



IRF23/680

Plan finalisation report – PP-2021-6676

Amendment No. 53 to Wollongong LEP 2009 - Former
Port Kembla School Site (Lot 1 DP 811699 Military
Road, Port Kembla)

May 2023

Published by NSW Department of Planning and Environment

dpie.nsw.gov.au

Title: Plan finalisation report – PP-2021-6676

Subtitle: Amendment No. 53 to Wollongong LEP 2009 - Former Port Kembla School Site (Lot 1 DP 811699 Military Road, Port Kembla)

© State of New South Wales through Department of Planning and Environment 2023 You may copy, distribute, display, download and otherwise freely deal with this publication for any purpose, provided that you attribute the Department of Planning and Environment as the owner. However, you must obtain permission if you wish to charge others for access to the publication (other than at cost); include the publication in advertising or a product for sale; modify the publication; or republish the publication on a website. You may freely link to the publication on a departmental website.

Disclaimer: The information contained in this publication is based on knowledge and understanding at the time of writing [April 23]and may not be accurate, current or complete. The State of New South Wales (including the NSW Department of Planning and Environment), the author and the publisher take no responsibility, and will accept no liability, for the accuracy, currency, reliability or correctness of any information included in the document (including material provided by third parties). Readers should make their own inquiries and rely on their own advice when making decisions related to material contained in this publication.

Acknowledgment of Country

The Department of Planning and Environment acknowledges the Traditional Owners and Custodians of the land on which we live and work and pays respect to Elders past, present and future.

Contents

1	Introduction.....	2
1.1	Overview.....	2
1.1.1	Name of draft LEP	2
1.1.2	Site description	2
1.1.3	Purpose of plan.....	3
1.1.4	State electorate and local member.....	5
2	Gateway determination and alterations	5
3	Public exhibition and post-exhibition changes	6
3.1	Submissions during exhibition.....	7
3.1.1	Submissions supporting the proposal	7
3.1.2	Submissions objecting to and/or raising issues about the proposal.....	7
3.2	Advice from agencies.....	12
3.3	Post-exhibition changes.....	15
3.3.1	Council resolved changes.....	15
3.3.2	Justification for post-exhibition changes.....	15
4	Department's assessment.....	15
4.1	Detailed assessment.....	17
5	Post-assessment consultation	24
6	Recommendation.....	24
	Attachments	25

1 Introduction

1.1 Overview

1.1.1 Name of draft LEP

Wollongong Local Environmental Plan 2009 (Amendment No. 53).

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

1.1.2 Site description

The planning proposal relates to the former Port Kembla Public School site located on Military Road, Port Kembla (Lot 1 DP 811699).

The site is located immediately south of the heavy industrial lands and the port of Port Kembla in the suburb of Port Kembla (**Figure 1**). Port Kembla is approximately 8km south of the Wollongong city centre in the Wollongong local government area.



Figure 1: Site context (Source: Nearmap)

The site is approximately 2.195ha and is trapezoidal in shape (**Figure 2**). It is bounded by Military Road (west), Marne Street (south), Reservoir Street (east) and Electrolytic Street (north). 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 local heritage item and is vacant, with only the foundations of the main school building remaining.

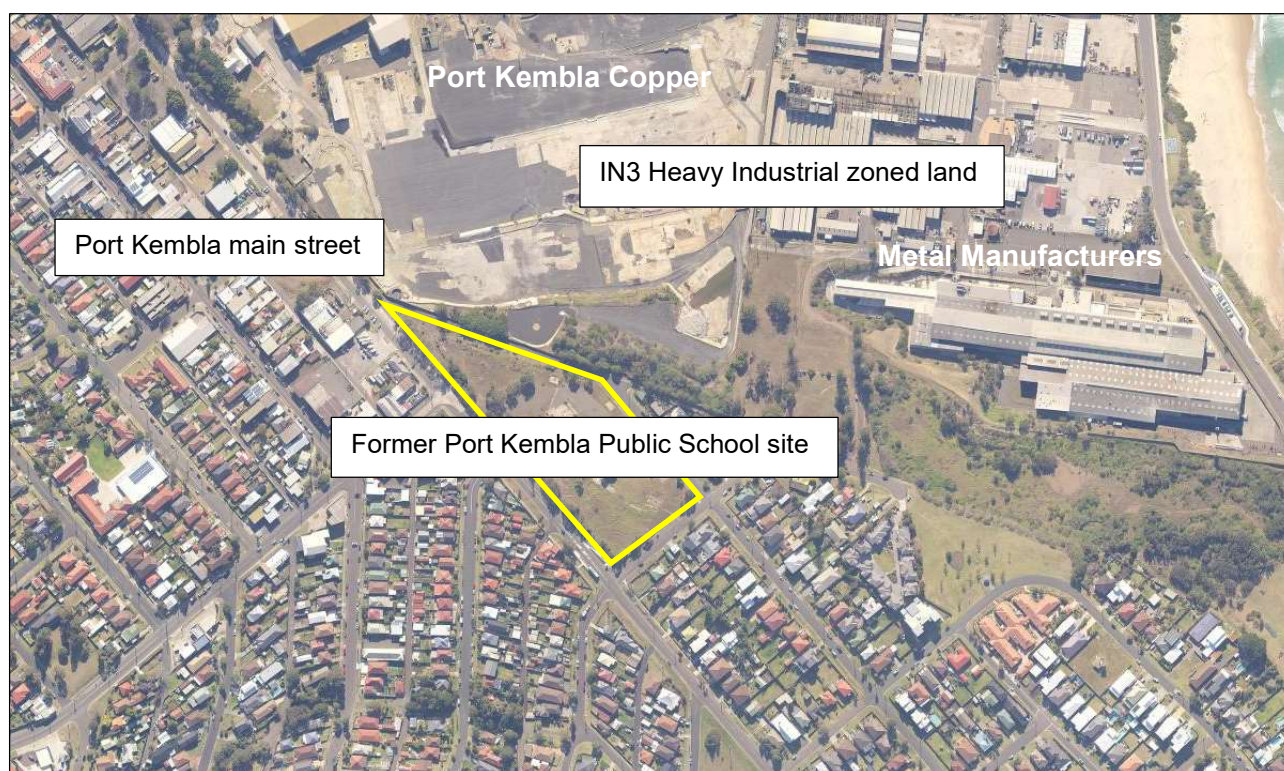


Figure 1: Subject site (Source: DPIE Spatial Viewer)

1.1.3 Purpose of plan

The table below outlines the current and proposed controls for the LEP.

