

Minutes 26 June 2007



Minutes of Ordinary meeting of the Port Stephens Council held in the Council Chambers, Raymond Terrace on 16 June 2007, commencing at 8pm.

PRESENT:

Councillors R. Swan (Mayor); S. Tucker (Deputy Mayor); H. Brown; G. Dingle; S. Dover; G. Francis; J. J. Nell; G. Robinson; R. Westbury; General Manager; Executive Manager – Corporate Management, Facilities and Services Group Manager; Sustainable Planning Group Manager; Jeff Smith for Acting Business and Support Group Manager.

145	Councillor Nell Councillor Francis	It was resolved that the apology from Councillor Baumann, Councillor Hodges, Councillor Jordan and Stewart Murrell be received and noted.
146	Councillor Nell Councillor Francis	Resolved that the minutes of the Ordinary meeting of Port Stephens Council held on 22 May 2007 be confirmed.

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MAYORAL MINUTES

MAYORAL MINUTE

ITEM NO. 1

FILE NO: 5120-022

MOTION TO CLOSE MEETING TO THE PUBLIC

REPORT OF: JUNE SHINE – EXECUTIVE MANAGER CORPORATE MANAGEMENT

RECOMMENDATION:

- 1) That pursuant to section 10A(2)(c) of the Local Government Act, 1993, the Committee and Council resolve to close to the public that part of its meetings to discuss Confidential Mayoral Minute Item 1 on the Ordinary meeting agenda namely **Acquisition of Land**. That the reasons for closing the meeting to the public to consider this item be that:-
it contains commercial information of a confidential nature that would, if disclosed, confer a commercial advantage on a person with whom the Council proposes to conduct business.
- 2) In particular, the information and discussion concerns Acquisition of Land.
- 3) On balance it is considered that receipt and discussion of the matter in open Council would be contrary to the public interest, as the information and discussion need to be carried out confidentially to protect the interests of both parties. Any breach of such confidentiality could prejudice Council's position.
- 4) That the minutes relating to this item be made public on settlement if the proposed acquisition goes ahead or when negotiations are ended.

ORDINARY MEETING OF COUNCIL – 26 JUNE 2007

RESOLUTION:		
147	Councillor Swan Councillor Nell	That there being no objection the Recommendation was adopted.

MAYORAL MINUTE

ITEM NO. 2

FILE NO:PSC2007-1665

NOMINATION FOR WORIMI CONSERVATION LANDS BOARD OF MANAGEMENT

THAT COUNCIL:

Endorse Councillor Ron Swan as Council's delegate and Councillor Sally Dover as the alternate delegate to the Worimi Conservation Lands Board of Management.

ORDINARY MEETING OF COUNCIL – 26 JUNE 2007

RESOLUTION:		
148	Councillor Swan	That there being no objection the Recommendation be adopted.

BACKGROUND

The Worimi Conservation Lands was established on 2 February 2007 with the gazettal of approximately 4200 hectares of land at Stockton Bight as the Worimi Regional Park, Worimi National Park and Worimi State Conservation Area.

The lands are owned by the Aboriginal owners and leased back to the NSW Government to be co-managed as a part of the NSW conservation estate. The Worimi Conservation Lands are co-managed by the Department of Environment and Climate Change Parks and Wildlife Group and the Worimi Aboriginal community in accordance with the NSW National Parks and Wildlife Act.

In accordance with the Act, a Board of Management is being established for the Worimi Conservation Lands. Representation on the Board is determined by the Act and the lease agreement for the Worimi Conservation Lands. The Board is appointed by the Minister for the Environment with the concurrence of the Minister for Aboriginal Affairs, and will have 13 members comprising:

- Eight registered Aboriginal owners;
- One member representing the Worimi Local Aboriginal Council;
- One member who is a Councillor representing Port Stephens Council;
- One member representing conservation interests;
- One member representing neighbours of the Worimi Conservation Lands and
- The Department of Environment and Climate Change Parks and Wildlife Group, Hunter Regional Manager.

ORDINARY COUNCIL MEETING – 26 JUNE 2007

Port Stephens Council is invited to nominate a Councillor for appointment to the Board. The term of appointment is five years as long as they remain a Councillor.

Nominations closed on the 15 June 2007 and in the absence of a Council meeting I exercised my delegations. Nominations were submitted with Councillor Ron Swan as Council's delegate with Councillor Sally Dover as the alternate.

MOTION TO CLOSE

ITEM NO. 1

FILE NO: 1740-193

MOTION TO CLOSE MEETING TO THE PUBLIC

REPORT OF: JUNE SHINE, EXECUTIVE MANAGER - CORPORATE MANAGEMENT

RECOMMENDATION:

- 1) That pursuant to section 10A(2)(d)(i) of the Local Government Act 1993, the Committee and Council resolve to close to the public that part of its meetings to discuss Confidential Item 1 on the Operations Committee agenda namely **TENDER – T05-2007 SUPPLY OF TEMPORARY ADMINISTRATIVE LABOUR SERVICES**.
 - 2) That the reasons for closing the meeting to the public to consider this item be that:-
 - (i) The report and discussion will include details of commercial information of a confidential nature that would, if disclosed, prejudice the commercial position of the tenderers; and
 - (ii) In particular, the report includes confidential pricing information in respect of the **Tender for Supply of Temporary Administrative Labour Services**.
 - 3) That on balance, it is considered that receipt and discussion of the matter in open Council would be contrary to the public interest, as disclosure of the confidential commercial information could compromise the commercial position of the tenderers and adversely affect Council's ability to attract competitive tenders for other contracts.
 - 4) That the report and minutes of the closed part of the meeting are to remain confidential and that Council makes public its decision including the name and amount of the successful tenderer in accordance with Clause 179 of the Local Government (General) Regulation 2005.
-

OPERATIONS COMMITTEE MEETING – 26 June 2007

RECOMMENDATION:

That the Recommendation be adopted.

ORDINARY MEETING OF COUNCIL – 26 JUNE 2007

RESOLUTION:

149	Councillor Robinson Councillor Dover	That the Recommendation be adopted.
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OPERATIONS COMMITTEE RECOMMENDATIONS

ITEM NO. 1

FILE NO: 16-2007-84-1

**DEVELOPMENT APPLICATION FOR RACE TRACK (MOTORBIKES)
AND LAND FILL AT 4556 NELSON BAY ROAD, ANNA BAY**

REPORT OF: SCOTT ANSON, MANAGER - DEVELOPMENT & BUILDING

RECOMMENDATION IS THAT COUNCIL:

Refuse Development Application 16-2006-873-1 for the following reasons:

1. The proposal is inconsistent with the provisions and zone objectives of Port Stephens Local Environmental Plan 2000.
2. The proposal is out of character with the immediate locality and will detract from the residential amenity.
3. The proposal is likely to cause an unacceptable acoustic impact.
4. The proposal is contrary to the public interests and expectations, of an orderly and predictable built environment.
5. The proposal is not considered suitable for the subject site.

OPERATIONS COMMITTEE MEETING – 26 June 2007

RECOMMENDATION:

Refuse Development Application 16-2006-873-1 for the following reasons:

1. The proposal is inconsistent with the provisions and zone objectives of Port Stephens Local Environmental Plan 2000.
2. The proposal is out of character with the immediate locality and will detract from the residential amenity.
3. The proposal is likely to cause an unacceptable acoustic impact.
4. The proposal is contrary to the public interests and expectations, of an orderly and predictable built environment.
5. The proposal is not considered suitable for the subject site.

MATTER ARISING:

	Councillor Nell Councillor Westbury	That Council assist to Investigate the issue of casual motor sports activities in Port Stephens.
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ORDINARY MEETING OF COUNCIL – 26 JUNE 2007

RESOLUTION:		
150	Councillor Nell Councillor Dover	That the Operations Committee Recommendations be adopted.

RESOLUTION:		
151	Councillor Nell Councillor Dover	That the Matter Arising in the Operations Committee Recommendations be adopted.

BACKGROUND

The purpose of this report is to present a development application to Council for determination at the request of Councillors Nell, Dingle and Dover.

This application seeks consent for the continued use of a motorbike race track and jump circuit at 4556 Nelson Bay Road, Anna Bay (Lot 2, DP 629368). This application was received as a result of a noise complaint made about the operation of bikes on the subject property. An investigation established that consent was required for both the landfill used for the tracks construction and its use.

The operation details include a maximum of 6-10 bikes operating between 9am to 5pm (generally), 4-5 days per week. Council received three submissions raising concerns about the potential for the proposal to generate offensive noise. Council requested that the applicant review the operational details, but no substantial changes have been made to the original proposal.

The legislative noise requirements applicable to the proposal are the EPA's Environmental Noise Control Manual (ENCM) and the Protection of the Environment Operations (Noise Control) Regulation 2000 (POEO), which requires that noise from recreational motorbikes do not exceed 5dB over background noise or result in the generation of "offensive noise", respectively. Offensive noise is considered to be noise that is either harmful or that unreasonably interferes with the amenity of surrounding properties.

The applicant has submitted a noise report in support of the proposal. The applicant's noise consultant also provided supplementary information to aid the assessment of potential impacts on adjoining residences. The background measurement provided in the noise report was 52dB(A). Therefore the noise limit applicable to this proposal is 57dB(A).

The noise data indicates that 6-10 bikes would likely exceed 57dB(A) and subject nearby residences to offensive noise. In addition, monitoring compliance of the noise generated by the track would be extremely difficult and is likely to become an ongoing concern for Council. On this basis, the current proposal is recommended for refusal.

Based on the available noise data, a smaller scale proposal should be able to operate within the legislative noise requirements, subject to strict operational controls. Details are further discussed in the Options section of this report.

LINKS TO CORPORATE PLANS

This report related to the Goal in the Assessment and Approvals program of Council's Management Plan, which is an ordered and predictable built environment in Port Stephens.

FINANCIAL/RESOURCE IMPLICATIONS

Council's determination may potentially result in the applicant or objectors taking the matter to the Land & Environment Court. This would incur legal costs for Council to defend its decision.

LEGAL AND POLICY IMPLICATIONS

There are no legal or policy implications likely to result from Council's determination.

Australian Business Excellence Framework

This aligns with the following ABEF Principles.

- 8) Effective use of facts, data and knowledge leads to improved decisions
- 10) Organisations provide value to their community through their actions to ensure a clean, safe, fair and prosperous society
- 11) Sustainability is determined by an organisation's ability to create and deliver value for all stakeholders

SUSTAINABILITY IMPLICATIONS

SOCIAL IMPLICATIONS

The proposal in its current form is likely to generate offensive noise as defined by the POEO Act and detrimentally impact the amenity of surrounding residences. Council received three submissions raising concern about the potential amenity impacts on their properties through the operation of the race track.

ECONOMIC IMPLICATIONS

The proposal does not have any significant economic implications.

ENVIRONMENTAL IMPLICATIONS

This assessment has included an investigation of the landfill used to construct the race track. Documentation submitted with the development application stated that Hay Enterprises Pty Ltd provided the fill used to construct the track. In undertaking an assessment of the proposal, it is considered that the landfill can be reasonably assumed to be "Virgin Excavated Natural Material" (VENM) due to its nature and where it was obtained (Cromarty Rd, Soldiers Point). However, the source site was identified as having some potential acid sulphate soil.

In addition, the documentation provided does not give any certainty that landfill used to construct the track was entirely provided by Hay Enterprises from the single source of Cromarty Rd, Soldiers Point. A submission has also raised concern with the source of the fill and requested that a geotechnical report would provide greater certainty of the quality of the

fill. If any contaminants are present in the fill then there is potential for leeching into the local stormwater drainage system, which is part of the Anna Bay Drainage Union catchment.

If Council were to support the applicant, a condition could be imposed requiring a geotechnical assessment of the fill. This would provide Council with certainty regarding the quality of the fill used to construct the track.

CONSULTATION

The application was exhibited in accordance with Council policy. Council received three submissions objecting to the proposal.

There were concerns about the potential of the race track to generate offensive noise if the scale of the proposal was not managed to ensure that it was only for private use. There were also concerns about impacting future development potential of adjoining properties and environmental impacts arising from any contaminated soil used to construct the track. These issues are discussed further in the assessment.

The application was referred to Council's Environmental Services Section regarding offensive noise compliance. Concern was raised about the lack of operational controls provided, the potential scale of the proposal and the difficulty Council would have monitoring and enforcing compliance with legislative noise levels. It was recommended that any approval include a condition requiring the applicant to install noise logging equipment and provide quarterly reports to Council.

OPTIONS

- 1) Adopt the recommendation.
- 2) Reject the recommendation.
- 3) Examine possibility of smaller scale proposal subject to time limited consent and operational controls.

Discussion: The available noise data indicates that a smaller-scale proposal may be suitable for the proposed site.

Noise projection data shows that a proposal with a maximum number of 5 bikes (maximum capacity 250cc or sound power of 110dB(A)) would be unlikely to generate noise levels exceeding 57dB(A) on any adjoining property, complying with the requirement of the ENCM. Assessment of the proposal against the Local Government Noise Guide has also identified measures that could be implemented to greatly reduce the potential for offensive noise generation.

The greatest potential for conflicts between residential amenity and use of the race track is considered to be weekends and holidays (both school and public). A reasonable control would be to limit all motorbike activities to a maximum period of two hours on Saturdays, Sundays and holidays. In addition to this, use of the jump circuit should be limited to a maximum of 2 bikes and for a period no longer than two hours (inclusive of any time using the track). This is due to the jump circuit being located closer to residences and an area where noise attenuation is impracticable. For weekday use, it is considered that the 8am to 6pm limit for recreational motor vehicle activities recommended by the ENCM could be imposed as a condition.

A physical noise barrier should also be established in immediate proximity to the track (marked in red on site plan). A landscaped mound with a height of 2m would provide some noise attenuation while bikes are operating at ground level. In addition, it would provide visual screening from surrounding residences.

It is considered that these measures provide a reasonable balance between the applicant's proposal, addressing the concerns of the submissions and protecting residential amenity. Approval of any such proposal could be for a period of twelve months, which provides a safeguard for surrounding residents and gives Council the opportunity to reassess the activity after twelve months of operation. An extension of this time could be sought be a Section 96 application.

The recommendation by the Environmental Services Section for the installation of noise logging equipment has not been included because the operational requirements of maximum number of riders and operating hours would provide Council with clear opportunities to check compliance. The noise data indicates that a proposal complying with the recommend measures should be able to comply with the legislative noise requirements. Noise logging equipment would likely be cost prohibitive for the non-commercial activity proposed.

