

ITEM NO. 5

FILE NO: PSC2011-04146

PLANNING PROPOSAL – RESIDENTIAL DEVELOPMENT AT NELSON BAY ROAD, EASTERN ENTRANCE TO NELSON BAY

**REPORT OF: BRUCE PETERSEN - ENVIRONMENTAL AND DEVELOPMENT PLANNING
MANAGER**

GROUP: DEVELOPMENT SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Adopt the Planning Proposal at **Attachment 1** in respect of Lot 3542 DP 1044499, Lot 3551 DP 622263 and Lot 392 DP 753204 for the purposes of Section 55 of the Environmental Planning and Assessment Act 1979 to facilitate further investigations into rezoning to part 2(a) Residential and part 7(a) Environment Protection under the Port Stephens Local Environmental Plan 2000.
- 2) Resolve to proceed with the Planning Proposal on the basis that the Proponent will investigate biodiversity offsets under the NSW Biodiversity Banking and Offsets Scheme following a Gateway Determination.
- 3) Resolve to report the Planning Proposal to Council prior to any public exhibition in the event of a positive Gateway Determination from the NSW Department of Planning and Infrastructure, which would require the submission of all relevant studies.

ORDINARY COUNCIL MEETING – 9 OCTOBER 2012

COMMITTEE OF THE WHOLE RECOMMENDATION

	Councillor John Nell Councillor Geoff Dingle
	That Item 5 be deferred to allow for resolution of the environmental issues.

In accordance with the Section 375A, Local Government Act 1993, a division is required for this item.

Those for the Motion: Crs John Nell and Geoff Dingle.

Those against the Motion: Crs Bruce MacKenzie, Peter Kafer, Paul Le Mottee, Ken Jordan, Chris Doohan, Steve Tucker, John Morello and Sally Dover.

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	Councillor Ken Jordan Councillor Sally Dover
	That the recommendation be adopted.

In accordance with the Section 375A, Local Government Act 1993, a division is required for this item.

Those for the Motion: Crs Bruce MacKenzie, Peter Kafer, Paul Le Mottee, Ken Jordan, Chris Doohan, Steve Tucker, John Morello and Sally Dover.

Those against the Motion: Crs John Nell and Geoff Dingle.

MOTION

258	Councillor Ken Jordan Councillor Steve Tucker
	It was resolved that Council: 1) Adopt the Planning Proposal at Attachment 1 in respect of Lot 3542 DP 1044499, Lot 3551 DP 622263 and Lot 392 DP 753204 for the purposes of Section 55 of the Environmental Planning and Assessment Act 1979 to facilitate further investigations into rezoning to part 2(a) Residential and part 7(a) Environment Protection under the Port Stephens Local Environmental Plan 2000. 2) Resolve to proceed with the Planning Proposal on the basis that the Proponent will investigate biodiversity offsets under the NSW Biodiversity Banking and Offsets Scheme following a Gateway Determination. 3) Resolve to report the Planning Proposal to Council prior to any public exhibition in the event of a positive Gateway Determination from the NSW Department of Planning and Infrastructure, which would require the submission of all relevant studies.

In accordance with the Section 375A, Local Government Act 1993, a division is required for this item.

Those for the Motion: Crs Bruce MacKenzie, Paul Le Mottee, Ken Jordan, Chris Doohan, Steve Tucker, John Morello and Sally Dover.

Those against the Motion: Crs John Nell, Peter Kafer and Geoff Dingle.

BACKGROUND

The purpose of this report is to recommend that Council rezone land at Nelson Bay for part residential development and part environmental protection, subject to satisfactory resolution of biodiversity constraints.

Planning Proposal:	Refer to Attachment 1
Subject Land & Owners:	Lot 3542 DP 1044499 (Crown Land, 8 hectares), Lot 3551 DP 622263 (Christmas Bush Property Management Pty Ltd, 8 hectares), Lot 392 DP 753204 (Port Stephens Council, 0.3 hectares)
Land Area:	16.3 hectares
Current Zone:	1(a) Rural Agriculture "A" Zone
Proposed Zones:	2(a) Residential "A" Zone (approximately 14 hectares) and 7(a) Environment Protection "A" Zone (approximately 2 hectares)
Potential Yield:	168 dwellings at 12 dwellings per hectare (preliminary estimate only).

The Proponent requests the subject land be rezoned from 1(a) Rural Agriculture to part 2(a) Residential and part 7(a) Environment Protection in accordance with the Planning Proposal at **Attachment 1**. A Location Map and Draft Zoning Map are at **Attachment 2** and **Attachment 3** respectively.

It is intended to review the Planning Proposal in the event of a Council resolution and Gateway Determination from the NSW Department of Planning and Infrastructure allowing detailed investigations to proceed. These investigations will inform a revised Planning Proposal.

The Planning Proposal is not the direct result of any particular planning strategy. The Proponent is requesting that the subject land be considered for rezoning on its own merits as below:

- Provision of 14 hectares of additional land for residential development at Nelson Bay;
- Distance to the Nelson Bay Town Centre (approximately 1.2 km);
- Location immediately adjacent to an existing residential area;
- Strategic location between Nelson Bay Road (immediately to the west) and the proposed Fingal Bay Link Road (to be located 200m to the south – land for the Link Road has been reserved however the road itself has not been constructed); and
- Proximity to infrastructure (water, sewer, power and telecommunications).

There are potential negative environmental impacts associated with pursuing rezoning of the land with a potential loss of 11 hectares of Coastal Sand Apple-Blackbutt Forest for residential development.

The Proponent has requested to demonstrate the merits of investigating the subject land for rezoning at a broader strategic level prior to committing more financial

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resources at this early stage of the planning process. The Proponent is to provide more detailed studies in the event of a 'positive' Council resolution and Gateway Determination from the NSW Department of Planning and Infrastructure. These detailed studies will include but not be limited to:

- Flora and Fauna (to supplement a preliminary report submitted by Wildthing Environmental Consultants);
- Utilities Servicing;
- Stormwater and Drainage;
- Visual Amenity;
- Geotechnical;
- Bushfire;
- Cultural Heritage; and
- Traffic.

The findings of these studies will inform with greater certainty a suitable zoning footprint and facilitate the preparation of a draft planning proposal for public exhibition.

Due to the range of issues involved the Planning Proposal will be reported back to Council prior to being placed on public exhibition. This will also provide the Proponent greater clarity regarding the next stage of the Planning Proposal as determined by the Gateway Determination.

FINANCIAL/RESOURCE IMPLICATIONS

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	No		
Reserve Funds	No		
Section 94	No		
External Grants	No		
Other	Yes	\$39,963	Stage 1 Rezoning Fee

Section 94 Development Contributions

Council's Section 94 Development Contributions Plan has not been amended at this time to account for any specific additional infrastructure required as a result of the Planning Proposal. Further investigation is required to determine the appropriate timing and mechanism for the Proponent to contribute towards covering the cost of any additional infrastructure that may be required as a result of the Planning Proposal. It is anticipated that this will be resolved in parallel to the rezoning process.

