed, or the motion was lost.

Note: Clause 17.6 reflects section 372(4) of the Act.

- 17.7 If a motion to alter or rescind a resolution has been lost, or if a motion which has the same effect as a previously lost motion is lost, no similar motion may be brought forward within 3 months of the meeting at which it was lost. This clause may not be evaded by substituting a motion differently worded, but in principle the same.

Note: Clause 17.7 reflects section 372(5) of the Act.

- 17.8 The provisions of clauses 17.5–17.7 concerning lost motions do not apply to motions of adjournment.

Note: Clause 17.8 reflects section 372(7) of the Act.

- 17.9 A notice of motion submitted in accordance with clause 17.6 may only be withdrawn under clause 3.11 with the consent of all signatories to the notice of motion.

- 17.10 A notice of motion to alter or rescind a resolution relating to a development application must be submitted to the General Manager no later than 5pm of the day after the meeting at which the resolution was adopted.

- 17.11 A motion to alter or rescind a resolution of the Council may be moved on the report of a committee of the Council and any such report must be recorded in the minutes of the meeting of the Council.

Note: Clause 17.11 reflects section 372(6) of the Act.

17.12 Subject to clause 17.7, in cases of urgency, a motion to alter or rescind a resolution of the Council may be moved at the same meeting at which the resolution was adopted, where:

- (a) a notice of motion signed by three councillors is submitted to the chairperson, and
- (b) a motion to have the motion considered at the meeting is passed, and
- (c) the chairperson rules the business that is the subject of the motion is of great urgency on the grounds that it requires a decision by the council before the next scheduled ordinary meeting of the council.

17.13 A motion moved under clause 17.12(b) can be moved without notice. Despite

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clauses 10.20–10.30, only the mover of a motion referred to in clause 17.12(b) can speak to the motion before it is put.

17.14 A motion of dissent cannot be moved against a ruling by the chairperson under clause 17.12(c).

Alternative to non-mandatory clauses 17.12 to 17.14 – that clauses 17.12 to 17.14 be removed by the draft code and renumber clauses.

Recommitting resolutions to correct an error

17.125 Despite the provisions of this Part, a Councillor may, with the leave of the chairperson, move to recommit a resolution adopted at the same meeting:

- (a) To correct any error, ambiguity or imprecision in the Council's resolution, or
- (b) To confirm the voting on the resolution.

17.136 In seeking the leave of the chairperson to move to recommit a resolution for the purposes of clause 17.125(a), the Councillor is to propose alternative wording for the resolution.

17.147 The chairperson must not grant leave to recommit a resolution for the purposes of clause 17.125(a), unless they are satisfied that the proposed alternative wording of the resolution would not alter the substance of the resolution previously adopted at the meeting.

17.158 A motion moved under clause 17.125 can be moved without notice. Despite clauses 10.20–10.30, only the mover of a motion referred to in clause 17.125 can speak to the motion before it is put.

17.169 A motion of dissent cannot be moved against a ruling by the chairperson under clause 17.125.

17.1720 A motion moved under clause 17.125 with the leave of the chairperson cannot be voted on unless or until it has been seconded.

18 TIME LIMITS ON COUNCIL MEETINGS

18.1 Meetings of the Council and committees of the Council are to conclude no later than 9pm.

Alternative to 18.1 - Meetings of the Council and committees of the Council are to conclude no later than 9.30pm.

18.2 If the business of the meeting is unfinished at 9pm, the Council or the committee may, by resolution, extend the time of the meeting.

Alternative to 18.2 - If the business of the meeting is unfinished at 9.30pm, the meeting is automatically extended by 15 minutes to 9.45pm. If the meeting continues to 9.45pm, the Council or the committee may, by resolution, extend the time of the meeting.

18.3 If the business of the meeting is unfinished at 9pm, and the Council does not resolve to extend the meeting, the chairperson must either:

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Alternative to 18.3 - If the business of the meeting is unfinished at 9.45pm, and the Council does not resolve to extend the meeting, the chairperson must either:

- (a) Defer consideration of the remaining items of business on the agenda to the next ordinary meeting of the Council, or
- (b) Adjourn the meeting to a time, date and place fixed by the chairperson.

18.4 Clause 18.3 does not limit the ability of the Council or a committee of the Council to resolve to adjourn a meeting at any time. The resolution adjourning the meeting must fix the time, date and place that the meeting is to be adjourned to.

18.5 Where a meeting is adjourned under clause 18.3 or 18.4, the General Manager must:

- (a) Individually notify each councillor of the time, date and place at which the meeting will reconvene, and
- (b) Publish the time, date and place at which the meeting will reconvene on the Council's website and in such other manner that the General Manager is satisfied is likely to bring notice of the time, date and place of the reconvened meeting to the attention of as many people as possible.

19 AFTER THE MEETING

Minutes of meetings

19.1 The Council is to keep full and accurate minutes of the proceedings of meetings of the Council.

Note: Clause 19.1 reflects section 375(1) of the Act.

19.2 At a minimum, the General Manager must ensure that the following matters are recorded in the Council's minutes:

- (a) the names of Councillors attending a Council meeting and whether they attended the meeting in person or by audio-visual link.
- (a)(b) Details of each motion moved at a council meeting and of any amendments moved to it,
- (b)(c) The names of the mover and seconder of the motion or amendment,
- (c)(d) Whether the motion or amendment was passed or lost, and
- (d)(e) Such other matters specifically required under this code.

19.3 The minutes of a Council meeting must be confirmed at a subsequent meeting of the Council.

Note: Clause 19.3 reflects section 375(2) of the Act.

19.4 Any debate on the confirmation of the minutes is to be confined to whether the minutes are a full and accurate record of the meeting they relate to.

19.5 When the minutes have been confirmed, they are to be signed by the person presiding at the subsequent meeting.

Note: Clause 19.5 reflects section 375(2) of the Act.

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- 19.6 The confirmed minutes of a meeting may be amended to correct typographical or administrative errors after they have been confirmed. Any amendment made under this clause must not alter the substance of any decision made at the meeting.
- 19.7 The confirmed minutes of a Council meeting must be published on the Council's website. This clause does not prevent the Council from also publishing unconfirmed minutes of its meetings on its website prior to their confirmation.

Access to correspondence and reports laid on the table at, or submitted to, a meeting

- 19.8 The Council and committees of the Council must, during or at the close of a meeting, or during the business day following the meeting, give reasonable access to any person to inspect correspondence and reports laid on the table at, or submitted to, the meeting.

Note: Clause 19.8 reflects section 11(1) of the Act.

- 19.9 Clause 19.8 does not apply if the correspondence or reports relate to a matter that was received or discussed or laid on the table at, or submitted to, the meeting when the meeting was closed to the public.

Note: Clause 19.9 reflects section 11(2) of the Act.

- 19.10 Clause 19.8 does not apply if the Council or the committee resolves at the meeting, when open to the public, that the correspondence or reports are to be treated as confidential because they relate to a matter specified in section 10A(2) of the Act.

Note: Clause 19.10 reflects section 11(3) of the Act.

- 19.11 Correspondence or reports to which clauses 19.9 and 19.10 apply are to be marked with the relevant provision of section 10A(2) of the Act that applies to the correspondence or report.

Implementation of decisions of the council

- 19.12 The General Manager is to implement, without undue delay, lawful decisions of the Council.

Note: Clause 19.12 reflects section 335(b) of the Act.

20 COUNCIL COMMITTEES

Application of this Part

- 20.1 This Part only applies to committees of the Council whose members are all Councillors.

ITEM 9 - ATTACHMENT 1 DRAFT CODE OF MEETING PRACTICE.Council committees whose members are all councillors

- 20.2 The Council may, by resolution, establish such committees as it considers necessary.
- 20.3 A committee of the Council is to consist of the Mayor and such other Councillors as are elected by the Councillors or appointed by the Council.
- 20.4 The quorum for a meeting of a committee of the Council is to be:
- (a) Such number of members as the Council decides, or
 - (b) If the Council has not decided a number – a majority of the members of the committee.

Functions of committees

- 20.5 The Council must specify the functions of each of its committees when the committee is established, but may from time to time amend those functions.

Notice of committee meetings

- 20.6 The General Manager must send to each Councillor, regardless of whether they are a committee member, at least 3 days before each meeting of the committee, a notice specifying:
- (a) The time, date and place of the meeting, and
 - (b) The business proposed to be considered at the meeting.
- 20.7 Notice of less than 3 days may be given of a committee meeting called in an emergency.

