

# NOTICE OF ORDINARY MEETING

## 8 FEBRUARY 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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1. PORT STEPHENS KOALAS

## **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. Amen.
- 4) Apologies and applications for a leave of absence by Councillors.
- 5) Disclosures of interests.
- 6) Confirmation of minutes Ordinary Meeting of 26 October 2021 and Extraordinary Meeting of 11 January 2022.
- 7) Mayoral minute(s) – if submitted
- 8) Motions to close meeting to the public – if submitted.
- 9) Reports to Council.
- 10) General Manager’s reports – if submitted.
- 11) Questions with Notice – if submitted.
- 12) Questions on Notice.
- 13) Notices of motions – if submitted.
- 14) Rescission motions – if submitted.
- 15) Confidential matters – if submitted.
- 16) Conclusion of the meeting.

## **PRINCIPLES FOR LOCAL GOVERNMENT**

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

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

### **Guiding principles for Council**

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

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

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

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

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

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

### 3. Community participation

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

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

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

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

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

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

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

## PORT STEPHENS COMMUNITY STRATEGIC PLAN

The Local Government Act requires Council to adopt a Community Strategic Plan (10+ years). The Plan includes a Delivery Program (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 - 8 FEBRUARY 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 <sup>1</sup>	
Nature of the land that is subject to a change in zone/planning control by the proposed LEP (the subject land) <sup>2</sup> [Tick or cross one box]	<input type="checkbox"/> The identified land. <input type="checkbox"/> Land that adjoins or is adjacent to or is in proximity to the identified land.
Current zone/planning control [Insert name of current planning instrument and identify relevant zone/planning control applying to the subject land]	

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

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

**ORDINARY COUNCIL - 8 FEBRUARY 2022**

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

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

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

Date \_\_\_\_\_

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



## Declaration of Interest form

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

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

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

Tick the relevant response:

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

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

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

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

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

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

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

# MOTIONS TO CLOSE

ITEM NO. 1

FILE NO: 22/14585  
EDRMS NO: PSC2015-00107

**MOTION TO CLOSE**

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

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**RECOMMENDATION:**

- 1) That pursuant to section 10A(2) (d)i of the Local Government Act 1993, the Committee and Council resolve to close to the public that part of its meetings to discuss Confidential Item 1 on the Ordinary agenda namely **Port Stephens Koalas**.
  - 2) That the reasons for closing the meeting to the public to consider this item is that the discussion will include information containing:
    - commercial information of a confidential nature that would, if disclosed prejudice the commercial position of the person who supplied it.
  - 3) That the report remain confidential and the minute be released in accordance with Council's resolution.
-



# COUNCIL REPORTS

**ITEM NO. 1**

**FILE NO: 21/327548  
EDRMS NO: 16-2017-524-1**

**DEVELOPMENT APPLICATION 16-2017-524-1 (EARTHWORKS - FILL) AT 52, 52A AND 40 CABBAGE TREE ROAD, WILLIAMTOWN (LOT: 7 DP 1059398, LOT: 7 DP: 4831, LOT: 3DP: 1106651)**

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

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Refuse DA No. 16-2017-524-1 for Earthworks – Fill at 52, 52A and 40 Cabbage Tree Road, Williamtown (LOT: 7 DP: 1059398, LOT: 7 DP: 4831 and LOT: 3 DP: 1106651) for the reasons contained in **(ATTACHMENT 3)**.

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**BACKGROUND**

The purpose of this report is to present Development Application (DA) No. 16-2017-524-1, for Earthworks – Fill, to Council for determination. The DA is being referred to Council in accordance with the Call to Council Policy **(ATTACHMENT 4)**.

The DA was reported to Council at its meeting of 11 September 2018 **(ATTACHMENT 5)** with a recommendation for refusal. The refusal recommendation by Council staff was as a result of key issues arising through the assessment of the DA, including impacts to flooding, ecology and rural character.

At the September 2018 meeting, Council resolved to defer consideration of the DA for a site inspection. Subsequent to that meeting, the applicant has provided additional information relating to the development characteristics, earthworks, flooding and ecology.

The application was not immediately reported back to Council to allow for a Planning Proposal associated with the site and the Williamtown Special Activation Precinct (SAP) Masterplan to progress through assessment and determination.

The Planning Proposal associated with the site was rejected at the Gateway determination stage. A subsequent rezoning review was conducted by the Joint Regional Planning Panel (now Hunter and Regional Planning Panel) at the request of the applicant in 2020. The Gateway review by the Panel rejected the Planning Proposal, determining that the proposal did not have strategic merit. It is anticipated the Williamtown SAP Masterplan will be placed on public exhibition in the first quarter of 2022.

Since the September 2018 deferral, Council staff identified that earthworks, even if utilising clean fill, are classified as ‘waste management works’. Clause 32 within Schedule 3 of the Environmental Planning and Assessment Regulation states that waste management works (earthworks), where not ancillary to any other development activity, is Designated Development when located on a floodplain, an area of high water table and within 250m of a dwelling not associated with the development. As a result, Council staff cannot support the proposal without the applicant obtaining the Secretary’s Environmental Assessment Requirements (SEARs) from the Department of Planning, Industry and Environment (DPIE) and preparing an Environmental Impact Statement. On this basis, the application is invalid.

The applicant has been requested to withdraw the application on a number of occasions however, to date, no withdrawal request has been received.

Further details regarding the statutory framework for designated development and other key issues relating to the DA are detailed in the Planners Assessment Report contained in **(ATTACHMENT 2)**.

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

Subject land:	52, 52A and 40 Cabbage Tree Road, Williamtown (LOT: 7 DP: 1059398, LOT: 7 DP: 4831 and LOT: 3 DP: 1106651)
Total area:	7.5ha
Zoning:	RU2 – Rural Landscape
Permissibility:	Earthworks are permissible under Clause 7.2 of PSLEP 2103
Submissions:	7
Key issues:	<p><u>Designated Development Requirements</u> - The DA is classified as Designated Development. Designated Development applications require an Environmental Impact Statement (EIS) and consultation with Department of Planning, Industry and Environment through obtaining SEARs. As a result, Council staff are unable to support the DA without the applicant obtaining the Secretary’s Environmental Assessment Requirements (SEARs) from the Department of Planning, Industry and Environment (DPIE) and preparing an Environmental Impact Statement. On this basis, the application is invalid.</p> <p><u>Impacts to Rural Character</u> – The DA will impact on the rural landscape character of the site and surrounding context, and is consequently inconsistent with the RU2 zone objectives.</p>

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

### Proposal

The DA is seeking consent for earthworks comprising the placement of fill in a single stockpile on the subject site to achieve the Flood Planning Level (FPL) of 4.0 metres Australian Height Datum (AHD). The proposed storage of fill is intended for the future use and development of the site in relation to business and airport related development, contingent upon a future rezoning occurring as part of the Williamstown SAP, or rezoning via a Planning Proposal.

The DA comprises:

- Delivery of fill on-site over a 5 year timeframe (maximum 50 movements per day)
- Maximum height of fill up to 4.0 metres (measured from existing ground level)
- Stockpile surface area is 16,223m<sup>2</sup>
- Fill volume approx. 53,698m<sup>3</sup>
- Batter at a 1:4 gradient with the following setbacks to property boundaries:
  - Eastern side boundary - varied setback of 10 metres to 26.7 metres.
  - Western side boundary - over 40 metres.
  - South-western boundary (adjacent No. 50 Cabbage Tree Road) – varied setback of 15.6 metres and 22.7 metres.
- Proposed access road to be setback 43.22 metres from the existing dwelling located at No. 50 Cabbage Tree Road
- Fill material will comprise Virgin Excavated Natural Material (VENM) and/or Excavated Natural Material (ENM).

### Site Description

The site consists of 3 lots with a combined area of 7.5 hectares and is located adjacent to the Defence and Airport Related Employment Zone (DAREZ) and identified within the Williamstown SAP investigation area. Vehicular access to the site is proposed via 40 Cabbage Tree Road. The site is constrained by environmental and neighbouring operational factors, including: flooding, contamination (PFAS), RAAF Base operations, ecology and bushfire. The site is currently vacant, partly cleared of vegetation, with the northern section containing dense vegetation. Existing drainage corridors traverse the site through the centre from east to west and along the eastern boundary.

The site is surrounded by rural land to the east, west and south. To the north, the site adjoins an approved 103 lot special purpose subdivision for Defence and airport related employment development, adjacent the Newcastle Airport, known as the 'Astra Aerolab'. A small lot, containing a single storey dwelling is located at the Cabbage Tree Road frontage, adjacent the subject site between 52 and 40 Cabbage Tree Road.

### Key issues

The key issues that arose during the DA assessment related to the classification of the proposed works as Designated Development, rural character and visual amenity impacts, as outlined in further detail below. A detailed assessment of the

development is provided in the Planners Assessment Report contained in **(ATTACHMENT 2)**.

### Designated Development

The application is classified as Designated Development in accordance with Clause 4.10 of the Environmental Planning and Assessment Act 1979 (EP&A Act), as the development is categorised as a waste management facility located on a floodplain, an area of high water table and dwellings within 250m not associated with the development in accordance with Schedule 3, Clause 32 of the Environmental Planning and Assessment Regulation 2000 (the Regulations).

Section 4.12(8) of the EP&A Act 1979 stipulates that a DA for Designated Development is to be accompanied by an Environmental Impact Statement (EIS) prepared in the form prescribed by the regulations, which includes a written application to the DPIE to obtain SEARs. There is no opportunity to obtain SEARs and prepare an EIS through an amendment to this current application.

The applicant has not correctly classified the DA as Designated Development, nor has the applicant sought SEARs from DPIE or prepared an EIS. As a result, the DA does not meet the minimum application requirements of the EP&A Act 1979.

### Rural Character and Visual Impacts

The subject site is zoned RU2 Rural Landscape and the objectives of the zone encourage sustainable primary industry production by maintaining and enhancing the natural resource base, maintain the rural landscape character of the land and provide for a range of compatible land uses, including extensive agriculture.

Given the DA includes fill that extends to heights up to 4.0 metres, the development will be highly visible from Cabbage Tree Road and surrounds across Williamstown. A landscape plan was submitted with the amended application to demonstrate the visual impact of the development. This plan identifies the establishment of native plant layers to screen the proposed stockpile, by planting taller species at the base of the mound and graduating to small species such as turf at the top. However, the proposed visual screening will take time to achieve as vegetation will need to reach maturity. Through the progressive delivery of new fill on-site, seedlings and vegetation are likely to be disrupted or destroyed, which could result in a failure to achieve mature height and subsequent visual impact mitigation.

The applicant has failed to demonstrate a nexus for which the DA would be required to support any current permissible land use within the current RU2 Rural Landscape zone and as a result, the visual and rural character impacts are not considered appropriate or suitable for the site. Subsequently, the proposed development does not satisfy the zone objectives as the height, extent and visual impact of the earthworks are out of keeping with the rural character of the surrounding locality.

Williamstown SAP Master Plan

The Williamstown SAP Master Plan has not been publically exhibited and accordingly there is no strategic or economic purpose for which the proposed earthworks would warrant support. Moreover, the establishment of an isolated and unplanned fill pad may compromise flood modelling and infrastructure planning for potential future works under the SAP.

For the above reasons, the DA does not adequately consider the impacts on the rural landscape character of the site and surrounding context and therefore is inconsistent with the zone objectives.

Conclusion

Based on the assessment by Council staff, the DA is inconsistent with the following legislation and policies:

- Environmental Planning and Assessment Act 1979 – Section 1.3 (Objects of Act), Section 4.12 (Application), Section 4.15(1)(b) (The likely impacts of the development), Section 4.15(1)(c) (Site Suitability), Section 4.14(1)(e) (Public Interest).
- Port Stephens Local Environmental Plan 2013 (PSLEP 2013) – Clause 2.3 (Zone Objectives) and Clause 7.2 (Earthworks).

A detailed assessment of the DA has been undertaken, and with consideration to the inconsistencies identified against the Environmental Planning and Assessment Act 1979 and PSLEP 2013, the DA is recommended for refusal for the reasons contained in **(ATTACHMENT 3)**.

**COMMUNITY STRATEGIC PLAN**

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

**FINANCIAL/RESOURCE IMPLICATIONS**

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

<b>Source of Funds</b>	<b>Yes/No</b>	<b>Funding (\$)</b>	<b>Comment</b>
Existing budget	Yes		There is scope within Council's existing budget to defend Council's determination if challenged.

**ORDINARY COUNCIL - 8 FEBRUARY 2022**

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

**LEGAL, POLICY AND RISK IMPLICATIONS**

The DA is inconsistent with the relevant planning instruments including the EP&A Act and PSLEP 2013.

Detailed assessment against these requirements are contained within the assessment report provided at **(ATTACHMENT 2)**.

Risk	<a href="#">Risk Ranking</a>	Proposed Treatments	Within Existing Resources?
If the DA is supported, there is a risk that Council's decision will be ultra vires as the application requirements for Designated Development under Clause 4.12 of the Environmental Planning and Assessment Act 1979 have not been met.	High	Accept the recommendation.	Yes
If the DA is refused, there is a risk that the determination of the DA may be challenged by the applicant in the Land and Environment Court.	Low	Accept the recommendation.	Yes
If the DA is approved, a third party may appeal the determination.	Low	Accept the recommendation.	Yes

## **SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

The establishment of an isolated and unplanned fill pad may compromise flood modelling and infrastructure planning for potential future works under the SAP. This would have detrimental social, environmental and economic implications.

The applicant has failed to demonstrate a nexus for which the proposed earthworks would be required to support any current permissible land use within the current RU2 Rural Landscape zone and as a result, the disturbance created by the works and associated vehicle movements are not considered appropriate or suitable for the site. Furthermore, the proposed development does not satisfy the zone objectives as the height, extent and visual impact of the earthworks are out of keeping with the rural character of the locality.

Accordingly, through the assessment of the DA, it is considered the development will result in negative social, economic and environmental outcomes.

## **CONSULTATION**

### Internal

Consultation was undertaken with internal officers, including; Engineering, Natural Systems (Ecology and Weeds), Strategic Planning, and Environmental Health. The referral comments from these officers were considered as part of the assessment contained at **(ATTACHMENT 2)**. Following the submission of additional information, no objections were made, with the exception of the Strategic Planning, which highlighted that the land has not yet been rezoned for commercial or business related development.

### External

Consultation with the Environment Protection Agency (EPA) was undertaken during the course of assessment. Subject to recommended conditions of consent being imposed with respect to landfill, the EPA did not object to the development. The EPA did however, object to the removal of any fill once placed on the site, noting that the fill would likely become contaminated by PFAS, if inundated during flood event. Based on this advice, the applicant's previous proposal to remove the fill from the site if the land is not rezoned in the future was not supported.

### Public Exhibition

The application was originally notified for a period of 14 days between 9 August 2017 and 22 August 2017. During this time, 4 submissions were received with 5 signatories.



As a result of modifications made to the development, the application was re-notified for a period of 14 days between 9 January 2019 and 23 January 2019. During this time, 3 submissions were received with 5 signatories. The key issues raised within the submissions included; drainage, spread of contaminated water, ecological impacts, flooding, visual impact, traffic management and lack of information supporting the development application. These issues have been addressed in detail within the detailed assessment report contained at **(ATTACHMENT 2)**. The assessment has acknowledged some of these concerns are insurmountable and therefore, the application is recommended for refusal.

### **OPTIONS**

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

### **ATTACHMENTS**

- 1) Locality Plan. [↓](#)
- 2) Planners Assessment Report. [↓](#)
- 3) Reasons for Refusal. [↓](#)
- 4) Call to Council Form. [↓](#)
- 5) Ordinary Council Minutes - 11 September 2018. [↓](#)

### **COUNCILLORS ROOM**

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

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

### **TABLED DOCUMENTS**

Nil.





# DEVELOPMENT ASSESSMENT REPORT

## APPLICATION DETAILS

<b>Application Number</b>	16-2017-524-1
<b>Development Description</b>	Earthworks - fill
<b>Applicant</b>	Land Development Solutions
<b>Date of Lodgement</b>	03/08/2017
<b>Value of Works</b>	\$20,000.00

### Background

The development application (DA) was reported to Council at its meeting of 11 September 2018 with a recommendation for refusal. The recommendation of refusal by Council staff was as a result of key issues arising through the assessment, namely impacts to flooding, ecology and rural character. In this regard, the development was found to be inconsistent with the Environmental Planning and Assessment 1979 (EP&A Act), Port Stephens Local Environmental Plan (LEP2013), Port Stephens Development Control Plan 2014 (DCP2014), Council's Floodplain Risk Management Policy and the NSW Government Floodplain Development Manual 2005.

At the September 2018 meeting, Council resolved to defer consideration of this item for a site inspection. Subsequent to that meeting, the applicant has provided additional information relating to the development characteristics, including earthworks, flooding and ecology.

The application was not immediately reported back to Council to allow for both a Planning Proposal lodged on the site and the Williamstown Special Activation Precinct (SAP) Masterplan to progress through assessment and determination.

The Planning Proposal was rejected at the Gateway determination stage. A subsequent rezoning review was conducted by the Joint Regional Planning Panel (now Hunter and Regional Planning Panel) at the request of the applicant in 2020. The Gateway review by the Panel rejected the Planning Proposal, determining that the proposal did not have strategic merit. It is anticipated the Williamstown SAP Masterplan will be placed on public exhibition in the first quarter of 2022.

Furthermore, since the September 2018 deferral, Council staff identified that earthworks, even if utilising clean fill, is classified as "waste management works". Clause 32 within Schedule 3 of the Environmental Planning and Assessment Regulation states that waste management works (earthworks), where not ancillary to any other development activity, is Designated Development when located on a floodplain, an area of high watertable and within 250m of a dwelling not associated with the development. As a result, Council staff cannot support the proposal without the applicant obtaining the Secretary's Environmental Assessment Requirements (SEARs) from the Department of Planning, Industry and Environment (DPIE) and preparing an Environmental Impact Statement. On this basis, the application is invalid.

The assessment below provides further details regarding the statutory framework for designated development and includes the assessment of the application that has already occurred.

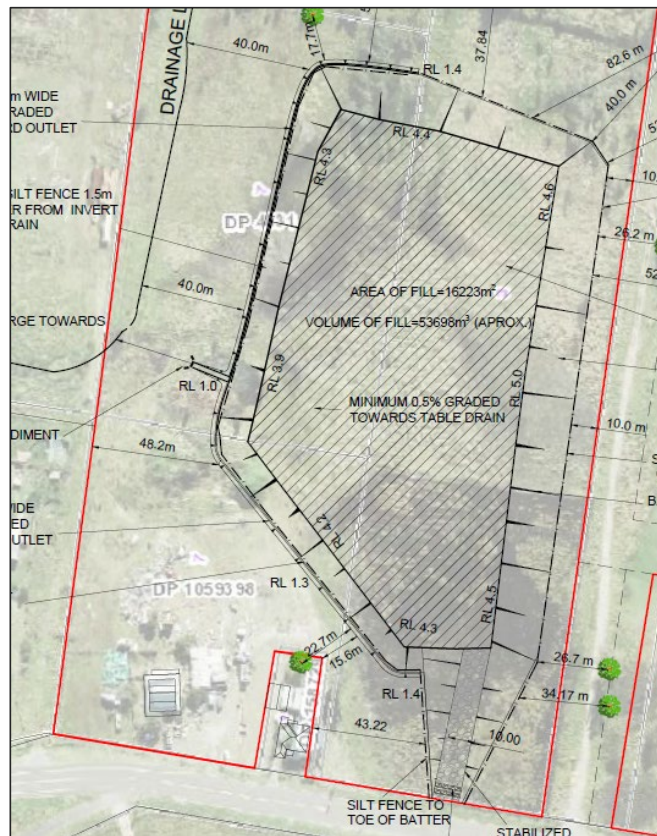
**Development proposal**

The applicant seeks approval for earthworks (waste management works) comprising the placement of fill in a single stockpile on the subject site to achieve the Flood Planning Level (FPL) of 3.0 metres Australian Height Datum (AHD) for the future use and development of the site in relation to business and airport related development, contingent upon a future rezoning occurring as part of the Williamstown SAP, or spot rezoning via a Planning Proposal.

The proposed development comprises:

- Delivery of fill on-site over a five year timeframe (maximum 50 movements per day);
- Maximum height of fill up to 4.0 metres (measured from existing ground level);
- Stockpile surface area is 16,223m<sup>2</sup>;
- Fill volume approx. 53,698m<sup>3</sup>;
- Batter at a 1:4 gradient with the following setbacks to property boundaries:
  - Eastern side boundary - varied setback of 10 metres to 26.7 metres.
  - Western side boundary - over 40 metres.
  - South-western boundary (adjacent No. 50 Cabbage Tree Road) – varied setback of 15.6 metres and 22.7 metres.
- Proposed access road to be setback 43.22 metres from the existing dwelling located at No. 50 Cabbage Tree Road; and
- Fill material will comprise Virgin Excavated Natural Material (VENM) and / or Excavated Natural Material (ENM).

An extract of the site plan is provided at **Figure 1** below.



**Figure 1: Site plan**

## PROPERTY DETAILS

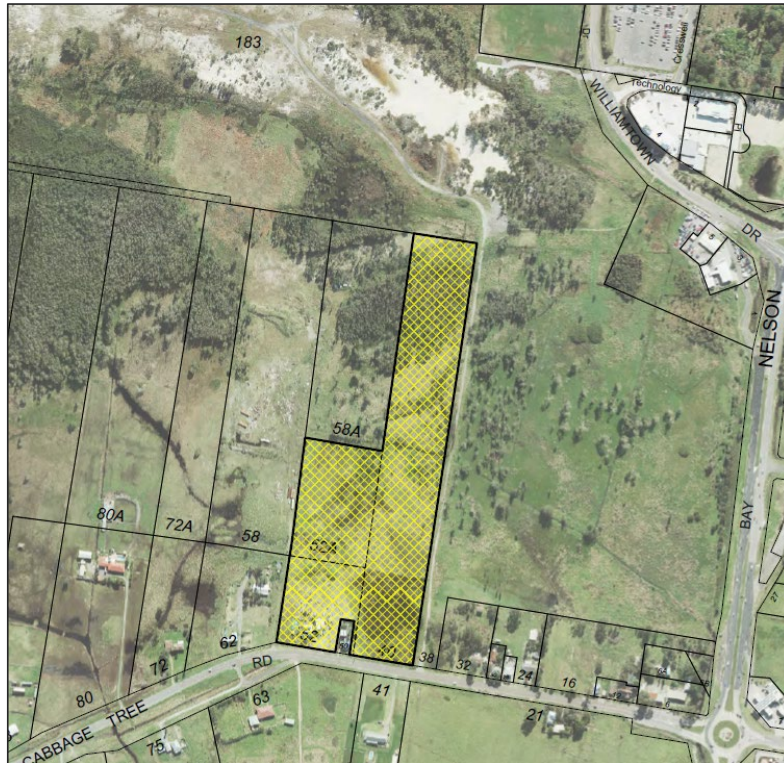
<b>Property Address</b>	52A Cabbage Tree Road WILLIAMTOWN, 52 Cabbage Tree Road WILLIAMTOWN, 40 Cabbage Tree Road WILLIAMTOWN
<b>Lot and DP</b>	LOT: 7 DP: 4831, LOT: 7 DP: 1059398, LOT: 3 DP: 1106651
<b>Current Use</b>	Vacant land
<b>Zoning</b>	RU2 RURAL LANDSCAPE
<b>Site Constraints</b>	<ul style="list-style-type: none"> <li>• Acid Sulfate Soils – Class 3;</li> <li>• Koala Habitat – Preferred;</li> <li>• Endangered Ecological Communities – Swamp Sclerophyll Forest;</li> <li>• RAAF Base Williamtown – ANEF 30-35;</li> <li>• RAAF Base Williamtown – Height Trigger;</li> <li>• RAAF Base Williamtown – Bird Strike Class C;</li> <li>• RAAF Base Williamtown – Extraneous Light;</li> <li>• Alligator Weed Affected Land;</li> <li>• Bushfire Prone Land – Category 3;</li> <li>• Flooding – High Hazard Storage;</li> <li>• Flooding – High Hazard Floodway;</li> <li>• Flooding – Low Hazard Storage;</li> <li>• Flooding – Low Hazard Fringe;</li> <li>• Williamtown PFAS Contamination Management Area – Primary Management Zone; and</li> <li>• Planning Strategy – DAREZ Business Park (adjoining the site).</li> </ul>

**Site Description**

The subject site consists of three lots known as 40, 52 and 52A Cabbage Tree Road, Williamtown, with a combined area of 7.5 ha and is located adjacent to the Defence and Airport Related Employment Zone ('DAREZ'). The subject site is identified in **Figure 2** below. Vehicular access to the site is proposed via 40 Cabbage Tree Road (Lot 3 DP: 1106651). The site is heavily constrained by environmental and neighbouring operational factors, including: flooding, contamination by per- and poly-fluoroalkyl substances (PFAS), RAAF Base operations, ecology and bushfire.

The site is currently vacant, partly cleared of vegetation, with the northern section containing dense vegetation. Existing drainage corridors traverse the site through the centre from east to west and along the eastern boundary.

The site is surrounded by rural land to the east, west and south. To the north, the site adjoins an approved 103 lot industrial subdivision, adjacent the Newcastle Airport, known as the 'Astra Aerolab'. A small lot, containing a single storey dwelling is located at the Cabbage Tree Road frontage, adjacent the subject site between 52 and 40 Cabbage Tree Road.



**Figure 2:** Aerial extent of subject site

### **Site History**

The subject site has a history of agricultural activities. A current compliance matter is being investigated by Council relating to the placement of demountable structures on-site. This is however outside of the area affected by the proposed development, and has no bearing on the assessment of the current application.

A Planning Proposal to rezone the land from RU2 Rural Landscape to B7 Business Park was previously lodged with Council but did not progress to Gateway determination. A rezoning review conducted by the Joint Regional Planning Panel in 2020 determined that the proposal did not have site specific merit.

### **Site Inspection**

A site inspection was carried out on **31 July 2018**. The subject site is depicted in the below images.



**Image 1: 40 Cabbage Tree Road (looking west)**



**Image 2: 40 Cabbage Tree Road (looking north-west)**



**Image 3: 40 and 52 Cabbage Tree Road (looking west)**



Image 4: 40 Cabbage Tree Road (looking west)



Image 5: 40 Cabbage Tree Road (looking west)

**ASSESSMENT SUMMARY**

**Designated Development**

The application is Designated Development in accordance with Clause 4.10 of the Environmental Planning and Assessment Act 1979 (EP&A Act), as the development is classified as a waste management facility located on a floodplain, an area of high water table and dwellings within 250m not associated with the development in accordance with Schedule 3, Clause 32 of the Environmental Planning and Assessment Regulation 2000 (the Regulations).

**Integrated Development**

The application does not require additional approvals listed under Section 4.46 of the Environmental Planning and Assessment Act 1979 (EP&A Act).



**Concurrence**

The application does not require the concurrence of another body

**Internal Referrals**

The proposed development was referred to the following internal specialist staff. The comments of the listed staff have been used to carry out the assessment against the Section 4.15 Matters for Consideration of the EP&A Act below.

**Engineering Services**

On 5 December 2018, a revised flood assessment prepared by Martens Consulting Engineers (ref: P1806741JR01V02 and dated December 2018) was submitted to Council. Amended plans were also received on 5 February 2018, which relocated the proposed fill 10 metres from the eastern boundary to minimise the offsite impact. The revised flood assessment and amended plans were referred to Council's Development Engineering Section for assessment.

The assessment of the amended information identified that the flooding conditions as a result of the proposed development are largely unchanged from the existing conditions. Further, that the proposed fill pad does not substantially alter the existing flood characteristics of the local area. As such, the proposed development is consistent with the LEP 2013, DCP 2014, the NSW Floodplain Development Manual 2005, and Council's existing Flood Study or Floodplain Risk Management Plan. In this regard, the proposed development was recommended for approval, subject to conditions.

**Traffic Engineer**

The application, including amended plans, was referred to Council's Traffic Engineer for assessment. The application was supported, subject to recommended conditions relating to the preparation of a Traffic Management Plan, Roads Act approval, restriction of vehicle movement and numbers to and from the site, and implementation of measures to ensure material is not transported off the subject site.

**Strategic Planning**

A Planning Proposal (PP) was lodged on 21 December 2018 that seeks to rezone the subject site from RU2 Rural Landscape to B7 Business Park was previously lodged with Council. The PP did not progress to Gateway approval as previously mentioned in this report.

**Natural Resources**

On 5 December 2018, an amended ecological report prepared by Kleinfelder (ref: NCA18L86696 and dated 4 December 2018) was submitted to Council. Further commentary was received on 5 February 2019 relating to the assessment of significance and Environmental Planning and Biodiversity Conservation Act 1999.

The amended / additional information was referred to Council's Natural Resources Section for assessment. In summary, the ecology assessment found the following:

- The buffer between the development and the drainage channel to the north increased from 16.5m to 40m.
- Two habitat trees (with hollows) are required to be removed within the proposed development footprint.
- Additional surveys and details on the Wallum Froglet were completed, concluding that no Wallum Froglets were identified on-site.

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

16-2017-524-1

- Assessment of potential impacts to natural flow regimes, inclusive of hydrology description, dynamics of the vegetation community and potential groundwater interactions was completed, concluding that minimal impact will occur and all drains will be untouched by the fill.
- Details on potential pollution and water quality impacts from proposed fill were provided. The improved sediment control measures and water quality management system offers substantially more protection and it is considered that potential pollution and water quality impacts can be adequately addressed to avoid any significant impact to surrounding wetland and swamp forest, or to downstream coastal wetlands. A revised buffer from the drainage channel to the north (as noted above) that flows into the mapped watercourse was provided to ensure that sufficient protection is available in the event of a small bank collapse.
- Additional consideration of the impacts on Alligator Weed located on-site was provided.
- Additional consideration of mitigation measures, including potential offset measures for the loss of hollow bearing trees or procedures for vegetation removal was provided.
- Sufficient information has been provided to justify that a significant environmental impact is unlikely.
- Sufficient information has been provided to justify that a significant impact on Matters of National Environmental Significance is unlikely.
- Information was provided confirming that the proposal is unlikely to have a significant impact on the koala.

It was determined that the proposed development will not result in unacceptable environmental impact, subject to conditions, in the event the application is supported.

**Weeds Officer**

The application was referred to Council's Weeds Officer to assess the impact of development on notifiable noxious weeds as the site is located within an area identified as containing Mother of Millions and Alligator Weed. It is noted that once the fill is placed it is not intended to be transported or distributed off site in the future. A condition requesting the preparation of a weed management plan was recommended, in the event the application is supported.

**External Referrals**

The proposed development was referred to the following external agencies for comment:

**Environment Protection Authority (EPA)**

The subject site is located within the Williamstown Investigation Zone and as the EPA is the lead authority investigating the contamination issues in the area, the application was referred to the EPA for comment and/or conditions. Following submission of additional information by the applicant, a response was received from the EPA on 5 February 2018, which provided recommended conditions of consent, which relate to; the implementation of a Quality Assurance / Quality Control Plan for the importation, certification and supervision of fill and requirements for resource recovery orders to which an exemption applies.

Further comment was sought from EPA in May 2019 in relation to the implications of imposing a time limited consent, requiring the removal of all material from the site within seven years to address concerns relating to long-term visual impacts associated with the proposal. In response to the referral, EPA noted that due to the site being located on flood prone land, the fill may be inundated by floodwaters and consequently contaminated with per- and poly-fluoroalkyl substances (PFAS). EPA further advised that should the fill become contaminated the fill may

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require disposal at a solid waste landfill or a hazardous waste facility, however disposal of large quantities of contaminated soil should be avoided.

## **ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 ASESMENT**

### **Section 4.10 – Designated Development**

The application is classified as Designated Development in accordance with Clause 4.10 of the Environmental Planning and Assessment Act 1979 (EP&A Act), as the development is classified as a waste management facility located on a floodplain, an area of high water table and residential dwellings within 250m not associated with the development in accordance with Schedule 3, Clause 32 of the Environmental Planning and Assessment Regulation 2000 (the Regulations).

### **Section 4.12 – Application**

Section 4.12(8) provides that a development application for designated development is to be accompanied by an Environmental Impact Statement (EIS) prepared in the form prescribed by the regulations, which includes a written application to the DPIE to obtain SEARs.

The applicant has not identified that the application is Designated Development and has not sought SEARs from DPIE. As a result, the proposal does not comply with Section 4.12 of the EP&A Act.

### **Section 4.15 – Matters for Consideration**

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

#### **State Environmental Planning Policies**

##### **State Environmental Planning Policy No. 44 – Koala Habitat Protection**

SEPP 44 applies by virtue of savings provisions as the application was lodged and not determined before the commencement of State Environmental Planning Policy Koala 2020.

SEPP 44 aims to encourage the proper conservation and management of areas of natural vegetation that provide habitat for Koalas to ensure a permanent free-living population over their present range and reverse the current trend of Koala population decline. The Ecology Assessment Report prepared by Wildthing Environmental Consultants (dated April 2018, ref: 12326) and ecological report prepared by Kleinfelder (ref: NCA18L86696 and dated 4 December 2018) submitted with the development application found the study area contained portions of 'preferred' habitat with linkages over cleared vegetation, as shown on the Koala Habitat Planning Map within the Port Stephens Council Comprehensive Koala Plan of Management (PSCKPoM). Based on the field surveys, no preferred koala habitat or habitat buffers were found. Conversely, the study area was found to contain 1.74 ha of supplementary koala habitat and no habitat linking areas. All other vegetation within the study area was classified as mainly cleared.

The proposed development will not require the removal of supplementary vegetation, and will be restricted to the designated footprint. A condition could be included requiring the inclusion of boundary fencing and vegetation removal requirements. Overall, the impact on koala habitat is low and the aims of SEPP 44 have been satisfied.

##### **State Environmental Planning Policy No. 55 – Remediation of Land**

The subject site is located within the Williamstown Environmental Investigation Area (Primary Management Zone), which is identified as possibly containing per- and poly-fluoroalkyl substances

(PFAS) within the soil, ground water and surface water. The proposed development does not incorporate any building works, change of use or excavation. The subject site has a history of land fill and agricultural activities and is not nominated within Council's records as being contaminated. However, the site is potentially contaminated given the possible presence of PFAS on the site. No site investigation or contamination report was submitted with the application.

A referral was sent to the EPA to review the application given the site is located within the Williamstown Environmental Investigation Area. Advice and general conditions were provided from the EPA relating to quality of fill and works within the investigation area. These conditions were provided on the basis that the fill storage was only for temporary purpose, whereby it is not proposed to remove the material from the site, although may be stockpiled or stored on different parts of the site until finally placed. EPA did not support removal of any material once placed on site.

#### State Environmental Planning Policy (Activation Precincts) 2020 (Activation Precincts SEPP)

The Activation Precincts SEPP facilitates a new planning framework for Special Activation Precincts (SAPs) in regional NSW, streamlining planning processes and guiding the delivery of the Precincts.

The site is located within the investigation area of the Williamstown Special Activation Precinct (SAP). The Department of Planning, Industry and Environment (DPIE) is currently conducting technical studies of an area south of Newcastle Airport and the Williamstown RAAF base. The technical studies include topics such as environment and heritage, sustainability and infrastructure, flooding and drainage, to help inform the final size and location of the Williamstown Precinct area.

Whilst the Master Plan is yet to be finalised or exhibited, the establishment of an isolated 4.0m high waste storage facility in the vicinity of the RAAF Base could potentially compromise the SAP planning process, particularly for flooding and infrastructure planning.

#### **Local Environmental Plan**

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

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

The proposed development is defined as "earthworks" and is permissible with consent in accordance with Clause 7.2 Earthworks of the LEP. The subject site is zoned RU2 Rural Landscape and the objectives of the zone encourage sustainable primary industry production by maintaining and enhancing the natural resource base, maintain the rural landscape character of the land and provide for a range of compatible land uses, including extensive agriculture.

Given the proposed fill extends to heights up to 4.0 metres, the development will be highly visible from Cabbage Tree Road and surrounds across Williamstown. A landscape plan was submitted with the amended application to demonstrate the visual impact of the development. This plan identifies the establishment of native plant layers to screen the proposed stockpile, by planting taller species at the base of the mound and graduating to the small species such as turf at the top. However, the proposed visual screening will take time to achieve as vegetation will need to reach maturity. Through the progressive delivery of new fill on-site, seedlings and vegetation are likely to be disrupted or destroyed, which could result in a failure to achieve mature height and subsequent visual impact mitigation.

The application provides consideration of the objectives of the zone, concluding that the proposed development is broadly consistent with the zone objectives. In review of this and subsequent further information requesting this be expanded upon, it is concluded that the proposed

development does not adequately consider the impacts on the rural landscape character of the site and surrounding context and therefore, remains inconsistent with the zone objectives. The establishment of a sizeable waste storage facility in a rural setting is considered non-confirming with the zone objectives.

#### **Clause 5.10 – Heritage**

Studies of the DAREZ area by GHD and surrounding land have identified that the subject site is not located within an area identified as being of Aboriginal Cultural Heritage significance and contains low archaeological potential. A AHIMS search (25 March 2018) has also been undertaken in respect of the subject site, which confirmed that no recorded Aboriginal items are located on or near the subject site.

The proposed earthworks shall be located within the southern portion of the subject site and will be largely contained within an area, which has been disturbed by heavy grazing for a long period of time. As such, the proposed development is not likely to result in adverse impacts to Aboriginal Cultural Heritage and is therefore satisfactory having regard to clause 5.10.

#### **Clause 7.1 – Acid Sulfate Soils**

The objective of Clause 7.1 is to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage. The subject site is identified as containing class 3 acid sulfate soils. Development consent is required for the carrying out of works more than 1 metre below the natural ground surface, or works by which the water table is likely to be lowered more than 1 metre below the natural ground surface.

The proposed development includes earthworks by means of landfill, not excavation. In this regard, the disturbance or risk of exposing acid sulfate soils is unlikely, and an acid sulfate soil management plan would not be required.

#### **Clause 7.2 – Earthworks**

The objective of Clause 7.2 is to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items, or features of the surrounding land. The proposed earthworks are not exempt development under this plan or any other applicable environmental planning instrument; therefore require consent from Council.

In response to the objective of Clause 7.2, the proposed landfill is satisfactory against the following matters for consideration under Clause 7.2(3), as it:

- Will not significantly disrupt or have a detrimental effect on drainage patterns and soil stability in the locality of the development;
- Will be restricted to fill which is VENM, ENM or any other waste-derived material the subject of a resource recovery exemption;
- Will include restrictions and/or quality assurance requirements relating to the source of fill material;
- Has a low likelihood of disturbing relics; and
- Has a low likelihood of adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area.

Despite this, the visual impacts of the proposal are anticipated to have detrimental impact to the existing and likely amenity of neighbouring properties. Given the proposed fill extends to heights of up to 4.0 metres, the development will be highly visible from adjoining properties. The landscape plan submitted with the amended application, while providing some visual screening of the development, does not provide sufficient short or long-term mitigation of visual impacts to adjoining properties. The proposed vegetation screening is expected to take considerable time to

reach maturity and through the progressive delivery of new fill on-site, seedlings and vegetation are likely to be disrupted or destroyed, resulting in a limited ability to achieve mature height. In consideration of the matters contained under Clause 7.2(3), the proposed development is not satisfactory and consent should not be granted.

### **Clause 7.3 – Flood Planning**

Clause 7.3 was repealed and replaced by Clause 5.21 of the PSLEP on 14 July 2021, however, as the development was lodged before the commencement of Clause 5.21, saving provisions apply and Clause 7.3 remains the relevant clause for consideration.

The subject development is located on land mapped as being within the flood planning area and categorised as High Hazard – Flood Storage, High Hazard – Floodway, Low Hazard – Flood Storage and Low Hazard – Flood Fringe. Clause 7.3 therefore applies.

The Applicant has provided a flood study prepared by Martens Consulting Engineers (ref: P1806741JR01V02 and dated December 2018) which demonstrated that the flooding conditions as a result of the proposed development are largely unchanged from the existing conditions. Further, the proposed fill pad does not substantially alter the existing flood characteristics of the local area. In response to the objectives of Clause 7.3, the proposed landfill is considered to be satisfactory as it:

- Is compatible with the flood hazard of the land;
- Will not significantly adversely affect flood behavior resulting in detrimental increases in the potential flood affectation of other development or properties;
- Incorporates appropriate measures to manage risk to life from flood;
- Will not significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses; and
- Is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.

To this extent, it is considered that development consent can be granted in accordance with Clause 7.3 of the LEP as the consent authority is satisfied that matters outlined in Clause 7.3(3) have been addressed.

### **s4.15(1)(a)(ii) – Any draft EPI**

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

### **s4.15(1)(a)(iii) – Any DCP**

#### Port Stephens Development Control Plan 2014

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

### **Section A.12 – Notification and advertising**

In accordance with the requirements of chapter A.12, the DA was originally notified for a period of 14 days from 9 August 2017 to 22 August 2017. Upon review and submission of revised documentation, the DA was re-notified for a period of 14 days between 9 January 2019 and 23 January 2019. During the latest round of exhibition three submissions were received with five signatories. The submissions are addressed in detail elsewhere within this report.

### **Section B2 – Natural resources**

The subject site has been subject to agricultural land use and largely cleared of remnant vegetation, and has been identified as containing the endangered ecological community ('EEC') Swamp Sclerophyll Forest towards the north. The vegetation located within proximity to the low lying area around the waterways and/or drains throughout the site may also provide habitat for the threatened wallum froglet (*Crinia tinnula*) that has been known to occur within the locality. Threatened species and endangered ecological communities as listed under state and/or Commonwealth legislation may also be present within the area, including; a RAMSAR listed wetland, key fish habitat (as listed under the *Fisheries Management Act 1994*) and preferred koala habitat as detailed under the Port Stephens Comprehensive Koala Plan of Management (PS CKPoM).