Table 1 Current and proposed controls

Control	Current	Proposed
Zone	B4 Mixed Use (Clause 7.13 of the WLEP requires ground floor retail)	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 Primary School'

Affordable housing	None	Require at least 5% Affordable Rental Housing
Approximate number of dwellings allowed on site (assuming 120m ² internal floor space)	46	85

Whilst the current B4 Mixed Use zoning of the site already permits various forms of medium density housing, Clause 7.13 of the Wollongong LEP 2009 does not allow development consent to be granted for buildings in the B4 zone where the ground floor would be used for the purpose of residential accommodation (thereby generally requiring commercial/retail uses on the ground floor).

Council notes Port Kembla has an oversupply of land zoned for commercial/retail uses and does not need any additional retail floor space.

An urban design analysis report prepared by Studio GL (2021) has been provided in support of the application. The analysis includes two preferred design concepts for development of the site, including:

- Preferred concept 1 – proposes a mix of two-storey terraces (10) and town houses (18) on Reservoir and Marne Streets and three-storey apartments (66) on Military Road and on the northern portion of the site (total 94 dwellings); and
- Preferred concept 2 – proposes a mix of two-storey terraces (10) and town houses (18) on Reservoir and Marne Streets, two-storey apartments (29) on Military Road, and an aged care facility (unspecified no. of residences) on the northern portion of the site.

Preferred concept 1 is shown in **Figure 3** below. A large portion of the northern part of the site is proposed as RE2 Private Recreation zoned land to provide a buffer to the port. Residential apartments in the north are located towards Military Road, allowing for the provision of a minimum 10m wide vegetated berm area (acoustic barrier) to the north and east enhancing the buffer zone between the proposed residences and the activity of the port.

Council estimates approximately 110 dwellings could be built on the site, which would include a minimum of 5% Affordable Rental dwellings (approx. 6 dwellings). The affordable housing component would be provided via a draft Planning Agreement reported separately to Council.

The planning proposal was supported by a range of other key supporting studies such as:

- acoustic feasibility study;
- contamination studies (detailed site investigation, data re-assessment for rezoning and conceptual remediation action plan);
- traffic impact assessment;
- traffic noise intrusion assessment;
- Green and Golden Bell Frog due diligence assessment; and
- heritage studies (historical heritage assessment and heritage interpretation management strategy).



Figure 3: Preferred Concept 1 (Source: Urban Design Analysis Report)

1.1.4 State electorate and local member

The site falls within the Wollongong state electorate. Mr Paul Scully MP is the State Member and Minister for Planning and Public Spaces.

The site falls within the Cunningham federal electorate. Ms Alison Byrnes MP is the Federal Member.

To the team's knowledge, neither MP has made any written representations regarding the proposal.

2 Gateway determination and alterations

The Gateway determination issued on 9/12/2021 (**Attachment B**) determined that the proposal should proceed subject to conditions.

The Gateway determination was altered on 9/01/2023 to extend the timeframe to complete the LEP to 9/03/2023 (**Attachment C**). Despite the timeframe to complete the LEP having passed, the Gateway determination remains active/valid and has been submitted to the Department for finalisation.

A key condition of the Gateway determination required a site-specific DCP chapter to be prepared to Council's satisfaction, and exhibited with the planning proposal, to ensure that all appropriate mitigation measures would be integrated into the redevelopment of the site, and any built form outcomes are compatible with surrounding land uses.

The DCP was required to be consistent with the recommendations of the acoustic feasibility study prepared in support of the application (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.

The DCP chapter was to incorporate measures/requirements 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;
- improved glazing requirements for apartment layouts with good window seals, such that when windows are closed, low internal noise levels can be achieved;
- provision of fresh air ventilation and thermal comfort, which would ensure that windows can be closed when improved amenity is desired by occupants;
- 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);
- adoption of masonry style façade construction which performs better at low noise frequencies with façade design to be reviewed by an acoustical consultant;
- outdoor areas which are designed to take advantage of any acoustic shielding by the building structure or surrounding buildings; and
- other landscaping, buffer, setback, engineering, and design solutions.

Council has met all the Gateway determination conditions, including the requirement for a site-specific DCP chapter. The DCP chapter was exhibited with the planning proposal and has been amended/updated to address issues raised in submissions.

3 Public exhibition and post-exhibition changes

In accordance with the Gateway determination, the proposal was publicly exhibited by Council from 12/10/2022 to 11/11/2022, as required by section 29 of the *Local Government Act 1993*.

Council advised a total of 26 submissions were received. Council's breakdown of the submissions received is provided in Table 2 below.

Table 2 Council Summary of Public Submissions Received

	Support Residential Development on site	Oppose Residential Development on site	No objection	Support Residential Development but one or more concerns/suggestions	Oppose Residential Development on site but possible suggestions if goes ahead	One or more concerns raised
10 Agency/ Business/ Interest Group submissions	-	3	3	2	1	1
16 Community submissions ("Our Wollongong" website and email)	4	1	-	8	-	3

Of these submissions:

- 5 objected to the proposal (including NSW Ports); and
- 21 either supported residential use of the site and/or raised some concerns/made suggestions for improvement.

Full details of the issues raised in submissions and Council's responses can be viewed at **Attachment Council Report**. The key issues raised in submissions and Council's responses are summarised in the following sections of this report.

3.1 Submissions during exhibition

3.1.1 Submissions supporting the proposal

Key reasons submissions supported residential use of the site include:

- residential use of the land will increase the population of Port Kembla helping to support the economic viability of the town and services and businesses, particularly on Wentworth Street;
- the Port Kembla area is in desperate need of more housing;
- the proposal would provide additional housing noting a housing shortage crisis;
- the mix of housing proposed is ideal as it will provide opportunities for tenants and buyers in an undersupplied market;
- the Port Kembla Town Centre is quiet and underutilised and there is a limit on variations of properties and affordable housing;
- introducing a mix of apartments, terraces and townhouses will provide greater opportunities for people to live, support the local area and town centre and hopefully bring life back;
- the area has lacked any significant form of quality new residential development; and
- the site has sat derelict and vacant for a long period of time.

3.1.2 Submissions objecting to and/or raising issues about the proposal

Key organisations and operators who made submissions on the proposal included:

- the Port Kembla Pollution Committee;
- Cement Australia;
- Port Kembla Gateway; and
- an operational port tenant.

Key issues raised in these submissions are summarised in Table 3 below.