ATTACHMENTS

- 1) Locality Plan
- 2) Assessment

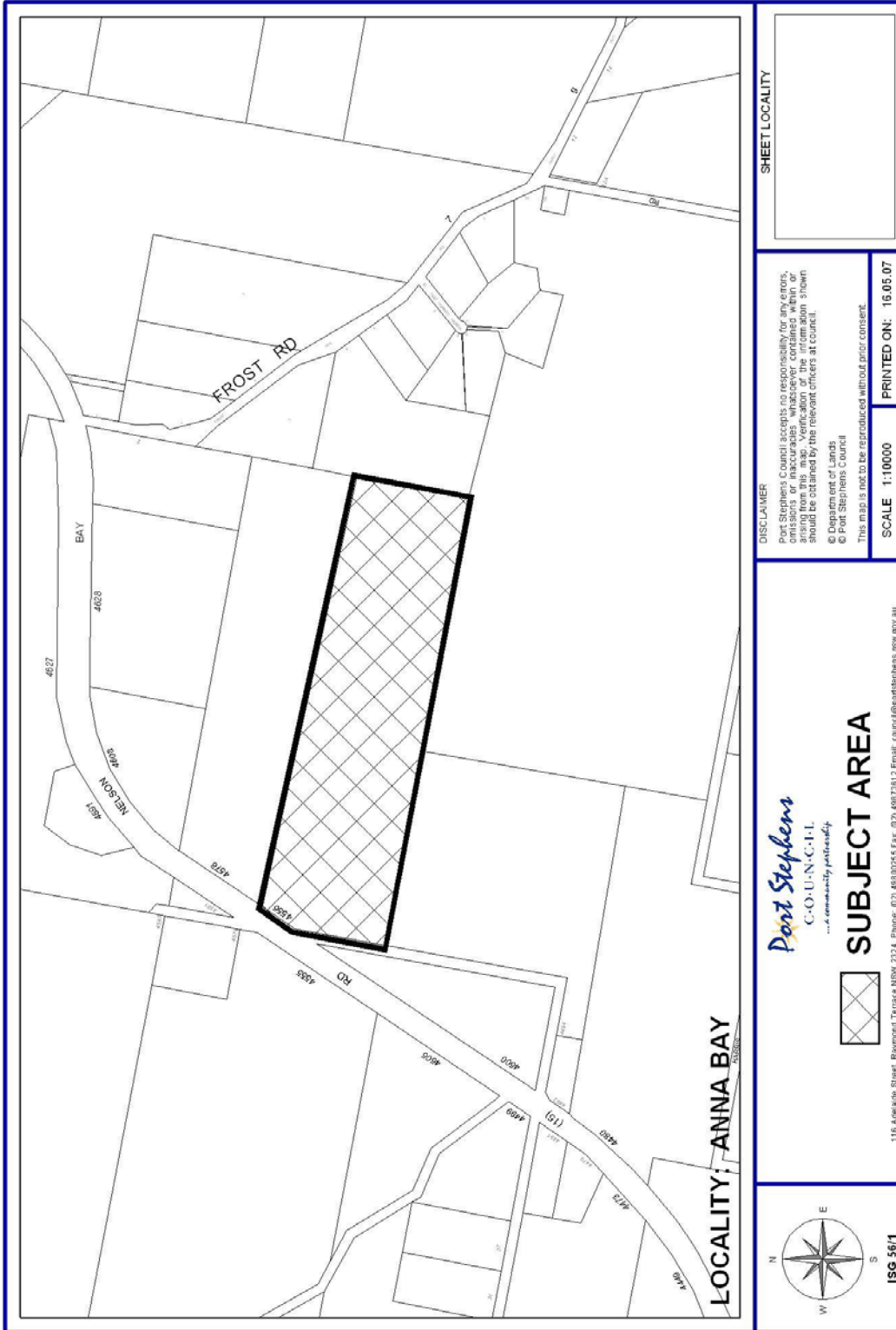
COUNCILLORS ROOM

- 1) Noise assessment provided by applicant
- 2) Supplementary information provided by VIPAC Engineers & Scientists Pty Ltd
- 3) Statement of Environmental Effects and supplementary documentation
- 4) Map identifying surrounding residences and distance to race track
- 5) Site and track plans (shows location for jump circuit, landfill mound)

TABLED DOCUMENTS

Nil.

ATTACHMENT 1
LOCALITY PLAN



SHEET LOCALITY

DISCLAIMER
Port Stephens Council accepts no responsibility for any errors, omissions or inaccuracies arising from this map. Verification of the information shown should be obtained by the relevant officers at council.
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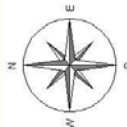
Port Stephens

C.O.U.N.C.I.L.
...a community partnership

SUBJECT AREA



116 Lakeside Street, Raymond Terrace NSW 2224. Phone: (02) 488 8025 Fax: (02) 488 7381 Email: council@portsteps.nsw.gov.au



ISG 50/1

ATTACHMENT 2

ASSESSMENT

The application has been assessed pursuant to Section 79C of the Environmental Planning & Assessment Act 1979 and the following is a summary of those matters considered relevant in this instance.

THE PROPOSAL

This application seeks consent to authorise the use of a race track and jump circuit for motorbikes at 4556 Nelson Bay Road, Anna Bay (Lot 2, DP 629368).

The documentation submitted with the application states that the track is for private use and not for commercial gain. The operational details include a maximum of 6-10 bikes on the track at any one time and that normal use of the track would be 4-5 days per week, between 9am and 5pm.

The documentation stated that the use differ during holiday periods (school & public), but would remain in accordance with legislative requirements, which prevent audible noise from recreational motor vehicles being generated 8am to 8pm on Saturday, Sunday or any public holiday and 7am to 8pm on any other day.

THE APPLICATION

Owner & Applicant Detail Submitted	Mr L & Mrs O Bennett Statement of Environmental Effects, Site Plan, Track Plan, Noise Assessment
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THE LAND

Property Description	Lot 2 and DP 629368
Address	4556 Nelson Bay Road, Anna Bay
Area	22.26 hectares (55.65 acres)
Dimensions	Approx 889m x 227m x 921m x 264m

THE ASSESSMENT

1. PLANNING PROVISIONS

LEP 2000 - Zoning Relevant Clauses	1(a) Rural Agriculture "A" Zone Clause 37 – Development on Flood Prone Land Clause 51A – Development on land identified on Acid Sulphate Planning Maps
Regulations	Protection of the Environment Operations (Noise Control) Regulation 2000
Development Guidelines	Noise Guide for Local Government EPA's Environmental Noise Control Manual

Development Control Plans

PS10 – Building Standards, Advertising & Notification
Procedures for Development Applications

Port Stephens Local Environmental Plan 2000

Under the provisions of LEP 2000, the proposed motor bike track is defined as a “race track”, which is permissible in the 1(a) zone subject to development consent.

Objectives of Zone

The current proposal is not considered to meet the objective (a) of the 1(a) zone, which seeks to *“regulate the development of rural land for purposes other than agriculture by ensuring that development is compatible with rural land uses and does not adversely affect the environment or the amenity of the locality”*.

The noise data indicates that the proposed scale of the track will likely exceed 57dB(A) and has the potential to generate offensive noise, thus detrimentally impacting the exiting amenity of surrounding residences.

The proposal is generally consistent with the other objectives of the zone, as it is unlikely to affect the agricultural viability of the land or any agricultural pursuit on adjoining properties.

Clause 37 – Development on Flood Prone Land

The site is mapped as flood prone land. The proposal will not increase the risk of flooding or loss of life with regard to the dwelling on the subject site or development on adjoining properties.

Clause 51A – Development on land identified on Acid Sulphate Planning Maps

The area for the proposed track is mapped as Class 3 Acid Sulphate Soils. Any works below 1m of the natural ground level requires consideration under this clause. Construction of the track or any modifications necessary would not require significant excavation. A Preliminary Acid Sulphate Soils Assessment is not considered necessary in this instance.

Protection of the Environment Operations (Noise Control) Regulation 2000

Clause 14 of the regulation requires that motor vehicles not be used in such a manner as to emit offensive noise. Offensive noise is defined in the *Protection of the Environment Operation Act 1997* as “noise:

- (a) *that, by reason of its level, nature, character or quality, or the time at which it is made, or any other circumstances:*
 - (i) *is harmful to (or is likely to be harmful to) a person who is outside the premises from which it is emitted, or*
 - (ii) *interferes unreasonably with (or is likely to interfere unreasonably with) the comfort or repose of a person who is outside the premises from which it is emitted, or*
- (b) *that is of a level, nature, character or quality prescribed by the regulations or that is made at a time, or in other circumstances, prescribed by the regulations.”*

The potential for offensive noise to be generated is considered in the assessment of the *Noise Guide for Local Government* (included below). Clause 15 of the POEO Regulation

requires that the of motor vehicles on residential premises should not be heard from any habitable room of any residential premises on an adjoining lot during the hours of 8am and 8pm Saturday, Sunday or any public holiday and 7am to 8pm on any other day.

Environmental Protection Authority's Environmental Noise Control Manual (ENCM)

The ENCM contains noise guidelines which have been supplemented by the Noise Guide for Local Government and recommends that the noise generated by the recreational use of motor vehicles not exceed 5dB above the background noise level. In addition, the guide recommends that recreational use of motor vehicles occur between 8am and 6pm.

The applicant submitted a noise report prepared by VIPAC Ltd in support of the proposal. VIPAC also provided supplementary information to aid Council's assessment of the proposal.

The noise report measured the background noise level and the noise generated by 2 of the loudest bikes (250cc) that would use the site. Background noise was calculated at 52dB(A). Based on this reading, noise should be limited to 57dB(A) for nearby residences. The actual maximum sound power of the 2 bikes tested (250cc) was measured at 108dB, which resulted in measurement of 54dB(A) at the boundary of a residence 380m away. The supplementary noise data provided to Council used the measured noise levels to extrapolate the sound generated by 6 and 10 bikes using the site simultaneously.

Assuming a potential maximum sound power of 110dB(A) (allowing for variations in different bikes), it was demonstrated that surrounding residences would be exposed to predicted noise levels greater than 57dB(A) for both 6 and 10 bikes operating on the site.

Noise Guide for Local Government

The Noise Guide for Local Government contains both matters for consideration and possible mitigation techniques when assessing activities that generate noise.

Part 2 – Noise Assessment - Part 2 of the guide provides matters of consideration to determine if an activity is likely to generate "offensive noise" as described in the POEO Act. These are listed below along with the relevant assessment comments:

- *Is the noise loud either in an absolute sense or relative to other noise in the area?*

The proposal is for a motorbike race track, which is likely to generate high frequency noise over short periods of time.

The noise data estimated that 6 bikes would generate noise greater than 57dB(A) (5dB above background) and that 10 bikes could generate 59.9dB(A) at the nearest residence. This noise level is 8dB over the measured background and is described as moderate-noisy. The noise level could also increase depending on weather conditions, variations in background noise and the conditions of bikes using the track.

It is considered that the noise generated by the proposal would loud in both an absolute and relative sense.

- *Is the noise well above the background noise level?*

The noise data obtained demonstrates that the operation of 6-10 bikes would result in levels between 5-8db above measured background, which the noise report states was 52dB(A).

- *Does the noise include any tones, impulses or fluctuations in volume?*

Noise generated by the bikes will fluctuate as the track contains a number of jumps. The noise report stated that the use of the bikes was only audible during times that the bikes were in the air or preparing to go over a jump.

- *Does the noise occur at times when unreasonable interference with comfort or repose occurs or is likely? For example, during evenings or at night?*

The proposal states that the race track would be used approx 4-5 times a week, including weekends and holidays. It is considered that the greatest potential for interference with the comfort or repose of surrounding dwellings is on weekends and holidays (both school and public), which are generally times when recreation activities are undertaken.

- *How often does the noise occur (hourly, daily, monthly)?*

The applicant has stated that the use of the track would be on a regular basis (approx. 4-5 times a week). The frequency and duration of the noise will depend on the management of the track, which is largely the responsibility of the applicant/operator.

- *Is the volume, duration or character of the noise typical of the type of activity in question?*

Motorbikes generally produce high-frequency, fluctuating noise. The creation of a race track will concentrate motorbike activity and increase the noise produced from the subject site compared to motorbikes being used on a rural lot without any formal track.

In this regard, the proposed use of the race track would not be typical of general motorbike use in rural areas and noise generated would be dependant on the management of the track.

- *Is the noise affecting or likely to adversely affect people's activities? For example, conversation, reading, studying, watching TV or sleeping?*

The proposal is likely to affect activities undertaken within surrounding residences, particularly on weekends and holidays, due to the estimated volume and time of noise generated. The use of 6-10 bikes is likely to generate noise that will be audible on adjoining properties and of level described as moderate-noisy.

Recreational activities are less likely to be undertaken during the week, which decreases the potential for any land use conflict.

- *Is the noise typical of activities conducted in the area?*

The area is rural, in which the use of motorbikes for agricultural purposes could be expected. However, creation of a formal track is likely to concentrate motorbike activities, both in terms of frequency and volume of use. The scale of the proposal is not considered typical of the activities conducted in the surrounding area.

Following consideration of the matters listed in the Noise Guide for Local Government, the scale of the proposal is not typical of the rural area and the noise generated is estimated to be moderate – noisy. As a result, there is significant potential for surrounding residences to be subjected to offensive noise by the proposal, particularly on weekends and holidays.

Part 3 – Noise Management Principals - Part 3 of the Noise Guidelines provides details and options for noise mitigation measures. The only practical noise mitigation measure that could be applied to this proposal is a physical noise barrier.

The applicant has proposed a landscaped mound near the street frontage, which is almost 200m from the track. The guide recommends that barriers be placed as close as possible to the noise source.

A more effective noise barrier would be a landfill mound constructed immediately next to the track and would need to be at least 2m high to mitigate noise generated at ground level. The loudest noise generated by the activity, however, will be when bikes are in the air. Requiring a landscaping mound to reduce bike noise when going over jumps would be impracticable and costly.

Development Control Plan PS10 – Building Standards, Advertising & Notification Procedures for Development Applications

The proposal was advertised and notified in accordance with Council policy. Council received three (3) submissions objecting to the proposal. The issues raised in the submissions are discussed later in this report.

2. LIKELY IMPACT OF THE DEVELOPMENT

Following assessment of the application, it was considered that the proposal has the potential to impact adjoining properties. The likely impacts are listed below, along with relevant assessment comments:

- ***Noise generated by the race track***

Based on the available noise data, the proposal (maximum of 6-10 bikes with a maximum sound power of approx 110dB(A)) is likely to generate noise exceeding the 57dB(A) limit recommended by the ECNM. Due to the volume and time of the activity, it is also likely for offensive noise to be generated on adjoining properties. Based on this analysis the current proposal is recommended for refusal.

- ***Dust generated by the race track***

The use of the track has the potential to generate significant quantities of dust, depending on weather conditions and frequency of use. The proposal includes provision for the installation of a watering system that if used appropriately, should minimise the potential for any detrimental impacts on adjoining properties.

▪ ***Visual impact***

The area for the proposed track is clearly visible from the Nelson Bay Road frontage and during times of use and dust generation, has the potential to have a significant visual impact. Any detrimental impacts can be minimised by the installation of a landscaping barrier between the track and road frontage. A barrier is also recommended by the Noise Guide for Local Government as a noise mitigation measure and would be a recommended condition if support was given to the proposal.