An ecological report prepared by Kleinfelder (ref: NCA18L86696 and dated 4 December 2018) was submitted to Council for review that adequately demonstrates that the proposed development will not result in a significant environmental impact. Two habitat trees (*Melaleuca quinquenervia*), one containing a large hollow (> 20 cm diameter entrance) and the other containing a medium-sized hollow (8 – 20 cm entrance) and three small hollows (<8 cm diameter entrance) will need to be removed as they occur within the stockpile footprint. Eleven other hollow-bearing trees (all *M. quinquenervia*) will not be impacted by the proposal. Accordingly, subject to recommended conditions, which relate to; NSW State Government permits, licences and statutory requirements relating to vegetation and fauna management, stormwater controls, weed removal and suppression and replacement of tree-hollows or implementation of nest boxes, the proposed development is considered satisfactory in respect to this matter.

#### **Section B4 – Drainage and water quality**

The proposed development does not require any specific water quality improvement measures. The submitted plans have demonstrated that the fill would be surrounded by sediment fencing and a "raingarden sediment trap", which satisfies sediment and water quality measures as required by Section B4. Further, sediment control during construction can be adequately addressed subject to recommended conditions. In this regard, the requirements of Section B4 have been satisfied.

#### **Section B5 – Flooding**

The subject land is mapped as being within the Flood Planning Area. As detailed within the assessment of Clause 7.3 of the LEP 2013 above, the proposed development is acceptable with respect to flood impacts. Accordingly, Section B5 is satisfied.

#### **Section B8 – Road network and parking**

To ensure that the impacts of the proposed development are considered and that the existing level of service of the road network (Cabbage Tree Road) is maintained, the provisions of Section B8 are required to be addressed.

It is noted that the delivery of fill material will occur over a period of five years depending on quantities available from local extractive industries, through the use of rigid trucks with dog trailer combinations not exceeding a Gross Combination Mass (GCM) of 42.5 tonnes. The total fill volume of 53,698m<sup>3</sup> proposed equates to 80,286 tonnes. If each truck has a GCM of 42.5 tonnes, this equates to 1895 trips required to fill the site to capacity, which is approximately 379 trips per year over five years. The applicant has proposed the maximum number of vehicle movements to include 50 per day. It is anticipated that the deliveries will be made from Monday to Friday between the hours of 9am and 7pm, and aims to capitalise on existing empty truck movements going past the site. A driveway access will be provided via 40 Cabbage Tree Road, which requires an application under Section 138 of the Roads Act 1993 to be conditioned under any consent. A 'shaker hump' is proposed within the access to ensure safe vehicle ingress and egress.

The noise and dust generated by the proposed vehicle movements are considered significant for the rural landscape of the locality. The fill storage is also without purpose at this time, given that the Planning Proposal to rezone the site has been rejected and the Williamstown SAP master planning process, including design for fill and earthworks is still being undertaken by DPIE.

If Council resolved to support the application, conditions could be included to restrict vehicle movements to 50 per day, require the preparation of a Traffic Management Plan, Roads Act approval, restriction of vehicle movements to left in left out of the site only, and implementation of measures to ensure material is not transported off the subject site.

**s4.15(1)(a)(iia) – Any planning agreement or draft planning agreement entered into under section 7.4**

There are no planning agreements that have been entered into under section 7.4 relevant to the proposed development.

**s4.15(1)(a)(iv) – The regulations**

As discussed against Section 4.10 of the EP&A Act 1979 above, Schedule 3 of the EP&A Regulations includes the relevant triggers for Designated Development. Schedule 3, Clause 32 – Waste management facilities or works under the Regulations is applicable to the development as earthworks, whether comprising ENM or VENM are considered a type of “waste management works”. Clause 32 provides that waste management facilities or works are designated development when located within or in proximity to certain environmental constraints, including a floodplain, high watertable area and residential dwellings within 250m. The proposed development is located on Flood Prone Land (High Hazard Storage, High Hazard Floodway, Low Hazard Storage and Low Hazard Fringe) and therefore in accordance with Clause 32(1)(d) the proposal is Designated Development. The application submitted in its current form is invalid through the absence of an EIS prepared in accordance with SEARs.

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

The subject site is located within a strategic economic precinct due to its location within the Williamstown SAP investigation area. Despite this, the Williamstown SAP Master Plan has not been publically exhibited and accordingly there is no strategic or economic purpose for which the proposed earthworks would warrant support. Moreover, the establishment of an isolated and unplanned fill pad may compromise flood modelling and infrastructure planning for potential future works under the SAP.

In addition, the applicant has failed to demonstrate a nexus for which the proposed earthworks would be required to support any current permissible land use within the current RU2 Rural Landscape zone and as a result, the disturbance created by the works and associated vehicle movements are not considered appropriate or suitable for the site. Furthermore, the proposed development does not satisfy the zone objectives as the height, extent and visual impact of the earthworks are out of keeping with the rural character of the surrounding locality.

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

Based on the information provided, the proposed development is likely to have an adverse impact in respect to the visual amenity and rural character of the site and surrounding locality. Furthermore, the assessment has determined that the site is not suitable as the development:

- Is inconsistent with the objectives of the RU2 Rural Landscape zone applied to the land;



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

16-2017-524-1

- Results in unacceptable visual impacts that are anticipated to have detrimental impact to the existing amenity of neighbouring properties.
- The Planning Proposal to rezone the land was rejected at Gateway determination;
- The Williamtown SAP Master Plan has not been exhibited. Accordingly, there is currently no strategic purpose for which the proposed earthworks would warrant support; and
- The applicant has failed to demonstrate reasons for which the proposed earthworks would be required to support a permissible land use within the current RU2 Rural Landscape zone.

**s4.15(1)(d) – Any submissions**

The application was originally notified for a period of 14 days between 9 August 2017 and 22 August 2017. During this time, four submissions were received with 5 signatories.

As a result of modifications made to the development, the application was notified for a period of 14 days between 9 January 2019 and 23 January 2019. During this time, three submissions were received with five signatories. The concerns raised regarding the development during this period are summarised below:

	<b>Submission Summary</b>	<b>Submission Response</b>
1	<p>Submission objects to the proposal, based on concerns relating to:</p> <ul style="list-style-type: none"> <li>• Disruption of existing drainage flows and spread of contaminated of water, the subject site is contaminated with PFAS, PFAO, PFAB in the high area of the "red zone".</li> <li>• Potential impact of proposed development on flood characteristics of neighbouring land.</li> <li>• Ongoing management of dust from proposed fill stockpiles.</li> </ul>	<ul style="list-style-type: none"> <li>• The revised flood assessment prepared by Martens Consulting Engineers (ref: P1806741JR01V02 and dated December 2018) demonstrated that the flooding conditions as a result of the proposed development are largely unchanged from the existing conditions. Further, the proposed fill pad does not substantially alter the existing flood characteristics of the local area.</li> <li>• The EPA have provided recommended conditions to manage the development within the Williamtown Investigation Area.</li> <li>• The fill is to be top dressed and seeded with fast growing native grasses and ground cover at all times to manage dust impacts.</li> <li>• Despite this, it is considered that the disturbance created by the works are without purpose at this time, given that there is no certainty of outcome relating to the Williamtown SAP.</li> </ul>
2	<p>Submission objects to the proposal, based on concerns relating to:</p> <ul style="list-style-type: none"> <li>• Disruption of existing drainage flows and spread of contaminated of water, the subject site is contaminated with PFAS, PFAO, PFAB in the high area of the "red zone".</li> </ul>	<ul style="list-style-type: none"> <li>• The revised flood assessment prepared by Martens Consulting Engineers (ref: P1806741JR01V02 and dated December 2018) demonstrated that the flooding conditions as a result of the proposed development are largely unchanged from the existing conditions. Further, the</li> </ul>

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

16-2017-524-1

	<ul style="list-style-type: none"> <li>• Potential impact of proposed development on flood characteristics of neighbouring land.</li> <li>• Increase in truck movements and how they would access the subject site, and the associated impacts on the surrounding road network.</li> <li>• Disturbance of contaminated site due to large machinery and trucks.</li> <li>• Quality of the proposed fill.</li> </ul>	<p>proposed fill pad does not substantially alter the existing flood characteristics of the local area.</p> <ul style="list-style-type: none"> <li>• The EPA have provided recommended conditions to manage the development within the Williamstown Investigation Area.</li> <li>• A driveway is proposed over 40 Cabbage Tree Road to ensure safe delivery of fill and egress of vehicles. Impacts to the surrounding road network have been assessed and found to be negligible.</li> <li>• No excavation is proposed, therefore high disturbance of contaminated land is unlikely.</li> <li>• Fill material will comprise Virgin Excavated Natural Material (VENM) and / or Excavated Natural Material (ENM).</li> <li>• Despite this, it is considered that the disturbance created by the works are without purpose at this time, given that there is no certainty relating to the Williamstown SAP Master Plan.</li> </ul>
3	<p>Submission objects to the proposal, based on concerns relating to:</p> <ul style="list-style-type: none"> <li>• Disruption of existing drainage flows and spread of contaminated of water, the subject site is contaminated with PFAS, PFAO, PFAB in the high area of the "red zone".</li> <li>• Potential impact of proposed development on flood characteristics of neighbouring land, particularly regarding ground and surface water.</li> <li>• There is no access to the property that would allow truck movements so one would need to be built. Cabbage Tree Road is already busy with truck movements.</li> <li>• Ongoing management of dust from proposed fill stockpiles.</li> <li>• Spread of alligator weed from large machinery and trucks.</li> <li>• Impact on native flora and fauna, particularly the Wallum Froglet.</li> <li>• Artist impression of mound inaccurate due</li> </ul>	<ul style="list-style-type: none"> <li>• The revised flood assessment prepared by Martens Consulting Engineers (ref: P1806741JR01V02 and dated December 2018) demonstrated that the flooding conditions as a result of the proposed development are largely unchanged from the existing conditions. Further, the proposed fill pad does not substantially alter the existing flood characteristics of the local area.</li> <li>• A driveway is proposed over 40 Cabbage Tree Road to ensure safe delivery of fill and egress of vehicles. Impacts to the surrounding road network have been assessed and found to be negligible.</li> <li>• The fill mound is to be top dressed and seeded with fast growing native grasses and ground cover at all times to manage dust impacts.</li> <li>• In the event the application is supported, a condition is recommended requiring the preparation of a weed management plan, to ensure the existing infestation of Alligator Weed is contained during works.</li> <li>• Additional surveys and details on the</li> </ul>

<p>to intended use of the site.</p>	<p>Wallum Froglet were completed concluding that no Wallum Froglets were identified on-site.</p> <ul style="list-style-type: none"> <li>• The application does not adequately demonstrate that visual impacts as a result of the development have been appropriately mitigated.</li> <li>• It is considered that the disturbance created by the works are without purpose at this time, given that there is no certainty of outcome relating to the Williamtown SAP.</li> </ul>
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**Comments**

A response to each of the comments received from submission makers has been made in this report. The assessment has acknowledged some of these concerns cannot be overcome and therefore the application is recommended for refusal.

**s4.15(1)(e) – The public interest**

The application has not demonstrated that the development is consistent with the adopted statutory planning provisions and strategies that seek to promote the appropriate development of land. The DA provides minimal public benefit, given that the works are not related to a permissible land use within the current RU2 Rural Landscape zone. The fill would be highly visible from Cabbage Tree Road and adjoining properties, resulting in adverse impacts to visual amenity and rural landscape character. Further, the disturbance created by the works and associated vehicle movements are considered to be without merit at this time, given that there is no certainty relating to the Williamtown SAP Master Plan. Accordingly, the DA is not considered to be satisfactory in terms of the public interest on this basis.



**REASONS FOR REFUSAL**

1. The proposed development is inconsistent with the objectives contained in Section 1.3 of the Environmental Planning and Assessment (EP&A) Act 1979, as it fails to promote the orderly and economic use and development of land (s.1.3(c) of the EP&A Act 1979).
2. The proposed development is not supported by the necessary Environmental Impact Statement required for Designated Development under Section 4.12 of the EP&A Act 1979 (s.4.12(8) of the EP&A Act 1979).
3. The proposed development fails to satisfy Clause 2.3 (zone objectives) and Clause 7.2 (earthworks) of the Port Stephens Local Environmental Plan 2013 (LEP2013) as the development will result in unacceptable visual impacts and is likely to detract from the rural character of the locality (s.4.15(1)(b) of the EP&A Act 1979).
4. The proposed development is not considered to be suitable for the site (s.4.15(1)(c) of the EP&A Act 1979).
5. The DA is not considered to be in the public interest as the development is inconsistent with the adopted principles and strategies which seek to promote the appropriate development of land (s.4.15(1)(e) of the EP&A Act 1979).

ITEM 1 - ATTACHMENT 4 CALL TO COUNCIL FORM.



PORT STEPHENS COUNCIL

CALL TO COUNCIL FORM DEVELOPMENT APPLICATION

I, Councillor Steve Tucker

require Development Application Number 2017-524

for Earthworks - Temporary Fill

at 40 Cabbage Tree Road Williamtown

to be subject of a report to Council for determination by Council.

Reason:

The reason for this call-up to Council is this D.A. submitted on 3/8/2017 is a precursor to proposed future development and access to Newcastle Airport.

Declaration of Interest:

I have considered any pecuniary or non-pecuniary conflict of interest (including political donations) associated with this development application on my part or an associated person.

I have a conflict of interest? Yes/No (delete the response not applicable).

If yes, please provide the nature of the interest and reasons why further action should be taken to bring this matter to Council:

Signed: [Redacted Signature] Date: 30/1/2018

**MINUTES ORDINARY COUNCIL - 11 SEPTEMBER 2018**

Councillor Chris Doohan left the meeting at 6:13pm.  
Councillor Jaimie Abbott left the meeting at 6:14pm.

**ITEM NO. 1**

**FILE NO: 18/172131  
EDRMS NO: 16-2017-524-1**

**DEVELOPMENT APPLICATION 16-2017-524-1 (EARTHWORKS - FILL) AT 52, 52A AND 40 CABBAGE TREE ROAD WILLIAMTOWN (LOT: 7 DP: 1059398, LOT: 7 DP: 4831, LOT: 3 DP: 1106651)**

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

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Refuse the development application 16-2017-524-1 for Earthworks - fill at 52, 52A and 40 Cabbage Tree Road, Williamtown (LOT: 7 DP: 1059398, LOT: 7 DP: 4831 and LOT: 3 DP: 1106651) for the reasons contained in **(ATTACHMENT 4)**.

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**ORDINARY COUNCIL MEETING - 11 SEPTEMBER 2018  
MOTION**

<b>281</b>	<p><b>Councillor Steve Tucker Councillor Giacomo Arnott</b></p> <p>It was resolved that Council defer item 1 for site inspection of development application 16-2017-524-1 for Earthworks - fill at 52, 52A and 40 Cabbage Tree Road, Williamtown (LOT: 7 DP: 1059398, LOT: 7 DP: 4831 and LOT: 3 DP: 1106651).</p>
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In accordance with Section 375 (A) of the *Local Government Act 1993*, a division is required for this item.

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

Those against the Motion: Nil.

**BACKGROUND**

The purpose of this report is to present development application (DA) No.16-2017-524-1, for earthworks - fill, to Council for determination. The development application was called to Council as detailed in **(ATTACHMENT 1)**.

**MINUTES ORDINARY COUNCIL - 11 SEPTEMBER 2018**

The subject DA relates to land located at 52, 52A and 40 Cabbage Tree Road, Williamstown, legally identified as LOT: 7 DP: 1059398, LOT: 7 DP: 4831 and LOT: 3 DP: 1106651 (the 'subject site'). A locality plan is provided at **(ATTACHMENT 2)**.

Proposal

The applicant seeks approval for earthworks comprising the placement of fill in a single stockpile on the subject site, as follows and detailed in **(ATTACHMENT 3)**.

- The total stockpile surface area and volume are unspecified, however it is noted that the stockpile varies between 3 m and 4.5 m in height with a batter at a 1:4 gradient.
- The proposed batter extends to the eastern side boundary with an approximately 0 m setback, whilst setbacks to the western side boundary exceed 40 metres.
- The fill is proposed to comprise virgin excavated natural material (VENM) and/or excavated natural material (ENM).

It is noted that the end purpose of the fill has not been specified by the applicant, with statements that the fill is required for 'future use and development of the site'. The applicant was requested to provide further information regarding the proposed end use, however this was not received.

Site Description

The subject site consists of three lots with a total area of 7.5 ha and is located adjacent to the Defence and Airport Related Employment Zone (DAREZ). Vehicular access to the site is available via 52 Cabbage Tree Road. The site is constrained by environmental and neighbouring operational factors, including: flooding, contamination (PFAS), RAAF Base operations, ecology and bushfire.

The site is currently vacant, partly cleared of vegetation, with the northern section containing dense vegetation. Existing drainage corridors traverse the site through the centre from east to west and along the eastern boundary.

Key Issues

The key issues resulting in the recommendation to refuse the application are outlined below. A detailed assessment of the development is contained at **(ATTACHMENT 3)**.

Flood impacts

The subject site is mapped as being within the flood planning area and falls within multiple flood categories as follows; High Hazard (Flood Storage), High Hazard (Floodway), Low Hazard (Flood Storage) and Low Hazard (Flood Fringe). The proposed earthworks are located primarily within land identified as High Hazard (Flood Storage). Council's Development Control Plan 2014 (DCP2014) Chapter B5

**MINUTES ORDINARY COUNCIL - 11 SEPTEMBER 2018**

requires that a flood study be provided with development applications proposing fill within the High Hazard (Flood Storage) area.

The applicant provided a flood assessment (prepared by Forum Consulting dated 26 March 2018) in support of their application. The flood assessment did not provide sufficient information to enable a detailed assessment of the impacts of the proposed earthworks upon adjacent properties, particularly along Cabbage Tree Road. In addition the flood assessment did not adequately address the flood hazard, including consideration of depth of inundation, flow velocity, or required warning time for local catchment flooding.

It is noted that Clause 7.3 of Council's Local Environmental Plan 2013 (LEP2013) applies to the subject site as it is land at or below the flood planning level. Clause 7.3(3) provides that development consent must not be granted to development on land to which the clause applies unless the consent authority is satisfied of certain preconditions including that; the development is compatible with the flood hazard of the land (cl. 7.3(3)(a)) and that the development will not significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties (cl. 7.3(3)(b)).

The proposed earthworks are not considered to be compatible with the flood hazard of the land as the applicant has failed to demonstrate that the proposed development will not adversely affect flood behaviour or impact adjoining properties. On this basis, the development is considered to fail the 'test' set out within Clause 7.3(3) and accordingly Council as the consent authority is unable to grant consent to the proposal.

#### Ecological impacts

Whilst the subject site has been subject to agricultural land use and largely cleared of remnant vegetation, it has been identified as containing the endangered ecological community (EEC) Swamp Sclerophyll Forest towards the north. The vegetation located within proximity to the low lying area around the waterways and/or drains throughout the site may also provide habitat for the threatened wallum froglet (*Crinia tinnula*) that has been known to occur within the locality. Threatened species and endangered ecological communities as listed under state and/or Commonwealth legislation may also be present within the area, including; a RAMSAR listed wetland, key fish habitat (as listed under the *Fisheries Management Act 1994*) and preferred koala habitat as detailed under the Port Stephens Comprehensive Koala Plan of Management (PS CKPoM).

An ecological report undertaken by Wildthing Environmental Consultants (dated April 2018) was submitted to Council. However, the report has limited consideration of the impacts of alteration to natural flow regimes, stating that the proposed development is unlikely to significantly alter the flow of the ephemeral drainage lines. The importation of fill and placement of this fill into these low lying areas will alter the hydrology of the site, which could alter the dynamics of the vegetation community



**MINUTES ORDINARY COUNCIL - 11 SEPTEMBER 2018**

existing onsite. Furthermore, the ecological report was considered to be unsatisfactory as identified in **(ATTACHMENT 3)**.

The information provided by the applicant has failed to provide a clear or accurate depiction of the impacts of the proposed development on the environmental characteristics of the land, therefore the application cannot be supported.

Rural character

The subject site is zoned RU2 Rural Landscape under Clause 2.3 of the LEP 2013 and the objectives of the zone include to maintain the rural landscape character of the land. The information provided with the application did not adequately consider the impacts on the rural landscape character of the area. Concern is raised that the height of the proposed fill will result in adverse visual impacts to locality and adjoining properties. Due to the height and scale of the proposed fill it is considered that mitigation measures would be unlikely to ameliorate the potential impact.

Conclusion

The development is inconsistent with the relevant environmental planning instruments applicable to the site, including:

- *Environmental Planning and Assessment Act 1979*, including Section 4.15(1)(c) regarding the suitability of the site.
- Port Stephens LEP2013; Clause 2.3 (Zone objectives), Clause 7.2 (Earthworks), and Clause 7.3 (Flood Planning).
- Port Stephens DCP2014; Chapter B2 (Natural Resources) and Chapter B5 (Flooding).
- Council's Floodplain Risk Management Policy.
- NSW Government Floodplain Development Manual 2005.

The key issues arising through the assessment of the application that have not be able to be overcome by the applicant (as discussed above) and for these reasons the proposed development is recommended for refusal for the reasons contained within **(ATTACHMENT 4)**.

**COMMUNITY STRATEGIC PLAN**

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

## MINUTES ORDINARY COUNCIL - 11 SEPTEMBER 2018

## 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		There is scope within Council's existing budget to defend Council's determination if challenged.
Reserve Funds	No		
Development Contributions (\$7.11)	No		
External Grants	No		
Other	No		

## LEGAL, POLICY AND RISK IMPLICATIONS

The development application is inconsistent with the relevant planning instruments, flood development guidelines and studies including the *Environmental Planning and Assessment Act 1979* (EP&A Act), *Port Stephens Local Environmental Plan 2013* (LEP 2013), *Port Stephens Development Control Plan 2014* (DCP 2014), *Local Government Act 1993* (LG Act 1993), Council's Floodplain Risk Management Policy and the NSW Government Floodplain Development Manual 2005. Detailed assessment against these requirements are contained within the assessment report provided at **(ATTACHMENT 3)**.

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

The approval of the subject DA is considered to be inconsistent with the principles contained within the NSW Floodplain Development Manual 2005 and may negate the good faith immunity provisions in the LG Act. As such, individual Councillors may be personally accountable and responsible for any subsequent implications resulting from the decision. Further, in the event of any future claim, Council's insurers may determine not to cover Council should the application be approved, contrary to the recommendation of Council staff.

**MINUTES ORDINARY COUNCIL - 11 SEPTEMBER 2018**

<b>Risk</b>	<b><u>Risk Ranking</u></b>	<b>Proposed Treatments</b>	<b>Within Existing Resources ?</b>
There is a risk if the application is approved that Council's decision will be ultra vires as Clause 5.10, Clause 7.3, Clause and Clause 7.5 of the LEP 2013 are preconditions to the granting of consent and have not been satisfied.	Medium	Determine the application in line with the recommendation.	Yes
There is a risk that if the application is approved, that Council may be liable for any damage or consequences to approving a development located on a site with a known flood risk.	Medium	Determine the application in line with the recommendation.	Yes
There is a risk the proposal will expose people and property to risk of damage and death as a consequence of approving fill in a site with a known flood and contamination risk.	High	Determine the application in line with the recommendation.	Yes

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

The subject site is located within a strategic economic precinct due to its proximity to DAREZ and is currently zoned RU2 Rural Landscape and it is important to note that there are currently no planning proposals lodged with Council seeking to rezone the land. Accordingly there is no strategic or economic purpose for which the proposed earthworks would merit support.

In addition, the applicant has failed to identify a purpose for the extent of proposed fill and has not demonstrated reasons for which the proposed earthworks would be required to support a permissible land use within the current RU2 Rural Landscape zone. Furthermore, in its current form the proposed development does not satisfy the zone objectives as the height, extent and visual impact of the earthworks are out of keeping with the rural character of the surrounding locality.

**MINUTES ORDINARY COUNCIL - 11 SEPTEMBER 2018**

As outlined in an above section of this report the applicant has failed to appropriately identify and mitigate the impacts to the environment including; flooding and ecology. As a result the environmental impacts of the development are unknown and the proposal cannot be supported.

**CONSULTATION**Internal referral

Consultation was undertaken with internal officers, including; Engineering, Natural Resources (Ecology and Weeds), Strategic Planning, and Environmental Health. The referral comments from these officers were considered as part of the assessment contained at **(ATTACHMENT 3)** and accordingly the DA is recommended for refusal for the reasons contained within **(ATTACHMENT 4)**.

External agency

Consultation with the Environment Protection Agency (EPA) was undertaken during the course of assessment. Subject to recommended conditions of consent being imposed with respect to landfill the EPA did not object to the development **(ATTACHMENT 4)**.

Public exhibition

In accordance with Council's notification requirements the DA was notified for a period of 14 days from 9 August 2017 to 22 August 2017. During the exhibition period four submissions were received. The key issues raised within the submissions included; drainage, spread of contaminated water, ecological impacts, flooding, visual impact, traffic management and lack of information supporting the development application. These issues have been addressed in detail within the detailed assessment report contained at **(ATTACHMENT 3)**. The assessment has acknowledged many of these concerns cannot be overcome and therefore the application is recommended for refusal.

**OPTIONS**

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

**ATTACHMENTS**

- 1) Call to Council Form.
- 2) Locality Plan.
- 3) Assessment Report.
- 4) Reasons for Refusal.

**MINUTES ORDINARY COUNCIL - 11 SEPTEMBER 2018**

**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

Nil.



CALL TO COUNCIL FORM  
DEVELOPMENT APPLICATION

I, Councillor Steve Tucker  
require Development Application Number 2017-524  
for Earthworks - Temporary Fill  
at 40 Cabbage Tree Road Williamstown

to be subject of a report to Council for determination by Council.

Reason:

The reason for this call-up to Council is this D.A. submitted on 3/8/2017 is a precursor to proposed future development and access to Newcastle Airport.


Declaration of Interest:

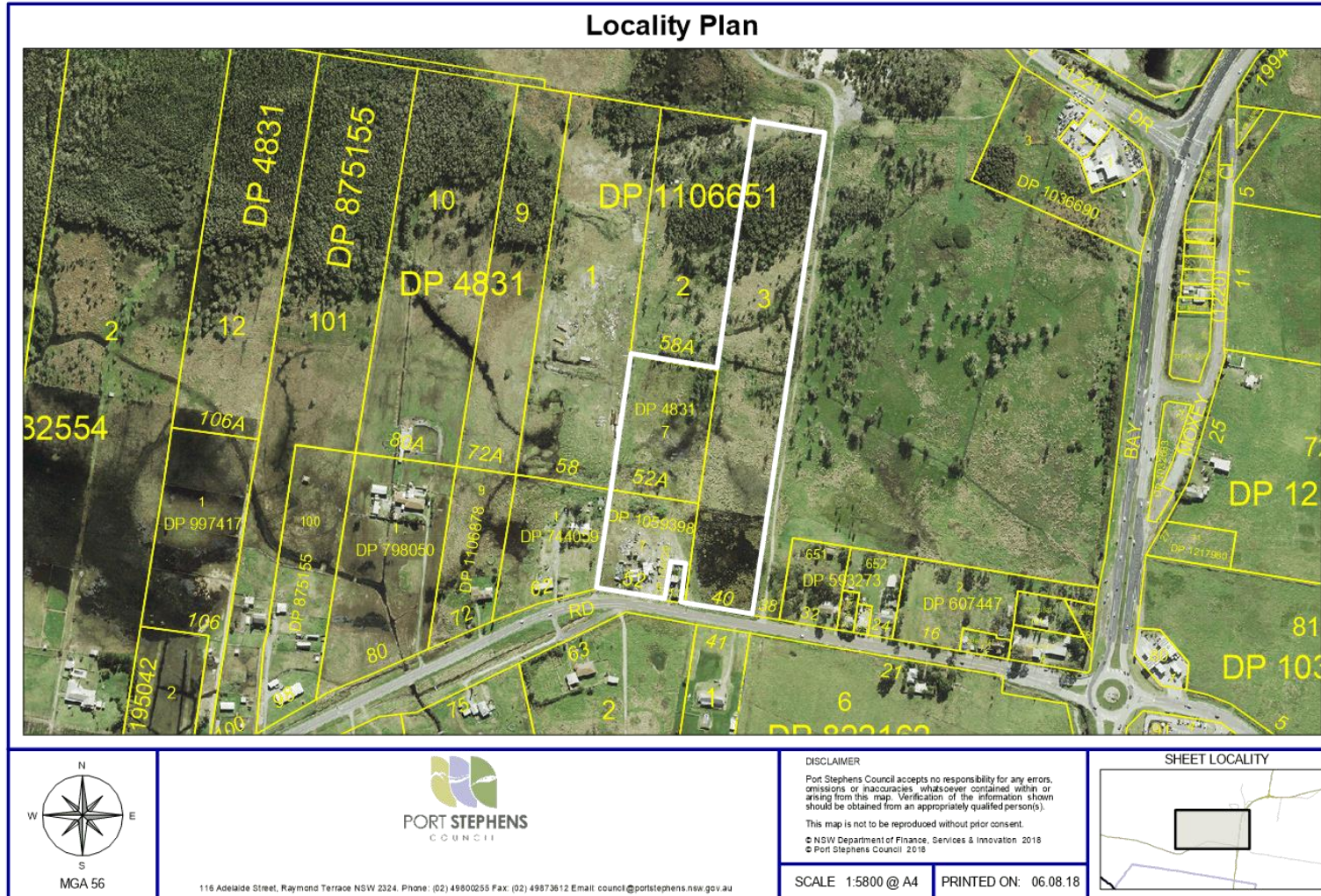
I have considered any pecuniary or non-pecuniary conflict of interest (including political donations) associated with this development application on my part or an associated person.

I have a conflict of interest? ~~Yes~~/No (delete the response not applicable).

If yes, please provide the nature of the interest and reasons why further action should be taken to bring this matter to Council:

.....  
.....  
.....

Signed:  Date: 30/1/2018





DEVELOPMENT ASSESSMENT REPORT

APPLICATION DETAILS

Application Number	16-2017-524-1
Development Description	Fill and associated earthworks
Applicant	UNTAPPED PLANNING
Date of Lodgement	03/08/2017
Value of Works	\$20,000.00

Development Proposal

The applicant seeks approval for earthworks comprising the placement of fill in a single stockpile on the subject site, as follows:

- The total stockpile surface area and volume are unspecified, however it is noted that the stockpile varies between 3 m and 4.5 m in height with a batter at a 1:4 gradient.
- The proposed batter extends to the eastern side boundary with an approx. 0 m setback, whilst setbacks to the western side boundary exceed 40 metres.
- The fill is proposed to comprise virgin excavated natural material ('VENM') and / or excavated natural material ('ENM').

It is noted that the end purpose of the fill has not been specified by the applicant, the applicant states that the fill is required for 'future use and development of the site'. The applicant was requested to provide further information regarding the proposed end use, however this was not received. An extract of the site plan is provided at figure 1 below.

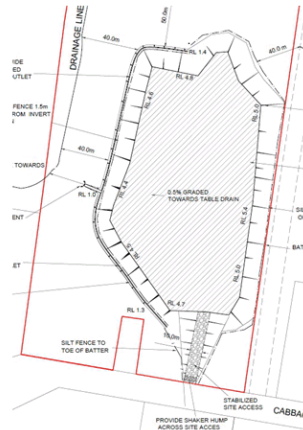


Figure 1: Site plan



16-2017-524-1

<b>PROPERTY DETAILS</b>	
<b>Property Address</b>	52A Cabbage Tree Road WILLIAMTOWN, 40 Cabbage Tree Road WILLIAMTOWN, 52 Cabbage Tree Road, WILLIAMTOWN
<b>Lot and DP</b>	LOT: 7 DP: 4831, LOT: 3 DP: 1106651, LOT: 7 DP: 1059398
<b>Current Use</b>	Vacant land
<b>Zoning</b>	RU2 RURAL LANDSCAPE
<b>Site Constraints</b>	<ul style="list-style-type: none"> <li>• Acid Sulfate Soils – Class 3;</li> <li>• Koala Habitat – Preferred;</li> <li>• Endangered Ecological Communities – Swamp Sclerophyll Forest;</li> <li>• RAAF Base Williamtown – ANEF 30-35;</li> <li>• RAAF Base Williamtown – Height Trigger;</li> <li>• RAAF Base Williamtown – Bird Strike Class C;</li> <li>• RAAF Base Williamtown – Extraneous Light;</li> <li>• Alligator Weed Affected Land;</li> <li>• Bushfire Prone Land – Category 3;</li> <li>• Flooding – High Hazard Storage;</li> <li>• Flooding – High Hazard Floodway;</li> <li>• Flooding – Low Hazard Storage;</li> <li>• Flooding – Low Hazard Fringe;</li> <li>• Williamtown PFAS Contamination Management Area – Primary Management Zone; and</li> <li>• Planning Strategy – DAREZ Business Park (adjoining the site).</li> </ul>

**Site Description**

The subject site consists of three lots with a total area of 7.5 ha and is located adjacent to the Defence and Airport Related Employment Zone ('DAREZ'). Vehicular access to the site is available via 52 Cabbage Tree Road. The site is constrained by environmental and neighbouring operational factors, including: flooding, contamination (PFAS), RAAF Base operations, ecology and bushfire.

The site is currently vacant, partly cleared of vegetation, with the northern section of containing dense vegetation. Existing drainage corridors traverse the site through the centre from east to west and along the eastern boundary.

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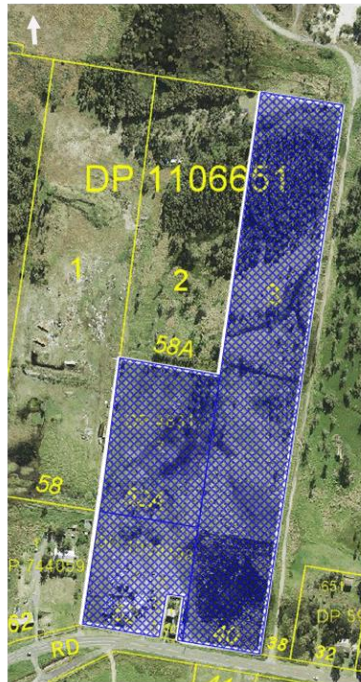


Image 1: Aerial extent of subject site

**Site History**

Compliance action associated with unauthorised land fill has occurred historically at the site (circa 2005), however this matter was resolved and has no bearing on the assessment of the current application.

**Site Inspection**

A site inspection was carried out on 31 July 2018. The subject site is depicted in the below images.

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Image 2: 40 Cabbage Tree Road (looking west)



Image 3: 40 Cabbage Tree Road (looking north-west)

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**Image 4:** 40 and 52 Cabbage Tree Road (looking west)



**Image 5:** 40 Cabbage Tree Road (looking west)

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**Image 6:** 40 Cabbage Tree Road (looking west)

**ASSESSMENT SUMMARY**

<b>Designated Development</b>	The application is not designated development
<b>Integrated Development</b>	The application requires additional approvals listed under Section 4.46 of the <i>Environmental Planning and Assessment Act 1979</i> (EP&A Act) and requires assessment by the Environmental Protection Agency under Section 43 the <i>Protection of the Environment Operations Act 1997</i> (POEO Act).
<b>Concurrence</b>	The application does require the concurrence of another body

**Internal Referrals**

The proposed development was referred to the following internal specialist staff. The comments of the listed staff have been used to carry out the assessment against the Section 4.15 Matters for Consideration of the EP&A Act below.

**Engineering Services**

Additional information was requested on 15 September 2017 outlining the requirements for further detail on the proposed water quality measures (including erosion and sediment control measures), proximity of the proposed fill to the First Order stream passing through each lot and provision of a flood report to adequately address the impact of the proposed fill on the flood characteristics and arrangements of the land.

On 16 November 2017 a flood assessment prepared by Forum Consulting (Ref: 71520 and dated 14 November 2017) and response to the additional requirements was received. Amended plans

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were also received, which relocated the proposed fill a minimum of 40m from waterfront land to negate a referral to DPI – Water and requirement for a controlled activity permit under the *Water Management Act 2000* (WM Act).

A review of the information, inclusive of the flood assessment provided on 16 November 2017 identified inadequacies and inconsistencies with the Port Stephens Council Development Control Plan 2014 (DCP 2014), the NSW Floodplain Development Manual 2005, and Council's existing Flood Study or Floodplain Risk Management Plan for the subject site in relation to numerical flood modelling, flood characteristics, flood planning level(s), flood storage impacts, velocity (including direction) and hazard and hydraulic categories. In addition, no information on the location of the 'future' redistribution of the proposed fill on-site was provided, therefore long term flooding impacts could not be considered.

On 30 January 2018, the applicant was requested to provide further information on the impacts on the flood characteristics of the land in line with the above comments. A response was received from the applicant on 20 April 2018, including an amended flood assessment, prepared by Forum Consulting (ref: 71520 and dated 26 March 2018). The information was reviewed by Council's Flood Advisory Review Panel at its meeting of 3 July 2018; however, the level of detail in the updated flood assessment was not sufficient enough to make an assessment on the impacts of flooding on adjacent properties. The application is yet to adequately consider the flood hazard, including consideration of depth of inundation, flow velocity and warning time for local catchment flooding and the impact of the proposal on the local residents, particularly along Cabbage Tree Road.

The application in its current form is not supported, and consequently recommended for refusal.

#### Strategic Planning

The statement of environmental effects submitted with the application noted that the objective of the development is to stockpile clean fill on the site for the future use and development of the site. The site is located within the DAREZ. In relation to the future use of the site, Strategic Planning have commented that the State government supports the expansion of aerospace and other compatible adjoining land uses at Williamtown. Direction 7 of the Hunter Regional Plan also contains actions to 'facilitate development opportunities on land surrounding Newcastle Airport to cluster emerging high-technology industry, defence and aerospace activities'.

Further, the draft Greater Newcastle Metropolitan Plan requires Council to align local plans to provide for high tech land uses and aerospace related industries to manage environmental constraints (including remediation) to plan for the staged release of land to facilitate the future expansion of DAREZ.

A pre-lodgement meeting was held with the applicant of the subject DA on 31 July 2018 in relation to the lodgement of a planning proposal that would seek to rezone the subject site (and, it is understood, other surrounding land) as part of the second stage of the development of the DAREZ precinct. Council advised that any planning proposal would need to address the environmental constraints including flooding, drainage, ecology, contamination, bushfire, and traffic and also the economic impacts of the proposal, including consideration of the staging of the DAREZ precinct and the existing development consent for Stage 1 DAREZ (construction of Stage 1 has not been finalised), as well as consistency with the Newcastle Airport Masterplan in relation to a proposed second access road.

A number of studies have been carried out looking at drainage in Williamtown, including the Commonwealth Defence Drainage Study currently being undertaken. Generally studies show the Williamtown/Fullerton Cove Drainage Catchment is at capacity as a result of approved developments, including the Stage 1 DAREZ. The studies have considered options to improve drainage in the area and to increase the drainage capacity in order to support the development of

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Williamstown and Council continues to be involved with State agencies in working towards solutions for improving drainage in the area to facilitate future development in accordance with the directions and actions in the Hunter Regional Plan and draft Greater Newcastle Metropolitan Plan.

No planning proposal has been lodged with Council, and thus cannot be considered as part of the assessment of the subject application.

Building Surveyor

No objections were made, application is supported unconditionally.

Natural Resources

Additional information was requested on 11 September 2017 requiring the provision of an ecology assessment in accordance with the provisions of Section B2 of the DCP 2014. A response was received on 14 November 2017, noting that under the *Local Land Services Act 2013* (LLS Act), the rear of the site is mapped as being Category 2 – Sensitive Regulated Land. The proposed location of the fill was amended to avoid these areas and any waterways on the site. The remainder of the site was considered as Category 1 – Exempt Land, whereby clearing of native vegetation is not regulated under Part 5 of the LLS Act. An ecology report, as requested, was not provided by the applicant.

A review of this information was carried out by Council's Natural Resource Section. A second request for the provision of an ecology report occurred on 30 January 2018. Whilst it was acknowledged that the subject site has been subject to agricultural land use and largely cleared of remnant vegetation, the site has ecological values associated not only with the Swamp Sclerophyll Forest located towards the rear of the site but also with the low lying area around the waterways and/or drains throughout the site. These latter areas may provide habitat for the threatened wallum froglet (*Crinia tinnula*) that has known to occur on the subject site and in the area immediately to the north of the site. The site is also known to support threatened species and endangered ecological communities as listed under state and/or Commonwealth legislation. It is within the catchment of key fish habitat as mapped under the *Fisheries Management Act 1994*, *State Environmental Planning Policy (Coastal Management) 2018* and an internationally important RAMSAR listed wetland. The site also supports preferred koala habitat as detailed under the Port Stephens Comprehensive Koala Plan of Management (PS CKPoM) and is at the outer edge of a current generational persistence area for the koala. Demonstration of how the proposed development complies with the performance criteria of the PS CKPoM was requested.

An ecology report was submitted to Council on 20 April 2018, prepared by Wildthing Environmental Consultants (dated April 2018, ref: 12326). Through a review of this report, Council's Natural Resource Section recommended refusal, unless additional information was received relating to:

- a) The exact fill boundary in relation to habitat trees;
- b) Additional surveys and details on the Wallum Froglet;
- c) Assessment of potential impacts to natural flow regimes, inclusive of hydrology description, dynamics of the vegetation community and potential groundwater interactions;
- d) Details on potential pollution and water quality impacts from proposed filling including erosion and sedimentation;
- e) Additional consideration of the impacts on Alligator Weed located on-site;
- f) Additional consideration of mitigation measures, including potential offset measures for the loss of hollow bearing trees or procedures for vegetation removal;

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- g) Consideration of the future management or tenure of the site to protect the remaining ecological attributes of the site;
- h) Further information against the 'assessment of significance' to demonstrate that no significant impact will be likely;
- i) Justification for the determination that the proposal is unlikely to have a significant impact on Matters of National Environmental Significance in accordance with the associated guidelines;
- j) Further assessment on the impact on koala habitat; and
- k) Assessment of the cumulative impacts of the proposed development.