Attendance at committee meetings

- 20.8 A committee member (other than the Mayor) ceases to be a member of a committee if the committee member:
- (a) Has been absent from 3 consecutive meetings of the committee without having given reasons acceptable to the committee for the member's absences, or
 - (b) Has been absent from at least half of the meetings of the committee held during the immediately preceding year without having given to the committee acceptable reasons for the member's absences.
- 20.9 Clause 20.8 does not apply if all of the members of the Council are members of the committee.

Non-members entitled to attend committee meetings

- 20.10 A Councillor who is not a member of a committee of the Council is entitled to attend, and to speak at a meeting of the committee. However, the Councillor is not entitled:
- (a) To give notice of business for inclusion in the agenda for the meeting, or

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- (b) To move or second a motion at the meeting, or
- (c) To vote at the meeting.

Chairperson and deputy chairperson of council committees

- 20.11 The chairperson of each committee of the Council must be:
- (a) The Mayor, or
 - (b) If the Mayor does not wish to be the chairperson of a committee, a member of the committee elected by the Council, or
 - (c) If the Council does not elect such a member, a member of the committee elected by the committee.
- 20.12 The Council may elect a member of a committee of the Council as deputy chairperson of the committee. If the Council does not elect a deputy chairperson of such a committee, the committee may elect a deputy chairperson.
- 20.13 If neither the chairperson nor the deputy chairperson of a committee of the Council is able or willing to preside at a meeting of the committee, the committee must elect a member of the committee to be acting chairperson of the committee.
- 20.14 The chairperson is to preside at a meeting of a committee of the Council. If the chairperson is unable or unwilling to preside, the deputy chairperson (if any) is to preside at the meeting, but if neither the chairperson nor the deputy chairperson is able or willing to preside, the acting chairperson is to preside at the meeting.

Procedure in committee meetings

- 20.15 Subject to any specific requirements of this code, each committee of the Council may regulate its own procedure. The provisions of this Code are to be taken to apply to all committees of the Council unless the Council or the committee determines otherwise in accordance with this clause.
- 20.16 Whenever the voting on a motion put to a meeting of the committee is equal, the chairperson of the committee is to have a casting vote as well as an original vote unless the Council or the committee determines otherwise in accordance with clause 20.15.
- 20.17 Voting at a Council committee meeting is to be by open means (such as on the voices, by show of hands or by a visible electronic voting system).

Closure of committee meetings to the public

- 20.18 The provisions of the Act and Part 14 of this code apply to the closure of meetings of committees of the Council to the public in the same way they apply to the closure of meetings of the Council to the public.
- 20.19 If a committee of the Council passes a resolution, or makes a recommendation, during a meeting, or a part of a meeting that is closed to the public, the chairperson must make the resolution or recommendation public as soon as practicable after the meeting or part of the meeting has

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ended, and report the resolution or recommendation to the next meeting of the Council. The resolution or recommendation must also be recorded in the publicly available minutes of the meeting.

- 20.20 Resolutions passed during a meeting, or a part of a meeting that is closed to the public must be made public by the chairperson under clause 20.19 during a part of the meeting that is webcast.

Disorder in committee meetings

- 20.21 The provisions of the Act and this code relating to the maintenance of order in Council meetings apply to meetings of committees of the Council in the same way as they apply to meetings of the Council.

Minutes of council committee meetings

- 20.22 Each committee of the Council is to keep full and accurate minutes of the proceedings of its meetings. At a minimum, a committee must ensure that the following matters are recorded in the committee's minutes:

- (a) the names of Councillors attending a Council meeting and whether they attended the meeting in person or by audio-visual link.
- (a)(b) Details of each motion moved at a council meeting and of any amendments moved to it,
- (b)(c) The names of the mover and seconder of the motion or amendment,
- (c)(d) Whether the motion or amendment was passed or lost, and
- (d)(e) Such other matters specifically required under this code.

20.23 All voting at meetings of committees of the Council (including meetings that are closed to the public), must be recorded in the minutes of meetings with the names of Councillors who voted for and against each motion or amendment (including the use of the casting vote), being recorded.

Note: renumber clauses of 20.23 is not adopted.

- 20.234 The minutes of meetings of each committee of the Council must be confirmed at a subsequent meeting of the committee.
- 20.245 Any debate on the confirmation of the minutes is to be confined to whether the minutes are a full and accurate record of the meeting they relate to.
- 20.256 When the minutes have been confirmed, they are to be signed by the person presiding at that subsequent meeting.
- 20.267 The confirmed minutes of a meeting may be amended to correct typographical or administrative errors after they have been confirmed. Any amendment made under this clause must not alter the substance of any decision made at the meeting.
- 20.278 The confirmed minutes of a meeting of a committee of the Council must be published on the Council's website. This clause does not prevent the Council from also publishing unconfirmed minutes of meetings of committees of the Council on its website prior to their confirmation.

21 IRREGULARITIES

21.1 Proceedings at a meeting of a Council or a Council committee are not invalidated because of:

- (a) A vacancy in a civic office, or
- (b) A failure to give notice of the meeting to any Councillor or committee member, or
- (c) Any defect in the election or appointment of a Councillor or committee member, or
- (d) A failure of a Councillor or a committee member to declare a conflict of interest, or to refrain from the consideration or discussion of, or vote on, the relevant matter, at a Council or committee meeting in accordance with the Council's Code of Conduct, or
- (e) A failure to comply with this Code.

Note: Clause 21.1 reflects section 374 of the Act.

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22 DEFINITIONS

the Act	means the Local Government Act 1993.
act of disorder	means an act of disorder as defined in clause 15.11 of this code.
amendment	in relation to an original motion, means a motion moving an amendment to that motion.
audio recorder	any device capable of recording speech.
audio-visual link	means a facility that enables audio and visual communication between persons at different places.
business day	means any day except Saturday or Sunday or any other day the whole or part of which is observed as a public holiday throughout New South Wales.
chairperson	in relation to a meeting of the council – means the person presiding at the meeting as provided by section 369 of the Act and clauses 6.1 and 6.2 of this code, and in relation to a meeting of a committee – means the person presiding at the meeting as provided by clause 20.11 of this code.
this code	means the council's adopted code of meeting practice.
committee of the council	means a committee established by the council in accordance with clause 20.2 of this code (being a committee consisting only of councillors) or the council when it has resolved itself into committee of the whole under clause 12.1.
councillor	means a councillor elected to Port Stephens Council, including the mayor, unless the mayor is defined in another capacity within this code.
council official	has the same meaning it has in the Model Code of Conduct for Local Councils in New South Wales.
day	means calendar day.
division	means a request by two councillors under clause 11.7 of this code requiring the recording of the names of the councillors who voted both for and against a motion.
foreshadowed amendment	means a proposed amendment foreshadowed by a councillor under clause 10.18 of this code during debate on the first amendment.
foreshadowed motion	means a motion foreshadowed by a councillor under clause 10.17 of this code during debate on an original motion.
open voting	means voting on the voices or by a show of hands or by a visible electronic voting system or similar means.
planning decision	means a decision made in the exercise of a function of a council under the Environmental Planning and Assessment Act 1979 including any decision relating to a development application, an environmental planning instrument, a development control plan or a development contribution plan under that Act, but not including the making of an order under Division 9.3 of Part 9 of that Act.

ITEM 9 - ATTACHMENT 1 DRAFT CODE OF MEETING PRACTICE.

performance improvement order	means an order issued under section 438A of the Act.
quorum	means the minimum number of councillors or committee members necessary to conduct a meeting.
the Regulation	means the Local Government (General) Regulation 2005 2021.
webcast	a video or audio broadcast of a meeting transmitted across the internet either concurrently with the meeting or at a later time.
year	means the period beginning 1 July and ending the following 30 June.

DRAFT

CONTROLLED DOCUMENT INFORMATION:

This is a controlled document. Hardcopies of this document may not be the latest version. Before using this document, check it is the latest version; refer to Council's website www.portstephens.nsw.gov.au			
TRIM container No	A2004-0284	EDRMS record No	20/242259 TBC
Audience	Elected Council		
Process owner	Governance Section Manager		
Author	Governance Section Manager		
Review timeframe	Four years 3 years	Next review date	9 June 2023 TBC
Adoption date	28 May 2019		

VERSION HISTORY:

Version	Date	Author	Details	Minute No.
1.0	28 May 2019	Governance Section Manager	Adoption of the model Code of Conduct.	113
1.1	9 June 2020	Governance Section Manager	Reviewed the Code, format numbering to align with corporate style guide and updated version control. 3.1, 3.1.1 to 3.1.4 – delete. 3.1 & 3.2 – insert new clauses. 3.2 to 3.36 – renumber to 3.3 to 3.37 and update reference clauses. 3.10 – replace 7 days with 10 days. 4.3 – amend 12.00 noon to read 12 noon. 8.1 – delete. 8.1 – insert new clause. Update definitions to include 'councillor'.	098

ITEM 9 - ATTACHMENT 1 DRAFT CODE OF MEETING PRACTICE.