Table 3 Summary of Key Issues Raised by Organisations and Operators

Issue raised	Response
<u>Port Kembla Pollution Committee</u> <ul style="list-style-type: none"> • Supported residential development but given history/contamination considered zoning should be R2 Low Density Residential; • considered R2 development may be able to be environmentally managed, assists with maintaining the character of Port Kembla and limits disturbance/release of toxic substances; 	<p>Council Response:</p> <p>Refer to detailed discussion in Section 4.1 of this report.</p> <p>Department Response:</p> <p>Refer to detailed discussion in Section 4.1 of this report.</p> <p>It is also noted the planning proposal is consistent with the Panel's</p>

Issue raised	Response
<ul style="list-style-type: none"> noted development of the land must engage the EPA and that given the contents of supporting contamination studies, the site should be declared significantly contaminated land and subject to management orders, site audits and financial assurances; noted legislative requirements must be complied with and considered site should be capped; and noted the Wollongong Local Planning Panel (19/3/21) noted there was no strategic merit for significant FSR and height increases and considered the increased height limit sets a precedent for future R3 rezoning applications. 	<p>recommendation to allow a maximum building height of 11m but retain the maximum 0.5:1 site FSR.</p> <p>Further, given the location of the site on the edge of the Port Kembla Town Centre and industrial sites in proximity, a 3-storey (11m) height limit is not considered unreasonable. It is noted that the increase in height limits has been retained at 2-storeys (9m) across from existing residents on Marne and Reservoir Streets to maintain the character of the area and ensure integration with the existing low-density built form.</p> <p>Noting the unique circumstances of this site (its history, B4 zoning, location on the edge of town, mainly surrounded by residential uses, previously zoned medium density, site-specific DCP prepared, extensive buffer/mitigation measures proposed, has Council support, key site identification, supporting technical studies, reviewed by Panel etc), it is considered unlikely the proposal would set a precedent for future rezoning applications.</p>
<p><u>Cement Australia</u></p> <ul style="list-style-type: none"> The site adjoins strategically important industrial land. The NSW Ports' 30 Year Master Plan identifies Port Kembla as home to NSW's second container port; most of the site is not suitable for residential uses due to the impacts from the port operations; residential uses should be restricted to areas where impacts do not exceed maximum thresholds with no mitigation required; the proposal is inconsistent with Illawarra Shoalhaven Regional Plan 2041 (Objective 3, Objective 18 and Objective 19); the proposal is inconsistent with Council's Community Strategic Plan and does not align with Council's Port Kembla 2505 Revitalisation Plan; the proposal lacks strategic and site-specific merit and is a poor strategic outcome with irreversible land use conflict. further information should be provided in the form of updated acoustic and traffic assessments; the proposal has the potential to limit the growth of the port area by introducing new residents and could 	<p>Council Response:</p> <p>Refer to detailed discussion in Section 4.1 of this report.</p> <p>Department Response:</p> <p>Refer to detailed discussion in Section 4.1 of this report.</p>

Issue raised	Response
<p>jeopardise an exceptionally important piece of infrastructure in NSW;</p> <ul style="list-style-type: none"> the proposal could increase traffic on roads surrounding port area could impact Cement Australia's operations; made several suggested amendments to the proposal (e.g. maintaining B4 zoning or introducing mixed light industrial/business zone with buffer to the port, rezoning the site for recreation/public open space etc); and made several suggested amendments to the site-specific DCP chapter (Sections 2, 4, 5.2, 5.3, 5.5 etc). 	
<p><u>Port Kembla Gateway</u></p> <ul style="list-style-type: none"> Opposes the proposed redevelopment of the site, primarily because of its proximity to the port; the site overlooks Port Kembla and is an example of inappropriate urban encroachment which will negatively impact the port and the jobs it supports; the port has future expansion plans which is expected to increase noise, traffic hazards, dust and odour and is likely to be considered a nuisance by new residents; the port operates 24/7 and must not be restricted by housing encroachment into industrial land; there is a need for a significant buffer zone between any future housing development and the future footprint of the port; and the development will adversely impact efficient functioning of the port and hinder future development as strategic and vital state infrastructure. 	<p>Council Response:</p> <p>Refer to detailed in Section 4.1 of this report.</p> <p>Department Response:</p> <p>Refer to detailed discussion in Section 4.1 of this report.</p>
<p><u>Operational Port Tenant</u></p> <ul style="list-style-type: none"> Urban encroachment has potential to restrict port/business operations, including by curfews and limits on use of freight rail; the proposal to almost double allowable dwellings would increase the likelihood and scale of conflict between port users and residents; site not appropriate for residential. The acoustic report concludes a proportion of the development will be affected by port/industrial noise 'at a level higher than desirable by many people'; and the proposal is inconsistent with strategic priorities for the region and the port. 	<p>Council Response:</p> <p>Refer to detailed discussion in Section 4.1 of this report.</p> <p>Department Response:</p> <p>Refer to detailed discussion in Section 4.1 of this report.</p>

A summary of the key issues raised in all other public submissions is provided in Tale 4 below.

Table 4 Summary of Key Issues Raised in Other Public Submissions

Issue raised	Response
<p><u>Other submissions</u></p> <p>Detailed Design</p> <ul style="list-style-type: none"> The development should include wide footpaths/a bike track, retention of big trees, green zones, a playground for all people (not a concrete jungle) and modern attractive/quality buildings; there is a need for a playground linked to streetscape. There are no good playgrounds until the beach; consider other items in the Port Kembla Revitalisation Plan such as bike racks, water stations, improved gardens, lighting, and access to public toilets in the development to support Wentworth Street; there are too many dwellings crammed into the development; it is overly developed and in contradiction to principles of enhancing amenity and the design of the existing neighbourhood; medium and high density is out of character for neighbourhood and suburb; the development will cause overshadowing and block sunlight; the potential for aged care residences (design concept 2) is worthy of consideration; a childcare facility within the development requires further consideration and will add to traffic and parking congestion. Wentworth Street retail precinct should be considered for a childcare facility; apartments need to be affordable and provide a mix of housing (minimum of 20% affordable housing provision); the proposed open green space is insufficient for amenity and wellbeing; there could be a much more interesting and creative solution for the space as an extension of the Port Kembla Central 	<p>Council Response:</p> <p>The site will be identified as a 'Key Site' in WLEP 2009 which will require the development to exhibit design excellence assessed by Council's Design Review Panel.</p> <p>Further urban design, modelling and graphic work is required to optimise:</p> <ul style="list-style-type: none"> Integration of shared heritage interpretation across the site and a built form that respects adjacent heritage items; a built form compatible with surrounding low scale residential areas; permeability through the site and the delivery of a range of useable open spaces; a built form that can preserve key views from public spaces and frame and enhance views for future residents; and design and siting of the residential buildings and associated landscaping to mitigate against noise, light spill and other potential impacts and provide optimum solar access. <p>This further urban design work would deliver a final Master/Concept Plan as part of a future DA for the site and built form outcome to the highest standard of architectural and urban design, as required by the Key Site designation.</p> <p>Further view analysis work will be required as part of any future DA to identify and respond to key views in the final Master Plan and built form. Site-specific DCP controls have also been reworded to require new development (design, siting etc) to maintain key view corridors, as guided by an updated View Analysis.</p> <p>Medium not high-density development is proposed. Development will be restricted to 9m (2 storeys) along Marne and Reservoir Streets consistent with the surrounding development.</p> <p>Modelling suggests that overshadowing is unlikely to be an issue for either Marne or Reservoir Streets.</p> <p>The proposed R3 zoning includes childcare as a permitted use, subject to a satisfactory Development Application (DA). Any future DA will require further traffic impact assessment.</p> <p>Following a Council Resolution there is a separate Voluntary Planning Agreement being negotiated (to be</p>

