

## MINUTES ORDINARY COUNCIL - 11 SEPTEMBER 2018

Councillor Glen Dunkley left the meeting at 6:46pm.  
Councillor Paul Le Mottee left the meeting at 6:46pm.

### NOTICE OF RESCISSION

ITEM NO. 1

FILE NO: 18/190377  
EDRMS NO: PSC2017-00020

### PLANNING PROPOSAL 95A AND 97 STOCKTON STREET, NELSON BAY

**COUNCILLOR:** RYAN PALMER  
STEVE TUCKER  
KEN JORDAN

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#### THAT COUNCIL:

- 1) Rescind its decision of 28 August 2018 to take no further action on Item No. 1 Planning Proposal 95A and 97 Stockton Street, Nelson Bay.

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### ORDINARY COUNCIL MEETING - 11 SEPTEMBER 2018 MOTION

288	<p><b>Councillor Chris Doohan</b> <b>Councillor Steve Tucker</b></p> <p>It was resolved that Council rescind its decision of 28 August 2018 to take no further action on Item No. 1 Planning Proposal 95A and 97 Stockton Street, Nelson Bay.</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 Chris Doohan, Ken Jordan, Sarah Smith and Steve Tucker.

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

### ORDINARY COUNCIL MEETING - 11 SEPTEMBER 2018 MOTION

	<p><b>Councillor Giacomo Arnott</b> <b>Councillor John Nell</b></p> <p>That Council defer the planning proposal for 95A and 97 Stockton Street, Nelson Bay for a site inspection.</p>
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## MINUTES ORDINARY COUNCIL - 11 SEPTEMBER 2018

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

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

Those against the Motion: Mayor Ryan Palmer, Crs Jaimie Abbott, Chris Doohan, Ken Jordan, Sarah Smith and Steve Tucker.

The motion was lost.

### ORDINARY COUNCIL MEETING - 11 SEPTEMBER 2018 MOTION

	<p><b>Councillor John Nell</b> <b>Councillor Giacomo Arnott</b></p> <p>That Council defer the planning proposal for 95A and 97 Stockton Street, Nelson Bay for alternative options to be provided to Council for the site.</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: Crs Giacomo Arnott and John Nell.

Those against the Motion: Mayor Ryan Palmer, Crs Jaimie Abbott, Chris Doohan, Ken Jordan, Sarah Smith and Steve Tucker.

The motion was lost.

### ORDINARY COUNCIL MEETING - 11 SEPTEMBER 2018 MOTION

289	<p><b>Mayor Ryan Palmer</b> <b>Councillor Chris Doohan</b></p> <p>It was resolved that Council:</p> <p>1) Adopt the Planning Proposal (dated 29 May 2018) <b>(TABLED DOCUMENT)</b> to amend Schedule 1 of the <i>Port Stephens Local Environmental Plan 2013</i> to permit with consent development for the purposes of:</p> <ul style="list-style-type: none"><li>• Storage premises on Lot 1, DP 200208 (97 Stockton Street, Nelson Bay); and</li><li>• A recreation facility (indoor) on Lot 2, DP 200208 (95A Stockton</li></ul>
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	Street, Nelson Bay).
2)	Forward the Planning Proposal to the NSW Department of Planning and Environment to seek a gateway determination and request delegated authority to make the Plan.
3)	The Planning Proposal be adopted subject to a request that the Department of Planning and Environment consider further restricting the proposed additional use by reference to matters such as operating hours car parking requirements and site usage that can address potential impacts on neighbours.

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, Chris Doohan, Ken Jordan, John Nell, Sarah Smith and Steve Tucker.

Those against the Motion: Cr Jaimie Abbott.

The motion was carried.

### ATTACHMENTS

- 1) Council Minute 28 August 2018 Planning Proposal 95A and 97 Stockton Street Nelson Bay.

**ITEM 1 - ATTACHMENT 1 COUNCIL MINUTE 28 AUGUST 2018 PLANNING PROPOSAL 95A AND 97 STOCKTON STREET NELSON BAY.****MINUTES ORDINARY COUNCIL - 28 AUGUST 2018**

Councillor Glen Dunkley left the meeting at 6:10pm, in Open Council.  
Councillor Paul Le Mottee left the meeting at 6:10pm, in Open Council.

