

## Planning and Assessment

IRF19/6075

### Gateway determination report

<b>LGA</b>	Port Stephens
<b>PPA</b>	Port Stephens Council
<b>NAME</b>	Nelson Bay Town Centre
<b>NUMBER</b>	PP_2019_PORTS_001_00
<b>LEP TO BE AMENDED</b>	Port Stephens Local Environmental Plan 2013
<b>ADDRESS</b>	Land identified in the Nelson Bay Town Centre study area
<b>DESCRIPTION</b>	See Figure 1
<b>RECEIVED</b>	Date received 30 April 2019 Additional information received 4 July 2019, 10 December 2019
<b>FILE NO.</b>	IRF19/6075
<b>POLITICAL DONATION</b>	There are no donations or gifts to disclose and a political donation disclosure is not required
<b>LOBBYIST CODE OF CONDUCT</b>	There have been no meetings or communications with registered lobbyists with respect to this proposal.

## 1. INTRODUCTION

### 1.1 Description of planning proposal

The purpose of the planning proposal (**Attachments A–A15**) is to implement a new planning framework for the growth and development of Nelson Bay. The proposed amendments to the Port Stephens Local Environmental Plan (LEP) 2013 include:

- increasing the maximum height of buildings;
- including a floor space ratio control across the study area;
- including a clause for activated street frontages; and
- including a clause for minimum building street frontages to encourage the consolidation of lots.

Port Stephens Council has advised that the proposal is consistent with the Progressing the Nelson Bay Town Centre and Foreshore Strategy: A revised implementation and delivery program 2018 (**Attachment A1**) (known as the delivery program).

The planning proposal does not amend the zoning or permissible land uses in the study area.

## 1.2 Site description

The planning proposal applies to Nelson Bay Town Centre as shown in Figure 1 (below) and **Attachment A2**. This area is referred to as the 'study area' throughout this report and covers approximately 60ha.

The study area boundary originates from the Nelson Bay Town Centre & Foreshore Strategy (2012) (**Attachment A3**), which investigates the connection between the commercial centre, Apex Park and the foreshore area, resulting in the study area extending into the marina.

The eastern and western boundaries of the study area were generally guided by the B2 Local Centre-zoned area. However, the study area also extends into part of the R3 Medium Density Residential-zoned land to the east and west (Figure 4, page 5). The southern boundary of the site includes the Nelson Bay Bowling & Recreation Club and an adjoining development site.



Figure 1: The study area to which the proposal applies.

The topography of the study area has influenced the urban form and creates a natural amphitheatre 'bowl shape' centred around the central village precinct (Figure 2, below). There is a disconnect between the town centre and the foreshore due to the escarpment on Magnus and Thurlow streets.

The study area slopes down towards the foreshore, and the town centre lies in the foreground of a major vegetated hillside fringed by low ridges. The landscape and topography create view corridors towards the surrounding vegetated hills and waterfront. The local centre experiences some flooding impacts up to 10m AHD.

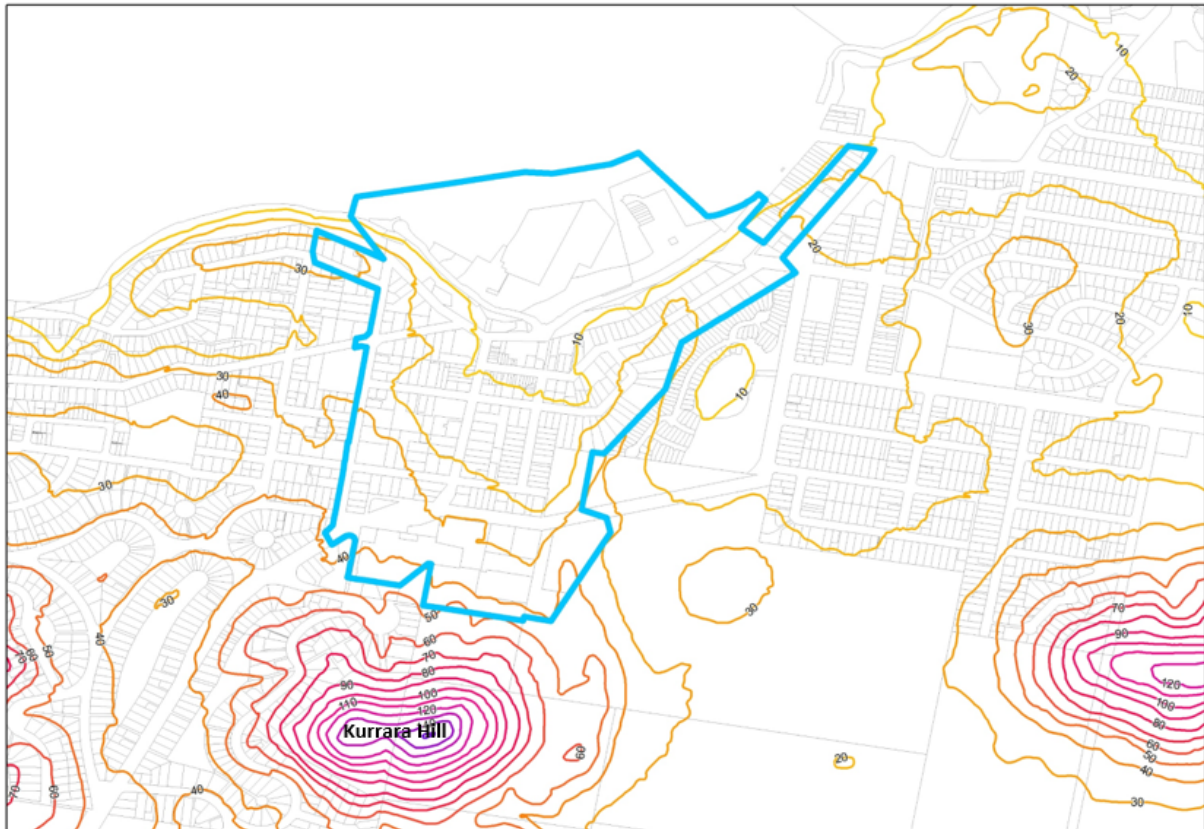


Figure 2: Topography of the town centre (10m contours).

The view corridors within the study area are outlined in the planning proposal. Stockton Street, a key north-south street in the village centre, provides the primary view corridor north to D'Albora Marina and the port and south to Kurrara Hill. Yacaaba Street, parallel to Stockton Street, has only a partial view corridor as it is terminated by Magnus Street in the north. There are also key views from the marina across to Gan Gan Hill, which rely on visual access across the central village edge precinct of Church Street.

The view corridor from Government Road provides the first glimpse of the port as you enter the town centre by road. Views at the intersection of Stockton Street and Victoria Parade provide important links between the town centre and the foreshore and open up to the most advantageous vista of Port Stephens from the town centre public domain.



To assist in describing the current land uses within the study area and the assessment of the proposal, the Department has labelled the various character areas in Figure 3 (below). These areas are partly based on the areas identified in the Port Stephens Development Control Plan (DCP) 2014 and have been adapted for this report to align with the proposed LEP amendments.