The provision of information on two occasions has not provided a clear or accurate depiction on the impacts of the proposed development on the environmental characteristics of the land. Based on the information provided, and known likely impacts, the application is recommended for refusal.

**Environmental Health**

Additional information was requested to outline and clarify the purpose and intended future use of the fill. In response to the information provided, the Environmental Health team made note to defer consideration of the application to the EPA in accordance with Section 43 of the POEO Act.

**Weeds Officer**

Additional information was requested on 15 August 2017 to clarify the impact of development on notifiable noxious weeds. The site is located within an area identified as containing the notifiable noxious weed infestation including Mother of Millions and Alligator Weed. Any VENM/ENM classified soil transported to the site would void the 'clean' fill classification, which will limit the potential transportation of fill to other sites. The application is unclear with respect to whether the proposal involves the temporary storage of fill for future removal to different sites or temporary filling of the identified areas for redistribution on site at a later stage. Additional information was received on 30 August 2017 noting that the intent of the fill is to utilise it on site in the future, so the fill is not intended to leave the site to be utilised elsewhere. A condition requesting the preparation of a weed management plan was recommended, in the event the application is supported.

**External Referrals**

The proposed development was referred to the following external agencies for comment:

**Environment Protection Agency (EPA)**

The application was referred to the EPA as integrated development under Section 4.46 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) to complete an assessment under Section 43 the POEO Act. Following submission of additional information by the applicant the EPA provided a response on 5 February 2018 which provided recommended conditions of consent.

**MATTERS FOR CONSIDERATION – SECTION 4.15****s4.15(1)(a)(i) – The provisions of any EPI**

Port Stephens Local Environmental Plan 2013 (LEP 2013)

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

The proposed development is defined as "earthworks" and is permissible with consent as an innominate use and under Clause 7.2 Earthworks of the LEP 2013.



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The subject site is zoned RU2 Rural Landscape. The application provided a basic consideration of the objectives of the zone, concluding that the proposed development is broadly consistent with the zone objectives. In review of this and subsequent further information requesting this be expanded upon, it is concluded that the proposed development does not adequately consider the impacts on the rural landscape character of the site and surrounding context. Given the proposed fill extends to heights of 3.5m to 4m, the development will likely be visible from Cabbage Tree Road and surrounds across Williamtown. No visual impact assessment been undertaken to demonstrate consistency with the objectives of the RU2 zone and therefore remains inconsistent with the zone objectives.

**Clause 5.10 – Heritage**

The Williamtown Defence and Airport Related Zone (DAREZ) Land Use Development Strategy prepared by GHD in December 2007 identified Aboriginal objects and Aboriginal places recorded on the land immediately adjacent (to the north) of the subject site. In accordance with Clause 2(3), additional information was requested from the applicant to investigate the potential for Aboriginal Heritage on the subject site and associated impacts of the proposed development. In response, the applicant noted that in March 2008, McCardle Cultural Heritage Pty Ltd undertook an Indigenous Archaeological Desk Top Assessment of the Airport/ Defence related employment zone at Williamtown to accompany the DAREZ rezoning which included the subject site. The study concluded that *'the area of highest archaeological potential is that in the northern portion of the study area. Within this area, it is suggested that sites will be artefact scatters and middens within the dunal and ridge formations as they are located to well-resourced areas and also provide excellent viewpoints'*. The applicant noted that while included in the study area, the subject site is located south of the area identified as being of significance and that no further investigation was required.

In response to this, a copy of the McCardle findings was requested to enable further comprehensive assessment of heritage impacts. A screenshot of the study area from the report was provided, indicating that the subject site were of low archaeological potential. An AHIMS search was also carried out on 25 March 2018, which determined that no artefacts or items of interest are located on or near the subject site. The applicant has also noted that the fill is to be located to the south of the subject site, which has been disturbed by heavy grazing for a long period of time.

The information provided with the application is sufficient to enable assessment of the application against Clause 5.10 and subject to conditions of consent with respect to this matter the development is considered to be satisfactory.

**Clause 7.1 – Acid Sulfate Soils**

The objective of Clause 7.1 is to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage. The subject site is identified as containing class 3 acid sulfate soils. Development consent is required for the carrying out of works more than 1 metre below the natural ground surface, or works by which the water table is likely to be lowered more than 1 metre below the natural ground surface. It is noted that the proposed development includes earthworks by means of landfill, not excavation. However, there is a risk of exposing potential acid sulfate soils through the movement of soils on-site to facilitate the development. A geotechnical report would be required, if development consent was granted in order to comply with the requirements of this clause.

**Clause 7.2 – Earthworks**

The objective of Clause 7.2 is to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items, or features of the surrounding land. The proposed earthworks are not exempt development under this plan or any other applicable environmental

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planning instrument; therefore require consent from Council, and consideration of the matters specified under Clause 7.2(3).

The flood assessment submitted with the application outlines that the earthworks are not anticipated to impact adjoining properties. Soil stability conditions would be incorporated into any conditions of consent issued to ensure scour protection, which would include but not limited to landscaping. The use of clean fill would also be conditioned.

As discussed under Clause 5.10 of this report, the likelihood of disturbing relics as a result of the proposed development is unknown. Economically, the proposed development could increase the use of the land for agricultural purposes or the expansion of DAREZ in the future, however as no planning proposal has been lodged for this purpose, the impacts are unknown.

Measures to avoid, minimise or mitigate the impacts of the development have not been widely assessed or considered within the documentation submitted as part of the development application.

In consideration of the matters contained under Clause 7.2(3), the proposed development is not satisfactory and consent should not be granted.

**Clause 7.3 – Flood Planning**

The subject development is located on land mapped as being within the flood planning area and categorised as High Hazard – Flood Storage, High Hazard – Floodway, Low Hazard – Flood Storage and Low Hazard – Flood Fringe. Clause 7.3 therefore applies.

As noted under the internal referrals section above, the level of detail in the updated flood assessment was not sufficient enough to make an assessment on the impacts of flooding on the subject land or adjacent properties. The proposed development has not responded to the objectives of Clause 7.3, and development consent should not be granted as the documentation submitted with the development application has not demonstrated that the proposed landfill:

*a) Is compatible with the flood hazard of the land;*

As noted in the flood assessment prepared by Forum Consulting Engineers (dated 26 March 2018, ref: 71520), the location of the proposed landfill is clear of any floodway issues and is wholly located in the area marked as High Hazard – Flood Storage. Through the provision of a detailed flood report, compatibility with the flood hazard of the land may be determined, however based on the information provided, it has been determined that the proposed development is not compatible with the flood hazard.

*b) Will not significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties;*

As noted under the internal referrals section above, the level of detail in the updated flood assessment was not sufficient enough to make an assessment on the impacts of flooding on the subject land or adjacent properties.

*c) Incorporates appropriate measures to manage risk to life from flood;*

No measures have been proposed to manage risk to life from flood.

*d) Will not significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses;*

The requirements of subclause (d) have partially been addressed. The flood assessment prepared by Forum Consulting Engineers (dated 14 November 2017, ref: 71520), outlined that the location of the landfill is a minimum of 40m from any identified water course. Soil stability conditions would be incorporated into any conditions of consent issued to ensure

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scour protection, which would include but not limited to landscaping. The use of clean fill would also be conditioned. The ecology report prepared by Wildthing Environmental Consultants (dated April 2018, ref: 12326) has limited consideration of the impacts of alteration to natural flow regimes, stating that the proposed development is unlikely to significantly alter the flow of the ephemeral drainage lines. The importation of fill and placement of this fill into these low lying areas will alter the hydrology of the site, which could significantly alter the dynamics of the vegetation community existing onsite.

- e) *Is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.*

The social and economic impacts of flooding are well documented local and State wide. Policies and strategies have been implemented by Council to adequately mitigate the adverse impacts of flooding within the Local Government Area. The proposed development has limited consideration of the social and economic costs to the community as a result of offset flooding and cumulative flood impacts on other development or properties that are likely to occur in the same floodplain.

To this extent, it is considered that development consent cannot be granted in accordance with Clause 7.3 of LEP2013 – Flood Planning as the consent authority is not satisfied that matters outlined in Clause 7.3(3) are satisfied.

**s4.15(1)(a)(ii) – Any draft EPI**

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

**s4.15(1)(a)(iii) – Any DCP**

Port Stephens Development Control Plan 2014

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

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

In accordance with the requirements of chapter A.12, the development application was notified for a period of fourteen (14) days from 9 August 2017 to 22 August 2017.

**Section B2 – Natural Resources**

As noted above whilst the subject site has been subject to agricultural land use and largely cleared of remnant vegetation, it has been identified as containing the endangered ecological community ('EEC') Swamp Sclerophyll Forest towards the north. The vegetation located within proximity to the low lying area around the waterways and/or drains throughout the site may also provide habitat for the threatened wallum froglet (*Crinia tinnula*) that has been known to occur within the locality. Threatened species and endangered ecological communities as listed under state and/or Commonwealth legislation may also be present within the area, including; a RAMSAR listed wetland, key fish habitat (as listed under the *Fisheries Management Act 1994*) and preferred koala habitat as detailed under the Port Stephens Comprehensive Koala Plan of Management (PS CKPoM).

An ecological report undertaken by Wildthing Environmental Consultants (dated April 2018) was submitted to Council. However, the report has limited consideration of the impacts of alteration to natural flow regimes, stating that the proposed development is unlikely to significantly alter the flow of the ephemeral drainage lines. The importation of fill and placement of this fill into these low lying areas will alter the hydrology of the site, which could significantly alter the dynamics of the vegetation community existing onsite. Furthermore, the ecological report was considered to be unsatisfactory as it failed to provide the information necessary for Council's Natural Resource section to complete a detailed assessment.

**Section B4 – Drainage and Water Quality**

Council's Development Engineering Section noted that landfill and earthworks isolated from the use of land or impervious area increase does not trigger any specific water quality measures. The proposed plans have indicated that the landfill would be surrounded by sediment fencing and a "raingarden sediment trap" which satisfies sediment and water quality measures. However, sediment control during construction would still need to be addressed. In this regard, the requirements of Section B4 have been satisfied.

**Section B5 – Flooding**

The subject land is mapped as being within the Flood Planning Area. Following from the discussion against Clause 7.3 of the LEP 2013 above, the proposed development is not acceptable in this regard.

**s4.15(1)(a)(iia) – Any planning agreement or draft planning agreement entered into under section 7.4**

There are no planning agreements that have been entered into under section 7.4 relevant to the proposed development.

**s4.15(1)(a)(iv) – The regulations**

There are no clauses of the regulations relevant to the proposed development.

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

There are no coastal management plans applicable to the proposed development.

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

The subject site is located within a strategic economic precinct due to its proximity to DAREZ and is currently zoned RU2 Rural Landscape and it is important to note that there are currently no planning proposals lodged with Council seeking to rezone the land. Accordingly there is no strategic or economic purpose for which the proposed earthworks would merit support.

In addition, the applicant has failed to identify a purpose for the extent of proposed fill and has not demonstrated reasons for which the proposed earthworks would be required to support a permissible land use within the current RU2 Rural Landscape zone. Furthermore, in its current form the proposed development does not satisfy the zone objectives as the height, extent and visual impact of the earthworks are out of keeping with the rural character of the surrounding locality.

As outlined in an above section of this report the applicant has failed to appropriately identify and mitigate the impacts to the environment including: flooding and ecology. As a result the environmental impacts of the development are unknown and the proposal cannot be supported.

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

Based on the information provided, the proposed development is likely to have adverse impact particularly in respect to the flood characteristics and ecological value of the site. Furthermore, the assessment has determined that the site is not suitable as the development:

- Encourages the improper management, development and conservation of the natural and artificial resources of agricultural land;

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- Is inconsistent with the objectives of the RU2 Rural Landscape zone applied to the land;
- May result in unacceptable an potentially irreversible impact to the natural environment by way of altering the flood characteristics of the subject and neighbouring sites; and
- Will incur and unacceptable and potential irreversible impact on the natural environment by way of altering the existing hydrology and fauna and flora characteristics of the land.

**s4.15(1)(d) – Any submissions**

Four submissions have been received in relation to the proposed development during the notification period and are summarised below:

	<b>Submission Summary</b>
1	Submission objects to proposal, based on concerns relating to: <ul style="list-style-type: none"> <li>• Disruption of existing drainage flows and spread of contaminated of water, the subject site is contaminated with PFAS, PFAO, PFAB in the high area of the "red zone".</li> <li>• Ecological impacts on lower section of site, containing birds of prey and nesting locations.</li> <li>• Flood impacts of proposed fill on broader Tomago area and cumulative impacts if fill is used to manage flooding across neighbouring sites. Any approval of fill activities may create a precedent for managing flood impacts through placement of fill.</li> <li>• Visual impacts of proposal with fill dimensions reaching height 6m may create undesirable impacts on tourism value of broader Port Stephens.</li> <li>• Ongoing management of dust from proposed fill stockpiles.</li> </ul>
2	Submission objects to proposal, based on concerns relating to: <ul style="list-style-type: none"> <li>• Disruption of existing drainage flows and spread of contaminated of water, the subject site is contaminated with PFAS, PFAO, PFAB in the high area of the "red zone".</li> <li>• Potential impact of proposed development on flood characteristics of neighbouring land.</li> <li>• Increase in truck movements and how they would access the subject site, and the associated impacts on the surrounding road network.</li> <li>• Quality of the proposed fill.</li> </ul>
3	Submission objects to proposal, based on concerns relating to: <ul style="list-style-type: none"> <li>• Disruption of existing drainage flows and spread of contaminated of water, the subject site is contaminated with PFAS, PFAO, PFAB in the high area of the "red zone".</li> <li>• Potential impact of proposed development on flood characteristics of neighbouring land.</li> <li>• There is no access to the property that would allow truck movements so one would need to be built. Cabbage Tree Road is already busy with truck movements.</li> <li>• Demolition of house or disturbance of existing asbestos containing fill pile should not be permitted.</li> </ul>
4	Submission objects to proposal, based on concerns relating to: <ul style="list-style-type: none"> <li>• The permissibility of land filling in the zone where not ancillary to a permitted land</li> </ul>

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	<p>use.</p> <ul style="list-style-type: none"><li>• The lack of clarity on what the proposal entails.</li><li>• How the development responds to known environmental constraints.</li><li>• The long term objectives and management of the site.</li><li>• Impact on Aboriginal Cultural Heritage of the site.</li><li>• The 'preloading' will result in the migration of contaminated groundwater from the site.</li><li>• Potential impact of proposed development on flood characteristics of neighbouring land.</li><li>• Truck movements and road safety, inclusive of number of movements and timeframes.</li><li>• Impact on threatened vegetation located on the site.</li></ul>
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**Comments**

A response to each of the comments received from submission makers has been made in this report. The assessment has acknowledged many of these concerns cannot be overcome and therefore the application is recommended for refusal.

**s4.15(1)(e) – The public interest**

The proposed development is not considered to be in the public interest as it is inconsistent with the adopted principles and strategies which seek to promote the appropriate development of land.



**REASONS FOR REFUSAL**

1. The proposed development fails to satisfy Clause 2.3 (zone objectives) and Clause 7.2 (earthworks) of the Port Stephens Local Environmental Plan 2013 (LEP2013) as the development will result in unacceptable visual impacts and is likely to detract from the rural character of the locality (s.4.15(1)(b) of the *Environmental Planning and Assessment Act 1979* (*EP&A Act*);
2. The proposed development fails to satisfy Clause 7.3 (Flood Planning) of LEP2013 as insufficient information has been provided to demonstrate that the development is compatible with the flood characteristics of the site, including potential impacts to adjoining properties (s.4.15(1)(a)(i) of the *EP&A Act*);
3. The development fails to comply with the controls contained within Port Stephens Development Control Plan (Chapter B2 Natural Resources and Chapter B5 Flooding) (s.4.15(1)(a)(i) *EP&A Act 1979*);
4. Insufficient information has been provided to demonstrate that the site is suitable for the development given the flood characteristics and ecological value of the land (s.4.15(1)(c) of the *EP&A Act*); and
5. The proposed development is not considered to be in the public interest as the development is inconsistent with the adopted principles and strategies which seek to promote the appropriate development of land (s.4.15(1)(e) of the *EP&A Act*).

**ITEM NO. 2**

**FILE NO: 22/15144  
EDRMS NO: 16-2016-638-2**

**DEVELOPMENT APPLICATION 16-2016-638-2 - 76 WALLALONG ROAD,  
WALLALONG**

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

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Approve S4.55 (1A) Modification to DA 16-2016-638-2 - Function Centre (Wedding Receptions), Temporary Marquee Structure – increase the number of events and patron capacity subject to the conditions contained in **(ATTACHMENT 3)**.

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**BACKGROUND**

The purpose of this report is to present a S4.55 (1A) modification application to Development Application (DA) 16-2016-638-2 to increase the number of events and patron capacity at an approved Function Centre to Council for determination.

A summary of the application and property is provided below:

Subject Land:	76 Wallalong Road, Wallalong (Lot 577 DP 864399).
Zoning:	RU1 Primary Production
Submissions:	14
Key Issues:	The key issues identified throughout the assessment of the application relate to noise and amenity impacts.

The modification application has been reported in accordance with Council's Planning Matters to be Reported to Council Policy as it has been called up by Mayor Ryan Palmer, Councillors Glen Dunkley and Chris Doohan **(ATTACHMENT 4)**. A further call up has been received by Councillors Giacomo Arnott, Leah Anderson and Jason Wells. **(ATTACHMENT 5)**.

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



### Proposal

The application seeks consent to modify various operational conditions of consent to facilitate an increase in patron capacity and the number of wedding events currently permitted at the venue. Specifically, the proposed modifications seek to:

- Increase the number of wedding receptions from 45 events per year to 80
- Increase the patron capacity from 120 to 150 patrons at any one time
- Increase the number of wedding receptions occurring on any weekend from 1 to 2
- Allow for weddings to occur on Sundays permanently in addition to the already approved receptions on Fridays and Saturdays
- Allow for weddings to temporarily occur from Monday to Thursday throughout 2022.

The applicant has indicated that the proposed modification to increase the number of events per year and to allow for weekday weddings is in response to impacts from COVID and the increased number of delayed bookings that are being catered for.

It is proposed that mid-week weddings will be capped at 20 within the year of 2022, with a maximum of 3 mid-week events in any one week.

### Site Description and History

The subject site is located on the western edge of the suburb of Wallalong. The site has an area of approximately 3.6ha and contains Wallalong House, a local heritage listed item under the Port Stephens Local Environmental Plan (PSLEP) 2013.

The site is surrounded largely by rural and residential development with much of the residential development existing to the northeast.

Development consent was granted for Wedding Ceremonies and Associated Photography in June 2012 under DA 16-2012-201-1. The original DA relevant to this application (16-2016-638-1) was for a Function Centre (Wedding Receptions) and Temporary Marquee Structure, which was granted consent in March 2017.

### Key issues

The key issues identified throughout the assessment of the application relate to noise and amenity impacts associated with the increased operation of the function centre.

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

### Noise and Amenity

The application seeks to increase the number of wedding receptions currently permitted at the premises and allow for events to occur on Sundays (permanently) and on weekdays (temporarily). The application proposes that events would operate

under the same operational hours as the existing consent, which currently requires music to stop and patrons to vacate the premise by 11:00pm.

Operating until 11pm on Sunday to Thursday nights is not considered acceptable noting the noise impact they may have to neighbours and their working week. As such a condition is recommended requiring events occurring on Sunday to Thursday to finish by 10:00pm with patrons to vacate the premises by 10:30pm. These hours would be consistent with the Protection of the Environment Operations (Noise Control) Regulation 2017, which while not directly applicable, requires music and amplified sound to cease from residential premises after 10pm on Sunday through to Thursday.

The applicant proposes to cap weekday wedding receptions to 20 within the year of 2022 which is considered reasonable noting it is required in response to the backlog of weddings brought about by COVID. However, the applicant does not propose to cap the number of weekday events receptions to occur within a week. This could result in multiple events occurring in a 1 week period which would be disruptive to neighbouring properties. As such a condition is recommended which limits Sunday to Thursday weddings to 1 event per fortnight.

Given the public interest concerns and potential noise impacts, it is recommended that all proposed operational modifications are to be subject to a 1 year trial. Following the trial period, a further application may be lodged by the applicant to formalise the proposed amendments.

In summary the following is recommended having consideration to the public submissions, impact on residential amenity and the COVID backlog:

- Increase the number of wedding receptions from 45 events per year to 80
- Increase the patron capacity from 120 to 150 patrons at any one time
- Increase the number of wedding receptions occurring on any weekend (Friday and Saturday only) from 1 to 2
- Allow up to 20 weddings to temporarily occur from Sunday to Thursday throughout 2022
- Limit Sunday to Thursday weddings to 1 event per fortnight
- Require Sunday to Thursday events to finish by 10:00pm with patrons to vacate the premises by 10:30pm
- A complaints register is to be created for the venue and must note all complaints received during operation (inclusive of all events) including a general description of the issue the complaint relates to. The complaints register is to be provided to Council at the end of each calendar month.

The above recommendations have been reflected in the recommended conditions of consent (**ATTACHMENT 3**).

Conclusion

When taking into consideration the above recommended amendments and the adoption of a 1 year trial, the application is considered to be supportable as it seeks to strike a balance between protection of residential amenity and enabling the continued operation of Wallalong House to help clear the COVID wedding back log.

**COMMUNITY STRATEGIC PLAN**

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

**FINANCIAL/RESOURCE IMPLICATIONS**

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

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

**LEGAL, POLICY AND RISK IMPLICATIONS**

The modification application is consistent with the relevant planning instruments including the Environmental Planning and Assessment Act 1979 (EP&A Act), Port Stephens Local Environmental Plan 2013 (PSLEP) and the Port Stephens Development Control Plan 2014 (DCP 2014). A detailed assessment against these environmental planning instruments is contained within the assessment report contained at **(ATTACHMENT 2)**.

<b>Risk</b>	<b><u>Risk Ranking</u></b>	<b>Proposed Treatments</b>	<b>Within Existing Resources?</b>
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 through a judicial review.	Low	Accept the recommendation.	Yes
If the DA is refused, there is a risk that the determination of the DA may be challenged by the applicant in the Land and Environment Court.	Medium	Accept the recommendation.	Yes

## **SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

### Social and Economic Impacts

The application, subject to recommended conditions, is considered to result in acceptable social and economic impacts as it seeks to strike a balance between protection of residential amenity and enabling the continued operation of Wallalong House to help clear the COVID wedding backlog.

### Built Environment

There are no physical works proposed and therefore the built environment will remain unchanged.

### Natural Environment

The proposed modification is not considered likely to have 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 Environmental Health Team. The referral comments provided by the Environmental Health Team are 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**).

Public exhibition

The modification application was notified in accordance with the requirements of the Port Stephens Council Community Participation Plan. The application was exhibited for a period of 14 days from 29 October 2021 to 12 November 2021. During that time, 14 public submissions were received.

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

**OPTIONS**

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

**ATTACHMENTS**

- 1) Locality Plan. [↓](#)
- 2) Planners Assessment Report. [↓](#)
- 3) Conditions of Consent. [↓](#)
- 4) Call to Council form. [↓](#)
- 5) Call to Council form. [↓](#)

**COUNCILLORS ROOM**

- 1) Unredacted submissions.

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

**TABLED DOCUMENTS**

Nil.

ITEM 2 - ATTACHMENT 1 LOCALITY PLAN.



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



## APPLICATION DETAILS

<b>Modification application no.</b>	16-2016-638-2
<b>Development description</b>	Function Centre (Wedding Receptions), Temporary Marquee Structure
<b>Modification description</b>	S4.55(1A) Modification to Function Centre (Wedding Receptions), Temporary Marquee Structure – increase the number of events and patron capacity
<b>Applicant</b>	LE MOTTEE GROUP PTY LIMITED
<b>Date of lodgement</b>	21/10/2021

**Modification Proposal**

The application seeks consent to modify various operational conditions of consent to facilitate an increase in patron capacity and the number of wedding events and currently permitted at the function centre. Specifically, the proposed modifications seek to:

- Increase the number of wedding receptions from 45 events per year to 80;
- Increase the patron capacity from 120 to 150 patrons at any one time;
- Increase the number of wedding receptions occurring on any weekend from 1 to 2;
- Allow for weddings to occur on Sundays permanently in addition to the already approved receptions on Fridays and Saturdays; and
- Allow for weddings to temporarily occur from Monday to Thursday throughout 2022.

The applicant has indicated that the proposed modification to increase the number of events per year and to allow for week day weddings is in response to impacts from COVID-19 and the increased number of delayed bookings that are being catered for.

It is proposed that mid-week weddings will be capped at 20 within the year of 2022, with a maximum of 3 mid-week events in any one week.

The conditions of consent proposed to be modified have been discussed in further detail below of this report.

**PROPERTY DETAILS**

<b>Property address</b>	76 Wallalong Road WALLALONG
<b>Lot and DP</b>	LOT: 577 DP: 864399
<b>Zoning</b>	RU1 PRIMARY PRODUCTION
<b>Site constraints that affect the modification</b>	N/A

**ASSESSMENT SUMMARY**

Designated Development	The application is not designated development
Integrated Development	The application does not require additional approvals listed under s.4.46 of the EP&A Act
Concurrence	The application does not require the concurrence of another body

**Internal Referrals**

The proposed modification was referred to the following internal specialist staff. The comments of the listed staff listed have been used to carry out the assessment against the S4.15 Matters for Consideration below.

**Environmental Health** – The application was referred to Councils Environmental Health Officer (EHO) in relation to noise. Councils EHO raised concerns over potential noise impacts, particularly given the history of noise related complaints Council has received associated with the function centre. The referral noted that this will likely be exacerbated by the proposed increase in operational capacity and number of events per year.

It was recommended by Council's EHO that all proposed modifications be only temporary and that mid-week weddings are reduced to only 10 in the year with consideration for these events to only be during daylight hours. The referral recommended that all existing noise mitigation conditions should continue to be implemented. The noise concerns are discussed further below under the s4.55(1A)(a) assessment of this report.

The EHO also recommended that the applicant install an on-site sewerage management system (OSMS) given the permanent nature of the facility. However, given the proposed modifications is recommended to be subject to a trial period of one year, it is considered that the requirement for OSMS can be addressed under future applications should the proposal seek to formalise the operational increase on an ongoing basis.

**External Referrals**

The proposed modification was not required to be referred to any external agencies.



**MODIFICATIONS INVOLVING MINIMAL ENVIRONMENTAL IMPACT – S4.55(1A)****S4.55(1A)(a) – Minimal Environmental Impact**

The application seeks to increase the number of wedding receptions currently permitted at the premises and allow for events to occur on Sundays (permanently) and on week days (temporarily). The application proposes that events would operate under the same operational hours as the existing consent, which currently requires music to stop and patrons to begin to vacate the premise at 11:00pm.

Operating until 11pm on Sunday to Thursday nights is not considered acceptable nor of minimal environmental impact noting the noise impact it may have to neighbours and their working week. As such, a condition is recommended requiring events occurring on Sunday to Thursday to finish by 10:00pm with patrons to vacate the premises by 10:30pm. These hours would be consistent with the Protection of the Environment Operations (Noise Control) Regulation 2017, which while not directly applicable, requires music and amplified sound to cease from residential premises after 10pm on Sunday through to Thursday.

The applicant proposes to cap week day wedding receptions to 20 within the year of 2022 which is considered reasonable noting it is required in response to the backlog of weddings brought about by COVID. However, the applicant does not propose to cap the number of week day events receptions to occur within a week. This could result in multiple events occurring in a 1 week period which would be disruptive to neighbouring properties. As such a condition is recommended which limits Sunday to Thursday weddings to 1 event per fortnight.

The increase in patron capacity from 120 to 150 patrons proposed is considered acceptable. The premise has ample car parking to cater for the additional patron capacity and with the existing and recommended noise restrictions it is considered the additional patrons will not impact upon residential amenity.

Given the public interest concerns and likely noise impacts noted above, it is recommended that all proposed operational modifications are to be subject to a one year trial. Following the trial period, a further application may be lodged by the applicant to formalise the proposed amendments.

Council officer's consideration of a proposed continuation of the operational matters permitted by the trial will be based on, among other things, the performance of the operator in relation to compliance with development consent conditions, noise mitigation and any substantiated complaints received.

In summary the following is recommended having consideration to the public submissions, impact on residential amenity and the COVID backlog:

- Increase the number of wedding receptions from 45 events per year to 80
- Increase the patron capacity from 120 to 150 patrons at any one time
- Increase the number of wedding receptions occurring on any weekend (Friday and Saturday only) from 1 to 2
- Allow up to 20 weddings to temporarily occur from Sunday to Thursday throughout 2022
- Limit Sunday to Thursday weddings to 1 event per fortnight
- Require Sunday to Thursday events to finish by 10:00pm with patrons to vacate the premises by 10:30pm
- A complaints register is to be created for the venue and must note all complaints received during operation (inclusive of all events) including a general description of the issue the complaint relates to. The complaints register is to be provided to Council at the end of each calendar month.

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The above recommendations have been reflected in the recommended conditions of consent attached to this report.

Taking the above amendments and the one year trial into consideration, the proposal is considered to be of minimal environmental impact for the following reasons:

- Operational hours for weekend weddings will remain unchanged.
- Weddings occurring Sunday – Thursday are limited to 1 per fortnight, will have shorter operational hours and are inclusive of Sundays, which will reduce the potential for noise and amenity impacts to surrounding residential properties mid-week.
- All events on site will be required to comply with the existing Plan of Management prepared by Le Mottee Group along with other existing noise control conditions.
- A complaints register will allow for Council officers to understand the impacts of the development during the one year trial period which will be taken into consideration should the trial be requested to be extended.

**S4.55(1A)(b) – Substantially The Same Development**

The development as modified is substantially the same as the approved development for the following reasons:

- The approved use as a function centre (wedding receptions) will remain unchanged by the proposal.
- The approved structures on the site will remain unchanged by the proposal.
- Operational hours remain unchanged for weekend weddings.
- All noise operational related conditions will remain unchanged.

On this basis, the application is considered substantially the same.

**S4.55(1A)(c) – Notification**

The application was notified from 29 October 2021 – 12 November 2021 in accordance with Councils Community Engagement Strategy.

Previous objectors to DA 16-2016-638-1 were also notified of the proposed modification.

**S4.55(1A)(d) – Submissions**

There were 14 submissions received relating to the proposed modification. The matters raised in the submissions objecting to the development are discussed in the table below:

No.	Objection	Comments
1	No objection to increased number of functions but have requested limitations be placed on the volume and duration of loud noise.	All existing operational conditions of consent will remain on the consent and therefore will be required to be complied with.  Weddings from Sunday – Thursday are recommended to finish at 10:00pm with patrons required to leave the premise by 10:30pm to reduce noise impacts.
2	Concern that music currently continues past 11:00pm.	A condition has been recommended requiring the applicant to keep a complaints

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No.	Objection	Comments
	<p>Noted that monitoring of noise is not being undertaken during functions.</p> <p>Concern of the speed of vehicles who are exceeding the speed limit. Adding more cars to the area would create potential for an incident to occur.</p> <p>Suggested that a phone contact should be available for nearby residents to contact the site manager if there issues occurring during a wedding.</p> <p>Submissions had no objection to the proposal if it was for a maximum of two weddings per weekend only on long weekend and not on Sundays. The submission noted Friday should be included within the 'weekend' wedding days.</p> <p>The submissions suggested that the mid-week weddings should be capped at 20 weddings for the year of 2022.</p> <p>Concern was raised in regard to lack of compliance with the existing DA and how would residents be assured of compliance with the proposed modifications.</p>	<p>register and submit a copy to Council each month. This will enable Council officers to assess what complaints are received during the recommended one year trial period.</p> <p>If the applicant does not comply with the consent, it is a compliance matter and concerns should be raised with Council's Development Compliance team.</p> <p>It is considered that the existing road network can cater for the proposed increase in capacity and therefore potential traffic. Vehicles going over the speed limit on local roads is not a planning consideration for this application.</p> <p>The operational plan of management provides contacts for the land owners who should be contacted where there are complaints. As noted above, the applicant will also be required to keep a complaints register and submit a copy to Council at the end of each calendar month.</p> <p>It has been recommended that Sundays are included as a 'week day' and therefore, weekend weddings will have maximum of 2 per weekend being on Fridays or Saturdays.</p> <p>Mid-week weddings are recommended to be capped at 20 per year.</p> <p>All compliance related matters should be directed to Council's Development Compliance team.</p>
3	<p>Submission noted that the venue holds events, which are not weddings, and has been used for filming which is inconsistent with the existing DA. The submission questioned whether DAs were received for these filming events and why neighbours were not notified.</p>	<p>The State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 outlines development which is exempt development (development not requiring approval). Filming is development that is identified being exempt development if it complies with the standards listed in the policy. It is likely the filming at the site was undertaken in accordance with this policy and therefore no development consent was</p>

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No.	Objection	Comments
	<p>The submission noted that the current maximum of 1 event per weekend is not adhered.</p> <p>Comment made that music is largely turned off by 11pm but sometimes extends beyond this time. The submission noted that the music is loud and impact the amenity of their home.</p> <p>The submission questioned who is monitoring/whether the conditions are complied with in regard to the base of the music as there being no subwoofers and electric drum kits as stipulated by the current DA.</p> <p>Questioned how the residents know if they have a sound limit device as required by the consent.</p> <p>Question who enforces the maximum acoustic emission.</p> <p>The submission raised concern that the current wedding venue impacts the amenity of the area and that the current consent it's not adhered to.</p> <p>Question whether the proposed modifications were now allowed to have 3 weddings per weekend.</p>	<p>required. Given Council did not receive a DA for the filming and therefore neighbours were not notified by Council for this reason.</p> <p>Noted. The application seeks to increase weekend weddings from 1 to 2. Any non-conformance with the existing consent are a development compliance matter.</p> <p>Where noise extends beyond the permitted time period, it is recommended that owners of the site be contacted as they are required to maintain a complaints register. Council and the police may also be called for noise complaints.</p> <p>The applicant is required to undertake noise monitoring associated with the existing conditions of consent on the DA.</p> <p>The consent requires that the applicant has a sound limiting device. If the applicant does not install or operate this device, it forms a non-conformance and the applicant is not operating in accordance with existing conditions. Evidence should be provided to Councils development compliance section for investigation.</p> <p>The noise limiting device is required to ensure the maximum acoustic emission is not exceeded.</p> <p>The proposed amendments are recommended to be subject to a 1 year trial period. The applicant is required to comply with all conditions of consent.</p> <p>The application seeks consent to have two weddings per weekend not three.</p>

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No.	Objection	Comments
	<p>Concern/objection over week day weddings and the impact on the neighbourhood's amenity.</p> <p>The submissions suggests that the proposal is not of minimal impact and not largely the same as originally approved.</p>	<p>To address noise concerns, it has been recommended that conditions be added to the consent restricting week day weddings to 1 per fortnight for the year of 2022. It has further been recommended that these events are to finish at 10:00pm with patrons to vacate the premise by 10:30pm.</p> <p>These restrictions have been recommended to be added to the consent to ensure any amenity impacts on neighbours are reduced.</p> <p>With the proposed amendments recommended, the application has been assessed as being of minimal impact and has also been assessed as being substantially the same development.</p>
4	<p>Concern over week day wedding noise and the impact it will have on school studies.</p>	<p>Council officers have recommended that weddings on Sunday – Thursday be restricted to 1 per fortnight for the year of 2022. It has further been recommended that these events finish at 10:00pm with patrons to vacate the premise by 10:30pm.</p> <p>These restrictions have been recommended to be added to the consent ensure any amenity impacts on neighbours are reduced.</p>
5	<p>Submission had concern regarding the noise impacts as a result of the increase in numbers and number of receptions.</p> <p>The submission noted that there was no concern regarding the current operations of Wallalong House, with the biggest concern being the proposed mid-week weddings.</p> <p>The concerns were regarding the noise impact, light spill and traffic impacts that would be felt if mid-weddings were to go ahead.</p>	<p>Council officers have recommended that weddings on Sunday – Thursday be restricted to 1 per fortnight for the year of 2022. It has further been recommended that these events finish at 10:00pm with patrons to vacate the premise by 10:30pm.</p> <p>These restrictions have been recommended to ensure any amenity impacts including impacts from traffic, noise and light on neighbours are reduced.</p> <p>It is also noted the weekend weddings have been recommended to be inclusive of Friday and Saturday only.</p>
6	<p>The submission noted that the use is incompatible with the zoning and that the</p>	<p>The use was approved under the original application and was considered appropriate.</p>

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No.	Objection	Comments
	<p>proposed modification would have amenity impacts on the rural nature of the neighbourhood.</p> <p>Objection was raised to the increased patronage proposed, and increase number of wedding receptions.</p> <p>The objection highlighted that the major concern was the noise.</p> <p>There was also concern raised in relation to traffic impact and that the state of the roads cannot withstand additional traffic.</p> <p>The submission noted that Council should request a traffic impact assessment, social impact assessment and environmental assessment report.</p>	<p>The existing use of the venue as a function centre will remain unchanged by the proposal.</p> <p>To reduce potential amenity impacts it has been recommended that Council impose a 1 year trial along with further restrictions for week day wedding events as discussed throughout the assessment.</p> <p>The proposed increase in the number of patrons is not considered likely to exacerbate current impacts on the site. Notwithstanding, if the recommendation is endorsed, the modifications will be subject to a 1 year trial and should the applicant wish to formalise the increased number of patrons this will be assessed by Council officers under a new application.</p> <p>The proposed modification is not of an extent that requires a traffic impact assessment, noting that the proposal seeks to increase the existing patronage by only 30 people. Ample car parking is also available to cater for the proposed increase in capacity.</p> <p>A social impact assessment is not considered necessary. An environmental assessment is provided in the form of a Statement of Environmental effects. There are no physical works proposed that would impact the existing environmental values of the site or surrounds.</p>
7	<p>The submission noted that the current consent is not complied with in terms of the number of events allowed and the base of the music. They noted that the venue uses subwoofers and live music which the current consent does not allow.</p> <p>The submissions main concern was over the noise impacts resulting from the additional events.</p>	<p>Noted. Where the applicant does not comply with the consent it is a development compliance matter. It is noted that a condition requiring a complaints register has been recommended to be added to the consent. The complaints register will be required to be kept on site and provided to Council at the end of each month for the trial period. This will allow Council officers to assess the non-compliances should the applicant wish to formalise the modifications following the trial period on an ongoing basis.</p> <p>To address potential noise impacts, it has been recommended via conditions of consent that Council enforce a 1 year trial of</p>

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No.	Objection	Comments
		all proposed amendments, include Sunday as a 'week day' and restrict the number and operating hours of week day weddings.
8	<p>Objection to the increase number of wedding receptions particularly mid-week.</p> <p>The submission noted that the venue does not currently comply with the consent.</p>	<p>It has been recommended that the original modification submitted by the applicant be amended to restrict the number of week day weddings and the times in which they can operate between to address concerns raised by neighbours.</p>
9	<p>The submission had no concern with the current operations of the venue but had concern over the inclusion of Sundays and mid-week weddings and noise impact it would have.</p>	<p>It has been recommended that Sundays be included as a 'week day' and are therefore subject to the same conditions as all other week day events.</p> <p>Further restrictions on the number of week day weddings and the times in which they can operate have also be recommended.</p>
10	<p>Submission noted that the current DA is not adhered to.</p> <p>Concern with the modification related noise, particularly weekday weddings and that it will interfere with residential amenity.</p>	<p>Noted. Where the applicant does not comply with the consent it is a development compliance matter. It is noted that a condition requiring a complaints register to be maintained has been recommended to be added to the consent. The complaints register will be required to be kept on site and provided to Council at the end of each month for the trial period, which will allow Council officers to assess the non-compliances should the applicant wish to formalise the modifications following the trial period.</p> <p>To address potential noise impacts, it has been recommended via conditions of consent that Council enforce a 1 year trial of all proposed amendments, include Sunday as a 'week day' and restrict the number and operating hours of week day weddings.</p>
11	<p>Concern over noise generated from week day wedding and sleep disturbance.</p> <p>Traffic was also considered a concern.</p>	<p>It has been recommended that the original modification submitted by the applicant be amended to restrict the number of week day weddings and the times in which they can operate between to address concerns raised by neighbours.</p> <p>The existing road network is considered to be able to cater for the increased capacity, noting the venue seeks to only increase the number by 30 people. Ample car parking is</p>

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No.	Objection	Comments
		available on site to cater for the proposed increase in patrons.
12	Noted that they current DA and music stopping at 11pm is not complied with. Concern over the noise impacts of week day weddings.	Noted. Where the applicant does not comply with the consent it is a development compliance matter. It is noted that a condition requiring a complaints register has been recommended to be added to the consent. The complaints register will be required to be kept on site and provided to Council at the end of each month for the trial period which will allow Council officers to assess the non-compliances should the applicant wish to formalise the modifications following the trial period.  To address potential noise impacts, it has been recommended via conditions of consent that Council enforce a 1 year trial of all proposed amendments, include Sunday as a 'week day' and restrict the number and operating hours of week day weddings.
13	No objection to weekend functions, but objection raised for week day functions and the noise impact it would have.	To address potential noise impacts, it has been recommended via conditions of consent that Council enforce a 1 year trial of all proposed amendments, include Sunday as a 'week day' and restrict the number and operating hours of week day weddings.
14	Objection raised concern over the entire modification due to noise disruptions currently experienced.	It has been recommended that a condition be included on the consent requiring that the modifications be subject to a 1 year trial period. To address noise concerns, conditions to further restrict week day weddings have been recommended then what was proposed by the applicant

**S4.55(3) – S4.15(1) Assessment**

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

The application is consistent with the provision of the PSLEP2013 and all relevant SEPPs applicable to the proposal.

s4.15(1)(a)(ii) – Any Draft EPI

		Notes (what draft EPI if needed and comments where not compliant)
	<input checked="" type="checkbox"/> There are no draft EPI's that are relevant to the proposed development	



	<input type="checkbox"/> A draft EPI is relevant to the proposed development however the application is consistent with the aims and objectives of the document.	
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s4.15(1)(a)(iii) – Port Stephens Development Control Plan 2014

Chapter	Compliant	Notes (where needed or if not compliant)
B	<input checked="" type="checkbox"/> General Controls	<p><u>Chapter B3 Environmental Management</u> <u>B3.C Noise</u></p> <p>In accordance with Section B3.C of the DCP, function centres that host outdoor weddings are required to provide an acoustic report. The original application was submitted with an acoustic report which is still considered to be relevant under the proposed modification given operational hours are not increasing nor are there amendments to the current noise restrictions on the consent. As such, it was not requested to be provided for this application.</p> <p>Notwithstanding, as noted throughout this assessment report, there are concerns over the proposed modifications and the likely impact on neighbouring properties in terms of noise emissions. To address potential impacts, it is recommended that Council enforce a 1 year trial period on all modifications proposed and further limit the number and operational hours of week day weddings through conditions as recommended in this report.</p> <p><u>B8 Road Network and Parking</u> <u>B8.A Traffic Impacts</u></p> <p>The original consent is approved to have 120 patrons per event. The proposed modification seeks to increase this by 30, allowing a total of 150 patrons per event. The proposed increase in patrons by 30 is not considered likely to have a significant impact upon traffic and the existing road network particularly when considering the nature of events being weddings where carpooling or buses are common modes of transport.</p> <p>In regard to car parking, there is ample room for on-site car parking with car parking</p>

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		currently located in the gravelled area in the sites north east of the site. The traffic impact assessment prepared for the original DA noted that the existing patron capacity would on average generate 27 cars and one bus in which the gravelled car parking area is capable of catering for. There is over flow car parking available on the grassed area located to the north east of the gravelled space, which is capable of accommodating over 50 vehicles. Therefore, the existing car parking arrangement is suitable for catering for the proposed increased in patron capacity.
C	<input type="checkbox"/> Development Types	N/A
D	<input type="checkbox"/> Specific Areas	N/A

s4.15(1)(a)(iia) – Any planning agreement or draft planning agreement entered into under section 93F

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

s4.15(1)(a)(iv) – The regulations

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

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

	Notes (where needed)
<input checked="" type="checkbox"/> Social and Economic Environment: There would be beneficial impacts as a result of the development.	<p>The proposed modification is considered to have positive social and economic impacts in the event the existing noise related conditions of the consent are adhered to and the amendments recommended by Council staff are adopted to address potential noise and amenity impacts.</p> <p>The modification will allow for the venue to hold additional weddings on weekends and week day weddings in response to the COVID-19 restrictions. This will attract visitors and tourists to Wallalong who will utilise existing facilities</p>

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	and local business that will provide beneficial monetary stimulus.
<input checked="" type="checkbox"/> Built Environment: The proposed development would not cause harm to the existing character.	There are no physical works proposed and therefore the building environment will remain unchanged.
<input checked="" type="checkbox"/> Natural Environment: There are no adverse impacts expected as a result of the proposed development and appropriate conditions have been added.	The proposed modifications is not considered likely to have impacts on the natural environment.