LEGAL, POLICY AND RISK IMPLICATIONS

Strategic Planning Position

The subject land is identified as Rural and Resource land within the Lower Hunter Regional Strategy (LHRS). Rural and Resource Land is open for consideration for rezoning under the Lower Hunter Regional Strategy on its merits.

The Lower Hunter Regional Strategy projects an additional 1,500 jobs and 1,200 dwellings in the Nelson Bay 'Specialised Centre' by 2031. The LHRS does not define the precise boundaries within which these additional dwellings and jobs will be located, however it is understood to apply to the wider Tomaree Tourism and Lifestyle Growth Area incorporating Nelson Bay, Salamander Bay, Corlette, Soldiers Point and Taylors Beach. The Planning Proposal will assist in meeting these projections.

The Port Stephens Planning Strategy (PSPS) identifies a potential yield for the Tomaree Tourism and Lifestyle Growth Area of 1034 dwellings as infill development (land already zoned for development). Combined with the estimated yield of 168 dwellings under the Planning Proposal, the total yield aligns with the 1,200 dwellings projected for Nelson Bay in the LHRS.

The PSPS provides consideration for rezoning on merit, when outside the LHRS Green Corridor, and of only local strategic planning significance. The Planning Proposal is a logical extension of the existing residential area. It is local in scale, will have a positive impact on the established commercial hierarchy, and would have a localised impact on the urban growth footprint (the environmental impacts of that footprint are subject to further assessment and biodiversity offsets).

A key element for the economic growth and revitalisation of Nelson Bay identified in the PSPS is the need to intensify residential development in the town centre, and provision of diverse housing choice, to attract permanent residents to the area and support the town centre outside of the peak tourism season. The Planning Proposal will support this Strategic Direction because it provides opportunity for more permanent dwellings and housing options close to Nelson Bay Town Centre.

The Nelson Bay Strategy reflects the other higher order strategic plans. The Nelson Bay Strategy focuses on the Nelson Bay Town Centre and foreshore, and the subject land sits outside the study area. It reinforces a key issue that there is a need to achieve an appropriate balance between permanent residential and tourist accommodation, and that future urban potential will come from intensification of development, primarily within existing zoned areas as medium density and multi-unit development. The subject land sits outside the scope of the Nelson Bay Strategy and its rezoning is being considered on its own merits. However it can contribute towards greater support for the Nelson Bay Town Centre, consistent with the aims of the Nelson Bay Strategy.

Port Stephens Local Environmental Plan 2000

The Planning Proposal is seeking to rezone the subject land from 1(a) Rural Agriculture to part 2(a) Residential and part 7(a) Environment Protection under the Port Stephens Local Environmental Plan 2000.

Council is also in the process of preparing the Draft Port Stephens Local Environmental Plan 2012. Under this new local environmental plan the equivalent proposed zones are R2 Low Density Residential and E2 Environmental Conservation. The equivalent of the subject land's current 1(a) Rural Agriculture zone is RU2 Rural Landscape.

Port Stephens Development Control Plan 2007

A site-specific development control plan chapter will be prepared to guide development of the subject land and will be subject to a future report to Council if the Planning Proposal proceeds.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
The subject land is restricted due to vegetation conservation legislation	High	Require the Proponent to provide a biodiversity offset as part of the Planning Proposal	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The subject land is not flood prone and will not be impacted by sea level rise. There are local drainage issues that will need to be considered. The majority of the subject land slopes in an easterly direction towards adjacent land that is managed by the National Parks and Wildlife Service. There is also currently no legal discharge point available from the land sought for rezoning and the need to maintain water quality is required. A stormwater management strategy to address this has not been provided by the Proponent at this stage of the planning process. A stormwater strategy will be required to demonstrate that this issue can be appropriately managed.

A traffic study has not been provided by the Proponent at this stage of the planning process, however will be required at a future stage to identify traffic impacts.

Initial advice from review of the Planning Proposal is:

- Direct access to the subject land from Nelson Bay Road is unlikely to be supported;

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- Access to the subject land from Tallean Road would be a preferred option with an appropriate intersection treatment; and
- The level of treatment for the Tallean Road and Nelson Bay Road intersection will require investigation.

The subject land has a total area of approximately 16 hectares. Vegetation on the subject land comprises 13 hectares of Coastal Sand Apple – Blackbutt Forest. The remaining 3 hectares is cleared.

Under the submitted Planning Proposal a wildlife movement corridor 50 metres wide and 2 hectares in area is proposed at the western side of the subject land and proposed to be zoned 7(a) Environment Protection.

Approximately 11 hectares of Coastal Sand Apple – Blackbutt Forest (Supplementary Koala Habitat) would be zoned 2(a) Residential and likely subject to clearing. This loss of vegetation is significant and is a primary constraint on the rezoning of the land. For this reason it is a recommendation of this Report that the rezoning process continues on the basis that the Proponent is prepared to investigate biodiversity offsets under the NSW Biodiversity Banking and Offsets Scheme, clarify consistency with the Port Stephens Comprehensive Koala Plan of Management, and further investigate flora and fauna impacts and amelioration measures following a Gateway Determination.

The Planning Proposal has potential to provide positive social and economic impacts through the provision of additional land for residential development. It is estimated that the Planning Proposal will yield approximately 168 dwellings (based on 14 hectares of land at 12 dwellings per hectare). This will contribute towards the provision of housing opportunities. The additional housing choice and population will assist in attracting permanent residents to the area and support the Nelson Bay Town Centre outside of the peak tourism season. This is a key element of the Strategic Direction for Nelson Bay identified in the Port Stephens Planning Strategy.

CONSULTATION

The Planning Proposal will be referred to relevant authorities for comment in the event of a Council resolution and Gateway Determination allowing it to proceed. It is anticipated that the main authorities will be the Office of Environment and Heritage, Roads and Maritime Services, Rural Fire Service and utility providers.

In the event of public exhibition the Planning Proposal should be placed on exhibition for a period of at least 28 days. Notice will be placed in the local newspaper and adjacent landowners will be notified in writing. Copies of the Planning Proposal will be available in local libraries, on Council's website and at Council's Administration Building in Raymond Terrace.

OPTIONS

- 1) Adopt the recommendations of this Report and resolve to initiate the rezoning process for the subject land. This is the recommended option;
- 2) Amend the recommendations of this Report and resolve to initiate the rezoning process with separate conditions. This is not the recommended option; or
- 3) Reject the recommendations of this Report and not initiate the rezoning process. This is not the recommended option.

ATTACHMENTS – provided under separate cover

- 1) Planning Proposal;
- 2) Location Map; and
- 3) Draft Zoning Map.

COUNCILLORS ROOM

- 1) Proponent's Planning Proposal; and
- 2) Report Attachments.

TABLED DOCUMENTS

Nil.

