

Regional Director  
Department of Planning and Environment  
PO Box 1226  
Newcastle NSW 2300

Dear Monica,

**Re: Planning proposal to amend Schedule 1 of the Port Stephens Local Environmental Plan 2013 to permit storage premises and a recreation facility**

**Property: Lot 1, DP 200208 and Lot 2 DP 200208  
97 Stockton Street, Nelson Bay and 95A Stockton Street, Nelson Bay**

At its meeting held on 11 September 2018, Council resolved to:

- 1) *Adopt the Planning Proposal (dated 29 May 2018) 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.*
- 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.*

Council considered that unless appropriately regulated, the additional permitted uses could result in impacts on the amenity of surrounding land uses and on the local road network. This resulted in the resolution listed above and numbered 3.

It is noted that the Council resolution numbered 3 is inconsistent with Section 9.1 Direction 6.3 – Site Specific Provisions, in that the resolution seeks to impose requirements in addition to those already contained in the Port Stephens Local Environmental Plan 2013. The Direction allows for inconsistencies however, if they can be justified to be of a minor significance.

A review of a range of Local Environmental Plans has demonstrated a precedence of controls relating to additional permitted uses, which restrict development in line with Council's resolution and that have been gazetted since the issue of the Direction. This demonstrates that such inconsistencies can be determined to be of a minor significance for the purposes of the direction, and accordingly the Council resolution numbered 3 is an acceptable consideration for this planning proposal. The table below provides references to relevant examples.

Theme	Example
Operating Hours / Timeframe	<ul style="list-style-type: none"> <li>• <a href="#"><u>Clause 20, Schedule 1, Coffs Harbour Local Environmental Plan 2013</u></a></li> <li>• <a href="#"><u>Clause 17, Schedule 1, Lake Macquarie Local Environmental Plan 2014</u></a></li> <li>• <a href="#"><u>Clause 4, Schedule 1, Lismore Local Environmental Plan 2012</u></a></li> <li>• <a href="#"><u>Clause 1, Schedule 1, Orange Local Environmental Plan 2011</u></a></li> </ul>
Car Parking / Access	<ul style="list-style-type: none"> <li>• <a href="#"><u>Clause 21, Schedule 1, Camden Local Environmental Plan 2010</u></a></li> <li>• <a href="#"><u>Clause 17, Schedule 1, Campbelltown Local Environmental Plan 2015</u></a></li> <li>• <a href="#"><u>Clause 1, Schedule 1, Gosford Local Environmental Plan 2014</u></a></li> <li>• <a href="#"><u>Clause 5, Schedule 1, Eurobodalla Local Environmental Plan 2012</u></a></li> <li>• <a href="#"><u>Clause 8, Schedule 1, Shoalhaven Local Environmental Plan 2014</u></a></li> </ul>
Site Usage and considerations for later assessment of a development	<ul style="list-style-type: none"> <li>• <a href="#"><u>Clause 7, Schedule 1, Camden Local Environmental Plan 2010</u></a></li> <li>• <a href="#"><u>Clause 18, Schedule 1, Kogarah Local Environmental Plan 2012</u></a></li> <li>• <a href="#"><u>Clause 2, Schedule 1, Ku-ring-gai Local Environmental Plan (Local Centres) 2012</u></a></li> <li>• <a href="#"><u>Clause 1, Schedule 1, Orange Local Environmental Plan 2011</u></a></li> <li>• <a href="#"><u>Clause 1, Schedule 1, Temora Local Environmental Plan 2010</u></a></li> </ul>

Council is now seeking a gateway determination from the Department of Planning and Environment.

It is acknowledged that a gateway will likely be conditional on further investigation of appropriate development constraints that should reasonably be imposed on future development on the site, and justification that such represents an inconsistency of minor significance.

A copy of the Planning Proposal and Council's Report on the matter is enclosed.

Please contact me on the below should you require any further information on this matter.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'B. Gardiner', with a stylized flourish at the end.

Brett Gardiner  
**Senior Strategic Planner**

9 October 2018

Telephone enquiries  
(02) 4980 0213

Please quote file no: 58-2017-12-1