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

The subject site is already operating as a function centre as approved under the original consent for the site. The venue will continue to be a suitable use of the site under the proposed modification if the recommended operational conditions proposed by Council staff are adopted.

s4.15(1)(d) – Any submissions

There were 14 submissions received relating to the proposed modification. These have been addressed above.

s4.15(1)(e) – The public interest

It is considered that the development is in the public interest subject to the additional restrictions recommended by Council staff being adopted. This will enable the continued operation of the Wallalong House venue along with facilitating additional wedding events in response to COVID-19 pandemic. The recommended operational changes will protect the amenity of neighbouring properties and reduce adverse impacts. The venue will still be subject to the existing conditions of consent, in addition to those additional restrictions recommended in the one year trial.

**MODIFIED CONDITIONS**

**Recommended New Condition**

**Trial Period Conditions**

19. The use may operate in accordance with the below conditions for a trial period of one (1) year commencing from the date of determination of the modified consent.

- The number of wedding receptions is limited to 80.
- The capacity of the facility is restricted to a maximum of 150 patrons at any one time.
- The number of wedding receptions is limited to two events on any weekend (including long weekends). Weekends are inclusive of Friday and Saturday only.
- Wedding receptions occurring from Sunday to Thursday are limited to 1 event per fortnight.
- Weddings receptions occurring from Sunday to Thursday are to finish by 10:00pm with patrons to vacate the premise by 10:30pm.
- A complaints register is to be created for the venue and must note all complaints received during operation (inclusive of both weekend and week day events) including a general description of the issue the complaint relates to. The complaints register is to be provided to Council at the end of each calendar month.

All existing conditions of consent not impacted by the above are to be satisfied at all times during the trial period.

A further application is required to be lodged with Council for the continuation of the above operational conditions permitted by the trial at the cessation of the nominated trial period. Council's consideration of a proposed continuation of the operational matters permitted by the trial will be based on, among other things, the performance of the operator in relation to the compliance with development consent conditions and any substantiated complaints received.

**DETERMINATION**

The modification application is recommended to be approved by Council, subject to amended conditions as shown above.

COURTNEY SARGENT

Senior Development Planner



## DRAFT CONDITIONS OF CONSENT – 16-2016-638-2

## CONDITIONS THAT IDENTIFY APPROVED PLANS AND LIMITATIONS OF CONSENT

1. The development must be carried out in accordance with the plans and documentation listed below and endorsed with Council's stamp, except where amended by other conditions of this consent or as noted in red by Council on the approved plans:

Plan/Doc.Title	Plan Ref. No	Sheet.	Date	Drawn By
Site Plan	10856	A001	16/02/2017	EJE Architecture
Temporary Marquee Floor Plan	10856	A101	16/02/2017	EJE Architecture
Food Prep Area	11856	A103	16/02/2017	EJE Architecture

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent prevail. If there is any inconsistency between the plans and documentation referred to above the most recent document shall prevail to the extent of any inconsistency.

2. An Occupation Certificate is required prior to commencement of the use approved by this application. The person having the benefit of this consent must appoint a principal certifying authority. If Council is not appointed as the Principal Certifying Authority then Council must be notified of who has been appointed. Note: at least two (2) days' notice must be given to Council of intentions to start works approved by this application.

## CONDITIONS TO BE SATISFIED PRIOR TO THE RELEASE OF THE OCCUPATION CERTIFICATE

3. **Prior to the release of the Occupation Certificate**, a Schedule of Works for the maintenance and upgrade works in accordance with the Building Condition Report (prepared by EJE Architecture, dated June 2015, reference number 10856-BCR-HER-001 Issue A) must be prepared and submitted to Council for assessment and approval.
4. A Plan of Management (POM) must be prepared and submitted to Council for assessment and approval prior to the release of the occupation certificate. The POM must include:
  - Event Checklist that includes the relevant ongoing management requirements stated in this consent;
  - Maintenance schedule for the marquee;
  - Requirements to be met during the installation of the marquee under the National Construction Code Volume 1 Section B: Structure; and
  - Fire safety measures to be implemented during events (as required by Clause 94A of the Environmental Planning and Assessment Regulations 2000).

## PORT STEPHENS COUNCIL

116 Adelaide Street  
Raymond Terrace NSW 2324

PO Box 42  
Raymond Terrace NSW 2324

Phone: 02 4980 0255  
Email: council@portstephens.nsw.gov.au

www.portstephens.nsw.gov.au

**ITEM 2 - ATTACHMENT 3      CONDITIONS OF CONSENT.**



**CONDITIONS TO BE SATISFIED AT ALL TIMES**

5. The consent only permits wedding receptions. Any other form of entertainment will be subject to separate development approval.
6. The number of wedding receptions is limited to 45 events in any calendar year.
7. The capacity of the facility is to be restricted to a maximum of 120 patrons at any one time.
8. The number of wedding receptions is limited to one (1) event on any weekend (including long weekends).
9. Wedding receptions must only be scheduled for Fridays or Saturdays. No wedding receptions are to be held on Sundays.
10. The operational hours are restricted to the following times:

	Start Time	Finish Time
Setup	12pm	5pm
Event (including music)	5pm	11pm
Patrons to vacate premises	11pm	11:30pm

Other internal operations such as cleaning, preparation, and office administration may be undertaken outside of the above hours provided no disturbance to the amenity of the neighbourhood occurs.

11. The Plan of Management Checklist must be completed during every event and kept on record. The records will be made available to Council on request.
12. During events, the following noise requirements must be enforced by the event manager:
  - All entertainment must be set up as detailed on the stamped plans, with speakers facing south towards the dance floor;
  - Bass noise component of the entertainment (125Hz and below) must be monitored and kept at low levels;
  - The entertainment cannot include subwoofers or electric drum kits;
  - A sound limiting device to ensure noise operates within compliant levels must be used during events. Entertainment during the reception period is monitored using the sound limiting device, with strict enforcement to keep acoustic emission below 90 dB(A) five (5) metres from the source. The sound limiting device must comply with AS IEC 61672 Electroacoustics - Sound Level Meters
13. A temporary toilet shall be provided on site from the time of commencement of events to ensure that adequate sanitary provisions are provided and maintained on the site. The number of toilets provided shall be one toilet per 20 persons on the site at any one time.

**ITEM 2 - ATTACHMENT 3      CONDITIONS OF CONSENT.**

14. The construction design and fit-out of the food preparation area must comply with the Australia New Zealand Food Standards Code Section 3.2.3.
15. Accessible toilet facilities must be provided wherever standard toilet facilities are provided for the event. These must be clearly sign posted as being accessible as per Australian Standard 1428.1.
16. A continuous and accessible path of travel, designed in accordance with Australian Standard 1428.1 shall be provided to and from associated buildings. This access way shall provide access to all included facilities.
17. Accessible car parking spaces shall be provided. These accessible parking spaces must be in close proximity to the event hub and provide a safe, clear accessible path of travel directly to all facilities.
18. The Schedule of Works must be implemented to ensure the specified works are undertaken. A record of these works must be kept and made available to Council on request.

**TRIAL PERIOD CONDITIONS**

19. The use may operate in accordance with the below conditions only for a trial period of one (1) year commencing from the date of determination of the modified consent.
  - The number of wedding receptions is limited to 80.
  - The capacity of the facility is restricted to a maximum of 150 patrons at any one time.
  - The number of wedding receptions is limited to two events on any weekend (including long weekends). Weekends are inclusive of Friday and Saturday only.
  - Wedding receptions occurring from Sunday to Thursday are limited to 1 event per fortnight.
  - Weddings receptions occurring from Sunday to Thursday are to finish by 10:00pm with patrons to vacate the premise by 10:30pm.
  - A complaints register is to be created for the venue and must note all complaints received during operation (inclusive of both weekend and weekday events) including a general description of the issue the complaint relates to. The complaints register is to be provided to Council at the end of each calendar month.

All other existing conditions of consent not impacted by the above are to be satisfied at all times during the trial period.

A further application is required to be lodged with Council for the continuation of the above operational conditions permitted by the trial at the cessation of the nominated trial period. Council's consideration of a proposed continuation of the operational matters permitted by the trial will be based on, among other things, the performance of the operator in relation to the compliance with development consent conditions and any substantiated complaints received.



116 Adelaide Street,  
Raymond Terrace NSW 2324  
PO Box 42  
Raymond Terrace NSW 2324  
p (02) 4988 0255 | f (02) 4987 3612  
e council@portstephens.nsw.gov.au  
DX 21406 | ABN 16 744 377 876

# Call to Council form

Development Application

## DEVELOPMENT APPLICATION (DA) CALL TO COUNCIL REQUEST

We (Mayor/Councillor/s)

Name:	Mayor Ryan Palmer
Name:	Cr Glen Dunkley
Name:	Cr Chris Doohan
request that DA number:	16-2016-638-2
for DA description:	Wedding Venue
located at:	76 Wallalong Rd Wallalong

be reported to Council for determination.

### REASON

Approval of the application is deemed to be in the public interest.

### SIGNATURE OF APPLICANT/S

Signature

Signature

Signature

### PRIVACY

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





116 Adelaide Street,  
Raymond Terrace NSW 2324

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

# Call to Council form

Development Application

## DEVELOPMENT APPLICATION (DA) CALL TO COUNCIL REQUEST

We (Mayor/Councillor/s)

Name:	Arnott
Name:	Anderson
Name:	Wells
request that DA number:	16-2016-638-2
for DA description:	Modification to Function Centre
located at:	76 Wallalong Rd, Wallalong 2320 NSW

be reported to Council for determination.

### REASON

Public interest

### SIGNATURE OF APPLICANT/S

Signature	<input type="text"/>	Date	<input type="text"/>
Signature	<input type="text"/>	Date	<input type="text"/>
Signature	<input type="text"/>	Date	<input type="text"/>

### PRIVACY

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**ITEM NO. 3**

**FILE NO: 21/331051  
EDRMS NO: 16-2019-8-1**

**DEVELOPMENT APPLICATION 16-2019-8-1 SOLDIERS POINT MARINA -  
SUNSET BOULEVARDE, RIDGEWAY AVENUE AND MITCHELL STREET,  
SOLDIERS POINT (LOT 2071 DP852662, LOTS 321 & 322 DP636840, LOT 539  
DP823769 AND LOTS 1 & 2 DP1058490)**

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

---

**RECOMMENDATION IS THAT COUNCIL:**

- 1) Refuse Development Application DA No. 16-2019-8-1 for Soldiers Point Marina – Alterations and additions to existing marina at Sunset Boulevard, Ridgeway Avenue and Mitchell Street, Soldiers Point (Lot 2071 DP852662, Lots 321 & 322 DP636840, Lot 539 DP823769, and Lots 1 and 2 DP1058490) for the reasons contained in **(ATTACHMENT 4)**.

---

**BACKGROUND**

The purpose of this report is to present Development Application (DA) 16-2019-8-1 to Council for determination. The DA has been reported to Council in accordance with Council's Development Applications to be reported to Council Policy as the land on which the development is to be carried out is partly owned by Port Stephens Council.

The DA was previously scheduled for reporting to Council in September 2019. However, the item was withdrawn from the Council Meeting Agenda when it was identified that not all of the property parcels within the site had been identified on the advertising and referral documentation. For this reason, the application was re-advertised and re-referred to external agencies for further comment. In response, all agencies made no further comment, with the exception of the Office of Environment and Heritage (now known as Heritage NSW). Despite no changes having been made to the footprint of the development, Heritage NSW (HNSW) identified in their referral response that due to the development abutting the Soldiers Point Aboriginal Place, an Archaeological Assessment and Aboriginal Cultural Heritage Assessment Report (ACHAR) would be required to assess potential impacts on Aboriginal objects and cultural heritage. This request was issued by HNSW in November 2019.

Since November 2019, 2 revisions of the Archaeological Assessment and ACHAR have been submitted to HNSW. On both occasions, the reports were deemed inadequate by HNSW and additional information was requested. The latest request for information required the undertaking of the test excavations that had already been requested in October 2020. HNSW have noted that if the test excavations reveal

Aboriginal objects within the DA footprint, and harm to those objects cannot be avoided, then their support would not be issued without further assessment being undertaken by the applicant.

For this reason, it is unknown how long it would take the applicant to address the concerns of HNSW. The applicant has been afforded multiple opportunities to secure General Terms of Approval (GTAs) from HNSW through the DA assessment over the past 2 years. However, there has been an inability for GTAs to be provided due to inadequate assessments in the ACHAR and a failure to address the requirements of HNSW identified originally in November 2019. On this basis the application is recommended for refusal.

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

Subject land:	The following lots comprise the site: <ul style="list-style-type: none"> <li>• 2A Sunset Boulevard, Soldiers Point (Lot 2071 in DP 852662)</li> <li>• 2A Ridgeway Avenue, Soldiers Point (Lot 321 in DP 636840)</li> <li>• 2C Ridgeway Avenue, Soldiers Point (Lot 539 in DP 823769)</li> <li>• 2E Ridgeway Avenue, Soldiers Point (Lot 1 in DP 1058490)</li> <li>• 2F Ridgeway Avenue, Soldiers Point (Lot 2 in DP 1058490)</li> <li>• 9 Mitchell Street, Soldiers Point (Lot 322 in DP 636840)</li> </ul>
Total Area:	16,360m <sup>2</sup>
Zoning:	Part B1 Neighbourhood Centre and part W2 Recreational Waterways
Permissibility:	Existing use rights
Submissions:	162 submissions including 99 signatories
Key issues:	<p><u>Aboriginal Heritage</u>  Insufficient information has been submitted to allow proper assessment of potential Aboriginal heritage impacts, despite the applicant being afforded multiple opportunities to do so. As a result, Heritage NSW have not provided their support for the DA.</p> <p><u>Environmental Impacts</u>  Due to the coastal location of the proposed development, consideration has been given to environmental impacts to both aquatic and terrestrial flora and fauna. Overall, the DA includes appropriate mitigation measures, incorporated in the design and construction methodology to prevent adverse impact to the environmental attributes of the coastal environment and subject to conditions could be supported.</p>

	<p><u>Parking</u></p> <p>The DA does not propose the provision of any additional car parking or alterations to existing car parking.</p> <p>The proposed facilities, including lounge, decking and pool area and gym are self-service facilities proposed by the applicant to only be used by customers who have their boats moored at the marina, operating in a similar manner to a hotel/motel. Therefore, the DA is not a generator of traffic or parking and subject to conditions limiting the use of the facility to boat users moored at the marina, could satisfy the parking provisions of the Port Stephens Development Control Plan.</p>
--	--

A Locality Plan is provided at **(ATTACHMENT 1)** which identifies each lot that forms part of the site. Noting that the proposed development relates to only a small portion of the site, a second Locality Plan is provided at **(ATTACHMENT 2)** to identify the footprint of the DA.

### Proposal

The DA is for alterations and additions to a marina known as the Soldiers Point Marina. The proposed works are to be located in the area lying directly to the north, which is currently used as a slipway. Key features of the DA include:

- Site preparation work including partial demolition of the existing slipway, minor earthworks and the driving of pile foundations.
- Construction of a two-storey addition to the marina, to measure 994.0m<sup>2</sup> in size.

The 2 storey addition to the marina is to include:

- Members Lounge
- Gymnasium
- Swimming pool and spa with a shaded pool lounge and patio
- 3 storage rooms
- Bathroom facilities
- Infrastructure and plant room
- Decking with associated stairwells
- Enhancement landscaping.

### Site description and history

The site is irregular in shape and encompasses 16,360m<sup>2</sup> of land and waterways. The site contains the existing Marina, comprising 90 berths, a dual slip way, concrete hardstand area and a marina building including administration offices, restaurant, café, 2 boat sales offices, workshop, laundry, sauna/massage rooms and amenities. Existing berths are also being utilised for wedding functions and a floating café.

The site has a number of constraints including; Flood prone land – high hazard flood fringe, Acid Sulfate Soils, Port Stephens – Great Lakes Marine Park (Special Purpose Zone), LEP 2013 – Wetlands, which are considered in detail within the Planners Assessment Report (**ATTACHMENT 3**).

A number of DAs have been considered since the original approval for a 130 berth marina in 1981. However, not all stages of the original development were completed and the marina includes only 90 berths. Subsequent to the granting of the original approval, a number of applications comprising alterations/additions and redesign of marina berths, as well as modification of the marina building have been approved. In 2017 the Land and Environment Court upheld a refusal of a development application (DA 16-2015-586-1) on the site for a proposed extension to the existing marina comprising an additional 59 berths, relinquishment of 7 swing moorings and car parking.

### Key Issues

The key issues that arose during the assessment of the DA related to potential impacts to Aboriginal heritage, ecological impacts and car parking. A detailed assessment of the development is contained in the Planners Assessment Report (**ATTACHMENT 3**).

### Impacts to Aboriginal Heritage

The DA is located in proximity to several previously recorded Aboriginal sites and abuts the Soldiers Point Aboriginal Place which includes a 5.9ha area at the tip of the Soldiers Point Peninsular.

During assessment of the DA, referral correspondence with Heritage NSW (HNSW) identified that due to the DA abutting an Aboriginal Place, an Archaeological Assessment and Aboriginal Cultural Heritage Assessment Report (ACHAR) would be required to assess potential impacts on Aboriginal objects and cultural heritage. This request was issued by HNSW in November 2019.

Since November 2019, 2 revisions of the Archaeological Assessment and ACHAR have been submitted to HNSW. On both occasions, the reports were deemed inadequate by HNSW and additional information was requested.

The reports found that an Aboriginal Heritage Impact Permit (AHIP) is required from HNSW under Section 90 of the National Parks and Wildlife Act 1974, due to potential impacts to the Soldiers Point Aboriginal Place and previously recorded Aboriginal archaeological sites. Due to these potential impacts, General Terms of Approval (GTAs) must be issued by HNSW prior to approval of the DA.

The latest review of the DA by HNSW deemed the Archaeological Report and ACHAR inadequate as the test excavations that had previously been requested in October 2020 had still not been undertaken. The test excavations are required to identify and determine the nature and extent of any subsurface deposits of Aboriginal

objects. Without this information, potential impacts on Aboriginal heritage remain unknown.

HNSW have noted that if the test excavations reveal Aboriginal objects within the DA footprint, and harm to those objects cannot be avoided, then their support would not be issued without further assessment being undertaken by the applicant.

For this reason, it is unknown how long it would take the applicant to address the concerns of HNSW. The applicant has been afforded multiple opportunities to secure GTAs from HNSW through the DA assessment over the past 2 years. However, there has been an inability for GTAs to be provided due to inadequate assessments in the ACHAR and a failure to address the requirements of HNSW identified originally in November 2019. Without the GTAs the DA cannot be supported and is recommended for refusal.

### Environmental Impacts

The DA is positioned on the water's edge within the Port Stephens Great Lakes Coastal Marine Park. Due to the coastal location of the proposed development, consideration was given to environmental impacts to both aquatic and terrestrial flora and fauna. The key environmental constraints included protected seagrass and threatened shorebirds.

The DA included the submission of an aquatic assessment, seagrass impact assessment and threatened shorebirds assessment of significance. These assessments found that the proposed development would not result in any significant impacts to the biophysical and ecological environment, or any natural coastal processes.

A number of submissions specifically identified that the DA may cause erosion of surrounding coastal land due to blockage of natural water flows. This potential impact has been considered as part of the assessment of the application and found to be acceptable. The DA includes pile foundations with a concrete slab suspended above the sea floor. The pile foundations are sufficiently spaced to allow natural flow of water and sediment underneath and ensure that adverse erosion impacts do not occur.

Overall, the DA includes appropriate mitigation measures incorporated in the design and construction methodology to prevent adverse impact to the environmental attributes of the adjacent waterway. In the event the application was approved, conditions relating to the preparation of a Construction Environmental Management Plan, protection and monitoring of seagrass, erosion and sediment control and stormwater controls would be recommended. The DA was also referred to Department of Primary Industry (DPI) Fisheries and DPI Marine Parks. No objection was made by either agency.

On this basis, the environmental impacts of the DA are considered satisfactory.

Car parking

The DA does not propose the provision of any additional car parking or alterations to existing car parking. The DA incorporates an extension of the existing use associated with the users of the current moorings and does not increase the number of moorings, which at the time of lodgement, did not require additional parking under the Port Stephens Development Control Plan 2014 (DCP). However, since lodgement of the DA in January 2019, the parking provisions for marinas within the DCP have been amended to now encompass uses carried out as part of, or ancillary to a marina. The new DCP controls are now applicable to the development.

The new DCP provides that a reduction in car parking demand can be considered where a Traffic Impact Assessment (TIA) is submitted and it can be demonstrated that ancillary uses carried out as part of, or ancillary to a marina do not generate demand for on-site parking. The proposed facilities, including lounge, decking and pool area and gym are self-service facilities proposed by the applicant to only be used by customers who have their boats moored at the marina, operating in a similar manner to a hotel/motel. Further, the proposed changes are not expected to generate additional employment, as the lounge and gym facilities are unstaffed, with the exception of ongoing maintenance which is to be incorporated within existing maintenance routines. The DA included a Traffic Impact Assessment (TIA), which assessed the car parking demand on this basis. The TIA concludes that the development is for upgraded facilities associated with the users of the current moorings and therefore is not a generator of traffic or parking. In addition, the application proposes the removal of the existing slipway, which could also see a reduction in car parking demand.

Some short-term impacts to car parking would occur during construction. Construction will primarily occur during the week when the marina is not at its busiest and demand for parking is at its lowest. During this time the parking demands of construction workers can be accommodated within the existing parking both on-site and on-street within the immediate vicinity of the site without unduly impacting upon local residential streets, noting the short term nature of the impact.

For the reasons outlined above, the application adequately demonstrates that the DA would not adversely affect the availability of off-street car parking and therefore not exceed the existing shortfall of spaces. In the event the application was supported, a condition of consent could be included to limit the use of the facility to boat users moored at the marina, aligning with the applicant's intended use of the facility. Any change of use of the facility for purposes other than this, such as a restaurant, café/bar or the like, would be subject to separate approval from Council and would require the provision of additional car parking. Subject to the imposition of the aforementioned condition, the DA would satisfy the requirements of the DCP.

Conclusion

Despite key issues relating to environmental impacts and car parking being resolved, potential impacts to Aboriginal heritage remain unknown and GTAs have not been granted by HNSW. As a result, the DA is inconsistent with the following legislation and policies:

- Environmental Planning & Assessment Act 1979
- State Environmental Planning Policy (Coastal Management) 2018 - Clause 13 and 14
- Port Stephens Local Environmental Plan 2013 - Section 5.10 – Heritage Conservation.

A detailed assessment of the DA with regard to the above legislation and policies is contained in the Planners Assessment Report (**ATTACHMENT 3**) and the DA is recommended for refusal for the reasons contained in (**ATTACHMENT 4**).

**COMMUNITY STRATEGIC PLAN**

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

**FINANCIAL/RESOURCE IMPLICATIONS**

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

<b>Source of Funds</b>	<b>Yes/No</b>	<b>Funding (\$)</b>	<b>Comment</b>
Existing budget	Yes		There is scope within Council's existing budget to defend Council's determination if challenged.
Reserve Funds	No		
Developer Contributions (S7.12)	Yes		Fixed Development Consent contributions are applicable to the development.
External Grants	No		
Other	No		



**LEGAL, POLICY AND RISK IMPLICATIONS**

The DA is inconsistent with the relevant planning instruments including the Environmental Planning & Assessment Act 1979, State Environmental Planning Policy (Coastal Management) 2018 and Port Stephens Local Environmental Plan 2013.

A detailed assessment against these requirements are contained within the Planners Assessment Report (**ATTACHMENT 3**).

<b>Risk</b>	<b><u>Risk Ranking</u></b>	<b>Proposed Treatments</b>	<b>Within Existing Resources?</b>
If the DA is supported, there is a risk that Council's decision will be ultra vire as GTAs have not been issued by HNSW and therefore the prerequisites for granting development consent under Section 4.47 of the Environmental Planning and Assessment Act 1979 have not been met.	High	Accept the recommendation.	Yes
If the DA is refused, there is a risk that the determination of the DA may be challenged by the applicant in the Land and Environment Court.	Medium	Accept the recommendation.	Yes

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

Outside of the potential impacts to Aboriginal heritage, the DA is considered to be an appropriate addition to the existing club building and the overall existing marina development, providing improved services to boat users utilising the moorings. It would assist in providing short-term employment during the construction phase and long-term job security for existing staff associated with the servicing of the development once constructed.

The DAs likely environmental impacts have been found to be acceptable or can be adequately managed to ensure adverse effects are appropriately mitigated.

## **CONSULTATION**

### Internal

Consultation was undertaken with internal officers, including; Engineering, Natural Systems, Building Certification, Environmental Health, Property Services and Development Contributions. The referral comments from these officers were considered as part of the Planners Assessment Report (**ATTACHMENT 3**).

### External

Consultation was undertaken with the Department of Primary Industries (DPI) – Fisheries, Water, Crown Lands and Marine Parks. No objections were raised to the proposed development and concurrence was granted, subject to conditions by DPI Marine Parks as the proposal is located within the Port Stephens Great Lakes Marine Park.

Consultation with Heritage NSW (formerly the Office of Environment and Heritage) was required as the DA requires an Aboriginal Heritage Impact Permit (AHIP) under Section 90 of the National Parks and Wildlife Act 1974. The application was referred to HNSW seeking GTAs on two occasions. On both occasions, HNSW deemed the information submitted inadequate and requested further information be submitted before the DA is reconsidered for GTAs. To date, HNSW have not granted GTAs for the DA and as a result, the DA is recommended for refusal for the reasons contained in (**ATTACHMENT 4**).

### Public exhibition

The DA was originally notified and advertised for a period of 14 days between 24 January 2019 and 7 February 2019. The DA was re-advertised and notified for a period of 14 days between 14 February 2019 and 28 February 2019. The DA was again re-advertised and notified for a period of 14 days between 6 September 2019 and 20 September 2019. A final round of notification and advertising occurred for 14 days between 4 December 2020 and 18 December 2020.

During the combined advertising and notification periods, 162 submissions with a total of 99 individual signatories were received in relation to the DA.

Of the submissions received, 1 submission was made in support of the development, all other submissions objected to the proposal.

The key issues raised within the submissions included community consultation and notification, public access issues, Aboriginal heritage, ecological impacts and car parking.

It is acknowledged that some of the submissions relating to Aboriginal heritage have not been overcome, due to insufficient information being provided to allow suitable assessment of impacts. As a result, the application is recommended for refusal.

All issues raised in the submissions have been considered in detail within the Planners Assessment Report (**ATTACHMENT 3**).

### **OPTIONS**

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

### **ATTACHMENTS**

- 1) Locality Plan 1 - Lots Forming Site Area. [↓](#)
- 2) Locality Plan 2 - Development Footprint. [↓](#)
- 3) Planners Assessment Report (Provided under separate cover) [⇒](#)
- 4) Recommended Reasons for Refusal. [↓](#)

### **COUNCILLORS ROOM**

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

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

### **TABLED DOCUMENTS**

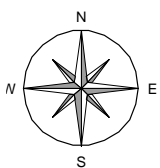
Nil.

Locality Plan  
2A, 2C, 2E & 2F Ridgeway Ave,  
2A Sunset Bvd & 9 Mitchell St, Soldiers Point



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

GIS PLAN



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**RECOMMENDED REASONS FOR REFUSAL – DA 16-2019-8-1**

1. Insufficient and inadequate information has been provided to determine the effect of the development on Aboriginal heritage as required under Section 5.10 (heritage conservation) of the Port Stephens Local Environmental Plan 2013 (s4.15(1)(a)(i) of the Environmental Planning & Assessment (EP&A) Act 1979).
2. The development is inconsistent with the aims and provisions of State Environmental Planning Policy (Coastal Management) 2018 as the development may have an unknown impact upon Aboriginal heritage (s.4.15(1)(a)(i) of the EP&A Act 1979).
3. The proposed development is not considered to be in the public interest as the development may have an unknown impact upon Aboriginal heritage (s.4.15(1)(e) of the EP&A Act 1979).
4. General Terms of Approval have not been issued by Heritage NSW for approval under Section 90 of the National Parks and Wildlife Act 1974 (s4.47(2) of the EP&A Act 1979).



**PORT STEPHENS COUNCIL**

116 Adelaide Street

PO Box 42

Phone: 02 4980 0255

[www.portstephens.nsw.gov.au](http://www.portstephens.nsw.gov.au)

**ITEM NO. 4**

**FILE NO: 21/324521  
EDRMS NO: PSC2009-02488**

**POLICY REVIEW - PROCUREMENT POLICY**

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

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Endorse the revised Procurement Policy as shown at **(ATTACHMENT 1)**.
- 2) Place the revised Procurement Policy, as amended, on public exhibition for a period of 28 days and should no submissions be received, the policy be adopted as amended without a further report to Council.
- 3) Revoke the Procurement Policy dated 8 October 2019, Minute No. 185 should no submissions be received.

---

**BACKGROUND**

The purpose of this report is to seek Council's endorsement of the revised Procurement Policy (the policy). The policy was last revised in October 2019, where a number of critical changes were made. Given the level of consideration and change that was applied at that revision, minimal amendments are suggested.

The purpose of the policy is to outline the principles to be used in all aspects of procurement. The policy is required to ensure Council's procurement is ethical, transparent and accountable.

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

**COMMUNITY STRATEGIC PLAN**

<b>Strategic Direction</b>	<b>Delivery Program 2018-2022</b>
Financial Management	Maintain strong financial sustainability.

**FINANCIAL/RESOURCE IMPLICATIONS**

The policy prescribes economical, efficient and effective procurement. Adoption of this policy will be within existing budget allocations.

**ORDINARY COUNCIL - 8 FEBRUARY 2022**

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**

The policy is written in accordance with the Local Government Act 1993 and the Local Government (General) Regulation 2021.

Council's procurement principles are to achieve the best value for money whilst being ethical, transparent and accountable. These principles promote fairness and competition.

Risk	<a href="#">Risk Ranking</a>	Proposed Treatments	Within Existing Resources?
There is a risk that Council will fail to secure goods and services at the most competitive price.	Low	Adopt the revised policy.	Yes
There is a risk that fraud and corruption will occur leading to financial and reputational loss.	Low	Adopt the revised policy.	Yes

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

The policy prescribes a preference for Australian made, local suppliers thereby supporting the local economy.

**CONSULTATION**

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

Internal

The Executive Team has been consulted to seek management endorsement.



External

In accordance with local government legislation the revised Procurement Policy will go on public exhibition for 28 days.

**OPTIONS**

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

**ATTACHMENTS**

- 1) Revised Procurement Policy. [↓](#)

**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

Nil.

## Policy



**FILE NO:** PSC2009-02488

**TITLE:** PROCUREMENT POLICY

**POLICY OWNER:** FINANCIAL SERVICES SECTION MANAGER

**1. PURPOSE:**

- 1.1 The purpose of this policy is to state Council's position on procurement matters and to provide clear direction to Council officials (Councillors, staff and delegates of Council) making procurement decisions.
- 1.2 Environmentally sustainable procurement results in minimisation of unnecessary purchasing, waste minimisation, water and energy saving, pollution minimisation, avoidance of toxic chemicals, reduction in greenhouse gases and decision making that incorporates biodiversity and conservation objectives.

**2. CONTEXT/BACKGROUND:**

- 2.1 Council procurement is required to achieve best value for money in the expenditure of public funds while being ethical, ecologically sustainable, transparent, accountable and promoting fairness and competition. This policy prescribes Council's approach to procurement and is supported by the Procurement Management Directive.

**3. SCOPE:**

- 3.1 This policy has been written considering the following principles:
- a) All parties engaged in procurement activities will display high standards of behaviour and ethics.
  - b) Procurement activities aim to be efficient, effective and balance risk and total cost.
  - c) Due economy shall be exercised in all purchasing decisions.
  - d) Purchasing decisions shall consider relevant evaluation criteria including environmental sustainability, support of local suppliers, registered disability employers and Australian made goods.
  - e) Parties will conduct all procurement and business relationships with fairness and honesty.
  - f) The process for awarding contracts on government projects will be open, clear and defensible.
  - g) A party with a potential conflict of interest will declare and address that interest as soon as the conflict is known to that party.
  - h) Parties shall comply with all legal obligations.
  - i) Parties shall not engage in practices that are anti-competitive.

## Policy

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## Policy



- j) Parties shall not engage in practices that aim to give a party an improper advantage over another.
- k) Parties shall not seek or submit tenders without a firm intention and capacity to proceed with a contract.
- l) Parties will maintain business relationships based on open and effective communication, respect and trust and adopt a non-adversarial approach to dispute resolution.

**4. DEFINITIONS:**

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

Procurement	The act of obtaining or buying goods and services. The process includes preparation and processing of a demand as well as the end receipt and approval of payment.
Local Supplier	A business or contractor employing full-time staff permanently operating from established premises within the Port Stephens local government area for not less than 6 months prior to the procurement or tender being initiated.

**5. POLICY STATEMENT:**5.1 Standards of behaviour

- 5.1.1 Council has adopted a Statement of Business Ethics **Policy** that sets out the high ethical standard expected of Council officials, contractors and business associates. In addition to this, the following statements are made in relation to procurement:

- a) Council processes shall be fully documented and defensible.
- b) Council will treat all potential tenderers consistently.
- c) All parties shall comply with the rule of law and avoid practices that are anti-competitive or collusive.
- d) Council will not engage in practices that give one party improper advantage over another outside its local and Australian made preference and registered disability employer preference policies.
- e) Council will not invite or submit tenders without a firm intention and capacity to proceed.
- f) Parties shall maintain open, effective communication, respect and trust and adopt a non-adversarial approach to dispute resolution.
- g) Staff involved in procurement of goods and services shall make themselves aware of and comply with all relevant policies, management directives and procedures. Related policies and management directives are listed at the end of this document.

## Policy

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## Policy

5.2 Environmental sustainability

- 5.2.1 Council is committed to "properly manage, develop, protect, restore, enhance and conserve the environment of the area for which it is responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development" as per the Local Government Act 1993 (NSW) (the Act). The principles of ecologically sustainable development (ESD) are defined in the Act as the "effective integration of economic and environmental considerations in decision making processes". Prior to purchasing supplies staff must consider whether the purchase is necessary or whether it is possible to use or re-use existing resources including sharing with other sections.

Requisitioning Officers must consider the environmental impact associated with the manufacture, use and disposal of proposed supplies, eg. sustainability of raw materials, energy used, pollution, recyclability or biodegradability. Council is committed to effective implementation for the following principles of ESD in procurement decision making; the precautionary principle; intergenerational equity; conservation of biological diversity and ecological integrity; and improved valuation, pricing and incentive mechanisms.

5.3 Local preference

- 5.3.1 Best value for money does not always mean lowest price. Council functions contribute to the economic success of the Local Government Area and Council expends considerable amounts annually on local economic development. Council prefers to buy from local suppliers and contractors where possible as this supports Council's local economic development initiatives. Where it is cost effective to do so (that is, within the annual rate peg factor for the year), staff must purchase from local suppliers with all other criteria being equal.

5.4 Preference for Australian made products

- 5.4.1 Council prefers to buy goods made in Australia and encourages a culture of "buy Australian" in Council officials when evaluating the merits of purchases. Where it is cost effective to do so staff must purchase Australian made/origin **low value** supplies.

5.5 Preference for registered disability employers

- 5.5.1 Council prefers to buy products made by registered disability enterprises and encourages such consideration in the evaluation of purchases. Where it is cost effective to do so, staff are encouraged to buy from registered disability employers.

## Policy

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## Policy

5.6 Purchase orders

5.6.1 Council will always issue a purchase order number for approved purchases. This is to be obtained by entering an online requisition into the Authority software. An online requisition must be entered before supplies are ordered. Suppliers are expected to cooperate by quoting the purchase order number on invoices. Council will not pay invoices where an approved purchase order number is absent. Council staff must refer to the Procurement Management Directive to ensure due process regarding purchases is followed.

5.7 Asset disposal

5.7.1 Council will dispose of surplus plant, vehicles, stores, materials, equipment, furniture, scrap metal, technology and other items in a competitive, transparent, cost effective and environmentally sustainable manner.

**6. POLICY RESPONSIBILITIES:**

- 6.1 Section Managers generally.
- 6.2 Procurement and Contractor Management Specialist.
- 6.3 Expenditure **Financial Acquisitions** Coordinator.

**7. RELATED DOCUMENTS:**

- 7.1 Local Government Act 1993 (NSW).
- 7.2 Local Government (General) Regulation **2021**.
- 7.3 Competition and Consumer Act 2010 (Cth).
- 7.4 NSW Government Procurement Code of Practice.
- 7.5 NSW Government Procurement Policy Framework.
- 7.6 NSW Government Sustainability Policy.
- 7.7 Port Stephens Council Code of Conduct.
- 7.8 Procurement Management Directive.
- 7.9 Financial Business Rules Management Directive.
- 7.10 Asset Disposal (other than property) Policy.
- 7.11 Petty Cash Management Directive.
- 7.12 Purchasing Card Management Directive.
- 7.13** Statement of Business Ethics **Policy**
- 7.14 Sustainability Policy.
- 7.15 Sustainability Procurement Policy.