The study area is dominated by the central village, with Stockton and Yacaaba streets forming the main north-south axis. Boutique shops, cafes and restaurants are centred around Magnus Street, with large-formal retail buildings located on the corner of Stockton and Donald streets. The central village includes several undeveloped commercial buildings or buildings that have reached the end of their life cycle. There are also several at-grade car parks in the central village.

The central village is flanked either side to the east and west by predominantly residential areas containing residential flat buildings and a variety of dwelling types, optimising the view corridors. There are also several large vacant sites in the residential areas.

The north of the study areas includes Apex Park, the marina and the foreshore, which represents the key tourist destination, as well as recreation areas for the town centre.

To the south of the central village, further up the hill, is the bowling club, golf course and a development site. This area forms the highest point in the study area.



Figure 3: Character areas within study area.

The study area was expanded through the delivery program to include the two ridgeline areas of Thurlow Street (west) and Magnus Street (east). Both of these new areas contain buildings up to 3-4 storeys.

### 1.3 Existing planning controls

The existing zoning of the study area is shown in Figure 4 (below). The village centre is zoned B2 Local Centre and is flanked by R3 Medium Density Residential-zoned land to the west, south and east.

The vegetated escarpment on Teramby Road is zoned E3 Environmental Management, and Apex Park is zoned RE1 Public Recreation. Port Stephens is zoned W2 Recreational Waterways.

There are two small areas on the E3 Environmental Management escarpment area: a parcel of SP1 Special Activities land, which is Hunter Water Corporation facilities, and RE2 Private Recreation-zoned land on the escarpment area, which contains a private development.

At the southern end of the town, the bowling club is zoned RE1 Public Recreation. Either side of the entry to the bowling club are two RE2 Private Recreation parcels of land including land owned by both Council and Crown lands. Adjacent to the bowling club, the SP2 Infrastructure zone applies to Nelson Bay Cemetery and the Stockton Street entry to Nelson Bay is a classified road.

There is additional R3-zoned land outside the study area to the west of Church Street, which extends midblock to Nelson Street. The planning proposal does not explain why this land is not included in the study area.

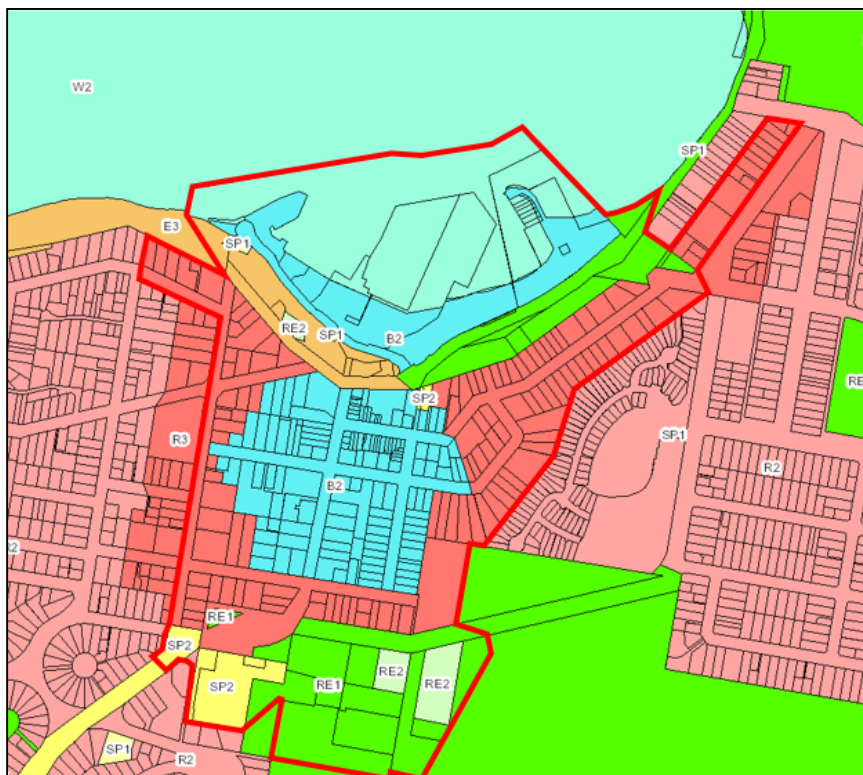


Figure 4: Existing zoning map.

The B2 Local Centre zone has height limits of 15m and 8m, and the R3 Medium Density Residential zone has a height limit of 15m (Figure 5, below and **Attachment A5**). The other zones do not include height controls. There is no floor space ratio (FSR) control for any of the zones within the study area. Currently, the remainder of the built form controls are contained in the Port Stephens DCP.



Figure 5: Existing height of building map.

## 1.4 Surrounding area

Nelson Bay is the strategic centre for the Tomaree Peninsula (Figure 6, below). The peninsula consists of several smaller centres including Anna Bay, Boat Harbour, Bobs Farm, Corlette, Shoal Bay, Fingal Bay and Salamander Bay. Nelson Bay is 33km east of Newcastle Airport, 41km from Raymond Terrace and 59km from Newcastle.

Nelson Bay is nestled on the shores of Port Stephens, a large natural harbour that contains many protected beaches and is part of the Port Stephens Great Lakes Marine Park. The surrounding area also has several popular beaches including Box Beach, Zenith Beach, One Mile Beach and Birubi Beach.

Much of the non-urban area surrounding Nelson Bay is covered by Tomaree National Park, of which the vegetated peaks and ridgelines act as a backdrop to the town centre. The town centre is surrounded by three high points: Gan Gan Hill; Kurrara Hill (behind the town centre); and Glovers Hill. The iconic vegetated peaks of the port are Yacaaba and Tomaree headlands, which are synonymous with the area.

Immediately adjoining the study area to the west is Nelson Street, which is a low-density residential neighbourhood with one-storey and two-storey dwellings. Along the foreshore, Victoria Parade accommodates a mix of multistorey holiday units and residential flat buildings. Many of these buildings are four storeys and step back into the escarpment. Above Victoria Parade are additional multistorey units on Magnus Street.



Further east along Shoal Bay Road is a well-established residential area. Most of this area around Montevideo Parade is characterised by low-density residential development. North of Shoal Bay Road towards Nelson Head is a large residential neighbourhood centred around Gowrie Avenue. The street and subdivision pattern are comprised of discreet cul-de-sacs servicing narrow allotments. The urban form is characterised by tall, narrow 3-4-storey buildings unless lots have been amalgamated, which has allowed five-storey developments. The predominant building type in this neighbourhood remains single-storey dwellings among pockets of four-storey units.



Figure 6: Surrounding area.

## 1.5 Summary of recommendation

It is recommended that the planning proposal proceed subject to conditions.

The planning proposal seeks to amend the planning controls in the study area to implement a new planning framework for the growth and development of Nelson Bay. Nelson Bay is a strategic centre and has been subject to economic stagnation over the past few years. The planning proposal seeks to address this by amending built form controls to create opportunities for increased density and facilitate economic development.

The Department recognises the strategic importance of Nelson Bay within the Port Stephens LGA and the region more broadly, and the proposal seeks to give effect to the regional and local plans (i.e. the delivery program and the Nelson Bay Town Centre and Foreshore Strategy).