1.2		Governance Section Manager	<p>Reviewed the Code in accordance with amendments in the Model Code of Meeting Practice , format numbering to align with corporate style guide and updated version control.</p> <p>Amendments Introduction - replaced “made” with “prescribed” and updated the Local Government (General) Regulation to 2021. 3.5 – update to include timeframe to publish business paper on website. 3.7 – update to include distribution of business paper to Mayor and Councillors. 3.10 – change to timeframe to lodge a notice of motion. 3.23 - new clause “Statement of ethical obligations”. 3.35 – new clause to enable pre-meeting briefings to be held by audio-visual link. 4.2 – new clause to enable public forums to be held by audio-visual link. 4.11 – Minor amendment to wording. 4.23 – updated reference to clause 4.19.</p>
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ITEM 9 - ATTACHMENT 1 DRAFT CODE OF MEETING PRACTICE.

			<p>5.2 – include reference to audio-visual link.</p> <p>5.13 – updated wording to “health” and “public health emergency”, and remove reference to flood or bushfire.</p> <p>5.15 to 5.17 – new clauses to enable meetings to be held by audio-visual link.</p> <p>5.18 to 5.22 – new clauses to enable meeting attendance by audio-visual link.</p> <p>5.26 – amendments to reflect method of recording webcast.</p> <p>5.27 to 5.31 – clauses wording in the model code of meeting practice.</p> <p>Former 5.19 to 5.23 – clauses removed.</p> <p>9.17 – remove “documents” and replace with “information”.</p> <p>11.10 – new clause to enable a division on each item.</p> <p>14.7 – include “departmental”.</p> <p>14.20 – new clause.</p> <p>15.11 – remove “personal reflections’ and replace with “unfavourable personal remarks about,” and include reference to section 182 of the Regulation.</p> <p>15.12 – update to include (e) and “any statement that</p>	
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ITEM 9 - ATTACHMENT 1 DRAFT CODE OF MEETING PRACTICE.

Version	Date	Author	Details	Minute No.
			<p>constitutes" and include reference to section 233 of the Regulation.</p> <p>15.16 – Include reference to section 233(2) of the Regulation.</p> <p>15.20 and 15.21 – new clause.</p> <p>15.24 – update to include reference to 15.17.</p> <p>16.2 – new clause.</p> <p>17.12 to 17.14 – new clauses.</p> <p>19.2(a) – new sub-clause.</p> <p>20.22(a) – new sub-clause.</p> <p>20.23 – new clause to enable a division on each item.</p> <p>Definitions updated to include audio-visual link and reference to 2021 Regulation.</p>	

MINUTES ORDINARY COUNCIL - 26 APRIL 2022

ITEM NO. 4

**FILE NO: 22/98772
EDRMS NO: A2004-0284**

CODE OF MEETING PRACTICE REVIEW

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Endorse the revised Code of Meeting Practice shown at **(ATTACHMENT 1)**.
- 2) Place the revised Code of Meeting Practice on public exhibition for a period of 28 days, allowing 42 days for submissions to be received.
- 3) Approve the Code of Meeting Practice as publicly exhibited, should no submissions be received, without a further report to Council.
- 4) Revoke the Code of Meeting Practice dated 9 June 2020, Minute No. 098, should no submissions be received.

**ORDINARY COUNCIL MEETING - 26 APRIL 2022
MOTION**

	<p>Councillor Peter Francis Councillor Giacomo Arnott</p> <p>That Council:</p> <ol style="list-style-type: none">1) Endorse the revised Code of Meeting Practice shown at (ATTACHMENT 1).2) Place the revised Code of Meeting Practice on public exhibition for a period of 28 days, allowing 42 days for submissions to be received.3) Approve the Code of Meeting Practice as publicly exhibited, should no submissions be received, without a further report to Council.4) Revoke the Code of Meeting Practice dated 9 June 2020, Minute No. 098, should no submissions be received.5) Include the following clause in the Code of Meeting Practice – “11.2.1 – The casting vote be only utilised in all instances of its use to maintain the status quo”.
--	---

The Mayor ruled the motion was not lawful, as it was inconsistent with the provisions of the Model Code of Meeting Practice.

MINUTES ORDINARY COUNCIL - 26 APRIL 2022

**ORDINARY COUNCIL MEETING - 26 APRIL 2022
MOTION**

	Councillor Giacomo Arnott Councillor Peter Francis That a motion of dissent be moved.
--	---

Note: Council resolved at its meeting of 22 February 2022 to conduct a trial of recording a division on all items for a period 4 meetings.

Those for the Motion: Crs Leah Anderson, Giacomo Arnott, Peter Francis, Peter Kafer and Jason Wells.

Those against the Motion: Mayor Ryan Palmer, Crs Matthew Bailey, Chris Doohan, Glen Dunkley and Steve Tucker.

The motion was declared lost on the casting vote of the Mayor.

**ORDINARY COUNCIL MEETING - 26 APRIL 2022
MOTION**

109	Councillor Peter Francis Councillor Giacomo Arnott It was resolved that item 4 be deferred pending advice from the Office of Local Government on the question of the amendment proposed by Cr Francis, being: "Include the following clause in the Code of Meeting Practice – 11.2.1 – The casting vote be only utilised in all instances of its use to maintain the status quo".
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Note: Council resolved at its meeting of 22 February 2022 to conduct a trial of recording a division on all items for a period 4 meetings.

Those for the Motion: Mayor Ryan Palmer, Crs Leah Anderson, Giacomo Arnott, Matthew Bailey, Chris Doohan, Glen Dunkley, Peter Francis, Peter Kafer, Steve Tucker and Jason Wells.

Those against the Motion: Nil.

The motion was carried.

BACKGROUND

The purpose of this report is to provide Council with the revised Code of Meeting Practice (the Code) (**ATTACHMENT 1**).

MINUTES ORDINARY COUNCIL - 26 APRIL 2022

The Port Stephens Council Code of Meeting Practice is based on the revised Model Code of Meeting Practice released by the Office of Local Government on 29 October 2021 (**TABLED DOCUMENT**).

The Code applies to meetings of the Council and Committees of Council where members are all elected members. The model Code also applies to boards of joint organisations and county councils.

Council first adopted the Code on 28 May 2019, with further amendments adopted on 9 June 2020. The Code includes mandatory and non-mandatory provisions. Council is also able to include supplementary clauses, however, any supplementary clauses cannot be inconsistent with the model Code.

The Code has maintained any previously adopted non-mandatory provisions.

Please note that yellow highlighting in the revised Code indicates an amendment has been made and strikethrough text is to be deleted.

The key amendments to the Code are:

- 1) Clause 3.23 – makes provision for the inclusion of a statement of ethical obligations in each business paper to remind Mayor and Councillors of their oath or affirmation of office and appropriate management of conflicts of interest.
- 2) Clause 3.5 – allows pre-meeting briefings to be held by audio-visual link (non-mandatory).
- 3) Clause 3.5 – includes provision specifying timeframe to publish business paper on Council's website, as adopted by Council. (non-mandatory).
- 4) Clause 3.7 – change to the timeframe for distribution of business papers to Mayor and Councillors, as adopted by Council.
- 5) Clause 3.10 - change to the timeframe to lodge a notice of motion, as adopted by Council.
- 6) Clause 4.2 – allows public forums (public access) to be held by audio-visual link (non-mandatory).
- 7) Clause 5.2 – includes reference to attendance at meeting by audio-visual link (non-mandatory).
- 8) Clauses 5.15 to 5.17 – makes provision for meetings to be held by audio-visual link (non-mandatory).
- 9) Clauses 5.18 to 5.22 – makes provision for attendance by councillors at a meeting by audio-visual link (non-mandatory).

MINUTES ORDINARY COUNCIL - 26 APRIL 2022

- 10) Clauses 5.26 to 5.31 – updated to reflect mandatory provisions in the model code.
- 11) Clause 14.20 – makes provision for obligations of a councillor attending a meeting by audio-visual link during closed meetings (non-mandatory).
- 12) Clauses 15.20 to 15.21 – makes provision for dealing with disorder by a councillor if attendance is by audio-visual link (non-mandatory).
- 13) Clause 16.2 – makes provision for managing conflicts of interest when attending a meeting by audio-visual link (non-mandatory).
- 14) Clause 16.3 – includes a new provision adopted by Council (non-mandatory).
- 15) Clauses 17.12 to 17.14 – makes provision to deal with a rescission motion at the same meeting a motion was considered (non-mandatory).
- 16) Clause 19.2(a) – requires the names of councillors attending a meeting and to record if they attended in person or by audio-visual link (non-mandatory).
- 17) Clause 20.22(a) - requires the names of councillors attending a meeting and to record if they attended in person or by audio-visual link (non-mandatory).