## Policy

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## Policy

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<b>EDRMS container No</b>	PSC2009-02488	<b>EDRMS record No</b>	TBA
<b>Audience</b>	Council staff		
<b>Process owner</b>	Financial Services Section Manager		
<b>Author</b>	Financial Services Section Manager		
<b>Review timeframe</b>	2 3 years	<b>Next review date</b>	TBA
<b>Adoption date</b>	25 March 2014		

**VERSION HISTORY:**

Version	Date	Author	Details	Minute No.
1	25/03/14	Financial Services Section Manager	Policy adopted.	64
2	25/11/14	Financial Services Section Manager	<ul style="list-style-type: none"> <li>Amended policy adopted.</li> </ul>	317
3	27/11/15	Financial Services Section Manager	<ul style="list-style-type: none"> <li>This policy has been reviewed and formatted into the new template.</li> <li>Port Stephens Code of Conduct added to related documents.</li> <li>Reference to Procurement Management Directive added to the Context / Background.</li> </ul>	
4	09/02/16	Financial Services Section Manager	<ul style="list-style-type: none"> <li>Amended policy adopted.</li> </ul>	018

## Policy

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## Policy



Version	Date	Author	Details	Minute No.
5	12/12/17	Financial Services Section Manager	<ul style="list-style-type: none"> <li>Updated references from TRIM to RM8.</li> <li>Updated RM8 record from 487 to 17/210686.</li> <li>Removed NSW Government Procurement Code of Tendering from the Related Documents Section.</li> <li>Added NSW Government Procurement Policy Framework, Procurement Management Directive, Asset Disposal (other than property) Policy, and Financial Business Rules Management Directive to the Related Documents Section.</li> </ul>	319

## Policy

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Policy



Version	Date	Author	Details	Minute No.
6	08/10/2019	Financial Services Section Manager	<p>Updated Policy into the new template.</p> <p>4.1 – Added ‘Local Supplier’.</p> <p>Added; 5.1 g) –</p> <p>5.2.1 – Added ‘Prior to purchasing supplies staff must consider whether the purchase is necessary or whether it is possible to use or re-use existing resources including sharing with other sections. Requisitioning Officers must consider the environmental impact associated with the manufacture, use and disposal of proposed supplies, eg. sustainability of raw materials, energy used, pollution, recyclability or biodegradability.’</p> <p>5.3.1 – Added ‘Where it is cost effective to do so (that is, within the annual rate peg factor for the year), staff must purchase from local suppliers with all other criteria being equal.’</p> <p>5.6.1 – Added ‘Council staff must refer to the Procurement Management Directive to ensure due process regarding purchases is followed.’</p> <p>Added: 7.11, 7.12, 7.13, 7.14 and 7.15 to ‘Related Documents’.</p> <p>Updated EDRMS file number in version history.</p>	185

Policy

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Policy



7	TBA	Financial Services Section Manager	<p>Updated policy into the latest format.</p> <p>5.1.1 – Added ‘Policy’                      5.4.1 – Added ‘low value’ in line with Procurement Management Directive.                      6.2 – Updated ‘Procurement and Contractor Management Specialist’ to ‘Procurement and Contract Management Specialist’ to reflect current naming convention.                      6.3 – Updated ‘Expenditure’ to ‘Financial Acquisitions Coordinator’ to reflect current naming convention.                      7.2 – Added ‘2021’.                      7.13 – Added ‘Policy’</p> <p>Controlled document information: amended review timeframe to 3 years in accordance with Council’s policy review process.</p>
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Policy

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**ITEM NO. 5**

**FILE NO: 21/342417  
EDRMS NO: PSC2005-3231**

**POLICY REVIEW - ASSET MANAGEMENT POLICY**

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

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Endorse the revised Asset Management Policy shown at **(ATTACHMENT 1)**.
- 2) Place the revised Asset Management Policy, as amended on public exhibition for a period of 28 days and should no submissions be received, the policy be adopted, without a further report to Council.
- 3) Revoke the Asset Management Policy dated 11 February 2020, (Minute No. 016) should no submissions be received.

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**BACKGROUND**

The purpose of this report is seek Council's endorsement of the revised Asset Management Policy (policy) shown as **(ATTACHMENT 1)**. The proposed revised policy has been updated into Council's corporate policy format and meets the Institute of Public Works Engineering Australia (IPWEA) 'must haves' of an asset management policy. The IPWEA 'must haves' is a list of items that should be included in an asset management policy for it to be considered best practice.

The intent of the policy is to articulate Port Stephens Council's commitment to sound asset management in an integrated, consistent, coordinated and financially sustainable manner.

The policy provides a clear direction by defining the key principles that underpin the management of assets. This is taken from the Local Government Act 1993. These principles are operationalised in the policy through the 'asset lifecycle management processes' and the 'key elements'. This in turn creates the framework for Council's Asset Management Plan.

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

**COMMUNITY STRATEGIC PLAN**

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

**FINANCIAL/RESOURCE IMPLICATIONS**

The adoption of the policy drives the Strategic Asset Management Plan framework, which in turn drives the sourcing and allocation of funds for operational and capital works.

<b>Source of Funds</b>	<b>Yes/No</b>	<b>Funding (\$)</b>	<b>Comment</b>
Existing budget	Yes		As documented in the Strategic Asset Management Plan.
Reserve Funds	No		
Developer Contributions (\$7.11)	No		
External Grants	No		
Other	No		

**LEGAL, POLICY AND RISK IMPLICATIONS**

The Local Government Act 1993, sections 8B(b) and 8B(c)(ii) 'Principles of Local Government' legislates Council's responsibility and the manner in which Council must conduct itself when providing services to the community. These principles include Council's asset management responsibility.

Essential Element 2.13 and 2.14 of the Local Government Guidelines sets out requirements for identification of critical assets, risk management strategies for these assets and specifications.

Essential Element 2.12 of the Local Government Guidelines requires that the Asset Management Strategy must include an overarching Council endorsed Asset Management Policy.

<b>Risk</b>	<b><a href="#">Risk Ranking</a></b>	<b>Proposed Treatments</b>	<b>Within Existing Resources?</b>
There is a risk that not adopting the policy would result in Council not meeting the requirements of the Local Government Act and the associated Integrated Planning and Reporting Framework.	Low	Adopt the revised asset management policy.	Yes

There is a risk that not adopting the content of the policy would result in a diminished Strategic Asset Management Plan.	Low	Adopt the revised asset management policy.	Yes
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**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

The proposed policy sets the direction on how the community's assets are to be managed. The management of the community's assets has implications for community safety, social needs and priorities, equity, amenity and utilisation. They also provide services that facilitate transport and attract businesses and tourists to the LGA providing economic diversity in the Local Government Area. The management of assets impact on the protection and conservation of environmental assets, resource use and energy and water conservation.

**CONSULTATION**

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

Internal

Consultation with key stakeholders was undertaken by the Assets Section with the other Council asset owners.

External

In accordance with local government legislation the draft Asset Management Policy will go on public exhibition for 28 days.

**OPTIONS**

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

**ATTACHMENTS**

- 1) Asset Management Policy. [↓](#)

**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

Nil.

## Policy



**FILE NO:** PSC2005-3231

**TITLE:** ASSET MANAGEMENT POLICY

**OWNER:** ASSET SECTION MANAGER

### 1. PURPOSE:

- 1.1 The purpose of the policy is to articulate Port Stephens Council's commitment to sound asset management in an integrated, consistent, coordinated and financially sustainable manner.
- 1.2 The policy provides a clear direction by defining the key principles that underpin the management of assets.

### 2. CONTEXT/BACKGROUND:

- 2.1 Port Stephens Council is responsible for a large and diverse asset base. These assets include, but not limited to; parks, pools, wharves, jetties, foreshores, roads, bridges, footpaths, drains, library resources, childcare centres, community buildings, Rural Fire Service (RFS) and State Emergency Services (SES) emergency buildings, sporting facilities, fleet, transport infrastructure, land, commercial business assets and information communication technology-related assets. These assets are used to provide facilities and services to the community, visitors and persons undertaking business in our local government area.
- 2.2 The Local Government Act 1993, sections 8B(b) and 8B(c)(ii) 'Principles of Local Government' legislates Council's responsibility and the manner in which Council must conduct itself when providing services to the community. These principles include Council's asset management responsibility.
- 2.3 Essential Element 2.13 and 2.14 of the Local Government Guidelines sets out requirements for identification of critical assets, risk management strategies for these assets and specific actions.
- 2.4 Essential Element 2.12 of the Local Government Guidelines requires that The Asset Management Strategy must include an overarching council endorsed Asset Management Policy.

### 3. SCOPE:

- 3.1 To meet the 'Principles of Local Government', Council shall be the custodian of assets it has control of and manage them through their lifecycle. The

#### Policy

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## Policy

management of assets is documented in the Strategic Asset Management Plan and should ensure that issues addressed are prioritised in line with:

- a. Organisational objectives.
- b. Community's goals as detailed in the Community Strategic Plan.
- c. As best as possible result in intergenerational equity.

**3.2** The Strategic Asset Management Plan addresses the asset lifecycle management processes by documenting the assets Council's approach to asset lifecycle management processes such as:

- a. background data
- b. planning
- c. creation/Acquisition/Augmentation Plan
- d. financial/Risk Management Plan
- e. operations and Maintenance Plan
- f. condition and performance monitoring
- g. rehabilitation/Renewal/Replacement Plan
- h. consolidation/Rationalisation Plan
- i. audit Plan/Review.

**3.3** Key elements that drive the above asset lifecycle management processes include:

- a. levels of service
- b. future demand
- c. lifecycle Management Plan
- d. financial summary
- e. asset Management Practices
- f. plan improvement and monitoring.

**3.4** Council will maintain and annually review the Strategic Asset Management Plan as required in Essential Element 2.18 of the Local Government Guidelines. Relevant staff and Councillors shall be trained in asset management.

## 4. DEFINITIONS:

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

Asset	An item that has potential value to an organisation and is used to provide a service to community, customers or stakeholders.
Asset Lifecycle Management	The term used to describe the management of an asset through the stages of life from planning and creation to disposal.
Strategic Asset Management Plan	Plan that documents the assets activities and programs for each service area and resources applied

### Policy

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## Policy



to provide a defined level of service in the most cost effective way based on the services required.

**5. STATEMENT:**

5.1 Council is committed to undertake the management of assets in accordance with the scope of this policy.

**6. RESPONSIBILITIES:**

- 6.1 Asset Section Manager is responsible for the implementing, complying with, monitoring, evaluating, reviewing and providing advice on the policy.
- 6.2 Port Stephens Council asset owners including Asset Section Manager, Business Systems Support Section Manager, Community Services Section Manager, Emergency Management Coordinator and Property Services Section Manager are responsible for implementing the policy.

**7. RELATED DOCUMENTS:**

- 7.1 Local Government Act 1993 and Guidelines.
- 7.2 Strategic Asset Management Strategy.
- 7.3 Asset Management Guidelines.

**CONTROLLED DOCUMENT INFORMATION:**

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<b>EDRMS container No.</b>	PSC2005-3231	<b>EDRMS record No.</b>	TBC
<b>Audience</b>	Mayor and Councillors, Council Staff and Community		
<b>Process owner</b>	Asset Section Manager		
<b>Author</b>	Asset Section Manager		
<b>Review timeframe</b>	2-years <b>3 Years</b>	<b>Next review date</b>	TBC
<b>Adoption date</b>	20 December 2011		

Policy

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## Policy



### VERSION HISTORY:

Version	Date	Author	Details	Minute No.
1	20 Dec 2011	Group Manager Facilities and Services	Adoption	459
2	8 Mar 2011	Group Manager Facilities and Services	Minor Amendments	064
3	12 Dec 2017	Asset Section Manager	Align to new Council Policy format and inclusion in IPWEA "must haves" as an asset management policy.	323
4	11 Feb 2020	Assets Section Manager	Updated to new Corporate Policy Template and minor grammatical formatting. 2.1 Addition of Rural Fire Services and State Emergency Services.	016
5		Assets Section Manager	Updated to new Corporate Policy Template. Reviewed by Author.	

## Policy

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ITEM NO. 6

FILE NO: 21/342430  
EDRMS NO: PSC2009-06551

**POLICY REVIEW - CONTRIBUTION TO WORKS FOR KERB AND GUTTERING  
CONSTRUCTION POLICY**

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

---

**RECOMMENDATION IS THAT COUNCIL:**

- 1) Receive and note submission (**ATTACHMENT 1**).
- 2) Revoke the Contributions to Works for Kerb and Gutter Construction policy dated 13 August 2019 (Minute No. 183).
- 3) Adopt the revised Contributions to Works for Kerb and Gutter Construction policy shown at (**ATTACHMENT 2**).

---

**BACKGROUND**

The purpose of this report is seek Council's endorsement of the revised Contributions to Works for Kerb and Gutter Construction Policy (policy) shown as (**ATTACHMENT 2**).

Council approved to place the policy on public exhibition at the 28 September 2021 Council meeting. While no submissions were made, a question was raised during discussion of the policy at the Council meeting. Further discussion following the meeting was undertaken between the then Councillor and Council staff in relation to the matter. This has been regarded as a submission and has been summarised in (**ATTACHMENT 1**). Additional wording has been incorporated into clause 3.12 in the advertised policy. This relates to how Council charge a contribution to works for kerb and guttering for strata and community title land.

The intent of this policy is to allow Council to charge residents a contribution to works for the construction of new kerb and guttering built adjacent to their property. This charge is triggered when Council is undertaking an upgrade of the road pavement as part of Council's Capital Works Program.

Council installs kerb and guttering to primarily aid in the management of stormwater. Kerb and guttering improves the ability to control and collect surface water runoff from the road pavement. This in turn reduces the scouring effects of water which damages road pavements and road shoulders which leads to potholes and silt build up in drains and waterways.

Reasons for the recommendation to endorse this policy are:

- Kerb and guttering is regarded by the community as having a direct benefit to landowners.
- Kerb and guttering provides improved stormwater runoff control and quality.
- The contribution creates an additional source of income for projects allowing more kerb and guttering to be constructed.

During the Public Exhibition, 1 submissions was received which has been summarised in **(ATTACHMENT 1)**. As a result of the submission, clause 3.12 in the advertised policy was modified to include additional information.

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

### COMMUNITY STRATEGIC PLAN

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

### FINANCIAL/RESOURCE IMPLICATIONS

The total cost of construction for kerb and guttering varies from year to year depending on the type and volume of projects scheduled in the Capital Works Program. The kerb and gutter annual contribution income typically ranges from \$30,000 - \$60,000. A number of projects were exempt from contributions due to removal and reconstruction of existing kerb and guttering or adjacent to land in which the policy does not allow for the collecting of funds.

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

### LEGAL, POLICY AND RISK IMPLICATIONS

Council elects whether to collect contributions to works. Section 217 of the Roads Act 1993 states "Roads authority may recover cost of paving, kerbing and guttering footways".

<b>Risk</b>	<b><a href="#">Risk Ranking</a></b>	<b>Proposed Treatments</b>	<b>Within Existing Resources?</b>
There is a risk that collecting Contribution to Works for Kerb and Guttering will impose additional costs to landowners leading to community dissatisfaction and financial hardship.	Low	Adopt the recommendations.	Yes

### **SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

To date a large majority of land owners have been willing to pay a contribution and see this as an improvement to the aesthetic and functionality to the property frontage. Anecdotally, this will increase a property's resale value.

The current and revised policy has a repayment system implemented to allow landowners to repay over a period of time should they not be able to afford the lump sum payment. The time limit is based on the amount owing and is broken into pensioner and non-pensioner schedules. Aged pensioners who satisfy the eligibility criteria can also make application to defer any contributions to works under Council's Debt Recovery and Hardship Policy. This repayment system has been working well since it was introduced into a previous review of this policy.

Kerb and gutter reduces scouring and water ponding on the road shoulder and verge area reducing the pavement failure. Kerb and gutter also improves stormwater runoff water quality by reducing gravel washing into the stormwater drainage systems and subsequent water catchments.

Providing a kerbed edge to the road helps to delineate the edge of the road formation. This aids in the location of services, position for vehicles to uniformly park alongside and clearly define the 'nature strip' of the road.

### **CONSULTATION**

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

#### Internal

- Finance Section.
- Capital Works Section.
- Executive Team.

External

The draft policy was placed on Public Exhibition for a period of 28 days from 29 September 2021 to 26 October 2021.

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

**OPTIONS**

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

**ATTACHMENTS**

- 1) Submission. [↓](#)
- 2) Contribution to Works for Kerb and Gutter Construction Policy. [↓](#)

**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

Nil.

**ITEM 6 - ATTACHMENT 1 SUBMISSION.**

Policy Review – Contribution to Works for Kerb and Gutter Construction Policy

No.	Author of submission	Comment	Council response
1	Staff	During the last term of Council, a question was raised from the floor of Council to do with how strata titles are proportioned and that the current policy document does not address this with enough detail.	Additional detail has been added into section 3.12 of the policy to address strata titles as well as community land and private internal roads.

## ITEM 6 - ATTACHMENT 2 CONTRIBUTION TO WORKS FOR KERB AND GUTTER CONSTRUCTION POLICY.

### Policy



**FILE NO:** PSC2009-06551

**TITLE:** CONTRIBUTION TO WORKS FOR KERB AND GUTTER CONSTRUCTION

**OWNER:** ASSETS SECTION MANAGER

#### 1. PURPOSE:

- 1.1 The purpose of this policy is to allow Council to charge residents a contribution to works for the construction of new kerb and guttering built adjacent to their property.
- 1.2 This policy provides a framework to apply a contribution based on land zoning.

#### 2. CONTEXT/BACKGROUND:

- 2.1 Kerb and gutter provides a clear boundary between the road pavement and the footpath reserve. It functions to collect and control stormwater runoff from both private properties and the roadway. Landowners, especially in urban areas, consider kerb and gutter an integral and necessary part of any road network.
- 2.2 Kerb and gutter improves the environment by reducing sediment transfer to improve water quality. Kerb and gutter reduces road shoulder scouring as well as the ability for water to pond on the road shoulder and roadside verge area which allows water to penetrate the pavement causing road failure.
- 2.3 The Roads Act allows Council to recoup the cost of installing kerb and gutter from the adjacent property owner. A repayment system outlined in the policy statement enables property owners to repay contributions to works over a period of time if they cannot afford the lump sum payment. This is time limited based on the amount owing and is broken into pensioner and non-pensioner schedules. Aged pensioners who satisfy the eligibility criteria can also make application to defer any contributions to works under Councils Debt Recovery and Hardship Policy.

#### 3. SCOPE:

- 3.1 That the contribution structure be fair and equitable and accepted by the general community.
- 3.2 When constructing new kerb and gutter for the community within a public road, Council will require a contribution from those adjoining property owners that benefit directly from these facilities.
- 3.3 That Council makes every endeavour to notify the property owners affected prior to commencing the work and provides details of work to be carried out and an approximate amount of any contribution to be paid. In exceptional

#### Policy

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**ITEM 6 - ATTACHMENT 2 CONTRIBUTION TO WORKS FOR KERB AND GUTTER CONSTRUCTION POLICY.**



**Policy**

circumstances when Council is unable to notify property owners prior to works and of costs, the owners are still liable to pay the contribution.

- 3.4 That this policy details all of the different situations and that contributions are consistently applied, to prevent any exceptions occurring.
- 3.5 Fees are to be reviewed annually through the fees and charges process reviewed by Council.
- 3.6 The amount charged is not to be more than half of the actual cost of construction.
- 3.7 The owner of the property becomes liable to pay the amount on receiving the notice. If the property is sold after notification has been given, the liability to pay the contribution will be the responsibility of the new owner.
- 3.8 Council will advise potential new property owners by indicating what liabilities exist when issuing a certificate under section 603.
- 3.9 Contributions are not applicable when the Group Manager of Facilities & Services determines that no direct benefit can be derived from the construction.
- 3.10 Contributions may be repaid over a period of time provided payments are made fortnightly in accordance with the following schedule:

a) Non Pensioners

Contribution amount (\$)	≤\$500	>\$500 to \$1,000	>\$1,000
Time to Pay	Up to 12 months	Up to 2 years	Up to 4 years
Minimum fortnightly repayments	\$20	\$20	\$20

b) Pensioners

Contribution amount (\$)	≤\$500	>\$500 to \$1,000	>\$1,000
Time to Pay	Up to 2 years	Up to 4 years	Up to 5 years
Minimum fortnightly repayments	\$10	\$10	\$10

- c) Regardless of the original source of funding for the construction of kerb and gutter (original source must be less than 100% of the total cost of construction), Council will require owners' contribution in all cases where such construction fronts privately owned land as zoned below.
- d) Aged Pensioners who satisfy the eligibility criteria may make application to defer any contribution towards kerb & gutter construction under Council's Debt Recovery & Hardship Policy.

3.11 Assessing the Application Based on Land Zoning

Policy

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ITEM 6 - ATTACHMENT 2 CONTRIBUTION TO WORKS FOR KERB AND GUTTER CONSTRUCTION POLICY.



## Policy

a) The applicability of any contribution is based on the land zoning of the property. List of land zones where a contribution is applicable for Kerb and Gutter:

- R1 General Residential
- R2 Low Density Residential
- R3 Medium Density Residential
- R5 Large Lot Residential
- B1 Neighbourhood Centre
- B2 Local Centre
- B3 Commercial Core
- B4 Mixed Use
- B5 Business Development
- B7 Business Park
- IN1 General Industrial.

### 3.12 Boundary Location & Calculations of Construction Costs

a) There are three different rate structures to be applied once the zone applicability has been established:

- Front boundaries: 50.0% of the average construction cost
- Corner Lots - Side & Front boundaries: 33.3% of the average construction cost
- Rear boundaries: 25.0% of the average construction cost.

b) The length used in the calculations is the length of the property boundary, but not more than the actual length of the kerb and gutter being constructed.

~~c) In the case of properties with strata title or community title the cost shall be shared equally between all strata title and community title holders.~~

c) In the case of properties with strata title the cost shall be shared between all lot owners in the same proportions as unit entitlement for the scheme under s.267 Strata Schemes Management Act 2015.

d) In the case of properties with community title and private internal roads the cost shall be recovered from the community association.

e) In the case of properties with community title and public internal roads the cost shall be recovered from the adjoining owner of land whether that be a community, precinct or neighbourhood association or individual precinct or neighbourhood lot owner.

## Policy

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**ITEM 6 - ATTACHMENT 2 CONTRIBUTION TO WORKS FOR KERB AND GUTTER CONSTRUCTION POLICY.**



## Policy

### 4. DEFINITIONS:

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

Kerb and Guttering	A concrete barrier used to define the edge of a road and drainage purposes.
Land Zone	As prescribed in Councils Local Environmental Plan (LEP) 2013. This Plan aims to make local environmental planning provisions for land in Port Stephens in accordance with the relevant standard environmental planning instrument under section 33A of the Environmental Planning and Assessment Act 1979.
Contribution	A payment or levy to give in order to help achieve or provide something.

### 5. STATEMENT:

- 5.1 To improve stormwater runoff water quality and control.
- 5.2 Improve the character of the area in which kerb and gutter is being installed.
- 5.3 Create an additional source of income for projects allowing more kerb and guttering to be constructed.
- 5.4 To be fair and equitable for the ratepayers of Port Stephens Council.

### 6. RESPONSIBILITIES:

- 6.1 Assets Section Manager is responsible for the implementation and administration of the policy and procedures (notification of work notices to property owners, calculation of fees etc).
- 6.2 Financial Services Section Manager is responsible for the invoicing and collection of contributions for the works.

### 7. RELATED DOCUMENTS:

- 7.1 Roads Act 1993.
- 7.2 Local Environmental Plan.
- 7.3 Schedule of Fees & Charges for current year.

## Policy

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ITEM 6 - ATTACHMENT 2 CONTRIBUTION TO WORKS FOR KERB AND GUTTER CONSTRUCTION POLICY.

Policy



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<b>EDRMS container No.</b>	PSC2009-06551	<b>EDRMS record No.</b>	TBA
<b>Audience</b>	Port Stephens Residents, Assets and Financial Services Sections		
<b>Process owner</b>	Assets Section Manager		
<b>Author</b>	Assets Section Manager		
<b>Review timeframe</b>	Two <b>3</b> years	<b>Next review date</b>	TBA
<b>Adoption date</b>	23/6/2015		

**VERSION HISTORY:**

Version	Date	Author	Details	Minute No.
1	09/02/2010	Assets Section Manager		018
2	23/06/2015	Assets Section Manager	Adopted by Council.	175
3	13/8/2019	Assets Section Manager	Review and updated to new Corporate Template. 2.3 Make one change – replace “to” with “the”. No submissions from Public Exhibition. Adopted by Council.	183
5	TBA	Assets Section Manager	Reviewed and updated to new Corporate Template.	TBA

Policy

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**ITEM NO. 7**

**FILE NO: 21/362083  
EDRMS NO: PSC2006-0038**

**POLICY REVIEW - PORT STEPHENS AIRCRAFT NOISE**

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

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Revoke the Port Stephens Aircraft Noise Policy and related guideline dated 10 December 2019, Minute No. 251 (**ATTACHMENT 1**).

---

**BACKGROUND**

The purpose of this report is to revoke the Port Stephens Aircraft Noise Policy (**ATTACHMENT 1**) (the policy) and related guideline (**ATTACHMENT 2**) dated 10 December 2019, Minute No. 251.

The policy was adopted in 2011 following the announcement of the Joint Strike Fighter Squadron at RAAF Base Williamtown to give effect to an accompanying local Aircraft Noise Guideline. The guideline ensured that land use planning decisions and planning certificates considered the impact of both existing and future aircraft noise during the period of transition to the new squadron.

Following the retirement of the F/A-18 Hornet aircraft from RAAF Base Williamtown, a policy is no longer needed to address the transition in aircraft models. Assessment of aircraft noise is now appropriately met by the broader land use planning and policy framework, including:

- Port Stephens Local Environmental Plan 2013.
- Port Stephens Development Control Plan 2014.
- Ministerial Direction 3.5 Development Near Regulated Airports and Defence Airfields.
- Memorandum of Understanding between Council and the Department of Defence.

**COMMUNITY STRATEGIC PLAN**

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

**FINANCIAL/RESOURCE IMPLICATIONS**

There is no direct financial implication for Council in relation to the revocation of the policy.

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

**LEGAL, POLICY AND RISK IMPLICATIONS**Aircraft Noise Planning Area

A key component of the policy is the Aircraft Noise Planning Area (ANPA) which is a composite map of the former 2012 ANEF and the current 2025 ANEF. The ANPA is redundant following the recent retirement of the F/A-18 Hornet aircraft from RAAF Base Williamtown and Salt Ash Air Weapons Range. If the policy is revoked, the 2025 ANEF will remain relevant and continue to be applied under the broader land use planning and policy framework for aircraft noise.

Planning Proposals

If the policy is revoked, the assessment of planning proposals (rezoning requests) will continue to be undertaken consistent with the broader land use planning framework for land affected by aircraft noise including Ministerial Direction 3.5 Development Near Regulated Airports and Defence Airfields and the Memorandum of Understanding between Council and the Department of Defence.

Planning Certificates

If the policy is revoked, a notation will continue to be provided on planning certificates whether land is within applicable ANEF contours. The Port Stephens Local Environmental Plan 2013 and the Port Stephens Development Control Plan 2014 provide a policy basis for including notification of aircraft noise on planning certificates. The Memorandum of Understanding between Council and the Commonwealth Department of Defence also includes provision for notation on planning certificates issued by Council for land within ANEF contours.

<b>Risk</b>	<b><a href="#">Risk Ranking</a></b>	<b>Proposed Treatments</b>	<b>Within Existing Resources?</b>
There is a risk that land use planning decisions and the issue of planning certificates will be based on outdated information.	Low	Adopt the recommendation.	Yes

### **SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

There are no expected social, economic or environmental implications as a result of revoking the policy.

### **CONSULTATION**

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

#### Internal

The Legal Services were consulted during the review and do not object to the revocation of the policy.

The Executive Team has been consulted to seek management endorsement.

#### External

The Commonwealth Department of Defence were consulted and do not object to the revocation of the policy.

### **OPTIONS**

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

### **ATTACHMENTS**

- 1) Port Stephens Aircraft Noise Policy. [↓](#)
- 2) Aircraft Noise Guideline. [↓](#)

### **COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

Nil.

## Policy



**FILE NO:** PSC 2006-0038

**TITLE:** PORT STEPHENS AIRCRAFT NOISE POLICY

**POLICY OWNER:** STRATEGY AND ENVIRONMENT SECTION MANAGER

**1. PURPOSE:**

- 1.1 The purpose of this policy is to give effect to the Port Stephens Aircraft Noise Guideline for the purposes of land use planning decisions related to planning proposals and the issue of planning certificates.
- 1.2 The policy should be read in conjunction with the Port Stephens Aircraft Noise Guideline (consistency with the guideline constitutes consistency with the policy).

**2. CONTEXT/BACKGROUND:**

- 2.1 Aircraft noise in Port Stephens originates from the RAAF Base Williamtown, Newcastle Airport, and the Salt Ash Air Weapons Range. Aircraft noise has the potential to cause adverse amenity impacts on surrounding land uses.
- 2.2 To address potential aircraft noise impacts, provisions in Council's statutory planning instruments apply to relevant development applications (ie the Port Stephens Local Environmental Plan 2013 (LEP 2013) and the Port Stephens Development Control Plan 2014.
- 2.3 Council has also executed a Memorandum of Understanding (MOU) with the Commonwealth Department of Defence for the purposes of exercising planning functions for development located within the Aircraft Noise Planning Area identified in the Port Stephens Aircraft Noise Guideline. The MOU sets out procedures for notification and consultation with the Commonwealth Department of Defence in relation to relevant land use planning decisions.

**3. SCOPE:**

- 3.1 The policy relates specifically to the following Council functions:
- a) Consideration of planning proposals (rezoning requests).
  - b) Issuing planning certificates.

## Policy

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## Policy



3.2 The policy and Port Stephens Aircraft Noise Guideline apply to properties that are located within the Aircraft Noise Planning Area identified in that guideline.

#### 4. DEFINITIONS:

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

Planning certificate	A certificate issued under Section 10.7 of the Environmental Planning and Assessment Act 1979 containing planning and other information about the relevant land. Planning certificates are required to be attached to a contract for the sale of land under the conveyancing legislation.
Planning proposal (rezoning request)	A request to make an amendment to the LEP 2013. Amendments may include changes to permissible land uses, building heights or minimum lot sizes.

#### 5. POLICY STATEMENT:

5.1 The policy aims to:

- a) Recognise the fundamental significance of RAAF Base Williamtown, Newcastle Airport and Salt Ash Air Weapons range at the nation, State, regional and local levels.
- b) Protect the long-term operation of those facilities by preventing encroachment of incompatible activities that are sensitive to aircraft noise.
- c) Ensure that aircraft noise impacts on the community are within acceptable limits.
- d) Allow a merit-based framework that is responsive to local expectations, weighs up potential costs and benefits to the community, and promotes approaches that are cost-effective, equitable and affordable.
- e) Ensure that planning proposal functions and functions related to the issue of planning certificates are exercised with a reasonable standard of care and diligence.
- f) Facilitate the issue of planning certificates that provide information about the likelihood of aircraft noise.
- g) Promote a cooperative framework in which all interested stakeholders can contribute to the future planning of RAAF Base Williamtown – Newcastle Airport and its environs.

## Policy

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**6. POLICY RESPONSIBILITIES:**

6.1 Strategic Planning team (policy review, planning proposal assessment and planning certificates).

**7. RELATED DOCUMENTS:**

- 7.1 Environmental Planning and Assessment Act 1979 (NSW).  
 7.2 Local Planning Direction 3.5 Development Near Regulated Airports and Defence Airfields.  
 7.3 Port Stephens Local Environmental Plan 2013.  
 7.4 Port Stephens Development Control Plan 2014.  
 7.5 Port Stephens Aircraft Noise Guideline.

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<b>EDRMS container No</b>	PSC 2006-0038	<b>EDRMS record No</b>	19/397957
<b>Audience</b>	General		
<b>Process owner</b>	Strategy and Environment Section		
<b>Author</b>	Strategy and Environment Section Manager		
<b>Review timeframe</b>	Two years	<b>Next review date</b>	December 2021
<b>Adoption date</b>	23/08/2011		

**VERSION HISTORY:**

Version	Date	Author	Details	Minute No.
1.0	23/08/11	Group Manager, Sustainable Planning	N/A	292

## Policy

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1.1	25/10/16	Strategy and Environment Section Manager	Provide policy in corporate template. Amend title of previous 'Port Stephens Aircraft Noise Policy 2010' to 'Port Stephens Aircraft Noise Guideline' and attach as supporting document. Key updates include reference to: Port Stephens Local Environmental Plan 2013 (LEP 2013); Port Stephens Development Control Plan 2014 (DCP); Australian Standard 2021-2015 Acoustics – Aircraft noise intrusion – building siting and construction (AS2021- 2015); and the Memorandum of Understanding (MOU) between Council and the Commonwealth (Department of Defence) 23 September 2015.	311
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Policy

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1.2	10/12/2019	Strategy and Environment Section Manager	<p>Policy reviewed and a draft prepared with amendments to adopt the new template for Council policies.</p> <p>1.1 Update to clarify the purpose of the Policy and avoid duplication of other Council instruments that apply to the assessment of impacts of aircraft noise.</p> <p>2.1-2.2-2.3 Update to clarify the background and context of the Policy and to include reference to the other Council instruments that address aircraft noise impacts.</p> <p>3.1 Amendments to simplify the language of the Policy.</p> <p>3.2 Amendments to clarify that the Policy and Port Stephens Aircraft Noise Guideline only apply to land.</p> <p>4.1 Updates to remove references to terms not used in the Policy and to add definitions for 'planning certificate' and 'planning proposal'.</p> <p>5.1. Amendment to clarify the aims of the Policy related to planning certificates and planning proposals.</p> <p>6.2 Update to remove reference to the Development and Compliance Section as they do not exercise functions related to planning proposals and planning certificates.</p> <p>7.2 Update reference to Local Planning Direction 3.5 Development Near Regulated Airports and Defence Airfields.</p>	251
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Appendix 2:	RAAF Base Williamtown & Salt Ash Weapons Range 2012 ANEF map
Appendix 3:	Aircraft Noise Planning Area

## Summary

The policy (to be read in conjunction with this guideline) provides a framework for planning decisions and other Council programs relating to aircraft noise. It sets out principles that are to guide planning proposals, development assessment, provision of aircraft noise information and efforts to initiate aircraft noise amelioration programs.

The policy aims to:

- Recognise the fundamental significance of RAAF Base Williamtown – Newcastle Airport and Salt Ash Air Weapons Range at the national, State, regional and local levels;
- Protect the long-term operation of those facilities by preventing encroachment of incompatible activities that are sensitive to aircraft noise;
- To ensure that aircraft noise impacts on the community are within acceptable limits;
- Allow a merit-based framework that is responsive to local expectations, weighs up potential costs and benefits to the community, and promotes approaches that are cost-effective, equitable and affordable;
- Ensure that planning and information management functions are exercised with a reasonable standard of care and diligence;
- Facilitate the provision of information to the public about aircraft noise that is accurate and meaningful, and that enables people to make appropriate decisions; and
- To promote a cooperative framework in which all interested stakeholders can contribute to the future planning of RAAF Base Williamtown-Newcastle Airport and its environs.

An aircraft noise planning area is defined based on Australian Noise Exposure Forecast maps. Within this area, the Guideline establishes principles based on relevant State planning directions, Australian Standards and current best practice aircraft noise amelioration programs. Whilst the Guideline seeks consistency with these general principles, it also provides guidance for the application of discretion. This allows decisions to respond to local circumstances and the merits of each case.

Detailed aircraft noise related development controls based on the policy are set out in Chapter B7 *Williamtown RAAF Base – Aircraft Noise and Safety* of the *Port Stephens Development Control Plan 2014*. These controls adopt the Building Site Acceptability principles outlined in AS 2021—2015 *Acoustics – Aircraft noise intrusion – Building siting and construction* but provide more definitive guidance regarding discretionary matters.

## Part 1: About the Policy

### 1.1 Purpose

The purpose of the policy including guideline is to guide Port Stephens Council when exercising its planning and other functions as they relate to aircraft noise. It relates specifically to the following Council functions:

- Planning proposals;
- Development assessment; and
- Information management.

It provides a framework for decision making that is generally consistent with national standards and State planning policies and directions, whilst also responding to local needs and expectations.

### 1.2 Principal aims

The policy has the following aims:

- To recognise the fundamental significance of RAAF Base Williamtown - Newcastle Airport and Salt Ash Air Weapons Range at the local, national, State and regional levels—not only in terms of defence and air transport, but as a key generator of economic activity;
- To protect the long-term operation of those facilities by preventing encroachment of incompatible activities that are sensitive to aircraft noise;
- To ensure Port Stephens Council planning approvals/decisions take into account aircraft noise impacts on the community and that they are within acceptable limits;
- To allow a merit-based framework that is responsive to local expectations, weighs up potential costs and benefits to the community, and promotes approaches that are cost-effective, equitable and affordable;
- To ensure that planning and information management functions are exercised with a reasonable standard of care and diligence;
- To facilitate the provision of information to the public about aircraft noise that is accurate and meaningful, and that

enables people to make appropriate decisions; and

- To promote a cooperative framework in which all interested stakeholders can contribute to the future planning of RAAF Base Williamtown-Newcastle Airport and its environs.

### 1.3 Contents

The guideline is divided into 6 parts.

- **Part 1 About the policy** - outlines the policy's purpose, principal aims, and its relationship to other policies and plans.
- **Part 2 Policy context** - explains why a policy is necessary, introduces important noise concepts, defines the area within which the policy should be applied, outlines essential planning criteria and identifies the policy tools that will be used to implement the policy.
- **Part 3 Planning proposals** - outlines principles for the preparation of planning proposals, such as those relating to the rezoning of land. These principles are essentially concerned with preventing future encroachment of development into areas where it would be incompatible with existing and future airport operations.
- **Part 4 Cooperative mechanisms** - outlines cooperative mechanisms which help to promote mutually satisfactory outcomes for all interested stakeholders and ensure the burden is at the lowest extent possible for the benefit of the existing community.
- **Part 5 Noise information** - outlines principles and procedures relating to the collection and use of aircraft noise information. Whilst managing risk and liability is an important objective, of equal significance is the need to provide meaningful information to the public. This will help people to make decisions appropriate to their needs and sensitivity to aircraft noise.
- **Part 6 Reference material** - contains a glossary of words with special or technical meanings, and a list of relevant publications.

## Part 1: About the Policy

### 1.4 Relationship to other policies

The policy including guideline:

- Outlines principles for planning proposals that are consistent with section 9.1 Direction 3.5 *Development Near Regulated Airports and Defence Airfields* made by the NSW Minister for Planning and the Environment under the *Environmental Planning and Assessment Act 1979* (NSW);
- Provides the rationale for aircraft noise related development controls contained in the *Port Stephens Local Environmental Plan 2013* and the *Port Stephens Development Control Plan 2014*;
- Adopts the building site acceptability principles outlined in Australian Standard AS 2021—2015 *Acoustics—Aircraft noise intrusion—Building siting and construction* but provides more definitive guidance regarding discretionary matters under the standard; and
- Supports the Memorandum of Understanding between Council and the Department of Defence which aims to ensure Defence is notified by Council of any application or planning proposal for properties wholly or partly within ANEF contours of 20 and greater and has the opportunity to make a submission with respect to any such matter notified to it in accordance with the MOU.

### 1.5 Explanation of terms

Terms used with special or technical meanings are explained in Part 6 *Reference material*.

## Part 2: Context

### 2.1 Introduction

Aircraft noise is not a new issue for the Port Stephens area, due to the community's longstanding co-existence with RAAF Base Williamtown - Newcastle Airport and the Salt Ash Air Weapons Range.

The RAAF Base was first established in 1941, and now plays an important role in supporting Australia's air combat capability. Civilian use of the airfield began in 1947 and today Newcastle Airport, which is located within the RAAF Base site, is a major regional airport undergoing rapid growth in passenger numbers. Newcastle Airport is managed by Newcastle Airport Ltd on behalf of Newcastle City Council and Port Stephens Council, which hold a lease over the airport site.

To limit aircraft noise impacts Port Stephens Council has for many years applied controls on new development in noise-affected areas. These controls are based on Australian Noise Exposure Forecast maps and compliance with Australian Standard AS 2021-2015 *Acoustics-Aircraft noise intrusion-Building siting and construction*.

The scheduled introduction of F-35 Lightning II combat aircraft after 2018 (to replace the current F/A-18 A/B Hornets) prompted the need for a complete review of the ANEF maps by the Department of Defence, as the new aircraft will produce different noise emissions and use the weapons range in different ways.

### 2.2 Why is the policy needed?

#### Protecting the airport

RAAF Base Williamtown-Newcastle Airport is a facility of fundamental significance at the local, national, state and regional levels. Its importance relates not only to defence and air transport, but also to its role as a key generator of economic activity in the Hunter region. Investment in military capability, airport infrastructure and the economic opportunities that cluster nearby are a very important and growing element in the regional and local economy. For example, the F-35 Lightning II will contribute an

additional \$500 million investment in the region, with consequent job increases above the current 3,000 defence-related employees, as well as wider multiplier effects on regional employment and income. Accordingly, the importance of RAAF Base Williamtown-Newcastle Airport and its ongoing development need to be appropriately recognised and supported. The enormous public investment in the facility should be protected from factors that would constrain its future operation, performance and competitiveness.

#### Protecting the community

Whilst airports need to be protected from too close a relationship with the community they serve, so too does the community need to be protected from aircraft noise.

Aircraft noise is an inescapable by-product of aviation. Unless measures are taken to reduce the impacts of aircraft noise on nearby communities, there can be a wide range of undesirable social, economic and environmental consequences. These range between annoyance and irritation, interference with speech and social activities, interference with classroom learning, loss of relaxation and tranquillity, sleep disruption, health impacts and many others. Loss of amenity due to aircraft noise can have significant impacts on the local economy.

Managing the impacts of aircraft noise is a major challenge for the local government area. A clear policy framework is required that can promote aircraft noise outcomes that are acceptable to the community.

#### Responding to local circumstances and expectations

It is not feasible to exclude all noise-sensitive development from the vicinity of RAAF Base Williamtown-Newcastle Airport, since existing built-up areas are already subject to major noise issues. These examples emphasise the need for guidance regarding discretionary matters under AS 2021-2015 so as to acknowledge the existing situation.



## Part 2: Context

### Exercising due care & diligence

Council has a duty to developers and landowners to exercise proper care when it exercises its planning functions. It is therefore essential that the planning controls intended to manage aircraft noise impacts are based on best practice and the most reliable factual information available.

Consequently, development proposals and requests for information that involve aircraft noise related matters should be considered with particular care and diligence. This requires clear criteria, consistent application of those criteria and sound record keeping practices.

### Informing the public

Successful co-existence between RAAF Base Williamtown-Newcastle Airport and the local community presupposes that members of the public have access to aircraft noise information that is accurate and meaningful. This will help people make appropriate decisions about where to locate their homes and businesses, based on their particular needs and personal sensitivity to aircraft noise. In particular, poor information can lead to false expectations and highly negative responses to aircraft noise. Well thought out information strategies can avoid these problems.

### Promoting cooperation

Defence and airport operations are regulated at the Commonwealth level, whilst land use planning is undertaken at the local and regional levels. Because of this division of responsibilities, cooperative mechanisms can help to promote mutually satisfactory outcomes for all interested stakeholders. These include the Department of Defence, Port Stephens Council, NSW Department of Planning, Industry and Environment and local community interest groups.

## 2.3 Aircraft Noise Exposure Forecasts

### Australian Noise Exposure Forecasts

*Aircraft noise exposure* is a measure of the cumulative amount of aircraft noise likely to be experienced at a particular site on an average day, taking into account factors such as noise intensity, duration and tonal qualities, as well as frequency of flights, type of aircraft and time of day. Computational processes are used to derive a single integrated measure that aims to reflect the average community response to aircraft noise. Aircraft noise exposure is widely used to guide decisions about locations that may be suitable for different activities.

