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Gateway determination report – PP-2021-6676

Former Port Kembla Public School Site Planning Proposal -
Military Road, Port Kembla

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Contents

1	Planning proposal	1
1.1	Overview	1
1.2	Objectives of planning proposal	1
1.3	Explanation of provisions	1
1.4	Site description and surrounding area	2
1.5	Mapping	4
1.6	Background	5
2	Need for the planning proposal	8
3	Strategic assessment	8
3.1	Regional Plan	8
3.2	Local	13
3.3	Section 9.1 Ministerial Directions	15
3.4	State environmental planning policies (SEPPs)	18
4	Site-specific assessment	19
4.1	Environmental	19
4.2	Social and economic	21
4.3	Infrastructure	22
5	Consultation	22
5.1	Community	22
5.2	Agencies	22
6	Timeframe	22
7	Local plan-making authority	23
8	Assessment summary	23
9	Recommendation	23

Table 1 Key reports and plans supporting the proposal

Key relevant reports and plans
Council's Planning Proposal
Council Report and attachments (10 May 2021)
Council Minutes (10 May 2021)
Wollongong Local Planning Panel Advice (19 March 2021)
Applicant's Initial Planning Proposal (July 2020) and supporting studies/appendices

1 Planning proposal

1.1 Overview

Table 2 Planning proposal details

LGA	LGA name
PPA	Wollongong City Council
NAME	Former Port Kembla Public School Site Planning Proposal (estimated 85 homes)
NUMBER	PP-2021-6676
LEP TO BE AMENDED	Wollongong Local Environmental Plan 2009
ADDRESS	Lot 1 DP 811699, Military Road, Port Kembla
DESCRIPTION	Lot 1 DP 811699
RECEIVED	4/11/2021
FILE NO.	IRF21/4606
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal

1.2 Objectives of planning proposal

The planning proposal contains objectives and intended outcomes that adequately explain the intent of the proposal.

The primary objective of the planning proposal is to enable medium-density residential development on the former Port Kembla Public School site.

1.3 Explanation of provisions

The planning proposal seeks to amend the Wollongong LEP 2009 per the changes below:

Table 3 Current and proposed controls

Control	Current	Proposed
Zone	B4 Mixed Use	R3 Medium Density Residential RE2 Private Recreation

Maximum height of the building	9m	11m for R3 zone, excluding Marne and Reservoir Street frontages which would remain at 9m
Floor space ratio	0.5:1	No change
Minimum lot size	1,999m ²	No change
Clause 7.17 Former Port Kembla Public School	Permits tourist and visitor accommodation on the site	Delete Clause 7.17
Clause 7.18 Design Excellence in the Wollongong City Centre and at Key Sites	None	Identify as Key Site under Clause 7.18 requiring proposed development to exhibit design excellence
Schedule 5 – Environmental heritage and Heritage Map	Identified as the 'Site of Port Kembla Primary School'	Amend to 'Site of former Port Kembla Public School'
Affordable housing	None	Require at least 5% Affordable Rental Housing
Approximate number of dwellings (assuming 120m ² internal floor space)	46	85

Council has also separately required a Heritage Interpretation Management Strategy for the site. The planning proposal states feedback has been given to the applicant regarding improving the Heritage Interpretation Management Strategy (prepared by John Oultram Heritage & Design), and this is being undertaken by the proponent.

The planning proposal contains an explanation of provisions that adequately explains how the objectives of the proposal will be achieved.

1.4 Site description and surrounding area

The planning proposal relates the former Port Kembla Public School site which located immediately south of the port of Port Kembla in the suburb of Port Kembla. Port Kembla is approximately 8km south of the Wollongong city centre in the Wollongong local government area (**Figure 1**).



Figure 1: Site context (Source: Nearmap)

The former Port Kembla Public School site is located on Military Road, Port Kembla (Lot 1 DP 811699).

The site is approximately 2.195ha and trapezoidal in shape. It is bounded by Military Road, Marne Street, Reservoir Street and Electrolytic Street. The site generally slopes upwards from north to south such that most of the site overlooks the port of Port Kembla and surrounding industrial lands.

The site was formerly used as the Port Kembla Public School until 1999. In 2013, the school building was destroyed by fire and subsequently demolished. The site is listed as a heritage item and is vacant, with only the foundations of the main school building remaining.

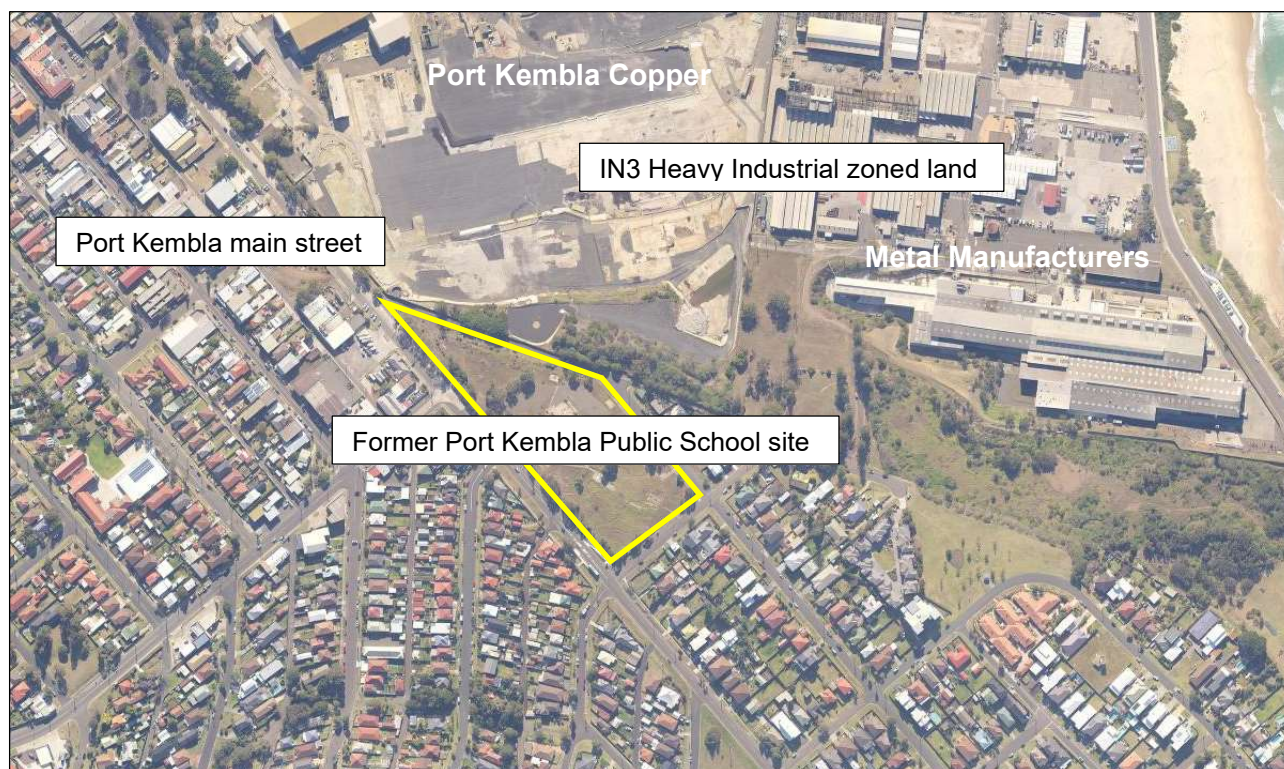


Figure 1: Subject site (Source: DPIE Spatial Viewer)

1.5 Mapping

The planning proposal includes mapping (Zoning, Height of Buildings and Keys Sites/Design Excellence), showing the proposed changes to the Wollongong LEP 2009 maps, which are suitable for community consultation.