ITEM NO. 5

FILE NO: PSC2011-04146

**PLANNING PROPOSAL – RESIDENTIAL DEVELOPMENT AT NELSON BAY ROAD,
EASTERN ENTRANCE TO NELSON BAY**

Planning Proposal – Residential Development at Nelson Bay Road, Nelson Bay

This Planning Proposal applies to Lot 3452 DP 1044499, Lot 3551 DP 622263, and Lot 392 DP 753204 in the suburb of Nelson Bay. The subject land, which has an area of approximately 16 hectares, is located at the eastern side of Nelson Bay Road and is shown on the attached Aerial Photo. At this stage the Planning Proposal is seeking to rezone approximately 14 hectares for residential use and 2 hectares for environmental protection. The Planning Proposal and zone footprint may be amended following a Gateway Determination and subsequent further investigations.

Part 1 – Objectives or Intended Outcomes

Objective 1 - To rezone land for residential development in Nelson Bay as shown on the attached Proposed Zone Map.

Objective 2 - To rezone land for environmental protection in Nelson Bay as shown on the attached Proposed Zone Map.

Part 2 – Explanation of Provisions

Port Stephens Local Environmental Plan 2000

The subject land is currently zoned 1(a) Rural Agriculture under the Port Stephens Local Environmental Plan 2000. The Planning Proposal seeks to rezone approximately 14 hectares of the subject land to 2(a) Residential and approximately 2 hectares to 7(a) Environment Protection as shown on the attached Zone Map.

Draft Port Stephens Local Environmental Plan 2012

A process is underway to replace the Port Stephens Local Environmental Plan 2000 with a comprehensive new local environmental plan, referred to as the Draft Port Stephens Local Environmental Plan 2012. Under this new local environmental plan the following equivalent zones will be applied:

- R2 Low Density Residential (for the 2(a) Residential zone); and
- E2 Environmental Conservation (for the 7(a) Environment Protection zone).

Part 3 – Justification

Section A – Need for the Planning Proposal.

Is the planning proposal a result of any strategic study or report?

The Planning Proposal is not the result of any strategic study or report. The subject land is being considered for rezoning on its own merits. In summary these merits are:

- Opportunity to provide 14 hectares of additional land for housing in Nelson Bay (168 dwellings based on 12 dwellings per hectare);
- Proximity to the Nelson Bay Town Centre (1.2 km to the north);
- Location immediately adjoining existing residential development; and
- Location between Nelson Bay Road to the west and the proposed Fingal Bay Link Road approximately 200m to the south (note: land for the Link Road has been reserved however it is not constructed).

Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

Objective 1 - To rezone land for residential development in Nelson Bay as shown on the attached Zone Map.

The best means of achieving Objective 1 is to rezone the relevant part of the subject land from 1(a) Rural Agriculture to 2(a) Residential under the Port Stephens Local Environmental Plan 2000.

Objective 2 - To rezone land for environmental protection in Nelson Bay as shown on the attached Zone Map.

The best means of achieving Objective 2 is to rezone the relevant part of the subject land from 1(a) Rural Agriculture to 7(a) Environment Protection under the Port Stephens Local Environmental Plan 2000.

Is there a net community benefit?

The Planning Proposal will have a net community benefit by providing 14 hectares of additional land for housing in Nelson Bay. However, a negative impact is the likely associated removal of approximately 11 hectares of Coastal Sand Apple – Blackbutt Forest vegetation. There is potential for the Proponent to address this impact through the provision of biodiversity offsets under the NSW biodiversity offsets program.

Net Community Benefit Test – Evaluation Criteria

Will the Planning Proposal be compatible with the agreed State and Regional strategic direction for development in the area (e.g. land release, strategic corridors, development within 800 metres of a transit node)?

The subject land is not identified as a Proposed Urban Area in the Lower Hunter Regional Strategy. Notwithstanding this, there are merits for considering the subject land for rezoning, including:

- Opportunity to provide 14 hectares of additional land for housing in Nelson Bay;
- Proximity to the Nelson Bay Town Centre;
- Location adjoining existing residential development; and
- Location between Nelson Bay Road to the west and the proposed Fingal Bay Link Road approximately 200m to the south.

These merits are generally consistent with the State and Regional strategic direction for development in the area set by the Lower Hunter Regional Strategy.

Is the Planning Proposal located in a global/regional city, strategic centre or corridor nominated within the Metropolitan Strategy or other regional/subregional strategy?

Yes. Nelson Bay is nominated as a Specialised Centre – Tourism Precinct in the Lower Hunter Regional Strategy with projections for 1,500 jobs and 1,200 dwellings.

Is the Planning Proposal likely to create a precedent or create or change the expectations of the landowner or other landholders?

Yes. The Planning Proposal is likely to create a precedent and change the expectations of other landowners in the area because it is seeking to rezone rural zoned and vegetated land for urban development that is not identified in any

planning strategy. This expectation can be limited to consideration of rezoning land situated between Nelson Bay Road and the proposed Fingal Bay Link Road. These location characteristics are unique and limited and are principal reasons for considering the subject land for rezoning.

Have the cumulative effects of other spot rezoning proposals in the locality been considered?

Yes. There are two adjacent allotments (being Lot 3552 DP 62223 and Lot 1 DP 1046750) that have the same location characteristics as the land subject of this Planning Proposal with a combined area of approximately 10 hectares. It is likely that these allotments would be sought for rezoning at a future time if the current Planning Proposal proceeds.

On the broader Tomaree Peninsula, there are only two other Planning Proposals under formal consideration for residential development. Both are at Anna Bay, a town located 8km south of Nelson Bay. One is for approximately 50 allotments and the other for approximately 270-320 allotments (preliminary estimates only). The cumulative effect of these rezoning proposals is a positive effect on the supply of residential land in the area.

Will the Planning Proposal facilitate a permanent employment generating activity or result in a loss of employment lands?

The Planning Proposal will facilitate the development of the land for residential purposes. This will generate employment during construction works, and upon completion will provide a permanent increase in population to support local businesses. The Planning Proposal will not result in any loss of employment lands.

Will the Planning Proposal impact upon the supply of residential land and therefore housing supply and affordability?

The Planning Proposal will have a positive impact on the supply of residential land by providing approximately 14 hectares of additional land for residential development. At an estimated density of 12 dwellings per hectare, the Planning Proposal could deliver approximately 168 dwellings.

Is there existing public infrastructure (roads, rail, utilities) capable of servicing the proposed site?

Public transport is by a bus service that connects Nelson Bay to the wider area. The bus service route is along Nelson Bay Road.

Initial review indicates that road access to the subject land from Tallean Road would be preferred. A traffic study is required to determine impacts and the level of intersection treatment for a Subject Land/Tallean Road intersection and any upgrade to the Tallean Road/Nelson Bay Road intersection.

Access to utilities will be the subject of referral to relevant providers following a Gateway Determination. The availability of utilities is assumed at this stage given the subject land is immediately adjacent to existing residential development.

Is there good pedestrian and cycling access?

The subject land is 1.2km from the Nelson Bay Central Business District. This provides some opportunity for pedestrian access, however it is at the limit of the generally acknowledged distance for walkability. Nelson Bay Road has an existing cycleway that connects Salamander bay and Nelson Bay Town Centre and passes directly opposite the Site. The subject land will link to the current road network to provide opportunities for cycling and pedestrian access.

Is public transport currently available or is there infrastructure capacity to support future public transport?