In addition to the amendments above, the Code has been updated to reflect changes in clause numbers and other minor amendments from the revised model Code.

Additional considerations by Council

Council also needs to give consideration to recording a division after each item.

Section 375A of the Local Government Act 1993, requires Council to record those voting 'for' and 'against' each item.

It is not mandatory for Council to record those voting 'for' and 'against' other motions passed by Council. Clause 11.10 and 20.23, shown below, would need to be included in the revised Code of Meeting Practice should Council be of a mind to include recording a division for all items.

- a) Clause 11.10 - makes provision for recording a division (non-mandatory).
- b) Clause 20.23 – makes provision for recording a division (non-mandatory).

Council has been conducting a trial of this approach following the Council meeting of 22 February 2022.

Public Access survey

Council recently conducted a public access survey to engage with speakers from the past 4 years, the Mayor and Councillors, Council staff and the general community, with 55 surveys completed.

MINUTES ORDINARY COUNCIL - 26 APRIL 2022

The questions included in the survey were:

- 1) How did you find the experience of presenting at Public Access? Were you shaky/nervous/anxious while presenting?
- 2) Would being seated whilst presenting have been helpful with the nervous feeling?
- 3) Thinking about the Public Access process, was the 5 minute time limit sufficient to present, or is it too constraining?
- 4) If you used the presentation display (i.e. PowerPoint presentation), how easy did you find the experience?
- 5) If given the option, would you have agreed to have your presentation broadcast on Council's live webcast to raise awareness?
- 6) Did you find questions from Councillors helpful?
- 7) Please provide any additional comments you might have on the current Public Access process.
- 8) Please provide any suggestions you might have to improve the Public Access process.

The survey graphs are shown at **ATTACHMENT 2**. Responses from questions 7 and 8 can be themed as follows:

- Councillor interaction during the sessions – both positive and opportunities for improvement
- Review time limit for speakers
- Provide Public Access via webcast with the speakers to have an option to present via the webcast
- Happy with the current process – enjoyed and provided an insight into Council meeting process
- Provide feedback to speakers on decisions of Council
- Limit questions from Councillors
- Speakers to have the ability to manage slide presentation
- Speakers able to attend by audio-visual link
- General improvements to the Public Access process

The following table provides Public Access benchmarking conducted as part of revising the Code.

Council	Speaker time limit	Public access webcast	Questions asked by councillors
Cessnock City	3 minutes with 2 further 1 minute extensions available.	Yes	Yes
Lake Macquarie City	4 minutes. Total of 10 minutes by speaker slot	Yes	Yes

MINUTES ORDINARY COUNCIL - 26 APRIL 2022

	includes questions from councillors.		
Maitland City	3 with 1 minute extension by resolution.	Yes	No direct questions to speakers – able to seek clarification from the chairperson.
Mid Coast	3 minutes	No	Yes
City of Newcastle	Public Voice (generally DAs only) – 10 minutes each 'for' and 'against' and 10 minutes for councillor questions. Public briefings (other council related matters once a month) – 2 sessions per month, 20 minutes for speakers and 10 minutes for councillor questions.	Yes	Yes

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2018-2022
Governance	Provide strong civic leadership and government regulations.

FINANCIAL/RESOURCE IMPLICATIONS

The financial and resource implications are within the existing budget.

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

MINUTES ORDINARY COUNCIL - 26 APRIL 2022

Source of Funds	Yes/No	Funding (\$)	Comment
Other	No		

LEGAL, POLICY AND RISK IMPLICATIONS

Council is required to adopt a Code of Meeting Practice based on the model Code to ensure it meets all legislative requirements in relation to conducting a meeting of the Council and a committee meeting of Council. In addition, Council is required to review its Code of Meeting Practice within 12 months of an ordinary local government election.

Section 361 of the Local Government Act 1993, requires Council to publicly exhibit the Code for a period of 28 days and allow 42 days for submissions to be received from the community.

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
There is a risk that Council may be in breach of the Local Government Act 1993 and Local Government (General) Regulation 2021 should it not adopt a Code of Meeting Practice.	Low	Adopt the recommendations.	Yes.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

There are limited sustainability implications associated with this report.

CONSULTATION

Internal

- Executive Team.
- Mayor and Councillors.

External

The revised Code of Meeting Practice is required to be publicly exhibited for a period of 28 days and allow 42 days for submissions to be received from the community. Public exhibition will take place at Council's library network, the Administration Building and be available from Council's website.

MINUTES ORDINARY COUNCIL - 26 APRIL 2022

OPTIONS

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

ATTACHMENTS

- 1) Draft Code of Meeting Practice
- 2) Public Access survey.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Office of Local Government – Model Code of Conduct.

ITEM 9 - ATTACHMENT 3 OFFICE OF LOCAL GOVERNMENT
CORRESPONDENCE.

Office of
Local Government

5 O'Keefe Avenue NOWRA NSW 2541
Locked Bag 3015 NOWRA NSW 2541

Our Reference: A817509
Your Reference: A2004-0284
Contact: Doug Friend
Phone: [REDACTED]

Mr Wayne Wallis
General Manager
Port Stephens Shire Council
PO Box 42
RAYMOND TERRACE NSW 2324

Email: tony.wickham@portstephens.nsw.gov.au

Dear Mr Wallis

Thank you for your letter of 2 May 2022 about the use of the casting vote by the person presiding at council meetings.

As you have noted, under section 370 of the *Local Government Act 1993* (the Act), which is reflected in clause 11.2 of the *Model Code of Meeting Practice for Local Councils in NSW* (the Model Meeting Code), the person presiding at a meeting of the council has, in the event of an equality of votes, a second or casting vote. Neither the Act nor the Model Meeting Code restrict the chairperson in how they exercise their casting vote, and this is entirely at the chairperson's discretion.

The Office of Local Government agrees that it was open to the Mayor to rule the motion seeking to insert a new clause 11.2.1 into Council's code of meeting practice was unlawful. This is because the proposed clause 11.2.1, which sought to require the casting vote to only be used to maintain the status quo, is inconsistent with section 370 of the Act and clause 11.2 of the Model Code in that it seeks to fetter the discretion of the chairperson in their use of the casting vote.

I trust this information is of assistance. Should you have any further questions about this matter, please contact Doug Friend of the Council Governance Team on [REDACTED] or by email [REDACTED]

Yours sincerely

Ally Dench
Executive Director, Local Government

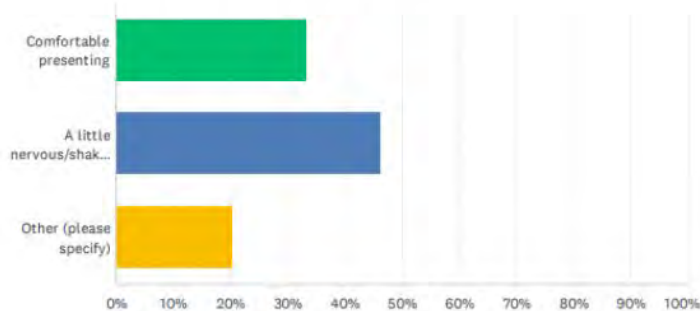
T 02 4428 4100 F 02 4428 4199 TTY 02 4428 4209
E olg@olg.nsw.gov.au W www.olg.nsw.gov.au ABN 20 770 707 468



PUBLIC ACCESS SURVEY

**Q1 How did you find the experience of presenting at Public Access?
Were you shaky/nervous/anxious while presenting?**

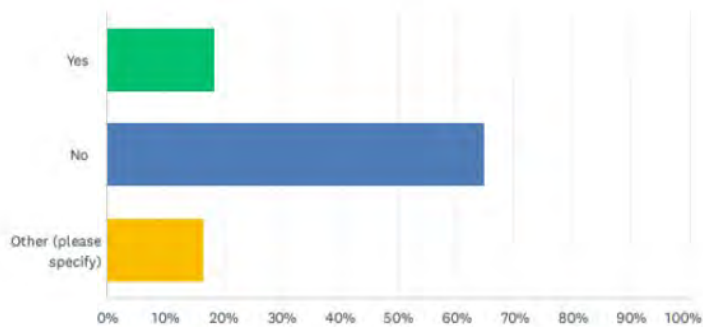
Answered: 54 Skipped: 1



ANSWER CHOICES	RESPONSES	
Comfortable presenting	33.33%	18
A little nervous/shaky/anxious	46.30%	25
Other (please specify)	20.37%	11
TOTAL		54

Q2 Would being seated whilst presenting have been helpful with the nervous feeling?