The method used in Australia for measuring aircraft noise exposure is known as the Australian Noise Exposure Forecast system. It includes the following noise measures, which are usually illustrated on maps by noise exposure contours.

- ANEF - a noise exposure forecast for a particular time in the future or based on particular circumstances such as ultimate capacity. ANEF maps are the maps that are referenced in the parts of AS 2021-2015 that are applied to land use planning.
- ANEI - a noise exposure index based on data for a previous year where the exact numbers and types of aircraft which used the airport are known. ANEI maps are not referenced in the parts of AS 2021-2015 that are applied to land use planning.
- ANEC - a noise exposure concept depicting possible noise exposure levels based on a predetermined set of assumptions about airport use and operation. ANEC maps are not referenced in the parts of AS 2021-2015 that are applied to land use planning.

It is important to appreciate that ANEF values represent predicted noise exposure, not predicted noise level or intensity. They do not give any indication of the maximum sound level ( $L(A)_{max}$ ) that may be experienced at a site.

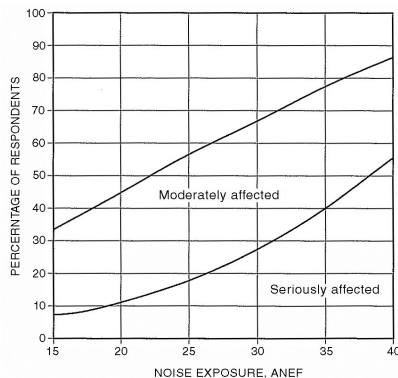
## Part 2: Context

### 2.4 Aircraft Noise Planning Area

#### Drawing the line

Many areas of the local government area are subject to some level of aircraft noise; some parts experience much more aircraft noise than others. This raises the question as to where to draw the line between those areas where aircraft noise should be considered in planning and other decisions (the Aircraft Noise Planning Area or ANPA) and those areas where it need not.

Aircraft noise planning thresholds are usually defined in terms of ANEF values. Under AS 2021-2015 all building types are classed as being 'acceptable' where the ANEF value is less than 20. Below this value, there is usually no need for aircraft noise reduction measures. However, even below this threshold level, most complaints about aircraft noise in Australia originate from outside the ANEF 20 contour. ANEFs have certain limitations, and several alternatives have been raised for discussion. Not the least of these limitations is that ANEFs tend to reinforce the misconception that aircraft noise magically ends at the ANEF 20 contour (which it does not).



**Figure 1: Relationship between ANEF level and community reaction in residential areas (Source: AS 2021-2015)**

#### Available ANEF maps

ANEF maps for all flying operations for RAAF Base Williamtown – Newcastle Airport are produced by the Department of Defence. The following maps have been published in recent years:

- *RAAF Base Williamtown & Salt Ash Weapons Range 2025 ANEF* - this forecast was made on 10<sup>th</sup> August 2011 and is based on predicted conditions in 2025. It reflects the operation of F-35 Lightning II after 2018 and the continued operation of the Hawk; and
- *RAAF Base Williamtown & Salt Ash Weapons Range 2012 ANEF* - this forecast was made in 2003 and is based on predicted conditions in 2012. It reflects the operation of existing Hawk and Hornet and is expected to continue until at least 2018.

The F35 Lightning II is gradually being phased in to replace the existing Hornet at RAAF Base Williamtown – Newcastle Airport. This process has already commenced and is anticipated to be completed by the year 2023. It is likely that the noise impact from the Hornet will progressively become less relevant as their number is reduced and ceases. Conversely, the noise impact from the F35 Lightning II will progressively become more relevant as their number is increased.

It is an established convention that there will only be one current ANEF map for a given airport at any one time, this being the latest map endorsed by the relevant authority. However, application of that convention is problematical in the circumstances listed above. Omitting to have regard to the 2012 ANEF might amount to a failure to exercise reasonable care, in which case there would be the potential for liability. Accordingly, the Department of Defence have advised the prudent approach is to consider the 2012 ANEF map for such period as it continues to be relevant.

#### Aircraft Noise Planning Area

The ANPA defines the area within which aircraft noise should always be considered in planning and development decisions generally in accordance with this guideline.

## Part 2: Context

The ANEF 20 level is adopted as the appropriate minimum planning threshold. The ANPA therefore comprises all properties that are wholly or partly within the ANEF 20 contour on the relevant planning area map, and so includes land within ANEF contours of 20 and higher.

The relevant planning area map is a composite of the 2025 ANEF and the 2012 ANEF. 2025 ANEF is the most recent ANEF map and 2012 ANEF is an earlier ANEF map that remains relevant to present or future circumstances.

A property-based approach has been adopted in defining the ANPA. If part of a property falls within the ANEF 20 contour, the entire property is defined to be within the ANPA. The information necessary to determine if a particular property is within the ANPA will be recorded on the Council's property database (refer to Part 5 *Noise information* of the policy).

Although a property may be identified within the ANPA only that part of a site within the 20 ANEF contour of the 2025 ANEF would be subject to development control plan requirements relating to aircraft noise.

No inference should be made that land outside the ANPA is not subject to aircraft noise. Such land is merely below the minimum noise exposure threshold adopted for planning purposes.

### 2.5 Planning criteria

There are three essential planning criteria that should be applied to all planning and development proposals within the Aircraft Noise Planning Area:

- Aircraft noise burden;
- Site suitability; and
- Aircraft noise reduction.

These criteria are critical to attaining progress on the two key objectives, namely to protect RAAF Base Williamtown-Newcastle Airport from encroachment by noise-sensitive activities, and to protect the community from adverse noise impacts.

Criteria	Purpose
Aircraft noise burden	Containing or reducing the aggregate aircraft noise problem
Site suitability	Putting the right activities in the right place ('prevention')
Aircraft noise reduction	Reducing noise through building construction measures ('cure')

Figure2: Planning Criteria

#### Aircraft noise burden

A. Any noise impact does not site solely with Defence. Newcastle Airport operates at Williamtown and thus it is a shared burden.

If Council makes a planning decision to allow noise sensitive development within the ANEF contours, then the aircraft noise burden becomes an existing one and it would also sit with Council.

The aircraft noise burden refers to the total number of dwellings or people that are exposed to unacceptable aircraft noise. Ideally, this burden should be reduced, or failing that, should not be permitted to increase.

The aircraft noise burden can be broken down into two distinct components:

- The *existing aircraft noise burden* comprises housing and other noise sensitive development that is already in existence. For such development, aircraft noise is an historical problem that cannot be dealt with by traditional planning policies. Council can, outside of its functions as a consent authority, advocate and call for co-operation from Department of Defence and Newcastle Airport to achieve any reduction and such areas are kept to a minimum when considering operations.

## Part 2: Context

- The *future aircraft noise burden* comprises housing and other development that is yet to be built. Aircraft noise is a planning problem that can be dealt with by zoning and other planning controls. Planning decisions should not make the future situation worse than that which currently exists. To do so would be contrary to the principle of intergenerational equity, which binds Council in its role as a consent authority and as a local council.

### Site suitability

- B. Site suitability refers to the acceptability of proposed development at a particular site, having regard to actual or forecast aircraft noise conditions and the sensitivity of that development to those conditions.

Site suitability provides a key criterion for deciding whether or not to permit or encourage particular activities in particular locations. It is about putting the right kinds of development in the right places, and represents 'prevention' rather than 'cure'. Where possible, achieving site suitability should have priority over aircraft noise reduction.

The currently recognised standard for site suitability is specified by Table 2.1 *Building Site Acceptability Based on ANEF Zones* in AS 2021-2015.

### Aircraft noise reduction

- C. This refers to the reduction of indoor noise levels by the application of suitable measures to the design, construction or modification of buildings (for example, building mass, noise insulation or double glazing).

Aircraft noise reduction represents 'cure' rather than 'prevention'. It is the next best option when a development site is conditionally suitable. However, there are theoretical and practical limits to aircraft noise reduction. When applied to highly unsuitable sites, acceptable noise outcomes may not be possible.

The currently recognised standard for aircraft noise reduction is specified by Section 3 *Building Construction Against Aircraft Noise Intrusion*.

## 2.6 Policy tools

The tools or mechanisms that can be used to implement the policy are as follows:

### Planning proposals

Planning proposals involve the preparation of plans relating to the future use and development of land. They are a critical tool for preventing an increase in the *future* aircraft noise burden.

### Development assessment

Development assessment involves the regulation of development proposals under existing planning instruments. It is an important tool for containing growth in the *future* aircraft noise burden, but is often constrained by the limitations of historical zoning decisions.

### Cooperative mechanisms

Cooperative mechanisms involve providing a forum for dialogue and feedback regarding the effects of aircraft operations on the local community, particularly in relation to minimising noise impacts and enable Council to advocate on behalf of the community.

### Information management

Information management relates to the way that information on aircraft noise is gathered, kept, used and distributed. It can promote a number of important objectives, such as ensuring due care and diligence, and providing accurate and useful information to the public.

When considered together, application of the above policy tools forms a holistic aircraft noise policy framework. This is illustrated in Figure 3 *Aircraft Noise Policy Framework*.

Port Stephens Aircraft Noise Guideline

## Part 2: Context

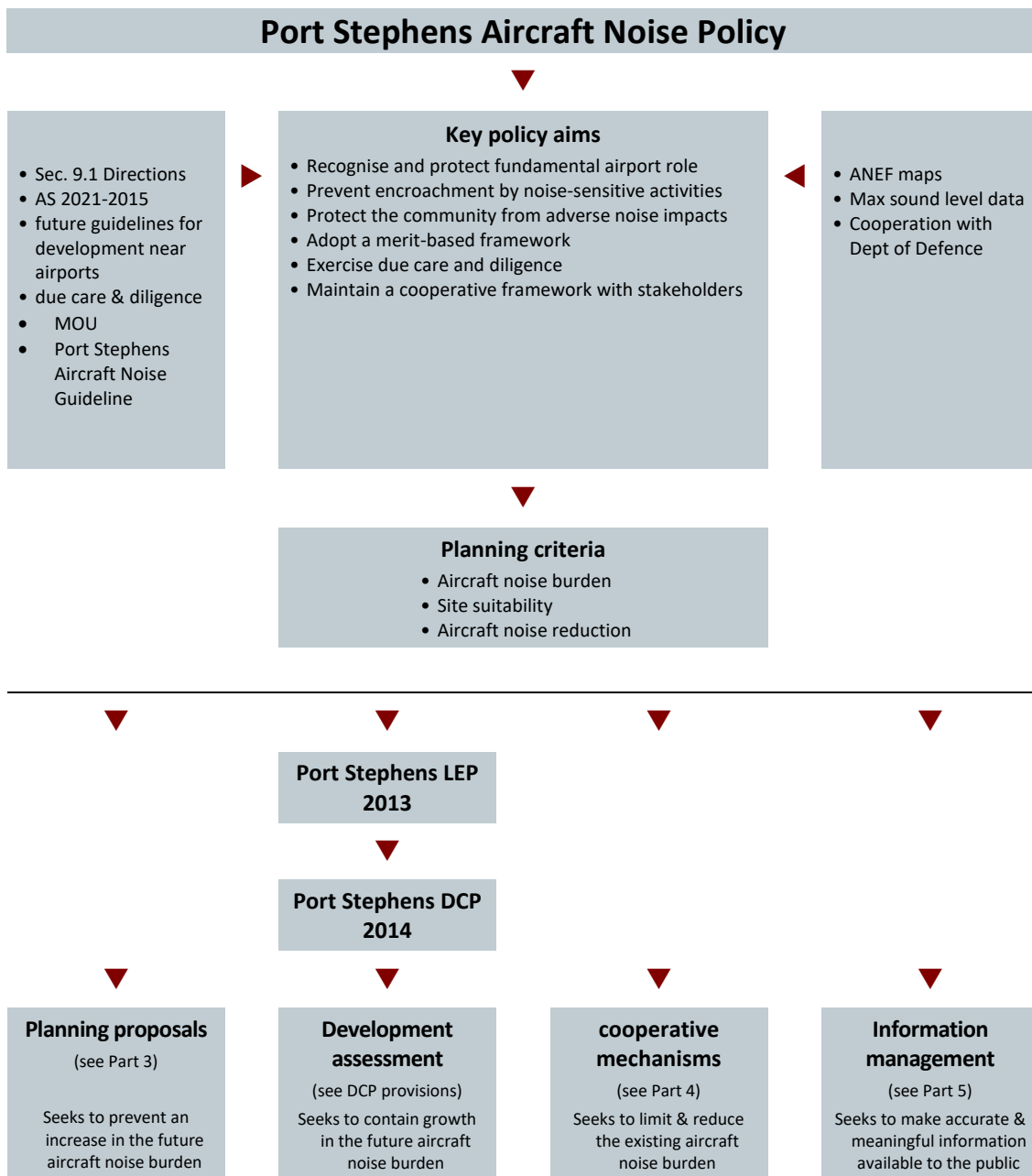


Figure 3: Aircraft Noise Policy Framework

## Part 3: Planning proposals

### 3.1 Role of planning proposals

A planning proposal refers to a proposal to alter the planning controls that operate under the *Port Stephens Local Environmental Plan 2013*. Planning proposals may relate to a broad strategic review of urban structure and settlement pattern within the Port Stephens area, a process commonly referred to as 'strategic planning'. Alternatively, they may involve consideration of a change of zoning for a specific land parcel, typically in response to a landowner's request. This latter type is commonly referred to as a 'rezoning request' or 'spot rezoning'.

Planning proposals usually cannot be used as a tool for reducing the *existing* aircraft noise burden. This is because the planning legislation allows the continued operation of 'existing uses' and other permitted land uses. However, they are of particular value in preventing an increase in the *future* aircraft noise burden. That is, planning proposals can be used to promote a future settlement pattern that, relative to the current situation, does not increase the number of people adversely affected by aircraft noise.

### 3.2 Statutory requirements

#### NSW Planning Directions

Under the *Environmental Planning and Assessment Act 1979* (NSW) a planning proposal must include documentation setting out the intended effect of the proposal and its justification. It must also be consistent with any relevant directions issued by the NSW Minister for Planning and the Environment under section 9.1 (or provide adequate justification for any inconsistency). Section 9.1 Direction 3.5 *Development Near Regulated Airports and Defence Airfields* applies to any planning proposal that will create, alter or remove a zone or provision relating to land in the vicinity of an aerodrome. Its objective in relation to aircraft noise is to ensure development for residential purposes or human occupation, if situated on land within ANEF contours of between 20 and 25, incorporates appropriate

mitigation measures so that the development is not adversely affected by aircraft noise. The Direction requires planning proposals to include provisions to ensure that development is consistent with AS 2021-2015. Regarding ANEF contours, it provides that a planning proposal must not rezone land:

- a. For residential purposes, nor increase residential densities in areas where the ANEF, as from time to time advised by the Department of Defence, exceeds 25; or
- b. For schools, hospitals, churches and theatres where the ANEF exceeds 20; or
- c. For hotels, motels, offices or public buildings where the ANEF exceeds 30.

It also provides that a planning proposal must include a provision to ensure that development meets AS 2021-2015 regarding interior noise levels where it seeks to rezone land:

- a. For residential purposes or to increase residential densities in areas where the ANEF is between 20 and 25; or
- b. For hotels, motels, offices or public buildings where the ANEF is between 25 and 30; or
- c. For commercial or industrial purposes where the ANEF is above 30.

#### Port Stephens Local Environmental Plan 2013

The *Port Stephens Local Environmental Plan 2013* regulates land use in Port Stephens including provisions for zoning and development standards. Clause 7.5 *Development in areas subject to aircraft noise* has the following objectives in relation to aircraft noise:

- a. To prevent certain noise sensitive developments from being located near the RAAF Base Williamstown – Newcastle Airport and its flight paths;
- b. To assist in minimising the impact of aircraft noise from that airport and its flight paths by requiring appropriate noise attenuation in noise sensitive buildings; and

## Part 3: Planning proposals

- c. To ensure that land use and development in the vicinity of that airport do not hinder or have any other adverse impacts on the ongoing, safe and efficient operation of that airport.

The clause applies to development that:

- a. Is on land that:
- i. Is near the RAAF Base Williamtown – Newcastle Airport; and
  - ii. Is in an ANEF contour of 20 or greater; and
- b. The consent authority considers is likely to be adversely affected by aircraft noise.

Before determining a development application for development to which this clause applies, the consent authority:

- a. Must consider whether the development will result in an increase in the number of dwellings or people affected by aircraft noise; and
- b. Must consider the location of the development in relation to the criteria set out in Table 2.1 *Building Site Acceptability Based on ANEF Zones* in AS 2021-2015; and
- c. Must be satisfied the development will meet the indoor sound design levels shown in Table 3.3 *Indoor Design Sound Levels for Determination of Aircraft Noise Reduction* in AS 2021-2015.

### 3.3 Strategic approach

Protecting the long-term operation of RAAF Base Williamtown-Newcastle Airport, whilst also protecting the community from unacceptable aircraft noise impacts, requires a strategy that prevents encroachment of noise-sensitive development into incompatible noise-exposed locations. In some cases there is likely to be conflicts between this strategy and landowners' aspirations for rezoning of land for urban purposes. These conflicts should be resolved in favour of the overriding priority and importance of RAAF Base Williamtown-Newcastle Airport.

The ANPA provides the spatial overlay within which planning proposals require detailed scrutiny. Planning proposals within that area need to be assessed in terms of the essential planning criteria identified in section 2.5:

- Aircraft noise burden;
- Site suitability; and
- Aircraft noise reduction.

Site suitability in terms of the acceptability criteria under AS 2021-2015 and ANEF contours are a key consideration. However, this approach can have limitations when applied to military airports, due to the very high maximum sound levels ( $L(A)_{max}$ ) that can be produced by combat aircraft. In some locations, compliance with aircraft noise reduction levels specified by AS 2021-2015 may not be possible or practicable within ANEF contours that define 'acceptable' and 'conditionally acceptable' locations. This issue needs to be carefully addressed.

Planning proposals outside the ANPA may also require scrutiny. This is because it is based on medium-term noise forecasts (currently year 2025) yet planning proposals may initiate land use changes well beyond that planning horizon. Therefore, any foreseeable long-term changes that might have aircraft noise impacts over a wider area should also be considered (for example changes to aircraft types, flight paths or volume of traffic). This should be considered by way of suitable consultation with the airport operator.

### 3.4 Principles

#### Where the principles apply

The following principles apply to planning proposals in respect of land that is:

- Within the ANPA; or
- Within 2 kilometres of the ANPA which has the potential to increase residential densities or other noise sensitive land uses; or
- Where the consent authority has been advised by Department of Defence that aircraft noise has the potential to adversely affect future development.

## Part 3: Planning proposals

### Aircraft noise burden

A. A planning proposal should not result in an increase in the future aircraft noise burden. That is, it should not permit any intensification of development within the ANPA that would significantly increase the number of people or dwellings adversely affected by aircraft noise.

### Site suitability

B. In its preparation of broad settlement strategies for the Port Stephens area, the Council should give preference to land uses in the vicinity of RAAF Base Williamstown-Newcastle Airport that:

- Will be compatible with the future long-term operation and growth of that facility;
- Have a mutually beneficial relationship with activities undertaken within that facility; and
- Do not rely on aircraft noise reduction to achieve compatibility.

C. A planning proposal should permit new development in a manner that is generally consistent with the building site acceptability criteria in AS 2021-2015. For example, a planning proposal should not:

- Rezone land for residential purposes where the ANEF level exceeds 25;
- Increase residential densities in areas where the ANEF level exceeds 25;
- Rezone land for schools, hospitals, churches and theatres where the ANEF exceeds 20; or
- Rezone land for hotels, motels, offices or public buildings where the ANEF exceeds 30.

D. However, a planning proposal should not be supported if there is evidence that it would not be 'possible' or 'practicable' for development permitted under the proposal to meet the level of aircraft noise reduction specified by AS 2021-2015. Such decisions should have regard to an acoustic study prepared by a noise control expert to establish the predicted maximum sound level  $[L(A)_{max}]$  for the

site in accordance with AS 2021-2015 and level of Aircraft Noise Reduction (ANR) required.

E. For the purposes of satisfying D above Council will have regard for the predicted maximum sound level  $[L(A)_{max}]$ , as may be provided to Council from time to time by the Department of Defence to assist Council in its planning.

### Aircraft noise reduction

F. A planning proposal should not lessen existing requirements for aircraft noise reduction that apply under the *Port Stephens Local Environmental Plan 2013*.

### Inconsistency with principles

G. A planning proposal that is inconsistent with any of the above principles should not be prepared unless:

- It is justified by a planning strategy that considers the objectives of this policy;
- Meets requirements under NSW section 9.1 Direction 3.5 *Development Near Regulated Airports and Defence Airfields*; and
- The Council is satisfied that to do so would be both reasonable and in the public interest.

### Consultation

H. When preparing a planning proposal relating to land:

- Within the ANPA; or
- Within 2 kilometres of the ANPA.

The Council should consult with the Department of Defence and Newcastle Airport and any stakeholder having a particular interest in the issue of aircraft noise.



## Part 4: Cooperative mechanisms

### 4.1 Extent of the aircraft noise burden

The extent of the aircraft noise burden is shown in the following table:

	ANEF Contour					Total
	20-25	25-30	30-35	35-40	>40	
2012 ANEF	1,649	522	49	8	1	2,229
2025 ANEF	911	244	77	26	12	1,270
Net Difference	-738	-278	+28	+18	+11	-959

**Figure 4: Residential Sites Encompassed by ANEF Contours Before and After the Inclusion of the JSF Aircraft (Source: Environmental Impact Statement – Flying Operations of the F35A Lightning II Volume 2: RAAF Base Williamtown Table 8-10 Residential sites encompassed by ANEF contours before and after the inclusion of the F-35A aircraft)**

### 4.2 Promoting cooperation

Defence and airport operations are regulated at the Commonwealth level, whilst land use planning is undertaken at the local and regional levels. Because of this division of responsibilities, cooperative mechanisms can help to promote mutually satisfactory outcomes for all interested stakeholders. These include the Department of Defence, Port Stephens Council, NSW Department of Planning, Industry and Environment and local community interest groups.

Members of the Council, acting as community leaders, can play an active role in advocating the case for programs including possible amelioration for the community to parliamentary members and Ministers.

Studies should be undertaken to more fully document the extent to which existing development is subject to unacceptable levels of aircraft noise. These should be undertaken cooperatively by the Council and the Department of Defence.

Ideally a cooperative framework should be maintained in which all stakeholders can:

- Appreciate the strategic importance and operational requirements of RAAF Base Williamtown to the Australian people;
- Appreciate the strategic importance of Newcastle Airport and its operational requirements;
- Appreciate the impacts that aircraft noise has on the local community, and the measures that might be needed to resolve those impacts;
- Ensure the local community is burdened to the minimum extent possible from aircraft operations from RAAF Base Williamtown and Newcastle Airport; and
- Contribute to the future planning of RAAF Base Williamtown-Newcastle Airport and its environs.

### 4.3 Memorandum of Understanding

Council entered into a Memorandum of Understanding (MOU) with the Commonwealth of Australia (represented by the Department of Defence) in September 2015. The purpose of the MOU is to set out expectations and understanding with respect to the exercise of planning functions by the Council for development of land within the ANPA.

#### Development Applications

Under the MOU Council acknowledges and agrees that, as a Consent Authority, it is required by section 4.15 of the *Environmental Planning and Assessment Act 1979* (NSW) to take certain matters into account when assessing an application including but not limited to the following:

- The relevant provisions of the LEP;
- The relevant provisions of the DCP;
- The likely impacts of development proposed, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality;
- The suitability of the site;
- Any submissions; and
- The public interest.

## Part 4: Cooperative mechanisms

Under the MOU, Council agrees to notify Defence of a relevant application made to Council and to take into account any submission made by Defence to the fullest extent possible.

### Planning Proposals

Under the MOU Council agrees to use its best endeavours to comply with the following when preparing and considering a planning proposal which relates to land within the ANPA:

- Section 9.1 Direction 3.5 *Development Near Regulated Airports and Defence Airfields*; and
- This policy (in particular the principles contained in Part 3 *Planning proposals*).

Under the MOU Council is to notify Defence of a planning proposal which relates to land that is:

- Within the ANPA; or
- Within 2km of the ANPA which has the potential to increase residential densities or other noise sensitive land uses.

Council agrees to notify Defence of a relevant planning proposal made to Council and to take into account any submission made by Defence to the fullest extent possible.

### 4.4 Model programs

The Sydney and Adelaide Noise Amelioration Programs, which are now completed, are generally considered the best practice approach in Australia. Being civil airports, these programs were funded by an industry levy and have brought about significant improvements for noise sensitive buildings in high noise exposure zones. Funding for the up-grading of existing housing was set at a maximum of \$57,000 per dwelling (at that time). The approach taken was to provide amelioration at the following thresholds:

Threshold	Land use	Amelioration provided
>25 ANEI	Public buildings	Aircraft noise reduction
>30 ANEI	Dwellings	Aircraft noise reduction by: 35 dB(A) for sleeping areas and 30 dB(A) for living areas
>40 ANEI	Dwellings	Voluntary acquisition of property

**Figure 5: Amelioration Thresholds for Sydney and Adelaide Programs**

*Note: Australian Noise Exposure Index (ANEI) is based on data for a previous year where the exact numbers and types of aircraft which used the airport are known.*

Subject to appropriate justification, the Council should work with the Department of Defence and the community to frame an appropriate amelioration program based on the above model.

### 4.5 Consultative Committee

To promote the objectives of this Policy in cooperation with the Department of Defence, RAAF, the community and other stakeholders, the Council will continue to participate in relevant committees or convene committees (as needed) to:

- Provide an interface between the community and the operators of the RAAF Base Williamstown and Newcastle Airport;
- Provide a forum for dialogue and feedback regarding the effects of aircraft operations on the local community, particularly in relation to minimising noise impacts;
- Promote sharing of relevant information, such as that relating to aircraft noise, planning proposals, development trends, noise complaints and so forth; and
- Provide opportunities for all interested stakeholders to contribute to the future planning of RAAF Base Williamstown-Newcastle Airport and its environs.

## Part 5: Noise information

### 5.1 Planning certificates

#### Planning certificates - advice under section 10.7(2)

The following aircraft noise information should be included on planning certificates as prescribed advice under section 10.7(2):

Where the property is within the Williamtown & salt Ash Air Weapons Range 2025 ANEF (10 August 2011) a statement should be made to the effect that:

- The property is subject to the 2025 ANEF and subject to aircraft noise related development controls under the Port Stephens LEP 2013, the Port Stephens DCP 2014 and AS 2021-2015.

Where the land is within the Aircraft Noise Planning area a statement should be made that to the effect that:

- The property is within the Aircraft Noise Planning Area and aircraft noise may be a matter for evaluation in the assessment of development applications under section 4.15 of the Act.

*Note: This disclosure relates to the matter as to whether or not the council has adopted a policy to restrict the development of the land because of the likelihood of land slip, bushfire, flooding, tidal inundation or any other risk (Item 7 of schedule 4 Environmental Planning and Assessment Act Regulation 2000 (NSW).*

#### Planning certificates - advice under s10.7(5)

The following aircraft noise information should be included on planning certificates as additional advice section 10.7(5):

Where the property is not located within the ANPA a statement should be made to the effect that:

- No inference should be made that the land is not subject to aircraft noise—it merely indicates that the level of aircraft noise exposure present on the land is below the threshold adopted for planning purposes;
- The land is likely to be affected by some level of aircraft noise, which may cause some persons or development annoyance from time to time, particularly those with a higher sensitivity to noise; and
- Persons or development with particular noise sensitivity requirements may need to consider aircraft noise reduction measures for the site.
- The likely extent of aircraft noise exposure for the land is shown on ANEF maps which can be inspected at the office of the Council or on the Department of Defence website;
- Persons or development with particular noise sensitivity requirements may need to consider aircraft noise reduction measures for the site.

## Part 5: Noise information

### 5.2 Aircraft noise community information strategy

In collaboration with the Department of Defence, the Council should investigate preparing and implementing a community information strategy to provide meaningful aircraft noise information to the community. Such information would be readily interpreted by non-experts, and would be based on communication concepts rather than technical parameters. Information may include noise data received from Defence (for example the Defence Noise and Flight Path Monitoring System available from the Department of Defence website).

The overall aim should be to enable people to make more informed decisions about the noise environment likely to be experienced at particular locations and how that environment might be compatible or incompatible with their needs or objectives. The strategy could also address possible alternative delivery media.

## Part 6: Reference material

### 6.1 Glossary

#### Acceptability

What is acceptable is ultimately a value judgement that reflects community norms and expectations, as well as the level of available resources. AS 2021-2015 provides guidance as to acceptable aircraft noise outcomes, but wider public interest considerations and the particular circumstances of the case may also need to be considered.

#### Acoustic study

A study undertaken by a noise control expert that describes the noise conditions present at a site and identifies aircraft noise reduction measures required to achieve an acceptable noise environment. The study will also address related issues such as likely cost and practicability. Its purpose is to provide an adequate factual basis for planning and development decisions.

#### Aircraft noise burden

The total number of dwellings or people that are exposed to unacceptable aircraft noise. Ideally, this burden should be reduced, or failing that, should not be permitted to increase. Two components can be distinguished, each requiring different policy responses:

- The *existing aircraft noise burden*—housing and other development that is already in existence
- The *future aircraft noise burden*—housing and other development that is yet to be built.

#### Aircraft noise information

Information that describes existing or predicted future aircraft noise conditions or that enables the interpretation of such information.

#### Aircraft Noise Planning Area

The area of land subject to aircraft noise related considerations. It comprises all properties that are wholly or partly within the ANEF 20 contour on 'relevant ANEF maps' and includes land that is within ANEF contours of 20 and greater.

#### Aircraft noise reduction

The reduction of indoor noise levels by the application of suitable measures to the design, construction or modification of buildings (for example, building mass, noise insulation or double glazing). The currently recognised standard for aircraft noise reduction is specified by Part 3 of AS 2021—2015.

#### Australian Noise Exposure Forecast (ANEF)

A single integrated measure of predicted future exposure to aircraft noise that aims to reflect the average community responses. It takes into account a wide variety of factors, such as noise intensity, duration and tonal qualities, as well as type of aircraft, frequency of flights and time of day. Forecasts are shown by contour lines on ANEF maps, and assist decisions regarding the suitability of development according to its sensitivity to aircraft noise.

#### AS 2021-2015

Australian Standard AS 2021-2015 *Acoustics - aircraft noise intrusion - building siting and construction*. This is a nationally recognised standard for development affected by aircraft noise.

#### The Council

Port Stephens Council

#### dB (decibels)

A logarithmic scale unit used to measure sound pressure levels. A sound level levels as high as 130 -140 dB can be felt as pain.

#### dB(A) (decibels on the A-weighted scale)

Decibels measured using a particular weighting scale that reflects the sensitivity of the human ear across the audible frequency range.

#### Department of Defence

The Commonwealth agency responsible for administering Australia's defence services.

#### Development

The use of land, the subdivision of land, the erection of a building, the carrying out of a work, the demolition of a building or work, and certain other regulated activities.

## Part 6: Reference material

### Development control plan (DCP)

A type of plan prepared under the *Environmental Planning and Assessment Act 1979* (NSW). DCPs provide more detail than a local environmental plan, and must be considered when development applications are determined.

### Local environmental plan (LEP)

A type of planning instrument prepared under the *Environmental Planning and Assessment Act 1979* (NSW). LEPs provide the broad local framework for development assessment including objectives, urban structure, land use controls, approval criteria, and other matters.

### Maximum sound level - $L(A)_{max}$

A measure of aircraft noise, being the highest instantaneous sound pressure level measured at a site during a single aircraft flight. It provides some indication of interference with speech, listening to television, sleeping or other common activities, but does not give any information about how long this level will last or how frequently it will occur.

### Noise

The subjective response to sound, particularly any loud, annoying or unwanted sound. Psychological responses to sound are affected by a wide variety of factors. As these responses vary from person to person, there is no single universal measure of noise.

### Planning certificate

A certificate issued under section 10.7 of the *Environmental Planning and Assessment Act 1979* (NSW) that provides information about planning and related matters for a specified parcel of land. Under conveyancing laws a planning certificate containing basic information must be attached to any contract for the sale of land.

### Planning proposal

Proposals that involve the preparation of plans relating to the future use and development of land. They include both broad strategic reviews and the rezoning of individual properties.

### Principle

A rule of conduct or action that is applied when implementing a policy. The principles set out in this policy serve to guide how decisions should be made.

### RAAF

Royal Australian Air Force.

### RAAF Base Williamtown - Newcastle Airport

The interrelated complex of defence, air transport and support facilities comprising RAAF Base Williamtown, Newcastle Airport and the Salt Ash Air Weapons Range.

### Relevant ANEF maps

Refers to the most recent ANEF map, and any earlier ANEF map that remains relevant to present or future circumstances. ANEF maps for RAAF Williamtown-Newcastle Airport are published by the Department of Defence and can be inspected at the office of the Council.

### Site suitability

Refers to the acceptability of proposed development at a particular site, having regard to actual or forecast aircraft noise conditions at that site, and the sensitivity of that development to those conditions. The currently recognised standard for site suitability is specified by Table 2.1 Building Site Acceptability Based on ANEF Zones in AS 2021-2015.

### Sound

A pressure disturbance that travels through air. Sound is a physical phenomenon that can be objectively measured (see decibels). However, the way in which people perceive and react to sound is entirely subjective (see noise).

## Part 6: Reference material

### 6.2 Relevant publications

*Final Environmental Impact Statement for Flying Operations of the F-35A Lightning II* (comprised of *Draft Environmental Impact Statement for Flying Operations of the F-35A Lightning II*, Coffey for Australian Government Department of Defence, Defence Materiel Organisation, EPBC Reference 2010/5747, July 2014; and *Draft Environmental Impact Statement Supplementary Report for Flying Operations of the F-35A Lightning II* prepared by Coffey for Australian Government Department of Defence, Defence Materiel Organisation, EPBC Reference 2010/5747, April 2015

Airservices Australia (1999). *The Australian Noise Exposure Forecast System and Associated Land Use Compatibility Advice for Areas in the Vicinity of Airports*. Airservices Australia, Canberra.

Department of Defence (2009). *Operation of the JSF Aircraft as New Air Combat Capability (NACC) at RAAF Base Williamtown and Salt Ash Air Weapons Range Public Environment Report*. Report prepared by Sinclair Knight Merz.

Department of Defence (2009). *RAAF Base Williamtown & Salt Ash Air Weapons Range 2025 ANEF Summary Report*. Report prepared by GHD Pty Ltd.

Department of Infrastructure, Transport, Regional Development and Local Government (2009). *Safeguards for airports and the communities around them*. Discussion Paper. DITRDLG, Canberra.

Department of Infrastructure, Transport, Regional Development and Local Government (2009). *National Aviation Policy White Paper*. Chapter 14: Minimising the impact of aircraft noise.

Department of the Environment and Heritage and Department of Transport and Regional Services (2003). *Guidance Material for Selecting and Providing Aircraft Noise Information*. DEH & DOTARS, Canberra.

Department of Transport and Regional Services (2000). *Expanding Ways to*

*Describe and Assess Aircraft Noise*. DOTARS, Canberra.

Department of Transport and Regional Services (2003). *Going Beyond Noise Contours: Local Approaches to Land Use Planning Around Smaller Australian Airports*. DOTARS, Canberra.

Newcastle Airport Ltd (2007). *Newcastle Airport Masterplan*. NAL, Williamtown NSW.

NSW Minister for Planning (2009). *Direction 3.5: Development Near Regulated Airports and Defence Airfields*. Made under section 9.1 of the Environmental Planning and Assessment Act 1979, and dated 14 April 2016.

Queensland Government (2002). *State Planning Policy 1/02 Guideline: Development in the Vicinity of Certain Airports and Aviation Facilities*. Dept of Local Government and Planning, Brisbane.

Queensland Government (2002). *State Planning Policy 1/02: Development in the Vicinity of Certain Airports and Aviation Facilities*. Dept of Local Government and Planning, Brisbane.

Standards Australia (2000). *Australian Standard AS 2021—2000, Acoustics—Aircraft noise intrusion—Building siting and construction*. Standards Australia, Homebush NSW.

WA Planning Commission (2004). *Aircraft Noise Insulation for Residential Development in the Vicinity of Perth Airport*. WAPC, Perth.

WA Planning Commission (2004). *Statement of Planning Policy No. 5.1: Land use Planning in the Vicinity of Perth Airport*. WAPC, Perth.