The proposal implements the intent of the Hunter Regional Plan by providing infill development in Nelson Bay. The proposal does not demonstrate consistency with several directions in the regional plan, and Gateway conditions are recommended that require the proposal to be updated prior to exhibition.

The proposal is consistent with the Port Stephens Planning Strategy 2011, which identifies a projected increase in demand for housing and retail floor space in Nelson

Bay and recognises that the current controls cannot provide the required capacity to meet future demand.

The proposal also requires further urban design analysis to justify how the proposed amendments were determined and to demonstrate how the proposed height, FSR, frontage and DCP controls will develop appropriate bulk and scale in the town centre considering factors such as existing development, topography, surrounding ridgelines, existing fine-grain and character, potential overshadowing, and the relationship with the public domain. Council has already undertaken urban design work on the study area and the analysis can consolidate and build on this work.

## **2. PROPOSAL**

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### **2.1 Objectives or intended outcomes**

The objective of the planning proposal is to amend the development controls in the study area to:

- amend built form controls to create opportunities for increased density and achieve high-quality built form;
- facilitate economic growth in Nelson Bay that contributes to local long-term and self-sufficient employment;
- provide for housing choice and necessary support services;
- implement the actions in the Hunter Regional Plan 2036, which seeks to grow the local economy and tourism industry; and
- create a walkable, liveable town centre in Nelson Bay.

The objectives of the planning proposal are clear and appropriate.

### **2.2 Explanation of provisions**

The proposal includes the following amendments to the Port Stephens LEP 2013:

- height of buildings:
  - amend the height of building controls for the B2, R3, RE1 and RE2 zones (Table 1);
- floor space ratio:
  - introduce a new model clause and supporting map for the study area;
- active street frontages:
  - introduce a new model clause and supporting map for the study area; and
- minimum street frontage widths:
  - amend the precinct area map and the definition of 'precinct area' and introduce a new clause.

Currently the only built form control in the LEP for the study area is the height of buildings control. All other proposed controls in this proposal are new LEP controls for the study area.

The planning proposal does not provide an accurate description of where the proposed amendments will apply to, and the maps in the proposal also require updating. Subsequently, the Department has provided a summary in Table 1 describing the parts of the study area the proposed amendments apply to in relation to the character area map (Figure 3, page 4).



Table 1: Summary of proposed LEP amendments

		Proposed amendments			
Description of area (Refer to Figure 3)	Zone	Height (m)	FSR	Active street frontage	Minimum street frontage
Thurlow Street	R3 Medium Density Residential	17.5	2:1	-	yes
Foreshore escarpment	E2 Environmental Conservation	-	-	-	yes
	RE2 Private Recreation	10.5	2:1	-	yes
	SP1 Special Activities	-	-	-	yes
Teramby Road	B2 Local Centre	10.5 14	2:1	-	yes
Foreshore precinct	RE1 Public Recreation	8	-	-	yes
Central village edge (east and west)	R3 Medium Density Residential	28	3:1	-	yes
	B2 Local Centre	28	3:1	yes	yes
Central village	B2 Local Centre	17.5	2.5:1	yes	yes
Magnus Street	R3 Medium Density Residential	17.5	2.5:1	-	yes
Bowling Club	RE1 Public Recreation	42	3:1	-	yes
	RE2 Private Recreation	42	3:1	-	yes

Council has advised that the DCP will be updated for the study area and will contain more detailed built form controls for the town centre. As a condition of the Gateway determination, the Department has recommended that the draft DCP be publicly exhibited concurrently with the proposal.

## 2.3 Mapping

The planning proposal includes amendments to the following LEP maps:

- height of building map; and
- precinct area map.

The proposal includes the creation of the following new LEP maps:

- floor space ratio map; and
- active street frontages map.

The proposed maps (Figures 7–10 and **Attachment A4**) as presented in the proposal will require updating prior to exhibition as they do not provide an outline of the proposed study area.



Figure 7: Proposed FSR map.



Figure 8: Proposed height of building map.

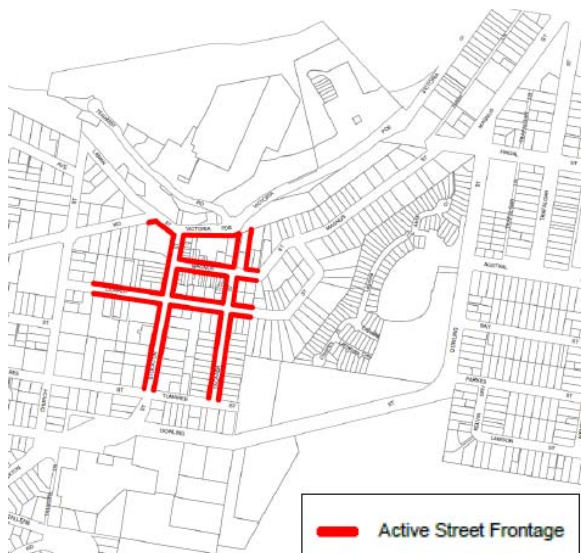


Figure 9: Proposed active street frontage map.



Figure 10: Proposed precincts area map.

### 3. NEED FOR THE PLANNING PROPOSAL

The planning proposal is the result of various strategic planning studies undertaken by Council over many years and seeks to implement actions identified in Council's delivery program.

The need for the proposal has arisen due to economic stagnation in Nelson Bay. Council advised that the residential unit market in Nelson Bay has declined since 2006 and studies have indicated that the current height limits are unfeasible for redevelopment.

The proposal seeks to address this by amending built form controls to create opportunities for increased density and infill development to facilitate economic development. Nelson Bay remains the civic and tourist hub of the Tomaree Peninsula and is a key strategic centre in the Port Stephens LGA.

Nelson Bay has the highest concentration of short-term rental accommodation and tourist facilities on the Tomaree Peninsula. Due to the dominance of tourist accommodation, Nelson Bay experiences significant seasonal population variations.

The proposal seeks to deliver a town centre with high amenity that will attract new permanent residents, jobs and tourists.

The planning proposal seeks to meet the broad intent of the Hunter Regional Plan 2036 for Nelson Bay by investigating high-density development that enhances the tourism, recreational and residential appeal of the town centre. However, there are several inconsistencies with some of the Hunter Regional Plan actions that are discussed in section 4.2 of this report.

Further discussion regarding the need for the proposed LEP amendments is provided below:

#### Floor space ratio (FSR)

Council is proposing to introduce FSR controls to the study area to support the growth of the town centre. The proposed FSR controls will ensure that any future development is compatible with the desired character and built form and minimise the effects of bulk and scale. There are currently no FSR controls applying to the study area.

The proposed FSR controls range from 2:1 to 3:1; however, the proposal does not indicate how the FSRs were determined and why certain FSRs are proposed for areas within the study area (Figure 7, page 10).

The proposal indicates that the FSR controls are consistent with the delivery program, which recommends lower densities in the central village and higher densities on the village edge. The proposed FSR controls, coupled with the proposed DCP controls such as setbacks, will consider the fine-grain character of the town centre. However, further detail is required in the proposal to demonstrate this.

Subsequently, the Department recommends a Gateway condition that Council prepare an urban design analysis that provides detail regarding how the proposed FSR controls were determined and an analysis demonstrating how the proposed FSR, height, setback and DCP controls would create a high-quality built form outcome. The planning proposal would be required to be updated prior to exhibition.