Issue raised	Response
<p>Business District with a nod to/recognition of history; and</p> <ul style="list-style-type: none"> significant impacts to views and vistas for existing residents. 	<p>reported to Council separately for endorsement and public exhibition) to provide a minimum 5% Affordable Rental Dwellings.</p> <p>Department Response:</p> <p>Council's response is adequate. Detailed design issues will be further refined and assessed in detail as part the assessment of any future DA/s. It is also noted the Panel (19/3/21), in its assessment of an earlier version of the proposal, previously agreed with the open space allocation at the northern end of the site. The RE2 zone boundary has also now been increased to align with the southern side of Church Street.</p> <p>Refer also to detailed discussion in Section 4.1 of this report.</p>
<p>Traffic and Parking</p> <ul style="list-style-type: none"> The exhibited plan did not show any parking on site. Concern raised about the amount of traffic generated, loss of parking and increased noise at homes; the Military Road/Church St intersection is busy with poor sight lines and 45-degree angle parking impeding views. The proposal will introduce increased traffic exacerbating congestion and the likelihood of accidents; the need for infrastructure upgrades to support an increase in vehicles and foot traffic; there should be minimal roads through the site. Include bike parking and make the development focus on people not car access; and improve public transport connections to Wollongong with a more frequent train service. 	<p>Council Response:</p> <p>Onsite parking is to be provided in accordance with the requirements set out in Wollongong Development Control Plan (WLDCP) 2009 Chapter E3: Car Parking, Access, Servicing/Loading Facilities and Traffic Management. WDCP 2009 also includes bicycle parking requirements.</p> <p>Any future DA will require further traffic impact assessment and potentially modelling to determine likely impacts on current intersections and the need for any upgrades.</p> <p>Department Response:</p> <p>Council's response is adequate. Consideration of more frequent train services to Wollongong would be a matter for consideration by Transport for NSW (TNSW) during the detailed assessment of any future DA.</p> <p>Refer also to detailed discussion on in Section 4.1 of this report.</p>
<p>Contamination</p> <ul style="list-style-type: none"> Site contamination concerns raised noting the former school was relocated; and proximity to steelworks, port and historical contamination pose health and wellbeing issues to potential residents. 	<p>Council Response:</p> <p>Refer to detailed discussion in Section 4.1 of this report.</p> <p>Department Response:</p> <p>Refer to detailed discussion in Section 4.1 of this report.</p>

Issue raised	Response
<p>Noise</p> <ul style="list-style-type: none"> The vegetated berm will be insufficient as a noise barrier from neighbouring industries; and industrial/port noise will be echoed back on residents by taller buildings across the road. 	<p>Council Response:</p> <p>Council has increased the size of the proposed RE2 zoned land in the northern portion of the site post exhibition to align with the southern side of Church Street to provide a greater buffer to port operations. Council has also amended the site-specific DCP chapter so that an acoustic barrier (rather than a vegetated berm) is required on the north-eastern boundary with the port (Electrolytic Street) which is to be designed by a suitably qualified and accredited acoustic engineer</p> <p>The design and height of the acoustic barrier will respond to the proposed building heights and orientation. It is anticipated that an engineered solid acoustic barrier will be required.</p> <p>Development will be also restricted to 9m (2 storeys) along Marne and Reservoir Streets consistent with the surrounding development.</p> <p>Department Response:</p> <p>Council's response is adequate. Refer also to detailed discussion in Section 4.1 of this report.</p>

3.2 Advice from agencies

Council has consulted with all agencies required by the Gateway determination and received the following feedback.

Table 5 Summary of Advice from Public Authorities

Issues raised	Response
<p><u>NSW Ports</u></p> <p>NSW Ports objected to the proposal on the following grounds:</p> <ul style="list-style-type: none"> It would be incompatible with port operations and inconsistent with the aims of Chapter 5 Three Ports of the Transport and Infrastructure SEPP; it would be inconsistent with strategic priorities for the region and the port; it would bring sensitive uses closer to port and industrial land resulting in land use conflicts; the proposed buffer to the port is inadequate in terms of its size and the residential land use which would be permitted within it; the acoustic mitigation measures proposed in the site-specific DCP cannot be relied on to mitigate surrounding noise to acceptable levels within habitable areas; and the proposed relaxation of development controls (i.e allowing increased residential development on the site) would further exacerbate the above issues. 	<p>Council Response:</p> <p>Objection noted. Refer to detailed discussion in Section 4.1 of this report.</p> <p>Department Comment:</p> <p>Objection noted. Refer to detailed discussion in Section 4.1 of this report.</p>