Existing and proposed zoning and building height maps are shown in **Figure 3** and **Figure 4** below.

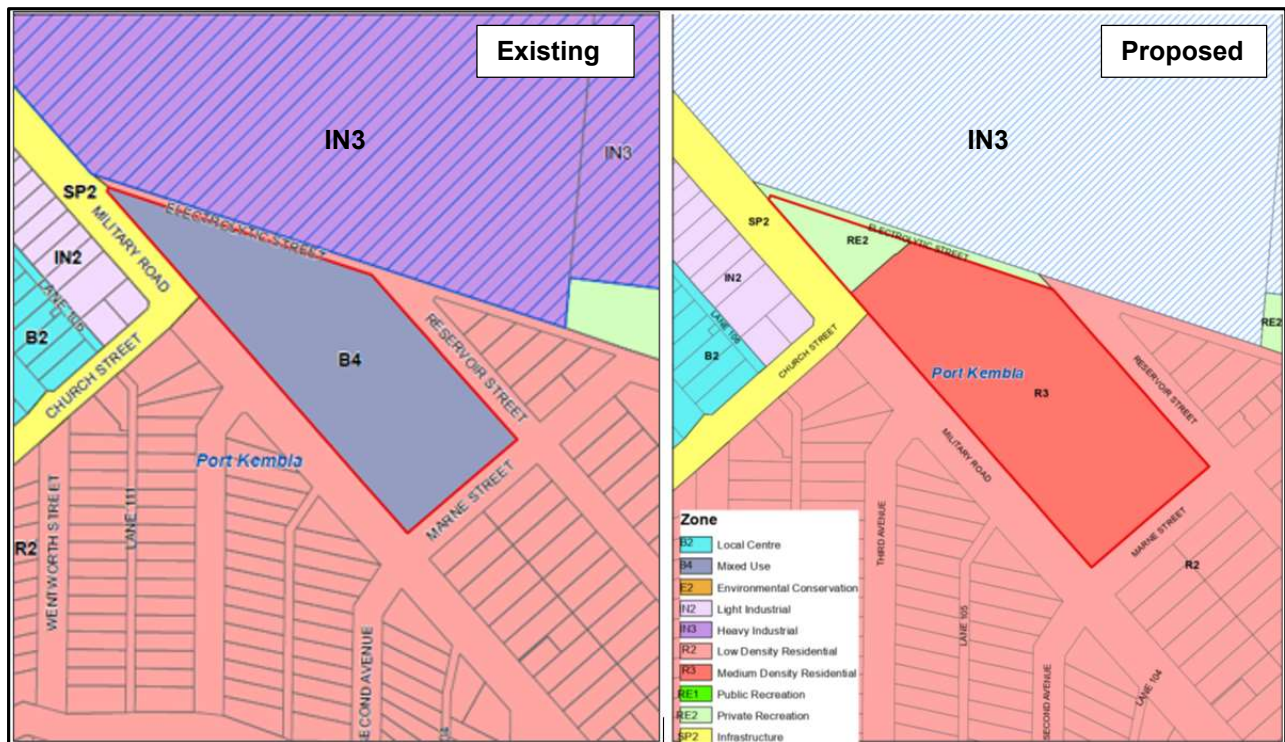


Figure 3: Zoning Maps (Source: DPIE Spatial Viewer)

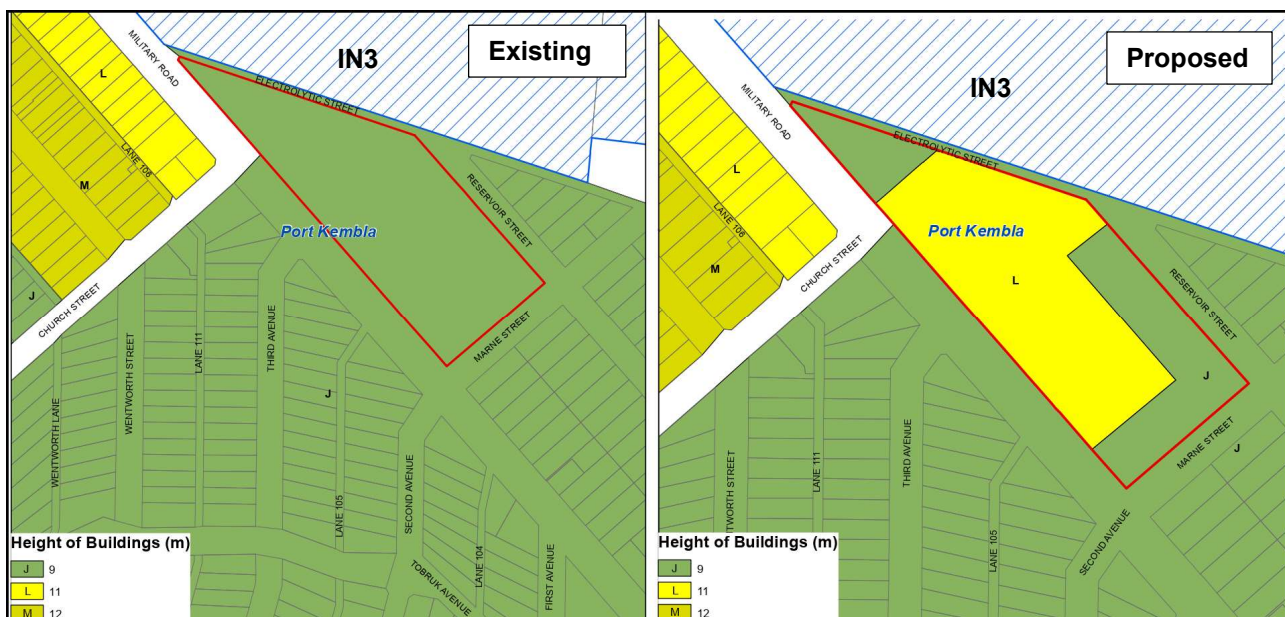


Figure 4: Height of Buildings Maps (Source: Council Report)

1.6 Background

Site History

In 2000, due to health concerns, the Port Kembla Public School relocated to Gloucester Boulevard and the site was subsequently purchased by Port Kembla Copper (PKC). The site was rezoned from 2(b) Medium Density Residential to 3(a) General Business by Wollongong Local Environmental Plan 1990 (Amendment No. 184) and the original school buildings were heritage listed.

In 2005, some of the former school buildings were demolished.

In 2010, the site was rezoned to B4 Mixed Use, as part of the introduction of Wollongong Local Environmental Plan 2009 (WLEP).

In January 2013, the school building was destroyed by fire and subsequently demolished. The site remains vacant, with only the foundations of the main school building remaining.

In 2016, the former school site was sold to the current owner.

Previous Planning Proposal (2018)

In 2018, Council lodged a proposal to rezone the former Port Kembla Public School site from B4 Mixed Use to part R3 Medium Density Residential and part RE2 Private Recreation and rezone another site (Gallipoli Park) from R2 Low Density Residential to RE1 Public Recreation.

On 21 November 2018, the Department issued a Gateway determination (PP_2018_WOLLG_008_00) supporting the rezoning of Gallipoli Park but amending the planning proposal to remove all aspects relating to the former Port Kembla Public School site.