A bus service operates along Nelson Bay Road before turning away from the subject land along Galoola Drive. The service operates a number of times daily between the main commercial areas of Port Stephens and Newcastle. The bus service provider may consider expanding its bus route to accommodate for the proposed residential development.

Will the proposal result in changes to the car distances travelled by customers, employees and suppliers? If so, what are the likely impacts in terms of greenhouse gas emissions, operating costs and road safety?

The distance of the subject land from the Nelson Bay Town Centre provides some opportunity for residents to walk to businesses and the foreshore, and undertake short

vehicle trips by private vehicle. Car distance travelled would be reduced compared to a development located further from Nelson Bay.

Are there significant Government investments in infrastructure or services in the area whose patronage will be affected by the proposal? If so, what is the expected impact?

There are no significant Government investments in infrastructure or services in the area whose patronage will be negatively affected by the Planning Proposal.

Will the proposal impact on land that the Government has identified a need to protect (e.g. land with high biodiversity values) or have other environmental impacts? Is the land constrained by flooding?

The subject land adjoins the Tomaree National Park. The Proponent advises they met with representatives of the National Parks and Wildlife Service on 21st February 2012, who suggested the following:

- Inclusion of a bushfire Asset Protection Zone and associated measures contained within the subject land;
- appropriate fencing; and
- Stormwater to be kept on the subject land with 100% infiltration.

The land is not impacted by flooding or sea level rise, however stormwater management (including detention and water quality) will need to be addressed in a stormwater strategy submitted by the Proponent after a Gateway Determination.

Will the Planning Proposal be compatible/complimentary with the surrounding land uses? What is the impact on amenity in the location and wider community?

Yes. Development of the subject land is an extension of existing residential development to the north. Tomaree National Park is located to the east however a future subdivision can be designed to be compatible with this adjoining use. To the immediate south is land owned by Worimi Local Aboriginal Land Council that is currently zoned 1(a) Rural Agriculture and could be subject to a similar Planning Proposal at a future time. Nelson Bay Road is located to the west and the proposed Fingal Bay Link Road is 200m to the south. This context gives the subject land merit for consideration for rezoning.

Alternatively, the position can also be put that the Planning Proposal will have negative impacts on amenity for existing residents in the immediately locality through increased traffic on Talleen Road and removal of vegetation. The Proponent intends to address these impacts through a high standard of subdivision design and application of the 7(a) Environment Protection zone on part of the subject land. There is also the potential to ameliorate against environmental impacts through the provision of biodiversity offsets by the Proponent.

Will the public domain improve?

Additional population growth from the development can contribute towards improved year-round patronage in the Nelson Bay Town Centre and increased activity in the public domain.

Will the Planning Proposal increase choice and competition by increasing the number of retail and commercial premises operating in the area?

The Planning Proposal does not seek to rezone any land for commercial use.

If a stand-alone proposal and not a centre, does the Planning Proposal have the potential to develop into a centre into the future?

The Planning Proposal does not seek to rezone any land for commercial use and will not develop into a commercial centre in the future.

What are the public interest reasons for preparing the draft plan? What are the implications of not proceeding at this time?

The public interest reason for preparing the draft plan is the provision of 14 hectares of additional land for housing. If the Planning Proposal does not proceed at this time the amount of residential land available for housing in the area will be limited to existing zoned land.

Section B – Relationship to strategic planning framework.

Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy?

Lower Hunter Regional Strategy

The subject land is identified as Rural and Resource Land on the Main Map of the Lower Hunter Regional Strategy. It is not identified as a Proposed Urban Area. Its identification as Rural and Resource Land allows for its consideration for rezoning under the Lower Hunter Regional Strategy on its merits. In summary, these merits are:

- Opportunity to provide 14 hectares of land for housing in Nelson Bay;
- Proximity to the Nelson Bay Town Centre;
- Location immediately adjoining existing residential development; and
- Location between Nelson Bay Road to the west and the proposed Fingal Bay Link Road to the south.

The consistency of the Planning Proposal with the relevant Outcomes and Actions of the Lower Hunter Regional Strategy is discussed in the following paragraphs.

Lower Hunter Regional Strategy - Outcomes and Actions for Centres and Corridors

Nelson Bay is identified in the Lower Hunter Regional Strategy as a Specialised Centre - a centre of regionally significant economic activity and employment, and is projected to provide a further 1,500 jobs and 1,200 dwellings. The Planning Proposal is consistent with the Lower Hunter Regional Strategy Outcomes and Actions for Centres and Corridors because it will assist in meeting these projections by providing land for residential development and additional permanent residents to support business and employment in the Nelson Bay Town Centre on a year-round basis.

Lower Hunter Regional Strategy - Outcomes and Actions for Housing

The Planning Proposal is consistent with the Lower Hunter Regional Strategy Outcomes and Actions for Housing because it:

- Will promote consolidation of a nominated Specialised Centre;
- Will contribute to the provision of 1,500 jobs and 1,200 dwellings in Nelson Bay;
- Will provide opportunity for development generally consistent with Neighbourhood Planning Principles;
- Will provide opportunities for a range of housing types and the extra supply of land may contribute to housing affordability in the area; and

- Is unlikely to substantially increase demand the need for State infrastructure based upon its relative small scale (subject confirmation through referral to utilities providers and further investigation).

The Planning Proposal will provide approximately 14 hectares of land for residential development (168 dwellings at 12 dwellings per hectare).

Lower Hunter Regional Strategy – Outcomes and Actions for Environment and Natural Resources

The Planning Proposal is consistent with the Lower Hunter Regional Strategy Outcomes and Actions for the Environment and Natural Resources for the following reasons:

- The subject land is not located within the Watagan Stockton Green Corridor; and
- The subject land is not required for provision of mineral resources.

Notwithstanding the above, the subject land still has environmental characteristics that require consideration. 13 hectares of the subject land comprises Coastal Sand Apple – Blackbutt Forest and the Planning Proposal is seeking to rezone approximately 11 hectares of this vegetation for residential use. This will likely lead to its removal in whole or part. There is potential for the Proponent to address this impact through provision of biodiversity offsets subject to further investigation.

Is the planning proposal consistent with the local Council's Community Strategic Plan, or other local strategic plan?

Integrated Strategic Plans

Port Stephens Council has adopted a suite of plans collectively referred to as 'Integrated Strategic Plans' comprising:

- Port Stephens Community Strategic Plan 2021;
- Port Stephens Delivery Program 2011-2015; and
- Port Stephens Operation Plan 2011-2012.

Considered together these plans comprise Council's Community Strategic Plan. The consistency of the Planning Proposal with the relevant Strategic Directions is discussed in the following paragraphs.

Community Strategic Plan - Strategic Direction – Environmental Management – Maintain high levels of biodiversity and engage the community in protecting and enriching the environment:

3.1 Maintain and improve existing biodiversity levels through development and implementation of conservation programs.

The Planning Proposal seeks to rezone approximately 11 hectares of Coastal Sand Apple Blackbutt Forest to 2(a) Residential. This will likely lead to its removal in whole or part, and lead to a subsequent decrease in biodiversity. There is potential for the Proponent to address this impact through the provision of biodiversity offsets. The Planning Proposal also seeks to protect approximately 2 hectares of the subject land through application of the 7(a) Environment Protection zone to a corridor on the western part of the subject land.

