# ORDINARY COUNCIL – 23 AUGUST 2011

Cr Glenys Francis returned to the meeting at 6.10pm

## ITEM NO. 2

#### FILE NO: PSC2009-07013

# PLANNING PROPOSAL TO PERMIT A MEDICAL CENTRE AT 2 KEEL STREET, SALAMANDER BAY

# REPORT OF: BRUCE PETERSEN, MANAGER ENVIRONMENTAL AND DEVELOPMENT PLANNING

GROUP: SUSTAINABLE PLANNING

## **RECOMMENDATION IS THAT COUNCIL:**

- Resolve, subject to receipt of the relevant fee, to forward the Planning Proposal at Attachment 1 to amend the Port Stephens Local Environmental Plan 2000 under section 55 of the Environmental Planning and Assessment Act 1979 to permit with consent a medical centre at 2 Keel Street Salamander Bay (Lot 1 in DP 880861) via an enabling clause.
- 2) Resolve to charge 50% (\$2,000) of the original fee (\$4,000) for reconsideration of the Planning Proposal.

## COUNCIL COMMITTEE MEETING – 16 AUGUST 2011

Councillor Sally Dover Councillor John Nell That Council resolve, subject to receipt the relevant fee, to forward the Planni Proposal at Attachment 1 to amend the P Stephens Local Environmental Plan 20 under section 55 of the Environmen Planning and Assessment Act 1979 to per with consent a medical centre at 2 Ke Street Salamander Bay (Lot 1 in DP 88086 via an enabling clause.
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In accordance with Section 375A of the Local Government Act, a division is required for this item.

Those for the motion: Crs Bruce MacKenzie, Peter Kafer, Ken Jordan, Steve Tucker, Caroline De Lyall, Glenys Francis, John Nell, Sally Dover, Shirley O'Brien and Geoff Dingle.

Those against the motion: Crs Frank Ward.

# **ORDINARY COUNCIL – 23 AUGUST 2011**

## **ORDINARY COUNCIL MEETING – 23 AUGUST 2011**

Cr Peter Kafer left the meeting at 6.12pm prior to voting. Cr Peter Kafer returned to the meeting at 6.13pm prior to voting.

	ouncillor Ken Jordan	It was resolved that the Council Committee recommendation be adopted with payment of full fees being \$4,000 for the Planning Proposal.
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In accordance with the Section 375A, Local Government Act 1993, a division is required for this item.

Those for the Motion: Crs Ken Jordan, Bruce MacKenzie, Steve Tucker, Shirley O'Brien, John Nell and Bob Westbury.

Those against the Motion: Crs Peter Kafer, Glenys Francis, Caroline De Lyall, Geoff Dingle and Frank Ward.

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#### **RECOMMENDATION IS THAT COUNCIL:**

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- 2) Resolve to charge 50% (\$2,000) of the original fee (\$4,000) for reconsideration of the Planning Proposal.

#### **PROPOSAL DETAILS**

Subject Land	2 Keel Street Salamander Bay (Lot 101 in DP 880861)		
Owners	SK & SI Pty Ltd (submission by Environmental Planning		
	Services Pty Ltd)		
Current Zone	2(a) Residential (to be retained)		
Proposed Amendment	Permit with consent a medical centre as a site-specific permissible use		

## BACKGROUND

The purpose of this report is to reconsider a planning proposal to amend the *Port* Stephens Local Environmental Plan 2000 (the LEP) to permit with consent a medical centre on land zoned 2(a) Residential at 2 Keel Street Salamander Bay.

Council previously considered the planning proposal at its meeting on 9<sup>th</sup> February 2010 and did not support the recommendation, and instead resolved to:

- 1) Not proceed with the Planning Proposal to permit a medical centre at 2 Keel Street, Salamander Bay.
- 2) That the applicant be directed to operate in accordance with the Council approval "professional consulting rooms" and all the conditions that were attached to the approval.
- 3) That the applicant be advised that if they wish to build a Medical Centre as indicated in the business paper the applicant can acquire a suitable site in the Commercial zone area in accordance with the Council's Plan.

The existing premise was approved under the Port Stephens Local Environmental *Plan 1987* as "professional consulting rooms" by definition and is limited to three health care professionals and three associated employees (refer to DA 7-1998-60693).

For a "medical centre" to be permissible as requested on the subject land an amendment to the LEP is required.

Council has been requested by the applicant to reconsider the proposal to amend the LEP.

This report deals with whether it is appropriate to make a medical centre permissible on the subject land under the LEP. It does not seek to address compliance with the existing development consent nor assess the merits of any particular development application for the site, which is subject to a separate process.

If the LEP is amended to permit a medical centre on the subject land it will enable the applicant to lodge a development application for Council's consideration and determination. This report deals with whether the land use is appropriate and not the merits of the development which would be subject to a separate development assessment process.