This was because the proposed level of intensification of residential use on the former Port Kembla Public School site was considered likely to result in increased/unacceptable land-use conflicts with adjacent heavy industrial uses within the port that could:

- restrict the existing and likely future uses of adjacent industrial/port land, adversely impact on the efficient functioning of the port and hinder the potential to grow the capacity of the port of Port Kembla as an international trade gateway, therefore being inconsistent with Directions 1.2 and 1.4 and Action 1.2.1 of the Illawarra-Shoalhaven Regional Plan (and section 9.1 Ministerial Direction 5.10);
- hinder the efficient development, redevelopment, and protection of land at Port Kembla for port purposes, therefore being inconsistent with the aims of State Environmental Planning Policy (Three Ports) 2013; and
- restrict the use of adjacent industrial lands for employment uses, therefore being inconsistent with the objectives of section 9.1 Ministerial Direction 1.1 Business and Industrial Zones.

The Department is of the view Port Kembla should be protected from encroachment by incompatible land uses which could sterilise or limit the potential use of state significant port land.

It was considered that rezoning the former school site to intensify residential development (at the proposed scale) was premature noting uncertainty about the potential restrictions it may place on the future use of heavy industrial land within the port of Port Kembla. At the time, the Department had engaged a consultant to complete the Port Kembla Land Use Conflict Management Study seeking to look at ways to reduce land use conflicts around the port and heavy industrial lands into the future. This study was prepared in accordance with Action 1.2.1 of the now superseded Illawarra Shoalhaven Regional Plan (2015).

Local Planning Panel Recommendation

In July 2020, a revised draft planning proposal was submitted to Council to address concerns raised by the Department.

The revised draft planning proposal proposed medium density development of the site, FSRs ranging from 0.5:1, 0.75:1 and 0.8:1 across the site and maximum building heights of 9m and 17m.

Council noted the revised concept plan provided with the revised draft planning proposal suggested a development comprising two storey buildings and 5 storey buildings, with an option for an aged care facility in place of some apartments.

In summary, the height and density of the revised proposal had increased relative to the proposal unsupported by the Department in 2018.

The revised draft planning proposal was reviewed by the Wollongong Local Planning Panel (the Panel) in 2021.

The Panel determined that the revised draft planning proposal had strategic merit to remove the necessity for ground floor retail that currently exists for development within the B4 Mixed Use zone (Clause 7.13 of the WLEP).

The Panel deemed there was no strategic merit for significant FSR or height increases. The Panel was concerned about the elevation of the site, and the likely noise and light spill from the port adjacent, and that increasing the residential density significantly was not desirable.

The Panel noted that should the requirement of ground floor commercial be removed, this would automatically allow for more residential development within the existing 0.5:1 FSR that applies to the site. The Panel recommended the planning proposal be amended to:

- retain the B4 Mixed Use zone;
- remove the Clause 7.13 of the WLEP requiring ground floor retail;
- allow a maximum building height of 11m; and
- retain the existing maximum 0.5:1 site FSR.

The Panel also considered the planning Proposal should also identify the site as a 'Key site' under Clause 7.18 of the WLEP which requires a Development Control Plan (DCP)/or concept plan to ensure that all appropriate mitigation measures are integrated into the redevelopment of the site, and any built form outcomes are compatible with the surrounding low density residential character.

The Panel agreed with the open space allocation at the northern end of the site.

It is noted that while the Panel recommended the retention of the B4 Mixed Use zone in the southern part of the site, Council considered it should be rezoned to R3 Medium Density Residential to better reflect the future use of the site for residential uses.

Additionally, Council noted Port Kembla has an oversupply of land zoned for commercial/retail uses and does not need any additional retail floor space. As such, the subject planning proposal proposes an R3 zone on the majority of the site.

A comparison of the existing, unsupported 2018 proposal, revised Panel proposal (2020) and submitted proposed (2021) development controls, as well as approximate dwelling yield is provided in **Table 4** below.

Table 4 Existing, unsupported, and current proposed development controls

Control	Existing	Unsupported proposal (2018)	Revised proposal to Panel (2020)	Current Proposal (2021)
Zone	B4 Mixed Use (Clause 7.13 of the WLEP requires ground floor retail)	R3 Medium Density Residential RE2 Private Recreation	R3 Medium Density Residential RE2 Private Recreation	R3 Medium Density Residential RE2 Private Recreation
Maximum height of the building	9m	11m	17m 9m on Marne and Reservoir Streets	11m 9m on Marne and Reservoir Streets

Control	Existing	Unsupported proposal (2018)	Revised proposal to Panel (2020)	Current Proposal (2021)
Floor space ratio	0.5:1	0.75:1	0:5, 0:75:1 and 0.8:1	0.5:1
Minimum lot size	1,999m ²	499m ²	449m ² 200m ² on Marne and Reservoir Streets	No change
Maximum approximate number of dwellings achievable (assuming 120m ² floor space per dwelling)	46 noting ground floor cannot be used for residential	137 (approximately triple)	More than unsupported 2018 proposal	85 (less than double or an increase of 39 dwellings)

2 Need for the planning proposal

The planning proposal is needed to:

- achieve the intended outcomes and enable medium-density residential development on the former Port Kembla Public School site;
- facilitate a mix of dwelling types that encourage social mix and provide housing choice to meet the needs of the community; and
- facilitate growth in Port Kembla in line with Council's adopted Port Kembla 2505 Revitalisation Plan.

Council acknowledges the current B4 Mixed Use zoning of the former school site enables shop-top housing, multi-dwelling housing and residential flat buildings. However, Council notes that clause 7.13 of the Wollongong LEP 2009 – Ground floor development on land within business zones – requires ground floor retail across the site. Council has advised that additional retail floor space is not required in Port Kembla due to an existing oversupply and vacancies.

Council considers the site is not suitable for inclusion within the adjacent industrial area and residential use remains the best possible outcome for the site.

The Department notes there are limited (if any) vacant sites of this size with proximity to the town centre of Port Kembla that could be suitable for medium density residential development.

The Department concurs with Council there is an oversupply of retail floor space in Port Kembla and considers a planning proposal of this nature is the most efficient and appropriate way to achieve the intended outcomes.

3 Strategic assessment

3.1 Regional Plan

The following table provides an assessment of the planning proposal against key relevant aspects of the Illawarra Shoalhaven Regional Plan 2041.

