

NOTICE OF ORDINARY MEETING 9 AUGUST 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 26 July 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 Motion – 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 - 9 AUGUST 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.

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

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

Mayor/Councillor's signature _____

Date _____

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



Declaration of Interest form

Agenda item No. _____

Report title _____

Mayor/Councillor _____ declared a

Tick the relevant response:

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

in this item. The nature of the interest is _____

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

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

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

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

Mayor/Councillor left the Council meeting at _____ pm.

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

COUNCIL REPORTS

ITEM NO. 1

**FILE NO: 22/151298
EDRMS NO: 16-2021-1018-1**

DEVELOPMENT APPLICATION 16-2021-1018-1 - SHOP TOP HOUSING – 3 APARTMENTS WITH GROUND FLOOR COMMERCIAL PREMISES - 14 MARKET STREET, FINGAL BAY

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Approve Development Application DA No. 16-2021-1018-1 for shop top housing – 3 apartments with ground floor business premises at 14 Market Street, Fingal Bay (Lot 8 DP 252664) subject to the conditions contained in **(ATTACHMENT 3)**.
- 2) Support the Clause 4.6 variation request to the building height for the reasons outlined within this report.

BACKGROUND

The purpose of this report is to present a Development Application (DA) 16-2021-1018-1 for shop top housing comprising 3 residential apartments with a ground floor business premises to Council for determination.

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

Subject Land:	14 Market Street, Fingal Bay
Total Area:	332.5m ²
Zoning:	B1 Neighbourhood Centre Zone
Submissions:	1 - Support
Key Issues:	The key issues identified throughout the assessment of the DA relate to building height.

The DA has been reported to Council in accordance with Council's 'Planning Matters to be Report 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 23.5% (1.88m). The building height standard is 8m and the height of the proposed building is 9.88m.

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

Proposal

The DA seeks consent for the demolition of the existing building on site and construction of a 3 storey shop top housing development. The shop top housing development will consist of a business premise on the ground floor, specifically a real estate agent fronting Market Street and residential apartments above. The ground floor will also be utilised for car parking and storage.

The proposal includes a total of three residential apartments. Two apartments are proposed on the first floor and each include 2 bedrooms, a media room, an open plan living and dining area with connection to a balcony for private open space. The second floor is proposed to contain a single apartment comprising 4 bedrooms, open plan living and two balconies.

The business premise and each apartment is provided with a separate garage and vehicular access. The access arrangements result in three crossovers and garages within the laneway along the south eastern boundary and one to the rear (south western boundary).

Site Description and History

The subject site is legally identified as Lot 8 DP 252664 and generally known as 14 Market Street, Fingal Bay. The site is located on the corner of Market street and an unnamed lane way. Vehicular access to the site is currently provided from the laneway off Market Street.

The site has a slight slope from the rear toward Market Street and currently contains a 2 storey building. The existing building contains a business premise (real estate agent) on the ground floor and the first floor appears to be utilised as a dwelling. The rear of the site has a garage and grassed area. One medium sized tree exists within the sites southern corner.

The site is surrounded by a mixture of land uses along Market Street. The street block that the site resides within contains a mixture of commercial land uses including food and drink premise, grocery store, hairdressers and a petrol station. Similar shop top housing developments exists to the west of the site along Market Street. The remainder of the surrounding development is largely of residential nature with a mixture of densities. Fingal Bay Beach is located to the north east of the site.

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 shop top housing building exceeds the maximum allowable building height for the site prescribed under Clause 4.3 of the Port Stephens Local Environmental Plan (PSLEP) 2013. The building proposes a maximum building height of 9.88m, which exceeds the 8m building height limit; representing a 23.5% variation to the development standard.

A written request to vary the building height development standard has been submitted by the applicant in accordance with Clause 4.6 of the PSLEP 2013. The submitted Clause 4.6 variation request is considered to adequately demonstrate that there are sufficient environmental planning grounds to justify varying the height of buildings standard based on the following:

- The proposed height is considered to be appropriate for the context and character of the area as surrounding development along the commercial strip is characterised by 2 and 3 storey developments in the form of shop top housing similar to the proposal.
- Despite the percentage and numerical extent of the variation, it is observed the building will be constructed to an of RL18.15 when measured from the Finished Floor Level (FFL) at the Market Street elevation, noting the adjoining shop top buildings to the west are constructed to an RL between 18.39 (4 Market Street) and 18.04 (6–10 Market Street). Consequently, this establishes a consistent street wall height that will enhance the intended character of Market Street and creates a proportional relationship to the scale of the street and public domain.
- The existing and approved development along the Market Street commercial strip demonstrates a higher density transition in the context and character of the locality. Moreover, the existing building in its current form is out of context with the character of the area having regard to the existing and approved shop top housing developments to the west.
- Despite the proposed height variation, the proposal results in negligible off site impacts including visual and amenity impacts, overshadowing and view loss as demonstrated by shadow diagrams and a Visual Impact Assessment prepared by the applicant.
- The proposal is generally compliant with the Apartment Design Guidelines and the Port Stephens Council Development Control Plan (DCP) controls.
- The objectives of Clause 4.3 are achieved despite the non-compliance with the numerical standard.

On the grounds listed above, the building height variation is recommended for support. A detailed assessment against Clause 4.6 is contained within the Planners Assessment Report (**ATTACHMENT 2**).

Car Parking

Chapter B8 of the DCP provides on-site parking requirements for development. The proposal provides for 5 car parking spaces, with 4 allocated to the apartments and 1 for the business premises. In accordance with the on-site parking requirements

outlined under B8 of the DCP, a total of 7 car spaces are required to cater for the development. The proposal is therefore non-compliant with the DCP car parking requirements with a shortfall of 2 car parking spaces, resulting from not providing 1 visitor space and 2 car spaces to cater for the business premise.

The shortfall in car parking is considered acceptable on the following grounds:

- Control B8.6 of the DCP notes that Council may consider a reduction in car parking spaces if a current land use has been approved with a parking shortfall and the proposed parking concession does not exceed the current shortfall for the approved use as calculated in accordance with Figure BU. The business premise currently exists on-site without an allocated car parking space. Therefore, despite the non-compliance with the DCP car parking requirements, the proposal represents a parking improvement to what currently exists on site by providing 1 additional car parking space. Taking this into consideration and the historical deficiency, the shortfall of car parking is considered acceptable.
- Given the sites constraints (width and overall area), it is considered that providing a visitor space is not viable given it may compromise the design of the residential car parking, storage areas and pedestrian access currently provided on the ground floor. Further, the development is designed to provide separate garages for each dwelling, meaning a visitor space would likely follow the same design creating functionality issues due to access for visitors and potentially exacerbate concerns regarding the domination of garages along the frontage to the laneway. It is therefore considered that the visitor parking shortfall is acceptable.

Further to the above, the proposed shortfall is considered acceptable given there is ample on-street car parking within the sites vicinity, particularly along the Market Street and within the laneway to the sites rear.

Conclusion

As detailed in the Planners Assessment Report (**ATTACHMENT 2**), the DA is considered to be consistent with the aim and objectives of the relevant environmental planning instruments and Council policies applicable to the subject site. There will be no adverse impact to the natural or built environment.

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 2022-2026
Strong economy, vibrant local businesses, active investment	Support sustainable business development in Port Stephens

FINANCIAL/RESOURCE IMPLICATIONS

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

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes		
Reserve Funds	No		
Developer Contributions (S7.11)	Yes		Should Council determine to approve the DA, s.7.11 development contributions totalling \$38,634 (to be indexed at the time of payment) 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) and associated State Environmental Planning Policies as listed above.

The non-compliances with PSLEP 2013 are considered acceptable and consistent with the relevant control objectives. A detailed assessment against the environmental planning instruments is contained within the Planners 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

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
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.	Medium	Accept the recommendation.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Social and Economic Impacts

The proposed development represents a modern mixed use development that will provide additional housing options in the area as well as the retention of the existing business premise (within a new building), which will provide job opportunities and contribute to Fingal Bay's commercial viability.

The proposed development is not anticipated to have any adverse social and economic impacts.

Impacts on the Built Environment

The proposed development is considered to result in a positive impact to the built environment by providing a modern architecturally designed development within the Market Street commercial strip. Despite the proposed height limit exceedance, the proposal is considered to be appropriate for the context and character of the area as surrounding development along the commercial strip is characterised by 2 and 3 storey developments in the form of shop top housing similar to the proposal.

Impacts on the Natural Environment

The proposed development is not considered to impact upon the natural environment as it does not contain any significant vegetation, koala habitat or threatened species habitat. The stormwater management has been appropriately designed to reduce potential impacts on the natural environment.

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 Development Engineering, Waste Management, Building Surveying, Development Contributions, Spatial Services teams and Councils Urban Design Panel (UDP). The referral comments from these officers have been considered as part of the Planners Assessment Report **(ATTACHMENT 2)**. The 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 7 December 2021 to 12 January 2022 in accordance with the provisions of the Port Stephens Council Community Engagement Strategy. During this time 1 submission of support was received.

OPTIONS

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

ATTACHMENTS

- 1) Locality Plan. [↓](#)
- 2) Planners Assessment Report. (Provided under separate cover)
- 3) Recommended Conditions of Consent. [↓](#)

COUNCILLORS ROOM

- 1) Development Plans.

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

ITEM 1 - ATTACHMENT 1 LOCALITY PLAN.



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



RECOMMENDED CONDITIONS

1.0 - General Conditions of Consent

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

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

Plan No.	Revision No.	Plan Title.	Drawn By.	Dated.
2051-DA02	F	Proposed Site Layout and Demolition Plan	Torren Bell Building Design	03/03/2022
2051-DA03	G	Proposed Lower and Upper Floor Layouts	Torren Bell Building Design	31/05/2022
2051-DA04	G	Proposed Second Floor and Roof Layout	Torren Bell Building Design	31/05/2022
2051-DA05	G	Elevations	Torren Bell Building Design	31/05/2022
2051-DA06	G	Typical Sections and Street View	Torren Bell Building Design	31/05/2022
2051-DA12	A	Exterior Colours and Finishes	Torren Bell Building Design	03/03/2022

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.

- (2) **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.
- (3) **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:
- 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.

- (4) **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.

- (5) **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'.

- (6) **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.

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

- (8) **Separate approval for signs** – A separate development application for any proposed signage, must be provide to, and approved by, the Consent Authority or under the provision of the State Environmental Planning Policy (Exempt and Complying Codes) 2008 if applicable prior to the erection or display of any such signs.

- (9) **Separate Approval for fit-out** - A separate development application for the fit out and use of the business premises must be submitted to and approved by either the Consent Authority prior to that use commencing or under the provisions of the State Environmental Planning Policy (Exempt and Complying Codes) 2008, where applicable.

- (10) **External agency approvals** – The requirements from the Ausgrid Referral (dated 7 December 2021. Reference 1900111251 must be complied with prior to, during, and at the completion of the development.

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



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) **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.

- (2) **Erosion and sediment control plan**– Before the issue of a construction certificate, 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:

- Council's development control plan,
- 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.

- (3) **Roads Act Approval** – For construction/reconstruction of Council infrastructure, including vehicular crossings. Footpath, kerb and gutter, stormwater drainage, an application must be made for a Roadworks Permit under Section 138B of the Roads Act 1993.

The following information must be provided to Council as Roads Authority with the Roads Act application:

- a) Continuous concrete pedestrian pathway along the entire lot boundary fronting the adjoining laneway.
- b) Details for the installation of a 'C3' 'No Stopping' line along extent of driveway crossovers in the laneway.

- (4) **Car parking details** – 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.

- (5) **Construction site management plan** - Before the issue of a construction

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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 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.

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

Facility	Per Lot/Dwelling	Total \$
Civic Administration – Plan Management	\$472	\$944
Civic Administration – Works Depot	\$1,231	\$2,462
Town Centre Upgrades	\$3,316	\$6,632
Public Open Space, Parks and Reserves	\$2,012	\$4,024
Sports & Leisure Facilities	\$1,914	\$3,828
Cultural & Community Facilities	\$1,296	\$2,592
Road Works	\$3,489	\$6,978
Shared Paths	\$3,196	\$6,392
Bus Facilities	\$12	\$24
Fire & Emergency Services	\$240	\$480
Flood & Drainage	\$1,846	\$3,692
Kings Hill Urban Release Area	\$293	\$586

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	TOTAL	\$38,634
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Payment of the above amount must apply to Development Applications as follows:

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

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

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

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.

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(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) **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.

- (9) **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).



- (10) **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.

- (11) **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.

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

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

- (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 development consent shall make appropriate arrangements with the owners of No. 12 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. 12. 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 —

- 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) **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.
- (8) **Construction Management Plan implementation** - All construction management procedures and systems identified in the approved Construction Management Plan must be introduced during construction of the development.
- (9) **Stormwater disposal** – Following the installation of any roof, collected stormwater runoff from the structure must be:
- a) Connected to an approved stormwater management system.
- (10) **Unexpected finds contingency (general)** – Should any suspect materials (identified by unusual staining, odour, discolouration or inclusions such as building rubble, asbestos, ash material, etc.) be encountered during any stage of works (including earthworks, site preparation or construction works, etc.), such works must cease immediately until a qualified environmental specialist has been contacted and conducted a thorough assessment.
- In the event that contamination is identified as a result of this assessment and if remediation is required, all works must cease in the vicinity of the contamination and Council must be notified immediately.
- Where remediation work is required, the applicant will be required to obtain consent for the remediation works.
- (11) **Soil, erosion, sediment and water management** – All requirements of the Erosion and Sediment Control Plan or Soil and Water Management Plan must be maintained at all times during the works and any measures required by the plan must not be removed until the site has been stabilised.
- (12) **Offensive noise, dust, odour and vibration** – All work must not give rise to offensive noise, dust, odour or vibration as defined in the Protection of the Environment Operations Act 1997 when measured at the nearest property boundary.



(13) **Construction noise** – While building work is being carried out and where no noise and vibration management plan is approved under this consent, 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.

(14) **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.

(15) **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.

(16) **Cut and fill** – 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.

5.0 - Prior to Issue of an Occupation Certificate

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ITEM 1 - ATTACHMENT 3 RECOMMENDED CONDITIONS OF CONSENT.



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

- (1) **Occupation Certificate required** - An Occupation Certificate must be obtained prior to any use or occupation of the development.

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

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

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

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

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

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

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

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

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

- (6) **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.



- (7) **Completion of Roads Act Approval works** - All approved road, footpath and/or drainage works, including vehicle crossings, have been completed in the road reserve in accordance with the Roads Act Approval to the satisfaction of the Council as the Roads Authority.
- (8) **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.
- (9) **Completion of landscape and tree works** – Before the issue of an occupation certificate, the principal certifier must be satisfied that all landscape and tree-works, including pruning in accordance with *AS 4373-2007 Pruning of amenity trees* and the removal of all noxious weed species, have been completed in accordance with the approved plans and any relevant conditions of this consent.
- (10) **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.
- (11) **Roof Design** – The roof design must include the installation of PV Solar Panels.

6.0 – 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.
- (4) **Maintenance of landscaping** – Landscaping must be maintained in accordance with the approved landscape plan and conditions of this development consent. All



landscape areas must be kept free of parked vehicles, stored goods, garbage or waste material at all times.

If any of the vegetation dies or is removed, it is to be replaced with vegetation of the same species and similar maturity as the vegetation which has died or was removed.

- (5) **Media Rooms and IT Nook** – The rooms identified as ‘media rooms’ in Units 1 and 2 and ‘IT Nook’ in Unit 3 on the approved plans are not to be used as bedrooms.

Advice Note(s):

- (1) **'Dial Before you Dig'** – Before any excavation work starts, contractors and others should phone the “Dial Before You Dig” service to access plans/information for underground pipes and cables.
- (2) **Dividing fences** – The erection of dividing fences under this consent does not affect the provisions of the Dividing Fences Act 1991. Under this Act, all relevant parties must be in agreement prior to the erection of any approved dividing fence/s under this consent.
- Council has no regulatory authority in this area and does not adjudicate civil disputes relating to the provision of, or payment for, the erection of dividing fences. If there is a neighbour dispute about the boundary fence and you are seeking mediation, you may contact the Community Justice Centre, or if legal advice or action is required, you may contact the Chamber Magistrate.
- (3) **Disability Discrimination Act** – The Commonwealth Disability Discrimination Act makes it an offence to discriminate against people on the grounds of disability, in the provision of access to premises, accommodation, or services. It is the owner/applicants responsibility to ensure compliance with the requirements of this Act.
- (4) **Works near/adjoining electricity network assets** – There are underground electricity network assets adjacent to the proposed development in Market 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) **Premise standard** – It is the Applicants responsibility to ensure compliance with the requirements of the Disability Discrimination Act 1992 (DDA).
- Note:** Compliance with the Building Code of Australia does not necessarily meet the requirements of the DDA.
- (6) **Signage** – You are advised that any proposed advertising signs that are not shown on the approved plans, or classified as exempt development, are subject to a separate Development Application to Council.