3.1.1 Continue implementation of the Comprehensive Koala Plan of Management;

The consistency of the Planning Proposal with the Port Stephens Comprehensive Koala Plan of Management is discussed in a following section of this Planning Proposal (refer to discussion of State Environmental Planning Policy 44 – Koala Habitat Protection).

3.1.3 Refine the accuracy of the information relating to the status and value of biodiversity across the LGA and of environmental processes;

This has been achieved separately through the development of the Port Stephens Conservation Assessment Tool which identifies the majority of the subject land site as a 'Landscape Habitat Link'. The Proponent has also submitted a Flora and Fauna Report (Seven Part Test on Threatened Flora and Fauna, Wildthing Environmental Consultants, December 2011) which identifies environmental characteristics of the subject land. The status and environmental value of the subject land will be further set out by further investigated following a Gateway Determination.

3.1.4 Review land use strategies and policies with a view to increased protection for biodiversity and water quality; and

The subject land is not identified as proposed urban area in any land use strategies and is being considered for rezoning on its own merits.

3.1.5 Undertake or promote good land management practices on private and government land to protect flora and fauna, and water quality.

The Proponent is seeking to rezone the subject land from 1(a) Rural Agriculture to part 2(a) Residential and part 7(a) Environment Protection.

Community Strategic Plan - Strategic Direction – Sustainable Development – Provide clarity about the long term development pattern and capacity of Port Stephens for the development industry, investors and the community; and protect and maintain the unique natural aesthetics and heritage assets of the LGA through compliance enforcement:

3.8 Develop strategic land use plans, including a community settlement strategy and Operation Plan 2011-2012.

The Port Stephens Planning Strategy was adopted in December 2011.

3.8.1 Identify suitable land for rezoning;

The land is not identified as a proposed urban area in the Port Stephens Planning Strategy, however is being considered on its own merits.

Port Stephens Planning Strategy 2011-2036

The subject land is not identified as a Proposed Urban Area in the Port Stephens Planning Strategy. Despite this, provision is made for considering planning proposals for land not identified for development as follows:

"Land not identified for development in either the LHRs, PSPS or identified in the Green Corridor is unlikely to be supported by Council. It is acknowledged that minor rezoning proposals, which on an LGA wide scale, are considered inconsequential may be considered in the context of minimal/nil impact to the established commercial hierarchy, residential and employment land supply and growth footprints."

(Port Stephens Planning Strategy, page 95)

The Planning Proposal satisfies these requirements. It will have a positive impact on the established commercial hierarchy by supporting businesses in Nelson Bay and will have a localised impact on the urban growth footprint (the environmental impacts being subject to further assessment and potential biodiversity offsets).

The Planning Proposal will also assist in implementing a key element of the Strategic Direction of the Port Stephens Planning Strategy for Nelson Bay. This key element is the need to provide more diverse housing choice in proximity to Nelson Bay to attract permanent residents to the area, as well as support the town centre outside of the peak tourism season (Port Stephens Planning Strategy, page 71). The Planning Proposal is consistent with this Strategic Direction because it will provide additional land for permanent residential development and population to support the Nelson Bay Town Centre on a year-round basis.

A consideration in whether to proceed with the Planning Proposal is its ability to assist in meeting the dwelling projections and yields of the Port Stephens Planning Strategy (the projection for 1,200 dwellings for Nelson Bay in the Lower Hunter Regional Strategy is also relevant). The subject land is included within the 'Tomaree Tourism and Lifestyle Growth Area' comprising the suburbs of Nelson Bay, Salamander Bay, Soldiers Point and Taylors Beach. A summary of potential dwelling yields for these localities is provided in Table 1 Summary of Potential Dwelling Yields.

Table 1 Summary of Potential Dwelling Yields

AREA	Priority	Development Type	New Release Timing	Duration	Dwelling Yield	Average Density
Nelson Bay	2	Infill	2010	25 years	769	15+
Salamander Bay - Corlette - Soldiers Point - Taylors Beach	1	Infill	2013	10 years	265	12-15
TOTAL	N/A	N/A	N/A	N/A	1034	N/A

(extracted from the Port Stephens Planning Strategy, Page 82)

Combined with the yield of 1034 dwellings shown in the above Table, the estimated 168 dwellings under the Planning Proposal is consistent with the projection for 1,200 dwellings for Nelson Bay under the Lower Hunter Regional Strategy.

The Port Stephens Planning Strategy states that dwelling projections are estimates of a probable outcome, and are not targets, and that the actual figures are affected by changes in economic, social and environmental factors that influence land development and market demand (Port Stephens Planning Strategy, page 79).

In addition, the following factors can affect the availability of land and need to be taken into account:

- Reluctance on the part of some landowners to make land available for development;
- The potential dwelling numbers of existing zoned land within some areas often rely heavily on urban consolidation/infill being achieved. Examples of these areas include Nelson Bay and Raymond Terrace;
- Lead times in the rezoning and development of land, including the provision of sufficient infrastructure;
- Impact of demographic trends and their changes over time;
- The need to provide a spread of future release areas in a range of locations to provide location choice, product choice and competition;
- Impact of potential constraints on future release areas (e.g. aircraft noise, ecology, flooding, bushfire, infrastructure costs, fragmented land ownership); and
- Not all land identified within the growth areas will be developed for urban uses.

(Port Stephens Planning Strategy, page 79)

Taking into account all of the above factors, there is merit in proceeding with the Planning Proposal to meet the dwelling projections of the Lower Hunter Regional Strategy and Port Stephens Planning Strategy.

Is the planning proposal consistent with applicable state environmental planning policies?

The relevant State Environmental Planning Policies are SEPP 44 Koala Habitat Protection and SEPP 55 Remediation of Land (note: SEPP 71 Coastal Protection does not apply to the subject land).

SEPP 44 Koala Habitat Protection

SEPP 44 applies to the Proposal via the Port Stephens Comprehensive Koala Plan of Management (CKPoM). The Flora and Fauna Report submitted by the Proponent provides an assessment against the CKPoM Performance Criteria as follows:

a) not result in development within areas of Preferred Koala Habitat and Habitat Linking Areas:

None of this site has been mapped as these Koala habitat classes.

b) allow only for low impact development within areas of Supplementary Habitat and Habitat Linking Areas:

The vegetated parts of the site are all classified as 'Supplementary Habitat'. The proposed rezoning would retain approximately 20% of the native vegetation on the site as an east-west fauna movement corridor. Since there are no Koala feed trees on the site, this movement corridor is seen as being the major Koala habitat attribute present. In the absence of any definition of 'low impact development', it could be seen that the retention of this corridor did ameliorate the impact of the clearing and that the result was 'low impact'.

c) Minimise the removal of any individuals of preferred Koala food trees wherever they occur on the site,

No koala food trees occur on the site.

d) Not result in development which would sever Koala movement across the site. This should include consideration of the need for maximising tree retention on the site generally and for minimising the likelihood of impediments to safe unrestricted Koala movement.