▪ ***Environmental contamination***

This assessment has included investigation of the landfill used to create the race track. Council requested confirmation of the fill's origin. Documentation was submitted stating that approximately 12-15 tonnes of landfill was sourced from 28-30 Cromarty Rd, Soldiers Point and used to construct the track.

Council's records confirmed that the source site is residential and subject to development consent 16-2004-422-1, which approved construction of an urban housing development that required a large amount of excavation. An Acid Sulphate Soils Assessment was conducted on the site due to the excavation required, which stated that there was a small likelihood of any potential acid sulphate soils being disturbed, but that any such soils should be treated with lime before being removed from the site.

Environmental Protection Authority guidelines were used to assess the landfill and determine if it satisfied the criteria for VENM. The guidelines recommend a visual inspection for any signs of contamination such as odours or building waste (bricks, timber, tiles & vegetation). A site inspection prior to the lodgement of this application, during which photos were taken, confirmed that no building waste was present in the fill located on the site. In addition, the source site does not have any past uses associated with contaminated soils. It is considered that the soil could be reasonably assumed to be VENM.

However, documentation submitted does not confirm whether all of the soil used to construct the track was obtained from Hay Enterprises. A submission questioned the source of the fill and raised concern about its quality. In addition, it cannot be confirmed whether the fill provided from Hay Enterprises contained any potential acid sulphate soils, and if so, whether any treatment process was undertaken.

If there are any contaminants in the fill, there is the potential for leeching to occur and enter the existing drainage channels on the site, which is within the Anna Bay Drainage Union catchment.

This proposal has been recommended for refusal, which would require removal of all fill used in the tracks construction. If Council decided to support the proposal, a condition could be imposed requiring a geotechnical assessment of the fill used for the track construction. This would provide Council with certainty regarding the quality of the fill and address one of the major issues raised in the submissions.

3. Suitability of the Site

The site is a 22.26 hectare rural allotment along Nelson Bay Rd. The site is relatively flat and is subject to flooding. The rear two-thirds of the site is densely vegetated with swamp sclerophyll (mapped as an endangered species and preferred koala habitat).

There are seven residential dwellings within 500m of the race track, with the nearest residential receiver being 300m away (north-west from the track).

The use of motorbikes is considered to be within the character of rural areas and private use of motorbikes on private property does not require development consent under LEP 2000. However, the construction of formal race tracks on private property is likely to increase the scale, frequency and duration of any motorbike activities, resulting in larger impacts on adjoining properties.

The available noise data indicates that the proposal (with a maximum of 6-10 bikes) would likely exceed the 57dB(A) requirement of the ENCM and subject the nearby residences to offensive noise. In addition, documentation submitted by the applicant does not impose sufficient operational limits to ensure compliance with the legislative noise limits. It is for this reason that the current proposal is recommended for refusal.

The noise data, however, also indicates that a smaller-scale use (with a maximum of 5 bikes) with strict operational limits on the frequency and duration of motorbikes activities could comply with the legislative noise requirements. Details of a smaller-scale proposal have been discussed previously in the Options section of this report.

4. Submissions

The application was advertised and notified in accordance with Council policy. Council received three submissions raising concerns about the proposal. These concerns are listed below along with the relevant assessment comments:

- ***The proposal is likely to generate offensive noise due to lack of operational limits***

All the submissions raised concern with the potential for the track to generate offensive noise if not properly managed. Each submission stated that although a small-scale use by the residents of the dwelling may be acceptable, there was potential for the use to become a public facility, which would detrimentally impact the area's amenity.

The submission also suggest that the past use of the track had exceeded what could reasonably be considered a small-scale use, as there had been a number of instances where more than 10 bikes had been simultaneously operating.

Comment: The proposal seeks consent for a race track with a maximum capacity of 6-10 bikes. Available noise data predicts the use of 6 or more bikes on the track would generate more than 57dB(A). This exceeds the legislative noise requirements and would likely generate offensive noise on adjoining properties and detrimentally impact the existing amenity.

In addition, there are no clear operational limits for frequency and duration of motorbike activities, which increases the potential for offensive noise to be generated.

▪ ***Potential for the track to be used as a commercial operation***

A submission raised concern that the use of the track by people other than the residents of the dwelling could be extended easily to a commercial use in the future and that this would result in an increase in numbers using the track and the noise generated by the activity.

Comment: The applicant has stated that the proposal is for private use and not for commercial gain, which can be conditioned on any consent. However, monitoring and enforcing any such condition would be extremely difficult and could become an ongoing concern for Council.

▪ ***Unauthorised landfill used for track construction and potential for contamination***

A submission raised significant concern about the fill that had been deposited on the site and used to construct the track without consent. The submission suggested that a geotechnical report should be required to ensure that the fill is not contaminated.

Comment: As previously described in this report, the applicant provided documentation from Hayes Enterprises confirming the location and quantity of the landfill that was provided. Following assessment, it can be reasonably assumed that the fill constitutes VENM.

However, it cannot be determined if this was the only fill used to construct the track. In addition, there is the potential for some of the fill provided by Hayes Enterprises to contain potential acid sulphate soils. Any contaminants in the soils could leech into the existing drainage system, which is within the Anna Bay Drainage Union catchment.

If support were to be given to the proposal, it is recommend that a geotechnical report to be submitted confirming the fill does not contain any contaminants if the applicant cannot provide a comprehensive account of all fill used to construct the track (including dates, quantities and source).

▪ ***Potential for dust generated by track to impact adjoining properties***

Submissions raised concern about the potential for the track to generate large quantities of dust and for adjoining properties to be detrimentally impacted.

Comment: The use of the track has the potential to generate significant amounts of dust. The proposal includes provisions of a watering system that if used appropriately, should greatly reduce any potential for adverse impact on adjoining properties.

▪ ***Impact on amenity of adjoining properties & associated devaluing***

The submissions raised concerns over the potential for the proposal to have significant impacts on the amenity of adjoining properties and their monetary value.

Comment: If the legislative noise requirements are exceeded, it is likely that the existing amenity of surrounding residences would be detrimentally impacted. However, an evaluation of property values is outside the scope of this planning assessment.

▪ **Potential impact on future development of adjoining properties**

Two of the submissions raised concern of the impact of the proposal on future development on adjoining properties, such as tourist facilities, which are permissible in the 1(a) zone.

Comment: The noise data predicts that the use of 6 or more bikes is likely to exceed the legislative noise limits and have a detrimental impact on the existing amenity of the adjoining properties. However, it is difficult to estimate any possible impact on future development potential.

▪ **Potential traffic impact on Nelson Bay Rd**

The submissions raised concerns over the potential for traffic problems if the numbers of riders using the track increased significantly.

Comment: The use of the track is intended for private use, predominantly for the residents of the dwelling and immediate family. It is unlikely that the proposal would have any significant traffic generation or impact traffic flows along Nelson Bay Rd.

▪ **Safety of riders using race track**

A submission raised concern about the safety of the riders while using the track and questioned who was responsible for ensuring that appropriate safety measures were in place.

Comment: The safety of riders while using the track is the responsibility of both the bike riders and the owner of the land. There are no planning requirements for safety applicable to the proposed use. The applicant has provided documentation that is provided to the individuals using the track advising them of their responsibility for ensuring their own safety.

▪ **Unregistered bikes entering and leaving site via public road**

A submission raised concern over unregistered bikes entering and leaving the site via Nelson Bay Rd.

Comment: Any use of unregistered bikes on the public road is outside the scope of this planning assessment and is a law enforcement matter.

▪ **Concern about adequacy of existing toilet facilities**

A submission raised concern about the capability of the existing wastewater management if the track resulted in a significant increase in numbers.

Comment: The proposal is intended to be for private use and does not constitute an increase in residential density. It is considered unnecessary to require provision of additional toilet facilities for a private use.

5. Public Interest

Although race tracks are permissible in the 1(a) zone, the current proposal is considered likely to have a detrimental impact on the amenity of adjoining properties, which contradicts objective (a) of the zone and would not be in the public interest.

6. Conclusion

Although the proposal is permissible in the zone and motorbikes are considered an acceptable activity in rural zones, the scale of the activity, with a maximum of 6-10 bikes, is likely to exceed legislative noise requirements. This could result in a detrimental impact on the amenity of surrounding residences. In addition, it is considered that the applicant has not justified the proposal with adequate controls or measures to ensure compliance with legislative noise levels.

Monitor and enforcing compliance with the legislative noise requirements would be extremely difficult, but would be Council responsibility and could become an ongoing concern.

The proposal is recommended for refusal on this basis.

ITEM NO. 2

FILE NO: 16-2007-89-1

**DEVELOPMENT APPLICATION FOR ADULT SHOP AT NO. 1/9
YACAABA STREET, NELSON BAY**

REPORT OF: SCOTT ANSON, MANAGER - DEVELOPMENT & BUILDING

RECOMMENDATION IS THAT COUNCIL:

- 1) Approve Development Application 16-2007-89-1 subject to the conditions contained in Attachment 3.

OPERATIONS COMMITTEE MEETING – 26 June 2007

RECOMMENDATION:

That Council Refuse Development Application 16-2007-89-1 for the following reasons:

1. The Proposal is contrary to Council Policy given that Council has initiated a draft Local Environmental Plan to limit restricted premises to Industrial Zones only.
2. The Proposal is contrary to public interest as evidenced in 218 letters of objection.
3. The Proposal is considered to be in conflict with the residential land use adjoining and nearby the subject site.
4. The proposed site of the adult bookshop is considered to be an inappropriate location due to high pedestrian traffic in this sector of the Nelson Bay Centre.

ORDINARY MEETING OF COUNCIL – 26 JUNE 2007

RESOLUTION:		
152	Councillor Dover Councillor Nell	That Council refuse Development Application Number 16-2007-89-1 for Adult Shop at No. 1/9 Yacaaba Street, Nelson Bay for the following reasons: 1. The Proposal is contrary to Council Policy given that Council has initiated a draft Local Environmental Plan to limit restricted premises to Industrial Zones only. 2. The Proposal is contrary to public interest as evidenced in 218 letters of objection. 3. The Proposal is considered to be in conflict with the residential land use adjoining and nearby the subject site.

		4. The proposed site of the adult bookshop is considered to be an inappropriate location due to high pedestrian traffic in this sector of the Nelson Bay Centre.
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BACKGROUND

The purpose of this report is to present a development application to Council for determination at the request of Councillor Dover.

This application seeks consent to change the use of No. 1/9 Yacaaba St, Nelson Bay to “restricted premises”. The proposal includes an associated fit-out and new signage. The site is within the 3(a) Business General “A” Zone and the Nelson Bay CBD. Restricted premises are permissible in the 3(a) zone subject to development consent. The proposal is considered to be a retail activity and is consistent with the relevant zone objectives.

This application was advertised and notified in accordance with Council policy. Council registered 218 submissions objecting to the proposal. The majority of objections raised general concerns about the nature of the activity and the potential for detrimental social impacts to be imposed on the community as a result of criminal behaviour. A number of objections also raised specific concerns about the unsuitability of the proposed location and its proximity to community services that cater to families, such as St Vincent De Paul, Salvation Army and Centrelink.

Restricted premises are a legal activity and require compliance with the *Classification (Publications, Films & Computer Games) Act 1995* and the *Crimes Act 1900*. These acts prevent the external display of materials or unsuitable advertising and limiting access to persons over 18 years of age. It is considered that compliance with these requirements will ensure that the activity does not have any significant or detrimental impacts on the surrounding area. Any comment on the social acceptance of restricted premises or associated criminal behaviour is considered outside the scope of the planning assessment of this application.

Under the current planning legislation, there are no planning merit considerations that warrant refusal of the application. The proposal is recommended for approval subject to the attached conditions.

Council has recently endorsed a Notice of Motion amend the LEP to limit restricted premises to 4(a) Industrial zoned land. Council's Strategic Planning Section has undertaken section 53 notification and a draft has been sent to the Department of Planning Rezoning Panel seeking a section 65 certificate. Once this occurs, the draft LEP will be placed on public exhibition. However, the resolution does not have any statutory weight until the public exhibition process is undertaken.

LINKS TO CORPORATE PLANS

This report relates to the Goal in the Assessment and Approvals program of Council's Management Plan, which is an ordered and predictable built environment in Port Stephens.

FINANCIAL/RESOURCE IMPLICATIONS

Nil

LEGAL AND POLICY IMPLICATIONS

The development application is consistent with current Council's Policy. It should be noted that Council recently resolved to limit restricted premises to the 4(a) Industrial Zone, but doesn't have any current legal standing and is contrary to the LEP 2000. There is currently no adopted Council policy specifically relating to restricted premises.

Australian Business Excellence Framework

This aligns with the following ABEF Principles.

- 8) Effective use of facts, data and knowledge leads to improved decisions
- 10) Organisations provide value to their community through their actions to ensure a clean, safe, fair and prosperous society
- 11) Sustainability is determined by an organisation's ability to create and deliver value for all stakeholders

SUSTAINABILITY IMPLICATIONS

SOCIAL IMPLICATIONS

The majority of submissions raised concern about the social and moral implications of restricted premises. The application was referred to Council's Community Safety Officer, who has not raised any objection to the proposal subject to the inclusion of recommended conditions.

Any further consideration of issues not specifically relating to this proposal is outside the scope of this planning assessment. Approving the restricted premises is not considered to be contrary to the public interest on planning merit grounds.

ECONOMIC IMPLICATIONS

The proposal does not have any significant economic implications.

ENVIRONMENTAL IMPLICATIONS

The proposal does not have any significant environmental implications.

CONSULTATION

The application was exhibited in accordance with Council policy. Council has received 218 submissions objecting to the proposal.

Planning concerns raised included proximity of the site to the Nelson Bay CBD and community services frequented by families. Most objections also raised concern about the

general nature of restricted premises, their unsuitability for the area and potential for indirect social impacts.

These objections are discussed in the Attachments.

OPTIONS

- 1) Adopt the recommendation.
- 2) Adopt the recommendation with varied conditions of consent.
- 3) Reject the recommendation and refuse the development application. In this instance, grounds for refusal will need to be drafted by Councillors including supporting justification as a basis for defence in any potential legal proceedings.

ATTACHMENTS

- 1) Locality Plan
- 2) Assessment
- 3) Recommended Conditions

COUNCILLORS ROOM

- 1) Copy of plans submitted with application
- 2) Statement of Environmental Effects
- 3) Traffic Impact Statement

TABLED DOCUMENTS

Nil.

ATTACHMENT 1
LOCALITY PLAN



LOCALITY: NELSON BAY



Port Stephens
C.O.U.N.C.I.L.
... a community partnership



SUBJECT AREA

DISCLAIMER
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**ATTACHMENT 2
ASSESSMENT**

The application has been assessed pursuant to Section 79C of the Environmental Planning and Assessment Act 1979 and the following is a summary of those matters considered relevant in this instance.

THE PROPOSAL

This application seeks consent to change the use of 1/9 Yacaaba St, Nelson Bay to “restricted premises” (adult shop). This includes an internal fit-out and new signage.