ITEM NO. 2

**FILE NO: 22/161182
EDRMS NO: 58-2015-3-1**

PLANNING PROPOSAL FOR 4874 NELSON BAY ROAD, NELSON BAY

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Discontinue the planning proposal (**ATTACHMENT 2**) for 4874 Nelson Bay Road, Nelson Bay (Lot 11 DP 841401) to rezone part of the subject land from C2 Environmental Conservation to part SP2 Infrastructure (Hospital) and part R1 General Residential.

BACKGROUND

The purpose of this report is to seek endorsement of Council to discontinue a planning proposal (**ATTACHMENT 2**) to rezone part of 4874 Nelson Bay Road, Nelson Bay (Lot 11 DP 841401) from C2 - Environmental Conservation to part SP2 Infrastructure (Hospital) and part R1 - General Residential. A Gateway determination has not been requested for this planning proposal. Accordingly, endorsement from the Minister for Planning is not required to discontinue this proposal.

The recommendation to discontinue the planning proposal follows a previous request on 11 December 2018 where Council resolved to defer consideration of the planning proposal and allow additional time for the proponent to submit the requested information. Additional information to adequately justify the planning proposal was not submitted following the Council resolution, with subsequent requests made by Council on 29 July 2020 and 23 February 2021. The information received in response to these requests did not adequately justify the impact of clearing vegetation on the land, nor did it provide certainty of development outcomes for the purposes of a hospital.

The site is a local heritage item known as Gan Gan Army Camp resulting from its use during World War 2. The current C2 - Environmental Conservation zone reflects the high ecological value of the property with vegetation covering the majority of the site. The site provides habitat to a variety of locally significant, threatened and endangered species. The sites bushfire prone status severely inhibits land development outcomes for the more open areas of the property.

A comprehensive review of the proposal and its compliance with State and Local requirements is provided within the Strategic Planning Assessment Report (**ATTACHMENT 3**).

There is considered to be insufficient site and strategic justification to support the planning proposal proceeding for Gateway determination seeking amendment to the Port Stephens Local Environmental Plan 2013 (LEP).

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2022-2026
Thriving and Safe Place to Live	Provide land use plans, tools and advice that sustainably support the community.

FINANCIAL/RESOURCE IMPLICATIONS

There are no financial or resource implications for Council in adopting 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

There are some foreseen legal, policy and risk implications for Council as a consequence of this report.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that proceeding with the planning proposal will create unacceptable environmental impacts and land use planning impacts.	High	Determine that the planning proposal should not proceed.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The potential sustainability implications of proceeding with the planning proposal for the site are significant because of its high environmental value. To offset this, the planning proposal outlines potential social and economic benefits to the community through the provision of housing and a site for a future hospital.

The planning proposal and supporting information do not resolve site and strategic merit considerations to enable support for the amendment of the LEP provisions for the site. The planning proposal does not provide resolution of the requirements of the local, regional and State strategic and environmental planning framework, or certainty regarding the delivery of the intended outcomes (including a proposed hospital).

CONSULTATION

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

Internal

Whilst internal consultation resulted in a number of matters requiring further consideration, the key constraint for the proposal relates to the sites ecological value.

A range of ecological impacts were identified as a result of the proposed rezoning of the site, including loss of old-growth native forest (trees greater than 150 years old), the impact on biodiversity and faunal movement corridors, and impacts on the habitat of a number of threatened species including Powerful Owl, Koala and Varied Sittella.

The potential for impact on the Powerful Owl is a key matter of concern, given the quality and quantity of habitat that would be removed by the proposal. The subject site contains old-growth forest and a large number of habitat trees for Powerful Owl. The removal of vegetation that is suitable breeding habitat for the Powerful Owl is a key ecological consideration.

External

Should Council resolve to support the planning proposal it will be forwarded to the NSW Department of Planning and Environment for a Gateway determination. The Department has previously advised that there are significant strategic planning issues for the site that would need to be resolved to facilitate further consideration.

Assessment by the Strategy and Environment Section is that those issues remain unresolved with the revised planning proposal and additional supporting information.

OPTIONS

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

ATTACHMENTS

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

COUNCILLORS ROOM

- 1) Revised planning proposal and additional supporting studies.

TABLED DOCUMENTS

Nil.



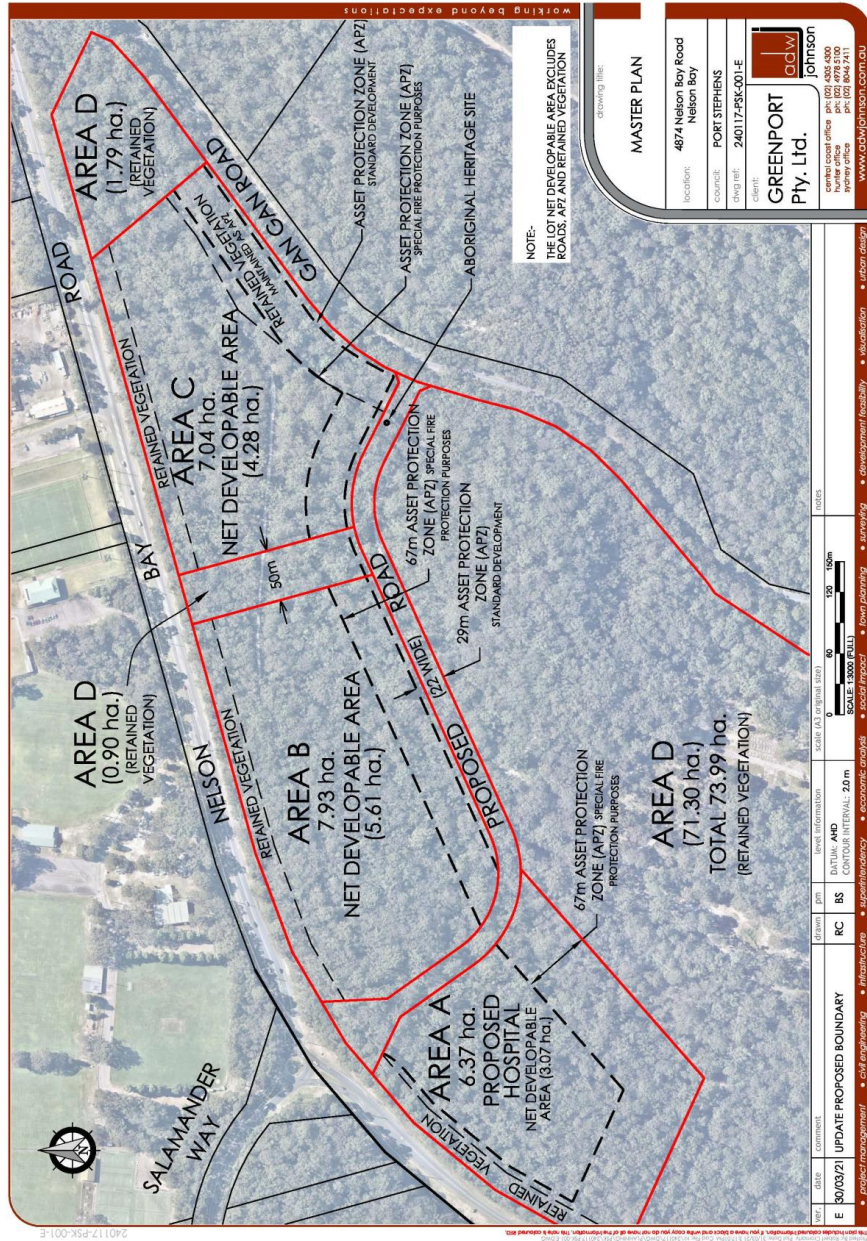
116 Adelaide Street, Raymond Terrace NSW 2324. Phone: (02) 49800255 Fax: (02) 49873612 Email: council@portstephens.nsw.gov.au



STRATEGIC PLANNING ASSESSMENT REPORT (SPAR)

Application No.	58-2015-03-1
Applicant Name	Greenport Corporation Pty Ltd (c/o ADW Johnson Pty Ltd)
Applicant Address	PO Box 122 Hamilton NSW 2303
Site Location Details	Lot 11 DP 841401 (4874 Nelson Bay Road, Nelson Bay) Total site area: 98 hectares Existing zoning: C2 Environmental Conservation
Proposal Summary	Amend the Port Stephens Local Environmental Plan 2013 (LEP) to: <ul style="list-style-type: none">• Enable the redevelopment of part of the subject land for a hospital and housing that may include multi-dwelling housing, seniors housing or residential flat buildings (24 hectares).• Apply a 15m and 12m height limit and 450m² minimum lot size within the development area.• Conserve the balance of the site for its ecological value (74 hectares).







Information	Assessment
Department of Planning Guide to preparing planning proposals	
<p>Part 1 – Statement of objectives or intended outcomes of the proposed instrument</p>	<p>The statement of intended outcomes is adequate to enable assessment. The planning proposal seeks to amend the LEP to enable the redevelopment of part of the site for a hospital and housing that may include multi-dwelling housing, seniors housing or residential flat buildings (24 hectares) and to protect and conserve the balance of the site for its ecological value (74 hectares).</p>
<p>Part 2 – Explanation of the provisions that are to be included in the proposed instrument</p>	<p>The planning proposal adequately explains the provisions that are proposed to be included in a draft instrument:</p> <ul style="list-style-type: none"> • Amending the zoning from C2 Environmental Conservation to a combination of SP2 Infrastructure (Hospital), R1 General Residential, and C2 Environmental Conservation. • Amend the lot size from 40 ha to a combination of 40 ha and 450m². • Amend the height of building from no limit to a combination of 15m, 12m and no limit. <p>The proposed amendments are shown in the submitted master plan and draft LEP map sheets submitted with the planning proposal.</p>
<p>Part 3 – Justification of strategic and site-specific merit</p>	<p>The justification provided for the objectives, outcomes and provisions of the proposed instrument, and whether it will give effect to, or is a product of, the local planning statement, is considered to insufficient be in the circumstances of the case.</p>
<p>Section A – Need for the planning proposal</p>	
<p>Q1 Is the planning proposal a result of an endorsed local strategic planning statement, strategic study or report?</p>	<p>The planning proposal is not the result of an endorsed local strategic planning statement, strategic study or report.</p> <p>The site is not identified for a change in land use by the Port Stephens Local Strategic Planning Statement (LSPS) or the Port Stephens Local Housing Strategy (Live Port Stephens) and is assessed as a site-specific proposal.</p>

Information	Assessment
<p>Q2 Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?</p>	<p>The planning proposal does not set out alternative options for amending the LEP to achieve the intended outcomes.</p> <p>The planning proposal does not include consideration of other sites on the Tomaree and their potential suitability for a hospital and infill housing.</p> <p>The planning proposal does not include consideration of potential development options under the existing C2 Environmental Conservation zone, or alternative development and zone footprints to minimise environmental impacts and earthworks.</p>
<p>Section B – Relationship to strategic planning framework</p>	
<p>Q3. Will the planning proposal give effect to the objectives and actions of the applicable regional, or district plan or strategy (including any exhibited draft plans or strategies)?</p>	<p>The planning proposal gives limited effect to some of the applicable regional, or district plans or strategies.</p>
<p>Assessment of consistency with the Hunter Regional Plan 2036 (HRP).</p>	<p>The site is not identified for development in the HRP.</p> <p>The planning proposal may demonstrate broad alignment with some of the directions and actions of the HRP in relation to Direction 6 Grow the economy of Port Stephens including Action 6.5 Plan for and provide infrastructure and facilities that support the ageing population. However, there is a lack of certainty that the intended outcomes will be delivered (a hospital) and consideration of other sites in the region that may be suitable to achieve the intended outcomes.</p> <p>The planning proposal is inconsistent with direction 14 Protect and connect natural areas Action 14.4 Protect biodiversity by maintaining and, where possible, enhancing the existing protection of high environmental value areas; implementing appropriate measures to conserve validated high environmental value areas; developing local strategies to avoid and minimise the impacts of development on areas of high environmental value and biodiversity corridors; and identifying offsets or other mitigation measures for unavoidable impacts. The site has</p>

Information	Assessment
	<p>high environmental value and is zoned C2 Environmental Conservation. The planning proposal will result in clearing approximately 24 hectares of vegetation and will require the purchase of an estimated 760 ecosystem credits under the NSW Biodiversity Offset Scheme for residual impacts.</p> <p>The planning proposal is inconsistent with Direction 21 Create a compact settlement. It is inconsistent with Action 21.1 Promote development that respects the landscape attributes and character of the metropolitan areas, towns and villages and Action 21.4 Create a well-planned, functional and compact settlement pattern that responds to settlement planning principles and does not encroach on sensitive land uses, including land subject to hazards, on drinking water catchments or on areas with high environmental values. The site has high environmental value and will require substantial earthworks that will negatively affect the landscape, notwithstanding the proposed offsetting measures.</p> <p>The planning proposal has broad alignment with Direction 22 Promote housing diversity Action 22.1 Respond to the demand for housing and services for weekend visitors, students and seasonal workers, the ageing community and resource personnel and Action 22.2 Encourage housing diversity, including studios and one and two-bedroom dwellings, to match forecast changes in household sizes. The planning proposal estimates the provision of 295 dwellings and there is high demand for housing and aged care.</p> <p>The planning proposal has limited alignment with Direction 26 Deliver infrastructure to support growth and communities Action 26.2 Enable the delivery of health facilities, education, emergency services, energy production and supply, water and waste water, waste disposal areas, cemeteries and crematoria, in partnership with infrastructure providers. Although the planning proposal includes land to be zoned SP2 Infrastructure (Hospital) there is no certainty that a hospital will be delivered or evidence that the</p>

Information	Assessment
	proposed SP2 zoned land is of a suitable configuration and accessibility to support a hospital. Additionally, there is no consideration of alternate suitable sites on the Tomaree.
Assessment of consistency with the Greater Newcastle Metropolitan Plan.	The GNMP does not apply.
Give effect to a relevant local strategic planning statement or endorsed local strategy	The planning proposal gives some effect to the Port Stephens Local Strategic Planning Statement (LSPS). Although additional housing supply is an intended outcome, the planning proposal conflicts with the conservation of biodiversity values outcomes of the LSPS. The planning proposal does not consider the potential for infill development in and immediately adjacent to existing centres and medical facilities, to meet demand for housing and medical services.
Responding to a change in circumstances	The planning proposal is seeking to respond to the demand for housing and demand for medical facilities, however will result in substantial environmental impacts. Evidence of the demand for seniors housing and medical facilities is provided in the submitted Market Potential Assessment Report and Social Impact Assessment.
Q4. Is the planning proposal consistent with a council LSPS that has been endorsed by the Planning Secretary or GSC, or another endorsed local strategy or strategic plan?	As assessed previously in this report, the planning proposal gives some effect to the Port Stephens Local Strategic Planning Statement (LSPS). Although additional housing supply is an intended outcome, the planning proposal conflicts with the conservation of biodiversity values outcomes of the LSPS. The planning proposal does not consider the potential for infill development in and immediately adjacent to existing centres and medical facilities, to meet demand for housing and medical services.
Is the planning proposal consistent with relevant precinct plan(s) (including structure plans and master plans and any exhibited draft plan(s))	There are no applicable precinct plans.
Is the planning proposal consistent with relevant Council strategy (or strategies) endorsed by the NSW	The site is not identified for development in relevant council strategies.