The retention of a movement corridor would preserve movement patterns for east-west movement between Preferred habitat locations. Some tree retention/replanting is possible within the proposed residential area but a large proportion of the extant bush would have to be cleared to allow the development to proceed.

While this proposal impacts only upon Supplementary Habitat and no Koala food trees are to be removed, it could be seen that it does not strictly comply with the intent of the CKPoM in that 80% of the extant native vegetation on the site is likely to be removed as a result of subsequent development of the site. However, given that Council only has to consider the performance criteria and be satisfied that is possible for the impact of a subsequent development to be 'low', it may, in light of other planning considerations, support this rezoning."

(Wildthing Environmental Consultants, December 2011, Page 36)

Notwithstanding the assessment provided by the Proponent, there are concerns with the consistency of the Planning Proposal against the Performance Criteria for rezoning of the CKPoM and will require further consideration following a Gateway Determination.

The Planning Proposal is not considered consistent with *Criteria (B) allow only for low impact development within areas of Supplementary Habitat and Habitat Linking Areas* because it is seeking to rezone approximately 11 hectares of Coastal Sand Apple-Blackbutt Forest (Supplementary Koala Habitat) for residential use. This cannot be considered 'low impact development', which is defined in the CKPoM as:

"Development that maximises the retention and minimises the degradation of native vegetation, and in particular koala habitat. Such developments will be consistent with the objectives of the 'performance Criteria for Development Applications' contained in the Port Stephens Council CKPoM. Low impact developments will also minimise recognise threats to koalas which include dogs, bushfires, traffic, feral animals, and habitat fragmentation (including barriers to koala movement)".

(CKPoM, page 58)

There are also concerns about the consistency of the Planning Proposal with *Criteria D) not result in development which would sever Koala movement across the site. This should include consideration of the need for maximising tree retention on the site generally and for minimising the likelihood of impediments to safe/unrestricted Koala movement.* The adequacy of the proposed east-west corridor particularly its proposed 50m width requires additional investigation. Also, the Planning Proposal may impact on a suspected north-south link where Koalas are at times moving

between local peaks to browse upon Box Beach Ironbark. Under this circumstance, the existence of Koala movement corridors across the subject land requires further investigation.

The consistency of the Planning Proposal with the Performance Criteria of the Comprehensive Koala Plan of Management will be the subject of further investigation and consideration following a Gateway Determination.

SEPP 55 Remediation of Land

The subject land has a history of agricultural use however there is no known contamination. The subject land is not included on Council's Contaminated Land Register. Further investigation into this issue will occur following a Gateway Determination.

Is the planning proposal consistent with applicable Ministerial Directions?

Direction 1.1 Business and Industrial Zones

The objectives of this Direction are:

- To encourage employment growth in suitable locations,
- To protect employment land in business and industrial zones, and
- To support the viability of identified strategic centres.

The Direction does not apply to the Planning Proposal because it does not affect land within an existing or proposed business or industrial zone (including the alteration of any existing business or industrial zone boundary).

Direction 1.2 Rural Zones

The objective of this Direction is to protect the agricultural production value of rural land. This Direction applies because the Planning Proposal is seeking to rezone land from a rural zone to a residential zone.

The Planning Proposal is inconsistent with this Direction, however this inconsistency is justified because it is of minor significance. The land is not mapped as Prime Agricultural Land (Class 1 to 3) and the land is not used for cropping or grazing and is primarily vegetated. The subject land is of little agricultural value.

Direction 1.3 Mining, Petroleum Production and Extractive Industries

The objective of this Direction is to ensure that the future extraction of State or regionally significant reserves of coal, other minerals, petroleum and extractive materials are not compromised by inappropriate development. The land is not located in a mineral resource area. The Planning Proposal is consistent with this Direction because it will not impact upon the future extraction of State or regional resources. The Proponent submits that the subject land is located within Petroleum Exploration Licence 458 but the size and location of the Site would not impact on exploration rights.

Direction 1.4 Oyster Aquaculture

The objectives of this Direction are:

- To ensure that Priority Oyster Aquaculture Areas and oyster aquaculture outside such an area are adequately considered when preparing a planning proposal, and
- To protect Priority Oyster Aquaculture Areas and oyster aquaculture outside such an area from land uses that may result in adverse impacts on water quality and consequently, on the health of oysters and oyster consumers.

This Direction does not apply because the Planning Proposal will not adversely impact on a Priority Oyster Aquaculture Area.

Direction 1.5 Rural Lands

The objectives of this Direction are:

- To protect the agricultural production value of rural land,
- To facilitate the orderly and economic development of rural lands for rural and related purposes.

This Direction requires consistency with the principles of State Environmental Planning Policy (Rural Lands) 2008 as follows:

The promotion and protection of opportunities for current and potential productive and sustainable economic activities in rural areas.

The subject land has very limited agricultural opportunity.

Recognition of the significance of rural land uses to the state and rural communities including the social and economic benefits of rural land use and development.

The subject land makes little to no social and economic contribution to the community through agricultural uses.

In planning for rural lands, to balance the social, economic and environmental interests of the community.

Despite its current 1(a) Rural Agriculture zoning the subject land makes little to no contribution to the community through agricultural use.

The identification and protection of natural resources, having regard to maintaining biodiversity, the protection of native vegetation, the importance of water resources and avoiding constrained land.

The subject land has a total area of approximately 16 hectares. 13 hectares is vegetated with Coastal Sand Apple – Blackbutt Forest. Part of the subject land is proposed to be rezoned to 7(a) Environment Protection as a wildlife corridor. Approximately 11 hectares of Coastal Sand Apple – Blackbutt Forest is proposed to be rezoned to 2(a) Residential. The Planning Proposal is inconsistent with this part of the Direction.

The provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities:

Nelson Bay is not a rural community. Nonetheless, additional housing opportunities can contribute to the social and economic welfare of the community.

The consideration of impacts on services and infrastructure and appropriate location when providing for rural housing:

The land is well located to take advantage of existing services and infrastructure.

Ensuring consistency with any applicable regional strategy of the Department of Planning or any applicable local strategy endorsed by the Director-General:

The consistency of the Planning Proposal with the Lower Hunter Regional Strategy is discussed under Direction 5.1 Implementation of Regional Strategies.

In summary, any inconsistency of the Planning Proposal with Direction 1.5 Rural Lands is of minor significance, with the exception of the potential for impact on the vegetation on the subject land. That exception is addressed in various other sections of this report.

Direction 2.1 Environmental Protection Zones

The objective of this Direction is to protect and conserve environmentally sensitive areas. The Direction relevantly provides that a planning proposal must include provisions that facilitate the protection and conservation of environmentally sensitive areas. Although the Planning Proposal does this to an extent, it can be considered inconsistent with this Direction.

The Planning Proposal is inconsistent with this Direction because it is seeking to rezone 11 hectares of Coastal Sand Apple – Blackbutt Forest to 2(a) Residential.