Issues raised	Response
<p><u>NSW Environment Protection Authority (EPA)</u></p> <p>The EPA noted the following:</p> <ul style="list-style-type: none"> • The site is adjacent the former Port Kembla Copper smelter site zoned IN3 Heavy Industrial and less than 100m from land zoned IN2 Light Industrial. • industrial activities have the potential to produce noise, dust and odour which may impact nearby receivers. • placing sensitive residential land uses next to areas undergoing such activities has the potential to cause land use conflict. The EPA recommended that the potential for land use conflict in this location be carefully considered prior to any rezoning; and • an EPA accredited site auditor should be engaged throughout the contamination assessment and management process, including the provision of a Site Audit Statement certifying that the land is suitable for the proposed use(s) prior to occupation. <p>The EPA also attached its submission to the previous 2018 proposal which was not supported by the Department due to the proposed level of intensification of residential use under that proposal.</p>	<p>Council Response:</p> <p>Noted. Refer to detailed discussion in Section 4.1 of this report.</p> <p>Department Comment:</p> <p>Noted. Refer to detailed discussion in Section 4.1 of this report.</p>
<p><u>Transport for NSW (TNSW)</u></p> <p>TNSW raised no objection to the proposal as the rezoning and future development would not have a significant impact on the State Road network in terms of safety and efficiency. TNSW also made following comments:</p> <ul style="list-style-type: none"> • Noted surrounding roads are managed by Council and it is a matter for Council to assess and manage the traffic; • Sections 4.1 and 5.4.2 of the site-specific DCP: <ul style="list-style-type: none"> ○ Suggested improvements to infrastructure for future development (e.g provision of wider footpaths along road frontages to provide connectivity and a direct linkage and details of improvements to adjoining public transport infrastructure to promote and cater for public transport usage by future residents; ○ clarified TNSW road/laneway engineering requirements are generally Australian Guide to Road Design including its associated supplements and relevant Australian Standards; and ○ suggested some improvements to acknowledge future design of any roundabout will need to cater for the existing and future cycle and pedestrian network provided within Military Road road reserve and should ensure compliance with the NSW Government Road User Space Allocation Policy and Procedure as well as the NSW Government Movement and Place Framework. 	<p>Council Response:</p> <p>No objection noted.</p> <p>Suggestions for local infrastructure improvements noted and shared with relevant Council divisions.</p> <p>Site-specific DCP chapter updated to acknowledge that the future design of the roundabout will need to cater for the existing and future cycle and pedestrian network provided within Military Road and should ensure compliance with the policies and frameworks specified by TNSW.</p> <p>Department Comment:</p> <p>Council's response is adequate. Consideration of connectivity and local infrastructure improvements suggested by TNSW could be further addressed in detail during the assessment of any future DA for the proposed development.</p>
<p><u>National Trust (Illawarra Shoalhaven Branch)</u></p> <p>The National Trust supported the rezoning in principle and made the following comments:</p> <ul style="list-style-type: none"> • Noted the site history (relocation of former school site due to contamination concerns) and raised concern about site contamination noting the urban design analysis indicates aged care 	<p>Council Response:</p> <p>Refer to detailed discussion on contamination in Section 4.1 of this report.</p>

Issues raised	Response
<p>and childcare facilities could be incorporated;</p> <ul style="list-style-type: none"> assumed the relevant authorities have been engaged to provide comment regarding site contamination and that strict controls and monitoring will be in place should any proposed residential development proceed; considered the proposal will assist in ensuring the commercial/business enterprises of the area are focused on the Town Centre as identified in Council's Port Kembla 2505 Revitalisation Plan; saw value in the following specific elements of the proposal in providing its in principle support: <ul style="list-style-type: none"> Integrated heritage interpretation across the site in line with the Heritage Interpretation Management Strategy; ensuring the built form respects both the surrounding low scale residential areas and the adjacent heritage items; maintaining the existing views to the coast and escarpment, Mt Keira and Hill 60, encouraging the built forms to frame and enhance views where possible; ensuring a range of permeable open spaces across the site for both residents and general community; landscaped open space area at boundary of Military Road and Electrolytic Street and vegetated berm to assist noise mitigation from the port; maintaining the exiting mature plantings along the site boundaries and incorporating new plantings; and designing and siting the residential buildings to mitigate against noise, light spill and other impacts associated with the port and industrial area. 	<p>Council also noted support for residential use of the land to assist the economic viability of the Town Centre and for the adoption of design measures to mitigate potential noise and other amenity impacts.</p> <p>Department Comment:</p> <p>Council's response is adequate. Refer to detailed discussion in Section 4.1 of this report.</p>
<p><u>Sydney Water</u></p> <p>Provided information to assist in planning for the servicing needs of the proposed development as follows:</p> <ul style="list-style-type: none"> Potable water servicing should be available via watermain on Military Road. Amplifications, adjustments and/or minor extensions may be required; and wastewater servicing should be available via a wastewater main within the property boundary. Amplifications, adjustments and/or minor extensions may be required; and noted development servicing advice can change over time and detailed requirements will be provided once the development is referred to Sydney Water for a Section 73 application. 	<p>Council Response:</p> <p>Noted.</p> <p>Department Comment:</p> <p>Council's response is adequate. These issues would be further considered/addressed in detail by Council during the assessment of any future DA for the proposed development.</p>
<p><u>Endeavour Energy</u></p> <p>Attached resources to share with applicant, including standard conditions for development applications and planning proposals.</p>	<p>Council Response:</p> <p>Noted and forwarded to planning consultant (with a request to share with the applicant).</p> <p>Department Comment:</p> <p>Council's response is adequate. These issues would be further considered/addressed in detail by Council during the assessment of</p>

Issues raised	Response
	any future DA for the proposed development.

The Department considers Council has adequately addressed matters raised in submissions from agencies. Key issues are discussed in further detail in Section 4.1 of this report.

3.3 Post-exhibition changes

3.3.1 Council resolved changes

At Council's Ordinary Meeting on 27/02/2023, Council resolved to proceed with the planning proposal with the following key post-exhibition changes:

- increasing the size of the proposed RE2 Private Recreation zone boundary in the northern portion of the site to align with the southern side of Church Street to:
 - provide a greater buffer to port operations;
 - minimise port side residential development on the highest elevation of the site;
 - ensure that an apartment building does not terminate the view of Church Street, and
 - ensure the proposed development is sympathetic to the surrounding built form.
- substantial changes to the site-specific DCP chapter to address issues raised in submissions such as:
 - requiring a minimum 10m setback from the boundary adjoining the port on Electrolytic Street to allow construction of the noise attenuation barrier designed by an acoustic consultant;
 - setbacks adjusted to 4.5m with a 1m articulation zone for both Reservoir and Marne Streets, compatible with the surrounding existing built form;
 - requiring the developer to provide a roundabout at any proposed access to the site from Military Road; and
 - requiring updated acoustic, traffic and view analysis as part of any future DA.
- requiring further urban design analysis/refinement to be undertaken to develop a final Master Plan/Concept Plan as part of a future development application to better reflect the desired future character of the site in terms of achieving a quality design that incorporates shared heritage elements, respects key views, better integrates with the existing residential community, and mitigates against potential amenity impacts associated with its port interface location.