Table 5 Regional Plan assessment

Regional Plan Objectives	Justification
<p>Objective 3 – Grow the Port of Port Kembla as an international trade hub</p> <p>Strategy 3.1 - Protect Port Kembla as an international gateway for freight and logistics.</p>	<p>Not Inconsistent - The Port of Port Kembla directly and indirectly supports more than 3,500 jobs and contributes \$543 million to the regional economy each year. The Port is identified as being of State significance to the economy through State Environmental Planning Policy (Three Ports) 2013.</p> <p>The Port has key existing roles and functions (e.g. in manufacturing, import/exports, bulk commodities etc), is emerging as an international trade hub and green hydrogen hub. The NSW Ports' 30 Year Master Plan Navigating the Future also identifies Port Kembla as a home to NSW's second container port to cater for future trade volumes as Port Botany reaches capacity.</p> <p>The Regional Plan recognises that demand for residential development around the Port is increasing and could conflict with current and future heavy industry uses due to noise, air, dust, odour and traffic emissions as well as visual amenity and health and safety concerns.</p> <p>The Regional Plan notes increased development within the Port and in surrounding areas could constrain the Port's future operating capacity and efficiency if not managed appropriately.</p> <p>Vacant heavy industrial sites, such as the Port Kembla Copper site (adjacent the subject site), currently act as a buffer between the port and residential areas. These sites do not contribute to the economy or create jobs while they are vacant but do have potential for new jobs.</p> <p>Recent investments and development approvals/proposals, and the current focus of strategic planning for the port (the Department, NSW Ports, Transport for NSW, etc), are likely to see the capacity of the Port expand over the next approximately 20 years.</p> <p>It is acknowledged that an intensification of residential use on the boundary of the Three Ports SEPP area presents the risk for land-use conflict with adjacent heavy industrial uses within the Port area. This is because the future expansion of the Port of Port Kembla is likely to result in increased noise, air, dust, odour, traffic, visual, hazards and risks and other amenity impacts which may impact on amenity for incoming residents, particularly when the port is at capacity and operating 24 hours a day, seven days a week (as is the case in Port Botany).</p> <p>The Department's Infrastructure Policy and Assessment Practice and Hazards teams have raised similar concerns to those outlined above, particularly that:</p> <ul style="list-style-type: none"> • uses of the industrial land may intensify in the future and intensification of residential development on the site should not impact on the operation and viable future use of adjoining industrial land and port operations (noting intensification could restrict hazardous uses on the adjoining heavy industrial land); and • impacts on future residents on this site from noise and air pollution (air quality) and contamination need to be considered at the forefront with high level mitigation measures designed at the onset.

It is noted residential development is currently permitted with consent on the site in the B4 Mixed Use zone. The Wollongong Local Planning Panel has also reviewed a previous version of the planning proposal (refer to Section 1.6 of this report) and determined there is strategic merit to remove the necessity for ground floor retail that currently exists for development within the B4 Mixed Use zone (Clause 7.13 of the WLEP).

The Panel noted that should the requirement of ground floor commercial be removed this would automatically allow for more residential development within the existing 0.5:1 FSR that applies to the site (and surrounding residential areas). As noted in **Table 4** of this report, this would allow an additional 39 dwellings (approximate) on the subject site (or less than double - assuming an internal floorspace of 120m² per dwelling) under the current proposal.

The proposed level of density/FSR (0.5:1) is consistent with that of adjacent R2 Low Density Residential zoned properties located in similar proximity to the Port and adjacent heavy industry on Reservoir and Marne Streets. The potential for land use conflict between the port and surrounding residential areas is not a new issue.

On balance, the Department is of the view that the proposed scale/density of residential use strikes a reasonable balance between the need to provide additional housing in Port Kembla and supporting the growth of the Port of Port Kembla as an international trade hub and protecting it as international gateway for freight and logistics.

In reaching this conclusion, the Department has taken several key factors into consideration, including:

- the site was previously zoned medium density residential under the former Wollongong Local Environmental Plan 1990;
- residential uses are permitted on the site directly abutting heavy industrial zoned land;
- the density and height limits of the proposal have been reviewed from an urban design perspective and recommended by the Wollongong Local Planning Panel;
- Council's report (10 May 2021) notes the Port Kembla 2505 Revitalisation Plan identified that the site may be suitable for residential development;
- the proposal provides an opportunity to implement some of the findings of the Port Kembla Land Use Conflict Management Study (refer to Section 3.2 of this report);
- there are uncertainties in relation to timing and nature of future uses and it seems unreasonable to not consider residential use of the site;
- there should be a shared responsibility for both port/industrial uses and adjoining residential uses to implement appropriate mitigation measures/source controls where possible to achieve best practice and ensure harmonious coexistence;
- under the existing controls no land use restrictions apply to the northern end of the site (where the proposed RE2 buffer is proposed) meaning residential development could be constructed to the northern extent (closest to heavy industry) without any buffer restrictions;

- the planning proposal is supported by an acoustic study prepared by RWDI which makes recommendations (masonry style construction, orientation, glazing, ventilation etc and inclusion of Section 10.7 Planning Certificate notations on title so it is clear for future owners/occupiers that they may be subject to 24/7 port and industrial noise) to ensure potential impacts to incoming residents are minimised as much as possible;
- the site would be identified as a 'Key site' under Clause 7.18 of the WLEP which requires any development to exhibit design excellence (i.e. deliver the highest standard of architectural and urban design), including (but not limited to):

- a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved; and
- demonstration of how the proposed development addresses the suitability of the land for the development.

Consistent with the Panel's advice (refer to section 1.6 of this report), the Department has recommended a Gateway condition requiring the preparation of a site-specific DCP chapter prior to exhibition of the planning proposal to ensure that appropriate mitigation measures are integrated into the redevelopment of the site.

The DCP must be consistent with the recommendations of the acoustic study (and any urban design analysis/concept design) and incorporate built form/development controls (e.g. improved glazing, ventilation, masonry style construction etc) seeking to manage potential land use conflicts and ensure any future development provides a suitable level of amenity for incoming residents considering potential noise, air, dust, odour, traffic, visual, and other amenity impacts from the Port operating at capacity 24 hours a day, seven days a week.

Consultation is also recommended with key stakeholders such as the Environment Protection Authority (EPA), NSW Ports and significant industrial neighbours (BlueScope and Port Kembla Copper) to ensure all potential issues are considered and addressed prior to finalisation.

In making its decision, the Department has also considered the likely key positive socioeconomic impacts of the proposal such as:

- provision of additional housing supply in a convenient location and by using existing facilities and services (including the Port Kembla town centre and public transport);
- provision of more diverse and affordable housing mix/choice in Port Kembla to meet the needs of the community;
- provision of increased residential population in the suburb of Port Kembla helping implement the intent of Councils' Port Kembla 2505 Revitalisation Plan and reactivate the town centre;
- creation of local employment opportunities in construction;
- provision of a small part of the site (zoned RE2) as a 'green link' between the Port Kembla town centre and ultimately (informally) the coast; and
- the opportunity the proposed heritage interpretation strategy for the site provides to better celebrate the history of the site as the former Port Kembla Public School and its contribution to Port Kembla as a suburb.