Answered: 54 Skipped: 1

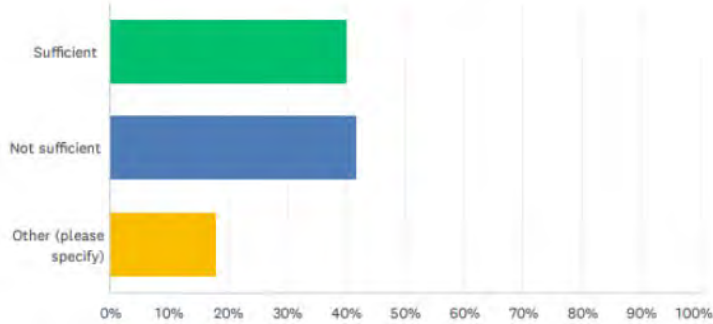


ANSWER CHOICES	RESPONSES	
Yes	18.52%	10
No	64.81%	35
Other (please specify)	16.67%	9
TOTAL		54

ITEM 9 - ATTACHMENT 4 PUBLIC ACCESS SURVEY.

Q3 Thinking about the Public Access process, was the 5 minute time limit sufficient to present, or is it too constraining?

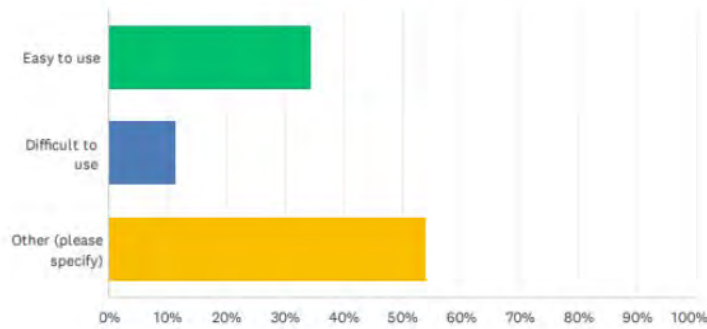
Answered: 55 Skipped: 0



ANSWER CHOICES	RESPONSES	
Sufficient	40.00%	22
Not sufficient	41.82%	23
Other (please specify)	18.18%	10
TOTAL		55

Q4 If you used the presentation display (ie. powerpoint presentation), how easy did you find the experience?

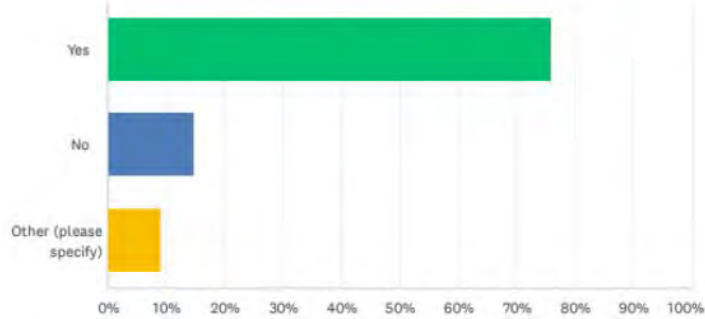
Answered: 52 Skipped: 3



ANSWER CHOICES	RESPONSES	
Easy to use	34.62%	18
Difficult to use	11.54%	6
Other (please specify)	53.85%	28
TOTAL		52

Q5 If given the option, would you have agreed to have your presentation broadcast on Council's live webcast to raise awareness?

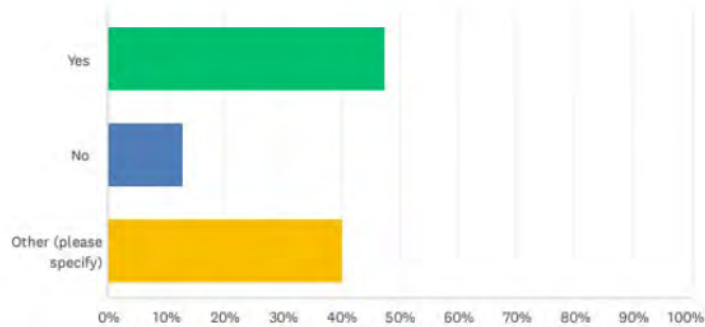
Answered: 54 Skipped: 1



ANSWER CHOICES	RESPONSES	
Yes	75.93%	41
No	14.81%	8
Other (please specify)	9.26%	5
TOTAL		54

Q6 Did you find questions from councillors helpful?

Answered: 55 Skipped: 0



ANSWER CHOICES	RESPONSES	
Yes	47.27%	26
No	12.73%	7
Other (please specify)	40.00%	22
TOTAL		55

ITEM NO. 10

**FILE NO: 22/105079
EDRMS NO: PSC2021-04205**

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 and Ward funds to the following:-
 - a. Raymond Terrace RSL Sub-Branch – West Ward - \$2205.80 donation towards costs of conducting ANZAC Day Services in Raymond Terrace.
 - b. Tilligerry Community Association – Cr Steve Tucker – Rapid Response - \$500 donation towards printing of Tilligerry visitor maps.
 - c. Endorse the provision of funds to November Sheehan - East Ward - \$750 donation towards the cost of the production of handmade cards for elderly residents in aged care facilities 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.

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 Capacity Building

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

ORDINARY COUNCIL - 14 JUNE 2022

The requests for financial assistance are shown below:

WARD FUNDS

Raymond Terrace RSL Sub-Branch	An ex-service organisation tasked with the well-being, care, compensation and commemoration of ex-serving Defence Force Personnel and their dependants.	\$2205.80	Donation towards running costs of ANZAC Day Services in Raymond Terrace.
Tilligerry Community Association	A volunteer group dedicated to improving the Tilligerry area.	\$500	Donation towards reprinting visitor maps.
November Sheehan - Heart Letter Pen initiative	The Heart Letter Pen initiative is a small volunteer organisation who make cards for the elderly residents of aged care facilities.	\$750	Donation towards the production of handmade cards for elderly residents in aged care facilities.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2018-2022
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 (S7.11)	No		
External Grants	No		
Other	No		

LEGAL AND POLICY IMPLICATIONS

To qualify for assistance under Section 356(1) of the Local Government Act 1993, the purpose must assist the Council in the exercise of its functions. Functions under the

Act include the provision of community, culture, health, sport and recreation services and facilities.

The policy interpretation required is whether the Council believes that:

- a) applicants are carrying out a function, which it, the Council, would otherwise undertake.
- b) the funding will directly benefit the community of Port Stephens.
- c) applicants do not act for private gain.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that Council may set a precedent when allocating funds to the community and an expectation those funds will always be available.	Low	Adopt the recommendations.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Nil.

CONSULTATION

Consultation with key stakeholders has been undertaken by the General Manager's Office.

Consultation has been undertaken with the key stakeholders to ensure budget requirements are met and approved.

OPTIONS

- 1) Accept the recommendation.
- 2) Vary the dollar amount before granting each or any request.
- 3) Decline to fund all the requests.

ATTACHMENTS

Nil.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ITEM NO. 11

**FILE NO: 22/141997
EDRMS NO: PSC2021-04203**

INFORMATION PAPERS

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 14 June 2022.

No:	Report Title	Page:
1	April 2022 Cash and Investments	269
2	Council Resolutions	272

INFORMATION PAPERS

ITEM NO. 1

**FILE NO: 22/117996
EDRMS NO: PSC2017-00180**

APRIL 2022 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 30 April 2022.

ATTACHMENTS

- 1) April 2022 Cash and Investments.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ITEM 1 - ATTACHMENT 1 APRIL 2022 CASH AND INVESTMENTS.