**ITEM NO. 1**

**FILE NO: 18/158167  
EDRMS NO: 58-2017-12-1**

**PLANNING PROPOSAL 95A AND 97 STOCKTON STREET, NELSON BAY**

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

**RECOMMENDATION IS THAT COUNCIL:**

- 1) Adopt the Planning Proposal (dated 29 May 2018) (**TABLED DOCUMENT**) to amend Schedule 1 of the *Port Stephens Local Environmental Plan 2013* to permit with consent development for the purposes of:
  - Storage premises on Lot 1, DP 200208 (97 Stockton Street, Nelson Bay); and
  - A recreation facility (indoor) on Lot 2, DP 200208 (95A Stockton Street, Nelson Bay).
- 2) Forward the Planning Proposal to the NSW Department of Planning and Environment to seek a gateway determination and request delegated authority to make the Plan.

**ORDINARY COUNCIL MEETING - 28 AUGUST 2018****MOTION**

<b>262</b>	<b>Councillor John Nell Councillor Giacomo Arnott</b>  It was resolved that Council take no action on the planning proposal at 95A and 97 Stockton Street, Nelson Bay.
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In accordance with Section 375 (A) of the Local Government Act 1993, a division is required for this item.

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

Those against the Motion: Crs Ken Jordan, Sarah Smith and Steve Tucker.

The Motion was carried.

Councillor Jaimie Abbott left the meeting at 6:24pm, Open Council.  
Councillor Giacomo Arnott left the meeting at 6:24pm, Open Council.

**ITEM 1 - ATTACHMENT 1 COUNCIL MINUTE 28 AUGUST 2018 PLANNING PROPOSAL 95A AND 97 STOCKTON STREET NELSON BAY.****MINUTES ORDINARY COUNCIL - 28 AUGUST 2018****BACKGROUND**

The purpose of this report is for Council to consider a Planning Proposal to amend Schedule 1 'Additional permitted uses' to the *Port Stephens Local Environmental Plan 2013* (LEP 2013) to permit with consent development for the purposes of:

- Storage premises on Lot 1, DP 200208 (97 Stockton Street, Nelson Bay).
- A recreation facility (indoor) on Lot 2, DP 200208 (95A Stockton Street, Nelson Bay).

A Locality Map is attached at **(ATTACHMENT 1)**.

The Planning Proposal notes that the amendments are necessary to facilitate these future uses (subject to development consent) and the future uses will likely utilise existing structures on the site **(TABLED DOCUMENT)**.

A summary of the Planning Proposal and property details are included below:

Date lodged:	19 July 2017
Proponent:	Le Mottee Group Pty Ltd
Subject properties:	97 Stockton Street, Nelson Bay LOT: 1 DP: 200208 95A Stockton Street, Nelson Bay LOT: 2 DP: 200208
Current zoning:	R2 Low Density Residential <b>(ATTACHMENT 2)</b> .
Site area:	Cumulative site area of the two (2) lots is approximately 1454m <sup>2</sup>
Proposed additional land use(s):	Storage premises on Lot 1, DP 200208 (97 Stockton Street, Nelson Bay) and a recreation facility (indoor) on Lot 2, DP 200208 (95A Stockton Street, Nelson Bay).

Existing and current use

The subject land is currently zoned R2 Low Density Residential **(ATTACHMENT 2)** and supports two large existing sheds. A current approval exists on the site for a removal business and a storage business. The Planning Proposal describes the site as having a long history of commercial uses **(TABLED DOCUMENT)**, however the existing use does not match the current residential zoning, which has been in place since the commencement of the *Environmental Planning and Assessment Act 1979* (EP&A Act) in 1980.

Purpose of the amendment

A rezoning is not proposed in this instance. The amendment to Schedule 1 of the LEP 2013 will enable additional uses under the current zoning and limit the additional land uses permissible on the subject site to:

**ITEM 1 - ATTACHMENT 1 COUNCIL MINUTE 28 AUGUST 2018 PLANNING PROPOSAL 95A AND 97 STOCKTON STREET NELSON BAY.****MINUTES ORDINARY COUNCIL - 28 AUGUST 2018**

- Storage premises on Lot 1, DP 200208.
- A recreation facility (indoor) on Lot 2, DP 200208.