The proposed hours of operation for the restricted premises will be from 7.30am to 8.30pm, Monday to Sunday. It is estimated that the operation will include 4 staff members (1 being part-time for cleaning/maintenance). The proposal will involve the retail sale items classified as being restricted in the *Classification (Publications, Films & Computer Games) Act 1995*.

THE APPLICATION

Owner	Mr J Mudie
Applicant	Ms C Dages
Detail Submitted	Statement of Environmental Effects, Traffic Impact Statement, Site & Floor Plans, Signage Details

THE LAND

Property Description	Lot 1, SP 55674
Address	1/9 Yacaaba St, Nelson Bay
Site Area	511 (approx)
Dimensions	12.8m x 39.95m
Area of Premises	234.936sqm (GFA)
Characteristics	Ground floor commercial premises. 1 st floor contains residential premises.

THE ASSESSMENT

1. Planning Provisions

LEP 2000 – Zoning	3(a) Business General “A” Zone
Relevant Clauses	None Applicable
Development Control Plan	LD4 Development Guidelines – Nelson Bay Commercial Area PS2 Parking and Traffic Guidelines PS4 Commercial and Industrial Development Guidelines PS10 Building Standards and Notification Procedures for Development Applications Draft Consolidated DCP
State Environmental Planning Policies	SEPP 71 – Coastal Protection

Discussion

Port Stephens LEP 2000

The subject property is in the 3(a) Business General “A” Zone, which permits restricted premises subject to development consent. With regard to the relevant objectives of the zone, the following assessment comments are provided below:

Objectives of the Business General Zone

- (a) *to provide for a range of commercial and retail activities, and uses associated with, ancillary to, or supportive of, retail and service facilities, including tourist development and industries compatible with a commercial area.*

The proposal is considered to be a retail activity. The site is located in the Nelson Bay CBD, which is an established commercial area containing a variety of retail and commercial activities. The proposal is unlikely to significantly alter the character of the commercial area.

- (b) *to ensure that neighbourhood shopping and community facilities retain a scale and character with the amenity of the locality.*

The proposal involves the change of use of an existing premises and is unlikely to have any significant impact on the scale or character of the Nelson Bay CBD.

- (c) *to maintain and enhance the character and amenity of major commercial centres, to promote good urban design and retain heritage values where appropriate.*

As discussed in (b), it is considered that the proposal is unlikely to detrimentally impact the character of the existing commercial area.

The proposal does not contravene any of the zone objectives. There are no other provisions in LEP 2000 applicable to the proposal.

DCP LD4 – Development Guidelines: Nelson Bay Commercial Area

There are no relevant provisions in LD4 applicable to the proposed change of use and associated fit-out.

DCP PS2 – Parking & Traffic Guidelines

Under the provisions of DCP PS2, the proposed activity is best considered to fit the definition of a retail activity and requires 1 space per 20sqm. The premises has a GLFA of 191sqm, which would require 10 parking spaces.

The subject unit benefits from an 8 space parking area at the rear of the site, 6 spaces of which are available for the proposed development (2 are dedicated to the upstairs residence). A Traffic Impact Statement was submitted with the application demonstrating that the likely parking demand would not exceed 6 spaces. The argument is considered reasonable and is supported in this instance. The subject premises was approved as a shop, which is considered to have the same parking requirements as restricted premises. Due to no increase in traffic generation, Section 94 contributions are not considered necessary in this instance.

DCP PS4 – Commercial & Industrial Development

There are no requirements relevant to the proposed change of use and associated fit-out.

DCP PS10 – Building Standards and Notification Procedures for Development Applications

The proposal was advertised in accordance with Council Policy. Council received 218 submissions objecting to the proposal. The issues raised are discussed later in this report.

Port Stephens Advertising Signs Code

Council's Advertising Signs Code requires under-awning signs be a minimum height of 2.6m above the ground. The proposal makes provision for an under-awning sign that is compliant with Council's controls, except that the proposed height is 2.4m. A condition shall be imposed requiring the height be amended to 2.6m and for details to be submitted prior to commencement of the activity.

SEPP 71 – Coastal Protection

There are no requirements relevant to the proposed change of use.

2. Likely Impact of the Development

Following a planning assessment of the proposed restricted premises, it is considered that the development has the potential to generate impacts listed below. Comments on how these issues have been addressed are also included.

- *Impact of external appearance of premises and signage*

The proposal seeks to make changes to the façade of the existing premises and will include erection of signage (1 fascia sign and 1 under-awning sign).

The proposal is subject to the requirements of the *Classification (Publications, Films & Computer Games) Act 1995* and the *Crimes Act 1900*. The *Crimes Act* requires that operators ensure that items for sale are not visible from the exterior of the restricted premises and that signage does not specify the nature of the items sold.

The application is considered to comply with this requirement, as the façade of the premises will be treated to ensure that items are not visible from the premises' exterior and signage is of a business identification nature and does not specifically refer to items available for sale.

Providing compliance with the requirements of the *Crimes Act* are met, it is unlikely that the proposal will generate any significant or detrimental visual impacts.

- *Conflict with existing land uses*

The proposed site is 1/9 Yacaaba St, Nelson Bay. The site is within the Nelson Bay CBD and is surrounded by existing commercial & retail development. The site is also in close proximity to community services (including Centrelink, RTA, Salvation Army and St Vincent DePaul) and residential areas on Tomaree St and Donald St.

It is considered that the site is located in an area that will be frequented by a large amount of pedestrian traffic. However, the physical appearance of the restricted premises should not have any significant or detrimental visual impact on surrounding development or on any members of the public.

The proposed hours of operation, 7.30am to 8.30pm Monday to Sunday, are considered outside standard business hours. However, existing development on adjoining properties are unlikely to be detrimentally impacted by the hours of operation.

It is considered that there is minimal potential for conflict between the proposed restricted premises and any adjoining or nearby activities.

- *Impact of development on existing traffic flow along Yacaaba St.*

The subject premises benefits from having a rear parking area with 6 available spaces for the restricted premises. A Traffic Impact Statement has been submitted with the application recommending that the parking available is sufficient for the likely traffic demand. It is agreed in this instance that the parking should be capable of coping with peak parking demands and is unlikely to have any impact on the existing traffic flows along Yacaaba St.

3. Suitability of the Site

The site is within the Nelson Bay CBD, which contains a variety of commercial and retail activities and an established character which is unlikely to be altered by the proposed restricted premises. Restricted premises are considered to be a retail activity and similar in nature to other activities conducted in the surrounding area.

The site's proximity to community services (Centrelink, RTA, Salvation Army and St Vincent DePaul), residential areas and public transport stops is likely to result in a large amount of pedestrian traffic passing the subject premises. However, it is considered that the façade, signage and access requirements of the Classification Act and Crimes Act will minimise the potential for any significant visual impact or for any offence to be caused to any members of the public in the vicinity of the premises.

Public submissions have suggested that restricted premises should be limited to industrial areas, as per brothels, which would decrease the potential for conflict with existing land uses, particularly the community services and pedestrian traffic.

Prior to lodging this development application, the applicant consulted Council's planning staff, including investigation of locating the proposal in an industrial zoned area. Under Council's current provisions (LEP 2000), restricted premises are prohibited in 4(a) Industrial General "A" Zone.

It should be noted that Council has recently endorsed a Notice of Motion to amend LEP 2000 limiting restricted premises and related activities to the 4(a) Industrial Zone. However, this resolution has not made to the draft LEP stage (must be publicly exhibited following section 65 certificate being issued by Department of Planning), so it doesn't have any statutory weight and has not been considered in this assessment.

It is considered that site is acceptable for the proposed change of use as it is unlikely to have any significant impact on the established character of the Nelson Bay CBD, surrounding development or anyone in the vicinity of the site.

4. Submissions

The application was advertised and notified in accordance with the requirements of *Development Control Plan PS10 – Building Standards and Notification Procedures for Development Applications*. The submission period closed on 7 March 2007.

Council received 218 submissions objecting to the proposal. Nine submissions were received after the end of the submission period. A number of submissions were received with insufficient information to be registered. The issues raised in all submissions received have been considered in this assessment. Below is a list of the issues and concerns raised in the submissions:

- *Potential for proposal to have detrimental social impact on community*

The majority of submissions raised concerns about the potential for the restricted premises to have indirect social impacts on the locality. These general concerns were based on the nature of restricted premises and the items available for sale.

The proposed activity is a legal activity and a permissible use in the 3(a) zone and as such, consideration of the nature of the restricted premises and their broader impact on society is outside the scope of this merit assessment.

The applicant has sought to address any potential impact on the community by ensuring that visual and amenity issues, required under the provisions of the Classification Act and Crimes Act, have been addressed.

- *Potential for proposal to result in an increase in criminal and anti-social behaviour*

The majority of the submissions were also concerned about the potential for the restricted premises to increase crime and anti-social behaviour, due to the social impact of the items sold and the type of customers that frequent restricted premises.

As previously discussed, the proposal is a legal activity subject to strict regulations. Any criminal activity is a matter for investigation and action by the NSW Police. The proposal was referred to Council's Community Safety Officer for comments on any specific safety concerns.

It was recommended that lighting be provided for the parking area and an audible alarm be installed on the entry doors to alert staff of persons entering the premises. These comments will be included as recommended conditions of consent.

It was also commented that consideration be given to provided a gate to the upstairs residence and that a safety alarm be provided for staff due to the opaque glass obscuring external surveillance. These additional recommendations are considered unreasonable on planning merit grounds and have not been included.

The design and layout of this proposal are not considered to increase the risk of any criminal activity occurring.

- *Potential for conflict with existing activities in surrounding area*

The majority of submissions raised concern about the potential for the restricted premises to detrimentally impact existing development in the area, particularly the surrounding community services (Centrelink, RTA, Salvation Army and St Vincent DePaul) and residential areas on Tomaree and Donald Streets.

The site's location is within the Nelson Bay CBD and is subject to a large volume of pedestrian traffic. However, the application has been designed to comply with the requirements of the Crimes Act, which minimises the visual impact by preventing products from being visible from the premises' exterior and limits signage to having a business identification nature. In addition, the Classification Act requires that the activity be managed so as to ensure any person under 18 years of age is not granted access to the restricted premises.

Compliance with these requirements will ensure that only customers of the restricted premises obtain access to classified items for sale and that any direct or visual impacts on the surrounding community services or any pedestrians in the vicinity of the site are minimised.

- *Proposed location is not considered suitable for restricted premises*

The majority of the submissions expressed concern about the location of the proposal and that restricted premises were permissible in the 3(a) zone. It was suggested that restricted premises in general be confined to industrial estates, as this would minimise exposure to areas frequented by families and children.

The applicant has previously enquired about the possibility of being located within the 4(a) Industrial General "A" Zone. Under the provisions of LEP 2000, restricted premises are prohibited in the 4(a) zone. Council has recently passed a Notice of Motion to amend LEP 2000 to limit restricted premises to the 4(a) Industrial General "A" Zone.

The site is within the Nelson Bay CBD, which is an established commercial centre. The proposed use is considered a retail activity and is similar in nature to other activities in the CBD.

Due to the visual appearance of the premises being regulated by the Crimes Act, it is considered that the site is unlikely to result in any significant or detrimental impacts and is considered an acceptable location for the proposal.

- *Potential for visual impact of proposal to affect pedestrians and existing development in immediate vicinity*

A number of submissions raised concern about the visual impact of the premises and the potential for pedestrians to be offended by the items for sale and displays. The application is subject to the requirements of the Crimes Act, which requires that items for sale or displays are not visible from the exterior of the premises. In addition, signs are to be of a business identification nature and not indicate the nature of the items sold.

The proposal has been designed to comply with these requirements. The front windows will be painted and opaque, preventing any items from being visible from the

street. The entry of the premises will have a partition wall, screening any views while the door is in use. The signage will contain the name of the business but will not advertise the material available for sale.

These measures should ensure that any external impacts will be minimal and not have any detrimental effects on the surrounding area or any pedestrians passing the site.

▪ *Potential for the existing amenity of the area to be affected by the proposal*

Submissions from residents of adjoining properties raised concern about the potential for the proposal to detrimentally affect the amenity of the area. This was described as a combination of factors such as exposure to unwanted items and potential for increase in criminal behaviour having a direct impact on the well-being of the residents.

The proposal is a legal activity and concern about items for sale or criminal activity is outside the scope of a planning assessment. It is considered that the application has reasonably addressed the planning issues such as external visual impact and limit exposure to materials by complying with the requirements of the Crimes Act and Classifications Act.

Compliance with the relevant requirements should reduce the potential for any amenity impacts on adjoining properties and it is considered that there are no likely detrimental impacts to be generated by the proposal.

It is considered that the issues raised in submissions, particularly regarding visual impact and access to unwanted materials is strictly regulated by the applicable legislation and has been considered in the design of the proposal.

The proposal is not likely to generate any significant detrimental impact on the surrounding area, including existing activities and pedestrian traffic. It is thus considered that the concerns are not sufficient ground for refusal.

5. Public Interest

The concerns raised in the public submissions have been addressed in the assessment of this application. The proposal has been designed to minimise any external impacts generated by the restricted premises. The proposal is compliant with the requirements of the Crimes Act, Classification Act and LEP 2000. Accordingly, the application is not considered contrary to the public interest and is recommended for approval.

**ATTACHMENT 3
CONDITIONS**

1. The development is to be carried out in accordance with the approved plans and documentation submitted with the application set out in Schedule 3, except as modified by the conditions of this development consent or as noted in red by Council on the approved plans.
2. Failure to comply with the conditions of consent constitutes a breach and on the spot fines may be issued under the Environmental Planning & Assessment Act 1979 and or the Protection of the Environment Operations Act 1997.
3. The proposed signage shall be in accordance with the details submitted with this application, except for the under-awning sign, which shall be amended to be at least 2.6m above ground level. Details are to be provided prior to commencement of the activity. Any other advertising material for the activity will require further Council approval.
4. Flashing illuminated signage is not permitted. Illuminated signs must be fitted with an automatic timing device to extinguish the illumination between the hours of 10.00pm and 7.00am.
5. The use of the unit shall be in accordance with the *Classification (Publications, Films and Computer Games) Act 1995*. In this regard, minors are not permitted in the restricted premises area at any time and proof of age is required prior to access being granted.
6. The use of the unit shall be in accordance with the *Crimes Act 1900*. In this regard, all restricted items shall be contained within the premises and not be visible from the exterior.
7. A notice is to be placed at the entry to the restricted premises, notifying customers of the material available for purchase and that proof of age is required for entry.
8. As a result of community safety concerns, high intensity lighting shall be provided in the laneway and carparking area. Details are to be provided to Council prior to the commencement of the activity.
9. As a result of community safety concerns, an audible door alarm shall be provided on the entry door to alert staff of people entering the premises. These shall be installed prior to the commencement of the activity.