	<p>The Department acknowledges land use issues, future intentions for the Three Ports SEPP area and the Port Kembla Centre and topography make this a difficult proposal to assess. On balance, the scale/density of residential development is considered to be acceptable to proceed to consultation.</p> <p>It is noted that this is the second time Council has supported medium density development of the site. The Department believes the ultimate success of the development will largely come down to how well Council and the proponent can work together to develop the site-specific DCP (and concept design) and ensure, through the development assessment and construction processes, that the new dwellings/site design incorporate appropriate attenuation measures to manage potential land use conflicts and mitigate future residents from future port/industrial impacts on amenity.</p>
<p>Objective 4 - Activate regionally significant employment precincts to support new and innovative economic enterprises</p> <p>Action 3 - Develop precinct profiles for the regionally significant employment lands and where required, establish precinct collaboration teams to activate land for economic growth</p>	<p>Not Inconsistent - The Regional Plan recognises regionally significant employment precincts as supporting jobs growth and development and generate significant economic benefits for the community.</p> <p>The Port of Port Kembla precinct is identified as one of seven regionally significant employment precincts in the Regional Plan.</p> <p>A consultant is currently preparing a regionally significant employment precinct profile for Port Kembla on behalf of the Department.</p> <p>The scale of the subject proposal is considered to strike a reasonable balance between the need to providing additional housing in Port Kembla and supporting the growth of the Port of Port Kembla as a regionally significant employment precinct.</p>
<p>Objective 18 - Provide sufficient housing supply in the right locations</p> <p>Strategy 18.2 - Facilitate housing opportunities in existing urban areas, particularly within strategic centres</p>	<p>Not Inconsistent - The planning proposal would facilitate additional housing opportunities in the Port Kembla urban area. The site is near the Port Kembla town centre and community services and facilities, including public transport, recreation areas and schools.</p>
<p>Objective 19 - Deliver housing that is more diverse and affordable</p>	<p>Consistent - The planning proposal seeks to provide more diverse and affordable housing mix/choice in Port Kembla which has been identified by Council as a potential location for increased housing opportunity.</p>
<p>Objective 23 - Celebrate, Conserve, and reuse cultural heritage</p>	<p>Consistent – The site is identified as a local heritage item but has little remains of the Port Kembla Public School and its associated buildings (due to a fire in 2013).</p> <p>The heritage assessment supporting the proposal found the site has limited archaeological potential and the proposal will have minor heritage impacts (subject to the preparation of a heritage interpretation strategy prior to finalisation of the planning proposal).</p> <p>The Department understands the proponent is currently preparing a revised heritage interpretation strategy for the site in response to Council comments to better celebrate the history of the site as the former Port Kembla Public School and its contribution to Port Kembla as a suburb. The site would</p>

remain listed/recognised as a local heritage item in the WLEP but would be renamed to the 'Site of former Port Kembla Public School'.

The application is also supported by Aboriginal due diligence advice which found no further archaeological work is required in the study area due to the entire study area assessed as having low archaeological potential.

3.2 Local

The proposal states that it is consistent with the following local plans and strategies.

Table 6 Local strategic planning assessment

Local Strategies	Justification
Wollongong Local Strategic Planning Statement (2020)	<p>The LSPS refers to the Retail Centres Hierarchy which identifies Port Kembla as a Town, surrounded by residential and industrial land uses. Council considers the planning proposal to be consistent with the housing direction for Port Kembla outlined in the LSPS.</p> <p>The LSPS notes trade though Port Kembla will continue to grow, providing employment opportunities and buffer areas around the port will need to be considered. The LSPS also identifies there is a need to revitalise the commercial centre of Port Kembla.</p> <p>The subject proposal is considered to strike a reasonable balance between providing additional housing (and population) in Port Kembla to help revitalise the commercial centre and growing the adjacent port and industry.</p>
Wollongong 2028 Community Strategic Plan	<p>The Wollongong Community Strategic Plan (CSP) outlines the community's priorities and aspirations, providing directions for the provision of key projects and services.</p> <p>Council considers the planning proposal contributes to the delivery of key goals and associated objectives of Council's CSP as outlined below.</p> <p><u>Goal 5 - We are a healthy community in a liveable space</u></p> <p>The planning proposal seeks to provide more diverse housing choice in Port Kembla. Council also notes the proponent is seeking to deliver housing that is affordable highlighting the push for the proposed R3 zone.</p> <p>Council notes the site is in a unique location within proximity to Port Kembla town centre and various public facilities, incorporates a green link corridor and provides connectivity to the town centre.</p> <p><u>Goal 6 - We have sustainable affordable and accessible transport</u></p> <p>Council considers the site has the potential to provide connectivity and direct linkages to public transport, public facilities, the commercial/business hub of Port Kembla and the coast.</p>
Port Kembla 2505 Revitalisation Plan	<p>Council considers the intent of the proposal to be supportive of the Revitalisation Plan through increasing residential population, increasing housing choice, providing key linkages throughout the site, to the coast and to the Port Kembla town centre and highlighting the heritage significance of the site whilst managing its interface with the port area.</p> <p>Council's report (10 May 2021) notes the Revitalisation Plan identified that the site may be suitable for residential development.</p>

	The Revitalisation Plan contains a vision to “grow with the port and industry” seeking to balance the needs of the growing port and industry with the neighbouring resident population. The scale of the subject proposal is considered to strike a reasonable balance between the need to providing additional housing in Port Kembla and growing the adjacent port and industry.
Urban Greening Strategy 2017 - 2037	<p>The Urban Greening Strategy 2017-2037 aims to strategically increase the quality and quantity of all vegetation in an urban setting. The Strategy identifies opportunities for Wollongong to harness the benefits of trees and vegetation, contributing towards creating a world class urban landscape.</p> <p>Councils considers the proposal to be conducive to the Strategy as it incorporates a portion of RE2 Private Recreation-zoned land on the northern part of the site to provide a small part of a ‘green link’ between the Port Kembla town centre and ultimately (informally) the coast (i.e. MM beach). The proposal will also contribute to increasing the green canopy cover of Port Kembla.</p>

Port Kembla Land Use Conflict Management Study

The Port Kembla Land Use Conflict Management Study (LUC Study) was completed in December 2018 and sought to look at ways to reduce land use conflicts around the port and heavy industrial lands into the future. This study was prepared in to address Action 1.2.1 of the Illawarra Shoalhaven Regional Plan (2015).

The Illawarra Shoalhaven Regional Plan 2015 has since been superseded by the Illawarra Shoalhaven Plan 2041 (refer to Section 3.1 of this report) which includes similar objectives (Strategy 3.1) to ensure strategic plan and local plans consider opportunities to reduce land use conflicts from adjoining land uses including residential and, where appropriate, include buffer measures to minimise the impact of development on the efficient functioning of the port.

The study will be used to inform action on implementation of Strategy 3.1 of the new Illawarra Shoalhaven Plan 2041. The Department is currently implementing other priority actions of the Regional Plan and the timeframe for this further work is therefore currently unknown.

The applicant notes the recommendations and conclusions in the LUC study require further investigation developed in consultation with the Department, Council, and port operators (with supporting studies).

As further investigation has not yet commenced, and the timeframe for this work is unknown, the applicant has requested that the subject planning proposal continues to be considered in accordance with the concepts identified in the LUC study.

The site was identified as being in a sensitive area in the LUC study (interface area). The LUC study notes IN3 land to the north (PKC site) could be reactivated for industrial use (likely in conjunction with the Port Kembla Outer Harbour Expansion container terminal) and new residential development near the port will require careful consideration in terms of potential land use conflict.

A triangular portion at the northern tip of the site of the site was identified for a suggested zoning change to light industrial (as a part of a larger strip of land on the eastern side of Military Road extending north – PKC site) to improve the buffer between industry and adjacent residences in Port Kembla (recommendation 5).

The LUC study also suggested a new chapter could be incorporated into the Wollongong DCP 2009 to manage land use conflicts by providing specific controls for development adjoining industrial zones (recommendation 6). Key considerations for future development specified include:

- good building design and orientation so that sleeping areas are orientated away from the Port and surrounding industrial and Port land uses;
- improved glazing to habitable rooms and windows to incorporate good seals;

- provision of fresh air ventilation, which would ensure that windows can be closed when improved amenity is desired by occupants; and
- outdoor areas are designed to take advantage of any acoustic shielding by the building structure or surrounding buildings.

The applicant supports the concept of a buffer and has proposed the northern portion of the site comprise a Heritage Interpretation Park (RE2 Private Recreation) to provide some form of delineation from the port.

The applicant also sees the planning proposal as an opportunity to implement recommendations of the LUC study relating to building design and construction (as outlined above) to mitigate potential noise and other amenity impacts.