The Planning Proposal is not justified by a land use strategy which:

- Gives consideration to Direction 2.1 Environmental Protection Zones; and
- Identifies the land which is the subject of the planning proposal (if the planning proposal relates to a particular site or sites), and
- Is approved by the Director-General of the Department of Planning.

The potential loss of 11 hectares of Coastal Sand Apple-Blackbutt Forest Vegetation cannot be considered of minor significance.

The Planning Proposal is seeking to address environmental impacts by retaining a corridor (to be zoned 7(a) Environment Protection) and appropriate subdivision design. There is potential for the Proponent to address environmental impacts through the provision of biodiversity offsets.

Direction 3.1 Residential Zones

The objectives of this Direction are:

- To encourage a variety and choice of housing types to provide for existing and future housing needs,
- To make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services, and
- To minimise the impact of residential development on the environment and resource lands.

The Planning Proposal is consistent with this Direction. The land is located approximately 1.2km from Nelson Bay Town Centre and is adjacent to a main transport route. The proximity of the subject land to Nelson Bay Central Business District facilitates short trips by private vehicle to access shops and employment.

Direction 4.1 Acid Sulfate Soils

The objective of this Direction is to avoid significant adverse environmental impacts from the use of land that has a probability of containing acid sulfate soils.

The Planning Proposal is consistent with this Direction. The subject land is mapped as potentially comprising Class 5 Acid Sulfate Soils, which is the lowest risk category under clause 51A of the Port Stephens Local Environmental Plan 2000. Clause 51A provides that "Works within 500m metres of Class 1, 2, 3 or 4 land which are likely to lower the watertable below 1 metre AHD on the adjacent Class 1, 2, 3 or 4 land" require consideration. In this instance, potential Class 5 acid sulfate soils are located up to approximately 1km around the site, indicating that any risk from acid sulfate soils is low and manageable.

Direction 4.2 Mine Subsidence and Unstable Land

The objective of this Direction is to prevent damage to life, property and the environment on land identified as unstable or potentially subject to mine subsidence. The subject land is not within a Mine Subsidence District.

The Planning Proposal submitted by the Proponent discusses geotechnical matters, including the potential for steep land, as follows:

"The site geology and soil is identified as a variant of the Shoal Bay Aeolian landscape which consists of non-cohesive sand soils that are well drained, low in fertility and can have steep slopes. The south east corner of the site exhibits some potential for steep land, although the rest of the site is considered suitable for residential development. Following a positive gateway determination, a site specific assessment will be undertaken to further examine the site geology and landform and confirm any geological constraints. This assessment will assist in confirming areas within the site suitable for residential".

(Planning Proposal, Page 50-51)

This Direction states that a planning proposal shall include provisions that encourage the provision of housing that will:

- Broaden the choice of building types and locations available in the housing market, and
- Make more efficient use of existing infrastructure and services, and
- Reduce the consumption of land for housing and associated urban development on the urban fringe, and
- Be of good design.

This Direction requires that a planning proposal shall:

- Contain a requirement that residential development is not permitted until land is adequately serviced (or arrangements satisfactory to the council, or other appropriate authority, have been made to service it), and
- Not contain provisions which will reduce the permissible residential density of land.

The Planning Proposal is consistent with this Direction because it will provide 14 hectares of additional land supply for housing in proximity to an existing urban area.

Direction 3.4 Integrating Land Use and Transport

The objective of this Direction is to ensure that urban structures, building forms, land use locations, development designs, subdivision and street layouts achieve the following planning objectives:

- improving access to housing, jobs and services by walking, cycling and public transport, and
- increasing the choice of available transport and reducing dependence on cars, and
- reducing travel demand including the number of trips generated by development and the distances travelled, especially by car, and
- supporting the efficient and viable operation of public transport services, and
- providing for the efficient movement of freight.

This Direction states that a draft LEP shall locate zones for urban purposes and include provisions that give effect to, and are consistent with, the aims, objectives and principles of:

- *Improving Transport Choice – Guidelines for planning and development* (DUAP 2001), and
- *The Right Place for Business and Services – Planning Policy* (DUAP 2001).

Direction 5.2 Sydney Drinking Water Catchment

Not applicable.

Direction 5.3 Farmland of State and Regional Significance on the NSW Far North Coast

Not applicable.

Direction 5.4 Commercial and Retail Development along the Pacific Highway, North Coast

Not applicable.

Direction 5.5 Development in the vicinity of Ellalong, Paxton and Millfield (Cessnock LGA)

Not applicable.

Direction 5.6 Sydney to Canberra Corridor

Not applicable.

Direction 5.7 Central Coast

Not applicable.

Direction 5.8 Second Sydney Airport: Badgerys Creek

Not applicable.

Direction 6.1 Approval and Referral Requirements

The objective of this Direction is to ensure that local environmental plan provisions encourage the efficient and appropriate assessment of development.

The Planning Proposal is consistent with this Direction. It does not introduce any provisions that require the concurrence, consultation or referral of development applications to a Minister or public authority.

Direction 6.2 Reserving Land for Public Purposes

The objectives of this Direction are:

- To facilitate the provision of public services and facilities by reserving land for public purposes, and

The consistency of the Planning Proposal with this Direction regarding potential for unstable land will be established by a study following a Gateway Determination.

Direction 4.3 Flood Prone Land

The objectives of this Direction are:

- To ensure that development of flood prone land is consistent with the NSW Government's *Flood Prone Land Policy* and the principles of the *Floodplain Development Manual 2005*, and
- To ensure that the provisions of an LEP on flood prone land is commensurate with flood hazard and includes consideration of the potential flood impacts both on and off the subject land.

The Direction does not apply to the Planning Proposal as the subject land is not flood prone.

Direction 4.4 Planning for Bushfire Protection

The objectives of this Direction are:

- To protect life, property and the environment from bush fire hazards, by discouraging the establishment of incompatible land uses in bush fire prone areas, and
- To encourage sound management of bush fire prone areas.

The subject site is classified as bushfire prone land. Following a positive Gateway Determination a bushfire threat assessment will be prepared and referred to the Commissioner of the NSW Rural Fire Service.

Direction of 5.1 Implementation of Regional Strategies

The objective of this Direction is to give legal effect to the vision, land use strategy, policies, outcomes and actions contained in regional strategies.

The Planning Proposal may be considered to be inconsistent with this Direction because the subject land is not identified as a proposed urban area in the Lower Hunter Regional Strategy. Alternatively, the rezoning of the subject land is able to be considered under the Lower Hunter Regional Strategy on merit because the land is identified as Rural and Resource land, and is not within the Watagan – Stockton Green Corridor. Any inconsistency may be justified because it will assist in the delivery of housing to meet the Lower Hunter Regional Strategy projections of 1,200 additional dwellings and 1,500 jobs in Nelson Bay.

impacts of the proposal in regards to the threatened species, populations and communities.

Parts of the site have been subject to a long history of agricultural use and it now presents as a mosaic of bushland and cleared paddock. Most of the site supports Coastal Sand Apple Blackbutt Forest in relatively good condition.