#### The site and context

The site is located at the corner of Bagnalls Beach Road and Keel Street, Salamander Bay. To the north, east and south is residential development. Salamander Bay Shopping Centre and a variety of other businesses are located on the opposite side of Bagnalls Beach Road, on land zoned for commercial development.

Keel Street is residential in character and surrounding dwellings are predominantly single storey. The business operates from a building that has the appearance of a two storey dwelling.

The medical centre has previously provided the following advice concerning the operation of the business:

- 6 permanent employees and 1 casual;
- 4 permanent doctors and 1 part time; and
- Services include general medicine, pathology, childhood and adult immunisation, counselling, women's and men's health and aviation medicals. (Port Stephens Medical Centre, 14 January 2010)

The proximity of the site to a major commercial centre and Bagnalls Beach Road presents an opportunity to provide ongoing medical services with relatively easy access to public and private transport and commercial services.

Vehicle access is provided to the site by a single entry and exit located on Keel Street. No access is provided from Bagnalls Beach Road. As the site is located at the entrance to Keel Street there is little or no need for vehicles to travel beyond the medical centre along Keel Street.

The location of the site is shown in **Attachment 2 – Aerial Photograph**.

# FINANCIAL/RESOURCE IMPLICATIONS

The proponent paid a Stage 1 lodgement rezoning fee of \$4,000 in September 2009, when Council resolved not to proceed with a planning proposal. The applicant has now lodged a separate request for Council to reconsider its resolution of February 2010. At the same time the applicant has asked Council to reduce its fee as the proposal relates to the reconsideration of an earlier proposal and remains substantially the same. Under the current Fees and Charges Schedule 2011-2012 Stage 1 lodgement attracts a rezoning fee of \$21,000. The proponent has requested that Council consider reducing the fee to be more reflective of the amount of work associated with the reconsideration of the matter. This request has merit given that the planning proposal has not altered in any substantial way.

Under the circumstances of this particular proposal applying a \$21,000 fee is not commensurate with the amount of additional work required. It is therefore recommended a nominal fee of \$2,000 (half the original fee) be applied as a service fee under current Fees and Charges Schedule 2011-2012 for reconsideration of the proposal.

## LEGAL, POLICY AND RISK IMPLICATIONS

#### Strategic Planning for Medical Centres

Population growth and aging are important issues to consider and are discussed generally in the draft *Port Stephens Planning Strategy* (PSPS). The PSPS relevantly identifies that:

- Ageing of the population is a challenge,
- Port Stephens LGA has experienced continuing high population growth compared to the Hunter Statistical Division (annual growth rate 1.41% from 2001-2006) and a larger percentage of people aged over 60 years (22.9% compared to 21.2%),
- The Tomaree Peninsula is the second fastest growing Planning District (40% between 1996 and 2006), and
- Healthy communities are a NSW State Plan priority including: improving and maintaining access to quality healthcare in the face of increasing demand; improve survival rates and quality of life for people with potential fatal or chronic illness, promote healthy lifestyles; reduce potentially preventable hospital admissions; and improve outcomes in mental health.

There are other businesses throughout the Port Stephens local government area providing relatively small scale medical type services in the form of professional consulting rooms on sites similar to 2 Keel Street, Salamander Bay. That is, they are located on residential zoned land, on main transport routes, and are adjacent to commercial areas. Examples include the professional consulting rooms along Adelaide Street in Raymond Terrace. This demonstrates that in some instances such

sites service a demand for the provision of small scale medical services, and highlights a need to consider the broader merits of allowing small scale facilities. It is also particularly relevant given the indicative demand for medical services on the Tomaree Peninsula and in the Hunter Region generally.

#### State Environmental Planning Policy (Infrastructure) 2007

The proponent had intended to resolve the matter through the provisions of this SEPP, which permits a range of health services facilities (including medical centres) in a variety of zones, regardless of a prohibition in a council local environmental plan. A NSW Department of Planning review of the SEPP in 2010 recommended the inclusion of medical centres as a permissible use in the R2 Low Density Residential, the equivalent of the 2(a) Residential zone in the Port Stephens LEP 2000. However, the equivalent zone for this site R2 Low Density Residential does not allow medical centres. As a result the proponent cannot utilise the SEPP. The NSW Department of Planning has since provided written advice to a representative of Port Stephens Medical Centre encouraging them to seek reconsideration of the planning proposal by Council (Attachment 3).

#### Definitions

A "Medical centre" is defined under the LEP as "a building or place used for the purpose of providing professional health services (such as preventative care, diagnosis, medical or surgical treatment or counselling) to out-patients only".

"Professional consulting rooms" are defined under the Port Stephens Local Environmental Plan 1987 as "a room or number of rooms forming either the whole of or part, attached to or within the cartilage of a dwelling-house and used by not more than three legally qualified medical practitioners or by not more than three dentists within the meaning of the Dentists Act 1934, or by not more than three health care professionals, who practise therein the profession of medicine, dentistry or health care respectively, and if more than one, practise in partnership, and who employ not more than three employees in connection with that practice".