The acoustic study prepared by RWDI in support of the application makes similar building design recommendations and for the inclusion of Section 10.7 certificates on the title of future dwellings so it is clear for future owners and occupiers that their property is noise affected by a 24-hour operating port. This measure also formed a part of the suggested recommendations of the LUC study (recommendation 4).

The Department supports the concepts identified in the LUC study. To ensure these are applied to the site, the Department has recommended key Gateway conditions requiring a site-specific Development Control Plan (DCP) chapter to manage potential land use conflicts and ensure that all appropriate mitigation measures are integrated into the redevelopment of the site, and any built form outcomes are compatible with surrounding land uses.

The DCP shall be consistent with the recommendations of the acoustic study (and any urban design analysis/concept design) and incorporate built form, design, layout and development controls seeking to ensure any future development provides a reasonable level of amenity for incoming residents.

3.3 Section 9.1 Ministerial Directions

The planning proposal's consistency with key relevant section 9.1 Directions is discussed below:

Table 7 9.1 Ministerial Direction assessment

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
Direction 1.1 – Business and Industrial Zones	Inconsistency justified	<p>The objectives of this Direction are to:</p> <ul style="list-style-type: none"> • encourage employment growth in suitable locations; • protect employment land in business and industrial zones; and • support the viability of identified centres. <p>This Direction applies to the planning proposal as it involves an alteration to an existing business zone on an industrial zone boundary.</p> <p>The planning proposal is inconsistent with this Direction as the proposed rezoning of the former Port Kembla Public School site would result in the loss of employment lands in a business zone (i.e. B4 Mixed Use).</p> <p>Council has identified that the Port Kembla 2505 Revitalisation Plan and previous studies undertaken by Council have identified an oversupply of commercial/retail-zoned land in Port Kembla.</p>

		<p>Council considers the development of the site for business use would further erode the viability of businesses in the Port Kembla town centre. Given the above, Council concluded that the planning proposal is justifiably inconsistent with this Direction and of minor significance.</p> <p>The Department accepts there is an oversupply of commercial land in Port Kembla and considers the loss of B4 zoned land to be justified.</p> <p>The Department is of the view that the proposed scale/density of residential use strikes a reasonable balance between the need to providing additional housing in Port Kembla and protect adjacent industrial land.</p> <p>The Secretary's delegate may therefore be satisfied that any potential inconsistency with this Direction is of minor significance.</p>
Direction 2.3 – Heritage Conservation	Consistent	<p>The objective of this Direction is to conserve items, areas, objects and places of environmental heritage and indigenous significance.</p> <p>This Direction requires planning proposals to facilitate the conservation of heritage items.</p> <p>The Port Kembla Public School site is listed as a local heritage item in the Wollongong LEP 2009 and is in proximity to three other locally listed heritage items (the former Port Kembla Fire Station, St Stephens Anglican Church and a dwelling house/shop).</p> <p>The planning proposal is supported by a heritage assessment that found:</p> <ul style="list-style-type: none"> • little remains of the Port Kembla Public School and its associated buildings (due to a fire in 2013); • the site has limited archaeological potential; and • the project will have a minor indirect impact on heritage items near the site and overall minor heritage impacts (subject to the preparation of a heritage interpretation strategy prior to finalisation of the planning proposal). <p>As no school structures remain on the site, the planning proposal seeks to amend the heritage listing in the Wollongong LEP 2009 to "site of former Port Kembla Public School" as it is intended that heritage interpretation will be provided as part of any future redevelopment to reflect the historical significance of the site.</p> <p>The proponent is currently preparing a revised heritage interpretation strategy for the site in response to Council comments to better celebrate the history of the site as the former Port Kembla Public School and its contribution to Port Kembla as a suburb.</p> <p>The application is also supported by an Aboriginal due diligence advice which found no further archaeological work is required in the study area due to the entire study area assessed as having low archaeological potential.</p>

		Given the findings of the heritage assessments, the Secretary's delegate can be satisfied that any potential inconsistency with this Direction is of minor significance.
Direction 2.6 – Remediation of Contaminated Land	Consistent	<p>The objective of this direction is to reduce the risk of harm to human health and the environment by ensuring that contamination and remediation are considered by planning proposal authorities.</p> <p>The Direction applies as contamination is known to be an issue on the site (refer to Section 3.4 of this report).</p> <p>The planning proposal is supported by a phase 1 detailed site investigation, a further data reassessment report for the rezoning and a conceptual remediation action plan (RAP). Based on these reports, it was concluded that the site is contaminated but can be remediated to enable residential development.</p> <p>Based on the submitted reports, Council concluded that although the site is contaminated, it can be rehabilitated to enable residential development.</p> <p>Council's report (10 May 2021) notes a (final) RAP will be required to accompany any future development application (based on the final development proposal) and a site auditor will be required to monitor the development.</p> <p>The Secretary's delegate may be satisfied the proposal is consistent with the requirements of this Direction.</p>
Direction 3.1 – Residential Zones	Consistent	<p>The objectives of this Direction are to:</p> <ul style="list-style-type: none"> • encourage a variety and choice of housing types to provide for existing and future housing needs; • make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services; and • minimise the impact of residential development on the environment and resource lands. <p>This Direction applies to planning proposals that would affect land within a proposed residential zone and aims to encourage housing to meet local demand, ensure new housing makes efficient use of existing infrastructure and services, and minimise the impact of residential development on the environment.</p> <p>The planning proposal states that it would facilitate a mix of housing types on the former Port Kembla Public School site and can comply with the nominated objectives of this Direction.</p> <p>The Department notes that the site is close to services in the Port Kembla town centre and local transport options, has the potential to be serviced by utilities (see further discussion below) and is unlikely to adversely impact on the environment or resource lands.</p>

The Department is satisfied that the planning proposal (as it relates to the former Port Kembla Public School site) is consistent with this Direction.

3.4 State environmental planning policies (SEPPs)

Key relevant SEPPs to the planning proposal are discussed below.

State Environmental Planning Policy (Three Ports) 2013

The Three Ports SEPP seeks to ensure the consistent development and delivery of infrastructure and the protection of land at Port Botany, Port Kembla, and the Port of Newcastle for port purposes.

The Department notes the land to which the planning proposal relates is outside the Three Ports SEPP land application area for Port Kembla. However, the former Port Kembla Public School site adjoins IN3-zoned heavy industrial land within the SEPP area and the Department therefore considers the Three Ports SEPP to be relevant to this planning proposal.

The Department's Infrastructure Policy and Assessment Practice and Hazards teams have reviewed the proposal and advised the protection of Port Kembla and adjoining industrial area is paramount, including allowing the efficient operation of the Port and ensuring that the industrial land around the port is maintained for port-related and industrial uses, including heavy industry. This is a key aim of the Three Ports SEPP.

In summary, specific concerns were raised that:

- uses of the industrial land may intensify in the future and intensification of residential development on the site should not impact on the operation and viable future use of adjoining industrial land and port operations (noting intensification could restrict hazardous uses on the adjoining heavy industrial land);
- impacts on future residents on this site from noise and air pollution (air quality) and contamination need to be considered at the forefront with high level mitigation measures designed at the onset; and
- other areas in the LGA should be looked at for housing growth that are more appropriately located.

Council considers residential use remains the best possible outcome for the site. Council's report (10 May 2021) also notes the Port Kembla 2505 Revitalisation Plan identified that this site may be suitable for residential development.