Cash and Investments Held as at 30 April 2022

ISSUER	Broker	Rating*	Type	Yield (%)	Term (days)	Maturity Date	Amount Invested	Market Value
Illawarra Credit Union	Laminar	NR	TD	0.86%	175	10-May-22	2,000,000	2,000,000
Defence Bank	Curve	BBB	TD	0.65%	539	25-May-22	1,000,000	1,000,000
Defence Bank	Curve	BBB	TD	0.65%	550	7-Jun-22	600,000	600,000
MOVE Bank	RIM	NR	TD	0.65%	384	21-Jun-22	1,000,000	1,000,000
MOVE Bank	RIM	NR	TD	0.65%	391	28-Jun-22	500,000	500,000
Commonwealth Bank of Australia	CBA	AA	TD	0.90%	67	5-Jul-22	2,500,000	2,500,000
Mutual Bank	Curve	NR	TD	1.00%	123	5-Jul-22	1,000,000	1,000,000
Judo Bank	RIM	BBB	TD	0.75%	392	19-Jul-22	1,000,000	1,000,000
BNK Bank	RIM	NR	TD	1.02%	356	2-Aug-22	1,000,000	1,000,000
Judo Bank	Laminar	BBB	TD	0.80%	349	18-Aug-22	875,000	875,000
BNK Bank	Laminar	NR	TD	0.77%	376	14-Sep-22	875,000	875,000
Judo Bank	Laminar	BBB	TD	0.80%	390	28-Sep-22	875,000	875,000
National Australia Bank	Curve	AA-	TD	1.20%	181	11-Oct-22	1,000,000	1,000,000
AMP Bank	Laminar	BBB	TD	0.80%	361	11-Oct-22	750,000	750,000
Arab Bank	Laminar	NR	TD	0.86%	369	8-Nov-22	1,000,000	1,000,000
AMP Bank	Laminar	BBB	TD	1.00%	375	22-Nov-22	750,000	750,000
AMP Bank	Laminar	BBB	TD	1.00%	368	22-Nov-22	750,000	750,000
AMP Bank	Laminar	BBB	TD	1.00%	390	20-Dec-22	1,000,000	1,000,000
Mutual Bank	Curve	NR	TD	1.10%	397	3-Jan-23	1,000,000	1,000,000
Commonwealth Bank of Australia	CBA	AA	TD	1.57%	271	10-Jan-23	1,000,000	1,000,000
AMP Bank	Laminar	BBB	TD	1.00%	405	17-Jan-23	800,000	800,000
Judo Bank	Laminar	BBB	TD	0.99%	368	31-Jan-23	470,000	470,000
Bank of Queensland	BOQ	BBB	TD	0.80%	382	14-Feb-23	955,000	955,000
Westpac	Westpac	AA-	TD	0.95%	391	14-Mar-23	1,000,000	1,000,000
G & C Mutual Bank	IAM	BBB	TD	1.00%	397	29-Mar-23	1,000,000	1,000,000
G & C Mutual Bank	IAM	BBB	TD	1.00%	411	12-Apr-23	1,000,000	1,000,000
Judo Bank	Curve	BBB	TD	1.05%	425	26-Apr-23	650,000	650,000
Westpac	Westpac	AA-	TD	1.12%	454	16-May-23	1,000,000	1,000,000
G & C Mutual Bank	IAM	BBB	TD	1.00%	432	3-May-23	600,000	600,000
Mutual Bank	Curve	NR	TD	1.25%	551	6-Jun-23	1,000,000	1,000,000
AMP Bank	Laminar	BBB	TD	1.35%	550	20-Jun-23	585,000	585,000
Macquarie Bank	Curve	A+	TD	0.95%	487	4-Jul-23	1,000,000	1,000,000
Westpac	Westpac	AA-	TD	1.30%	517	18-Jul-23	1,000,000	1,000,000
Westpac	Westpac	AA-	TD	1.48%	629	7-Nov-23	1,000,000	1,000,000
Westpac	Westpac	AA-	TD	1.53%	732	30-Jan-24	1,000,000	1,000,000
Westpac	Westpac	AA-	TD	1.53%	746	13-Feb-24	1,000,000	1,000,000
Westpac	Westpac	AA-	TD	1.72%	741	27-Feb-24	1,000,000	1,000,000
Bank of Queensland	BOQ	BBB	TD	2.60%	727	26-Mar-24	900,000	900,000
Suncorp	Suncorp	AA-	TD	2.71%	735	8-Apr-24	1,000,000	1,000,000
Judo Bank	IAM	BBB	TD	3.35%	732	23-Apr-24	825,000	825,000
Judo Bank	IAM	BBB	TD	3.35%	746	7-May-24	825,000	825,000

ITEM 1 - ATTACHMENT 1 APRIL 2022 CASH AND INVESTMENTS.

Cash and Investments Held as at 30 April 2022

ISSUER	Broker	Rating*	Type	Yield (%)	Term (days)	Maturity Date	Amount Invested	Market Value
Total Term Deposits (\$)							39,085,000	39,085,000
TCorp Short Term Income Fund	TCorp	AAA					5,000,000	4,987,972
TCorp Medium Term Growth Fund	TCorp	AAA					3,500,000	3,595,483
TCorp Long Term Growth Fund	TCorp	AAA					1,000,000	1,123,849
Total Investments (\$)							48,585,000	48,792,303
Cash at Bank (\$)							5,160,426	5,160,426
Total Cash and Investments (\$)							53,745,426	53,952,729
Cash at Bank Interest Rate		0.20%						
3 month BBSW		0.41%						
Average Investment Rate of Return on TD's		1.21%						
TD = Term Deposit								
*Standard & 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.								
Tim Hazell								
Financial Services Section Manager								

ITEM NO. 2

**FILE NO: 22/141879
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.

The General Manager's Office has no outstanding resolutions.

ATTACHMENTS

- 1) Corporate Services Group resolutions.
- 2) Development Services Group resolutions.
- 3) Facilities & Services Group resolutions.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.



Division: Corporate Services **Date From:** 27/08/2013
Committee: **Date To:** 24/05/2022
Officer:
Action Sheets Report **Printed: Monday, 6 June 2022**

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 27/08/2013	Crosdale, Timothy Crosdale, Timothy	Campvale Drain	30/12/2022		
243						
03 Jun 2022	Two private owners, Hunter Water Corporation and National Parks and Wildlife Service (NPWS). Matter ongoing.					

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council	Crosdale, Timothy Crosdale, Timothy	Financial Sustainability Committee	30/06/2022		
03 Jun 2022	Financial Sustainability Committee is established. Report back to Council end of June 2022.					

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 11/05/2021	Crosdale, Timothy Crosdale, Timothy	Car parking in Shoal Bay	30/12/2022	12/05/2021	
1						21/123694
03 Jun 2022	In principle approval received from Crown Lands.					

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 22/09/2020	Crosdale, Timothy Crosdale, Timothy	Newline Road, Raymond Terrace	30/09/2022		
2						20/288489
199						
03 Jun 2022	Approved. Contracts prepared. Finalising survey levels in contract.					

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 13/04/2021	Crosdale, Timothy	PROPOSED CLOSURE AND SALE OF PATHWAY IN BOAT HARBOUR	30/07/2022	14/04/2021	
2		Crosdale, Timothy				21/96728
090						
03 Jun 2022	Matter ongoing.					

ITEM 2 - ATTACHMENT 2 DEVELOPMENT SERVICES GROUP RESOLUTIONS.



Division: Development Services **Date From:** 13/07/2021
Committee: **Date To:** 24/05/2022
Officer: **Printed:** Monday, 6 June 2022

Action Sheets Report

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 22/02/2022	Drinan, Kate	Minor DA Modification Reporting	27/08/2022	25/02/2022	
7 060		Pearl, Steven				22/57049
31 May 2022						
In accordance with the Resolution, the Planning Matters to be Reported to Council Policy will be amended, exhibited and reported back to Council (should submissions be received) by August 2022.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 22/02/2022	Gardner, Janelle	Newspaper Notices	31/08/2022	25/02/2022	
2 055		Pearl, Steven				22/57049
31 May 2022						
Council Report being drafted and reported back to Council 12 July 2022.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 24/05/2022	Lamont, Brock	Grant Suspension 2022	29/07/2022	27/05/2022	
4		Pearl, Steven				22/136825
31 May 2022						
It was resolved that the Notice of Motion No. 4 be deferred for discussion at the Financial Sustainability Committee.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 10/05/2022	Lamont, Brock	Re-Establish of Alcohol Free Zones in Medowie and Shoal Bay	31/07/2022	12/05/2022	
2		Pearl, Steven				22/124235
31 May 2022						
Paper is in preparation for public exhibition. Awaiting a list of liquor licence holders in the proposed AFZ areas from the Police (to send letters when it goes on exhibition).						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 8/02/2022	Lourens, Rean	FLYING-FOX ISSUES AT ROSS WALLBRIDGE RESERVE	30/09/2022	14/02/2022	
7 032		Pearl, Steven				22/45826
31 May 2022						
Report is being drafted and will be reported back to Council at the 26 July 2022 meeting.						

ITEM 2 - ATTACHMENT 2 DEVELOPMENT SERVICES GROUP RESOLUTIONS.



Division: Development Services **Date From:** 13/07/2021
Committee: **Date To:** 24/05/2022
Officer: **Printed:** Monday, 6 June 2022

Action Sheets Report

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 12/10/2021	Lourens, Rean	Carbon Neutrality	30/09/2022	13/10/2021	
2 275		Pearl, Steven				21/274186
31 May 2022						
Two way was held 19 April 2022 with an outcome to draft Report back to Council in 27 September 2022.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 14/09/2021	Connell, Sarah	Port Stephens Waterway Strategy	31/07/2022	15/09/2021	
1 240		Pearl, Steven				21/252518
31 May 2022						
To be presented to Development Services Group Manager.						