ITEM NO. 3

FILE NO: 16-2000-380-10

POLICY IMPLICATIONS ASSOCIATED WITH SECTION 96 MODIFICATION TO DEVELOPMENT CONSENT FOR AN URBAN HOUSING DEVELOPMENT AT NO.11 – 13 CHURCH STREET, NELSON BAY

REPORT OF: SCOTT ANSON, MANAGER - DEVELOPMENT & BUILDING

RECOMMENDATION IS THAT COUNCIL:

- 1) Not support the Section 96 Modification Application due to excessive height, density, floor space ratio and other non-compliances.
- 2) Delegate determination of the Section 96 Modification Application 16-2000-380-10 for No.11 – 13 Church Street, Nelson Bay to the General Manager noting the conclusion to the report that the Section 96 modification should be refused based upon the draft reasons for refusal shown in Attachment 3.
- 3) Note that the review of the Height of Tall Buildings Study will form part of a comprehensive Planning Strategy for the Nelson Bay / Shoal Bay districts.

OPERATIONS COMMITTEE MEETING – 26 June 2007

RECOMMENDATION:

That the Recommendation be adopted.

ORDINARY MEETING OF COUNCIL – 26 JUNE 2007

RESOLUTION:

153	Councillor Nell Councillor Dover	That the Recommendation be adopted.
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BACKGROUND

The purpose of this report is to provide a further report back to Council for determination after Council at its Ordinary Meeting of 24 April 2007 resolved to defer the matter in order for re-exhibition of the current plans to be undertaken.

The Section 96 modification was originally reported to Council for determination with the first report being forwarded and considered at the Operations Committee Meeting on 13 March 2007. This report is provided in Attachment 1.

Key Issues

In summary, the key issues outlined in the original report consisted of the following:-

- Density;
- Floor Space Ratio;
- Height;
- Other – disparity in unit numbers, access/carparking, construction certificate, drainage, re-advertising / re-notification.

Recommendations of the Operations Committee Meeting 13 March 2007

The Operations Committee's recommendation was to defer the matter for the following to be undertaken:-

- *a review of revised plans submitted by the applicant on 13 March 2007;*
- *a review of the plans with the requirements of the Consolidated DCP 2007;*
- *the provision of information on comparisons of height and density of development within the immediate area;*
- *undertake re-exhibition of the revised plans.*

Comment

The above tasks were undertaken with information provided to Council by way of a Supplementary Information Paper dated 18 April 2007 forwarded to Council for consideration at its Ordinary Meeting on 24 April 2007. The Supplementary Information Paper is provided in Attachment 2.

The merit assessment provided in the Supplementary Information Paper, provided an update based on the revised (current) plans and key issues that were discussed in the original report to Council on 13 March 2007. The key issues are as follows:-

- Height;
- Density;
- Floor space ratio;
- Carparking;
- Inconsistency with draft Development Control Plan (DCP) 2007.

Therefore, the recommendations of the Supplementary Information Paper, was to adopt the recommendation of the report forwarded to the Operations Committee Meeting on 13 March 2007.

Recommendations of the Ordinary Meeting of Council on 24 April 2007

The Ordinary Meeting of Council deferred the matter for further re-exhibition to be undertaken of the current plan due to significant departures from development standards and potential policy implications relevant to the future built form outcomes in Nelson Bay.

Comment

The Section 96 modification was publicly exhibited with re-advertising and re-notification undertaken in accordance with Council policy. A total of eight (8) submissions were received during this re-exhibition period objecting to the application. The main areas of concern or objection remained the same as previously outlined in submissions received. These are discussed in the Supplementary Information Paper provided in Attachment 2 and are summarised as follows:-

- Development not considered “substantially the same”;
- Inconsistent with LEP 2000 and DCP requirements;
- Privacy impacts;
- Over-shadowing impacts;
- Carparking and traffic impacts;
- Inadequate setbacks due to two additional floors proposed and elevated driveway;
- Non-compliance with the provisions of SEPP 65 – no Design Verification Statement
- Capability of existing footings to support additional levels;
- Inconsistencies with measurement of height between Council and the Department.

A copy of further submissions received (together with previous submissions received) will be provided in the Councillors Room.

In response to Councillor enquiries, information is provided on the following issues:-

- potential inaccuracy of some plans/documentation submitted by the applicant;
- applicant’s claim - adverse impacts and the adjoining development (Cote d’Zur) in Donald St

Potential in-accuracies of some plans/documentation submitted by the applicant

Concern was raised regarding the potential inaccuracy of some plans / documentation submitted by the applicant for this Section 96 application, with a particular example being the “Streetscape – West Elevation (A4 Size) Plan.

Comment

This particular example given, has been taken from a larger (A3 size) plan titled “Shadow / Streetscape Diagrams” dated 1 January 2006.

This plan is not relevant to the revised (current) plan and should not be relied upon in Council’s consideration of this application due to the lack of detail (i.e. not drawn to scale & not dimensioned). Council can not verify that these plans are an accurate and true representation of the built form outcomes (including height) both on the subject site and surrounding properties bordered by Donald, Church and Tomaree Streets.

Assertions of Adverse Impacts and the Adjoining development (Cote d’Zur) – 61 Donald Street

Enquiries were made in respect to assertions that the adjoining development (Cote d’Zur) located at No.61 Donald Street, (rear of the subject site), has adversely impacted on the subject proposal, in particular with regards to height, bulk and scale.

Comment

There are assertions that the adjoining development has resulted in major adverse impacts on the subject site / existing approved development, in particular view loss and solar access, which has contributed to the Applicant’s justification for the proposed Section 96 application, in particular the proposed increase in density and height of the approved development. This is not considered reasonable grounds for justification to propose such significant departures to Council policy.

In considering potential impacts, it is noted that the subject site is surrounded by a number of properties, zoned either 2(c) Residential or 3(a) Business General (such as Cote d'Zur) pursuant to LEP 2000. There are also other contributing factors such as site location, orientation of allotments and topography which all contribute to the potential for these development sites to impact on each other. It is also considered unrealistic to anticipate or expect to maintain a certain view which the site may have enjoyed circa 2000, when originally the application was lodged and consent was granted.

The adjoining Donald Street development was originally approved with minor variations or exceedence of the 15.0 metre height limit, in several localised points only. The Department of Planning granted concurrence for a height of 14.81m pursuant to Clause 58 of the Hunter Regional Environmental Plan 1989 (ie. measured from Natural Ground Level).

Subsequent to this, a Section 96 application was granted to increase floor to ceiling heights (from 2.6m to 2.7m) to ensure compliance with the provisions of SEPP 65 – Design Quality of Residential Flat Development, which resulted in an overall height of 17.0 metres. The Department of Planning granted concurrence for the increase in height pursuant to Clause 58 of the Hunter Regional Environmental Plan 1989 (ie. measured from Natural Ground Level).

It is considered important to note that the above Donald Street development only exceeded the height limit in localised points, with the majority of the built form below both the 17.0m and 15.0m respectively (as measured from Natural Ground). In comparison, it is considered that the subject Section 96 application is in direct contrast, whereby the proposal has a large percentage of built form well in excess of both the 15.0 metre height limit and existing approved maximum height of 18.0 metres.

The Applicant's justification is not considered reasonable grounds for justification to propose such significant departures to Council policy. Furthermore, it is considered that to support such extensive departures would result in the subject development adversely impacting on surrounding developments and setting a major precedent for future development both within Nelson Bay and potentially throughout the Port Stephens Local Government Area.

LEGAL AND POLICY IMPLICATIONS

There remains significant legal and policy implications for Council relating to this Section 96 application as outlined in the report forwarded to the Operations Committee Meeting on 13 March 2007 and re-considered at the Ordinary Meeting of Council on 24 April 2007. (Refer to Attachments 1 and 2).

The proposal remains inconsistent in a number of areas with established Council Policy. The proposal continues to involve significant departures to all development standards set out in Clause 19 of Local Environmental Plan 2000 (i.e. density, floor space ratio and height limit). The ramifications of supporting the proposal, in particular the height departure alone, will undermine a long standing Council policy adopted and implemented in the mid 1980's known as the *Height of Tall Buildings Study*. The previous Local Environmental Plan 1987 and the current Local Environmental Plan 2000 set down a maximum height limit of 15.0 metres in the Residential 2(c) zone. This consistent application of adopted height controls has achieved a reasonable result, for Council, the community and developers during this period of time. Whilst it is acknowledged that minor variations above this 15.0 metre limit have been supported (including a height variation for this development), development has generally occurred within the character of the area.

LINKS TO CORPORATE PLANS

This report relates to the Goal in the Assessment and Approvals program of Council's Management Plan, which is an ordered and predictable built environment in Port Stephens.

FINANCIAL/RESOURCE IMPLICATIONS

The recommendation to undertake a review of the *Height of Tall Buildings Study* and need for the preparation of a comprehensive Master Plan for Nelson Bay will have both financial and resource implications.

Australian Business Excellence Framework

This aligns with the following ABEF Principles.

- 1) Clear direction allows organisational alignment and a focus on the achievement of goals
- 2) Mutually agreed plans translate organisational direction into actions
- 3) Understanding what customers value, now and in the future, influences organisational direction, strategy and action
- 8) Effective use of facts, data and knowledge leads to improved decisions
- 10) Organisations provide value to their community through their actions to ensure a clean, safe, fair and prosperous society
- 11) Sustainability is determined by an organisation's ability to create and deliver value for all stakeholders

SUSTAINABILITY IMPLICATIONS

SOCIAL IMPLICATIONS

Approving the variations proposed under this Section 96 modification (ie. Height, Density, Floor Space and carparking shortfall) will establish an undesirable precedent whereby future proposed development/modifications will most likely seek similar concessions.

It is also important to note that community concern exists throughout the Local Government Area and in particular the Nelson Bay area, generally raising concern about varying any of the development standards contained in Council's planning instrument. In particular, varying the height limit is of major concern to the community together with concern of Council being continually pressured by development to support variations to Council policy.

Other non-compliances such as carparking also contribute to an over-development of the site and suggest that the proposed increase in density is unachievable based on site area. Further, it is noted that in supporting such a proposal, is likely to result in an increase in overall community concern for these inconsistencies with Council policy, and in time, will potentially be to the detriment of residential amenity in the Nelson Bay central area. Therefore, the proposal is considered contrary to the public interests and expectations of a predictable and orderly built environment.

ECONOMIC IMPLICATIONS

The consistent application of landuse controls and development standards is required to support economic and investment decisions within Nelson Bay central business district and surrounding areas. Variations to policies and standards can lead to increased speculation and development pressures on Residential 2 (c) zoned land seeking major departures from established planning controls and raises inequities with other developments.

ENVIRONMENTAL IMPLICATIONS

Approving the proposed extensive departures to Council policy will not only undermine these requirements but will set a precedent within the Nelson Bay central area and in other areas of the Local Government Area, creating an even greater uncertainty of the public interests and expectations, of an orderly and predictable built environment.

CONSULTATION

The application was re-exhibited in accordance with Council's decision to defer the matter for re-exhibition at its Ordinary Meeting of Council on 24 April 2007. A total of eight (8) submissions were received objecting to the application. The main areas of objection remained the same as previously outlined in submissions received.

These are discussed in the Supplementary Information Paper provided in Attachment 2, and are summarised as follows:-

- Development not considered "substantially the same";
- Inconsistent with LEP 2000 and DCP requirements;
- Privacy impacts;
- Over-shadowing impacts;
- Carparking and traffic impacts;
- Inadequate setbacks due to two additional floors proposed and elevated driveway;
- Non-compliance with the provisions of SEPP 65 – no Design Verification Statement
- Capability of existing footings to support additional levels;
- Inconsistencies with measurement of height between Council and the Department.

A copy of all submissions received will be provided in the Councillors Room.

OPTIONS

- 1) Adopt the recommendation that Council:-
 - a) Not support the Section 96 Modification Application due to excessive height, density, floor space ratio and other non-compliances.
 - b) Delegate determination of the Section 96 Modification Application 16-2000-380-1 for 11-13 Church Street, Nelson Bay to the General Manager noting the conclusion to the report that the Section 96 modification should be refused based upon the draft reasons for refusal shown in Attachment 3.
 - c) Note that the review of the Height of Tall Buildings Study will form part of a comprehensive Planning Strategy for the Nelson Bay / Shoal Bay districts.

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- 2) Not accept the Recommendations and express “in principle” support of the Section 96 Modification Application and request the Group Manager, Sustainable Planning to bring forward draft conditions to the Ordinary Meeting on 26 June 2007, in the event that Council resolve to approve the Section 96 application.

ATTACHMENTS

- 1) Report forwarded to the Operations Committee Meeting on 13 March 2007
- 2) Supplementary Information Paper dated 18 April 2007, forwarded to the Ordinary Meeting of Council on 24 April 2007
- 3) Reasons for Refusal

COUNCILLORS ROOM

- 1) All Submissions received

TABLED DOCUMENTS

Nil

ATTACHMENT 1

OPERATIONS COMMITTEE REPORT 13 MARCH

**POLICY IMPLICATIONS ASSOCIATED WITH SECTION 96
MODIFICATION TO DEVELOPMENT CONSENT FOR AN URBAN
HOUSING DEVELOPMENT AT NO.11 – 13 CHURCH STREET,
NELSON BAY**

REPORT OF: SCOTT ANSON, MANAGER- DEVELOPMENT & BUILDING

RECOMMENDATION IS THAT COUNCIL:

1. *Not support the Section 96 Modification Application due to excessive height, density, floor space ratio and other non-compliances.*
2. *Delegate determination of the Section 96 Modification Application 16-2000-380-1 for 11-13 Church Street, Nelson Bay to the General Manager noting the conclusion to the report that the Section 96 modification should be refused based upon the draft reasons for refusal shown in Attachment 3.*
3. *Note that the review of the Height of Tall Buildings Study will form part of a comprehensive Planning Strategy for the Nelson Bay / Shoal Bay districts.*

BACKGROUND

This Section 96 application has been called to Council at the request of Councillors Westbury and Dover. Following extensive consultation with East Ward Councillors this report seeks Council's direction on proposed, significant departures from current development standards contained in the Port Stephens Local Environmental Plan 2000 associated with the assessment of this S96 modification.

This report is not a fully comprehensive assessment of the proposed S96 modification under the Environmental Planning and Assessment Act 1979. The purpose of the report is to enable Council to provide clear direction in respect to the key policy issues of height, density and floor space ratio for development on this site and the Nelson Bay Central Business District in general.

Council has closely considered whether the current proposal can be reasonably considered under Section 96 of the EP&A Act 1979 rather than requiring a new development application. Council's current legal advice indicates that Council can determine the current Section 96 application on merit. If a new application was lodged based on the significant departures proposed the Department of Planning would be the consent authority for a new Development Application.

LEGAL/POLICY IMPLICATIONS

There are significant legal and policy implications for Council relating to this Section 96 application. The proposal is inconsistent in a number of areas with established Council Policy. The proposal involves significant departures to all development standards set out in Clause 19 of Local Environmental Plan 2000 (ie. density, floor space ratio and height limit).