Information	Assessment
<p>Department of Planning and Environment, including an endorsed local strategic planning statement.</p>	
<p>Is the planning proposal consistent with the Local Housing Strategy?</p>	<p>The planning proposal is not consistent with the Port Stephens Local Housing Strategy (Live Port Stephens). Although Live Port Stephens seeks to ensure an adequate and diverse supply of new housing, it prioritises future greenfield housing on land that is unconstrained. It acknowledges that some rezoning requests will require a higher level of strategic justification and supporting information to be considered for development. In this instance, notwithstanding the additional information and revised planning proposal submitted by the proponent, the proposal does not satisfactorily address the site and strategic planning framework and policy requirements to ensure delivery of the intended outcomes.</p>
<p>Is the planning proposal consistent with a relevant local area strategy?</p>	<p>There is no applicable current local area strategy that identifies a change in land use for the site.</p>
<p>Q5. Is the planning proposal consistent with any other applicable State and regional studies or strategies?</p>	<p>There are no other applicable State and regional studies or strategies that apply to the planning proposal.</p>

SEPP ASSESSMENT

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

SEPP	Overview	Assessment
SEPP (Biodiversity and Conservation) 2021	The relevant chapter of this SEPP aims to help reverse the decline of koala populations by ensuring koala habitat is properly considered during the development assessment process, and to provide a process for councils to strategically manage koala habitat through the development of koala plans of management.	The site comprises significant established vegetation mapped as Supplementary Koala Habitat under the Port Stephens Comprehensive Koala Plan of Management. The proposal will result in the removal of approximately 24 hectares of Supplementary Koala Habitat that is zoned C2 Environmental Conservation. The information lodged for the proposal does not demonstrate consistency with this SEPP.
SEPP (Housing) 2021	To enable the development of diverse housing types, to encourage housing that will meet the needs of more vulnerable members of the community, to promote the planning and delivery of housing in locations to make use of existing and planned infrastructure, to minimise adverse climate and environmental impacts of new housing development, to support short-term rental accommodation as a home-sharing activity while managing the social and environmental impacts from this use, and to mitigate the loss of existing affordable rental housing.	The planning proposal seeks to rezone part of the site from C2 Environmental Conservation to R1 General Residential and SP2 Infrastructure (Hospital). The intended outcome is to enable the redevelopment of part of the site for a hospital, and housing that may include multi-dwelling housing, seniors housing or residential flat buildings. The submitted planning proposal estimates 295 dwellings. The planning proposal does not minimise environmental impacts.

MINISTERIAL DIRECTION ASSESSMENT

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

Ministerial Direction	Overview	Assessment
1. Employment and Resources		
1.1 Business and Industrial Zones	<p>Applies to planning proposals affecting existing or proposed business or industrial zone land.</p> <p>By requiring consistency with the objectives of the direction, retention of areas of business and industrial zoned land, protection of floor space potential, and/or justification under a relevant strategy/study; the direction seeks to protect employment land in business and industrial zones, encourage employment growth in suitable locations and support the viability of identified centres.</p>	<p>The LEP amendment proposal relates to existing business and industrial zoned land because of its proximity to existing business centres. Whilst the proposal does not propose a business or industrial zone, employment would be generated at a potential hospital and potential residents would support the viability of existing centres at Salamander Bay and Nelson Bay.</p> <p>The information lodged for the proposal demonstrates limited application and consistency with this direction.</p> <p>The proposal is inconsistent with the aim of concentrating allied health services within the Nelson Bay town centre consistent with local planning strategies.</p>
2. Environment and Heritage		
2.1 Environment Protection Zones	<p>Applies to all planning proposals. Provides for the protection and conservation of environmentally sensitive areas, by ensuring that planning proposals do not reduce the environmental protection standards applying to such land unless it is suitably</p>	<p>The LEP amendment proposal relates to land within an existing environmental protection zone.</p> <p>The planning proposal is inconsistent with this direction. It will result in the removal of approximately 24 hectares of high value vegetation and Supplementary Koala Habitat within the C2 Environmental Conservation zone and reduces the environmental standards that apply to the land.</p>

Ministerial Direction	Overview	Assessment
	<p>justified by a relevant strategy or study or is of minor significance in the opinion of the Secretary of the NSW Department of Planning and Environment (or nominated delegate).</p>	<p>The impacts of the planning proposal are not:</p> <ul style="list-style-type: none"> • Sufficiently justified by a strategy (which gives consideration to this direction, identifies the site and is approved by the Director-General of the Department of Planning and Environment); • Sufficiently justified by the information and studies prepared in support of the planning proposal which gives consideration to the objectives of this direction (notwithstanding the retention of part of the site within the C2 Environmental Conservation zone and the purchase of biodiversity offset credits for residual impacts); • consistent with the Hunter Regional Plan 2036; and • of minor significance.
<p>2.2 Coastal Management</p>	<p>Applies to land within a coastal zone, as defined in the Coastal Management Act 2016 (NSW).</p> <p>The direction seeks to protect and manage coastal areas of NSW. Proposals must include provisions that give effect to and are consistent with the objects of the Coastal Management Act 2016 (NSW) the Coastal Management Manual and Toolkit, Coastal Design Guidelines and any relevant Coastal Management Program certified by the Minister.</p>	<p>The northern part of the site proposed for rezoning is not within the coastal zone.</p> <p>The southern part of the site is located within the coastal zone and includes a Coastal Wetland and buffers.</p> <p>Consistency with the direction is not directly relevant to the proposal.</p>

Ministerial Direction	Overview	Assessment
2.3 Heritage Conservation	Requires relevant planning proposals to contain provisions to facilitate the conservation of items, areas, objects and places of environmental heritage significance and indigenous heritage significance.	<p>Gan Gan Army Camp is listed as a heritage item of local significance in the LEP. Development of part of the site can be undertaken in a manner which is not in conflict with the heritage value and history of the site. The proposed development footprint does not affect upon the site of the former army camp buildings.</p> <p>The submitted master plan indicates the planning proposal may impact on an Aboriginal heritage site. Information is not provided on consultation with the Aboriginal community.</p> <p>The information lodged for the proposal does not demonstrate consistency with this direction.</p>
2.6 Remediation of Contaminated Land	Seeks to reduce the risk of harm to human health and the environment by ensuring that contamination and remediation are considered by planning proposal authorities	<p>The LEP amendment proposal affects land to which this direction applies.</p> <p>The information lodged for the proposal demonstrates consistency with this direction by avoiding potential risk areas.</p>
3. Housing, Infrastructure and Urban Development		
3.1 Residential Zones	<p>Applies to planning proposals affecting existing or proposed residential zoned land or other zoned land upon, which significant residential development is or will be permitted.</p> <p>Requires relevant planning proposals to include provisions that encourage housing development, ensures satisfactory arrangements for servicing infrastructure</p>	<p>The LEP amendment proposal relates to land upon which significant residential development will be permitted.</p> <p>The information lodged for the proposal would demonstrate general consistency with this direction in the event that part of the site is rezoned from C2 Environmental Conservation to R1 General Residential.</p> <p>The intended outcome is to enable the redevelopment of part of the site for a hospital, and housing that may include multi-dwelling housing, seniors housing or residential flat buildings. The</p>

Ministerial Direction	Overview	Assessment
	<p>and will not reduce the permissible residential density of land; unless it is suitably justified under a relevant strategy or study or is of minor significance in the opinion of the Secretary of the NSW Department of Planning and Environment (or nominated delegate).</p>	<p>planning proposal estimates 295 dwellings.</p>
<p>3.4 Integrating Land Use and Transport</p>	<p>Requires planning proposals, which seek to create, alter or remove a zone or provision relating to urban land (including land zoned for residential, business, industrial, village or tourist purposes), to be consistent with the aims, objectives and principles of 'Improving Transport Choice – Guidelines for planning and development' and 'The Right Place for Business and Services – Planning Policy' or that they be suitably justified under a relevant strategy or study or be of minor significance in the opinion of the Secretary of the NSW Department of Planning and Environment (or nominated delegate).</p>	<p>The LEP amendment proposal seeks to rezone land for a hospital and residential purposes.</p> <p>The information lodged for the proposal demonstrates some broad consistency with this direction by locating development on a main transport corridor in relative proximity to Salamander Bay centre and Nelson Bay centre. Assessment of consistency is not submitted against Improving Transport Choice – Guidelines for planning and development (DUAP 2001) and The Right Place for Business and Services Planning Policy (DUAP 2001) under this direction.</p>

Ministerial Direction	Overview	Assessment
4. Hazard and Risk		
4.1 Acid Sulfate Soils	Requires the provisions of planning proposals must be consistent with the Acid Sulfate Soils Planning Guidelines and other such relevant provisions provided by the Director-General of the Department of Planning, except where the proposal is suitably justified under a relevant strategy or study or where non-compliance is of minor significance in the opinion of the Secretary of the NSW Department of Planning and Environment (or nominated delegate).	The site is mapped as containing very low risk of Acid Sulfate Soils. The information lodged for the proposal demonstrates consistency with this direction.
4.4 Planning for Bushfire Protection	Applies requirements for planning proposals affecting land mapped as being bushfire prone land (or land in proximity to such land); except where the Commissioner of the NSW Rural Fire Service has issued written advice to Council that, notwithstanding the noncompliance with the requirements; the NSW Rural Fire Service does not object to progression of the planning proposal.	The LEP amendment proposal relates to land in proximity to bushfire prone land. The information lodged for the proposal demonstrates consideration of this direction through identification of asset protection zones on the submitted master plan. Consultation with the Rural Fire Service would be required.

Ministerial Direction	Overview	Assessment
5. Regional Planning		
5.10 Implementation of Regional Plans	Requires that planning proposals be consistent with relevant regional strategies released by the Minister for Planning, except where, in the opinion of the Secretary of the NSW Department of Planning and Environment (or nominated delegate); the inconsistency is considered to be of minor significance and the intent of the strategy is not undermined.	<p>Assessment of consistency with the Hunter Regional Plan 2036 (HRP) is provided previously in the assessment.</p> <p>The site is not identified for development in the HRP.</p> <p>The planning proposal demonstrates some broad alignment with some of the directions and actions of the HRP in relation to Direction 6 Grow the economy of Port Stephens including Action 6.5 Plan for and provide infrastructure and facilities that support the ageing population.</p> <p>The planning proposal is inconsistent with direction 14 Protect and connect natural areas Action 14.4 Protect biodiversity by maintaining and, where possible, enhancing the existing protection of high environmental value areas; implementing appropriate measures to conserve validated high environmental value areas; developing local strategies to avoid and minimise the impacts of development on areas of high environmental value and biodiversity corridors; and identifying offsets or other mitigation measures for unavoidable impacts.</p> <p>The planning proposal is inconsistent with Direction 21 Create a compact settlement. The site does not adjoin land that is already zoned for urban development. It is inconsistent with Action 21.1 Promote development that respects the landscape attributes and character of the metropolitan areas, towns and villages and Action 21.4 Create a well-planned, functional and compact settlement pattern that responds to settlement planning principles and does not encroach on sensitive land uses, including land subject to hazards, on drinking water</p>

Ministerial Direction	Overview	Assessment
		<p>catchments or on areas with high environmental values.</p> <p>The planning proposal has some alignment with Direction 22 Promote housing diversity Action 22.1 Respond to the demand for housing and services for weekend visitors, students and seasonal workers, the ageing community and resource personnel and Action 22.2 Encourage housing diversity, including studios and one and two-bedroom dwellings, to match forecast changes in household sizes. 295 dwellings are proposed in a range of dwellings focused on seniors.</p> <p>The planning proposal has limited alignment with Direction 26 Deliver infrastructure to support growth and communities Action 26.2 Enable the delivery of health facilities, education, emergency services, energy production and supply, water and waste water, waste disposal areas, cemeteries and crematoria, in partnership with infrastructure providers.</p> <p>Given the scale and the environmental implications of the planning proposal, inconsistencies of the planning proposal are not of minor significance.</p>

Information	Assessment
Section C – Environmental, social and economic impact	
<p>Q8. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?</p>	<p>The proposal may impact on threatened species or their habitats located on the site.</p> <p>The proposed development footprint requires the removal of native vegetation which constitutes habitat for numerous threatened flora and fauna species. Threatened fauna species include the Koala, Powerful Owl and Squirrel Gliders.</p>

Information	Assessment
	<p>Several records for the Koala occur both within and adjacent to the site along Nelson Bay Road and Gan Gan Road. Whilst Koalas may not have been directly observed on site during ecological surveys, Council is satisfied that there is an active population of Koalas utilising the habitats within the study area. Majority of the Koala records within and adjacent to the site are also injured or deceased individuals, indicating the site may provide a strong habitat corridor east-west.</p> <p>During the 2015 targeted surveys during the breeding period, a Powerful Owl with a dependent chick was observed in the northwest of the study area, within habitat proposed for removal. The proponent has sufficiently surveyed the proposal site to demonstrate Powerful Owl were not nesting or roosting within the proposal site in year 2021.</p> <p>The site exhibits evidence of high usage by Squirrel Glider as is evident by glider feed scars on Red Bloodwood trees that occur within the development site. Similar glider activity has been observed on Council controlled land at the ovals and croquet court adjacent to the proposal site.</p>
<p>Q9. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?</p>	<p>There will be negative environmental effects as a result of the planning proposal as discussed above. The site has a total area of 98 hectares. The area proposed for development is approximately 24 hectares. The balance of the land will be retained for conservation purposes. There is residual estimated requirement for 760 ecosystem credits.</p>
<p>Q10. Has the proposal adequately addressed any social and environmental effects?</p>	<p>There may be potential for positive social and economic impacts as a result of the planning proposal however additional justification would be required. There is insufficient certainty that a hospital will be provided on the site under the SP2 Infrastructure (Hospital) zone to offset the extensive environmental impacts of the planning proposal. There is also substantial clearing required and a substantial residual deficit of biodiversity offset credits required.</p>

Information	Assessment
Section D – Infrastructure (Local, State and Commonwealth)	
<p>Q11. Is there adequate public infrastructure for the planning proposal?</p>	<p>There may be adequate sewer and water public infrastructure for the planning proposal.</p> <p>Supporting information has not been provided to investigate the potential suitability of other land on the Tomaree for the provision of a hospital or certainty for its delivery on the planning proposal site.</p>
Section E – State and Commonwealth Interests	
<p>Q12. What are the views of state and federal public authorities consulted in order to inform the Gateway determination?</p>	<p>Preliminary consultation was previously undertaken with the NSW Department of Planning and Environment and the NSW Office of Environment and Heritage.</p> <p>The Department of Planning and Environment commented that inclusion of the site in the previous Port Stephens Planning Strategy was not supported.</p> <p>The NSW Office of Environment and Heritage commented previously that the site has significant ecological constraints.</p>
<p>Part 4 – Maps containing sufficient detail to indicate the substantive effect of the planning proposal.</p>	<p>The maps included in the planning proposal adequately identify the substantive effect of the planning proposal including a master plan and associated draft local environmental plan maps.</p>
<p>Part 5 – Details of the community consultation that is to be undertaken before consideration is given to the making of the proposed instrument</p>	<p>The community consultation requirements would be set by a Gateway determination.</p>
<p>Part 6 – Projected timeline of the plan making process</p>	<p>The projected timeline as detailed in the planning proposal is not considered appropriate. There are significant unresolved site and strategic planning issues that require further consideration and uncertainty about delivery of the intended outcomes (hospital) to support the preparation of a planning proposal for the site.</p>

TECHNICAL CONTENT ASSESSMENT

Assessment of technical information

Supporting plans and studies	Assessment
Site specific DCP	A site-specific DCP is not provided or necessarily required however it may assist in guiding the preparation and assessment of any future development application.
Traffic impact assessment	The planning proposal provides that a traffic assessment report will be completed within 6 months of a Gateway determination. No objection was raised on traffic issues during initial internal consultation.
Bushfire hazard assessment	A bushfire threat assessment report is not provided. The master plan indicates bushfire asset protection zones and road access. Consultation with the NSW Rural Fire Service would be required.
Flora and fauna assessment	<p>The site has high environmental value. Considering that vegetation across the majority of the site and within the proposed development footprint is considered to meet the definition of old growth forest and considering the high level of threatened biodiversity activity on the site, the current C2 Environmental Conservation zoning is suitable.</p> <p>The ecological information provided does not provide evidence that the proposed development area is not of high ecological value. The information submitted supports that should Council wish to proceed, the area selected for future development is the most suitable location on site (from an ecological perspective).</p> <p>The proposal seeks to rezone and develop 24 hectares. The remaining 74 hectares of the site will remain zoned C2 Environmental Conservation. The proponent estimates there will be a residual requirement to obtain 760 ecosystem credits under the NSW Biodiversity Offsets Scheme.</p> <p>The site has been sufficiently surveyed to demonstrate Powerful Owl were not nesting or roosting within the proposal site in 2021.</p>

Supporting plans and studies	Assessment
	The proposed development footprint will impact upon approximately 24 hectares of Supplementary Koala Habitat under the Port Stephens Comprehensive Koala Plan of Management.
Geotechnical assessment	The submitted Site Regrade Plan indicates substantial earthworks and site regrading would be required to facilitate a future potential development (cut -265,625m ³ ; fill 166,485m ³ ; balance -99,140m ³). The proposal will significantly affect the local landscape form.
Contamination assessment	<p>The planning proposal includes a Preliminary Site Contamination Investigation that considers contamination risk (GHD, May 2003). The investigation identifies land outside of the proposed rezoning footprint that should be further investigated for potential asbestos and other contaminants near the former army camp buildings.</p> <p>Any risk within the proposed zoning footprint is likely to be very low and could be further considered (if required). The development footprint is not identified as a risk in the submitted investigation.</p>
Economic sensitivity analysis	The submitted planning proposal estimates the following direct economic effects during the operating phase of a hospital and residential community: Output \$23.865M; Employment 173 jobs; Wages and Salaries \$12.958M; Value-added \$15.972M. There are also potential substantial indirect monetary effects if the site were to be developed.
Heritage impact assessment	The planning proposal provides that additional Aboriginal heritage investigations will be completed within 8 months of a Gateway determination. This matter requires careful consideration and may further delay consideration and the form of any planning proposal. The submitted master plan indicates that a road will affect upon an item of Aboriginal heritage. It is not demonstrated that the proposal has addressed all of the relevant criteria for Aboriginal cultural heritage in Appendix 1 of Live Port Stephens.