For the reasons outlined earlier in this report, on balance, the Department is of the view that the proposed scale/density of residential use strikes a reasonable balance between the need to providing additional housing in Port Kembla and the need to protect the operation and viable future use of adjoining industrial land and port operations.

Recommended conditions requiring preparation of a site-specific DCP would ensure impacts on future residents are considered and high-level mitigation measures designed at the onset to manage potential land use conflicts and ensure incoming residents are protected from future port/industrial impacts and ensure a reasonable level of amenity. This would in turn help to protect the on-going and viable future use of the Port.

State Environmental Planning Policy No 55 – Remediation of Land

SEPP 55 provides a state-wide approach to the management of contaminated land and outlines the relevant considerations in preparing an environmental planning instrument to rezone land.

The former Port Kembla Public School site adjoins the former Port Kembla Copper smelter and stack site, which is zoned IN3 Heavy Industrial. Asbestos sheeting and other contaminating

building materials were used to construct the former school buildings, and part of the site appears to have been filled with slag.

The planning proposal is supported by a phase 1 detailed site investigation, a further data reassessment report for the rezoning and a conceptual remediation action plan (RAP). Based on these reports, it was concluded that the site is contaminated but can be remediated to enable residential development.

The conceptual RAP outlines a range of remediation strategies and would require review following the finalisation of the development design and further assessment through the development application process. It is anticipated that conditions of consent would be imposed on any development consent to ensure the land is remediated in accordance with the final RAP before it is used for residential purposes. A site auditor would be required to be appointed to monitor the proposed development works.

Based on the submitted reports, Council concluded that although the site is contaminated, it can be rehabilitated to enable residential development.

The Department is satisfied that the relevant considerations of SEPP 55 for preparing an environmental planning instrument to rezone land have been met.

4 Site-specific assessment

4.1 Environmental

Contamination

As noted earlier in this report, the planning proposal was supported by several contamination reports, which concluded that the former school site is contaminated but can be remediated to enable residential development.

The Department is satisfied that contamination issues have been suitably considered as part of the planning proposal, and the detailed design of the RAP for the site could be resolved through the development application process to ensure the land is remediated before it is used for residential purposes.

Heritage

As noted earlier in this report, the heritage assessment supporting the proposal found the site has limited archaeological potential and the proposal will have minor heritage impacts (subject to the preparation of a heritage interpretation strategy prior to finalisation of the planning proposal).

The proponent is currently preparing a revised heritage interpretation strategy for the site in response to Council comments to better celebrate the history of the site as the former Port Kembla Public School and its contribution to Port Kembla as a suburb. The site would remain listed/recognised as a local heritage item in the WLEP but would be renamed to the 'Site of former Port Kembla Public School'.

The application is also supported by an Aboriginal due diligence advice which found no further archaeological work is required in the study area due to the entire study area assessed as having low archaeological potential.

The Department is satisfied heritage issues have been suitably addressed.

Noise and environmental amenity impacts

The application is supported by an acoustic study prepared by RWDI which found a proportion of the development will be affected by Port and industrial noise at a level higher than desirable for many people but not all. The assessment finds the development should consider the following key measures to mitigate noise impacts from the port to acceptable levels such as:

- orientation of living areas and balconies to the north, with bedroom areas facing south to mitigate from noise sources to the north;
- apartment layouts which extend from one side of the building to the other or use internal light wells, to provide shielding from Port noise;
- glazing be reviewed for apartment layouts, such that when windows are closed, low internal noise levels can be achieved. The assessment notes at these times sufficient fresh air ventilation and thermal comfort would need to be addressed;
- inclusion of Section 10.7 certificates on the title so it is clear for future owners and occupiers that their property is noise affected to some degree by a 24-hour operating port; and
- adoption of façade construction such as masonry style construction which performs better at low frequencies and façade design should be reviewed by an acoustical consultant.

Consistent with the Wollongong Local Planning Panel's advice, the Department has recommended a Gateway condition requiring the preparation of a site-specific DCP chapter prior to exhibition of the planning proposal to ensure that all appropriate mitigation measures are integrated into the redevelopment of the site, and any built form outcomes are compatible with the surrounding land uses.

The DCP must be consistent with the recommendations of the acoustic study (and any urban design analysis/concept design) and incorporate built form, design, layout and development controls seeking to ensure any future development provides a reasonable level of amenity for incoming residents considering potential noise, air, dust, odour, traffic, visual, and other amenity impacts from the Port operating at its estimated future capacity 24 hours a day, seven days a week.

With this condition in place, the Department is satisfied potential noise issues can be minimised so that they are manageable. Further, more detailed assessment of potential noise impacts would also be undertaken at the development assessment stage.

Consultation is also recommended with key stakeholders such as the Environment Protection Authority (EPA), NSW Ports, BlueScope and Port Kembla Copper to ensure all potential issues are considered and addressed prior to finalisation.

Hazards and risks

An intensification of residential population on the site could limit future hazardous industrial development within the Port area and intensify potential future land use safety conflicts.

The Department is of the view that Port Kembla should be protected from encroachment by incompatible land uses which could sterilise or limit the use of State significant industrial land.

The proposed level of density/FSR (0.5:1) is consistent with that of adjacent R2 Low Density Residential zoned properties located in similar proximity to the Port and adjacent heavy industry on Reservoir and Marne Streets.

It is also noted that residential uses are already permitted with consent on the site in the B4 Mixed Use zone and under the existing controls no land use restrictions apply to the northern end of the site (where the proposed RE2 buffer is proposed) meaning residential development could be constructed to the northern extent (closest to heavy industry) without any buffer restrictions.

Existing (and emerging potential) major hazardous facilities such as the bulk liquids terminal (approved by the Department in 2015) and emerging hydrogen and natural gas uses (at present) seem to be predominantly proposed to be located on the opposite (northern side) of the port. It is noted that this may not always be the case and these types of uses are permitted generally within the Three Ports SEPP area.

The outer harbour of Port Kembla is likely to become the future home of NSW's second container port. In Port Botany, the container terminal is supported by several container and logistics facilities

on port land and in surrounding industrial areas and a similar pattern of development could be anticipated at Port Kembla. It is noted that container terminals and logistics facilities/warehouses can also be potentially contain hazardous and dangerous goods.

On balance, the Department is of the view that the proposed scale/density of residential use strikes a reasonable balance between:

- potentially limiting the use of the adjacent Three Ports SEPP lands for hazardous industries;
- limiting/managing potential land use conflicts; and
- the need to provide additional housing in Port Kembla and allowing modest redevelopment of an underutilised site, in a good location at significant benefit to the local community.

Full utilisation of the Port is unlikely to happen for many years and given uncertainties, it seems unreasonable to prevent residential use of the site.

Flora and fauna

The site has been cleared of native vegetation, contains some trees and weeds have grown since closure of the former Public School.

The application is supported by a Green and Golden Bell Frog due diligence assessment which found the property has minimal habitat values for the Green and Golden Bell Frog and there should be no limitations for development about this species. The assessment recommended no further assessments are required for the Green and Golden Bell Frog.

The Department is satisfied flora and fauna impacts have been suitably considered at this stage and notes they would be considered in more detail through the development assessment process.

Other impacts

The planning proposal gives rise to the need for consideration of a range of other environmental issues, such as the potential traffic, traffic noise and waste impacts from the construction and operation of housing on the former Port Kembla Public School site.

Any future development application for the site would need to be accompanied by a detailed assessment of all environmental impacts, including relevant technical studies.