The ramifications of supporting the proposal, in particular the height departure alone, will undermine a long standing Council policy adopted and implemented in the mid 1980's known as the Height of Tall Buildings Study. The previous Local Environmental Plan 1987 and the current Local Environmental Plan 2000 set down a maximum height limit of 15.0 metres for Residential 2(c) zoned land. The consistent application of the adopted height limit, including some minor variations, has reinforced existing and adopted desired future development patterns in the Nelson Bay area. This current proposal is contrary to Council's consistent approach and is considered an overdevelopment of the site. If the proposal is supported it would set an undesirable precedent for future development outcomes within the Nelson Bay further undermining public expectations of a predictable and orderly built environment.

Original Development Consent and Section 96 Modification Applications

The original Development consent was granted on 29 May 2000 pursuant to the requirements of Local Environmental Plan 1987. The approved development was configured in two separate building blocks – Block A & B with associated services and facilities provided on the site. The approved 25 unit development consisted of 14 x 2 bedroom units and 11 x 3 bedroom units.

Since the original development consent was granted, a total of eight (8) modified consents (ie. Section 102 and Section 96 applications) have been submitted and subsequently approved for this development. Provided in Attachment 4 is a chronology of the major elements previously submitted in these modification applications. The current development consent, as modified, consists of 25 units with maximum height of approximately 18.0 metres.

The current Section 96 application, (Modification No.9) was lodged on 15 February 2006. Notices of Intent to Refuse the application were issued by the Sustainable Planning Group on two occasions, 28 April 2006 and 30 November 2006. During the assessment and the Intent to Refuse process, the application was called to Council for determination. The latest revised proposal generally consists of:-

- *Density increase from 25 to 42 units;*
- *Floor Space Ratio increase from 1.9:1 to 2.5:1;*
- *Height increase from approximately 18.0 metres to 24.0 metres (as measured from Natural Ground Level only);*
- *Revised design of roofline and upper storey levels of buildings – Block A & B;*
- *Revised access/carparking arrangements to accommodate additional carparking on-site;*
- *Minor changes to Site Coverage and Garbage Bin storage;*

Key Issues

The key issues associated with this Section 96 modification are as follows:

- *Height*
- *Density*
- *Floor Space Ratio*
- *Carparking*
- *Other (including individual penthouse offices, Construction Certificate, drainage and stormwater management and recommended re-notification).*

New Development Application v Section 96 Modification Application

Prior to lodgement of the Section 96 application, the applicant made inquiries with Council in respect to the proposal. Council's initial advice questioned the appropriateness of lodging a Section 96 for the extent of variations proposed and suggested consultation with the Department of Planning in respect to lodgement of a new development application. Council also expressed concern over the extent of departures from Council's planning instrument (ie. LEP 2000), and that it was unlikely these variations would receive support from Council.

Following consultation with the Department of Planning, the applicant proceeded to lodge a Section 96 application on 15 February 2006 with Council, the subject of this report. Upon lodgement of the Section 96 application, Council sought legal advice on two points. Firstly, whether the development is considered substantially the same development and therefore, legally able to be considered under a Section 96 application, and secondly, whether the Department of Planning have a concurrence role in respect to height under the provisions of the Hunter Regional Environmental Plan 1989. The Section 96 application was also referred during assessment to the Department of Planning for their assessment and concurrence.

Given conflicting opinions from both the Department of Planning and Council's legal advisors, the need existed to seek further clarification on these two points. The current position is that both Council's legal advisors and the Department concur that there is no legal requirement for concurrence to be obtained from the Department of Planning for a Section 96 application. However, there remains a difference of opinion in regards to whether it is appropriate to be dealing with such variations under a Section 96 application, rather than requiring lodgement of a new Development application.

Council's legal advisors remain of the opinion that Council is able to deal with the current Section 96 application based on recent Land & Environment Court decisions, and consider there are merit grounds for refusal of the application. The Department of Planning maintain a different opinion in that "the proposed modification represents a significant departure from the original approved Development application", with specific reference to additional storeys and units, and have stated that "the Coastal Assessments Branch has advised that in these circumstances the Department's normal practice would be to require a fresh DA to be lodged". The Department also recognised that ultimately it is the consent authority's decision whether or not to accept the lodgement of a Section 96 application.

In conclusion, Council has proceeded to assess the Section 96 application based on legal advice received, however on-going reservations at the assessment level and the opinion of the Department of Planning, further questions the appropriateness of assessing the magnitude of variation under a Section 96 application. The Department of Planning would be the consent authority for a new Development Application.

Merit Assessment

A comprehensive assessment under Section 79C of the Environmental Planning & Assessment Act 1979 has not been undertaken. This report focuses on the key development standards and proposed variations to these standards. Council has a legal obligation to assess the Section 96 application under the provisions of the current LEP 2000 and not under the provisions of LEP 1987.

In undertaking a merit assessment of the Section 96 application the key areas of non-compliance relate to density, floor space ratio, height and other non-compliances or inconsistencies and are discussed below.

Table - Summary of key areas of non-compliance

Attribute	Proposed	Required	Complies	Variation sought
<i>Height</i>	<i>24.0 metres</i>	<i>15.0 metres</i>	<i>No</i>	<i>+ 9.0 metres Or 60%</i>
<i>Density</i>	<i>1 unit / 60m² (42 units)</i>	<i>1 unit / 150m²</i>	<i>No</i>	<i>+ 90m²</i>
<i>Floor Space Ratio</i>	<i>2.5: 1</i>	<i>1.8:1</i>	<i>No</i>	<i>+ 0.7:1</i>
<i>Carparking</i>	<i>69 spaces</i>	<i>70 spaces</i>	<i>No</i>	<i>- 1 spaces (minimum)</i>

Discussion

Height

Proposed:

The proposal seeks a variation to height and suggests maximum heights of each building, proposed in the order of Block A – 21.4m (northern end) and Block B – 21.8m (south eastern corner) measured from Natural Ground Level (NGL).

Comment:

The current development consent, as modified provides for a maximum height of approximately 18.0 metres. The height limit pursuant to both LEP 1987 and LEP 2000 is a maximum of 15.0 metres. This height limit has been in existence circa 1987 and was determined through the Height of Tall Buildings Study commissioned in the mid 1980's.

For the purposes of assessment, the proposed increase in height needs to be considered in the context of the 15.0 metre height limit within the Residential 2(c) Zone pursuant to Clause 19 of LEP 2000, with consideration given to the existing approved height of 18.0 metres. This development has received approval for an incremental creep in respect to the maximum height from 15.0 metres to 18.0 metres (3.0 metres above the limit) and is now proposing a further variation from 18.0 metres to 24.0 metres (9.0 metres above the 15.0m limit).

The assessment does not concur with the documentation submitted with the Section 96 application, which suggests maximum heights of each building, proposed in the order of Block A – 21.4m (northern end) and Block B – 21.8m (south eastern corner) measured from Natural Ground Level (NGL). It is also noted that the justification submitted in support of the height increase is primarily based on how it is measured and viewed from street level, in particular the higher street level taken from the lower side of the lot and between each building and from adjoining properties, with no demonstrated justification as to how it will be

viewed from any public place including the waterway. It is also difficult to determine the accuracy of the Shadow/Streetscape Diagram submitted.

The assessment of height (as required), based on the limitations of information submitted to Council has been taken from Natural Ground Level only, (not Finished Ground Level) with maximum heights as follows:-

- Block A – 24.15m (north eastern corner of building), 23.75m (northern ridgeline) and 21.85m (southern ridgeline).*
- Block B – 24.15m (north eastern corner of building) and 23.7m (northern ridgeline) and 21.8m (southern ridgeline).*

The proposal represents a 60% or 9.0 metre increase/variation to Council's 15.0 metre height limit, and 40% or 6.0 metre increase/variation to the existing approved height of approximately 18.0 metres. Whilst, it is acknowledged that variations to the 15.0 metre height limit have been granted to both the subject development and surrounding developments (including adjoining Commercial 3(a) zoned land), in comparison these variations are considered minor. The proposed height variations currently before Council, in either context are considered significant departures to Council's planning instrument with no sound planning grounds, nor merit to support further increases in height proposed under this application. .

To support these variations will also have ramifications to Council's 15.0 metre height limit requirements within the adjoining Commercial 3(a) zoned land given similar development pressures being experienced within this zone, not unlike development in the Residential 2(c) Zone. The proposal is also considered contrary to the public interests and expectations, of an orderly and predictable built environment.

In conclusion, it is considered that overall, the 15.0 metre height limit has generally achieved acceptable results for Council, the community and developers during this period of time and whilst it is acknowledged that variations above this 15.0 metre limit have been supported, development has generally occurred within the character of the area. To support this proposal with extensive departure in height is considered contrary to these achievements, with height a contributing factor to unacceptable bulk and scale and an over development of the site. Therefore, it is recommended that the Section 96 application not be supported with height a key reason for refusal as outlined in this assessment. It is also recommended that in the context of the Nelson Bay central area, height has continued to be of major community concern and with continued development pressure to undermine Council's policy, a review of the Height of Tall Buildings Study and preparation of a comprehensive Master Plan for the Nelson Bay / Shoal Bay central area is thought necessary to deal with these broader policy issues.

Density

Proposed:

The Section 96 application lodged proposed an increase in density from 25 units to 41 units. During assessment of the application, the density was revised and reduced to 40 units with plans submitted. However, the latest proposal consists of 42 units based on current plans (Block A – 20 & Block B – 22) with floor plans clearly providing for 42 numbered units.

Comment:

The current development consent relates to approval for a 25 unit development. The subject site has a total site area of 2,516m². Based on the density provisions of 1 unit / 100m² pursuant to Local Environmental Plan 1987, the development, as approved, complied with Council's density requirements (gaining approval for the maximum density potential on the site).

A merit assessment of the proposal has been undertaken on the basis of proposed increase from 25 to 42 units (current plans submitted). The density variation is being considered on its merits, based on the current density provisions of 1 unit / 150m² pursuant to the requirements of Local Environmental Plan 2000. Whilst the current Local Environmental Plan 2000 has a different density standard to that under which the original consent was granted (ie. LEP 1987), the development, was approved for the maximum density potential of 25 units, based on total site area. The current requirements of LEP 2000, has a maximum density potential of 16 units, based on total site area. This reduction in density potential between LEP 1987 and LEP 2000 shows a clear decision or policy change introduced in LEP 2000. This policy change should not be undermined without reasonable merit or justification.

The existing approval for 25 units is the maximum density potential under LEP 1987, representing a 9 unit difference between LEP 1987 and current LEP 2000. The proposal represents a 26 unit increase to Council's current density standard, and a 17 unit increase to the existing approved density of 25 units. There is also a proposed Security/Caretaker accommodation unit, which potentially should be considered as an additional unit.

Notwithstanding Council's obligation to assess this proposal under LEP 2000, in either context the proposed variations are considered significant and unacceptable departures to Council's requirements (past and present), with no merit to support the proposal for 42 units. This represents a density proposal of 1 unit / per 60m², where the current maximum density potential under LEP 2000 is 1 unit / 150m².

It is considered that any further variation to density on this site, and to the extent of 42 units, has no sound planning grounds when considering Council's past and present planning instruments, nor merit to support the extent of variation. The density departure is considered a major element contributing to the unacceptable bulk and scale and over development of the site. Further, it is likely to be inconsistent with the densities proposed/approved within the adjoining Commercial 3(a) Zone, where there is no actual density standard existing. In this regard, Council when assessing these developments with residential components above ground level, is guided by the Residential 2(c) density provisions to aid in achieving acceptable forms of development and acceptable residential living standards.

Floor Space Ratio

Proposed:

The Section 96 application, as indicated on plan suggests a maximum FSR of 2.2:1.

Comment:

Council's Floor Space Ratio (FSR) requirement has remained the same in both LEP 1987 and LEP 2000 with a maximum of 1.8:1. The current development consent, as modified provides for a total Floor Space Ratio (FSR) of approximately 1.9:1.

However, an assessment has been undertaken and has identified that this ratio is higher than stated in supporting documentation with FSR calculated at 2.5:1. This variation is considered to be a contributing factor to the unacceptable bulk and scale and over development of the site and therefore, should not be supported by Council.

Access and Carparking Provision on-site

Proposed:

The proposed plans provide for a total of 69 carparking spaces on-site, with access to 59 spaces via the northern access/entry point and access to the remaining 10 spaces via the southern access/entry point.

Comment:

An assessment of carparking provision has been finalised and based on the number of units and bedroom numbers carparking required is calculated as follows:-

Block A: 11 x 2 Beds Units = 11 spaces and 9 x 3 plus Beds Units = 18 spaces (Total = 29)

(Note: Potential of 3 extra spaces required depending on room use)

Block B: 13 x 2 Beds Units = 13 spaces and 9 x 3 plus Beds Units = 18 spaces (Total = 31)

(Note: Potential of 2 extra spaces required depending on room use)

Residential unit occupants parking = 60 spaces;

Security / Caretaker unit = 1 space;

Visitor parking = 9 spaces;

Total = 61 residential spaces and 9 visitor spaces (Overall Total =70 spaces)

Note: These calculations exclude the units that have Study Rooms noted above.

An shortfall of 1 carparking space has been identified. Notwithstanding, this initial shortfall, there are a number of spaces (out of the 69 spaces provided on plan) that do not appear to comply with Council requirements and the Australian Standard: Parking facilities for off-street parking and therefore, the potential for greater than 1 spaces is evident as outlined below (areas of non-compliance):-

- A total of 6 spaces out of the 59 spaces identified as accessible via the northern access/entry point, would appear not to comply and the carparking arrangement in this regard suggests that the 2 way access/traffic flow is no longer achievable, whereby reducing traffic flow to 1 way only being physically achievable.
- A total of 2 spaces out of the 10 spaces identified as accessible via the southern access/entry point, would appear not to comply.
- A further 6 spaces are considered marginal to complying with requirements.
- The northern access/entry-exit is required to be one combined access point.

Therefore, based on an assessment of 42 units and a security/caretaker's area a total of 70 carparking spaces is required to be provided on-site (ie. 61 for occupant carparking / security guard & 9 for visitor parking). Based on the above areas of non-compliance, it is likely that an additional shortfall of up to 14 spaces above the initial 19 space do not comply.

The assessment concludes that due to the increase in density proposed, there has been an inability to provide the required carparking, appropriately located on-site, accessible and without compromise to the two-way traffic flow within the site and vehicles being able to enter/leave the development in a forward direction as required. Therefore, this further suggests that the proposal is an over-development of the site and should be amended accordingly to enable required carparking provision on-site.

It is noted that whilst the Section 94 Contributions Plan - Tomaree Peninsula has a carparking contribution for Nelson Bay, it would be inappropriate to accept payment for any shortfall for residential development. Council's continued efforts of enforcing the need to strictly comply with Council's carparking requirements for residential development demonstrates no sound planning justification for a variation in this instance and suggests an over-development of this site.

Other

There are a number of other issues, which have been identified in finalising assessment and the report to Council. These are discussed below and include the following:-

- Individual Penthouse Unit Office Areas located on Level 2 – Ground Floor Level;
- Construction Certificate;
- Drainage needs to be further explored; and
- Re-notification warranted given extent of changes over time.