Supporting plans and studies	Assessment
	<p>There is no information provided on consultation with Aboriginal groups.</p> <p>The Gan Gan Army Camp is listed as being of local heritage significance in the LEP. The proposed zoning footprint does not affect the site of the former army camp buildings.</p>
Social impact assessment	<p>The submitted Market Potential Assessment Report (Location IQ 2017) identified the most likely facilities that could be provided at the site would be around aged care and independent living units, together with medical facilities that could possibly include a hospital and a number of medical specialists with associated community benefits. There is evidence of high demand for medical services and aged care accommodation on the Tomaree.</p>

RECOMMENDATION

The planning proposal is considered to have insufficient site and strategic merit to proceed to Gateway.

ITEM NO. 3

**FILE NO: 22/165638
EDRMS NO: PSC2017-00180**

PLANS OF MANAGEMENT: SHOAL BAY HOLIDAY PARK, FINGAL BAY HOLIDAY PARK AND HALIFAX HOLIDAY PARK

REPORT OF: KIM LATHAM - HOLIDAY PARKS SECTION MANAGER
GROUP: CORPORATE SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Place the draft Plan of Management (PoM) on public exhibition for Shoal Bay Holiday Park and Fingal Bay Holiday Park in accordance with section 38 of the Local Government Act 1993.
 - 2) Note that under clause 70A of the Crown Land Management Regulation (2016) a public hearing is not required.
 - 3) Agree to adopt the Plan of Management for Shoal Bay Holiday Park and Fingal Bay Holiday Park following the public exhibition period, should no submissions be received.
 - 4) Adopt the Plan of Management for Halifax Holiday Park in accordance with section 38 of the Local Government Act 1993.
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BACKGROUND

The purpose of this report is to endorse the public exhibition of the Plan of Management (PoM) for Shoal Bay Holiday Park (**ATTACHMENT 1**) and Fingal Bay Holiday Park (**ATTACHMENT 2**) and adopt the PoM's on completion of the exhibition period if no submissions are received.

Further, this report seeks to authorise the adoption of the already exhibited Plan of Management for Halifax Holiday Park (**ATTACHMENT 3**) supported by the Plan of Management, Halifax Holiday Park Post Exhibition Report (**ATTACHMENT 4**).

The draft PoM for Halifax Holiday Park has not changed since it was exhibited in July 2019 with no objections received. Reference is also made within the PoM to Lot 424 noted as 'precinct 7' with no plans to change the current land use from a community recreational open space.

The draft PoM for Shoal Bay Holiday Park was exhibited in July 2019 but requires re-exhibition as a result of a change to precinct 1A (Bernie Thompson Reserve) with plans to construct a structured public car park.

The draft PoM for Fingal Bay Holiday Park was delayed as a result of Crown Land's reclassification process. Crown Land have now confirmed the Holiday Park as community land so we can proceed to exhibit the draft PoM.

ORDINARY COUNCIL - 9 AUGUST 2022

The Crown Land Management Act 2016 (CLM Act), authorises local councils that have been appointed to manage dedicated or reserved Crown land to manage that land as if it were public land under the Local Government Act 1993 (LG Act).

In accordance with the CLM Act, Port Stephens Council is required to prepare new Plans of Management for Halifax, Shoal Bay and Fingal Bay Holiday Parks and adhere to the specific requirements stated in Division 3.6 of the CLM Act. This includes the requirement to undertake community engagement on a draft plan of management which has already been completed for Halifax Holiday Park.

The Plans of Management establish objectives, strategies and performance targets for the ongoing operation and development of the Holiday Parks. The PoM's seek to conserve and maintain the natural environment of the Holiday Parks while providing a range of recreation and accommodation opportunities for visitors. As a key source of non-rate revenue to Council, the PoM's ensure we remain competitive in the market and can continue to optimise the economic benefit to the community.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2022-2026
Financial Management.	Implement the 2022 to 2025 Delivery Plans for Beachside Holiday Parks and Koala Sanctuary.

FINANCIAL/RESOURCE IMPLICATIONS

There are no financial or resource implications associated with the Plans of Management.

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

Clause 70A of the Crown Land Management Regulation 2016 exempts councils from conducting a public hearing under section 40A of the LG Act. The only requirement is to publicly exhibit the PoM under section 38 of LG Act.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that the continued viability of each Holiday Park will not be managed appropriately if the PoM's are not adopted.	High	Adopt the recommendations.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The new draft PoM's will allow the continued management and delivery of successful business outcomes for Council's Crown Land Holiday Parks as listed in the Beachside Holiday Parks Delivery Plan which include economic, social and environmental objectives.

CONSULTATION

Consultation with key stakeholders has been undertaken by the Holiday Parks Section.

Internal

- Holiday Parks Management.
- Strategic Property Coordinator.

External

- Crown Lands.
- Community groups.
- Holiday Van Consultative Committee.

In accordance with local government legislation the draft PoM's for Shoal Bay Holiday Park and Fingal Bay Holiday Park will go on public exhibition for 42 days.

OPTIONS

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

ATTACHMENTS

- 1) Plan of Management - Shoal Bay Holiday Park. (Provided under separate cover)
- 2) Plan of Management - Fingal Bay Holiday Park. (Provided under separate cover)

ORDINARY COUNCIL - 9 AUGUST 2022

- 3) Plan of Management - Halifax Holiday Park. (Provided under separate cover)
- 4) Halifax Holiday Park Post Exhibition Report. (Provided under separate cover)

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ITEM NO. 4

**FILE NO: 22/189233
EDRMS NO: 22/176812**

NSW PUBLIC SPACES CHARTER

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Become a signatory to the NSW Public Spaces Charter (**ATTACHMENT 1**).

BACKGROUND

The purpose of this report is to recommend that Council become a signatory to the NSW Public Spaces Charter (the Charter) (**ATTACHMENT 1**). The Charter identifies 10 principles for quality public space that allows everyone in NSW to enjoy and participate in public life.

The NSW Department of Planning and Environment (DPE) developed the Charter to be used by land managers and anybody involved in the planning, design, delivery or management of public space. It was released in October 2021 and is one of the flagship programs of the NSW Government's priority for Greener Public Spaces. A draft Practitioner's Guide (**ATTACHMENT 2**) has also been prepared to support signatories in planning, designing, managing and activating public spaces.

To promote the delivery of high quality public space, Transport for NSW (TfNSW) has encouraged all Councils to become a signatory to the Charter. Signatories will have access to a network of other local government areas which will provide an opportunity for information, data sharing and support.

The Charter is consistent with Council's approach to planning open space. Council is currently focusing on the delivery of high quality public space through implementation of the Recreation Strategy, Public Domain Plans and Place Plans.

Becoming a signatory to the Charter would confirm Council's commitment to delivering high quality spaces, and may result in opportunities for grant funding programs and State endorsement of Council plans into the future. Becoming a signatory of the Charter will not have a financial or resourcing impact on Council's current open space operations.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2022-2026
Thriving and Safe Place to Live	Provide land use plans, tools and advice that sustainably support the community.

FINANCIAL/RESOURCE IMPLICATIONS

There are no financial or 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

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
There is a risk that Council will not have access to best practice guides, information and data to delivery high quality public spaces.	Low	Adopt the recommendation to become a signatory to the Charter	Yes
There is a risk that Council may be ineligible for future grant applications if Council does not become a signatory.	Low	Adopt the recommendation to become a signatory to the Charter	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Becoming a signatory to the Charter would provide an opportunity to demonstrate to the NSW Government and to the community, a commitment to manage our high-quality open spaces in a sustainable way.

The Charter will help Council to provide or advocate for better public spaces and could result in opportunities for grant funding and State endorsement of Council plans into the future.

CONSULTATION

Internal consultation has been undertaken by the Strategy and Environment Section with the Assets and Public Domain and Services Sections.

Consultation with other key stakeholders has been undertaken by the Department of Planning and Environment.

The Charter was prepared in consultation with Aboriginal peoples, community members and representatives from state and local government, industry, the business and cultural sectors and a diverse range of public space experts.

OPTIONS

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

ATTACHMENTS

- 1) NSW Public Spaces Charter. [↓](#)
- 2) Draft NSW Public Spaces Practitioner's Guide. (Provided under separate cover)

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.



NSW Public Spaces Charter

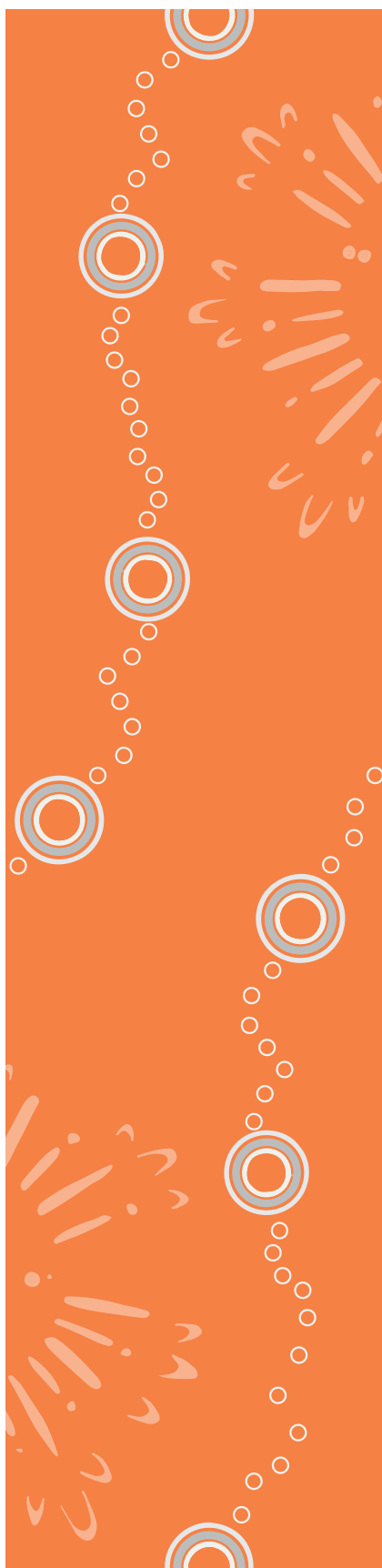
Ten principles for public space in NSW



NSW Department of Planning,
Industry and Environment

October 2021





Acknowledgement of Country

The Department of Planning, Industry and Environment acknowledges the Traditional Custodians of the land and pays respect to Elders past, present and future.

We recognise Aboriginal and Torres Strait Islander peoples' unique cultural and spiritual relationships to place and their rich contribution to society. NSW is Aboriginal land, so throughout this document Aboriginal peoples are referred to specifically, rather than First Nations, or Torres Strait Islander peoples.

Aboriginal peoples take a holistic view of land, water and culture and see them as one, not in isolation to each other. The NSW Public Spaces Charter is based on the premise upheld by Aboriginal peoples that if we care for Country, it will care for us.

Published by the NSW Department of Planning, Industry and Environment

dpie.nsw.gov.au

NSW Public Spaces Charter

Image on front cover: Noreuil Park, Albury. Courtesy of Destination NSW.

Artwork (left) by Nikita Ridgeway.

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Ministerial foreword

As the first NSW Minister for Public Spaces, it's clear to me that public space is everyone's business. This is why it's a priority of the NSW Government to increase access to quality, green public spaces, and why we have developed the NSW Public Spaces Charter.

The charter provides ten principles for quality public space that have been designed to maximise the social, cultural, environmental and economic benefits that public space delivers.

The charter has been more than a year in the making and is based on deep and broad engagement. It's truly a community-led tool, designed in collaboration with practitioners and reflecting what communities love about public spaces and what they tell us should be improved.

In November 2021 the NSW Government released survey results showing almost half of respondents were using public spaces and parks more than ever before.

Indeed, our love for public spaces has never been more in focus. It's no secret that the pandemic has emphasised the inherent need we have for safe and welcoming public space. At the height of COVID-19, many of us experienced newfound joy and delight in public spaces that we may have previously taken for granted. This showed how much we need them on a physical, emotional and psychological level.

The Government is responding to the community with this new charter. We're setting the bar to help change how people think about, view, and engage with great public spaces.

This unifying set of principles, based on solid evidence and research, will underpin the creation and improvement of high-quality public spaces across NSW.

All our public spaces should reflect the values, needs and aspirations of the communities they serve, including those who are vulnerable and hard-to-reach. Ensuring public spaces are

equitable and inclusive will lead to the creation of a more just State. Making public spaces that enable social interaction in beautiful places is an amazing vision that I believe everyone can share.

I encourage every organisation that creates, cares for, and uses public spaces in NSW to sign up to the charter. Let's work together to bring forth a new legacy for public space. Let's use these principles to transform how we think about and deliver quality public spaces that help all NSW communities love the places they live.



The Hon. Rob Stokes, MP
Minister for Planning and Public Spaces
Minister for Transport and Roads



Statement of Country

*Barangaroo Reserve.
Photographer: Alison Page
and Nikolas Lachajczak*

Country is a holistic worldview that incorporates humans, non-humans, more-than-humans and all the complex networks and systems that connect them. Country is known to be alive and sentient, and continually communicating. Country is not constrained by boundaries, lines on a map, or edges of a site. Instead, Country soars high into the atmosphere, plunges far into the ocean, and deep into the earth's crust. Country has diverse and distinct ways of expressing and being understood depending on the people, place, and context. Country is associated with Aboriginal people's cultural groups, it is where their ancestors still walk, and the places to which they belong. But it is much more than this. Country is known in physical, spiritual, and cultural ways. Tangibly it might include the flora, fauna, geology, elements, and waters. Intangibly Country includes expressions about place, spirit, narratives, identity, cultural practice, Law, lore, languages, and customs. Country holds all these individual aspects together harmoniously, storing knowledges like an eternal library.

While it may not have been built in the way it is currently understood, Aboriginal people have always designed and managed the environment, in collaboration with Country. The built environment is part of Country and needs to be cared for and designed as such. Likewise, relating to Country through public spaces enables those

spaces to embody the spirit of place as story, culture and life are celebrated there. Because Country communicates and holds all knowledges, Country can guide what it needs to be healthy, and how it must be designed and managed, including in public spaces. Being in and activating public spaces as an extension of Country is part of caring for Country. Allowing Country to be lead designer or planner ensures the inclusion of all who access spaces, not just humans, as Country is inherently inclusive. Knowledge Holders of Country are descended from Country and know it best. Working together with them is key to understanding how to connect with and care for Country. Everyone is responsible for caring for Country as we all live, learn, work, and play on Country.

With thanks to the Elders, Knowledge Holders, kin, and family who have generously shared their knowledges and means of connecting to Country. With thanks to Country for providing these words and understandings.

Dr Danièle Hromek

Dr Hromek is a Budawang woman of the Yuin nation. She works as a cultural designer and researcher considering how to Indigenise the built environment by creating spaces to substantially affect Indigenous rights and culture within an institution.



Western Sydney Parklands.
Courtesy of Greater Sydney Parklands

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Introduction

Public space is where public life happens.

It guides and shapes our experience of the places where we live, work and visit, filling them with vibrancy and energy as we connect, interact and share with others. It begins the moment you leave your front door and connects us to both work and leisure, and public and personal life. It includes the streets we walk or cycle in, the town squares we socialise in, libraries we learn in, community halls we gather in and parks, playgrounds and sport fields where we relax or play. It provides a wealth of social, cultural, economic and environmental benefits that are critical to the health, wellbeing and prosperity of communities.