Division: Facilities & Services
Committee:
Officer:
Date From: 08/12/2020
Date To: 24/05/2022
Printed: Monday, 6 June 2022
Action Sheets Report

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 8/02/2022	Burton, Paul	Basketball Backboard and Rings - Croquet Court, Boomerang Park	30/06/2022	14/02/2022	
15 039		Kable, Gregory				22/45826
02 Jun 2022						
Further investigation on the foundation will be undertaken to ensure the court is fit for the proposed use. Report will then be provided back to Council.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 8/02/2022	Gutsche, Tammy	Independent Audit of Financial Positions of 355c Hall Committees	22/06/2022	14/02/2022	
16 041		Kable, Gregory				22/45826
02 Jun 2022						
Report is currently in progress.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 22/03/2022	Maretich, John	Policy Review - Public Property Encroachment Policy	30/06/2022	23/03/2022	
7		Kable, Gregory				22/81589
02 Jun 2022						
The Policy was placed on Public Exhibition and two submissions were received. A report will be prepared go to Council in June 2022.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 8/02/2022	Gutsche, Tammy	Reusable Nappies and Menstrual Products	22/06/2022	14/02/2022	
6 031		Kable, Gregory				22/45826
02 Jun 2022						
Report is currently in progress.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 8/02/2022	Burton, Paul	Boomerang Park BBQs	28/06/2022	14/02/2022	
9 034		Kable, Gregory				22/45826
02 Jun 2022						
Report shall be provided to Council on the proposal to increase facilities as per this NOM.						



Division: Facilities & Services **Date From:** 08/12/2020
Committee: **Date To:** 24/05/2022
Officer: **Printed:** Monday, 6 June 2022

Action Sheets Report

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 8/02/2022	Maretich, John	Tomaree Road Footpath	31/07/2022	14/02/2022	
13 037		Kable, Gregory				22/45826
02 Jun 2022						
Report will be provided to Council.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 22/03/2022	Maretich, John	Guy Marks Oval, King Park, Raymond Terrace	30/06/2022	23/03/2022	
6 091		Kable, Gregory				22/81589
02 Jun 2022						
Staff to prepare a sign to rename the oval						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 24/05/2022	Gutsche, Tammy	World Menstruation Hygiene Day	31/07/2022	27/05/2022	
1		Kable, Gregory				22/136825
02 Jun 2022						
A report will be prepared for Council.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 24/05/2022	Maretich, John	Fingal Bay	31/08/2022	27/05/2022	
2		Kable, Gregory				22/136825
02 Jun 2022						
Works will be investigated and completed by Staff.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 24/05/2022	Maretich, John	Taylor's Beach	31/08/2022	27/05/2022	
3		Kable, Gregory				22/136825
02 Jun 2022						
Works will be investigated and completed by Staff.						

ITEM 2 - ATTACHMENT 3 FACILITIES & SERVICES GROUP RESOLUTIONS.



Division: Facilities & Services
Committee:
Officer:
Date From: 08/12/2020
Date To: 24/05/2022
Printed: Monday, 6 June 2022
Action Sheets Report

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 22/03/2022	Maretich, John	Identifying Potholes	30/06/2022	23/03/2022	
7 092		Kable, Gregory				22/81589
02 Jun 2022						
Report is currently in progress.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 26/04/2022	Maretich, John	Lakeside Leisure Centre	31/01/2023	28/04/2022	
2 114		Kable, Gregory				22/109684
02 Jun 2022						
Report to be prepared to go back to Council						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 24/05/2022	Maretich, John	Review of Dog Off Lead Areas - Boat Harbour Beach	30/06/2023	27/05/2022	
4		Kable, Gregory				22/136825
02 Jun 2022						
Report was endorsed by Council at its meeting held 24 May 2022, Minute No. 133. A review will be carried out in 12 months.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 8/02/2022	Maretich, John	Foreshore Reserves and Parking on Council Land	26/07/2022	14/02/2022	
5 030		Kable, Gregory				22/45826
02 Jun 2022						
Report shall be provided to Council.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 25/05/2021	Maretich, John	Anna Bay Drainage Union	31/07/2022	26/05/2021	
2 126		Kable, Gregory				21/138820
02 Jun 2022						
The State Government agency responsible for Anna Bay Drainage Union shall be consulted with.						



Division: Facilities & Services
Committee:
Officer:
Date From: 08/12/2020
Date To: 24/05/2022
Printed: Monday, 6 June 2022
Action Sheets Report

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 25/05/2021	Maretich, John	Bus Stop in Seaside Estate, Fern Bay	31/07/2022	26/05/2021	
5 128		Kable, Gregory				21/138820
02 Jun 2022						
This review shall be undertaken through Local Traffic Committee and consultation with members of the Seaside Community Association and a report is being compiled.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 13/07/2021	Mitchell, Darren	Hydrogen and Electric Vehicles in Council's Fleet	30/06/2022		
2 177		Kable, Gregory				21/190429
02 Jun 2022						
Staff are currently in consultation with suppliers on how to introduce new fuel sources for our vehicles.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 8/12/2020	Mitchell, Darren	Fly Point and Little Beach Parking/SMART Parking	30/06/2022		
3		Kable, Gregory				20/391301
02 Jun 2022						
The 2 way session held in late April was predominantly for Shoal Bay and Birubi, not specifically Fly Point and Little Beach as mentioned last month. A Council report has been drafted for additional Smart Parking locations which will include these 2 sites, Fly Point and Little Beach. The report will go to Council in June 2022.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 9/02/2021	Mitchell, Darren	5G Small Cell Technology Rollout in Port Stephens	30/06/2022		
3 006		Kable, Gregory				21/33235
02 Jun 2022						
Discussions have commenced with Telstra and are ongoing.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 9/02/2021	Burton, Paul	MEDOWIE REGIONAL PLAYGROUND AND TOWN CENTRE	31/08/2022		
2 012		Kable, Gregory				21/33235
02 Jun 2022						
Two-Way Council briefing will be scheduled in the near future to discuss the future of this land.						



Division: Facilities & Services
Committee:
Officer:
Date From: 08/12/2020
Date To: 24/05/2022
Printed: Monday, 6 June 2022

Action Sheets Report

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 10/08/2021	Maretich, John	Agreement with Community Association DP270468 - Lagoons Estate, Nelson Bay	30/06/2022		
4 208		Kable, Gregory				21/218740
02 Jun 2022						
Council to enter agreement with the Community Association DP 270468 in accordance with the confidential terms as per Council report.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 8/02/2022	Maretich, John	POLICY REVIEW - CONTRIBUTION TO WORKS FOR KERB AND GUTTERING CONSTRUCTION POLICY	26/07/2022	14/02/2022	
6 018		Kable, Gregory				22/45826
02 Jun 2022						
Report with requested information shall be provided to Council.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 8/02/2022	Maretich, John	Medowie Library	28/06/2022	14/02/2022	
2 027		Kable, Gregory				22/45826
02 Jun 2022						
Investigation underway to determine viability as requested.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 8/02/2022	Maretich, John	Raymond Terrace Lakeside Pathway	30/06/2022	14/02/2022	
4 029		Kable, Gregory				22/45826
02 Jun 2022						
Preliminary investigation was undertaken to form part of the NOM background. Additional investigation with assistance from NSW Police will be undertaken and report will be presented to Council.						



Division: Facilities & Services
Date From: 08/12/2020
Committee:
Date To: 24/05/2022
Officer:
Printed: Monday, 6 June 2022
Action Sheets Report

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 10/08/2021	Mitchell, Darren	Kirrang Drive, Medowie Shared Pathway	30/06/2022	13/08/2021	
8 217		Kable, Gregory				21/218740
02 Jun 2022						
Council staff will undertake further investigations into the financial requirements and options to accelerate the Kirrang Drive, Medowie pathway. Staff will report the outcomes back to Council.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 10/08/2021	Burton , Paul	Raymond Terrace Seven Day Makeover	31/12/2022		
17 228		Kable, Gregory				21/218740
02 Jun 2022						
This will be discussed with the Councillors in the lead up to William St, Stage 2 which funded through the Streets of Shared Spaces grant.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 12/10/2021	Gutsche, Tammy	Change to Lease Arrangements for Fingal Bay Surf Life Saving Club and Commercial Tenancies	31/07/2022	13/10/2021	
8 270		Kable, Gregory				21/274186
02 Jun 2022						
Paperwork currently being prepared for the Mayor and General Manager for the official seal.						

NOTICES OF MOTION

NOTICE OF MOTION

ITEM NO. 1

FILE NO: 22/148261

EDRMS NO: PSC2021-04195

GRANT SUSPENSION 2022

COUNCILLOR: STEVE TUCKER

THAT COUNCIL:

- 1) Suspend all internal grant programs and subsidies for 12 months with funds being redirected towards urgent repairs and maintenance.