3.3.2 Justification for post-exhibition changes

The Department notes that these post-exhibition changes are justified being made in response to submissions and do not require re-exhibition.

It is considered that the post-exhibition changes provide a greater buffer to port operations, reduced potential for land use conflict issues, and improved urban design outcomes.

4 Department's assessment

The proposal has been subject to detailed review and assessment through the Department's Gateway determination (**Attachment B**) and subsequent planning proposal processes. It has also been subject to a high level of public consultation and engagement.

The following reassesses the proposal against the relevant Regional Plan, Council's Local Strategic Planning Statement, Local Housing Strategy, Local Planning Panel Recommendation, Section 9.1 Directions, SEPPs, and other local plans/strategies. It also reassesses any potential key impacts associated with the proposal.

As outlined in the Gateway determination report (**Attachment Gateway Report**), the planning proposal submitted to the Department for finalisation:

- Remains not inconsistent with Illawarra Shoalhaven Regional Plan;
- remains consistent with key aspects of Council's Local Strategic Planning Statement (housing direction for Port Kembla and identified need to revitalise the commercial centre);
- remains consistent with the Port Kembla Revitalisation Plan 2505;
- remains consistent or justifiably inconsistent with all relevant Section 9.1 Directions; and
- remains consistent or justifiably inconsistent with all relevant SEPPs.

The following tables identify whether the proposal is consistent with the assessment undertaken at the Gateway determination stage. Where the proposal is inconsistent with this assessment, requires further analysis or requires reconsideration of any unresolved matters these are addressed in Section 4.1.

Table 2 Summary of strategic assessment

	Consistent with Gateway determination report Assessment	
Regional Plan	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Local Strategic Planning Statement	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Community Strategic Plan	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Port Kembla Revitalisation Plan 2505	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Urban Greening Strategy	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Port Kembla Land Use Conflict Management Study	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Local Housing Strategy	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No, refer to section 4.1
Local Planning Panel (LPP) recommendation	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No, refer to section 4.1 (Other issues)
Section 9.1 Ministerial Directions	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
State Environmental Planning Policies (SEPPs)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1

Table 3 Summary of site-specific assessment

Site-specific assessment	Consistent with Gateway determination report Assessment	
Social and economic impacts	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Environmental impacts	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Infrastructure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1

4.1 Detailed assessment

The following section provides details of the Department's assessment of key issues raised in submissions, including Council's response to these issues and recommended revisions to the planning proposal.

Strategic Planning and Potential Land Use Conflicts

Objections to the proposal (including NSW Ports and some port operators) were made on the basis it would be inconsistent with strategic priorities for the port and region.

Submissions also objected to the proposal (including NSW Ports and some port operators) raising concern it would be incompatible with and limit port operations and bring sensitive uses closer to port and heavy industrial land resulting in land use conflicts.

The objections considered that the proposed buffer to the port is inadequate in terms of its size, the acoustic mitigation measures proposed in the site-specific DCP cannot be relied on to mitigate surrounding noise and other impacts to acceptable levels, and further information should be provided in the form of updated acoustic and traffic assessments.

The EPA recommended the potential for land use conflict in this location be carefully considered prior to any rezoning.

It is the case that the proposal would result in additional residents living on the boundary of the industrial area surrounding the port. However, there is a need to balance this against the potential of the currently vacant site to provide valuable housing outcomes and support revitalisation of the Port Kembla Town Centre. It is also the case that residential development is currently permitted on the site in the form of shop top housing.

The Department's Gateway assessment (**Attachment Gateway Report**) generally found that:

- The proposal is not inconsistent with key port-related objectives of the Illawarra Shoalhaven Regional Plan, including Objective 3 (Grow the Port of Port Kembla as an international trade hub) and Strategy 3.1 (Protect Port Kembla as an international gateway for freight and logistics);
- the proposal is consistent with key objectives which seek to deliver housing that is more diverse and affordable and celebrate, Conserve, and reuse cultural heritage (Objective 19 and Objective 23);
- noise (and environmental amenity impacts) could be mitigated so that they are manageable, subject to the preparation of a site-specific DCP chapter ensuring all appropriate mitigation measures are integrated into the redevelopment of the site. The DCP was also required to be consistent with the recommendations of the acoustic study (and urban design analysis/concept plan) supporting the planning proposal to ensure low internal noise levels could be achieved; and
- 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 as intended by the Three Ports SEPP (now *State Environmental Planning Policy (Transport and Infrastructure) 2021 – Chapter 5 Three Ports*).

The Department's assessment also found the proposal would be consistent with key aspects of Council's Local Strategic Planning Statement (housing direction for Port Kembla and identified need to revitalise the commercial centre) and the Port Kembla Revitalisation Plan 2505 through increasing residential population and housing choice, providing/enabling key linkages through 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. Council notes this Plan examined the Port Kembla suburb and identified the former school site as being suitable for residential development.

Council acknowledged the site adjoins State significant port land which supports a significant number of jobs and makes a significant contribution to the regional economy each year. It was also acknowledged the NSW Ports' 30 Year Master Plan Navigating the Future identifies Port Kembla as a home to NSW's second container port. Council reiterated key relevant aspects of the Regional Plan to the proposal (as above) and made the following key points in response to submissions:

- A key purpose *State Environmental Planning Policy (Transport and Infrastructure) 2021 – Chapter 5 Three Ports* (Transport and Infrastructure SEPP) is to define the port related activity boundaries and protect/reserve the land within those boundaries for existing and future port uses, and considered the SEPP area functions/should function as the buffer between port and industrial lands and residential areas;
- the proposed RE2 zone boundary in the north of the site has been increased to align with the southern side of Church Street to provide a greater buffer to port operations, reduce the extent of port side residential development on the highest elevation of the site, and reduce the potential for interface issues;
- the current B4 Mixed Use zone already permits various forms of medium density housing across the entire site, including the northern portion closest to the port (which is now proposed as a buffer area);
- safeguards in the form of legislation, development and environmental protection license conditions, environmental management plans, and industry standard policies addressing air, noise etc must be adhered to and are built into approval processes to mitigate adverse impacts from industry/port operators to nearby residents;
- the site is surrounded by residential development on three sides, its current B4 zoning permits residential development, and the proposal would not place any additional onus on port operators in terms of the above safeguards;
- an acoustic barrier (rather than a vegetated berm) is now being required on the north-eastern boundary with the port (Electrolytic Street) to be designed by a suitably qualified and accredited acoustic engineer to further mitigate potential port noise impacts;
- objectives and controls have been included in the site-specific DCP chapter to mitigate and avoid potential adverse amenity impacts from port and industrial operations;
- the proposed Wollongong LEP 2009 'Key Site' designation provides a pathway to ensure best practice building design and construction methods are achieved for the site;
- updated acoustic, traffic and view assessments/analysis, and an air quality assessment would also be required as part of any future DA; and
- there is an ongoing transition to more sustainable and environmentally friendly port operations.