The existing R2 Low Density Residential zone will be retained and will not prohibit future residential use, if desired. The additional land uses are not considered likely to pose a significant threat to the existing retail/commercial core in Nelson Bay town centre given the limited uses proposed and the scale of the sites.

Suitability of the subject land

The site is not identified for commercial purposes in any State or local land use planning strategies. Despite this, commercial uses have previously been carried out on the land. Given the historical uses of the site, the existing structures located on the site, and the limited uses that will be permitted, the proposed additional uses are considered appropriate.

The Planning Proposal seeks to maintain the ongoing use of the land consistent with the existing commercial uses on the site, while limiting the types of commercial purposes that may be carried out with consent. Limiting the additional uses will minimise adverse impacts and maintain the potential to develop the land for future residential use, in accordance with the character of the area, if desired.

**COMMUNITY STRATEGIC PLAN**

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

**FINANCIAL/RESOURCE IMPLICATIONS**

There are no foreseen financial or resource implications for Council as a consequence of the recommendation of this report.

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	Yes	\$5,250	Stage 1 Rezoning Fees paid 19 July 2017.
Reserve Funds	No		
Developer Contributions (\$7.11)	No		
External Grants	No		
Other	No		

**ITEM 1 - ATTACHMENT 1 COUNCIL MINUTE 28 AUGUST 2018 PLANNING PROPOSAL 95A AND 97 STOCKTON STREET NELSON BAY.****MINUTES ORDINARY COUNCIL - 28 AUGUST 2018****LEGAL, POLICY AND RISK IMPLICATIONS**

<b>Risk</b>	<b><u>Risk Ranking</u></b>	<b>Proposed Treatments</b>	<b>Within Existing Resources?</b>
There is a risk that commercial uses on the site could negatively impact on other identified centres.	Low	Limiting the additional permitted land uses to storage premises and a recreation facility (indoor) within the R2 Low Density Residential Zone will assist in minimising potential adverse impacts. It is understood that commercial uses have existed on the site for an extended period of time with no demonstrable impact on the existing commercial centre in the locality.	Yes
There is a risk that the additional permitted use could compromise the residential use of the land.	Low	Given the residential zoning will not change, the potential exists for residential development of the site in the future.	Yes

Port Stephens Local Environmental Plan 2013

The site is currently zoned R2 Low Density Residential under the LEP 2013. The existing R2 zone that applies to the subject sites under the LEP 2013 will be retained.

The Planning Proposal will permit (with consent) specific additional land uses which are considered to have minimal potential for adverse impacts. By permitting only specific additional land uses and retaining the R2 zoning, potential development is limited to those land uses and will not result in a further extension of a business zone in the residential neighbourhood.

Limiting the land use negates potential negative social impacts associated with allowing other uses through a rezoning, and also facilitates potential future residential use to reflect population growth demands.

The proposed additional use on Lot 1, DP 200208 is defined by the LEP 2013 as:

**“storage premises** means a building or place used for the storage of goods, materials, plant or machinery for commercial purposes and where the storage is not ancillary to any industry, business premises or retail premises on the same parcel of

**ITEM 1 - ATTACHMENT 1 COUNCIL MINUTE 28 AUGUST 2018 PLANNING PROPOSAL 95A AND 97 STOCKTON STREET NELSON BAY.**

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land, and includes self-storage units, but does not include a heavy industrial storage establishment or a warehouse or distribution centre.”

Note: self-storage units are a type of storage premises and would be permitted with consent if the additional use of ‘storage premises’ is allowed.

The proposed additional use on Lot 2, DP 200208 is defined by the LEP 2013 as:

“**recreation facility (indoor)** means a building or place used predominantly for indoor recreation, whether or not operated for the purposes of gain, including a squash court, indoor swimming pool, gymnasium, table tennis centre, health studio, bowling alley, ice rink or any other building or place of a like character used for indoor recreation, but does not include an entertainment facility, a recreation facility (major) or a registered club.”

Environmental Planning and Assessment Act 1979

Under Part 3 of the EP&A Act, only the Minister or Council can initiate an amendment to a Local Environmental Plan. If Council resolves to proceed with the recommendation and adopt the Planning Proposal, it will be forwarded to the NSW Department of Planning and Environment for a gateway determination. This will include a request for the delegation of plan making functions.