Over the past 20 years, Council has undertaken significant urban design work in Nelson Bay and may be able to build on this work. However, the analysis would need to be presented in a consolidated, standalone format that specifically relates to the proposed amendments in this planning proposal.

#### Height of buildings

Council is proposing to amend the heights for the B2, R3, RE1 and RE2 zones (Figure 8, page 10). Some of the proposed height increases are minor, but others are more significant.

The proposed increase in height is in response to several approved development applications in the past few years in Nelson Bay that have exceeded the height controls. Variations to the heights have ranged from 38% to 113% and have been subject to community interest. Council has also identified that building height is the biggest constraint on development in Nelson Bay.

The variations clearly demonstrate the need for Council to strategically review the existing height controls and identify where increases may be appropriate through detailed urban design analysis considering matters such as topography, vegetated ridgelines, local character, existing development, transition to surrounding land uses and view-sharing.



As described in Table 1, the heights range from 8m in the RE1 zone to 42m in the RE2 zone. However, similar to the proposed FSR controls, the proposal does not provide an analysis of how the heights were determined and why certain heights are proposed for certain areas. For instance, it is unclear why a north-south strip along Yacaaba Street is higher than the surrounding land uses and why some of the largest increases in height (i.e. around the bowling club site) have been placed on a higher topography. Further justification needs to be provided in the proposal. As identified, it is recommended that Council update the proposal to include an urban design analysis for the study area.

#### Active street frontages

The planning proposal seeks to introduce provisions on some B2 Local Centre-zoned streets in the town centre to activate the town centre and become more pedestrian friendly (Figure 9, page 10). The concept of introducing an active street frontage clause is supported and requires ground-floor uses to be either business or retail uses. It seeks to avoid blank walls or streets with poor passive surveillance.

The active street frontage controls are contained in the Port Stephens DCP and would be removed from the DCP, so they do not duplicate the proposed LEP controls.

The planning proposal does not provide details on what the clause would entail. A Gateway condition has been recommended that requires Council to provide details on the wording of the clause.

#### Minimum building street frontage

The proposal seeks to introduce a minimum building street frontage requirement by introducing a new clause and amending the precinct area LEP map (Figure 10, page 10). The LEP definition of 'precinct area' will also require amendment to include the study area.

The clause is proposed to apply to the entire study area and requires that new development has a minimum primary street frontage of 15m. Council identified that the need for the clause was to encourage the consolidation of lots to assist in facilitating development, and this is supported by the Department. The clause also seeks to address issues such as bulk and scale and privacy issues.

The implementation of the clause can be complex, so there needs to be flexibility to ensure development in the town centre is not unintentionally prohibited. A Gateway condition is recommended for Council to clarify the proposed wording of the clause, including what is defined as new development and what development types it applies to.

#### Design excellence

Council's delivery program recommends establishing an external design panel, and the planning proposal states that the proposed DCP will introduce design excellence controls. Council has since advised that an Urban Design Review Panel to provide advice and recommendations on individual development applications was established in January 2020.

The Department notes that there is no proposed LEP amendment to require a design excellence process. The Department supports the inclusion of a design excellence clause in the LEP as it will ensure there is a requirement to ensure best practice design occurs in Nelson Bay, identified as a strategic centre.

A Gateway condition is recommended requesting Council provide clarification on how design excellence will be implemented and if an LEP amendment is proposed. It

is also recommended that Council consult with the NSW Government Architect on this matter.

#### Minimum lot size

The planning proposal does not propose an amendment to the minimum lot size controls. The B2 Local Centre zone does not contain a minimum lot size control (Figure 11, below) but relies on DCP controls to manage density.

The R3 Medium Density Residential zone has a 500m<sup>2</sup> minimum lot size. This minimum lot size control will not affect the yield or density of future residential flat buildings in the R3 zone. Clause 4.1 Minimum subdivision lot size requires that the size of any lot resulting from subdivision should not be less than the size shown on the minimum lot size map. However, subclause (4) stipulates that this requirement does not apply to strata subdivision.

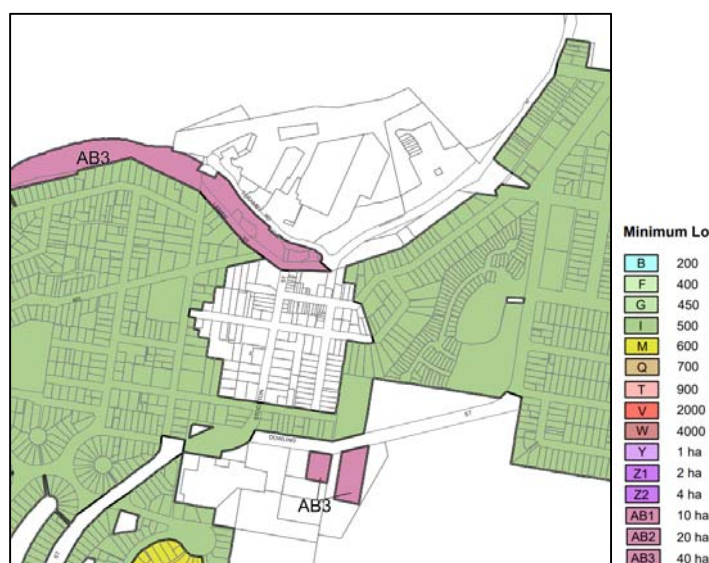


Figure 11: Current minimum lot size map

## **4. STRATEGIC ASSESSMENT**

### **4.1 State**

The proposal is consistent with state policies except the following:

#### Better Placed (2017)

Better Placed (2017) is the NSW Government Architect's design policy for the built environment and is a high-level reference to guide strategic frameworks and master planning. It forms part of the terms of reference to support design excellence processes.

The renewal of Nelson Bay Town Centre has progressed considerably since 2012 and has been informed by significant community engagement over the years. Better Placed states that design processes are iterative, not linear, which suggests solutions arrived at in the planning proposal require evaluation before delivery.

The proposed LEP amendments require evaluation and testing, and some of the amendments may require further investigation and evidence through a design review process (i.e. urban design analysis). Ensuring the Better Placed design objectives are appropriately considered will ensure the town centre will be healthy, responsive, integrated, equitable and resilient.

The Department notes that the proposed DCP is being updated to include design standard controls that reflect the seven objectives of Better Placed. A range of development controls set out how the objectives can be achieved. The Department supports Council updating the suite of documents to ensure consistency with Better Placed.

As part of the Gateway condition to undertake an urban design analysis, it is recommended that Council undertakes a consistency assessment against Better Placed and consult with the NSW Government Architect.

## 4.2 Regional

### Hunter Regional Plan 2036

The Hunter Regional Plan 2036 applies to the study area, and specific directions and actions are addressed in the planning proposal as described in Table 2.