Flora and fauna surveys were undertaken to identify any threatened species that could be using the site and three species of bats were found. The survey also found that the site had attributes that would have constituted a resource for 62 other species listed as threatened, or migratory under State and/or Federal legislation. A Seven-part Test assessment under Section 5A of the EPA Act has found that there should be no significant impact upon any threatened species, Endangered Population or Endangered Ecological Community. Three species of cryptic orchid were included in the species that were deemed to have habitat on the site and searches should be undertaken for these species during their flowering period in winter and spring and a supplementary Seven-part Test undertaken if they are then found.

The Port Stephens Comprehensive Koala Plan of Management was addressed by applying the performance criteria for rezoning applications, which considered that, within the applicable performance criteria, Council may approve this rezoning.

Considerations have been made of the Commonwealth Environment Protection and Biodiversity Conservation (EPBC) Act (1999). It was determined that the proposal should have no significant impact on a matter of National Environmental Significance.

In conclusion, provided the documented procedures are followed, it is unlikely that the proposed works will constitute a significant adverse impact upon any viable local populations or individuals of the threatened species, Endangered Populations or Endangered Ecological Communities considered in this report".

(Wildthing Environmental Consultants, December 2011, Page 37).

A review of the submitted Flora and Fauna Report has identified that further confirmation of the presence of the following Threatened flora species is required:

- To facilitate the removal of reservations of land for public purposes where the land is no longer required for acquisition.

This Direction provides that a draft LEP shall not create, alter or reduce existing zonings or reservations or of land for public purposes without the approval of the relevant public authority and the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General). The Planning Proposal is consistent with this Direction because none of the subject allotments are currently zoned for public recreation purposes.

Notwithstanding the above, it should be noted that one of the allotments (Lot 392 DP 753204) is owned by Port Stephens Council. It serves as a detention basin for existing nearby development and has an area of only 2,700 square metres. Rezoning this allotment to 2(a) Residential is appropriate in the context of the surrounding proposed residential zone. The basin may be moved to an alternative location as part of subsequent development.

Direction 6.3 Site Specific Provisions

The objective of this Direction is to discourage unnecessarily restrictive site specific planning controls.

The Planning Proposal is consistent with this Direction. It does not propose any unnecessarily restrictive site specific provisions and will apply standard 2(a) Residential and 7(a) Environment Protection zone provisions to the subject land and

Section C – Environmental, Social and Economic Impact

Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

A Seven Part Test on Threatened Flora and Fauna is included with the Flora and Fauna Report submitted by the Proponent. It concludes:

"Flora, habitat and fauna assessments have been undertaken over an area of land proposed for rezoning to allow a residential development in Nelson Bay. The purpose of these assessments was to identify the significance of potential

once developed (based on an average of 2.1 persons per dwelling). The additional population will address a key Strategic Direction of the Port Stephens Planning Strategy to support the Nelson Bay Town Centre on a year-round basis.

Summary of environmental assessments to be undertaken following a Gateway Determination

The following assessments will be undertaken following a Gateway Determination:

- Flora and Fauna (including Comprehensive Koala Plan of Management);
- Utilities Servicing;
- Water Management (including stormwater and drainage);
- Visual Amenity;
- Geotechnical;
- Bushfire Threat;
- Traffic Impact; and
- Cultural Heritage.

Section D – State and Commonwealth Interests

Is there adequate public infrastructure for the planning proposal?

The subject land adjoins an existing residential area that is provided with reticulated sewer, water infrastructure and energy infrastructure. The ability of these services to be extended to the subject land will be determined in consultation with the relevant providers following a Gateway Determination.

What are the views of the State and Commonwealth public authorities consulted in accordance with the gateway determination?

The views of the following relevant authorities will be consulted with following a Gateway Determination:

- Roads and Maritime Service
- Office of Environment and Heritage
- Rural Fire Service
- Energy Australia
- Hunter Water Corporation

- Sand Doubletail Orchid (*Diurus arenaria*) and Newcastle Doubletail Orchid (*Diurus praecox*) has been recorded in proximity to the Site therefore comprehensive targeted searches during flowering season need to be undertaken.
- Villous Mintbush (*Prostanthera densa*) a historic record exists on-site for this species and is known on nearby Kurrara Hill. A more comprehensive and targeted search needs to be undertaken; and
- *Melaleuca groveana* (Grove's Paperbark) occurs on neighbouring hills and its absence or presence needs to be confirmed.

As discussed earlier in this Planning Proposal under the section on State Environmental Planning Policy 44 Koala Habitat Protection additional work is also required to clarify consistency with the Performance Criteria for rezoning requests of the Port Stephens Comprehensive Koala Plan of Management.

The Proponent has indicated preparedness to undertake further environmental studies and assessments to evaluate the impact of future residential development on flora and fauna following a Gateway Determination.

Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

The Planning Proposal seeks to rezone approximately 11 hectares of Coastal Sand Apple - Blackbutt Forest for residential use.

It is proposed to manage environmental impacts by rezoning an east-west wildlife corridor across the subject land to 7(a) Environment Protection and to implement sustainable subdivision design principles in any development. There is potential for the Proponent to address environmental impacts through the provision of biodiversity offsets under the NSW biodiversity offsets program.

How has the planning proposal adequately addressed any social and economic effects?

The Planning Proposal will have positive social and economic impacts through the provision of additional zoned land for housing at Nelson Bay. The subject land has the potential to provide approximately 168 dwellings (based on 14 hectares of residential zoned land at 12 dwellings per hectare) and an additional population of 353 persons

Part 4 – Community Consultation

The Planning Proposal will be placed on public exhibition for a period of 28 days. Notice of the Planning Proposal will be placed in the local newspaper, on the Council website and in writing to adjacent landowners. Copies of the Planning Proposal and supporting documentation will be placed on exhibition.

AERIAL PHOTO

SHEET 4 OF 5

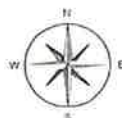


Department of Land & Property Information 2012
 Port Stephens Council 2012

SCALE 1:50000 @A3

LOCALITY: NELSON BAY

COUNTY OF GLOUCESTER



MGA56

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

PORT STEPHENS LOCAL ENVIRONMENTAL PLAN 2000

DRAFT

AMENDMENT - Nelson Bay Rd, NELSON BAY

(Lot 3542 DP 1044499, Lot 3551 DP 622263
 Lot 392 DP 753204)

DRAWN BY: DM DATE: 12/07/2012
 SUPERVISING DRAFTSPERSON: DM
 PLANNING OFFICER: MB
 COUNCIL FILE No.: PSC2011 - 04146
 DEPT. FILE No.
 CERTIFICATE PLAN No. DATED: X
 CERTIFICATE ISSUED
 UNDER S65 EPA ACT
 PUBLISHED ON PLANNING WEBSITE:

STATEMENT OF RELATIONSHIP WITH OTHER PLANS

AMENDS PORT STEPHENS LEP 2000 PLANNING SCHEME

CERTIFIED IN ACCORDANCE
 WITH THE ENVIRONMENTAL
 PLANNING AND ASSESSMENT
 ACT 1979 AND REGULATIONS
 AS AMENDED

AUTHORISED
 COUNCIL EMPLOYEE

DATE