People are at the heart of public space. The way they use it transforms it into a meaningful place with layers of shared experiences, collective memories and a mixture of identities. When people feel attached to public space, they are more likely to adopt, use and care for the space themselves and have a more powerful sense of belonging to their community.

Greek Festival of Sydney, Darling Harbour. Courtesy of Placemaking NSW



Public spaces are all places publicly owned or of public use, accessible and enjoyable by all for free and without a profit motive. They include:



PUBLIC OPEN SPACES

parks, gardens, playgrounds, public beaches, riverbanks and waterfronts, outdoor playing fields and courts, and bushland that is open for public access



PUBLIC FACILITIES

public libraries, museums, galleries, civic/community centres, showgrounds and indoor public sports facilities



STREETS

streets, avenues and boulevards; squares and plazas; pavements; passages and lanes, and bicycle paths

The quality of public space is just as important as its accessibility, as quality makes people feel safe, welcome and included. The quality of a public space is reflected not only in its physical form—how it’s designed, maintained and integrated with its environment—but also through the activities it supports and the meaning it holds. It can be evaluated by asking:

- Am I able to get there?
- Am I able to play and participate?
- Am I able to stay?
- Am I able to connect?

The purpose of the charter

The NSW Department of Planning, Industry and Environment has developed the NSW Public Spaces Charter to support everyone in NSW to have access to high-quality public space that allows them to enjoy and participate in public life. The charter identifies 10 principles for quality public space that distil and reflect evidence-based research, best practice and consultation with Aboriginal peoples, community members and representatives from state and local government, industry, the business and cultural sectors and a diverse range of public space experts.

The charter's principles are premised on the understanding that there isn't a one-size-fits-all approach to public space. Every public space has its own unique history, heritage, context and is supporting the different needs and uses of a specific community. There are significant and important differences in landscape, climate, amenity, population density and social and cultural demographics across Greater Sydney and regional and rural New South Wales. All these factors influence where and how people use public space and what the priorities are for their community. There are no set rules as to where and how the charter applies - it could apply to the management of a national or regional scale parkland, just as it could to the design of a new pocket park.



*Wagga Beach,
Wagga Wagga.
Courtesy of Wagga
Wagga City Council*

The 10 principles

The charter identifies 10 principles for quality public space, to support all those who advocate on behalf of, provide advice on, make decisions about, or plan, design, manage and activate public spaces in NSW.



The values

The charter is also built on the following core values that resonate strongly across all the principles. These values should always be considered when applying the principles.

Courtesy of Destination NSW



Connection to Country

All public space in NSW is on Country, which is at the core of every Aboriginal person's identity and sense of belonging. It is the place from which Aboriginal languages and cultures are derived, which determine families, kinship and communities. Aboriginal peoples are the Traditional Custodians of all public space in New South Wales. Acknowledging and valuing Aboriginal peoples and cultural knowledge when public space is planned, managed and delivered can promote and strengthen connection to Country and create healing for both Aboriginal communities and non-Aboriginal peoples too.

Courtesy of Adam Hollingworth



Equity and inclusion

Public space is a community asset that should support a society in which everyone can participate, prosper, and reach their potential. Inclusion in public spaces and in the processes to plan, design, manage and activate them is central to creating equitable public spaces and ensuring all people can access the benefits they provide.



Community engagement

Engaging the community as active participants in decision-making processes when planning, designing, managing and activating public space will help ensure that it reflects their values, needs and aspirations. Participatory processes, collaboration and co-design in public space projects help build trust, which then increases people's use of and attachment to the space. Ensuring that vulnerable and hard-to-reach communities are engaged in these processes leads to more welcoming and inclusive public space.

*Kids on Q, Campbelltown.
Courtesy of Campbelltown City Council*

Who should use the charter

The charter can be used by any organisation or practitioner involved in the planning, design, delivery, management or evaluation of public space. Becoming a signatory to the NSW Public Spaces Charter will help your organisation to provide or advocate for better public spaces. It will also allow your organisation to access the charter's community of practice, one-on-one support from the department, promotional opportunities and data sharing. Examples of how the charter can be used are outlined below.



The community can use the 10 principles to understand the value and benefits of quality public space. The charter will help the community to participate in the conversation about how public spaces should be planned, designed, managed and activated.



Local businesses and chambers of commerce can use the 10 principles to better understand how they can leverage public spaces for their business and advocate for public spaces in their area.



Public space managers can use the 10 principles to inform plans of management and the policies and programming that respond to the needs of their users.



Development professionals such as architects, heritage specialists and arborists can use the 10 principles to inform the design and delivery of a public space.



Strategic and statutory planners can apply the 10 principles as they develop planning proposals, local planning instruments and plans for precincts, local government areas, districts or regions.



Industry bodies can use the 10 principles to inform and support members involved in the planning, design, delivery, management or evaluation of public space.



Public policy makers can incorporate the 10 principles within policy and advice that informs NSW Government and council investment priorities.



Developers can draw from the 10 principles to plan for and provide quality public spaces within their developments.



To become a signatory to the charter, register your interest by emailing Public.Space@planning.nsw.gov.au

Using the charter

We have developed the charter to support all those who advocate on behalf of, provide advice on, make decisions about, or plan, design, manage and activate public spaces in NSW.

It is intended to align with other government and non-government strategies and policies for creating great places, where people can easily access a diversity of public spaces to enjoy the outdoors, interact with others or just relax.

The charter can also be used by the community to understand what quality public space is and to inform their participation when they are engaged in decisions about how public space is planned, designed, managed and activated.

Practitioner's guide

An accompanying practitioner's guide supports the charter. We have developed this to help practitioners understand the charter and how they can embed it into their work. The guide also explains the 10 charter principles and how practitioners should apply these when planning, designing, managing and activating public space.

For each of the 10 principles, the guide:

- explains the principles
- describes what the principle will look like in action
- provides practitioner tips to support how the principle can be followed as public space is planned, designed, managed and activated

- provides relevant examples
- links to relevant, supporting policies or plans.

Great Public Spaces Toolkit

The charter and practitioner's guide are also supported by the [Great Public Spaces Toolkit](#), which provides in-depth case studies and free resources to support local government, state agencies, industry and the community. The toolkit includes the Great Public Spaces Guide and the Evaluation Tool for Public Space and Public Life, which can be used by anyone who wants to better understand the strengths and areas for improvement in a public space.

Become a signatory

While we have developed the charter for use by anybody involved in the planning, design, delivery or management of public space, the Department of Planning, Industry and Environment encourages organisations and practitioners to become signatories to it. In becoming a signatory to the NSW Public Spaces Charter, an organisation or individual is showing a commitment to embed the 10 principles when they plan for, design, manage or activate public spaces.

Signatories to the charter will be supported with advice from the NSW Public Spaces Charter project team on how to develop an action plan to implement the Charter in their organisation or practice. They will also have access to a community of practice, delivered quarterly. The community of practice will be focused on building the capacity of signatories to apply the charter, by connecting them to public space experts and providing opportunities for information and data sharing and for promoting their own public space projects or practice.

To register your organisation's interest in becoming a signatory to the charter, email PublicSpace@planning.nsw.gov.au

While the department does not intend to subject the charter to regular review, we may update it as required to reflect contemporary practice and emerging research.



Unity Place, Burwood.
Courtesy of Burwood Council

10 PRINCIPLES



*Stirling Brown,
Mavis Feirer, Queenie
Walker, Janelle Brown
and Robyn Bancroft in
Market Square, Grafton
Photographer: Alison Page
and Nikolas Lachajczak*

PRINCIPLE #1

Open and welcoming



Everyone can access public space and feel welcome, respected and included.



Prince Alfred Square, Parramatta. Courtesy of Destination NSW

Public space should be inclusive of all people, regardless of their gender, age, sexuality, race, ethnicity, religion, cultural background, socioeconomic status, ability and/or personal values, so social, cultural, environmental and economic benefits are shared equitably.

For public space to be inclusive, it must be culturally, physically and socially accessible, and perceived by the community to be so. They should be places where everyone feels safe, welcome and able to participate in public life. They should offer a diversity of uses and well-designed experiences that are free of charge regardless of income, ability or where they live. Amenities such as seating, shade and shelter, end-of-trip facilities, accessible toilets and inclusive play spaces that anyone can use and enjoy should be provided.

The physical design of a space, how people get there and move through and between public spaces, is critical. Public space should be designed and maintained to ensure the highest possible level of accessibility, so that people of all ages and with differing cognitive, sensory, physical, or developmental abilities can use them with dignity and ease. They should have

clear entrances and exits, open sightlines, visible wayfinding and clear navigation. They should be well integrated with surrounding land uses and public transport options, and easy to walk or cycle to.

Individual public spaces can have distinct purposes and functions, and may not be able to cater to every need. Planning public spaces to be linked and equitably distributed can create a more connected network of spaces that work together, and support each other.

Creating open and welcoming public spaces requires early and ongoing engagement with communities regarding how they are planned, designed, managed and activated. Including diverse groups of people, including Aboriginal peoples, young people, people with disability, people experiencing homelessness and culturally and linguistically diverse people in shaping public spaces can help create more accessible, inclusive and welcoming public spaces for everyone. It is especially important to have strategies in place to engage community members and groups who have historically felt excluded from these processes.

PRINCIPLE #2

Community focused



Public space brings people together and builds strong, connected and resilient communities.

Public spaces are the meeting and gathering places where we socialise with friends and loved ones and experience social connections that are fundamental to individual and community health and wellbeing.

Public space is important because it can bring us side-by-side with people whom we don't know, to share space and experiences with others who are different from us. This can create mutual understanding, empathy and trust, which over time strengthens the social capital of communities. Social capital is what makes communities cohesive and resilient, providing them with the relationships and networks of support that they need to withstand and adapt to broader economic and social shifts.

A key outcome when planning, designing, managing and activating a public space should be how it facilitates formal and informal social interaction and fosters social connectedness amongst diverse people, cultural communities, age groups, religious groups, families and friends.

Public spaces must also be places that promote equity, inclusion, social justice and democracy. They should allow free expression, collective action, public debate and opportunities for people of all backgrounds to participate in civic life.

Public space that is community-led, with a strong foundation of inclusive and equitable engagement, collaboration and co-design is more likely to meet the desires, expectations, traditions and needs of its community. Involving the community, including diverse, under-represented and hard-to-reach groups, in decisions about how public space is planned, designed, managed and activated builds trust and ultimately a sense of belonging and attachment to place.

*Kerrabee Soundshell, Moama.
Courtesy of Murray River Council/Rebecca Pilgrim*



PRINCIPLE #3



Culture and creativity

Public space provides a platform for culture and creative expression that makes places more colourful, animated and thought-provoking.

All public space is on Country, which is deeply embedded with knowledge and memories that are the starting point for considering the culture of a place. Aboriginal peoples have always used ceremony, rituals and storytelling to engage with the spirit of a place, activate memories and connect with Country.

It's important that Aboriginal peoples can access public spaces for cultural practices, which incorporate any practice that connects them to their culture, Country and Dreaming. Cultural practices may involve caring for Country activities and are not restricted to traditional practices.

By listening to Aboriginal peoples and sharing the stories of Country, we can all strengthen our understanding of, and connection to, place and to each other. In being sites for truth-telling about our history and the impacts of colonisation, public spaces can also become places of reconciliation and healing.

Culture and creativity are powerful tools for communities to create a positive narrative about who they are and what they want their futures to look like. Arts and culture brings people together, allowing them to share experiences that powerfully builds community. Places with a rich and exciting cultural and creative offering are more liveable and distinct, with people more likely to want to live, work and spend time there.

Public space can embed arts, music, literature, screen, performance and cultural experiences, public art and events directly into the heart of communities. Supporting local opportunities for cultural and creative expression in public spaces encourages more diverse and equitable participation for audiences and artists.

The rich cultural diversity of NSW brings an exciting energy into our public spaces, making them places of cultural interaction and exchange. Programming and events such as concerts, festivals, storytelling, and ceremonies can reflect local histories, cultures and traditions. They can foster social inclusion and intercultural dialogue among diverse communities.



*Manning Regional Art Gallery, Taree.
Courtesy of MidCoast Council*

Public spaces such as libraries, parks, laneways and plazas can provide flexible and informal space that supports ephemeral, temporary and permanent creative works to be more visible, valued, distinctive and accessible. The spaces around and in between public facilities such as libraries, museums, galleries and community centres are especially well-placed locations for planning creative and cultural projects and activities. Place-based approaches that involve local artists and creative organisations can build on the unique identity of a local area and community to activate public spaces.

PRINCIPLE #4

Local character and identity



Public space reflects who we are and our diverse stories and histories.

Public space contains layers of built and natural heritage that cut across time and provide communities with a specific sense of character, place and identity. This heritage can be tangible or intangible, embedded in built form and landscapes or living in stories, memories and oral histories.

Country is the foundation of a place's identity. Public space should acknowledge and reflect Aboriginal languages, place names, and histories. It should provide space for Aboriginal cultures to be practised and shared, as this helps people feel more connected to Country and place. Public spaces such as parks, libraries, community centres, plazas, and sports grounds have aesthetic, historic, scientific, social or spiritual value that enriches our lives and make us feel deeply connected to our community and our landscape.

The character and quality of heritage in public spaces should be carefully managed and maintained, to promote local identity and to pass it on to the future generations. New public spaces should be sympathetic to the history and heritage

of the site and to the communities who live and have lived there, especially in urban renewal and brownfield developments. Adaptive re-use of heritage buildings such as town halls, fire stations and hospitals can provide new and exciting public spaces and uses that build on the history and connection that communities have to these places.

Supporting local artists and creatives to work collaboratively with communities can deliver public art and creative placemaking programs that respond to place and celebrate local stories, cultures and histories.

Communities are the best experts for recognising and valuing the local character and identity of a place and should be engaged early in the process of planning, designing and activating public space. Engaging communities meaningfully and effectively will ensure that diverse voices, cultures and histories can be reflected in the character of public space and everyone feels a more powerful sense of pride and belonging.

*Line of Lode Miners Memorial, Broken Hill
Courtesy of Destination NSW*



PRINCIPLE #5



Green and resilient

Public space connects us to nature, enhances biodiversity and builds climate resilience into communities.



Great River Walk, Penrith. Courtesy of Destination NSW

Public space supports the natural flows and cycles of the environment, by connecting ecological systems and networks of green space, waterways, bushland, riparian landscapes and wildlife corridors. Wildlife relies on public space for food and refuge, and their use and needs should be considered and protected. Native trees and vegetation should be prioritised in public space as these provide animals with their natural habitats, and are more suited to Australian climate and soil conditions.

By respecting, valuing and being guided by Aboriginal knowledge and land management practices in how we care for public space, we can help to support the health and wellbeing of Country. The planning, design, management and activation of public space can also support them to be sites for education about caring for Country's health and wellbeing and their role in supporting biodiversity and broader ecosystems.

Public space should be integrated with green infrastructure to ensure that urban and regional communities have equitable access to the social, environmental and economic benefits of quality green space. Green infrastructure is the network of green spaces, natural systems and semi-natural systems that supports sustainable communities.

It includes waterways, bushland, tree canopy and green ground cover, parks, and green open spaces that are strategically planned, designed and managed to support a good quality of life in the urban environment.

Public space that has quality green infrastructure, including tree canopy cover, can increase the long-term removal and storage of carbon, provide relief from urban heat and heatwaves, improve air and water quality, increase natural shade and the walkability of neighbourhoods, reduce noise pollution and the likelihood of flooding and sewage overflow.

Through careful planning and design, public spaces can build climate resilience into urban and regional communities. This includes using sustainable materials and integrating green walls and roofs into the built environment, providing green fire breaks between natural and built environments and flood mitigation zones in flood-prone areas. Planning and designing adaptable community facilities that are capable of changing use as refuge spaces and distribution points will ensure critical social infrastructure is available in the time of crisis and disaster.

PRINCIPLE #6

Healthy and active



Public space allows everyone to participate in activities that strengthen our health and wellbeing.

Public space plays a crucial role in building sustainable and healthy communities by supporting social interaction and connection and providing play and active recreation opportunities, green and natural environments, access to local healthy foods and safe routes to walk and cycle.

Public space that is well-designed, connected and inclusive can support everyone to build walking, exercise and physical activity into our everyday lives, helping prevent chronic disease such as cancer, heart disease, diabetes and depression. Increased availability and equitable distribution of accessible public open space can improve the opportunities for active and passive recreation, such as walking, running, cycling, team sports, picnicking and playing.