The important difference between the two definitions is that a medical centre is not limited in scale. Professional consulting rooms are deliberately smaller in scale and generally compatible with the residential character of the 2(a) Residential zone. As such, medical centres are not permissible within the 2(a) Residential zone and usually permissible within commercial zones.

## Amending the Port Stephens Local Environmental Plan 2000 - Enabling Clause

The most appropriate mechanism for permitting a medical centre on the subject land is a site-specific enabling clause. This will restrict commercial use of the site to a medical centre only and continue to prohibit other types of commercial use within the 2(a) Residential zone generally, which may have the potential for significantly greater adverse impacts on the residential amenity of an area.

#### SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Amending the LEP to permit a medical centre on the site will enable a development application to be submitted for a medical centre on the subject land within the 2(a) Residential zone. Any future proposal will need to demonstrate that the proposal meets the requirements of the Building Code of Australia and the matters for consideration under section 79C of the Environmental Planning and Assessment Act 1979.

## CONSULTATION

#### Development Assessment and Environmental Health Section

Any development application for a medical centre on the subject land will be assessed on merit and using the development controls for commercial premises i.e. car parking requirements.

#### Coordinator, Social Planning

Advice from the previous report to Council on this matter is that access to health services and facilities need to expand in line with population growth to ensure the health needs of the existing and future population are met.

#### OPTIONS

- Adopt the recommendation of this report and adopt the planning proposal at Attachment 1 to amend to the LEP and insert an enabling clause allowing a 'medical centre' on the subject land;
- 2) Reject the recommendation of this report and not adopt the planning proposal, and require the use to comply with the existing approval as a 'professional consulting room'.

## ATTACHMENTS

- 1) Planning Proposal Under separate cover;
- 2) Aerial Photograph;
- 3) Letter from the NSW Department of Planning 21<sup>st</sup> March 2011.

# COUNCILLORS ROOM

1) Planning Proposal.

# TABLED DOCUMENTS

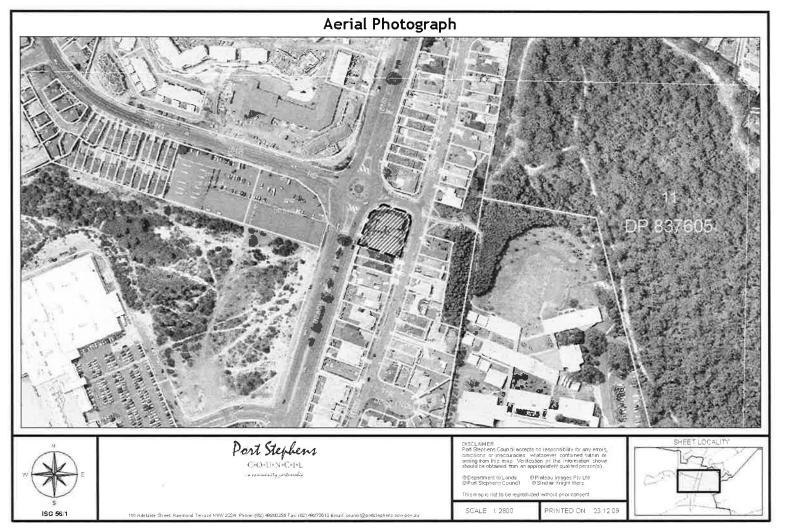
Nil.

# **ATTACHMENT 1**

# Planning Proposal

(Under Separate Cover)

# ATTACHMENT 2



PORT STEPHENS COUNCIL

#### ATTACHMENT 3

#### Letter - NSW Department Of Planning dated 21 March 2011



11/02838

Dear Mr Priestiey

Mr Andrew Priestley Andrew Priestley Associates

Level 2 88 George Street The Rocks NSW 2000

I refer to your letter to the Director General regarding 2 Keel Street, Salamander Bay The Director General has asked me to reply on his behalf.

In this case the Department of Planning accepts the Port Stephens Council's determination, under Clause 1.6 of SEPP (Exempt and Complying Development Codes), that the Standard Instrument R2 Low Density Residential Zone is equivalent to the Port Stephens LEP 2000 2(a) Residential "A" Zone, as being appropriate.

The Department appreciates the case that your clients have put forward about expansion of the site, however this would most appropriately be dealt with through a Planning Proposal to amend the Port Stephens LEP 2000, rather than by way of a site specific equivalent zone determination by the Director General.

I note that the Council has recently refused to support a Planning Proposal for amendment to the Port Stephens LEP to enable the proposed development. In this regard, I would encourage your clients to make further representations to the Council seeking reconsideration and an understanding of the reasons behind the Council's decision.

Should you have any questions m relation to this advice I have arranged for Mr Dylan Meade, Planning Officer at the Newcastle office of the Department of Planning to assist you. Dylan can be contacted on telephone number (02) 4904 2718

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Yours sincerely

Tom Gellibrand Deputy Director General Plan Making and Urban Renewal

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