The Department has considered the issues raised in submissions, as well as Council's responses, and does not consider significant new strategic planning or potential land use conflict issues have arisen since the Gateway determination was issued which would preclude rezoning of the site.

The Department remains 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 existing 0.5:1 FSR would be retained consistent with surrounding low density residential uses;
- the density and height limits of the proposal have been reviewed from an urban design perspective and recommended by the Local Planning Panel;
- Council's Port Kembla 2505 Revitalisation Plan identified that the site may be suitable for residential development;
- there are uncertainties in relation to timing and nature of future port/industrial uses and it seems unreasonable to not consider residential use of the vacant site for an indefinite period;
- 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;
- in response to submissions and to reduce the potential for land use conflicts, Council has increased the size of the RE2 zoned buffer land in northern portion of the site;
- Council is requiring an acoustic barrier on the site boundary with the port designed by a suitably qualified and accredited acoustic engineer;
- the 11m height limit would allow taller buildings to provide some shielding to residences behind both on site and on Military Road. It also allows potential for less building footprint area at ground level and provision of increased port buffers/setbacks;
- consistent with the Panel's advice of 21 March 2021, the site would be identified as a 'Key site' under Clause 7.18 of the WLEP which requires any development to exhibit design excellence, 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.
- consultation has been undertaken with key stakeholders such as the EPA, NSW Ports and industrial neighbours and the potential for land use conflict/s in this location has been carefully considered;
- further urban design analysis would be undertaken to develop a final Master Plan/Concept Plan as part of a future development application to (amongst other things) refine the detailed design and ensure it mitigates against potential amenity impacts associated with the location in proximity to the Port; and
- updated acoustic, traffic and view assessments/analysis, and an air quality assessment would also be required as part of any future DA. In particular, the Department considers it pertinent that the revised acoustic study considers the final built form proposed, the potential impacts of existing and proposed uses at the time and from the Port operating at its estimated future capacity (including maximum noise level events where relevant - such as from intermittent

crashes and bangs) to ensure acceptable internal noise levels for sleeping at night would be achieved.

Importantly, as required by the Gateway and mentioned in the Panel's advice of 19 March 2021, a site-specific DCP chapter has been prepared (consistent with the requirements of the acoustic study supporting the application) to ensure that all appropriate mitigation measures are integrated into the redevelopment of the site. This includes built form, design, layout and development controls which seek to manage potential land use conflicts and ensure any future development provides a reasonable level of amenity for incoming residents considering potential impacts (noise, air quality etc).

The DCP chapter has been updated in response to the issues raised in submissions and includes key controls requiring:

- Orientation of living areas and balconies to the north, with bedroom areas being oriented away from the port and surrounding industrial areas to mitigate from noise sources;
- 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 requirements for apartment layouts such that when windows are closed, low internal noise levels can be achieved;
- consideration of measures such as draught and acoustic sealing, venting and window orientation to minimise amenity impacts;
- provision of fresh air ventilation and thermal comfort measures to ensure that windows can be closed to improve amenity in accordance with the Building Code of Australia;
- engagement of an acoustic consultant to provide advice on construction methods and materials (walls, ceiling and roof systems and windows/doors) noting masonry style façade construction performs well at low noise frequencies;
- other landscaping, buffer, setback, engineering, and design solutions, notably:
 - a minimum 10m setback from the boundary closest to the port along Electrolytic Street (to be zoned RE2 Private Recreation) to allow construction of the noise attenuation barrier designed by an acoustic engineer. The DCP notes it is anticipated that an engineered solid lapped acoustic barrier will be required, and the design and height of the acoustic barrier will respond to the proposed building heights and orientation.
- inclusion of notations on Section 10.7 certificates 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); and
- updated acoustic, traffic and view assessments/analysis as part of any future DA.

In relation to glazing, the acoustic study supporting the application notes that with a relatively high specification glazing such as 10mm laminated construction for windows and glazed doors, an internal to external noise reduction of at least 25 decibels can be achieved to allow internal levels of 35dBA. The Department considers glazing of this minimum specification may be appropriate to future-proof the development considering the site context and future uses planned for the port.

The Department is satisfied the plan considers appropriate opportunities to reduce land use conflicts with the port and includes buffer measures to minimise the impact of development on the efficient functioning of the port and the freight industry as generally required by Strategy 3.1 of the Regional Plan.

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 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 during construction and home businesses;
- 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.

The Department acknowledges the potential for land use conflict, the future intentions of the Transport and Infrastructure SEPP – Chapter 5 Three Ports area and the Port Kembla Town Centre and local topography. On balance, the scale/density of residential development is considered to be acceptable.

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 to a degree depend on Council and the proponent working together to implement the site-specific DCP and ensure, through the development assessment and construction processes, that the new dwellings/site detailed design incorporates appropriate attenuation measures to manage potential land use conflicts and mitigate future residents from port/industrial impacts to ensure a reasonable level of amenity.

Contamination

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 data reassessment indicates the site is impacted by widespread heavy metal contamination, as well as localised total recoverable hydrocarbons and asbestos.

Several submissions raised concern about site contamination, its proximity to the port, and the potential release/disturbance of toxic substances noting the former public school was relocated (to Gloucester Boulevard) due to health concerns. Given site contamination, submissions raised concern about the proposed residential use of the site, and that the urban design analysis indicates aged care and childcare facilities could be incorporated into the development.

Council has consulted with the relevant authority (EPA) to provide comment regarding site contamination and ensure strict controls (e.g. significantly contaminated land declaration, management orders, site audits and financial assurances) and monitoring would be in place to manage contamination issues.

Council noted contamination assessment reports submitted conclude that the site is contaminated but could be managed through implementation of an Environmental Management Plan (EMP) and can be rehabilitated and rendered suitable for medium density residential development, subject to further data assessment following finalisation of the proposed development design, review of the conceptual remediation strategies and subsequent remediation of identified contamination issues.