By providing access to cool, green spaces and connecting people to natural landscapes, such as nature trails, river and coastal walks and bushland, public space powerfully improves our mental health, reducing depression, anxiety and stress and improving memory and concentration. It should encourage and support social interaction and connection, which is important to our social wellbeing, and can help to reduce social isolation and loneliness. People should have access to a mix and balance of comfortable, tranquil spaces with places to sit and relax as well as space for higher-intensity activities such as sport and recreation, prioritising appropriate uses for different spaces.

Public space that is safe, well connected and high-quality encourages a culture of walking and cycling. Wider contiguous footpaths, tree canopy and shaded corridors, barriers between traffic and people, well-designed lighting, frequent crossings and lower traffic speeds

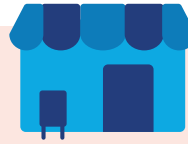
can all contribute to increased walkability. Using a movement and place lens to plan, design and manage streets can help to ensure these dual functions are supported. Street environments should be considered as places to attract people to visit and stay, not just as places to move through. They should contribute to the network of public space within a location, where people can live healthy, productive lives, meet each other, interact, and go about their daily activities.

The quality of public space is crucial in shaping the physical, cognitive and social development of children. Their needs, as well as that of their families, should always be considered. Supporting inclusion in the processes that shape public space will facilitate a broad range of healthy activities and behaviours and enable more people to have equitable access to the health benefits they provide.



*Sydney Olympic Park.
Courtesy of Sydney Olympic Park
Authority/Fiora Sacco*

PRINCIPLE #7



Local business and economies

Public space supports a dynamic economic life and vibrant urban and town centres.

The public space network supports lively high streets, outdoor dining and cafés, and popular tourist destinations, as well as providing low-barrier commercial opportunities, such as markets, food vans and live performance.

The way that we value buildings and places is strongly linked to people's experience of these places and whether it includes spaces that meet their needs. Locations with high-quality, well-designed and well-managed public places attract residents, customers, employees and services, which in turn attracts business and investment. To deliver a high-quality experience, public space should have a strong vision and layers of activities to attract different groups of people and helps them form a connection to place.

Privately-owned spaces and commercial activity can complement and activate public space, but this should not compromise their primary function of delivering public benefit. Active facades, building edges and podiums can create economic activity and vitality that draws people into an area, while public space attracts diverse groups of people and connects them to retail and business. Town centres and retail precincts that are supported with quality public spaces where people can sit, rest and connect with each other are more likely to thrive.

Using streets as public spaces can create more vibrant and dynamic retail and hospitality precincts and attract higher foot traffic. Activating streets and laneways with creative



Blak Markets, La Perouse. Courtesy of Destination NSW

placemaking and programming can breathe life and energy into public space that turns neighbourhoods into destinations, spurs innovation and improves land and property value.

Activating public spaces such as parks, plazas, libraries, museums and community centres in a safe and welcoming way after dark is critical for a more diverse and vibrant night-time economy. Understanding the rhythm and patterns of how public space is used at different times of the day can inform a strategic and place-based approach to programming and activation that supports the local economy at all hours.

PRINCIPLE #8

Safe and secure



Everyone feels safe to access and use public space at all times of the day.

Perceptions of personal safety influence how public spaces are accessed and used. Public space feels safer when it is well-used and inclusive, and people can see and interact with others. It should encourage a diverse mix of intergenerational and intercultural users, and recognise children as active users of the space. It should be activated with a mix of uses at all times of the day and people-oriented lighting at night, especially along pedestrian and cycle routes.

Incorporating crime-prevention strategies such as the Crime Prevention Through Environmental Design principles when planning and designing public space can reduce crime and anti-social behaviours, making places and spaces feel safer, which in turn can enhance the physical, mental and social wellbeing of community members. It's important, however, that strategies and approaches to designing and managing safe public spaces don't strip them of their

distinctiveness and public amenity, or cause marginalised groups to be excluded.

Risk assessments and safety audits are valuable tools for understanding if there are safety issues in a public space and what measures could be put in place to address these. Consulting diverse groups of people, including women and vulnerable or marginalised groups, is important to understand their experience of accessing and using public space and their perception of its safety.

Feeling culturally, physically and spiritually safe when accessing public spaces is especially important for Aboriginal peoples and communities. Involving Aboriginal communities, at all stages of public spaces development and its continuing management, is key to creating and maintaining culturally safe places.

*Inner West Fest - Baludarrri.
Courtesy of Inner West Council/Daniel Kukec*



PRINCIPLE #9



Designed for place

Public space is flexible and responds to its environment to meet the needs of its community.



*Leagues Club Park, Gosford.
Courtesy of Hunter & Central Coast Development Corporation*

The way that public space is designed can directly or indirectly affect the way that it is used, and who uses it. Public space should provide open space and facilities that are multi-purpose, connected and flexible enough to support a broad range of uses, activities and experiences throughout the day and night. It should respond to its environment and the diversity of its users, incorporating universal design principles so that everyone can enjoy it, regardless of age, ability and mobility.

Public space that is co-located with other uses, such as education, health, cultural facilities and other public spaces, can help create a sense of place and community. For example, co-locating libraries within community centres or open space near schools can diversify the use of these spaces and provide more equitable access. Planning for place across the whole lifecycle of a project, from concept, to design, delivery and implementation will lead to more successful public spaces.

Every public space is unique and has its own specific context, community and environment. It should be fit-for-purpose, designed with an understanding of how it will be used and who will use it. It should be capable of adapting to

changing uses and demands. It should encourage formal and informal interaction and provide people with different levels of engagement so that they don't have to interact with the space in the same way. It should have complementary uses whenever possible and be well-connected to surrounding areas and other public space to provide a richer experience for its users.

The connectivity of public space to the ground floor of buildings and the way they work together to support each other is important. Planning, designing and activating ground planes that support surrounding streets, laneways and open spaces encourages vibrant public life and provides a continuous network of pathways and experiences that makes it easier and safer for people to move around.

Aboriginal Knowledge Holders, organisations and communities should be engaged at an early stage of the design process for public space, to ensure that knowledge about Country is considered. This could include identifying stories or narratives connected to a place that can inform its design, or to understand if there are key movement paths or Songlines that can direct how people move in and through the public space.

PRINCIPLE #10



Well-managed

Well-managed and maintained public space functions better and invites people to use and care for it.

All public spaces require some form of management so that they can continue to fulfil their various roles and provide a safe and welcoming environment. There are often multiple and diverse stakeholders whose involvement, activities and relationships can affect the quality of a public space and who have their own concerns and needs for how the space should be maintained. Public space management and governance agreements, strategies and frameworks that define roles and responsibilities, support collaboration and consider sustainable funding models can deliver better place quality outcomes.

Public space should be managed in a way that encourages and is considerate of users. Rules governing public space should only restrict activities and behaviours that are unsafe and shouldn't target user groups who have historically been excluded from public space, including young people, Aboriginal peoples and people experiencing homelessness.

Public spaces should be designed with consideration of their financial sustainability, and how long-term operating and maintenance costs can be minimised. Smart infrastructure, systems and technology can also improve the ways that public space is monitored and managed. Cleaning, maintenance and repairs of public space and its amenities should be carried out in line with their levels of use to maintain a welcoming environment.

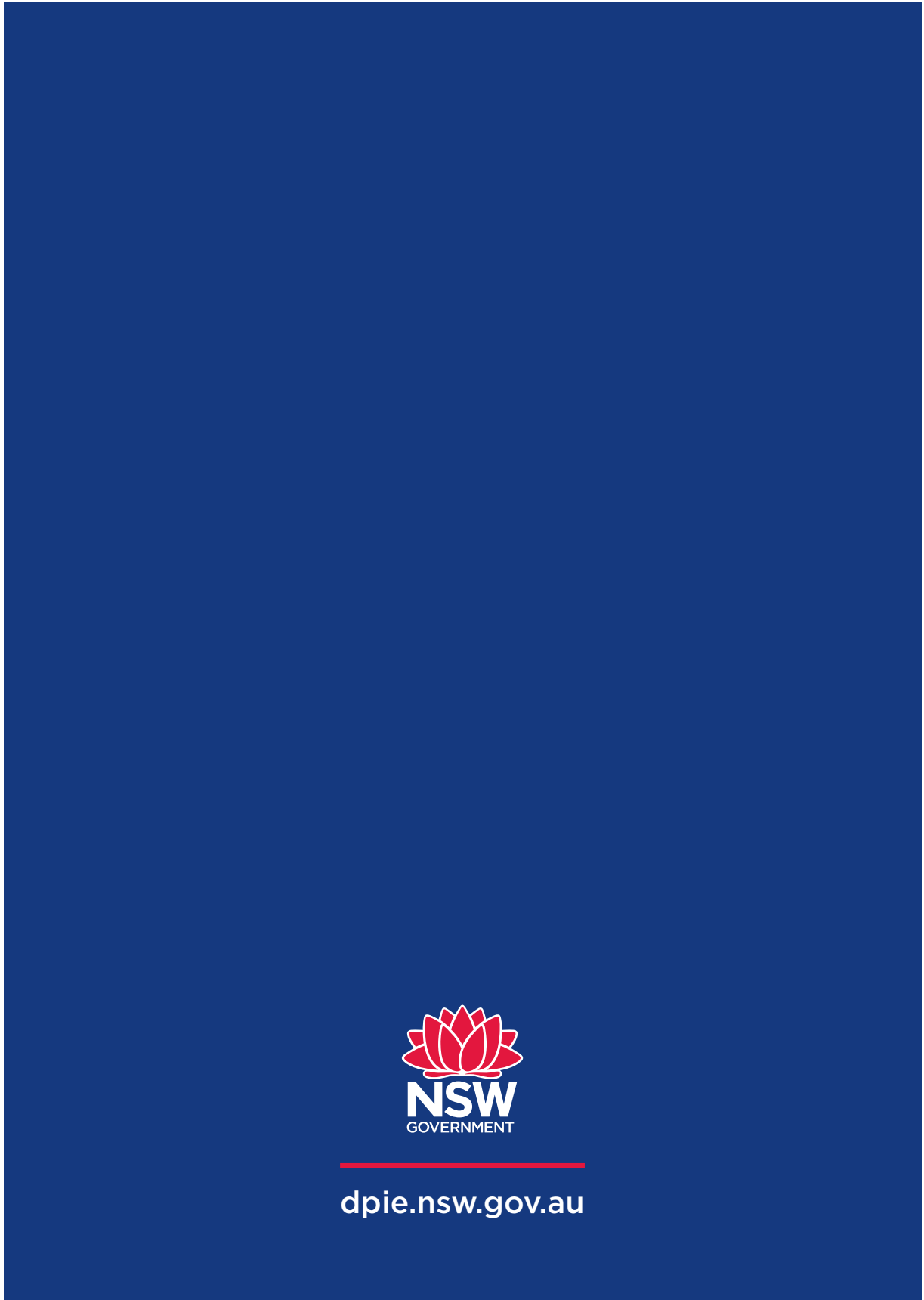
Aboriginal people are experts in land management practices that ensure the health and wellbeing of Country. Valuing and respecting Aboriginal cultural knowledge and working with Aboriginal peoples should be a priority in managing public space. This will also ensure that culturally significant places are respected and protected, and there is access for cultural practice.

Flexible community-led design, inclusive processes and capacity-building can also

foster more efficient and dynamic models of stewardship to emerge. When power and responsibility for managing public space is shared with the community, people feel more invested and are more willing to maintain, program, beautify, and advocate for those spaces. Volunteer groups such as scouts and girl guides, local schools, sports and surf lifesaving clubs, bush care groups or citizen science networks can provide valuable community partnerships for managing public space.

*Royal Botanic Gardens Sydney's Aboriginal Education & Engagement Manager Renee Cawthorne
Courtesy of Royal Botanic Gardens and Domain Trust*





dpie.nsw.gov.au

ITEM NO. 5

**FILE NO: 22/206535
EDRMS NO: PSC2021-04206**

REQUEST FOR FINANCIAL ASSISTANCE

REPORT OF: TIMOTHY CROSDALE - ACTING 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. Irrawang High School – Mayoral funds - \$1300 donation supporting Creative and Performing Arts (CAPA) students on an upcoming road trip event.
 - b. Raymond Terrace Soccer Club - West Ward funds - \$1000 donation towards supporting the All Age Women's Team to participate in the State Cup.

BACKGROUND

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

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

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

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

The requests for financial assistance are shown below:

ORDINARY COUNCIL - 9 AUGUST 2022**MAYORAL FUNDS – Mayor Palmer**

Irrawang High School	Irrawang High School is a government funded coeducational secondary school located in Raymond Terrace.	\$1300	Donation towards supporting students to attend a Creating and Performing Arts road trip event.
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WARD FUNDS

Raymond Terrace Soccer Club	Raymond Terrace Soccer Club is a local sporting club supporting children through to adults taking part in competitive football.	\$1000	Donation towards supporting the All Age Women's Team to participate in the State Cup.
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COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2022-2026
Thriving and safe place to live	Provide the Community Financial Assistance Program

FINANCIAL/RESOURCE IMPLICATIONS

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

LEGAL 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. 6

**FILE NO: 22/199243
EDRMS NO: PSC2022-02308**

INFORMATION PAPERS

REPORT OF: TIMOTHY CROSDALE - ACTING GENERAL MANAGER
GROUP: GENERAL MANAGER'S OFFICE

RECOMMENDATION IS THAT COUNCIL:

Receives and notes the Information Papers listed below being presented to Council on 9 August 2022.

No:	Report Title	Page:
1	Review of Management Options for the Raymond Terrace Flying Fox Camp	98
2	DELEGATIONS - MAYOR	110
3	Questions on Notice / Questions with Notice	115
4	Council Resolutions	116

INFORMATION PAPERS

ITEM NO. 1

**FILE NO: 22/143744
EDRMS NO: PSC2013-04598**

REVIEW OF MANAGEMENT OPTIONS FOR THE RAYMOND TERRACE FLYING FOX CAMP

REPORT OF: BROCK LAMONT - STRATEGY & ENVIRONMENT SECTION
MANAGER

GROUP: DEVELOPMENT SERVICES

BACKGROUND

The purpose of this report is to provide further information on the Grey-headed Flying fox (GHFF) breeding colony in Ross Wallbridge Reserve, Raymond Terrace. Council provided an update on the operation of the existing Plan of Management at the 26 April 2022 Council meeting (**ATTACHMENT 1**). During the meeting, Councillors requested further information on the potential management action that can be undertaken to limit impacts on the local community.

As reported at the 26 April 2022 Council meeting, the flying foxes first established a camp at Newbury Park, Raymond Terrace in the summer of 2011 and have since expanded into the adjacent Ross Wallbridge Reserve in November 2014. The camp has been primarily occupied by the GHFF, with a smaller proportion of Little Red Flying foxes and Black Flying foxes also occurring. The Raymond Terrace Camp (RTC) is located adjacent to light industrial, commercial and residential areas causing community concern due to noise, smell and excrement impacts.

The GHFF is listed as a threatened species under both the NSW Biodiversity Conservation Act 2016 (BC Act) and the Commonwealth Environmental Protection Biodiversity Conservation Act 1999 (EPBC Act). The RTC is also designated as a Nationally Significant Camp under the EPBC Act. Disturbance to flying foxes and their habitat is limited by these legislative controls and requirements. Commonwealth approval must be provided in order to undertake management action outside of the Plan of Management.

Councils and government agencies have attempted to manage flying fox populations in various ways in other locations in Australia. A recent scientific article titled Review of Dispersal Attempts at flying fox Camps in Australia (B J. Roberts. et al, 2021) summarised information on the costs and outcomes of 48 camp dispersals in Australia.

MANAGEMENT OPTIONS

Table 1 details the 12 current disturbance methods used within Australia to disperse flying fox camps.