The Department considers that the potential impacts of other environmental issues associated with the development of housing on the site could be suitably managed through the development assessment process.

4.2 Social and economic

Council considers the proposal will have a net community benefit (including positive social and economic effects) for the following key reasons:

- it will provide additional housing supply in a convenient location and by using existing facilities and services (including the Port Kembla town centre and public transport) such that the economic and social cost of future development would be minimised;
- it will provide more diverse and affordable housing mix/choice in Port Kembla to meet the needs of the community;
- it constitutes a balanced and appropriate use of land and is in keeping with the adjoining residential zoning and future character;
- it would not result in any significant adverse environmental impacts; and
- it would create local employment opportunities in construction and home maintenance.

The Department also considers the following could result in positive socioeconomic effects/community benefits:

- provision of increased residential population in the suburb of Port Kembla helping revitalise the Port Kembla town centre in line with Councils' Port Kembla 2505 Revitalisation Plan;
- provision of a small part of the site (zoned RE2) as a potential future 'green link' between the Port Kembla town centre and the coast; and
- the opportunity the proposed heritage interpretation strategy for the site provides to better celebrate the history of the site as the former Port Kembla Public School and its contribution to Port Kembla as a suburb.

4.3 Infrastructure

The planning proposal indicates that the former Port Kembla Public School site has the potential to be serviced by utilities and will require the construction and potential dedication of new roads to service the proposed development. Council has advised that any future residential development application for the site would require developer contributions to be paid in accordance with the Wollongong development contributions plan.

The Department agrees that the site has the potential to be adequately serviced by infrastructure and is satisfied that suitable arrangements are in place to fund this.

5 Consultation

5.1 Community

Council proposes a community consultation period of 28 days.

The exhibition period proposed is considered appropriate and a condition to this effect forms part of the Gateway determination.

5.2 Agencies

It is recommended the following agencies be consulted on the planning proposal and given at least 21 days to comment:

- NSW Ports;
- Environment Protection Authority;
- DPIE – Environment, Energy and Science
- Endeavour Energy;
- Sydney Water;
- Transport for NSW;
- Roads and Maritime Services;
- Department of Premier and Cabinet (Heritage NSW); and
- National Trust of Australia, Illawarra Shoalhaven Regional Branch.
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6 Timeframe

Council proposes a 12 month time frame to complete the LEP.

The Department considers a time frame of 12 months to be appropriate given the nature of the LEP and recommended Gateway conditions (i.e. site-specific DCP).

A condition to the above effect is recommended in the Gateway determination.

7 Local plan-making authority

Council has advised that it would like to exercise its functions as a Local Plan-Making authority.

Agencies/authorities such as NSW Ports and the EPA have previously expressed concern with medium density residential development of this site and the Department recommends that Council not be authorised to be the local plan-making authority.

This will allow the Department retain oversight and ensure all submissions and potential issues are considered, prior to deciding whether to make the LEP.

8 Assessment summary

The planning proposal is support to proceed with conditions because the Department is of the view that the proposed scale/density of residential use strikes a reasonable balance between the need to providing additional housing in Port Kembla and the need to protect the operation and viable future use of adjoining industrial land and port operations.

The proposal is consistent with the intent of key regional planning objectives concerning provision of housing supply in existing urban areas, delivering more affordable and diverse housing, and celebrating heritage. The proposal would also:

- provide increased residential population in the suburb of Port Kembla helping revitalise the Port Kembla town centre in line with Councils' Port Kembla 2505 Revitalisation Plan;
- create local employment opportunities in construction and home maintenance;
- provide of a small part of the site a 'green link' between the Port Kembla town centre and ultimately (informally) the coast; and
- provide an opportunity to better celebrate the history of the site as the former Port Kembla Public School and its contribution to Port Kembla as a suburb via the proposed heritage interpretation strategy.

Full utilisation of the Port is unlikely to happen for many years and given uncertainties, it seems unreasonable to limit residential use of the scale proposed until this time. It is acknowledged there should also be a shared responsibility for both port/industrial uses and adjoining residential uses to implement appropriate mitigation measures/source controls where possible to achieve best practice and ensure harmonious coexistence.

It is noted that this is the second time Council has supported medium density development of the site. The Department believes the ultimate success of the development will largely come down to how well Council and the proponent can work together to develop the site-specific DCP and ensure, through the development assessment and construction processes, that the new dwellings/site design incorporate appropriate recommended attenuation measures to manage potential land use conflicts and mitigate future residents from future port/industrial impacts and ensure a reasonable level of amenity.

9 Recommendation

It is recommended the delegate of the Secretary:

- Agree that any inconsistencies with section 9.1 Direction 1.1 – Business and Industrial Zones, Direction 2.3 – Heritage Conservation and Direction 2.6 – Remediation of Contaminated Land are minor or justified; and
- Agree the proposal is consistent with section 9.1 Direction 3.1 – Residential Zones.

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

1. Prior to public exhibition, the following must be prepared to Council's satisfaction and exhibited with the planning proposal:

- a) a site-specific Development Control Plan (DCP) chapter to ensure that all appropriate mitigation measures are integrated into the redevelopment of the site, and any built form outcomes are compatible with surrounding land uses.


The DCP shall be consistent with the recommendations of the acoustic study (and any urban design analysis/concept design) and incorporate built form, design, layout and development controls seeking to manage potential land use conflicts and ensure any future development provides a reasonable level of amenity for incoming residents considering potential noise, air, dust, odour, traffic, visual, and other amenity impacts from the Port operating at its estimated future capacity 24 hours a day, seven days a week. This DCP chapter should incorporate measures/requirements such as:

- i. orientation of living areas and balconies to the north, with bedroom areas facing south to mitigate from noise sources to the north;
- ii. apartment layouts which extend from one side of the building to the other or use internal light wells, to provide shielding from Port noise;
- iii. improved glazing requirements for apartment layouts with good window seals, such that when windows are closed, low internal noise levels can be achieved;
- iv. provision of fresh air ventilation and thermal comfort, which would ensure that windows can be closed when improved amenity is desired by occupants;
- v. inclusion of Section 10.7 certificates on the title so it is clear for future owners and occupiers that their property is affected by impacts of a 24-hour operating port (noise, light, air/dust etc);
- vi. adoption of masonry style façade construction which performs better at low noise frequencies with façade design to be reviewed by an acoustical consultant;
- vii. outdoor areas which are designed to take advantage of any acoustic shielding by the building structure or surrounding buildings; and
- viii. other landscaping, buffer, setback, engineering, and design solutions.

2. Consultation is required with the following public authorities:

- NSW Ports;
- Environment Protection Authority;
- DPIE – Environment, Energy and Science;
- Endeavour Energy;
- Sydney Water;
- Transport for NSW;
- Roads and Maritime Services;
- Department of Premier and Cabinet (Heritage NSW); and
- National Trust of Australia, Illawarra Shoalhaven Regional Branch.

3. The planning proposal should be made available for community consultation for a minimum of 28 days. Letters are to be sent advising adjoining owners of land within the Three Ports SEPP area of the proposal, including BlueScope and Port Kembla Copper.
4. The timeframe for completing the LEP is to be 12 months from the date of the Gateway determination.
5. Given the nature of the proposal, Council should not be authorised to be the local plan-making authority.



8/12/21

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9/12/2021

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Attachments

Attachment A – Council's Planning Proposal

Attachment B – Gateway determination

Attachment C – Letter to Council