Council also noted:

- A detailed asbestos investigation would be required prior to remediation and further investigations could be undertaken as part of a future development application process;
- contamination reports indicate that potential management strategies for contamination could include offsite disposal, on site treatment, off site treatment or on-site containment; and

- the health-based Investigation Levels (HIL) guidelines are very stringent for sensitive uses (residential housing, childcare, aged care development);
- the submission from the EPA confirms that an accredited site auditor should be engaged throughout the contamination assessment and management process, including the provision of a Site Audit Statement certifying that the land is suitable for the proposed use(s) prior to occupation; and
- a long-term EMP is required to be notified on the planning certificate for on site management of any encapsulated contamination (if this management strategy is utilised), promoting awareness of the contamination management and the requirements to avoid disturbance. The long term EMP will require review and endorsement by a Site Auditor and the developer is responsible for site clean-up and long-term monitoring.

The Department is satisfied Council has addressed contamination concerns raised in submissions and notes the planning proposal is supported by several contamination reports, which conclude 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 and associated site auditing could be resolved through the DA process to ensure the land is suitably remediated before it is used for residential purposes.

The Department concludes the relevant considerations for preparing an environmental planning instrument to rezone the land have been met.

Heritage

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 has prepared a Heritage Interpretation Strategy (HIS) for the site in consultation with Council to 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 Wollongong LEP 2009 but would be renamed to the 'Site of former Port Kembla Primary School'.

The HIS recommends interpretation in the form of the following:

- Retention of landscape - retention of mature trees;
- demolished structures - introduced devices (features, sculptures plaques and the like to demonstrate, describe or reflect an important aspect of the site) and footing markings of main school building in public areas;
- introduced devices – in the form of:
 - layout to reflect both Aboriginal occupation and educational themes;
 - artwork/structures to allow interpretation of Aboriginal themes; and
 - interpretation panels covering Aboriginal themes, the development of Port Kembla and Port Kembla Public School.

In the post-exhibition report, Council noted the site sits adjacent to three other heritage items (St Stephen's Anglican Church, former Fire Station, and a dwelling house/shop on the corner of Third Avenue/Military Road) and that the heritage value and its context should also inform the future interpretative strategy of the site.

Council noted further urban design work would deliver a final Master/DA Concept Plan for the site which optimises (among other things) integration of shared heritage interpretation across the site and a built form that respects adjacent heritage items. This further urban design work would deliver

a Master Plan for the site and built form outcome to the highest standard of architectural and urban design, as required by the Wollongong LEP 2009 'Key Site' designation.

The National Trust (Illawarra Shoalhaven Branch) supported the rezoning in principle and saw value in integrated heritage interpretation across the site in line with the HIS.

The Department is satisfied heritage issues have been suitably addressed and can be further refined through the development assessment process.

Other Issues

Public submissions raised a range of other detailed/urban design issues and potential impacts for consideration (e.g traffic congestion, need for road/intersection upgrades, adequate parking provision, overshadowing, impacts to views, inadequate open space provision, consideration of site facilities such as bike racks, wide footpaths, playgrounds, public toilets, need for increased affordable housing and the like).

Council's response to these issues (summarised in Table 4 of this report) is considered adequate.

In particular, the Department notes:

- The traffic assessment supporting the proposal found there are no significant traffic or transport impacts that preclude approval;
- on-site parking is to be provided in accordance with the relevant requirements of WLDCP 2009;
- overshadowing is unlikely to be an issue on Marne or Reservoir Streets;
- the Panel (19/3/21), in its assessment of an earlier version of the proposal, previously agreed with the open space allocation at the northern end of the site which has now been increased in size and is an improvement;
- the site would be identified as a 'Key Site' in WLEP 2009 which will require the development to exhibit design excellence assessed by Council's Design Review Panel;
- further urban design work would deliver a final Master/DA Concept Plan for the site which optimises (among other things):
 - a built form compatible with surrounding low scale residential areas,
 - permeability through the site and the delivery of a range of useable open spaces; and
 - a built form that preserves key views from public spaces and frames and enhances views for future residents. Site-specific DCP controls have also been reworded to development to maintain key view corridors, as guided by an updated View Analysis to be completed to inform built form design and siting and buildings to be positioned, scaled, and set back to ensure key views are maintained.
- the affordable housing component of the proposed development is being pursued/reported separately by Council via a separate draft Planning Agreement containing provision of at least 5% Affordable Rental Housing; and
- 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 the potential impacts and management of other/detailed design issues can be suitably managed and refined through the development assessment process.

Draft Wollongong Local Housing Strategy

Since the Gateway determination was issued for this proposal, Council exhibited a Draft Wollongong Local Housing Strategy (LHS). Public exhibition of the Draft LHS concluded in December 2022 and Council has now adopted the strategy and recently sought endorsement from the Secretary.

The Draft LHS identifies that Council is currently assessing and progressing the former Port Kembla School site planning proposal which (amongst others) will provide additional housing.

5 Post-assessment consultation

The Department consulted with the following stakeholders after the assessment.

Table 4 Consultation following the Department's assessment

Stakeholder	Consultation	The Department is satisfied with the draft LEP
Mapping	Relevant maps have been prepared Council in consultation with the Department's ePlanning team and meet the technical requirements.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details
Council	<p>Council was consulted on the terms of the draft instrument under clause 3.36(1) of the <i>Environmental Planning and Assessment Act 1979</i>.</p> <p>Council confirmed on 12/04/2023 that it approved the draft and that the plan should be made.</p>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details
Parliamentary Counsel Opinion	On 11/05/2023 , Parliamentary Counsel provided the final Opinion that the draft LEP could legally be made. This Opinion is provided at Attachment PC .	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details

6 Recommendation

It is recommended that the Minister's delegate as the local plan-making authority determine to make the draft LEP under clause 3.36(2)(a) of the Act because the proposed scale/density of residential use strikes a reasonable balance between the need to provide 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 Gateway determination and 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. Issues raised during consultation have also been satisfactorily addressed.

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 businesses/maintenance;
- provide a small part of the site as a 'green link' between the Port Kembla town centre and potentially (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 HIS.

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

The Department notes the site-specific DCP and the ability of the development assessment and construction processes to ensure that the new dwellings/site detailed design incorporates 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.



11/5/23

Graham Towers
Team Leader, Southern Region



12/5/2023

Daniel Thompson
Director, Southern Region
Local and Regional Planning

Assessment officer

Andrew Hartcher

A/Specialist Planner, Southern Region

Attachments

Attachment	Document
A	Planning Proposal and attachments
B	Gateway determination
C	Gateway alteration
Gateway Report	Gateway determination report
Council Report	Council's Post-Exhibition Report
PC	Parliamentary Counsel's Opinion