**Appendix 1: RAAF Base Williamtown & Salt Ash Weapons Range 2025 ANEF map**

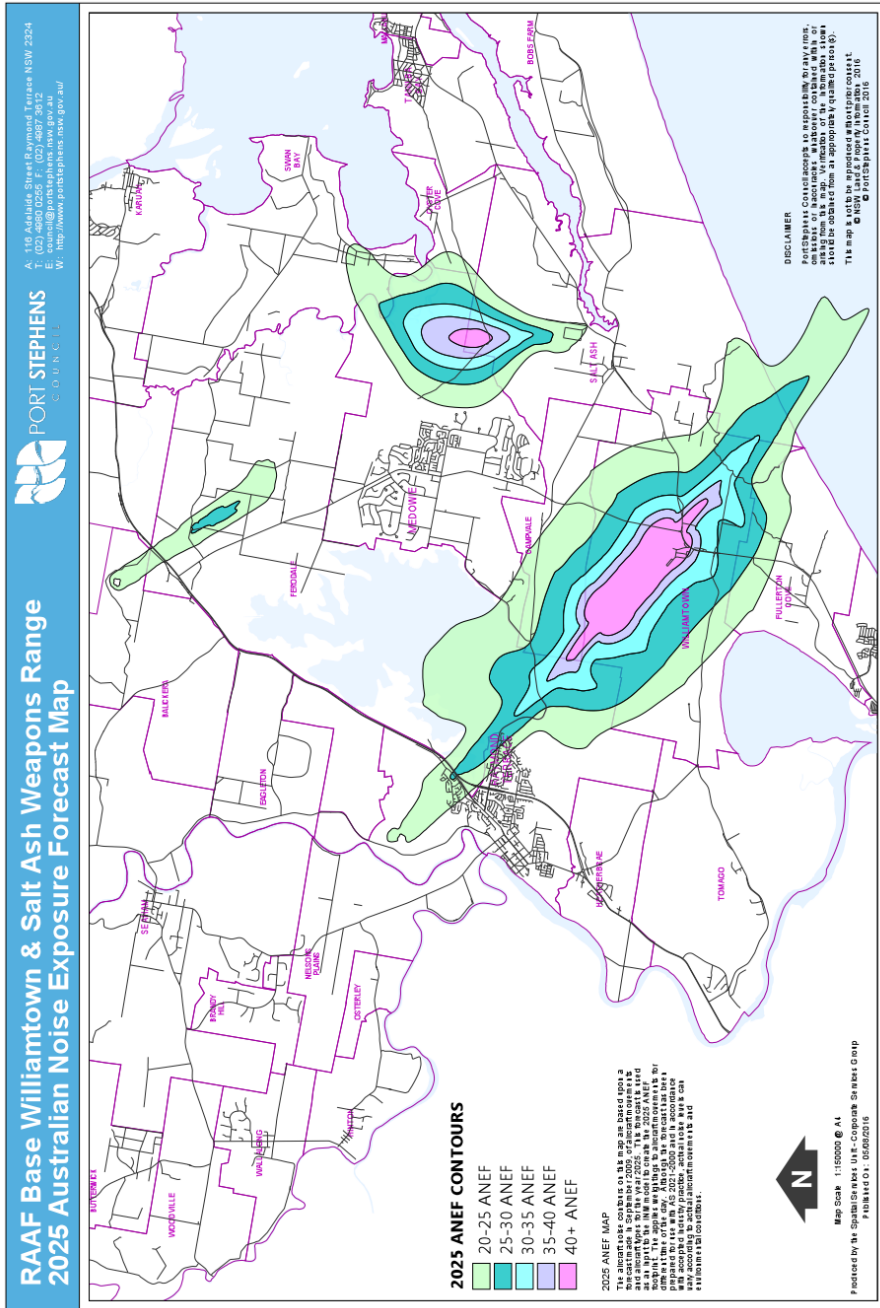
**Appendix 2: RAAF Base Williamtown & Salt Ash Weapons Range 2012 ANEF map**

**Appendix 3: Aircraft Noise Planning Area**

Port Stephens Aircraft Noise Guideline

# Part 6: Reference material

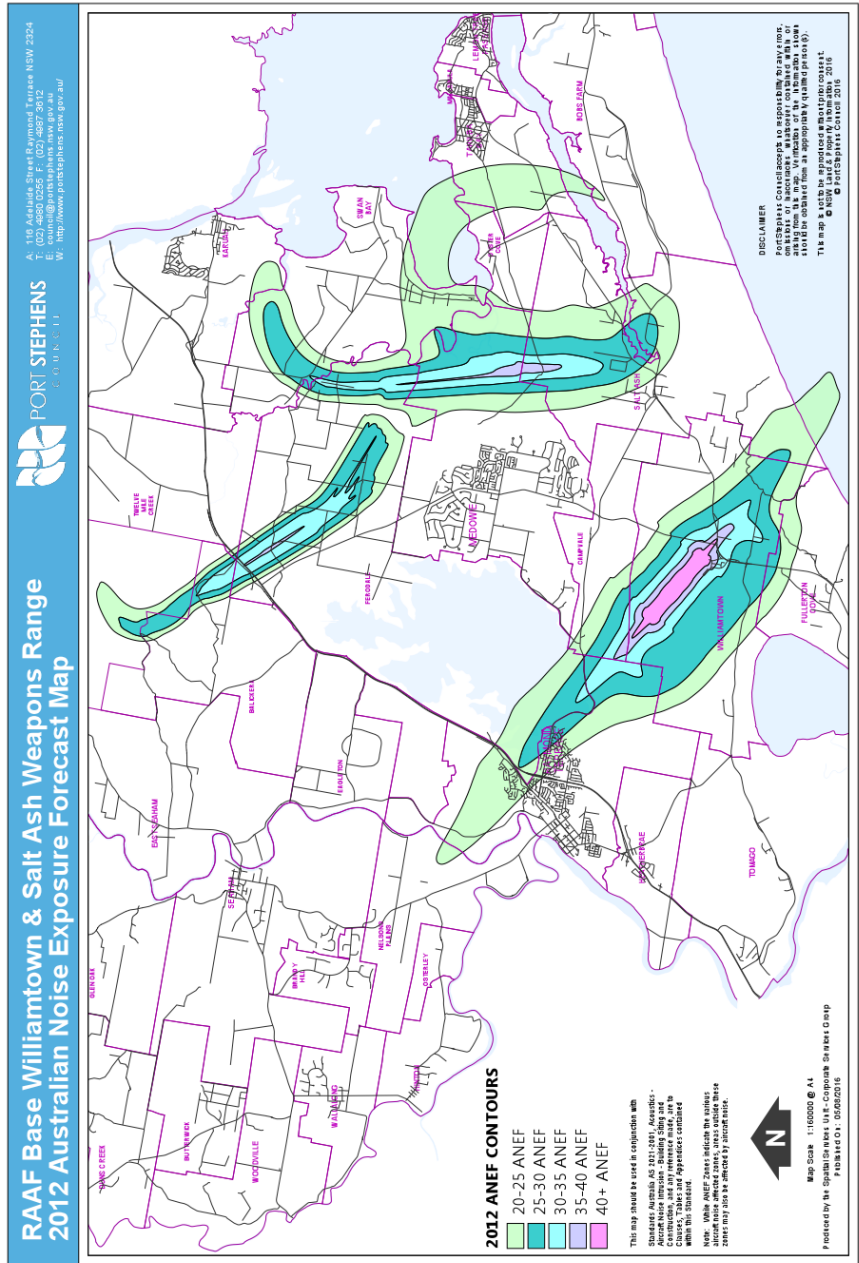
Appendix 1: RAAF Base Williamtown & Salt Ash Weapons Range 2025 ANEF





# Part 6: Reference material

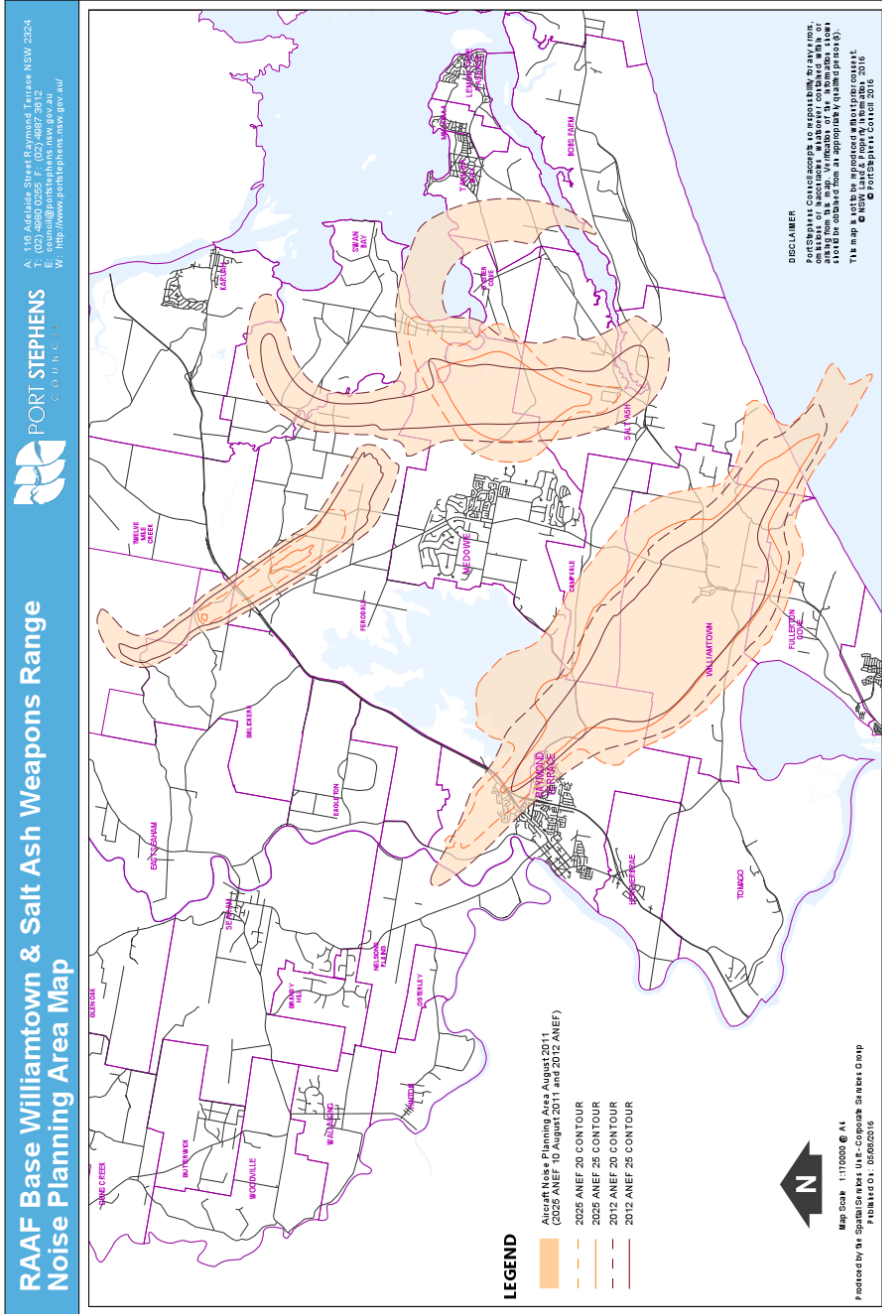
Appendix 2: RAAF Base Williamtown & Salt Ash Weapons Range 2012 ANEF



Port Stephens Aircraft Noise Guideline

# Part 6: Reference material

Appendix 3: Aircraft Noise Planning Area Map



## Part 6: Reference material

Version	Date	Amendments
1.0	23/08/11	Initial adoption
1.1	25/10/16	<ul style="list-style-type: none"> <li>- Amend title from 'Aircraft Noise Policy 2010' to 'Port Stephens Aircraft Noise Guideline'.</li> <li>- Add description of PS LEP 2013 provisions (p. 9-10).</li> <li>- Add section on MOU (p. 12-13).</li> <li>- Update various references to title of other policies e.g. to AS 2021-2000 to AS 2021-2015, DCP 2007 to DCP 2014, PS LEP 2000 to PS LEP 2013.</li> <li>- Various minor edits and changes e.g. to wording, font etc.</li> <li>- Improved resolution of maps at appendices.</li> </ul>
1.2	10/12/19	<p>Various edits to correct minor errors in text.</p> <p>Updated references for the applicable Ministerial direction to Section 9.1 Direction 3.5 <i>Development Near Regulated Airports and Defence Airfields</i>.</p> <p>Updated references for assessment of development application under the Act to section 4.15.</p> <p>Updated references to planning certificates issued under the Act to section 10.7.</p> <p>Updated references from Joint Strike Fighter to F35 Lightning II.</p> <p>Updated references from RAAF Base Williamtown, Newcastle Airport to RAAF Base Williamtown - Newcastle Airport.</p> <p>1.2 - Third dot point amended to read "To ensure Port Stephens Council planning approvals/decisions take into account aircraft noise impacts on the community and that they are within acceptable limits.</p> <p>2.4 - First paragraph amended wording to refer to ANEF maps for "all flying operations".</p> <p>2.4 - Inserted paragraph on estimated timeframe for completion of the transition to the F-35 Lightning II. Removed reference to Defence in relation to the consideration of former 2012 ANEF.</p> <p>2.4 - Updated wording to state that the parts of a site affected by 2025 ANEF would be subject to development control plan requirements.</p> <p>2.5 - Added "Any noise impact does not sit solely with Defence. Newcastle Airport operates at Williamtown and thus it is a shared burden".</p> <p>2.5 - Added "If council makes a planning decision to allow noise sensitive development within ANEF contours, then the aircraft noise burden becomes an existing one and it would also sit with Council".</p>

## Part 6: Reference material

	<p>3.4 - Under the heading "Consultation" added "Newcastle Airport".</p> <p>4.2 - Updated the first dot point under "Promoting cooperation" to "Appreciate the strategic importance and operational requirements of RAAF Base Williamstown".</p> <p>4.2 - Inserted new dot point "Appreciate the strategic importance of Newcastle Airport and its operational importance."</p> <p>4.2 - Updated the existing third dot point to "Ensure the local community is burdened to the minimum extent possible from aircraft noise from RAAF Base Williamstown and Newcastle Airport".</p> <p>4.5 - Updated wording to include that Council will continue to participate in relevant committees or convene committees (as needed).</p> <p>5.1 - Updated wording on guidance for planning certificates issued under section 10.7(2) where the property is within the 2025 ANEF.</p> <p>5.1 - Updated wording on guidance for planning certificates issued under section 10.7(2) where land is within the ANPA.</p> <p>5.1 - Updated wording on guidance for planning certificates issued under section 10.7(5).</p> <p>5.2 - Added a reference to the Defence Noise and Flight Path Monitoring System available from the Department of Defence website) and deleted redundant text.</p> <p>6.1 - Updated definition of the ANPA from the area of subject to aircraft noise "<i>considerations</i>".</p>
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**ITEM NO. 8**

**FILE NO: 21/279963  
EDRMS NO: T102-2021**

**T102-2021 ELEVATED SEATING PLATFORM WILLIAM STREET, RAYMOND TERRACE**

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

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) That pursuant to section 10A(2)(d) of the Local Government Act 1993, the Council resolve to close to the public part of its meeting to discuss Item 8 on the Ordinary Council agenda namely T102-2021 Elevated Seating Platform William Street, Raymond Terrace.
  - 2) That the reasons for closing the meeting to the public to consider this item be that:
    - a. The report and discussion will include details of commercial information of a confidential nature that would, if disclosed, prejudice the commercial position of the tenderers; and
    - b. In particular, the report includes confidential pricing information in respect of the T102-2021 Elevated Seating Platform William Street, Raymond Terrace.
  - 3) That on balance, it is considered that receipt and discussion of the matter in open Council would be contrary to the public interest, as disclosure of the confidential commercial information could compromise the commercial position of the tenderers and adversely affect Council's ability to attract competitive tenders for other contracts.
  - 4) That the report of the closed part of the meeting is to remain confidential.
  - 5) That Council reject the tenders submitted.
- 

**BACKGROUND**

The purpose of this report is to reject all tender submissions for the tender T102-2021 Elevated Seating Platform William Street, Raymond Terrace as all proposals exceeded the budgetary constraints for this project and specification.

Council's existing budget for the project is \$350,000; the tenders received exceeded the budget allocation by over \$200,000.

The tender was advertised from 1 September 2021 and closed on 28 September 2021, with a total of 2 conforming submissions received at the close of the tender period. A summary is included at **(ATTACHMENT 1)**.

## ORDINARY COUNCIL - 8 FEBRUARY 2022

Port Stephens Council (PSC) has recently received funding to complete the first stages of the Raymond Terrace town centre improvements. The first stage of the planned works includes 3 art-inspired shade structures featuring new decking with public seating beneath, greening and planting, lighting and cameras to improve safety, as well as improved accessible car parking.

The Design and Construct Contract to include:

- Shade structures incorporating artwork.
- Deck area including fixed furniture, decking, handrails and planter boxes.
- Disabled parking spaces including gutter bridge and associated infrastructure.
- Signage for public reference.
- Lighting and CCTV to crossing, seating and deck area.

The weightings agreed for this tender were:

Criteria	Weighting (%)
Price	40
Program	20
Compliance with Schedule	25
Project Methodology	15
<b>Total</b>	<b>100</b>

### COMMUNITY STRATEGIC PLAN

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

### FINANCIAL/RESOURCE IMPLICATIONS

There are no significant financial implications from rejecting the tender. The proposed tender submissions exceeded the expected budgeted amount.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes	350,000	William Street refurbishment.
Reserve Funds	No		
Developer Contributions (\$7.11)	No		
External Grants	No		
Other	No		

**LEGAL, POLICY AND RISK IMPLICATIONS**

A risk assessment has been conducted and constructed for this project. Risks have been identified and control measures have been incorporated into the project.

<b>Risk</b>	<b>Risk Ranking</b>	<b>Proposed Treatments</b>	<b>Within Existing Resources?</b>
There is a risk that if the tenders are accepted the budget allocation for the project will be exceeded.	High	Reject all tenders. Investigate delivering the project in house with budget resources available.	Yes
There is a risk that the program is not met and the project is delivered late.	Low	Ensure the program has sufficient float to account for any reasonable delays.	Yes

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

There are no significant sustainability implications.

**CONSULTATION**

Consultation with key stakeholders has been undertaken by the Capital Works Section.

Internal

- Project Manager – Community and Recreation.
- Team Leader – Community and Recreation.
- Capital Works Section Manager.

External

No external consultation was required for detailed scoping of this project.

**OPTIONS**

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

**ATTACHMENTS**

- 1) CONFIDENTIAL T102-2021 Elevated Seating Platform William Street, Raymond Terrace.

**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

Nil.



**ITEM NO. 9**

**FILE NO: 22/19233  
EDRMS NO: PSC2022-00083**

**ENVIRONMENTAL PROJECTS FUND 2021 - 2022**

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

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Endorse the allocation of \$19,813.85 for the project applications under the 2021 - 2022 Environmental Projects Fund – annual grant round in accordance with the amounts and purposes below:
  - a. \$1,033.85 to Seaham Preschool to purchase resources to support their curriculum teaching sustainability, environmental responsibility and recycling to students.
  - b. \$2,500 to Soldiers Point Landcare Group (a volunteer group of Port Stephens Council) to purchase and plant local endemic species at their work sites around Shoal Bay and Nelson Bay.
  - c. \$2,000 to Tilligerry Landcare Group (a volunteer group of Port Stephens Council) for a fox control program within Tilligerry wildlife corridors.
  - d. 2,000 to Lemon Tree Passage Parks, Reserves and Landcare Group (a volunteer group of Port Stephens Council) to restore fragments of bush in John Parade Reserve affected by fire in October 2021.
  - e. \$3,780 to Shoal Bay Landcare Group (a volunteer group of Port Stephens Council) to upgrade parts of the eastern Foreshore of Shoal Bay to a native community garden and help with dune restoration.
  - f. \$500 to Corlette Reserves & Landcare Group (a volunteer group of Port Stephens Council) to purchase and plant native endemic species at their work sites at Corlette.
  - g. \$5,000.00 to Plastic Free Port Stephens to implement their Navigating Plastics and Healthy Ecosystems Incursion project within local schools.
  - h. \$3,000 to Nelson Bay West Landcare Group (a volunteer group of Port Stephens Council) to enhance the Nelson Bay Bridle Path's Biodiversity and Community Value.

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**BACKGROUND**

The purpose of this report is to seek Council endorsement for the allocation of funds for applications under the 2021-2022 Environmental Projects Fund (EPF).

The EPF was created in 2016, and renewed in 2021 - 2022 as part of the Community Funding Program (CFP). Previously, EPF grants were only open to Schools and Council 355C committees. The new format allows for a range of local environmental organisations to also apply.

Applications for the 2021-2022 round of funding opened on 1 November 2021 and closed on 30 November 2021. Applications were invited for funding up to the value of \$5,000 per project, with a \$20,000 funding allocation.

A summary of application details is provided in **(ATTACHMENT 1)**. All applications were assessed by the assessment panel against evaluation criteria provided within the Environmental Projects Fund guidelines.

The EPF provides opportunity for community and schools to deliver environmentally focussed projects that benefit our local environment. The focus of these projects or activities should be to improve biodiversity and sustainability, protect local ecosystems, encourage student participation and educate our community. Eligible projects are often beyond Council's scheduled program of works yet represent significant community and environmental value.

**COMMUNITY STRATEGIC PLAN**

<b>Strategic Direction</b>	<b>Delivery Program 2018-2022</b>
Ecosystem Function	Protect and enhance the local natural environment.

**FINANCIAL/RESOURCE IMPLICATIONS**

An annual total of \$20,000 is available to fund projects under the EPF.

A total of nine applications were received for the 2021 – 2022 funding round.

Eight eligible applications were received totalling \$32,313.85. Due to the high standard of projects the assessment panel recommended to support 8 projects with some projects being partly funded **(ATTACHMENT 1)**. Therefore, the total amount allocated is for this funding round is \$19,813.85.

Only one application was deemed by the assessment panel to not meet the EPF guidelines. This application applied for the value of \$2,000 to erect koala signage at Sunset Beach Park.

The provision of funding to successful applicants is subject to further project planning and delivery in accordance with Council's systems and processes.

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

**ORDINARY COUNCIL - 8 FEBRUARY 2022**

Source of Funds	Yes/No	Funding (\$)	Comment
External Grants	No		
Other	No		

**LEGAL, POLICY AND RISK IMPLICATIONS**

There are no foreseen legal, policy or risk implications related to the adoption of the recommendations.

Recipients of funding under the Environmental Projects Fund shall accept full responsibility for the liability of any programs or projects funded. All recipients must provide evidence of appropriate insurances as required.

Risk	<a href="#">Risk Ranking</a>	Proposed Treatments	Within Existing Resources?
There is a risk of adverse public perception regarding projects that are funded.	Low	Ensure proper processes are followed in accordance with the Environmental Projects Fund guidelines and conditions of funding.	Yes
There is a risk that some grant recipients may fail to comply with required terms of funding, reporting and acquittal processes.	Low	Through ongoing communication ensure proper processes are followed in accordance with the Environmental projects Fund guidelines and conditions of funding.	Yes

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

The Environmental Projects Fund supports ongoing investment in local environmental groups, Council Volunteer Groups and Schools within the Port Stephens LGA.

These entities are involved in the production and delivery of environmental projects and activities that are accessible and beneficial for the Port Stephens Community, leading to social, economic and environmental development.

The proposed projects will:

- Encourage community partnerships through the revitalisation of our natural environment.
- Educate the community about the natural environment and its importance.

- Provide students the chance to develop skills in environmental activities such as building, composting and bee keeping.
- Reduce the community's environmental footprint.
- Celebrate our natural environment, species and habitats.
- Promote environmentally sustainable practices.

## **CONSULTATION**

Consultation with key stakeholders has been undertaken by the Strategy and Environment and Communications Sections. Schools, environmental groups and Council Volunteer Groups were all directly contacted about the upcoming grant round, followed by promotion on PSC Social Media to raise awareness among the community.

Copies of funding guidelines and information on how to apply via Smarty Grants were made available via the Council website.

Natural Systems and Vibrant Spaces provided support to grant applicants and ongoing support to successful applications will be provided by the Natural Systems team. This support works to build relationships. Ensure project outcomes and funding requirements are met and encourages broader community and environmental reach.

### Internal

Collaboration with council staff officers responsible for administering other community grant programs was undertaken.

### External

- Advertised on Councils website, EngagementHQ and social media throughout October and November 2021.
- Email updates sent to eligible/previous applicants in October and November 2021.

## **OPTIONS**

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

## **ATTACHMENTS**

- 1) Environmental Projects Fund Grant Agreement 2021-2022. [↓](#)

## **COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

Nil.

**ITEM 9 - ATTACHMENT 1 ENVIRONMENTAL PROJECTS FUND GRANT AGREEMENT 2021-2022.**

**Environmental Projects Fund 2021-2022 project applications.**

<b>Applicant</b>	<b>Project Title</b>	<b>Short Project Description</b>	<b>Funding amount applied for?</b>	<b>Approved Funding Amount</b>
Seaham Preschool	Increasing our sustainability knowledge and actions	To purchase resources to support our curriculum teaching sustainability, environmental responsibility and recycling. Through hands on play and active involvement children learn skills and abilities for themselves to take care of the environment.	\$1,033.85	\$1,033.85
Soldiers Point Landcare Group	Koala tree planting	A grant to enable our group to purchase local endemic koala tree to plant koala trees in areas of Shoal Bay to Little Beach	\$5,000.00	\$2,500.00
Resident	Koala Signage	To put Koala Signage in Sunset Beach Park also known as Pearson Park. Imaginative and informative sign with a solar light attached to educate people who use the park at night.	\$2,000	\$0
Tilligerry Landcare Group	Tilligerry Koala Forest	Develop a fox control program in the Tilligerry Koala Forest.	\$5,000.00	\$2,000.00
Lemon Tree Passage Parks, Reserves and Landcare Group	John Parade Reserve regeneration after fire	This project will restore fragments of bush in John Parade Reserve affected by fire in October 2021.	\$5,000.00	\$2,000.00
Shoal Bay Landcare Group (PSC)	Shoal Bay Native Gardens	To upgrade parts of the eastern Foreshore of Shoal Bay beach to a native community garden and help with dune restoration.	\$3,780.00	\$3,780.00
Corlette Reserves & Landcare Group	Planting Native Endemic Species	A grant to enable our group to purchase local endemic vegetation to plant at our Corlette work sites.	\$500.00	\$500.00

**ITEM 9 - ATTACHMENT 1 ENVIRONMENTAL PROJECTS FUND GRANT AGREEMENT 2021-2022.**

Plastic Free Port Stephens	Navigating Plastics and Healthy Ecosystems Incursion	To implement their Navigating Plastics and Healthy Ecosystems Incursion project within local schools.	\$5,000.00	\$5,000.00
Nelson Bay West Landcare and EcoPollinators	Enhancing the Bridle Path's Biodiversity and Community Value	This project will strengthen the treasured natural beauty and capacity of the Bridle Path as a sustainable environment linking the town centre of Nelson Bay to Dutchmans Beach.	\$5,000	\$3,000
<b>Total</b>			\$32,313.85	\$19,813.85
			<b>Funding Allocation</b>	\$20,000.00

ITEM NO. 10

FILE NO: 21/362092  
EDRMS NO: PSC2021-04211**LGNSW DESTINATION AND VISITOR ECONOMY CONFERENCE 17-19 MAY  
2022 IN ORANGE**REPORT OF: WAYNE WALLIS - GENERAL MANAGER  
GROUP: GENERAL MANAGER'S OFFICE

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Nominate Council delegates to attend the 2022 Local Government NSW Destination and Visitor Economy Conference from 17-19 May 2022 in Orange.

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**BACKGROUND**

The purpose of this report is to inform Council of the 2022 Local Government NSW Destination and Visitor Economy Conference in Orange from 17 to 19 May 2022.

The conference will aim to embrace not just tourism, but also a wider aspect of economic development to regional and metropolitan councils. The draft program is available at **(ATTACHMENT 1)**.

As Councillors are aware, the Payment of Expenses and Provision of Facilities to Mayor and Councillors Policy (the 'Policy') requires that a resolution of Council be sought for all attendance at a conference or seminar.

The costs associated with registration, travel and accommodation will be covered from within the existing professional development budget, subject to the Mayor or any individual Councillor/s not exceeding the conference budget limits set in the Policy.

Ensuring the Port Stephens local government area is well represented in all matters at the conference will benefit the Port Stephens community. Information received at the conference will be reported back to Council and will be distributed to the appropriate members of the community and relevant Council staff.

**COMMUNITY STRATEGIC PLAN**

<b>Strategic Direction</b>	<b>Delivery Program 2018-2021</b>
Governance	Provide a strong ethical governance structure.



**FINANCIAL/RESOURCE IMPLICATIONS**

The conference costs are not known at this stage and will be made available on receipt of the conference program. The registration cost for 2021 was \$880.

The costs associated with registration, travel and accommodation will be covered from within the existing budget, subject to any individual elected member not exceeding the conference budget limits in the Policy.

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

**LEGAL, POLICY AND RISK IMPLICATIONS**

The Payment of Expenses and Provision of Facilities to Mayor and Councillors Policy requires approval of a full Council meeting.

Risk	<a href="#">Risk Ranking</a>	Proposed Treatments	Within Existing Resources?
There is a risk that Port Stephens Council will not be represented on matters at the conference.	Low	That the recommendation be adopted.	Yes

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

Ensuring the local government area is well represented in all matters at the conference will benefit the Port Stephens Community. Information received will be distributed to the appropriate members of the community and relevant Council staff.

**CONSULTATION**

Nil.

**OPTIONS**

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

**ATTACHMENTS**

- 1) LGNSW Destination and Visitor Economy Conference DRAFT program. [↓](#)

**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

Nil.

**ITEM 10 - ATTACHMENT 1 LGNSW DESTINATION AND VISITOR ECONOMY CONFERENCE DRAFT PROGRAM.**



**Destination and Visitor Economy Conference**

Tuesday 17 May – Thursday 19 May 2022, Orange, Blayney and Cabonne

**Theme - Dare to Dream: Orange 360**

PRELIMINARY PROGRAM as at 15 December 2021

<b>Tuesday 17 MAY 2022:</b>			
<b>The Greenhouse at Orange Ex-Services' Club</b>			
1.30pm	ARRIVAL TEA AND COFFEE – registrations desk open		
2.00pm	DAY 1 OF CONFERENCE BEGINS		
Delegates choose from concurrent sessions	<b>Breakout Streams</b>		
	<b>STREAM 1A:</b> Marketing   Digital   Design Todd Wright Threesides Marketing	<b>STREAM 1B:</b> The future of the electric vehicle network	<b>STREAM 1C:</b> Arts, culture and heritage: Council case studies – using heritage to attract visitors
	AFTERNOON TEA – The Greenhouse Lawn		
	<b>Breakout Streams</b>		
	<b>STREAM 2A:</b> Marketing   Digital   Design Todd Wright Threesides Marketing	<b>STREAM 2B:</b> Encouraging electric vehicle drive tourism	<b>STREAM 2C:</b> Arts, culture and heritage How do councils embrace arts, culture and heritage as part of the tourism puzzle?
	5.00pm – 7.00pm	<b>Welcome Reception at The Greenhouse Lawn</b> <b>Official proceedings:</b> MC, Scott Phillips, CEO LGNSW <ul style="list-style-type: none"> <li>• Welcome to Country</li> <li>• Welcome from Mayor of Orange City Council</li> <li>• Address by Caravan &amp; Camping Industry Association, Premier Sponsor</li> </ul> Followed by delicious canapes and drinks as guests network, relax and settle in.	
7pm onwards	<i>Delegates are encouraged to pre-book at local restaurants for dinner.</i>		
<b>Wednesday 18 MAY 2022</b>			
<b>Civic Theatre Orange</b>			
	ARRIVAL TEA AND COFFEE - Trade exhibition and registration desk open		
9.00am	DAY 2 OF CONFERENCE BEGINS		
Morning plenary session in auditorium of the Civic Theatre	MC	Scene Setting	
	Cr Darriea Turley AM, President, LGNSW	LGNSW President's welcome	
	Mayor of Blayney	Host Council welcome	

Preliminary Program is correct at this time, please note speakers and topics may change. - 15 December 2021

**ITEM 10 - ATTACHMENT 1 LGNSW DESTINATION AND VISITOR ECONOMY CONFERENCE DRAFT PROGRAM.**

	The Hon. Stuart Ayres MP, Minister for Jobs, Investment, Tourism and Western Sydney {Invited}	Ministerial address
	Greg Binskin, Executive Manager, Tourism, Business NSW	Award ceremony with Minister Ayres MP NSW Tourism Industry Council announced Top Tourism Town Awards
	Sponsor Spotlight	Elevator pitches
	MC	Interactive activity
10.30am	<b>MORNING TEA</b>	
Mid-morning plenary session in auditorium of Civic Theatre	Presentation	"Demand but where is the supply? Creative Solutions to tackling shortages" <i>Including discussion of skills/worker/housing/hotel shortages</i>
	Sponsor Spotlight	Elevator pitches
	Panel	Regulations, Red Tape: Reframing the role of local government
12.30pm	<b>LUNCH</b>	
All site visits 3 hours	<b>Depart on Site Visits (x 4 Options). Refreshments included on all site visits</b>	
<b>Site Visit 1</b>	<b>Revisoning the CBD - "Orange City FutureCity"</b>	
1.30pm – 4.30pm	<b>Hosted by Orange City Council.</b>	Join a CBD walking tour that will highlight the Orange City FutureCity project. Discover hidden gems including art, pop-up shops, co-working spaces, small bars, smart technology, festoon lighting, pedestrian spaces, way-finding and green spaces. Tour the newly renovated, state of the art, Orange Regional Gallery.  See Orange's former hospital site and heritage building, and learn about the process of transforming this into a DPIE office space and medium density housing.  Munch on local produce and try some local drink. Hear how the Parrot Distillery became famous in town from one of their more unusual products.
<b>Site Visit 2</b>	<b>Millthorpe – "Heritage with style"</b>	
1.30pm – 4.30pm	<b>Hosted by Blayney Shire Council</b>  <i>(This experience includes a 20-minute bus transfer, so please settle back and relax.)</i>	Visit a picturesque heritage-listed village with a contemporary edge. Learn how the village committee worked with Council to transform the village from a sleepy place to a must-see, including re-starting train services at the dis-used station.  Tour the Golden Memories Museum, see local artisan crafts and walk the Millthorpe Wine Stroll Tour. Hear from the Millthorpe Wine Collective about how three-award winning Cellar Doors have joined together. Visit Tonic, which regularly garners a chef's hat from The Good Food Guide.

Preliminary Program is correct at this time, please note speakers and topics may change. - 15 December 2021

**ITEM 10 - ATTACHMENT 1 LGNSW DESTINATION AND VISITOR ECONOMY CONFERENCE DRAFT PROGRAM.**

<b>Site Visit 3</b>		
<b>Manildra: Canola Milling and Brewery – “Paddock to glass”</b>		
1.30pm – 4.30pm	<p><b>Hosted by Cabonne Shire Council</b></p> <p><i>(This experience includes a 40-minute bus transfer, so please settle back and relax.)</i></p>	<p>Australia’s largest flour mill is located in Manildra in the heart of the central west. The four mills by the Manildra Group produce enough flour to make over 100 loaves of bread every second!</p> <p>Visit the Manildra Group which includes the Mill and MSM Milling, demonstrating the creation of a high functioning business in a smaller village.</p> <p>Stop in a Pioneer Brewery Co, the largest independently-owned farm based brewery on Australia’s eastern seaboard which owns, grows and harvests malting barley, rye and wheat.</p>
<b>Site Visit 4</b>		
<b>Molong: Small town activation – Thriving through the pandemic and welcoming new residents</b>		
1.30pm – 4.30pm	<p><b>Hosted by Orange 360</b></p> <p><i>(This experience includes a 30-minute bus transfer, so please settle back and relax.)</i></p>	<p>Discover the riches of Cabonne. Visit Molong to discuss main street activation and small business creation with Eden Décor and Lime and Stone. They will explain how they set up thriving businesses during the pandemic!</p> <p>Listen to the Molong Advancement Group as they speak about the importance of the relationship with Council and Progress Association, and the sustainability of small villages.</p> <p>Plus tour Nashdale Lane Wines luxury glamping cabins, with views to Mount Canobolas and across neighboring vineyards and cattle farms.</p>
5.00pm	<b>Site visits return to accommodation</b>	
7.00pm – 10.00pm	<b>Conference dinner and entertainment - Australian National Field Day Site, Cabonne.</b> Address from Mayor of Cabonne	
Thursday 19 MAY 2022		
<b>Civic Theatre Orange</b>		
<b>ARRIVAL TEA AND COFFEE - Trade exhibition open</b>		
9.00am	<b>DAY 3 OF CONFERENCE BEGINS</b>	
Morning plenary session in auditorium of Civic Theatre	MC	Start of the final day + overview of the site visits
	Tourism Australia	National Update
	Host councils and Orange 360 Panel	Success stories in partnerships and packaging
	Sponsor Spotlight	Elevator pitches
	MC	Interactive activity
10.30am	<b>MORNING TEA</b>	
Mid-morning session in auditorium of Civic Theatre	Steve Cox, CEO, (invited)	Destination NSW Address
	Destination NSW	Strategic Partner
	Closing keynote	Dare to Dream: Taking control of the future!
	MC	Closing remarks
12.30pm	<b>LUNCH and Close</b>	
1.30pm	<b>CLOSE OF CONFERENCE</b>	

Preliminary Program is correct at this time, please note speakers and topics may change. - 15 December 2021

**ITEM NO. 11**

**FILE NO: 22/28860  
EDRMS NO: PSC2017-00019**

**PORT STEPHENS INTERNATIONAL WOMEN'S DAY SCHOLARSHIP**

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

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Contribute \$3,000 from Ward funds (\$1,000 from each Ward) to support 3 scholarships for women aged 16 and older in the Port Stephens local government area, in celebration of International Women's Day 2022.
- 2) Nominate 1 Councillor from each Ward to participate on the International Women's Day Scholarship Assessment Panel, to be chaired by the Mayor.

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**BACKGROUND**

Since 2018, Council has supported the Port Stephens International Women's Day scholarship program.

The purpose of this report is to seek approval from Council for \$3,000 from Ward funds (\$1,000 from each Ward) to support 3 scholarships for women aged 16 and over in the Port Stephens local government area, in celebration of International Women's Day 2022. The scholarships are for recognition and development of women across arts and culture, environment, business, community and health and sport.

The Port Stephens International Women's Day scholarship program is designed to encourage women in the Port Stephens local government area to achieve their goals and to support their valuable contribution to our communities.

Scholarship recipients will be awarded at a morning tea hosted by Council at Broughtons, Nelson Bay on Tuesday 8 March 2022.

**COMMUNITY STRATEGIC PLAN**

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

**FINANCIAL/RESOURCE IMPLICATIONS**

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

**LEGAL, POLICY AND RISK IMPLICATIONS**

Risk	<a href="#">Risk Ranking</a>	Proposed Treatments	Within Existing Resources?
There is a risk that not supporting the Port Stephens International Women's Day Scholarship Program funds could impact on Council's reputation.	Low	Adopt the recommendation.	Yes

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

The aim of the Port Stephens International Women's Day Scholarship Program is to encourage women in the Port Stephens Local Government Area (LGA) to achieve their goals and to support their valuable contribution to our communities. The scholarships are one of the ways Council recognises the important contribution women make to our community.

**CONSULTATION**

Consultation with key stakeholders has been undertaken.

Internal

- The Executive Team has been consulted to seek management endorsement.
- The General Manager has been consulted to seek endorsement prior to Council consideration.

External

The Port Stephens International Women's Day Scholarship Program is an ongoing program that has been endorsed by Council since 2018.

**OPTIONS**

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

**ATTACHMENTS**

Nil.

**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

Nil.



**ITEM NO. 12**

**FILE NO: 21/311190  
EDRMS NO: PSC2017-00178**

**REQUEST FOR FINANCIAL ASSISTANCE**

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

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Approves provision of financial assistance under Section 356 of the Local Government Act 1993 from Ward funds to the following:-
  - a. Central Ward funds - \$1000 donation to Port Stephens Veteran Golfers Association for the operation of their Golf Week in October 2022. These funds were previously donated for the 2021 Golf Week event, however, due to COVID-19, the event was postponed and approval is now sought to use the funds for the 2022 event.

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**BACKGROUND**

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

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

- 1) Mayoral Funds
- 2) Rapid Response
- 3) Community 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:

**WARD FUNDS**

Port Stephens Veteran Golfers Association	The Association's aim is to have weekly golfing 'get togethers' followed by fellowship in the clubhouse.	\$1000	Donation towards the operation of the Port Stephens Veteran Golfers Association Golf Week to be held in October 2022.
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**COMMUNITY STRATEGIC PLAN**

<b>Strategic Direction</b>	<b>Delivery Program 2018-2022</b>
Community Partnerships	Support financially creative and active communities.

**FINANCIAL/RESOURCE IMPLICATIONS**

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes		
Reserve Funds	No		
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.

<b>Risk</b>	<b><u>Risk Ranking</u></b>	<b>Proposed Treatments</b>	<b>Within Existing Resources?</b>
There is a risk that Council may 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. 13**

**FILE NO: 22/27491  
EDRMS NO: PSC2017-00015**

**INFORMATION PAPERS**

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

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**RECOMMENDATION IS THAT COUNCIL:**

Receives and notes the Information Papers listed below being presented to Council on 8 February 2022.

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<b>No:</b>	<b>Report Title</b>	<b>Page:</b>
1	Council Resolutions	198
2	Elected Members Professional Development and Expenses Reports - 1 July 2021 to 31 December 2021	208
3	Designated Persons' Return	211

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# INFORMATION PAPERS

**ITEM NO. 1**

**FILE NO: 21/232133  
EDRMS NO: PSC2017-00106**

**COUNCIL RESOLUTIONS**

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

**BACKGROUND**

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

**ATTACHMENTS**

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

**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

Nil.

**ITEM 1 - ATTACHMENT 1 CORPORATE SERVICES GROUP REPORT.**



**Division:** Corporate Services      **Date From:** 27/08/2013  
**Committee:**      **Date To:** 11/01/2022  
**Officer:**      **Printed:** Monday, 31 January 2022

**Action Sheets Report**

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 27/08/2013	Crosdale, Timothy	Campvale Drain	28/06/2022		
243		Crosdale, Timothy				
<b>28 Jan 2022</b>						
Two private owners, Hunter Water Corporation and National Parks and Wildlife Service (NPWS). Matter still outstanding.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 11/05/2021	Crosdale, Timothy	Car parking in Shoal Bay	30/06/2022	12/05/2021	
1		Crosdale, Timothy				21/123694
<b>28 Jan 2022</b>						
In principle approval received from Crown Lands. Plan of Management to be addressed before progressing works.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 22/09/2020	Crosdale, Timothy	Newline Road, Raymond Terrace	30/04/2022		
2		Crosdale, Timothy				20/288489
199						
<b>28 Jan 2022</b>						
Approved. Contracts prepared. Finalising survey levels in contract.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 13/04/2021	Crosdale, Timothy	PROPOSED CLOSURE AND SALE OF PATHWAY IN BOAT HARBOUR	30/04/2022	14/04/2021	
2		Crosdale, Timothy				21/96728
090						
<b>28 Jan 2022</b>						
Matter progressing.						

**ITEM 1 - ATTACHMENT 2 DEVELOPMENT SERVICES GROUP REPORT.**



**Action Sheets Report**

**Division:** Development Services      **Date From:** 13/07/2021  
**Committee:**                                      **Date To:** 11/01/2022  
**Officer:**    **Printed: Monday, 31 January 2022**

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 28/09/2021	Drinan, Kate	Animal Shelter	31/03/2022	29/09/2021	
1 253		Pear, Steven				21/263230
<b>24 Jan 2022</b>						
Target date changed from 31 March 2022 to 31 March 2022 - A report is scheduled to go to Council on 22 February 2022.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 12/10/2021	Lamont, Brock	Carbon Neutrality	31/03/2023	13/10/2021	
2 275		Pear, Steven				21/274186
<b>28 Jan 2022</b>						
Target date changed from 01 December 2022 to 31 March 2023 - The Natural Systems team will meet with stakeholders to provide a report to Council on a roadmap to achieving carbon neutrality and determine a suitable funding source to support Council in achieving this goal.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 26/10/2021	Lamont, Brock	Karuah Place Plan	31/03/2022	28/10/2021	
3 285		Pear, Steven				21/286560
<b>28 Jan 2022</b>						
Action reassigned to Lamont, Brock.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 13/07/2021	Drinan, Kate	Publication of Development Application Information	30/04/2022		
3 178		Pear, Steven				21/190429
<b>24 Jan 2022</b>						
Target date changed from 28 February 2022 to 30 April 2022 - Two way scheduled for 15 February 2022 – report to Council in March / April 2022.						



**ITEM 1 - ATTACHMENT 2 DEVELOPMENT SERVICES GROUP REPORT.**



**Division:** Development Services      **Date From:** 13/07/2021  
**Committee:**      **Date To:** 11/01/2022  
**Officer:**      **Printed:** Monday, 31 January 2022

**Action Sheets Report**

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 13/07/2021	Drinan, Kate	Publication of Development Application Submissions	30/04/2022		
4		Peart, Steven				21/190429
<b>24 Jan 2022</b>						
Target date changed from 28 February 2022 to 30 April 2022 - Two way scheduled for 15 February 2022 – report to Council in March / April 2022.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 14/09/2021	Lamont, Brock	Port Stephens Waterway Strategy	31/03/2022	15/09/2021	
1		Peart, Steven				21/252518
240						
<b>28 Jan 2022</b>						
Target date changed from 31 December 2021 to 31 March 2022 - The Natural Systems Team is reviewing the Waterway Strategy to see if there is any crossover with the Coastal Management Program (CMP). Meetings with key stakeholders are being scheduled to discuss the Waterway Strategy key objectives.						

**ITEM 1 - ATTACHMENT 3 FACILITIES & SERVICES GROUP REPORT.**



**Division:** Facilities & Services      **Date From:** 24/11/2020  
**Committee:**      **Date To:** 11/01/2022  
**Officer:**      **Printed:** Monday, 31 January 2022

[Action Sheets Report](#)

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
<b>27 Jan 2022</b>						
A 2 way was held with Councillors on the 26 October 2021. Proposed works based on grants was discussed.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 28/09/2021	Maretich, John	Policy Review - Contribution to Works for Kerb and Gutter Construction Policy	15/01/2022	29/09/2021	
5		Kable, Gregory				21/263230
<b>27 Jan 2022</b>						
Public Exhibition has now closed. One internal submission has been received and a report will go back to Council.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 10/08/2021	Stewart, Adam	Kirrang Drive, Medowie Shared Pathway	31/01/2022	13/08/2021	
8 217		Kable, Gregory				21/218740
<b>27 Jan 2022</b>						
Council staff will undertake further investigations into the financial requirements and options to accelerate the Kirrang Drive, Medowie pathway. Staff will report the outcomes back to Council.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 10/08/2021	Stewart, Adam	Australia Post Mail Box, 14A William Street, Raymond Terrace	30/06/2022	13/08/2021	
20 229		Kable, Gregory				21/218740
<b>27 Jan 2022</b>						
There are a variety of site specific constraints and factors which need to be taken into account including compliance with the Disability Discrimination Act, NSW Road Rules in regard to stopping near a postbox, and Councils Stage 2 works for William Street which will seek to relocate and optimise the location of street furniture including mail boxes.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 12/10/2021	Burton , Paul	Shade Sail at Robinson Reserve, Anna Bay	30/06/2022	13/10/2021	
7 269		Kable, Gregory				21/274186
<b>27 Jan 2022</b>						
Item will be added to WPP and staff will seek to identify suitable grant funding for the project.						