Table 2: Planning proposal's consistency with the Hunter Regional Plan

Action	Consistency
<b>Direction 6 – Grow the economy of MidCoast and Port Stephens</b>	
6.3 Enable economic diversity and new tourism opportunities that focus on reducing the impacts of the seasonal nature of tourism and its effect on local economies.	The planning proposal is consistent with this action as it will encourage economic development through an increased population. The potential increased permanent residential population may assist in managing the impacts during the low season.
6.5 Plan for and provide infrastructure and facilities that support the ageing population.	The planning proposal is consistent with this action as it will enable more opportunities for seniors housing development by making sites more viable in the town centre and associated infrastructure to support the existing and future populations.
<b>Direction 20 – Revitalise existing communities</b>	
20.1 Accelerate urban revitalisation by directing social infrastructure where there is growth.	<p>The proposal will help to facilitate the revitalisation of the Nelson Bay town centre. However, the planning proposal does not provide estimated population, dwelling and job numbers.</p> <p>To understand what social infrastructure is required (such as health, education, transport, open space and community facility upgrades), the Department believes that estimated population, dwelling and job numbers should be provided in the planning proposal. The planning proposal does not provide details on what social infrastructure may be required.</p> <p>Council has advised that it has adopted a <i>Local Infrastructure Contributions Plan 2020</i> in December 2019 which included a detailed infrastructure assessment across the LGA. The infrastructure assessment relied on growth projections based on Council's adopted strategies including the delivery program. The adopted contributions plan includes a range of social infrastructure upgrades for Nelson Bay, however these are not detailed in the planning proposal.</p> <p>To address this inconsistency, a Gateway condition is recommended that requires Council to update the planning proposal to describe how social infrastructure requirements have been considered what local upgrades are underway or may be required to support the proposed growth in the study area.</p>



Action	Consistency
<b>Direction 21 – Create a compact settlement</b>	
21.1 Promote development that respects the landscape attributes and the character of the metropolitan areas, towns and villages.	<p>The proposal states the planning controls respond to the underlying topography of the town centre and will define the desired character of public spaces of the foreshore and streets.</p> <p>As identified in section 3 of this report, the Department believes the proposal does not provide sufficient detail on how the proposed development controls were determined and therefore the proposal is inconsistent with this action. To address this inconsistency, the Department requires Council to undertake an urban design analysis that includes consideration of the existing and future desired local character.</p>
21.4 Create a well-planned, functional and compact settlement pattern that responds to settlement planning principles and does not encroach on sensitive land uses, including land subject to hazards, on drinking water catchments or on areas with high environmental values.	The proposal applies to the existing town centre and comprises infill development and does not extend the existing development footprint. Environmental constraints have been addressed as part of the section 9.1 Directions and will also be addressed at the development application stage. The proposal is consistent with this action.
21.6 Provide greater housing choice by delivering diverse housing, lot types and sizes, including small-lot housing in infill and greenfield locations.	The proposal will not amend existing zones or land uses and therefore does not allow greater housing diversity. However, the proposed amendments will likely make sites more viable within the study area and encourage infill development, likely resulting in housing diversity already permitted in the existing zone. The proposal is consistent with this action.
21.7 Promote new housing opportunities in urban areas to maximise the use of existing infrastructure.	<p>The proposal encourages infill development in the Nelson Bay town centre that seeks to maximise existing infrastructure.</p> <p>Council's delivery program identifies several infrastructure works that would support the proposed infill development. Priorities identified in the delivery program include public domain works, transport network upgrades and active transport upgrades. The proposal is consistent with this action.</p>
<b>Direction 23 – Grow centres and renewal corridors</b>	
23.1 Concentrate growth in strategic centres, local centres and urban renewal corridors to support economic and population growth and a mix of uses.	Nelson Bay is identified as a strategic centre in the Hunter Regional Plan and the proposal is consistent with this action.
23.2 Develop precinct plans for centres to take an integrated approach to transport, open space, urban form and liveable neighbourhoods, and investigate the capacity of centres to accommodate additional housing supply and diversity without compromising employment growth.	<p>Council advises that the Nelson Bay Strategy, the Delivery Program and the Public Domain Plan constitute a precinct planning approach to Nelson Bay as required by this action. In addition, the 2017 traffic and parking study seeks to provide an integrated approval to transport and land use.</p> <p>The Department supports Council's approach to precinct planning for Nelson Bay but requires the planning proposal to be updated to provide details such as an urban design analysis.</p> <p>The proposal does not fully investigate the capacity of the town centre to accommodate the proposed growth and therefore Gateway conditions have been recommended, including updating the proposal to address how both social infrastructure and transport constraints and potential upgrades have been considered.</p> <p>See comments regarding transport analysis under Section 9.1 Direction 3.4 Integrated Land Use and Transport.</p>

Action	Consistency
<b>Local government narratives</b>	
Maintain Nelson Bay as one of the primary tourist centres for the region and a hub for the Tomaree Peninsula.	The planning proposal is consistent with this action and will continue to facilitate Nelson Bay as a primary tourist centre. Council relies on its delivery program, primarily through public domain improvements, to continue to attract residents and tourists.
Maintain retail and professional services for the surrounding communities.	The planning proposal does not change the existing zoning and retains the existing B2 Local Centre zone.  The proposal is consistent with this action, and with the introduction of the active street frontage control, which requires ground-floor uses to be commercial or retail, would encourage expansion of these uses.
Investigate opportunities for high-density development that maintains and enhances the tourist, recreational and residential appeal of the centre.	The planning proposal seeks to include high-density development in Nelson Bay and proposes measures that will revitalise the town centre. The proposal is consistent with this action but should be updated to provide an urban design analysis.

### 4.3 Local

#### Port Stephens Planning Strategy 2011

The strategy identifies a projected increase in demand for housing and commercial/retail floor space in Nelson Bay by 2031. To meet this demand, it will be necessary to intensify residential development in the town centre.

The strategy indicates that current controls cannot provide the required capacity to meet future demand and recommends the redevelopment of existing at-grade car parks will provide additional housing and commercial/retail supply and contribute more positively to the streetscape.

The objectives of the proposal to create opportunities for increased density, achieve high-quality built form and facilitate economic growth are consistent with the strategy.

The Department has not endorsed this strategy.

#### Nelson Bay Town Centre and Foreshore Strategy

The delivery program (see below) replaced the actions contained in the 2012 Nelson Bay Town Centre and Foreshore Strategy.

#### Progressing the Nelson Bay Town Centre and Foreshore Strategy: A revised delivery and implementation program 2018 (delivery program)

The planning proposal has been directly informed by the actions of the delivery program and therefore the planning proposal is consistent.

The delivery program seeks to understand why limited private investment has not occurred in in Nelson Bay Town Centre since the inception of the Nelson Bay Strategy in 2012 and to provide guidance on the necessary steps to improve the economic and social outlook for Nelson Bay.

### 4.4 Section 9.1 Ministerial Directions

The planning proposal is consistent with the section 9.1 Directions except for the following where consistency has not been demonstrated or where further explanation is required.

### Direction 1.1 Business and Industrial Zones

The planning proposal is consistent with Direction 1.1 as it does not reduce the total potential floor space area for employment uses in business zones 4(c) by making residential development more permissible. The residential land uses (i.e. residential flat buildings) are already permitted in the B2 Local Centre zone and the intention is that commercial and retail uses will be required on ground-floor areas with the introduction of an active street frontages clause.