- Individual Penthouse Unit Office Areas located on Level 2 – Ground Floor Level

Clarification is required confirming that these individual offices are to be used exclusively as private offices for each Penthouse, without any use as commercial premises or conducting external business activities whereby members of the public attend the premises.

- Construction Certificate

Council was appointed to determine the original Construction Certificate and undertake inspections. An application for an amended Construction Certificate has not been lodged at this stage. Preliminary assessment of the plans submitted to amend the development consent revealed some areas of non-compliance with the deemed to satisfy provisions of the Building Code of Australia and these issues may require further assessment and consideration.

- Drainage needs to be explored further

It would appear that drainage can be achieved regardless of the extent of changes. However, further information is needed to enable a more detailed assessment to be undertaken, prior to any support of the application.

- Re-notification warranted given the extent of changes over time

The Section 96 application has been publicly exhibited with 3 submissions received raising objection to the original proposal in approximately July 2006. The main areas of concern relate to:-

- *Is the development substantially the same development, based on current changes proposed and number of previous modifications made to this development;*
- *increase in height warrants greater setbacks;*
- *over-shadowing impacts (insufficient information submitted to determine impacts);*
- *insufficient information provided to enable objectors to respond;*
- *undesirable precedent if variations are supported by Council;*
- *extra height only wanted due to loss of water view by surrounding developments, is not good justification to vary the height limit;*
- *to continue to support variations to density and height will have major impacts on streetscape, traffic and the character of this area of Nelson Bay.*

However, it should be noted that during the course of this assessment, the applicant has submitted various sets of revised plans and documentation, which have not all been publicly exhibited, in particular the current revised plans and documentation. Therefore, it is strongly recommended that the current plans and information be publicly exhibited prior to any consideration of support being given to this application in accordance with the requirements of Council's Advertising Policy.

LINKS TO CORPORATE PLANS

This report relates to the Goal in the Assessment and Approvals program of Council's Management Plan, which is an ordered and predictable built environment in Port Stephens.

FINANCIAL/RESOURCE IMPLICATIONS

The recommendation to undertake a review of the Height of Tall Building Study and need for the preparation of a comprehensive Master Plan for Nelson Bay will have both financial and resource implications.

Australian Business Excellence Framework

This aligns with the following ABEF Principles.

- 1) *Clear direction allows organisational alignment and a focus on the achievement of goals*
- 2) *Mutually agreed plans translate organisational direction into actions*
- 3) *Understanding what customers value, now and in the future, influences organisational direction, strategy and action*
- 8) *Effective use of facts, data and knowledge leads to improved decisions*
- 10) *Organisations provide value to their community through their actions to ensure a clean, safe, fair and prosperous society*
- 11) *Sustainability is determined by an organisation's ability to create and deliver value for all stakeholders*

SUSTAINABILITY IMPLICATIONS

SOCIAL IMPLICATIONS

Approving the variations proposed under this Section 96 modification (ie. Height, Density, Floor Space and carparking shortfall) will establish an undesirable precedent whereby future proposed development/modifications will most likely seek similar concessions.

Community concern exists throughout the Local Government Area and in particular the Nelson Bay area, and generally relates to varying any of the development standards contained in Council's planning instrument. However, it is noted that height in particular is of major concern along with the concern that Council are continually pressured by development to support variations to Council policy.

Other non-compliances such as carparking also contribute to an over-development of the site and suggest that the proposed increase in density is unachievable based on site area. Further, it is noted that in supporting such a proposal, is likely to result in an increase in overall community concern for these inconsistencies with Council policy, and in time, will potentially be to the detriment of residential amenity in the Nelson Bay central area. Therefore, the proposal is considered contrary to the public interests and expectations of a predictable and orderly built environment.

ECONOMIC IMPLICATIONS

An orderly and predictable built environment based on consistent application of landuse controls and standards is required to support economic and investment decisions within Nelson Bay central business district and surrounding areas. Variations to policies and standards can lead to increased speculation and development pressures on Residential 2 (c) zoned land seeking major departures from established planning controls and raised inequities with other developments.

ENVIRONMENTAL IMPLICATIONS

Approving the extensive departures to Council policy will not only undermine these requirements but will set a precedent within the Nelson Bay central area and in other areas of the Local Government Area and create even greater uncertainty of the public interests and expectations, of an orderly and predictable built environment.

CONSULTATION

The Section 96 application has been publicly exhibited with 3 submissions received raising objection to the original proposal in approximately July 2006. However, it should be noted that during the course of this assessment, the applicant has submitted various sets of revised plans and documentation, which have not all been publicly exhibited, in particular the current revised plans and documentation. Therefore, it is strongly recommended that the current plans and information be publicly exhibited prior to any consideration of support being given to this application to ensure compliance with Council's Advertising Policy.

Apart from the public exhibition process there was a need to undertaken consultation with other parties including Sparke Helmore Solicitors, Department of Planning and East Ward Councillors. The reasons for this consultation are outlined below:-

Sparke Helmore solicitors – Council sort legal advice in respect to the appropriateness of a Section 96 application, as opposed to a new Development Application and in relation to the concurrence role of the Department of Planning.

Department of Planning – Council referred the Section 96 application to the Department seeking their concurrence for proposed height pursuant to Clause 58 – Tall Buildings: Hunter Regional Environmental Plan 1989. The Department advised they do not have a concurrence role in respect to a Section 96 application and that in their opinion, a new Development Application would seem more appropriate given the extent of departures to Council's requirements.

East Ward Councillors – several rounds of consultation took place with Ward Councillors to provide information on both this development and surrounding developments in this area of Nelson Bay. Councillors Westbury and Dover called the Section 96 application to Council for determination.

OPTIONS

- 1) *Adopt the recommendation.*
- 2) *Reject or amend the Recommendations to provide “in principle” support of the Section 96 Modification Application.*

ATTACHMENTS

- 1) *Locality Plan*
- 2) *Reasons for Refusal*
- 3) *Extract of Sparke Helmore advice - summary of modifications*

COUNCILLORS ROOM

- 1) *Plans*
- 2) *Statement of Environmental Effects*

TABLED DOCUMENTS

Nil

ATTACHMENT 2

DRAFT REASONS FOR REFUSAL

1. *The development does not comply with Council's Height limit development standard pursuant to Clause 19 of Port Stephens Local Environmental Plan 2000, with the extent of variation to the standard considered unacceptable.*
2. *The development does not comply with Council's Minimum Area per Dwelling (ie. density) development standard pursuant to Clause 19 of Port Stephens Local Environmental Plan 2000, with the extent of variation to the standard considered unacceptable.*
3. *The development is contrary to the public interests and expectations, of an orderly and predictable built environment.*
4. *The development does not comply with both Council's Parking and Traffic Development Control Plan PS2 and Australian Standard: Parking facilities for off-street parking. The development does not comply with the required number of access carparking spaces. The development does not provide for carparking, appropriately located and without compromising compliance with adequate turning and passing areas on site.*

ATTACHMENT 3

EXTRACT FROM SPARKE HELMORE ADVICE – SUMMARY OF MODIFICATIONS

Modification 1

- On 29 May 2000, an application to modify the Original Consent was lodged.
- The amendments included the provision of additional carparking, addition of ensuites to 12 units, a 500mm increase to the setback at the southern boundary, one apartment changed to a three bedroom apartment, slight extensions to the apartment blocks to the west/south/north, increase in balcony areas for all units, as well as an increase in the roof deck size.
- Council approved the application by notice dated 17 April 2001.

Modification 2

- On 8 June 2001, a further application to modify the Original Consent was lodged with Council. The amendments included a change to the internal layout of the units, alteration to the front radius of Block A and B, the addition of a sauna and spa to three apartments and the addition of a small courtyard area to two apartments.
- Council approved the application by notice dated 18 June 2001.

Modification 3

- On 6 August 2001, a further application to modify the Original Consent was lodged with Council. The amendments included the addition of a green house, sundeck and roof over the pool, 350mm added to the roofline for Block A and B.
- Council approved the application by notice dated 11 October 2001.

Modification 4

- On 7 February 2002, a further application to modify the Original Consent was lodged. The amendments included minor amendments to balconies & sauna areas, lift/foyer areas, as well as the carpark.
- Council approved the application by notice dated 18 February 2002.

Modification 5

- On 7 May 2002, a further application to modify the Original Consent was lodged. The amendments included various internal amendments, minor balcony alterations, and a change in the 25 units from 14 x 2 bedroom units to 7 x 2 bedroom units, and from 11 x 3 bedroom units to 18 x 3 bedroom units.

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- Council approved the application by notice dated 26 August 2002.

Modification 6

- On 3 July 2003, a further application to modify the Original Consent was lodged with Council.
- The amendments included the addition of small balconies to the south, adjustments to the swimming pool, modification to balconies to west/north/east, alteration to common building and a change in the swimming pool shape.
- Council approved the application by notice dated 11 September 2003.

Modification 7

- On 13 November 2003, a further application to modify the Original Consent was lodged with Council.
- The amendments included an alteration to the roof plan, decrease in roof pitch, change in the balcony shape of common areas of two apartments, addition of pergola to an outdoor living area, and the roof plan of the swimming pool was altered.
- Council approved the application by notice dated 10 February 2004.

Modification 8

- On 22 November 2004, a further application to modify the Original Consent was lodged with Council.
- The amendments included the relocation of one unit from Level 5 on Block A to Level 5 on Block B, change to lift shaft, addition of column at the north to increase structural stability, change in shape of front balcony from curved edge to straight edges and the enclosure of the north facing balconies.
- Council approved the application by notice dated 21 April 2005.

Modification 9 – Current Application

- On 15 February 2006, the application to modify the Original Consent which is the subject of this advice was lodged with Council.
- The amendments proposed by this application consist of the following:
 - (a) An increase in the number of units from 25 to 41 units. This will entail an increase in the number of units on levels 4-6 from 1-2 to 3 units per floor.

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- (b) An increase in the height of the buildings by approximately 5 metres (ie from approx 18 metres to 23.5 metres) to accommodate increase in ceiling height of 100mm per floor.
- (c) Conversion of two first floor apartments into parking spaces, resulting in the development increasing from five to seven storeys.
- (d) Addition of balconies to the southern side.
- (e) The building footprint is to remain the same.

ATTACHMENT 2

Supplementary Information



TO: All Councillors & Executive Group

FROM: David Broyd,
Group Manager, Sustainable Planning

DATE: 17 April 2007

RE: Supplementary information for April Ordinary Council Meeting

FILE No: 16-2000-380-10

ITEM No: General Managers' Paper Item 1

REPORT TITLE: Policy implications associated with Section 96 modification to development consent for urban housing development at No.11 – 13 Church Street, Nelson Bay

PURPOSE

To provide further information to Council, as requested from the Operations Committee Meeting 13 March 2007 when the item was deferred for the following to be undertaken:-

1. A review of revised plans submitted by the applicant on 13 March 2007;
2. A review of the plans with the requirements of the Consolidated DCP 2007;
3. The provision of information on comparisons of height and density of development within the immediate area.

BACKGROUND

Since the Operations Committee Meeting on 13 March 2007, the applicant submitted further revised plans dated 22 March 2007.

1. Revised Plans submitted to Council (22 March 2007)

The plans generally consist of the following changes as outlined in the applicant's submission:-

- Reduction in height – Block A proposed at 22.17m & Block B proposed at 22.93m;
- Change in type of lift which does not require a lift overrun;

ORDINARY COUNCIL MEETING – 26 JUNE 2007

- Reduction in density by 4 units – now 38 units proposed (previously 42 units);
- Reduction in floor space ratio – 244m²
- Change in carparking layout and numbers to address issue in report – now 60 spaces + 8 visitor spaces;
- Garage area floor stepped down 75mm;
- Garbage disposal – proposed twice weekly by private company collection with bins located near the entrance.

Advertising / Notification

The plans dated 22 March 2007 were re-advertised and re-notified as the most recent submitted plans. Submissions received are discussed further in the Discussion.

Survey Confirmation of Proposed Height

On 5 April 2007 the applicant submitted survey datum confirming the proposed height of the development. Block A is proposed at 22.17 metres (closest to Church Street) and Block B is proposed at 22.93 metres. These reductions in height have been achieved by reducing the floor to ceiling heights and removal of the lift overrun.

Comment

This Merit Assessment provides an update based on the current plan of key issues that were discussed in the Council report. The key issues associated with the plan essentially remain unchanged and are as follows:-

- Height
- Density
- Floor Space Ratio
- Carparking
- Other – inconsistency with Development Control Plan (DCP) 2007, re-advertising & re-notification of current plan

Revised Table - Summary of key areas of non-compliance

Attribute	Proposed	Current Approval	Required LEP 2000	Complies	Variation sought
<i>Height</i>	<i>Block A: 22.17m Block B: 22.93m</i>	<i>18.0 m</i>	<i>15.0 m</i>	<i>No</i>	<i>> 4.0m or > 26% (to approved) > 7.0 m or > 46% (to LEP)</i>
<i>Density</i>	<i>1 unit / 66m² (38 units)</i>	<i>1 unit/ 100m²</i>	<i>1 unit / 150m²</i>	<i>No</i>	<i>34m² (to approved) 84m² (to LEP)</i>

ORDINARY COUNCIL MEETING – 26 JUNE 2007

<i>Floor Space Ratio</i>	2.2: 1	1.9:1	1.8:1	No	+ 0.3:1 (to approved) + 0.4:1 (to LEP)
<i>Carparking</i>	68 spaces (incl 8 visitor)	52 spaces (incl 6 visitor)	64 spaces (incl 8 visitor)	Yes (numerically) No (Refer Discussion)	

Discussion

- *Height*

The survey datum confirms that the proposed maximum height of the development in respect of Natural Ground includes Block A at 22.17 metres and Block B at 22.93 metres. This survey confirms that minimal reduction in height has occurred and that the variation proposed represents an extensive departure. The proposal is considered to remain a significant and unacceptable variation to both, Council's planning controls and to those concessions previously granted to this development in respect to height. Therefore, the proposal is not supported as it undermines Council's planning controls and contributes to unacceptable bulk and scale and is considered an over development of the site. The recommendations as outlined in the Council report remain unchanged based on the current plans.

- *Density*

The current plan has reduced the density variation from 42 units to 38 units. The proposal continues to represent an extensive departure. The development as originally approved achieved the maximum density potential for this site pursuant to LEP 1987 (i.e. 25 units). The proposal to increase this density remains a significant and unacceptable variation to Council's planning controls. To achieve the proposed density on this site requires further variations to height and floor space ratio development standards and compromises the functionality of the carparking provided on site for the development. Given these cumulative impacts resulting from the proposed increase in density, the proposal is considered excessive and is not supported as it remains a significant and unacceptable variation to Council's planning controls and represents an over development of the site. The proposal is also contrary to the public interests and expectations of an orderly and predictable built environment. The recommendations as outlined in the Council report remain unchanged based on the current plans.