BACKGROUND REPORT OF: BROCK LAMONT – ACTING STRATEGY & ENVIRONMENT SECTION MANAGER

BACKGROUND

NOTE: This Notice of Motion was passed by Council at its meeting held on 24 May 2022. No further action is required in relation to the Notice of Motion, however a Matter Arising subsequently moved was not dealt with due to the meeting being inquorate. The Matter Arising is therefore listed for consideration by the Council at this meeting.

**ORDINARY COUNCIL MEETING - 24 MAY 2022
MOTION**

142	Councillor Steve Tucker Councillor Matthew Bailey It was resolved that the Notice of Motion No. 4 be deferred for discussion at the Financial Sustainability Committee.
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Those for the Motion: Crs Leah Anderson, Giacomo Arnott, Matthew Bailey, Chris Doohan, Peter Francis, Ryan Palmer, Steve Tucker and Jason Wells.

Those against the Motion: Nil.

The motion was carried.

**ORDINARY COUNCIL MEETING – 14 JUNE 2022
MATTER ARISING**

	That Council remove Mayor Palmer from the Newcastle Airport Board until such time as Council can examine the admission by the Mayor that he is using the \$50,000 stipend to benefit his own personal taxation situation instead of putting that \$50,000 into the Mayoral Fund each year as has been the practice since he was placed on the Board.
--	--

The Port Stephens Community Funding Program is designed to provide financial support to community and business, creating resilient and vibrant neighbourhoods and to improve the liveability and wellbeing of the community.

The programs are managed by various teams within Council under the Grants and Donations Policy and the Sponsorship Policy.

The following provides a summary of all grant and sponsorship programs proposed for 2022-23.

PROGRAM	PURPOSE	CURRENT BUDGET
Local Strengthening Fund	Build sustainable local communities and environments, and enhance the wellbeing and development of the Port Stephens community, welcoming applications from community groups and not for profit organisations.	\$73,000 (\$36,000 funded by Ward Funds)
My Incredible Place Micro Grants	Support short-term, low cost projects (up to \$500) that encourage community-based place activation across Port Stephens.	\$10,000
Vibrant Spaces Fund	Support Port Stephens communities and business in delivering projects in our town centres and public spaces	\$50,000

ORDINARY COUNCIL - 14 JUNE 2022

PROGRAM	PURPOSE	CURRENT BUDGET
	to drive economic and social outcomes.	
Aboriginal Projects Fund	Support community projects designed or intended to empower and raise the profile of local Aboriginal and Torres Strait Islander people	\$35,000
Community Event Development Fund	Support the delivery of events that create social connections, improve the liveability and wellbeing of our residents or the environment and contribute to the social, historical and cultural identity of our community.	\$30,000
Major Event Sponsorship Fund	Support well managed events that drive overnight visitor spend, build the Port Stephens brand and reduce seasonal fluctuations.	\$100,000
International Women's Day Scholarships	Scholarships to local women to achieve their goals across arts, culture, environment, business, community, health or sport.	\$3,000 (\$1,000 per ward from Ward Funds)
Mayoral Funds	Provide assistance across the community from time to time. These funds help support community programs and initiatives that have a positive impact on Port Stephens and that do not meet the criteria of other funding streams.	\$50,000
Rapid Response Financial Assistance Fund (Ward Funds)	Provide financial assistance for small financial requests from the community including school canteen inspection fees.	\$18,000 (\$2,000 per Councillor – Rapid Response) \$5,200

ORDINARY COUNCIL - 14 JUNE 2022

PROGRAM	PURPOSE	CURRENT BUDGET
		(School canteen inspections)
Ward Funds - balance	Community financial assistance.	\$3,800
Environmental Projects Fund	Provide financial assistance to Port Stephens individuals, schools and groups to carry out environmental related projects and activities that have a positive benefit for the environment.	\$20,000

FINANCIAL/RESOURCE IMPLICATIONS

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

ATTACHMENTS

Nil.

NOTICE OF MOTION

ITEM NO. 2

FILE NO: 22/144385

EDRMS NO: PSC2021-04195

LIGHT COLOURED ROOFING

COUNCILLOR: GIACOMO ARNOTT

THAT COUNCIL:

- 1) Acknowledges that light coloured roofing creates lower temperatures in homes, and that this in turn leads to families needing to use less energy to cool the home during the summer and stops 'heat islands' from being created in our suburbs.
- 2) Asks the General Manager to prepare a report outlining:
 - a. The benefits of mandating light coloured roofing for all new developments.
 - b. The costs of mandating light coloured roofing for all new developments.
- 3) Asks that the General Manager's report include a recommendation as to whether a DCP amendment should be made to enforce this mandate.

BACKGROUND REPORT OF: KATE DRINAN – DEVELOPMENT AND COMPLIANCE SECTION MANAGER

BACKGROUND

If supported, staff shall prepare a report in accordance with the resolution of Council.

Matters for consideration include:

- The exempt provisions of the State Environmental Policy (Exempt and Complying Development Codes) 2008 enables roof cladding to be replaced without consent, therefore potentially overriding any development control standards of Council.
- Council does receive complaints from residents with respect to glare and reflectivity from lighter coloured roofing on occasion.
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 regulates the energy efficiency of residential buildings. BASIX includes consideration of roofing colours in determining the expected performance of a building. This often leads to lighter roof colours being selected.

FINANCIAL/RESOURCE IMPLICATIONS

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

ATTACHMENTS

Nil.

NOTICE OF MOTION

ITEM NO. 3

FILE NO: 22/144410

EDRMS NO: PSC2021-04195

NEWCASTLE AIRPORT BOARD

COUNCILLOR: GIACOMO ARNOTT

THAT COUNCIL:

- 1) Notes that Mayor Ryan Palmer is on the Newcastle Airport Board as nominated and elected by Port Stephens Councillors.
- 2) Notes that it was admitted on 24 May 2022 that the \$50,000 allowance is being taken personally by the Mayor after previously being donated to Council's Mayoral Fund for distribution to community groups and projects.
- 3) Notes that the Mayor's reasoning for this was to provide a benefit to his personal taxation situation which he said was being negatively impacted by the allowance going directly to Council.
- 4) Agrees that it is up to the holder of that Board position how the allowance is distributed or used.
- 5) Agrees that at the time of appointment to the Board position, if there is expected to be a change in how this allowance is received or distributed compared to how it is received and distributed immediately prior to the appointment by the holder of the position, an information paper must be provided by the new holder of that position outlining the change and the reasoning behind it.
- 6) Agrees that all future appointments or re-appointments for the elected member Newcastle Airport Board position must go through an internal EOI process for Councillors and the Mayor as follows:
 - a. Expressions of interest will be called 3 weeks prior to the Council meeting where appointment or re-appointment is scheduled to occur.
 - b. Expressions of interest will close 2 weeks prior to the Council meeting where appointment or re-appointment is scheduled to occur.
 - c. Expressions of interest must include a resume and a 250 word maximum outline of why the Councillor or Mayor believes they will be able to best serve Council and the ratepayers of Port Stephens in the role.
 - d. Those expressing interest are taken to have nominated for the position with an election to take place at the Council meeting where the appointment falls due.
 - e. If only 1 Councillor or Mayor expresses interest and nominates, no election is necessary and that person will be appointed to the position.
 - f. If more than 1 Councillor or Mayor expresses interest and nominates, an election will take place with the same process as a Deputy Mayor election being followed. The successful nominee will be appointed to the position.

BACKGROUND REPORT OF: WAYNE WALLIS – GENERAL MANAGER**BACKGROUND**

Newcastle airport located at Williamstown is jointly owned by Port Stephens Council and City of Newcastle on a 50:50 basis. The commercial operation is situated on Department of Defence land, over which the shareholder councils hold a long term Head Lease.

Newcastle Airport Pty Ltd (NAPL) manages the day to day operation of the commercial airport on behalf of shareholder councils and is governed by a skills based Board of Directors, comprising both independent and shareholder nominated directors.

The structure makes Newcastle Airport the largest Australian airport remaining in public ownership, with all dividends returned to the communities which it serves.

In accordance with the NAPL Constitution and Partnership Deeds, the Board of NAPL comprise of up to 10 non-executive Directors, with a majority of independent Directors. The selection process for the Board of Directors aims to provide an appropriate mix of skills and expertise.

The appointment of the Port Stephens Council shareholder representative to the NAPL Board is made by Council, with the person appointed required to have the appropriate expertise and experience to hold office with regard to the airport operations.

FINANCIAL/RESOURCE IMPLICATIONS

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

ATTACHMENTS

Nil.