TABLE 1 DESCRIPTION OF MANAGEMENT OPTIONS	
Disturbance method	Description
Continuous noise	Disturbance, typically at dawn and/or dusk, using loud noise emitted continuously for long periods. Sounds may be emitted from various sources (e.g. speakers, drums, banging pots, starter pistols, sirens, car horns, cracking stock whips, lawn mowers and whipper snippers).
Explosive noise	Disturbance, typically at dawn and/or dusk, using intermittent loud noises from bird-scaring or gas cartridges discharged from a shotgun within the camp.
Paintballs	Disturbance, typically during daylight, using paintballs shot directly at flying foxes.
Lights	Disturbance, typically at dawn and/or dusk and sometimes throughout the night, using handheld torches or large portable floodlight towers throughout the camp and pointed at roost trees.
Wood smoke	Disturbance, typically during daylight, using heat and smoke produced from bonfires positioned underneath or near roost trees.
Fog/smoke machine	Disturbance, typically before dawn, using a machine producing smoke that rises and dissipates around the camp to reduce visibility.
Odour	Various sensory deterrents used to attempt to make roost habitat unattractive to flying foxes, e.g. fish and prawn paste, kerosene or python faeces hung in bags from the canopy.
Water	Various water-based deterrents sprayed onto the flying foxes to cause them to take flight and move elsewhere, e.g. fire hoses, pressure cleaners and sprinklers.
Ultrasonic deterrents	Disturbance, typically before dawn, using devices that emit ultrasonic sounds.
Physical deterrents	Various deterrents used to attempt to scare flying foxes from roosting in particular areas. These are usually visual such as plastic bags or bright material (compact discs) hung from the canopy or large inflatable waving devices positioned next to roost trees.
Helicopter	Disturbance during the day, often for 2–3 hours, using a helicopter flown above or near the boundary of the camp to cause flying foxes to take flight from the noise and downdraft and try to push or herd the animals in a desired direction.
Extensive vegetation removal	Roost vegetation removed or significantly modified so that it is no longer suitable as roost habitat. Usually such extensive vegetation works are undertaken when flying foxes are

	absent, either vacating the site as part of normal seasonal movements, or work is undertaken at night in a staged approach when flying foxes are foraging away from the camp. This is subtly different from clearing vegetation to form buffers between the camp and residential properties, which are only designed to increase the distance between roosting flying foxes and residential dwellings.
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Of the 12 methods used throughout Australia to displace flying fox camps, none of the dispersal techniques have demonstrated camps abandoning the local area (greater than 20km radius of the original camp).

Extensive vegetation removal is noted as the most time-efficient dispersal method for small habitat areas within urban areas however the establishment of satellite camps is an associated risk with this management action.

REVIEW OF OUTCOMES OF MANAGEMENT ACTIONS UNDERTAKEN IN OTHER LOCATIONS

Between 1999 and 2007 a dispersal project was attempted in Maclean on the NSW north coast. Authorities attempted to relocate a breeding camp comprised of approximately 20,000 individuals. The total cost of the relocation attempt was at least \$400,000, including 640 person-hours of effort using continuous noise, wood smoke and extensive vegetation removal methods. Within the monitoring period, the camp made 23 attempts to return to their original camp, with 12 sites (included seven previously unoccupied sites) used during this time as temporary camps including the establishment of a camp in the nearby township of Iluka. The outcome, after nearly a decade of dispersal attempts at Maclean, was that the camp continued to return to their original site, while more camps were established in the region.

In 2003, Melbourne City Council attempted to relocate a GHFF camp roosting within the Royal Botanic Gardens. The camp was first established within the Royal Botanic Gardens in 1981 and at the time of attempted intervention consisted of 30,000 individuals. Melbourne City Council reports the attempt to move the camp to Yarra Bend Park as successful, however satellite colonies were reported in nearby suburbs. It is unknown what methodology was used and how many repeated actions were required. Melbourne City Council now have in place a \$1.7m Management Plan to ensure the camp remains within Yarra Bend Park.

In 2012, Sydney's Royal Botanic Gardens and Domain Trust sought approval to disperse their residing GHFF colony from the heritage listed garden. The Trust received conditional approval from the Federal Government to relocate the colony. Since 2012, the Trust have spent over \$1.5m on management options consisting of continuous noise, lights, foul-smelling odour, water and ultrasonic deterrents methods. After 10 years of dispersal attempts the camp periodically returns to the original camp site, and a satellite camp was established 4km away.

Cairns Regional Council were given conditional approval from the Federal Government to relocate the Spectacle Flying fox colony comprised of approximately 5,000 individuals in 2020. The conditions allowed Council to use directional sound-emitting devices, metal clangers and low-pressure water jets to disperse the bats before extensive vegetation removal. The Cairns Flying fox Roost Management Plan cost \$1.64 million during the 2020/2021 financial year, which included obtaining relevant permits. An additional \$242,000 was estimated to complete the plan in the following six month period. Deterrent activities began in July 2020 and continue to date. A report to Council in March this year noted an 83% reduction of flying foxes and in 2020.

A local point of reference is the Burdekin Park Flying fox colony at Singleton. Singleton Council adopted a Flying fox Management Plan on 15 July 2013 and reviewed the Camp Management Plan in 2015 and 2018. The aim of the Plan is to enable co-existence of the flying foxes with the Singleton community by minimizing the impacts on the community from flying fox roosting in Burdekin Park, enable a range of suitable management options to sustainably manage flying foxes in the area, manage all risks related to the flying fox roosting site within the legislative requirements, community expectations and financial constraints. No financial data or measures of success have been provided in preparation of this report with the Plan stating under funding commitments that 'it is expected that an annual work plan, including budget items will be development by the project team and implemented as required'.

The Review of Dispersal Attempts at flying fox Camps in Australia (B J. Roberts. et al, 2021) found that efforts varied in length and in the number of repeat actions that were undertaken to maintain camp levels. A consistent theme of dispersal attempts was the need for a financial commitment to be made to the ongoing maintenance and repeat of dispersal activities.

ESTIMATED COST OF MANAGEMENT ACTIONS

Whilst it is difficult to accurately estimate potential costs associated with dispersing the RTC, the abovementioned management actions provide guidance for consideration. Based on the average cost of referenced management actions, it is estimated that a minimum requirement of \$250,000 initial funding would be required. This would need to be supported by an estimated \$50,000 per annum for ongoing camp management and dispersal activities.

These costs are estimates only and further refinement of the project scope would be required before a funding commitment is made.

POTENTIAL ECOLOGICAL IMPACTS OF MANAGEMENT ACTIONS

The ecological implications of dispersal attempts for flying foxes are not well understood. Studies have found effects on physiological stress and reproductive output of flying foxes during disruption. There is also an associated risk of viral shedding and disease transmission due to physiological stress at the time of dispersal.

Flying foxes are protected by Federal and State legislation due to their critical importance to ecological processes through dispersing seed and pollinating flowering plants. The large scale removal of habitat vegetation, as undertaken by Cairns Regional Council, has significant impacts on frog, bird and possum populations. The loss of vegetation increases fragmentation of shelter and habitat vegetation. The loss of food resources has further impacts on native fauna located in an already highly urbanised area. The measures typically utilised in the management options above will have a negative impact on the other species utilising Ross Wallbridge Reserve and may result in stress events in these populations.

POTENTIAL SOCIAL AND REPUTATIONAL IMPACTS OF MANAGEMENT ACTIONS

Attempts to move flying fox colonies intensifies existing negative perceptions of flying foxes as pests that are required to be removed. Undertaking social media campaigns and educational workshop can alter this perception and result in more support for the conservation of the colony.

It is also difficult to predict the success of programs and how flying foxes react to relocation attempts. Numerous management programs have failed or resulted in colonies establishing in other urbanised areas, thereby moving the issue to a new location instead of removing the interaction with urban areas. The reputational risk to Council is therefore high, with limited mitigation measures available to limit the potential risks.

CONCLUSION

Through review of a number of flying fox camp dispersal projects throughout Australia, a number of key themes are evident. The projects are high-profile within local communities, high-risk in terms of achieving desired outcomes and high-cost in terms of mitigating community-wildlife conflict.

As detailed in this report, of the 12 methods used throughout Australia to displace flying fox camps, none of the dispersal techniques have demonstrated camps abandoning the local area (greater than 20km radius of the original camp). In most cases, satellite flying fox camps formed within 1km of the original camp, transferring the community-wildlife conflict to other areas.

Considering the detrimental impacts associated with dispersal attempts as well as the uncertainty of achieving desired outcomes, it is considered that the existing

ORDINARY COUNCIL - 9 AUGUST 2022

management measures in place for the RTC are adequate in providing a balanced outcome. The impact on the local community is not ideal however it is considered to be warranted in this location to ensure the protection of this threatened species.

ATTACHMENTS

- 1) Minutes Ordinary Council - 26 April 2022. [↓](#)

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

MINUTES ORDINARY COUNCIL - 26 APRIL 2022

ITEM NO. 6

**FILE NO: 22/100202
EDRMS NO: PSC2017-00015**

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 26 April 2022.

No:	Report Title	Page:
1	March 2022 Cash and Investments	120
2	Caravan Park Communities	126
3	Tree Moratorium	132
4	Flying Fox issues at Ross Walbridge Reserve, Raymond Terrace	137
5	Raymond Terrace Lakeside Pathway	141
6	Council Resolutions	145
7	Designated Persons' Return	159

**ORDINARY COUNCIL MEETING - 26 APRIL 2022
MOTION**

111	<p>Councillor Leah Anderson Councillor Matthew Bailey</p> <p>It was resolved that Council receives and notes the Information Papers listed below being presented to Council on 26 April 2022.</p> <hr/> <p>No: Report Title</p> <p>1 March 2022 Cash and Investments</p> <p>2 Caravan Park Communities</p> <p>3 Tree Moratorium</p> <p>4 Flying Fox issues at Ross Walbridge Reserve, Raymond Terrace</p> <p>5 Raymond Terrace Lakeside Pathway</p> <p>6 Council Resolutions</p> <p>7 Designated Persons' Return</p>
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MINUTES ORDINARY COUNCIL - 26 APRIL 2022

Councillor Peter Kafer left the meeting at 7:00pm.
Councillor Peter Kafer returned to the meeting at 7:02pm.
Councillor Jason Wells left the meeting at 7:10pm.
Councillor Jason Wells returned to the meeting at 7:14pm.

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, Ryan Palmer, Steve Tucker and Jason Wells

Those against the Motion: Nil.

The motion was carried.

**ORDINARY COUNCIL MEETING - 26 APRIL 2022
MATTER ARISING**

112	Councillor Giacomo Arnott Councillor Peter Kafer It was resolved that Council request an additional report be provided to the Flying Foxes report, asking for options, including financial implications, for moving the Flying Fox colony on without harming them.
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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.

MINUTES ORDINARY COUNCIL - 26 APRIL 2022

ITEM NO. 4

FILE NO: 22/92654
EDRMS NO: PSC2013-04598**FLYING FOX ISSUES AT ROSS WALBRIDGE RESERVE, RAYMOND TERRACE**REPORT OF: BROCK LAMONT - STRATEGY & ENVIRONMENT SECTION
MANAGER
GROUP: DEVELOPMENT SERVICES**BACKGROUND**

The purpose of this report is to provide further information on the Flying Fox colony in Ross Walbridge Reserve, Raymond Terrace. This information was requested by Council at the 8 February 2022 Council meeting (**ATTACHMENT 1**).

The flying-foxes first established a camp at Newbury Park, Raymond Terrace in the summer of 2011 and have since expanded into the adjacent Ross Walbridge Reserve in November 2014. The camp has been primarily occupied by the Grey-Headed Flying Fox (GHFF), with a smaller proportion of Little Red Flying-foxes (LRFF) and Black Flying Foxes (BFF) also occurring.

The Raymond Terrace Camp (RTC) is located adjacent to light industrial, commercial and residential areas causing community concern due to noise, smell and excrement impacts.

The GHFF is listed as a threatened species under both the NSW Biodiversity Conservation Act 2016 (BC Act) and the Commonwealth Environmental Protection Biodiversity Conservation Act 1999 (EPBC Act). The RTC is also designated as a Nationally Significant Camp under the EPBC Act. Disturbance to flying-foxes and their habitat is limited by these legislative controls and requirements.

Council and community volunteers, predominantly Wildlife In Need of Care Inc., undertake regular population counts to monitor the camp with this information provided back to the NSW Department of Planning and Environment. Similar to other Flying Fox camps and typical of the species, the RTC population number fluctuates substantially based on the availability of seasonal feeding resources. Council continues to monitor the population, which typically fluctuates between 2,000 to more than 20,000 individuals. The population was estimated at 13,300 individuals in early March 2022.

Council prepared and adopted the Flying Fox Camp Plan of Management for the Raymond Terrace Camp (FFPoM) (**ATTACHMENT 2**) in 2018, which outlines the issues of concern caused by the presence of Flying Foxes and the measures that will be taken to manage the land. This includes how Council manages and maintains the RTC.

MINUTES ORDINARY COUNCIL - 26 APRIL 2022

Council undertakes routine maintenance of the vegetation (including pruning and mowing), and park assets under an existing environmental assessment. The FFPoM provides a number of management options for the camp which has informed Council's standard operating procedures for maintenance activities in the reserve.

These standard operating procedures include the following stop work triggers:

- Works will not take place in periods of adverse weather including strong winds, sustained heavy rains, in very cold temperatures or during periods of likely population stress.
- Works will be postponed on days predicted to exceed 35°C (or ideally 30°C), and for one day following a day that reached $\geq 35^{\circ}\text{C}$.
- Unacceptable levels of stress during maintenance activities are visually monitored if any individual is observed panting, saliva spreading or if an individual is located on or within 2 metres of the ground.
- Unacceptable levels of fatigue during maintenance activities are visually monitored by signs such as more than 30% of the camp taking flight during daylight hours, individuals are in flight for more than 5 minutes or Flying Foxes appear to be leaving the camp during maintenance activities.
- Relevant authorities are notified in relation to any observed deaths in or around the camp or if a significant loss of condition is evident.

ATTACHMENTS

- 1) Minutes of Council Meeting - 8 February 2022.
- 2) Raymond Terrace Flying Fox Camp Management Plan. (Provided under separate cover)

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

MINUTES ORDINARY COUNCIL - 26 APRIL 2022

ITEM 4 - ATTACHMENT 1 MINUTES OF COUNCIL MEETING - 8 FEBRUARY 2022.

MINUTES ORDINARY COUNCIL - 8 FEBRUARY 2022

NOTICE OF MOTION

ITEM NO. 7

FILE NO: 21/288540

EDRMS NO: PSC2017-00019

FLYING-FOX ISSUES AT ROSS WALLBRIDGE RESERVE

COUNCILLOR: GIACOMO ARNOTT

THAT COUNCIL:

- 1) Notes that bats at Ross Wallbridge reserve are continuing to be a nuisance for locals in Raymond Terrace.
- 2) Requests the General Manager to prepare a report to provide an update on the flying-fox colony in Ross Wallbridge Reserve that includes:
 - An update on the current flying-fox numbers; and
 - Clarification on the flying-fox management actions in place for the reserve.

**ORDINARY COUNCIL MEETING - 8 FEBRUARY 2022
MOTION**

032	<p>Councillor Giacomo Arnott Councillor Peter Francis</p> <p>It was resolved that Council:</p> <ol style="list-style-type: none">1) Notes that bats at Ross Wallbridge reserve are continuing to be a nuisance for locals in Raymond Terrace.2) Requests the General Manager to prepare a report to provide an update on the flying-fox colony in Ross Wallbridge Reserve that includes:<ul style="list-style-type: none">• An update on the current flying-fox numbers; and• Clarification on the flying-fox management actions in place for the reserve.
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The motion was carried.

MINUTES ORDINARY COUNCIL - 26 APRIL 2022

ITEM 4 - ATTACHMENT 1 MINUTES OF COUNCIL MEETING - 8 FEBRUARY 2022.

MINUTES ORDINARY COUNCIL - 8 FEBRUARY 2022**BACKGROUND REPORT OF: JANELLE GARDNER – STRATEGY & ENVIRONMENT SECTION MANAGER****BACKGROUND**

Flying-fox first established a camp at Newbury Park, Raymond Terrace in summer 2011 and then later at the adjacent Ross Wallbridge reserve in 2016. Historically, the camp has been primarily occupied by the Grey-headed Flying-fox with the population varying seasonally over time in response to food resources.

The Grey-headed Flying-fox is listed as a 'vulnerable' species under both the Commonwealth Environmental Protection and Biodiversity Conservation Act 1999 and the NSW Biodiversity Conservation Act 2016. The Raymond Terrace Flying-fox camp is also recognised and protected as a 'Nationally Important Camp' under the Environmental Protection and Biodiversity Conservation Act 1999.

The number of flying-fox in the reserve varies substantially over time, particularly seasonally, in response to food resources and habitat changes. The Raymond Terrace Flying-fox Camp is located adjacent to residential areas, approximately 700 metres east of Raymond Terrace shopping district, and is a cause of conflict and community concern due to noise, smell and excrement impacts, as well as potential health risk perceptions by the community.

The Raymond Terrace Flying-fox Camp Management Plan, prepared in 2016, provides a tool to ensure appropriate management of the camp. This management plan outlines the issues of concern to the community caused by the presence of flying-fox and the measures that will be taken to manage the land and reduce conflict with the local community. Council also undertakes regular flying-fox population monitoring and has adopted specific processes to limit impacts on the colony during routine maintenance activities.