### Direction 2.2 Coastal Management

This direction applies and requires the proposal to include provisions that are consistent with the objects of the *Coastal Management Act 2016*, the NSW Coastal Management Manual and Toolkit, NSW Coastal Design Guidelines and relevant Coastal Management Program. The proposal does not provide sufficient detail to demonstrate consistency with the above documents. The proposal does not address the proposed increase floorspace and potential residents within the coastal zone to mitigate future risks from coastal hazards including the proposal's likely reliance on emergency responses.

It is noted however, that the proposal is consistent with 4(d) of this direction as Council is preparing a Coastal Management Program which is currently subject to community consultation and is expected to be finalised in December 2021. The Coastal Management Program applies to the study area. It is recommended that a summary of the draft Coastal Management Program is included in the proposal.

Of particular relevance to the proposal is the NSW Coastal Design Guidelines which provide guidance on the desired future character of areas and settlement patterns to ensure sensitively designed coastal settlements. The guideline includes considerations such as heights up to four storeys in town centres (Nelson Bay is considered a town centre) and that heights should be subject to place-specific urban design studies. The proposal does not demonstrate how the Guidelines have been addressed and is considered inconsistent with this direction. It is recommended that planning proposal is updated to demonstrate consistency with this direction, including addressing the requirements of the NSW Coastal Design Guidelines before consistency can be determined.

### Direction 3.1 Residential Zones

The planning proposal is consistent with the requirements of clauses (4) and (5) of this Direction as it seeks to broaden the choice of building types with an increase in height and FSR and will make sites within the study area more viable. The proposal will make more efficient use of existing infrastructure and services and will not reduce the permissible residential density of land.

The planning proposal achieves these requirements by encouraging an efficient use of land in an appropriate location (i.e. infill development) that is adequately serviced.

### Direction 3.4 Integrating Land Use and Transport

The planning proposal is generally consistent with the aims, objectives and principles of improving transport choice. An attachment to the proposal, the 2017 Nelson Bay Traffic and Parking Study (**Attachment A10**), provides strategies to manage car parking, road network management, and public and active transport.



However, the 2017 study does not provide a specific assessment of the proposed increase in dwellings and jobs on the existing traffic and transport network directly as a result of planning proposed. The area is highly car dependent, and the public transport network is not extensive, so it is essential to understand the potential impacts.

Council advised that a number of transport, traffic and parking improvements have been undertaken or are proposed including Council's draft Works Program which recommends further works in the study area. Council are focusing efforts on improving traffic and transport. It is recommended that the proposal is updated to outline how traffic and transport has been considered and what upgrades are proposed to support the proposed development.

A Gateway condition is recommended that the proposal be updated to address the impact of the proposed development on the capacity of the traffic and transport network and identify if upgrades are required in consultation with Transport for NSW. Following the update of the proposal, consistency with this Direction may then be determined.

#### Direction 4.1 Acid Sulfate Soils

The planning proposal is inconsistent with this Direction as the study area contains classes 1, 2, 3 and 5 acid sulfate soils (Figure 12, next page). Under clause (6) of this Direction, the planning proposal must not propose an intensification of land uses unless the relevant planning authority has considered an acid sulfate soil study. The proposal intensifies land uses by increased height and FSR: however, Council does not intend to undertake a study and therefore the proposal is inconsistent.

However, given the LEP contains acid sulfate soil provisions, it is considered that a study is unnecessary and the matter can be resolved at the development application stage. It is considered that the proposal's inconsistency with this Direction is of minor significance. The Secretary's agreement to the inconsistency is required.



Figure 12: Acid sulfate soils map.

#### Direction 4.3 Flood Prone Land

This Direction applies because there is a proposed height of building increase in part of the study area identified as 'high flood hazard fringe' (Figure 13, below). The proposal contains provisions that apply to flood planning areas that will permit an increase of development on the land.

The proposed increase in height in the affected area from 8m to 10.5m and 14m and introducing an FSR is considered a significant increase.

The inconsistency with this Direction is considered minor as the proposal will not result in any increase to development footprint or flood water displacement. The Secretary's agreement to the inconsistency is required.

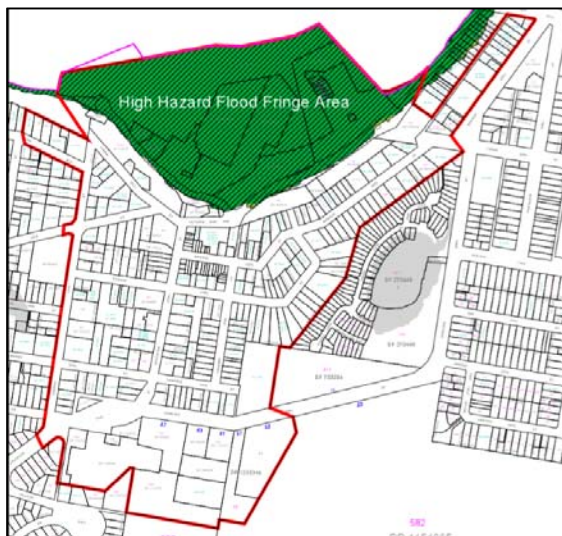


Figure 13: High hazard flood fringe.

#### Direction 4.4 Planning for Bushfire Protection

The planning proposal affects land mapped as bushfire prone and therefore this Direction applies. Consultation with the NSW Rural Fire Service will need to occur before consistency with this Direction can be determined.

#### Direction 5.10 Implementation of Regional Plans

The Hunter Regional Plan 2036 applies to the study area. There is some inconsistency with Directions 20 and 21 of the Hunter Regional Plan and Gateway conditions are recommended to address these matters. It is considered that the proposal's inconsistency with Direction 5.10 has not been justified.

#### Direction 6.2 Reserving Land for Public Purposes

The planning proposal is consistent with Direction 6.2 (4), which states:

*A planning proposal must not create, alter or reduce existing zonings or reservations of land for public purposes without the approval of the relevant public authority and the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General).*

The proposal does not alter the zoning or reservation for public-land however, does alter provisions applying to RE1 Public Recreation and RE2 Private Recreation land owned by a public authority. These sites are used for a variety of uses including

bowling club, hotel and outdoor recreation. This includes introducing height and FSR controls from 0m to 42m and an FSR of 3:1 to land owned by either Council or Crown Land (managed by Council).

Part of the Council-owned land is classified 'community' land under the *Local Government Act 1993* and Council advises that the reclassification of this land to from 'community' to 'operational' has not commenced. In addition, the RE2 Private Recreation zoned land is Crown Land and permits similar uses as the adjoining RE1 land including hotel or motel accommodation. Council advised the Department that future use of this land will be considered through a separate reclassification process, concurrently with a review of the existing Plan of Management.

The Department believes that the amendment to development controls to land classified as 'community' land is not sufficiently addressed in the planning proposal. It is recommended that proposed amendment to planning controls on land classified as 'community' land should be detailed in the planning proposal included providing details of the Plan of Management for this site. It is also recommended that Crown Land be consulted as part of the agency consultation.

Despite part of these lands being owned by a public authority, the proposal is consistent with this Direction as it does not change or alter any zone or reservation of public land.