**ITEM 1 - ATTACHMENT 3 FACILITIES & SERVICES GROUP REPORT.**



**Division:** Facilities & Services      **Date From:** 24/11/2020  
**Committee:**      **Date To:** 11/01/2022  
**Officer:**      **Printed:** Monday, 31 January 2022

**Action Sheets Report**

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 12/10/2021	Burton , Paul	Naming of Fields at Yulong Oval	31/01/2022	13/10/2021	
1 274		Kable, Gregory				21/274186
<b>27 Jan 2022</b>						
Signage has been ordered and will be installed January 2022.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 26/10/2021	Maretich, John	REVIEW OF DOG OFF LEAD AREAS - BOAT HARBOUR	31/03/2022	28/10/2021	
20		Kable, Gregory				21/286560
<b>27 Jan 2022</b>						
A report will be prepared once the extension of the trial period has been completed.						

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	26/12/2021	13/10/2021	
8 270		Kable, Gregory				21/274186
<b>21 Jan 2022</b>						
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 12/10/2021	Burton , Paul	Raymond Terrace Indoor Sports Facility	30/06/2022	13/10/2021	
9 271		Kable, Gregory				21/274186
<b>27 Jan 2022</b>						
Item will be added to WPP, advocacy documentation and staff will seek to identify suitable grant funding for the options analysis.						

**ITEM 1 - ATTACHMENT 3 FACILITIES & SERVICES GROUP REPORT.**



**Division:** Facilities & Services      **Date From:** 24/11/2020  
**Committee:**      **Date To:** 11/01/2022  
**Officer:**      **Printed:** Monday, 31 January 2022

[Action Sheets Report](#)

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 10/08/2021	Maretich, John	Agreement with Community Association DP270468 - Lagoons Estate, Nelson Bay	30/04/2022		
4 208		Kable, Gregory				21/218740
<b>27 Jan 2022</b>						
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	Stewart, Adam	5G Small Cell Technology Rollout in Port Stephens	31/12/2021		
3 006		Kable, Gregory				21/33235
<b>27 Jan 2022</b>						
Discussions have commenced with Telstra.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 9/02/2021	Burton , Paul	MEDOWIE REGIONAL PLAYGROUND AND TOWN CENTRE	28/02/2022		
2 012		Kable, Gregory				21/33235
<b>27 Jan 2022</b>						
Due diligence being undertaken. Resources are being prioritised to scoping and delivery of Capital Works Program. Recruiting in Community and Recreation Assets to achieve full complement and report will be finalised by February 2022.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 24/11/2020	Miles, Philip	Disposal of Surplus Excavated Materials at Newcastle Airport Development Project Site.	30/06/2022		
11 261		Kable, Gregory				20/358525
<b>27 Jan 2022</b>						
Newcastle Airport to submit DA modification. Legal Contracts have been drafted in preparation for DA modification approval.						

**ITEM 1 - ATTACHMENT 3 FACILITIES & SERVICES GROUP REPORT.**



**Division:** Facilities & Services      **Date From:** 24/11/2020  
**Committee:**      **Date To:** 11/01/2022  
**Officer:**      **Printed:** Monday, 31 January 2022

**Action Sheets Report**

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 8/12/2020	Stewart, Adam	Fly Point and Little Beach Parking/SMART Parking	31/03/2022		
3		Kable, Gregory				20/391301
<b>27 Jan 2022</b>						
Awaiting completion of the associated Place Plans. Report to be prepared and reported back to Council during March 2022.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 25/05/2021	Maretich, John	Anna Bay Drainage Union	1/06/2022	26/05/2021	
2		Kable, Gregory				21/138820
126						
<b>27 Jan 2022</b>						
The State Government agency responsible for Anna Bay Drainage Union shall be consulted with.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 13/07/2021	Stewart, Adam	Hydrogen and Electric Vehicles in Council's Fleet	31/12/2021		
2		Kable, Gregory				21/190429
177						
<b>27 Jan 2022</b>						
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	DEDICATION AS PUBLIC ROAD OF PART LOT 491 DP 27846 - 18C CROMARTY ROAD, SOLDIERS POINT	31/12/2022	13/08/2021	
1		Kable, Gregory				21/218740
210						
<b>27 Jan 2022</b>						
Council staff will commence transfer of land parcel to the road reserve.						

**ITEM 1 - ATTACHMENT 3 FACILITIES & SERVICES GROUP REPORT.**



<b>Action Sheets Report</b>	<b>Division:</b>	Facilities & Services	<b>Date From:</b>	24/11/2020
	<b>Committee:</b>		<b>Date To:</b>	11/01/2022
	<b>Officer:</b>		<b>Printed:</b>	Monday, 31 January 2022

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 25/05/2021	Maretich, John	Bus Stop in Seaside Estate, Fern Bay	31/05/2022	26/05/2021	
5 128		Kable, Gregory				21/138820
<b>27 Jan 2022</b>						
This review shall be undertaken through Local Traffic Committee and consultation with members of the Seaside Community Association and a report is being compiled.						

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 8/06/2021	Burton , Paul	Sand Movement from Shoal Bay to Fly Point	31/12/2022	9/06/2021	
2 143		Kable, Gregory				21/156213
<b>27 Jan 2022</b>						
Council shall apply for grants in accordance with associated criteria.						

**ITEM 1 - ATTACHMENT 4      GENERAL MANAGER'S OFFICE REPORT.**



<b>Action Sheets Report</b>	<b>Division:</b>	General Manager's Office	<b>Date From:</b>	10/08/2021
	<b>Committee:</b>		<b>Date To:</b>	11/01/2022
	<b>Officer:</b>		<b>Printed:</b>	Monday, 31 January 2022

Type	Meeting	Officer/Director	Subject	Est. Compl.	Emailed	Completed
Report	Ordinary Council 10/08/2021	Wickham, Tony	Public Access	31/03/2022	13/08/2021	
23 230		Wallis, Wayne				21/218740
<b>24 Jan 2022</b>						
Target date changed from 28 February 2022 to 31 March 2022 - Being reviewed in line with the new model Code of Meeting Practice.						

**ITEM NO. 2**

**FILE NO: 22/14022  
EDRMS NO: PSC2017-00739**

**ELECTED MEMBERS PROFESSIONAL DEVELOPMENT AND EXPENSES  
REPORTS - 1 JULY 2021 TO 31 DECEMBER 2021**

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

**BACKGROUND**

**Professional Development**

The purpose of this report is to provide an account of the expenses incurred by the Elected Members in accordance with clause 5.14 of the Councillor Induction and Professional Development Policy for the period July to December 2021.

	Mayor Palmer	Former Cr Abbott	Cr Arnott	Cr Doohan	Cr Dunkley	Former Cr Jordan	Former Cr Le Mottee	Former Cr Nell	Former Cr Smith	Cr Tucker
AICD Membership Renewal to December 2021 <sup>1</sup>								\$303		
LGNSW Online conference <sup>2</sup>	\$0	\$0		\$0			\$0			
<b>Total</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$</b>	<b>\$0</b>	<b>\$</b>	<b>\$303</b>	<b>\$</b>	<b>\$0</b>

<sup>1</sup>AICD – Australian Institute of Company Directors

<sup>2</sup>LGNSW – Local Government NSW

**Expenses**

The purpose of this report is to provide an account of the expenses incurred by the Elected Members in accordance with Clause 3.127 of the Payment of Expenses and Provision of Facilities to Mayor and Councillors Policy for the period 1 July 2021 to 31 December 2021 (**ATTACHMENT 1**).

The costs in the report are those incurred by the Elected Members that have been reconciled during this period and does not include expenses incurred that have not been submitted for reimbursement. The report also shows the total costs incurred to



## **ORDINARY COUNCIL - 8 FEBRUARY 2022**

Council by Elected Members (including the monthly allowance) for each costing category listed.

### **ATTACHMENTS**

1) Elected Members Expenses - 1 July 2021 to 31 December 2021. [↓](#)

### **COUNCILLORS ROOM**

Nil.

### **TABLED DOCUMENTS**

Nil.

ITEM 2 - ATTACHMENT 1 ELECTED MEMBERS EXPENSES - 1 JULY 2021 TO 31 DECEMBER 2021.

Elected Members Expense Report 1 July 2021 to 31 December 2021

		Mayor Ryan Palmer	Cr Jaimie Abbott	Cr Giacomo Arnott	Cr Chris Dochhan	Cr Glen Dunkley	Cr Ken Jordan	Cr Paul Le Mottree	Cr John Neill	Cr Sarah Smith	Cr Steve Tucker	TOTALS
Total Number of Council Meetings Attended (# held)												
Total Number of Months Reimbursed during the period												
Description of Expense	Limits as per policy											
Councillor Mobile Rental	75% up to \$200 per month											\$0.00
Councillor Mobile Calls		\$430.00	\$604.00					\$195.00	\$165.00			\$1,394.00
Councillor Landline Phone Rental												\$0.00
Councillor Landline Phone Calls												\$0.00
Councillor Fax Rental												\$0.00
Councillor Fax Calls												\$0.00
Councillor Internet	75% up to \$60 per month	\$300.00	\$420.00					\$225.00	\$225.00			\$1,170.00
Councillor Intrastate Travel Expenses	\$7000 per year		\$310.00		\$317.00	\$514.00	\$47.00	\$856.00	\$456.00		\$611.00	\$3,111.00
Councillor Interstate Travel (out of NSW)	\$2000 per year											\$0.00
Councillor Interstate Accommodation (out of NSW)												\$0.00
Councillors Intrastate Accommodation												\$0.00
Councillor Conferences	\$3000 per year											\$0.00
Councillor Training												\$0.00
Councillor Partner Expenses	Mayor \$1000 per year Crs \$500 per year (excluding LGNSW Annual Con.)	\$54.00										\$54.00
Councillor ICT Devices (incl. Mobile phones)	\$5000 per term				\$971.00	\$336.00		\$117.00				\$1,424.00
Councillor Stationery	\$300 per year		\$298.00								\$239.00	\$537.00
Councillor Awards/Ceremonies/Dinners		\$149.00		\$64.00			\$832.00	\$64.00				\$1,109.00
Councillor Child Care Costs	\$2000 per year		\$1,275.00									\$1,275.00
Councillor Communications Bundle	75% up to \$100 per month landline 75% up to \$100 per month mobile				\$458.00	\$552.00	\$371.00	\$253.00	\$34.00		\$329.00	\$1,997.00
Councillor Professional Development	\$15,000 per term								\$303.00			\$303.00
<b>TOTALS</b>		\$933.00	\$2,907.00	\$64.00	\$1,746.00	\$1,402.00	\$1,250.00	\$1,710.00	\$1,183.00	\$0.00	\$1,179.00	\$12,374.00
Councillor Allowances	Mayor \$62,960 pa Crs - \$19,790 pa	\$35,871.00	\$10,338.00	\$10,338.00	\$10,338.00	\$10,338.00	\$10,338.00	\$10,338.00	\$10,338.00	\$10,338.00	\$10,338.00	\$128,913.00
<b>TOTALS</b>		\$36,804.00	\$13,245.00	\$10,402.00	\$12,084.00	\$11,740.00	\$11,588.00	\$12,048.00	\$11,521.00	\$10,338.00	\$11,517.00	\$141,287.00

**ITEM NO. 3**

**FILE NO: 21/323491  
EDRMS NO: PSC2021-01880**

**DESIGNATED PERSONS' RETURN**

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

**BACKGROUND**

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

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

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

- Strategic Planner (PSC638)
- Ranger (PSC018)
- Ranger (PSC1065)
- Senior Environmental Health Officer (PSC763)
- Principal Building Surveyor (PSC075)
- Development Compliance Officer (PSC1084)

**ATTACHMENTS**

Nil.

**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

- 1) Designated Persons' Return.

**ITEM NO. 4**

**FILE NO: 22/29651  
EDRMS NO: A2004-0370**

**WORIMI CONSERVATION LANDS BOARD OF MANAGEMENT - COUNCIL  
DELEGATE**

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

**BACKGROUND**

The purpose of this report is to inform Council of a change to Council's alternate delegate on the Worimi Conservation Lands Board of Management.

Council at its meeting of 11 January 2022, appointed Cr Matthew Bailey as the Council delegate and Councillors Anderson and Francis as alternate delegates.

Council has been advised that only 1 alternate delegate is permitted.

Following consultation with Cr Anderson and Cr Francis, Cr Francis will be Council's alternate delegate.

**ATTACHMENTS**

Nil.

**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

Nil.

# NOTICES OF MOTION

**NOTICE OF MOTION**

**ITEM NO. 1**

**FILE NO: 21/288554**

**EDRMS NO: PSC2017-00019**

**CARAVAN PARK COMMUNITIES**

**COUNCILLOR: GIACOMO ARNOTT**

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**THAT COUNCIL:**

- 1) Requests that the General Manager prepare a report answering the following questions relating to 'caravan park'/lend-lease communities such as Latitude One and Sunrise:
  - a) How do energy efficiency standards apply compared to equivalent 'normal' developments?
  - b) How do setbacks apply compared to equivalent 'normal' developments?
  - c) How does noise insulation apply compared to equivalent 'normal' developments?
  - d) How is rate income determined compared to equivalent 'normal' developments?
  - e) What is the average cost of these homes compared to equivalent 'normal' developments?
  - f) Do these communities assist with affordable housing? If so, can examples please be provided?

---

**BACKGROUND REPORT OF: STEVEN PEART – GROUP MANAGER  
DEVELOPMENT SERVICES**

**BACKGROUND**

Latitude One and Sunrise developments are developments approved by Council which permit moveable dwellings to be installed on the land along with associated facilities such as clubhouses, swimming pools, bowling greens, tennis courts for the over 55's population. They provide a secure village environment for seniors and provide facilities and activities for the occupiers to enjoy.

The moveable dwellings require approval under Section 68 of the Local Government Act which provides requirements around setbacks and other matters surrounding amenity.

The rating of moveable dwellings is prescribed by the Local Government Act. The individual occupiers of the moveable dwellings generally are not subject to rates.

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The overall landowner of the village pays the rates for the village which does result in lower rate income for Council than if the individual occupiers paid rates.

**FINANCIAL/RESOURCE IMPLICATIONS**

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

**ATTACHMENTS**

Nil.

**NOTICE OF MOTION**

**ITEM NO. 2**

**FILE NO: 21/288522**

**EDRMS NO: PSC2017-00019**

**MEDOWIE LIBRARY**

**COUNCILLOR: GIACOMO ARNOTT**

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**THAT COUNCIL:**

- 1) Notes the strong population growth in Medowie over the last few years, and ongoing predicted growth with several residential developments in progress.
  - 2) Asks the General Manager to prepare a report on the viability of a street library or more regular visits from the mobile library to deliver library services to the growing population in Medowie.
- 

**BACKGROUND REPORT OF: JOHN MARETICH – ASSETS SECTION  
MANAGER**

**BACKGROUND**

The purpose of this report is to provide background information to allow consideration of the Notice of Motion.

The population of Medowie has grown. The NSW State Library People, Places Guidelines and Standards suggests 1 Branch Library for every 20,000 people and 1 Library Lounge for every 10,000 people. Based on this guideline and funding sources, it has been considered that the Raymond Terrace main branch library would continue to meet the near future population growth in Medowie. Noting that a library lounge may soon be needed in Medowie.

Until such time that the library lounge is required, the Mobile Library is a service that Council provides to the Medowie community. At present, the Mobile Library visits Medowie 5 times per fortnight making stops at Ferodale Road and Kindlebark Drive.

A street library was constructed as part of the recent Medowie 7 Day Makeover and is operating out of the park adjacent to the Medowie Community Centre.



**FINANCIAL/RESOURCE IMPLICATIONS**

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

**ATTACHMENTS**

Nil.

**NOTICE OF MOTION**

**ITEM NO. 3**

**FILE NO: 21/288526**

**EDRMS NO: PSC2017-00019**

**FORD AVENUE, MEDOWIE, STURGEON STREET, RAYMOND TERRACE,  
NELSON BAY ROAD AND GAN GAN ROAD**

**COUNCILLOR: GIACOMO ARNOTT**

---

**THAT COUNCIL:**

- 1) Notes the following issues:
  - Road deformity at approximately 3 Ford Avenue, Medowie, in the form of a sharp rise across the width of the road.
  - The road in Sturgeon Street, Raymond Terrace is in a poor state.
- 2) Requests the General Manager to prepare a report on these issues.
- 3) Acknowledges the speed change on Nelson Bay Road near the Gan Gan Road intersection going from 60m/h to 80km/h.
- 4) Asks Council's Traffic Committee to investigate the difficulty in judging car speeds due to acceleration when trying to turn out of Gan Gan Road and whether any speed changes or relocation of speed signs is warranted to reduce risk at this intersection.

---

**BACKGROUND REPORT OF: JOHN MARETICH – ASSETS SECTION MANAGER**

**BACKGROUND**

Ford Avenue

The purpose of this report is to provide background information to allow consideration of the Notice of Motion.

Ford Avenue is a sealed local access street located in the suburb of Medowie. Council is aware that a number of utility accesses have crossed this road leaving depressions / humps on the road. While the road itself could be improved for ride-ability, given the other priorities on Council's road network, this road is not scheduled in the near foreseeable future.

Sturgeon Street, Raymond Terrace

Sturgeon Street is a Local Road within the recognised Raymond Terrace Town Centre. The road does change from full width seal in the business end of the street, to variable seal widths with grass shoulders adjacent to the residential area.

Sturgeon Street between Glenelg Street and Jacaranda Avenue has been submitted in Round 3 of the NSW Government's Fixing Local Roads Grant in July. No announcements have yet been made for Round 3.

Nelson Bay Road and Gan Gan Road

The purpose of this report is to provide background information to allow consideration of the Notice of Motion.

Council has been successful in gaining a Black Spot Grant for the eastern intersection of Gan Gan Road and Nelson Bay Road. The grant is for the design stage in 2020-2021 and works in 2022-2023. The project is to improve the intersection sight distance.

Following the design stage, the project will be estimated and information be submitted under the same program for works in 2022-2023.

The initial proposed treatments will not require Local Traffic Committee review.

It should be noted that Nelson Bay Road is under the care and control of the NSW State Government and its approval will be required.

**FINANCIAL/RESOURCE IMPLICATIONS**

The inspection and assessment tasks are able to be completed at no additional expense to Council.

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

**ATTACHMENTS**

Nil.

**NOTICE OF MOTION**

**ITEM NO. 4**

**FILE NO: 21/288536**

**EDRMS NO: PSC2017-00019**

**RAYMOND TERRACE LAKESIDE PATHWAY**

**COUNCILLOR: GIACOMO ARNOTT**

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**THAT COUNCIL:**

- 1) Notes the significant number of unregistered motorbikes which travel along the Lakeside to Medowie pathway behind Raymond Terrace and Richardson Road.
  - 2) Notes that local families use this path, and should not have to face the physical danger of unregistered motorbikes when using the pathway.
  - 3) Asks the General Manager to prepare a report on ways to reduce entry points for unregistered motorbikes, and engineered solutions to prevent usage on the pathway of unregistered motorbikes.
- 

**BACKGROUND REPORT OF: JOHN MARETICH – ASSETS SECTION MANAGER**

**BACKGROUND**

The purpose of this report is to provide background information to allow consideration of the Notice of Motion

The shared pedestrian and cyclist pathway between Martens Avenue Reserve and Lakeside Leisure Centre is approximately 2.5km in length and is intended for active recreational usage.

Previous site inspections and preliminary investigations confirm that this stretch of pathway features approximately 20 access points available to motorcyclists. Many of the access points are extremely wide. Due to the width, dismount points for cyclists (and motorcycles) could be installed at these entry points, but would also need to be supplemented with steel cable barrier to be effective at a cost of at least \$5,000 per site. Dismount style treatments were also considered to be placed along the length of the pathway. Their effectiveness is predicted to be low with the adjoining bushland providing opportunity to circumnavigate the treatments.

Given motorcycles often feature similar dimension to bicycles, proposed treatments introduced to prevent motorbikes may have adverse impacts to bicyclists.

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Riding of motorbikes on footpaths is illegal with the NSW Police Force as the appropriate regulatory authority. Council staff will continue to work with the NSW Police Force on monitoring the area.

**FINANCIAL/RESOURCE IMPLICATIONS**

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

**ATTACHMENTS**

Nil.

**NOTICE OF MOTION**

**ITEM NO. 5**

**FILE NO: 21/288541**

**EDRMS NO: PSC2017-0019**

**FORESHORE RESERVES AND PARKING ON COUNCIL LAND**

**COUNCILLOR: GIACOMO ARNOTT**

---

**THAT COUNCIL:**

- 1) Notes the following issues:
  - The potential damage to our foreshores that unauthorised structures can cause.
  - Across the whole Council area, cars, caravans and boats are parked on road reserves or other public spaces.
- 2) Asks the General Manager to prepare a report on:
  - existing unauthorised structures on foreshore areas, and what action Council is taking to have them removed or development approval provided.
  - what action Council is taking to ensure that footpaths and roads are accessible and free of nuisance vehicles taking up space.

---

**BACKGROUND REPORT OF: JOHN MARETICH – ASSETS SECTION MANAGER  
AND KATE DRINAN – DEVELOPMENT AND COMPLIANCE SECTION MANAGER**

**BACKGROUND**

Foreshore Reserves

The purpose of this report is to provide background information to allow consideration of the Notice of Motion.

Council owns and manages a large portfolio of land for community use. The interface between private and public land on foreshore reserves can often lead to situations where clear lines of ownership and responsibility are difficult for property owners to define.

Council recognises that some adjoining private property owners will undertake works to beautify and maintain Council's land to the mutual benefit of each party. This is not dissimilar to the mowing of a nature strip or the removal of leaf litter from kerb drainage.

In some cases these works extend beyond general maintenance and may result in private assets being placed on Council land. This can lead to a sense of ownership and pride that benefits Council and the public. In other cases, this beautification and encroachment on Council owned or managed land may have a negative impact to the community, public safety, environment and amenity of the land. The extent of the encroachment and the organisation's risk appetite determines Council's ability to accept or deny each encroachment and any further action required.

It is important to note that retrospective development consent cannot be issued by Council. Council may only permit the encroachment to remain once matters such as structural adequacy and design have been assessed.

Council is currently preparing a Coastal Management Program (CMP) in partnership with the NSW Department of Planning, Industry and Environment (DPIE). The preparation and implementation of the CMP is legislated under the Coastal Management Act 2016 and State Environmental Planning Policy (Coastal Management) 2018.

An outcome of the CMP will be to provide clarity for foreshore landholders who share an interface with Council owned or managed land. Resources will be made available to better educate these property owners on land tenure and boundary definition, the necessary approval process required for works on both private and public land as well as best practice coastal zone maintenance activities.

#### Parking on Council Land

Parking enforcement in our LGA is guided by the NSW Road Rules and Council's Compliance Policy. Council's Compliance Policy allows for discretion.

Discretion is often required for parking on road reserves where, for example, there are narrow streets and there is not a clearly defined kerb and gutter. Parking enforcement will be undertaken where it is considered to be a road safety issue where sight lines at intersections are blocked or unreasonably impeded, where a formed footpath is blocked or pedestrians have to reasonably move out onto the road to get around a vehicle parked on the road reserve.

#### **FINANCIAL/RESOURCE IMPLICATIONS**

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

**ATTACHMENTS**

Nil.



**NOTICE OF MOTION**

**ITEM NO. 6**

**FILE NO: 21/288520**

**EDRMS NO: PSC2017-00019**

**REUSABLE NAPPIES AND MENSTRUAL PRODUCTS**

**COUNCILLOR: GIACOMO ARNOTT**

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**THAT COUNCIL:**

- 1) Notes that other Councils such as Wagga Wagga Council offer rebates to residents who use reusable nappies and menstrual products, to reduce the volume of these products reaching landfill.
- 2) Asks the General Manager to initiate discussions with Council's waste provider, to see whether they would provide a reduction in costs passed on to Council if these products could be removed from landfill, and using those savings in waste costs to provide a rebate to those purchasing reusable products.

---

**BACKGROUND REPORT OF: TAMMY GUTSCHE – COMMUNITY SERVICES SECTION MANAGER**

**BACKGROUND**

The reusable nappy and menstrual products rebate scheme is currently being trialled across a number of Councils including Wagga Wagga and Penrith. The aim of the scheme is to take the financial pressure off families and women trying to reduce their waste footprint. Disposable nappies end up in landfill where they take up to 150 years to break down. Whilst cloth nappies require detergents and water to wash, they are a better alternative for both the environment and families' finances.

Also included in the trial are free community workshops that provide information and resources around the financial benefits of reusable cloth nappies and menstrual products, different styles of products and how to clean and maintain them.

Council's Waste Services team has commenced research into the rebate scheme as part of the 'Source separated organics collection' option identified in the implementation plan component of the draft Waste Management Strategy 2021-2031.

As benchmarking of other Councils progresses, discussions will be held with our waste service provider to look at potential savings that could be achieved, and the potential to implement within Port Stephens LGA.

**FINANCIAL/RESOURCE IMPLICATIONS**

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

**ATTACHMENTS**

Nil.

**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.

---

**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

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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**

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

**ATTACHMENTS**

Nil.

**NOTICE OF MOTION****ITEM NO. 8****FILE NO: 21/288543****EDRMS NO: PSC2017-00019****ROBINSON RESERVE - DOG POO BAGS****COUNCILLOR: GIACOMO ARNOTT**

---

**THAT COUNCIL:**

- 1) Notes that there are dog poo bags at Robinson Reserve Anna Bay.
  - 2) Asks the General Manager to prepare a report on whether these dispensers can be replaced with lockable dispensers and to provide a dedicated dog poo bag away from the children's playground.
- 

**BACKGROUND REPORT OF: TAMMY GUTSCHE – COMMUNITY SERVICES SECTION MANAGER****BACKGROUND**

In late 2020, the Waste Services team within Council took over the management of the public place cleaning functions. As part of these functions, the team is responsible for the maintenance of the dog refuse dispensers across the LGA.

Over recent months, it has been identified that a number of these refuse dispensers located within foreshore reserves have become rusty and in need of replacement. Robinson Reserve at Anna Bay has been identified as a location of concern.

Waste Services have conducted an audit into the condition and location of these bins and have initiated a replacement program. Bins have been ordered and will be ready for installation late 2021 to early 2022.

Bins at Robinson Reserve will be relocated when new bins are installed.

**FINANCIAL/RESOURCE IMPLICATIONS**

<b>Source of Funds</b>	<b>Yes/No</b>	<b>Funding (\$)</b>	<b>Comment</b>
Existing budget	Yes		
Reserve Funds	No		

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<b>Source of Funds</b>	<b>Yes/No</b>	<b>Funding (\$)</b>	<b>Comment</b>
Developer Contributions (S7.11)	No		
External Grants	No		
Other	No		

**ATTACHMENTS**

Nil.

**NOTICE OF MOTION**

**ITEM NO. 9**

**FILE NO: 21/288545**

**EDRMS NO: PSC2017-00019**

**BOOMERANG PARK BBQS**

**COUNCILLOR: GIACOMO ARNOTT**

---

**THAT COUNCIL:**

- 1) Notes that Boomerang Park Raymond Terrace is a beautiful, fantastic space which benefits all locals and visitors with its pathway network, recreation and exercise facilities, and natural beauty.
  - 2) Asks the General Manager to prepare a report on whether BBQ facilities are adequately provided for in Boomerang Park, and to identify opportunities to increase quality BBQ facilities for public use.
- 

**BACKGROUND REPORT OF: JOHN MARETICH – ASSETS SECTION MANAGER**

**BACKGROUND**

The purpose of this report is to provide background information to allow consideration of the Notice of Motion.

The Boomerang Park Masterplan was adopted by Council in April 2016. Since the adoption of the masterplan, a number of infrastructure improvements have been made to the park. The masterplan does identify public barbeque facilities to be co-located with the playground, skate park and exercise equipment, however, these are yet to be realised.

The existing public barbeque facility in Boomerang Park is classed as being in very poor condition and in need of relocation and upgrade. It is currently situated at the top of the hill, near the old public amenities building and water tower.

Based on other asset rehabilitation and replacement priorities, this item is not currently listed within Council's 10 year Capital Works Program. Park facilities improvements (which would include a public barbeque replacement and upgrade) are listed within the adopted Development Contributions Plan for estimated delivery in 2025. To fast track the delivery of items from Council's various infrastructure plans, staff seek to identify and secure external grant funding which may deliver these improvements ahead of time.

**ORDINARY COUNCIL - 8 FEBRUARY 2022**

The cost of providing a double plate, accessible public barbeque facility, shelter and footpath works is estimated at \$35,000.

**FINANCIAL/RESOURCE IMPLICATIONS**

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

**ATTACHMENTS**

Nil.



**NOTICE OF MOTION****ITEM NO. 10****FILE NO: 21/288550****EDRMS NO: PSC2017-00019****ILLEGAL DUMPING****COUNCILLOR: GIACOMO ARNOTT**

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**THAT COUNCIL:**

- 1) Notes that illegal dumping is a major problem in our remote, forested areas close to residential parts of Port Stephens.
  - 2) Asks the General Manager to prepare a report outlining whether lowering the costs of going to the tip would reduce illegal dumping.
- 

**BACKGROUND REPORT OF: KATE DRINAN – DEVELOPMENT AND COMPLIANCE SECTION MANAGER****BACKGROUND**

Based on Council's 2021 Community Satisfaction Survey, respondents rated satisfaction for 'managing illegal dumping' at 70%, 4 points higher than last year.

Council is aware of illegal dumping on our land, National Parks land and State Forest land. Council has undertaken a large body of work in recent years to significantly reduce the number of incidents, volume of waste and number of specific illegal waste dumping hot spots. Council has employed a number of strategies to this affect, such as beautifying areas with tree planting, clearing, reducing vegetation that acts as a screen and the installation of physical barriers.

Through investigations into illegal dumping, the cost of tip fees is generally not what influences the offender, rather it is more about behaviour and convenience. Any reduction in tip fees would impact upon Council's budget.

**FINANCIAL/RESOURCE IMPLICATIONS**

<b>Source of Funds</b>	<b>Yes/No</b>	<b>Funding (\$)</b>	<b>Comment</b>
Existing budget	Yes		
Reserve Funds	No		

**ORDINARY COUNCIL - 8 FEBRUARY 2022**

<b>Source of Funds</b>	<b>Yes/No</b>	<b>Funding (\$)</b>	<b>Comment</b>
Developer Contributions (S7.11)	No		
External Grants	No		
Other	No		

**ATTACHMENTS**

Nil.

**NOTICE OF MOTION****ITEM NO. 11****FILE NO: 21/288471****EDRMS NO: PSC2017-00019****AIR QUALITY MONITORING AT EXTRACTIVE INDUSTRIAL OPERATIONS****COUNCILLOR: GIACOMO ARNOTT****THAT COUNCIL:**

- 1) Notes that there are several extractive industries in West Ward and Central Ward Port Stephens.
- 2) Notes that extractive industries are likely to cause air quality issues.
- 3) Prepare a letter to the Minister for Energy and Environment to request that:
  - Independent monitoring is undertaken at the extractive industry operations in the LGA to ensure that accurate data is provided to the community; and
  - The data be made available to Port Stephens Council to publish on its website.

**BACKGROUND REPORT OF: JANELLE GARDNER – STRATEGY & ENVIRONMENT SECTION MANAGER****BACKGROUND**

A large number of extractive industries are in operation within the Port Stephens Local Government Area (LGA). These include hard rock quarries in the northern and western areas of the LGA and sand quarries along the coastline.

As extractive industries are likely to generate dust emissions during operations, the majority of operators are required, by conditions of the Environmental Protection Licences, to undertake air quality monitoring and report these annually to the Environmental Protection Authority (EPA).

Although the data provided to the EPA is not publically available, the findings and any non-compliances contained in the annual report are provided on the EPA website.

**FINANCIAL/RESOURCE IMPLICATIONS**

<b>Source of Funds</b>	<b>Yes/No</b>	<b>Funding (\$)</b>	<b>Comment</b>
Existing budget	Yes		
Reserve Funds	No		

**ORDINARY COUNCIL - 8 FEBRUARY 2022**

<b>Source of Funds</b>	<b>Yes/No</b>	<b>Funding (\$)</b>	<b>Comment</b>
Developer Contributions (S7.11)	No		
External Grants	No		
Other	No		

**ATTACHMENTS**

Nil.

**NOTICE OF MOTION****ITEM NO. 12****FILE NO: 21/288476****EDRMS NO: PSC2017-0019****IRIS MOORE RESERVE****COUNCILLOR: GIACOMO ARNOTT**

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**THAT COUNCIL:**

- 1) Notes that there is ordinarily a plaque noting and acknowledging the Moore family at Iris Moore Reserve, Anna Bay.
  - 2) Notes that the plaque has been missing for some years now.
  - 3) Asks the General Manager to write to National Parks & Wildlife Service, asking them to replace the plaque and provide information on their maintenance schedule going forward.
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**BACKGROUND REPORT OF: JOHN MARETICH – ASSETS SECTION MANAGER****BACKGROUND**

The purpose of this report is to provide background information to allow consideration of the Notice of Motion.

Iris Moore Reserve is located at 10 Birubi Lane, Anna Bay (Lot 7316 DP 1137185). The land is owned by the NSW Department of Premier and Cabinet and is managed by the NSW National Parks & Wildlife Service. All assets located on this reserve are the responsibility of the land manager.

**FINANCIAL/RESOURCE IMPLICATIONS**

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

**ATTACHMENTS**

Nil.

**NOTICE OF MOTION****ITEM NO. 13****FILE NO: 21/288487****EDRMS NO: PSC2017-00019****TOMAREE ROAD FOOTPATH****COUNCILLOR: GIACOMO ARNOTT**

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**THAT COUNCIL:**

- 1) Notes that wheelchair bound residents currently have to use the road to travel along parts of Tomaree Road where there is no provided footpath.
  - 2) Asks the General Manager to provide a report outlining when a footpath will be provided for the rest of Tomaree Road.
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**BACKGROUND REPORT OF: JOHN MARETICH – ASSETS SECTION MANAGER****BACKGROUND**

The purpose of this report is to provide background information to allow consideration of the Notice of Motion.

With the recent road rehabilitation, 680m of new pathway was completed on Tomaree Road, from Rigney Street to Verona Road. This leaves 2 missing links in the pathway network on Tomaree Road; 431m from Verona Road to Messines Street and 87m from Rigney Street to Marine Drive.

Completion of the footpath on Tomaree Road is identified within the 2018 Pathways Plan. The construction of the Verona Road to Messines Street pathway is scheduled to be completed with the road rehabilitation listed in the Capital Works Program for the 2029-2030 financial year. The Rigney Street to Marine Drive missing link is currently unfunded.

**FINANCIAL/RESOURCE IMPLICATIONS**

<b>Source of Funds</b>	<b>Yes/No</b>	<b>Funding (\$)</b>	<b>Comment</b>
Existing budget	Yes		
Reserve Funds	No		
Developer Contributions (S7.11)	No		

**ORDINARY COUNCIL - 8 FEBRUARY 2022**

<b>Source of Funds</b>	<b>Yes/No</b>	<b>Funding (\$)</b>	<b>Comment</b>
External Grants	No		
Other	No		

**ATTACHMENTS**

Nil.



**NOTICE OF MOTION**

**ITEM NO. 14**

**FILE NO: 21/326288**

**EDRMS NO: PSC2017-00019**

**MAYORAL DIARY**

**COUNCILLOR: GIACOMO ARNOTT**

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**THAT COUNCIL:**

- 1) Notes public interest in knowing who the Mayor is meeting with and being potentially influenced by.
- 2) Notes that Newcastle City Council publishes their Lord Mayor's diary on a regular basis.
- 3) Agrees that this practice would improve accountability and transparency.
- 4) Agrees to publish the Mayor of Port Stephens' diary, with information to include who the meeting was with, the platform it was held (in person, video conference etc), and the nature of the meeting, on the Port Stephens Council website by the 7th of each month, for the month prior.

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**BACKGROUND REPORT OF: TONY WICKHAM – GOVERNANCE SECTION  
MANAGER**

**BACKGROUND**

There is currently no requirement under the Local Government Act 1993, the Local Government (General) Regulation 2021 or any other legislation for the Mayor's diary to be made public.

If Council were of the mind to publish the Mayor's diary, Council would need to ensure compliance with the Privacy and Personal Information Protection Act 1998 and must not disclose personal information unless:

- 1) The disclosure relates to the purpose for which the information was collected.
- 2) Council has no reason to believe the individual/s concerned would object to the disclosure.
- 3) The individual/s concerned is reasonably likely to be aware or has been made aware, that the information of this kind is usually disclosed to another person or body.
- 4) Council believes on reasonable grounds that the disclosure is necessary to prevent or lessen a serious and imminent threat to life or health of the individual concerned or another person.

**FINANCIAL/RESOURCE IMPLICATIONS**

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

**ATTACHMENTS**

Nil.

**NOTICE OF MOTION**

**ITEM NO. 15**

**FILE NO: 22/24445**

**EDRMS NO: PSC2021-04195**

**BASKETBALL BACKBOARD AND RINGS - CROQUET COURT, BOOMERANG PARK**

**COUNCILLOR: PETER KAUFER**

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**THAT COUNCIL:**

- 1) Call upon the General Manager to prepare a report into installing a basketball backboard and rings on the present croquet court facility in Boomerang Park as soon as possible. This structure has sat virtually unused since its construction. Adaptive reuse in the form of a basketball court is one use which will be used by many younger people in our community. Other shared uses, beyond a basketball court, could include, but not limited to, a walking soccer field, badminton, volleyball, cricket, film nights.

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**BACKGROUND REPORT OF: JOHN MARETICH, ASSETS SECTION MANAGER**

**BACKGROUND**

The purpose of this background is to provide information on the Notice of Motion.

Boomerang Park Croquet Facility was constructed in later 2017 and has gained limited use. The Raymond Terrace Men's Shed is the main user for a variety of fitness and sporting activities.

The courts are constructed on an engineered foundation and the surface would be suitable for social play and ball games. A basketball post could be positioned to limit potential impact on existing users.

Nearest public accessible basketball facilities are located at Lakeside Reserve No. 2, 3.5km away.

This proposal currently has no allocated budget. Should Council resolve to support this Notice of Motion, a budget would need to be allocated to the project.

Staff are also able to identify potential opportunities such as future grant submissions.

**FINANCIAL/RESOURCE IMPLICATIONS**

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

**ATTACHMENTS**

Nil.

**NOTICE OF MOTION**

**ITEM NO. 16**

**FILE NO: 22/24467**

**EDRMS NO: PSC2021-04195**

**INDEPENDENT AUDIT OF FINANCIAL POSITIONS OF 355C HALL COMMITTEES**

**COUNCILLOR: PETER KAHER**

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**THAT COUNCIL:**

- 1) Call for the General Manager to prepare a report into an immediate independent audit of financial positions of all 13 Council 355c Hall Committees –
  - i) Noting report by Council's Community Services Section Manager dated January 2022 (Council Briefing Notes) "that 4 of the Committees are working well with many of the others poorly managed by a very small number of people who are unable to commit the time required to manage the Halls."
  - ii) Risk to Council from Committees not providing appropriate financial records and the inconsistency in which Halls are managed.
  - iii) This will allow Council greater certainty into current resources of each Committee and where Council can either assist functioning Committees and the types of resources needed to ensure they continue to be fit for purpose and their functions and expenditures align with the goals of Council.

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**BACKGROUND REPORT OF: TAMMY GUTSCHE, COMMUNITY SERVICES SECTION MANAGER**

**BACKGROUND**

Under the Local Government Act 1993, Council is able to delegate some of its functions to a Committee of Council. A Committee is appointed and reappointed in accordance with the provisions of s.355 and s.377 of the Local Government Act, 1993.

A Committee of Council is acting on Council's behalf, the Committee is 'Council' and any action which the Committee undertakes is Council's responsibility.

Committees appointed under Section 355(c) of the Local Government Act are subject to the same standards of financial accountability as Council and it is therefore important that Committees manage their finances well. All funds and assets held by the committee belong to Council. The committee is responsible for the care and control of these funds.

Committees who handle funds, on behalf of Council, are required to comply with Council procedures and instructions, which are designed to ensure that records and day-to-day transactions are handled according to required standards.

There are no statutory reporting requirements for the committees other than providing the following to be reviewed by Council staff which form part of Council's records that are audited annually by the NSW Audit Office as part of our financial report.

- Monthly cash book summary
- Invoices paid and receipts issued
- Bank account statements and term deposit statements.

The last fully completed financial period would be the starting point, provided the Committees have submitted all their records noted above for that time. If not, then we will require all committees to get their records into Council in order to complete.

If a committee does not have any nominations for committee membership, then the Council will determine the process for the future management of the Committee. A committee can only be dissolved by a resolution of Council and, in the instance that it is dissolved, all financial monies and equipment and/or assets of that committee shall be returned to Council.

#### **FINANCIAL/RESOURCE IMPLICATIONS**

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

#### **ATTACHMENTS**

Nil.

# CONFIDENTIAL ITEMS

In accordance with Section 10A, of the Local Government Act 1993, Council can close part of a meeting to the public to consider matters involving personnel, personal ratepayer hardship, commercial information, nature and location of a place or item of Aboriginal significance on community land, matters affecting the security of Council, Councillors, staff or Council property and matters that could be prejudice to the maintenance of law.

Further information on any item that is listed for consideration as a confidential item can be sought by contacting Council.