FINANCIAL/RESOURCE IMPLICATIONS

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

ATTACHMENTS

Nil.

ITEM NO. 2

**FILE NO: 22/195956
EDRMS NO: PSC2009-00965**

DELEGATIONS - MAYOR

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

BACKGROUND

The purpose of this report is to confirm the changes to the Instrument of Delegation to the Mayor.

On 14 June 2022, Council resolved to amend the Mayor's delegations to include:

“to act as a Council nominated director on Newcastle Airport Pty Ltd, Greater Newcastle Aerotropolis Pty Ltd, Newcastle Airport Partnership, Greater Newcastle Aerotropolis Partnership, Newcastle Airport Partnership Company 3 and Newcastle Airport Partnership Company 4.”

The full Instrument of Delegation has been updated and is shown at **ATTACHMENT 1**.

ATTACHMENTS

1) Instrument of Delegation to Mayor. [↓](#)

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.



PORT STEPHENS COUNCIL

INSTRUMENT OF DELEGATION TO Mayor

On Tuesday, 9 August 2022 the Port Stephens Council (“**Council**”) resolved that:

1. All previous delegations of Functions the subject of this Instrument be revoked.
2. Pursuant to section 377 of the LG Act to delegate to the Mayor authority to exercise and/or perform on behalf of the Council the Council’s Functions identified in **Schedule 1** subject to any condition or limitation specified.
3. The Mayor be conferred authority to carry out the Policy Authorities listed in **Schedule 2** and undertake any administrative actions necessary to carry out those Policy Authorities.
4. These delegations and authorities are subject to, and are to be exercised in accordance with:
 - a. the requirements of the relevant Legislation;
 - b. any conditions or limitations set out in **Schedule 1**, **Schedule 2** and **Schedule 3**; and
 - c. any resolution or policy, procedure or budget adopted from time to time by the Council.
5. These delegations and authorities are effective from the date of the Resolution of the Council and remain in force until amended or revoked by a resolution of the Council.
6. In this delegation:
 - o ‘**Functions**’ means powers, authorities, duties and functions and anything ancillary or related to the exercise or performance thereof.

PORT STEPHENS COUNCIL

116 Adelaide Street
Raymond Terrace NSW 2324

PO Box 42
Raymond Terrace NSW 2324

Phone: 02 4980 0255
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- o **'Legislation'** means legislation enacted by the parliament of New South Wales and the parliament of the Commonwealth of Australia, including an Act, regulation made under an Act, by-law, rule or ordinance.

- o **'LG Act'** means the *Local Government Act 1993* as amended.

Schedule 1: Delegated Functions

Local Government Act 1993

Function Code	Function	Condition/ Limitation (if any)
LG Act 004	<p>Mayor Functions – Authority to exercise and/or perform the role of the mayor.</p> <p>Pursuant To – section 226</p>	<p>The following items are to be induced on the Instrument of Delegation to the Mayor:</p> <ol style="list-style-type: none"> 1. Authority to approve or refuse public access applications in accordance with the Council's policy and Code of Meeting Practice. 2. Authority in the cases of emergency, where it is not practical to wait for the next scheduled meeting of Council, to exercise such functions of council as necessary in the situation, except those functions listed in Schedule 377 of the Local Government Act (The Act) and those regulatory functions under Chapter 7 of the Act. This delegation applies only to those functions properly held by the Council and does not extend to statutory functions of the General Manager under Section 335 of the Act. 3. To make community awards on the recommendation of the Port Stephens Community Awards Panel and after appropriate consultation with all Councillors.

		<p>4. Authority to affix the corporate seal of Port Stephens Council to all documents necessary for Port Stephens Council to enter into or be a party to any property or commercial transaction, provided that the transaction has already been authorised by specific resolution of Council.</p> <p>5. Authority to act as a Council nominated director on Newcastle Airport Pty Ltd, Greater Newcastle Aerotropolis Pty Ltd, Newcastle Airport Partnership, Greater Newcastle Aerotropolis Partnership, Newcastle Airport Partnership Company 3 and Newcastle Airport Partnership Company 4.</p>
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Schedule 2: Policy Authorities

Code	Policy Authority	Conditions / Limitations (if any)
N/A	N/A	N/A

Schedule 3: General Limitations

Limitation (if any)
N/A

Pursuant to a Resolution of the Council at its meeting of Tuesday, 9 August 2022,

Steve Tucker

Mayor / Councillor

Date: Tuesday, 9 August 2022

Review date: Thursday, 25 July 2024

Delegate Acknowledgement of Delegation

I Ryan Palmer do hereby acknowledge that I have read and understood this Instrument of Delegation and that I will perform these delegations and authorities in accordance with this Instrument of Delegation and my position description.

Mayor of Port Stephens Council

Date:

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ITEM NO. 3

FILE NO: 22/202000
EDRMS NO: PSC2021-02510**QUESTIONS ON NOTICE / QUESTIONS WITH NOTICE**REPORT OF: TONY WICKHAM - GOVERNANCE SECTION MANAGER
GROUP: GENERAL MANAGER'S OFFICE**BACKGROUND**

The purpose of this report is to provide a response to Questions taken on or with Notice in accordance with the Code of Meeting Practice.

Item:	1
Councillor:	Councillor Giacomo Arnott
Date Received:	26 July 2022
Question with Notice:	<u>Information Papers</u> Why are there different costs for each councillor for Councillors' Strategic workshop?
Response:	The difference in the total costs for each Councillor relates to the sustenance costs. Those Councillors with lower costs only attended some of the events.

ATTACHMENTS

Nil.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ITEM NO. 4

**FILE NO: 22/195390
EDRMS NO: PSC2017-00106**

COUNCIL RESOLUTIONS

REPORT OF: TIMOTHY CROSDALE - ACTING GENERAL MANAGER
GROUP: GENERAL MANAGER'S OFFICE

BACKGROUND

The purpose of this report is to inform the Mayor and Councillors of the status of all matters to be dealt with arising out of the proceedings of previous meetings of the Council in accordance with the Code of Meeting Practice.

ATTACHMENTS

- 1) Corporate Services Group resolutions. [↓](#)
- 2) Development Services Group resolutions. [↓](#)
- 3) Facilities & Services Group resolutions. [↓](#)
- 4) General Manager's Office resolutions. [↓](#)

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.



Division: Corporate Services **Date From:** 27/08/2013
Committee: **Date To:** 26 July 2022
Officer: **Printed:** Monday, 1 August 2022

Action Sheets Report

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 11/05/2021	Pattison, Zoe	Car parking in Shoal Bay	30/12/2022	12/05/2021	
1		Crosdale, Timothy				21/123694
29 Jul 2022						
In principle approval received from Crown Lands.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 27/08/2013	Pattison, Zoe	Campvale Drain	30/12/2022		
		Crosdale, Timothy				
29 Jul 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 22/09/2020	Pattison, Zoe	Newline Road, Raymond Terrace	30/09/2022		
2		Crosdale, Timothy				20/288489
199						
29 Jul 2022						
Approved. Contracts prepared. Finalising survey levels in contract.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 13/04/2021	Pattison, Zoe	PROPOSED CLOSURE AND SALE OF PATHWAY IN BOAT HARBOUR	30/06/2023	14/04/2021	
2		Crosdale, Timothy				21/96728
090						
29 Jul 2022						
Matter ongoing.						

ITEM 4 - ATTACHMENT 2 DEVELOPMENT SERVICES GROUP RESOLUTIONS.



Division: Development Services **Date From:** 14/09/2021
Committee: **Date To:** 26/07/2022
Officer: **Printed:** Monday, 1 August 2022

Action Sheets Report

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	23/08/2022	12/05/2022	
2		Pearl, Steven				22/124235
01 Aug 2022						
Scheduled to go back to Council on 23 August 2022.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 14/06/2022	Gardner, Janelle	Communications & Engagement Strategy	30/09/2022	16/06/2022	
8		Pearl, Steven				22/155619
29 Jul 2022						
Submissions on the strategy have been received. A further report will be presented to Council on 27 September 2022.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 12/07/2022	Lamont, Brock	Policy Review: Community Development	30/09/2022	13/07/2022	
2		Pearl, Steven				22/186061
28 Jul 2022						
Currently on Public Exhibition until 12 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
18 Jul 2022						
Council Report being drafted and will be reported to Council Meeting 23/08/2022.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 14/09/2021	Connell, Sarah	Port Stephens Waterway Strategy	1/07/2023	15/09/2021	
1 240		Pearl, Steven				21/252518
01 Aug 2022						
Consultation with marine and related industries is now required which will take place following the completion of a range of other projects, including the Medowie Place Plan.						

ITEM 4 - ATTACHMENT 2 DEVELOPMENT SERVICES GROUP RESOLUTIONS.



Action Sheets Report	Division: Development Services	Date From: 14/09/2021
	Committee:	Date To: 26/07/2022
	Officer:	Printed: Monday, 1 August 2022

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 12/10/2021	Whitfield, Hannah	Carbon Neutrality	30/09/2022	13/10/2021	
275		Peart, Steven				21/274186
28 Jul 2022						
Natural Systems team will complete a report to Ordinary Council in September 2022 stepping through the roadmap to achieving carbon neutrality by 2025, along with suitable funding source to achieve the goal.						



Action Sheets Report	Division: Facilities & Services	Date From: 25/05/2021
	Committee:	Date To: 26/07/2022
	Officer:	Printed: Monday, 1 August 2022

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	30/09/2022	14/02/2022	
16 041		Kable, Gregory				22/45826
28 Jul 2022 Report is currently in progress.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 22/03/2022	Maretich, John	Identifying Potholes	30/09/2022	23/03/2022	
7 092		Kable, Gregory				22/81589
21 Jul 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	31/08/2022	14/02/2022	
9 034		Kable, Gregory				22/45826
28 Jul 2022 Report shall be provided to Council on the proposal to increase facilities as per this NOM.						

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	31/08/2022	14/02/2022	
15 039		Kable, Gregory				22/45826
28 Jul 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 26/04/2022	Maretich, John	Lakeside Leisure Centre	31/01/2023	28/04/2022	
2 114		Kable, Gregory				22/109684
28 Jul 2022 Report to be prepared to go back to Council.						



Division: Facilities & Services **Date From:** 25/05/2021
Committee: **Date To:** 26/07/2022
Officer: **Printed:** Monday, 1 August 2022

Action Sheets Report

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 24/05/2022	Maretich, John	Taylors Beach	31/08/2022	27/05/2022	
3		Kable, Gregory				22/136825
28 Jul 2022						
Works will be investigated and an Information paper with responses on actions will go back to Council.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 26/07/2022	Maretich, John	Smart Parking	31/10/2022	27/07/2022	
2		Kable, Gregory				22/199431
1 August 2022						
Staff compiling details to report 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
28 Jul 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 24/05/2022	Maretich, John	World Menstruation Hygiene Day	30/09/2022	27/05/2022	
1		Kable, Gregory				22/136825
28 Jul 2022						
A report will be prepared for Council.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 8/02/2022	Maretich, John	Foreshore Reserves and Parking on Council Land	30/09/2022	14/02/2022	
5 030		Kable, Gregory				22/45826
28 Jul 2022						
Report shall be provided to Council.						



Action Sheets Report	Division: Facilities & Services	Date From: 25/05/2021
	Committee:	Date To: 26/07/2022
	Officer:	Printed: Monday, 1 August 2022

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	16/08/2022		
2 177		Kable, Gregory				21/190429
28 Jul 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 10/08/2021	Maretich, John	Agreement with Community Association DP270468 - Lagoons Estate, Nelson Bay	30/09/2022		
4 208		Kable, Gregory				21/218740
28 Jul 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 9/02/2021	Burton , Paul	MEDOWIE REGIONAL PLAYGROUND AND TOWN CENTRE	31/08/2022		
2 012		Kable, Gregory				21/33235
28 Jul 2022 Two-Way Council briefing is scheduled for September 2022 to discuss the future of this land. A report will then be prepared.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 25/05/2021	Maretich, John	Bus Stop in Seaside Estate, Fern Bay	19/08/2022	26/05/2021	
5 128		Kable, Gregory				21/138820
28 Jul 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.						



Division: Facilities & Services
Committee:
Officer:
Date From: 25/05/2021
Date To: 26/07/2022
Printed: Monday, 1 August 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	17/08/2022	13/08/2021	
8 217		Kable, Gregory				21/218740
28 Jul 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 8/02/2022	Maretich, John	POLICY REVIEW - CONTRIBUTION TO WORKS FOR KERB AND GUTTERING CONSTRUCTION POLICY	30/09/2022	14/02/2022	
6 018		Kable, Gregory				22/45826
28 Jul 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	30/09/2022	14/02/2022	
2 027		Kable, Gregory				22/45826
28 Jul 2022						
Investigation underway to determine viability as requested.						

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
28 Jul 2022						
This will be discussed with the Councillors in the lead up to William Street, Stage 2 which funded through the Streets of Shared Spaces grant.						



Action Sheets Report	Division: Facilities & Services	Date From: 25/05/2021
	Committee:	Date To: 26/07/2022
	Officer:	Printed: Monday, 1 August 2022

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	30/09/2022	13/10/2021	
8 270		Kable, Gregory				21/274186
28 Jul 2022 Paperwork currently being prepared for the Mayor and General Manager for the official seal.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 12/07/2022	John Maretich	Koala Signage	31/08/2022	13/07/2022	
1		Kable, Greg				22/186061
1 August 2022 Staff are currently preparing a report for Council.						



Division: General Manager's Office **Date From:** 28/06/2022
Committee: **Date To:** 26/07/2022
Officer: **Printed:** Monday, 1 August 2022

Action Sheets Report

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 12/07/2022	Wickham, Tony	POLICY REVIEW: RECEIPT OF PETITIONS	19/08/2022	13/07/2022	
3		Wallis, Wayne				22/186061
29 Jul 2022						
On public exhibition until 16 August 2022.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 26/07/2022	Wickham, Tony	POLICY REVIEW: INTERNAL REPORTING	31/08/2022	27/07/2022	
4		Wallis, Wayne				22/199431
29 Jul 2022						
On public exhibition until 30 August 2022.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 12/07/2022	Wickham, Tony	POLICY REVIEW: STATEMENT OF BUSINESS ETHICS	19/08/2022	13/07/2022	
4		Wallis, Wayne				22/186061
29 Jul 2022						
On public exhibition until 16 August 2022.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 28/06/2022	Wickham, Tony	POLICY REVIEW: ALTERNATIVE DISPUTE RESOLUTION	12/08/2022	29/06/2022	
3		Wallis, Wayne				22/171244
29 Jul 2022						
On public exhibition until 1 August 2022.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 28/06/2022	Wickham, Tony	CODE OF MEETING PRACTICE REVIEW	19/08/2022	29/06/2022	
5		Wallis, Wayne				22/171244
29 Jul 2022						
The Code of Meeting Practice has been placed on public exhibition and is open for submissions until 15 August 2022.						

NOTICES OF MOTION

NOTICE OF MOTION

ITEM NO. 1

FILE NO: 22/198997

EDRMS NO: PSC2021-04195

HOUSING DENSITY - WALLALONG

COUNCILLOR: GIACOMO ARNOTT

THAT COUNCIL:

- 1) Notes that the community is against increased housing density in Wallalong.
 - 2) Agrees that the revision of the Port Stephens Local Housing Strategy (currently underway) should not include Wallalong as a potential housing location; and
 - 3) Writes to the NSW Minister for Planning to inform the Department of Planning and Environment that Port Stephens Council no longer supports Wallalong as a suitable location for increased housing density and requests that all references are removed from the Hunter Regional Plan 2041 prior to adoption.
-

BACKGROUND REPORT OF: BROCK LAMONT – STRATEGY & ENVIRONMENT SECTION MANAGER

BACKGROUND

The NSW Department of Planning and Environment (DPE) released the Hunter Regional Plan 2036 (HRP 2036) in October 2016. The HRP 2036 does not identify Wallalong as a potential urban release area.

The draft Hunter Regional Plan 2041 (draft HRP 2041) was exhibited by DPE from 6 December 2021 until 4 March 2022. The draft HRP 2041 identifies Wallalong as a potential future growth area.

The draft HRP 2041 states that “the identification of potential future growth areas is not a development commitment, nor does it imply that all, or any, part of these areas will be made available for urban development in the future. To remove any doubt, the department will not support premature planning, investigation or promotion of these areas; we will investigate their future role in the next review of the Hunter Regional Plan”.

Ministerial sign off of the Hunter Regional Plan 2041 is expected imminently.

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.