#### **4.5 State environmental planning policies (SEPPs)**

##### **SEPP No 65 – Design Quality of Residential Apartment Development and the Apartment Design Guide**

Council provided an assessment of SEPP 65 and the Apartment Design Guide (ADG) in the proposal. Residential flat buildings are assessed based on the criteria in SEPP 65 and the ADG.

Council maintains that the visual impact of built form in height transition areas require assessment. The delivery program recommends that this matter be addressed through individual development applications via the Urban Design Review Panel established in January 2020.

The ADG is also used in conjunction with SEPP 65 as a tool to support strategic planning processes such as this planning proposal, where controls are proposed to be amended.

The ADG recommends the inclusion of FSR controls to ensure development aligns with the optimum capacity and desired density. The ADG also advocates the use of building envelopes when testing proposed development controls in renewal areas, such as Nelson Bay.

The ADG indicates that building height controls help to define the proportion and scale of streets and public spaces and has a relationship to the physical and visual amenity of both the public and private realms. Cross sections showing existing and proposed heights and indicative setbacks in strategic locations around the town centre will assist Council to illustrate its vision for the future built form.

The ADG also provides recommendations for amending heights in renewal areas, including the consideration of transitions between zones to ensure that changes in topography are accommodated. The proposed heights need to be achievable within



the desired building envelope. As the town centre is relatively small, it is considered that representative sites within town centres could be tested as part of the urban design analysis. A Gateway condition is recommended requiring Council to prepare an urban design analysis.

SEPP 65 requires all DCPs to be consistent with the design guidance in Parts 3 and 4 of the ADG, which includes matters such as privacy, solar access, circulation, apartment size and building dimensions, and private open space. Council has advised that the existing DCP addresses several of these criteria and that Council is proposing to update the DCP further to align with this planning proposal.

#### SEPP (Coastal Management) 2018

Council indicates that given the planning proposal relates to an existing coastal urban area, then it is unlikely to result in an increase in coastal risk hazard. The proposal does not result in a change to existing land uses.

The aim of this SEPP is to establish a framework for land use planning to guide decision-making in the coastal zone. Most of Nelson Bay Town Centre is affected by the coastal environmental area, and approximately midway up Donald Street is affected by the coastal use area (Figures 14 and 15, below). The SEPP seeks to guide development assessment as it applies to development consent and does not apply to amending LEPs.



Figure 14: Coastal environmental area.



Figure 15: Coastal use area map (red line).

#### SEPP No 44 Koala Habitat Protection

Port Stephens Comprehensive Koala Plan of Management applies for the purpose of implementing SEPP 44. The proposed LEP amendments do not apply to 'preferred koala habitat', but some areas of 'supplementary koala habitat' do not contain vegetation. The proposal is consistent with SEPP 44.

## **5. SITE-SPECIFIC ASSESSMENT**

### **5.1 Social**

Council advises that the planning proposal will provide positive social impacts by revitalising the town centre through new development and creating new employment

opportunities. The revitalisation also has the potential to attract new visitors to Nelson Bay. There are positive benefits to locating more residents and jobs within an existing strategic centre.

However, as previously identified in this report, the planning proposal does not provide estimated population, dwelling or job numbers or details on what social infrastructure upgrades are required to support the proposed growth. Implications on social infrastructure cannot be determined and a Gateway condition is recommended requiring the planning proposal to be updated. The existing infrastructure may have capacity and be adequate and this needs to be demonstrated.

## 5.2 Environmental

The proposal identifies that the site is subject to a range of environmental constraints and they are discussed in section 4 of this report. Further consultation with the relevant agencies is required before environmental impacts can be fully evaluated. However, as the proposal does not change the existing zoning and is within a developed centre, the environmental impacts are considered to be minor.

There are several local heritage items within Apex Park and Nelson Bay Cemetery. The proposal will not amend the heritage protection of these items and is unlikely to impact on these items.

## 5.3 Economic

The intent of the planning proposal is to balance minimising impacts, bulk and scale with economic feasibility and provide a high-quality built form that will enhance the liveability of the public domain for residents and tourists. Council asserts that changing the planning controls will encourage investment in the study area and the increased population will become more resilient to seasonal variations and sustain new commercial opportunities.

Emphasis is placed on economic feasibility in determining the proposed planning controls. The proposal asserts that without private investment, the town centre will not improve the public realm and reach a critical mass. The feasibility review undertaken by HillPDA on behalf of Council in 2016 has influenced the proposed planning controls (**Attachment A6**).

The feasibility review investigated five test sites and compared them against testing carried out 12 months earlier. The conclusions are summarised in Table 3, indicating only certain heights and FSRs were viable on the test sites.

Table 3: Feasibility of planning controls

Height	FSR	Site cover	FSR	Site cover
3 storeys	2.5:1	83% Not viable	3:1	100% Not viable
5 storeys	2.5:1	50% Not viable	3:1	60% Not viable
8 storeys	2.5:1	33% Viable	3:1	38% Viable

Certain assumptions were made for the test sites, including underground parking construction and ground-floor retail for only two sites. The determining factor for developer viability is an 18% profit margin, which makes three-storey and five-storey buildings unviable in most instances in Nelson Bay, according to the feasibility review. The location of the sites within the study area has a significant impact on viability (i.e. within the town centre, water views).

The feasibility review indicated that some larger or amalgamated sites may not be viable for certain types of development.

The planning proposal recognises that the visitor economy will benefit from an improved public domain, which will encourage people to spend more time in public spaces.

Health care is the largest provider of jobs and is expected to grow with the forecast increase in the ageing population. Many private health services are situated around the town centre rather than Tomaree Hospital, which is 1.7km from the town centre. It is recommended that Council investigate the relationship between health services across the wider area to understand any potential opportunities for the revitalised town centre.

In summary, the economic analysis has informed the proposed planning controls and demonstrated that the proposed controls are economically viable.

#### **5.4 Infrastructure**

Nelson Bay is serviced by water, wastewater, electricity and telecommunications networks. Population increases as a result of the planning proposal may require the expansion of capacity for these services.

Council advised that it will consult with service providers to determine if there is adequate capacity within the networks to service the proposed growth. Consultation with Ausgrid and Hunter Water should occur to confirm capacity.

In terms of impacts on the traffic and transport network, as previously identified in this report, a Gateway condition has been recommended to update the proposal to address the impact of the proposed development on the capacity of the traffic and transport system and identify if upgrades are required. Consultation with Transport for NSW is also required.

The planning proposal does not provide details on Council's recently adopted local contributions plan. It is recommended that Council update the proposal to indicate how any infrastructure upgrades as a result of the planning proposal would be funded.

#### **5.5 Urban design**

##### Visual impact

The Nelson Bay Public Domain Plan (**Attachment A12**) and Nelson Bay Strategy 2012 provide a detailed analysis of scenic amenity and visual character, including view corridors. While the public domain plan provides a comprehensive analysis of the public domain, the planning proposal does not provide visual impact analysis of the proposed built form.

Analysis is required from view-sensitive receptors such as the adjoining residential areas and the public domain. The visual analysis should establish the magnitude of change to understand the level of compatibility of the proposed planning controls with the surrounding area. The visual impact analysis should propose mitigation measures to avoid or reduce impacts where required.



A visual impact analysis should be included as part of the required urban design analysis.