Hunter Regional Plan 2036

Nelson Bay is identified as a ‘strategic centre’ in the Hunter Regional Plan, with the following priorities:

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

Whilst the site is not identified specifically in the Plan, the proposal would not be inconsistent with maintaining Nelson Bay as a hub for the Tomaree Peninsula because it will provide additional services and facilities in the locality. The proposal is similarly not inconsistent with maintaining the Nelson Bay town centre as the commercial and business centre on the peninsula, given the underlying zoning will remain residential and the additional permitted uses will be limited.

Port Stephens Planning Strategy 2011

The Port Stephens Planning Strategy (PSPS) provides a comprehensive planning strategy for the local government area. The PSPS identifies a number of key challenges and opportunities for Nelson Bay. The site is not specifically identified in



**ITEM 1 - ATTACHMENT 1 COUNCIL MINUTE 28 AUGUST 2018 PLANNING PROPOSAL 95A AND 97 STOCKTON STREET NELSON BAY.****MINUTES ORDINARY COUNCIL - 28 AUGUST 2018**

the PSPS, however the proposed additional permissible uses will enable the continuation of specific commercial activities on the site with limited impacts on the viability of the commercial land in Nelson Bay town centre, given the scale of the site and the limited uses that will be allowed.

Nelson Bay Town Centre and Foreshore Strategy 2012

The site is not within the boundary of the Nelson Bay Town Centre and Foreshore Strategy 2012, however given the commercial nature of the proposed additional permitted uses, the Strategy and the draft 'Progressing the Nelson Bay Town Centre and Foreshore Strategy: A revised implementation and delivery program (2017)' (Delivery Program) (exhibited from 21 February 2018 to 4 April 2018) have been considered. The site is less than 1km from the commercial core of the town centre, however it is considered the continuation of specific commercial activities on the site will have limited impacts on the viability of the commercial land in Nelson Bay town centre, given the scale of the site and the limited uses that will be allowed. This is not inconsistent with the aims and objectives of the 2012 Strategy and draft Delivery Program.

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

There are no significant environmental implications as a result of the Planning Proposal which concludes that the impacts related to the specific commercial activities can be addressed as part of any future development application.

There is also a positive social and economic impact identified through facilitating the sustainable use of the existing structures on the land and the provision of additional services in the neighbourhood.

**CONSULTATION**Internal

Consultation was undertaken with internal stakeholders including the Development Assessment and Compliance Unit. No major concerns were identified with the Planning Proposal. All associated impacts are considered able to be dealt with during the assessment stage of any future development applications.

External

Community consultation and consultation with Government agencies will be undertaken in accordance with the gateway determination.

**ITEM 1 - ATTACHMENT 1 COUNCIL MINUTE 28 AUGUST 2018 PLANNING PROPOSAL 95A AND 97 STOCKTON STREET NELSON BAY.**

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**OPTIONS**

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

**ATTACHMENTS**

- 1) Locality Plan 95A and 97 Stockton Street Nelson Bay.
- 2) Current Zoning Map 95A and 97 Stockton Street Nelson Bay.

**COUNCILLORS ROOM**

Nil.

**TABLED DOCUMENTS**

- 1) Planning Proposal 95A and 97 Stockton Street, Nelson Bay.

**ITEM 1 - ATTACHMENT 1      COUNCIL MINUTE 28 AUGUST 2018 PLANNING  
PROPOSAL 95A AND 97 STOCKTON STREET NELSON BAY.**

**ITEM 1 - ATTACHMENT 1      LOCALITY PLAN 95A AND 97 STOCKTON STREET**  
**NELSON BAY.**



# MINUTES ORDINARY COUNCIL - 11 SEPTEMBER 2018

## ITEM 1 - ATTACHMENT 1 COUNCIL MINUTE 28 AUGUST 2018 PLANNING PROPOSAL 95A AND 97 STOCKTON STREET NELSON BAY.

### MINUTES ORDINARY COUNCIL - 28 AUGUST 2018

#### ITEM 1 - ATTACHMENT 2 CURRENT ZONING MAP 95A AND 97 STOCKTON STREET NELSON BAY.



There being no further business the meeting closed at 7.13pm.