#### Solar access

The planning proposal states that adequate solar access will be provided in the study area as there is sufficient variation to building height and FSR controls. The planning proposal does not provide any analysis to support this and shadow diagrams are not provided.

Testing the proposed built form controls on selected sites should be developed considering sunlight and daylight access, orientation and overshadowing to ensure the controls can allow for adequate daylight and solar access to apartments, common open space, key streets, adjoining properties and the public domain. Similarly, the planning proposal does not include details on the potential overshadowing impact of the proposed controls on public spaces.

An assessment of solar access requirements at a precinct level, including shadow diagrams, should be included as part of the required urban design analysis.

#### Local character

Nelson Bay Strategy 2012 provides an analysis of the existing character of the town centre. However, the planning proposal does not provide an examination of the future desired character given the proposed planning controls.

Details of the future desired character of the town centre in accordance with the Local Character and Place Guideline should be included in the urban design analysis.

## **6. CONSULTATION**

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### **6.1 Community**

Council has allocated two months for public exhibition. A minimum 28-day exhibition period is appropriate for the planning proposal given the likely community interest.

Given the extent of consultation undertaken by Council to date, it can be difficult to understand what consultation activities have previously occurred and how they have informed the planning proposal. Subsequently, the Department recommends that Council prepare a summary document of consultation to date and how all the various Council plans and policies relate to this planning proposal. A Gateway condition has been recommended to this effect.

### **6.2 Agencies**

Council has consulted with Crown Lands and the NSW Police Force as part of the delivery program and acknowledges that further consultation is required with agencies and service providers. Consultation is required with the following agencies:

- Crown Lands (public owned land);
- Ausgrid (electricity servicing capacity);
- Hunter Water (water servicing capacity);
- NSW Rural Fire Services (bushfire);
- Transport for NSW (public transport and access); and
- Government Architect NSW (design excellence).

## **7. TIME FRAME**

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Council has proposed a 10-month time frame for completing the LEP. It is recommended the planning proposal be given an 18-month time frame given the updates required and the significance of the proposal.

## **8. LOCAL PLAN-MAKING AUTHORITY**

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Council has not sought authorisation to progress this planning proposal using plan-making delegation. Given the autonomy Council has applied to the revitalisation of Nelson Bay to date, Council should be authorised as the local plan-making authority.

Council would still need to seek the Secretary's approval for the section 9.1 Directions where consistency has not yet been determined.

## **9. CONCLUSION**

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The planning proposal seeks to amend the planning controls in the study area to implement a new planning framework for the growth and development of Nelson Bay. The proposal includes amendments to height, FSR, activated street frontages and minimum building frontage clauses in the LEP.

Nelson Bay is a strategic centre and has been subject to economic stagnation over the past few years. The proposal seeks to address this by amending built form controls to create opportunities for increased density and facilitate economic development. The Department recognises the strategic importance of Nelson Bay within the Port Stephens LGA and the region more broadly, and the proposal seeks to give effect to regional and local plans (i.e. the delivery program and the Nelson Bay Strategy). The revitalisation of the study area has been subject to significant community consultation over the years.

The proposal implements the intent of the Hunter Regional Plan by providing infill development in Nelson Bay. The proposal does not demonstrate consistency with several directions in the regional plan, and Gateway conditions are recommended that require the proposal to be updated prior to exhibition.

The proposal also requires further urban design analysis to justify how the proposed amendments were determined and to demonstrate how the proposed height, FSR, frontage and DCP controls will develop appropriate bulk and scale in the town centre considering factors such as topography, surrounding ridgelines, existing fine-grain and character, overshadowing and the relationship with the public domain. Council has already undertaken urban design work on the study area and the analysis can consolidate and build on this work.

It is recommended that the proposal proceed subject to conditions.

## **10. RECOMMENDATION**

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It is recommended that the delegate of the Secretary:

1. agree that any inconsistencies with section 9.1 Directions 4.1 Acid Sulfate Soils and 4.3 Flood Prone Land are minor or justified; and
2. note that inconsistencies with section 9.1 Directions 2.2 Coastal Management, 3.4 Integrated Land Use and Transport, 4.4 Planning for Bushfire Protection and 5.10 Implementation of Regional Plans are unresolved and will require justification.

It is recommended that the delegate of the Minister determine that the planning proposal should proceed subject to the following conditions:

1. Council is to update the planning proposal with the following information and forward it to the Department for review prior to exhibition:

(a) an urban design analysis for the study area that:

- details how the proposed LEP controls were determined and demonstrate how the controls would create a high-quality built form including testing of the proposed building envelopes in selected strategic locations (in accordance with the Apartment Design Guide);
- demonstrates how the proposed DCP controls complement the proposed amendments;
- includes a visual impact analysis of the proposed built form;
- demonstrates how the proposed heights provide appropriate transitions including consideration of topography, surrounding ridgelines, local character, view sharing and surrounding land uses;
- demonstrates that solar access requirements can be achieved within the study area with inclusion of shadow diagrams, particularly for public domain areas;
- outlines the desired future character of the study area in accordance with the *Local Character and Place Guideline* (DPIE, 2019);
- includes a consistency assessment against *Better Placed* (DPIE, 2017); and
- updates the DCP to correspond with this urban design analysis;

*Note: It is acknowledged that Council have undertaken significant urban design work and the analysis can build on this work. However, it should be presented in a consolidated document that specifically relates to the proposed amendments in this proposal.*

(b) update the proposal to describe how social infrastructure requirements have been considered and be informed by estimated population, dwelling and job numbers;

(c) update the proposal to describe how traffic and transport in the study area has been considered and detail what upgrades are required (if any) to support the proposed growth;


(d) clarify the following clauses:

- active street frontages – provide detail on the proposed wording of the clause;
- minimum building street frontages – clarify what is defined as new development and what type of development it would apply to;
- design excellence – clarify if a design excellence clause will be included in the LEP;

(e) update to proposal to address consistency with the Coastal Design Guidelines and section 9.1 Direction 2.2 – Coastal Management;



- (f) update the proposal to provide further details on the amendment to controls for land classified as 'community' land; and
- (g) update the proposed LEP maps to include a legend and outline of the study area.
2. Council is to prepare a summary document (plain English guide) of community consultation to date within the study area and clarify how the planning proposal relates to the various documents prepared by Council. This should be exhibited concurrently with the planning proposal.
  3. The proposed DCP provisions for the study area should be exhibited concurrently with the planning proposal.
  4. The planning proposal should be made available for community consultation for a minimum of 28 days.
  5. Consultation is required with the following public authorities:
    - Ausgrid;
    - Hunter Water;
    - NSW Rural Fire Service;
    - Crown Land
    - Transport for NSW; and
    - Government Architect NSW.
  6. The time frame for completing the LEP is to be 18 months from the date of the Gateway determination.
  7. Given the nature of the planning proposal, Council should be authorised as the local plan-making authority



**Caitlin Elliott**  
**Team Leader,**  
**Central Coast and Hunter Region**



**Greg Sullivan**  
**Director,**  
**Central Coast and Hunter Region**

Contact Officer: Paul Maher  
Planning Officer  
Central Coast and Hunter  
Phone: 02 4904 2719