- *Floor Space Ratio*

The current plan has achieved a small reduction in floor space ratio. Whilst this variation, when considered individually may result in a smaller departure, it is important to note that previous variations to floor space ratio requirements have been granted for this development. The proposal remains inconsistent with Council's planning controls. The proposal to further

vary the floor space ratio for this development remains a contributing factor to the unacceptable bulk and scale and over development of the site and is not supported.

- *Carparking*

The current plan appears to numerically comply with respect to carparking provision on the site. However, there are a number of areas of concern with respect to access and carparking arrangements, generally outlined as follows:-

- *The entrance and separate exit arrangements on the northern end of the site is considered unacceptable. Recommend - That either a combined entry/exit of maximum 6.0m width be required or conform to previous approval.*
- *All structures (i.e. fountain, block wall and garden) must be removed from the road reserve. Recommend – That only a 1.2m wide concrete footpath is permitted within the road verge.*
- *The aisle width of the driveway along the northern side of the units does not allow for two-way access.*
- *Garages along the southern boundary result in a 4.0 metre high wall located on the boundary (south east corner).*
- *Difficult to determine how the proposed carparking spaces for Unit 35 & 36 are accessed.*
- *The functionality and location of the carparking arrangements for these units are considered inappropriate. This is in part due to placement of carparking spaces for both residents & visitors, which results in one way access/driveways and the potential for congestion and queuing out into Church Street.*

- *Other*

DCP 2007 - A preliminary review of the current plan and the Development Control Plan (DCP) 2007 has revealed a number of inconsistencies with Council's requirements. These are discussed further in Item 4 of this Supplementary Information.

Re-advertising & Re-notification of Current Plan - The Section 96 application with plans dated 22 March 2007 was publicly exhibited with re-notification undertaken in accordance with Council policy and a total of 4 submissions and 1 petition (85 signatures) were received objecting to the application.

The main areas of concern are as follows:-

- *Development not considered "substantially the same" – the proposal given the numerous modifications and now proposed extensive departures should not be considered under a Section 96 application. A new Development Application should have been required.*
- *Inconsistent with LEP 2000 – variations sought to density, height and floor space ratio are major and represent a massive over development of the site.*

- Privacy impacts – the development with such departures will adversely impact on the privacy of surrounding development and their open space areas.
- Over-shadowing impacts - any additional floors will increase the degree of over-shadowing, amenity to direct sunlight, impact to energy efficiency developments.
- Carparking impacts – additional units will generate additional demand for carparking with no available on-site parking within this area. This will also contribute to traffic problems within the public street.
- Setbacks – there has been no provision made for additional setbacks from boundaries for both buildings and access ramps which form part of the buildings increasing concerns over the bulk and scale and overall height of the development. This lack of setback raises concerns of safety, amenity, streetscape, traffic noise, privacy and fire safety non-compliances.
- Capability of Existing Footings to support additional levels – given the development has substantially commenced with footings installed there is concern as to whether the footings can support the additional levels.

A copy of submissions received will be provided in the Councillors Room.

2. The provision of information on comparisons of height and density of development within the immediate area

On 18 July 2006 a Memorandum providing information on the comparisons of height and density of development within the immediate area was forwarded to East Ward Councillors. This information has been updated and is produced in Attachment 1. The information gathered relates to developments approved, their height and density and consent authority (PSC or DoP).

The information is presented in map/locality plan format together with a Table of details for these properties. Separate maps showing both the zoning within this area and an aerial photo of the area are also provided for Councillor information in Attachment 1.

Measurement of Height and Concurrence Requirements

The Department of Planning have a concurrence role in respect to developments proposing a maximum height (above 15.0m) pursuant to a Tall Building Clause within the Hunter Regional Environmental Plan 1989. Therefore, a number of the development applications assessed by Council as identified on plan have required the Department's concurrence. In assessing and providing their concurrence to the proposed maximum heights of these buildings, the Department is measuring height from Natural Ground Level only. In contrast, Council is assessing height in accordance with the height definition pursuant to LEP 2000, whereby height is measured from either Natural Ground Level or Finished Ground Level of the completed building (whichever is the lower). This in turn results in different maximum heights being established.

It is noted that in respect to this Section 96 application, height has been measured from Natural Ground Level only due to the level of detail provided on plan.

As discussed within the report to Council, the extent of this proposed modification remains unacceptable primarily in respect to increases in density and height pursuant to LEP 2000

and relevant DCPs, which in turn raises concern that the development is contrary to the public interest and is considered an over development of the site.

3. Review of Section 96 Application with the Consolidated DCP 2007

Council requested consideration of the current proposal with the provisions of the new Consolidated DCP 2007. Council's Landuse Planning Section was requested to undertake an assessment of the revised plans against the provisions of Chapter 8 Residential Flat Buildings of the DCP 2007 and a Memorandum is provided for Council's information in Attachment 2.

In summary, this assessment demonstrates that the plans are inconsistent with key areas of both LEP 2000 and DCP 2007 and that the overall bulk and scale of the proposal and extent of departures to Council's development standards is unacceptable and to support such departures would undermine the provisions of both the LEP and new Consolidated DCP.

RECOMMENDATION

That the information as outlined and requested be considered at the Ordinary Meeting of Council on 24 April 2007 and the recommendations of the report forwarded to the Operations Committee Meeting on 13 March 2007 be adopted. These are as follows:-

Recommendation is that Council:

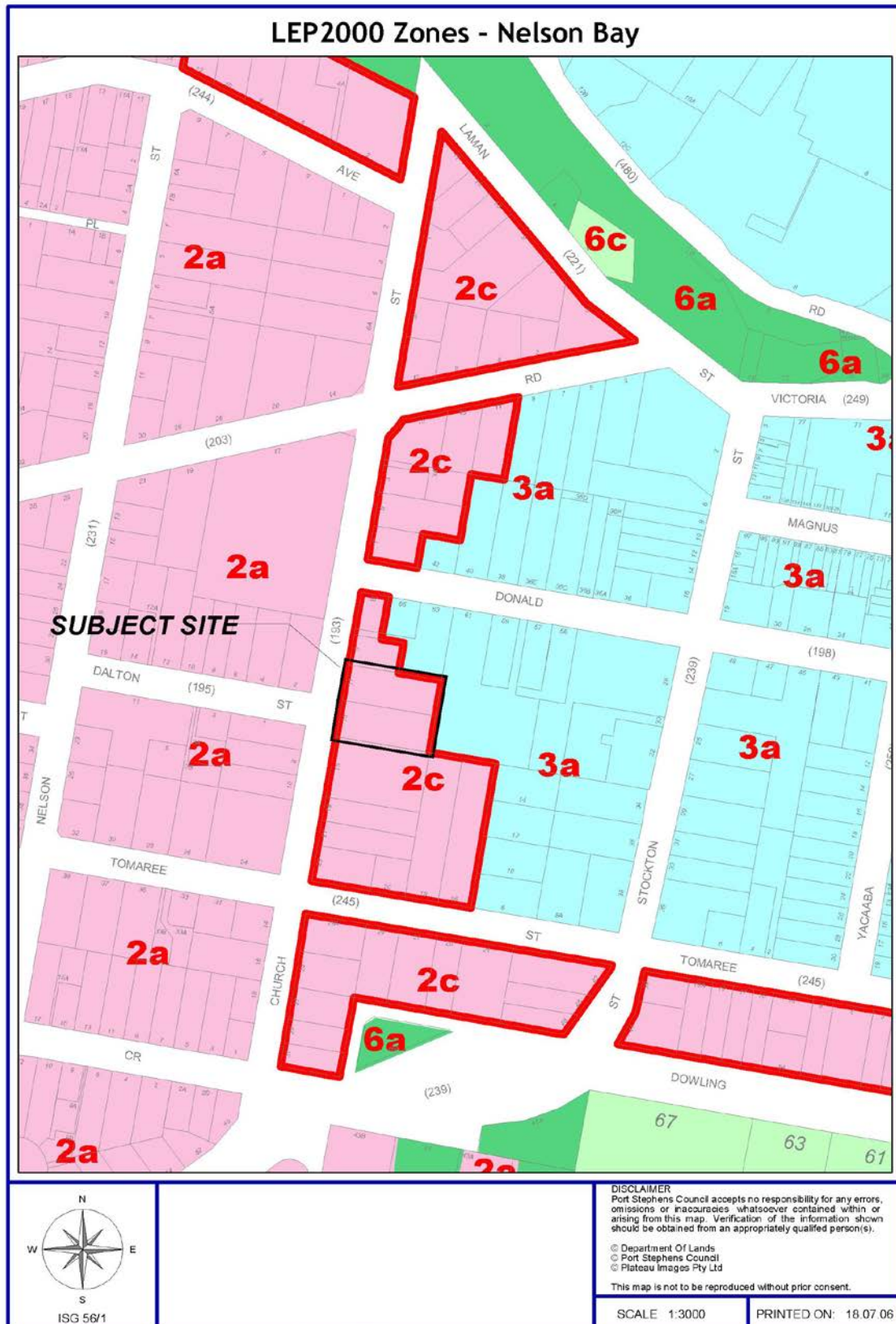
1. Not support the Section 96 Modification due to excessive height, density, floor space ratio and other non-compliances.
2. Delegate determination of the Section 96 Modification Application 16-2000-380-10 for 11-13 Church Street, Nelson Bay to the General Manager noting the conclusion to the report that the Section 96 Modification should be refused based upon the draft reasons for refusal shown in Attachment 3.
3. Note, that the review of the Height of Tall Buildings Study will form part of a comprehensive Planning Strategy for the Nelson Bay / Shoal Bay districts.

ATTACHMENT 1

Aerial Photo - Nelson Bay



ATTACHMENT 1



ATTACHMENT 1

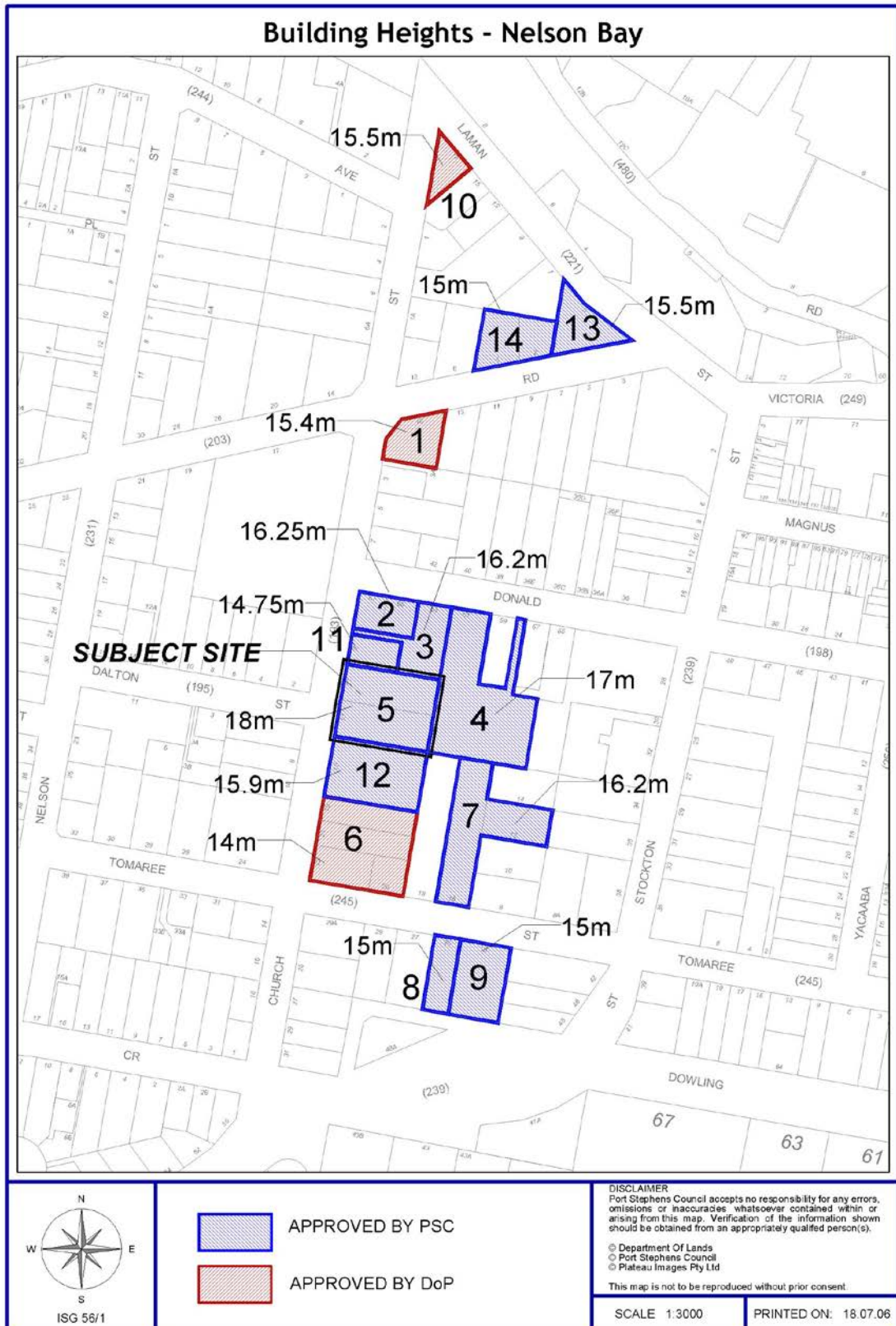
LIST OF DEVELOPMENTS / PROPERTIES IDENTIFIED ON MAP

Map	DA Number	Description - Development	Address	Consent Authority	Max. Height Approved	Density	
						Req'd	Approved
1.	16-1999-2239-1	10 Units	15 Government Rd, NB	Council	15.4m	1 unit / 100m ²	1 unit / 91m ²
	300-12-2004	Pool, Mods to Roof Terrace		Dept of Planning		N/A	N/A
2.	16-2002-666-1	Commercial & 15 Units (5 storey + basement)	65 & 67 Donald St, NB	Council	16.25m (mostly complies)	N/A (3a Zone)	1 unit / 53m ²
3.	16-2004-1606-1	Commercial & 14 Units (5 storey + basement)	63 Donald St, NB	Council	16.2m (mostly complies)	N/A (3a Zone)	1 unit / 82m ²
4.	16-2004-324-1	Mixed Use: Commercial, Tourist (9), Residential (45)	61 Donald St, NB	Council	17.0m (only localised points exceed 15m)	N/A (3a Zone)	1 unit / 87m ² Residential only 1 unit / 73m ² Tourist & Residential
5.	16-2000-380-1	25 Units (5 storey + basement)	11 & 13 Church St, NB	Council (LEP 1987)	18.0m	1 unit / 100m ²	Complies
6.	25-2003-7-1	58 Units – Tourist (5 storey + basement) Lure Apartments	19, 21 & 23 Church St & 20 Tomaree St, NB	Dept of Planning	14.0m	N/A (Tourist)	1 unit / 50.7m ²
7.	16-2002-1506-1	28 Units (26 Residential & 2 Tourist)	12 & 16 Tomaree St, NB	Council	16.2m (mostly complies)	Split Zone	No. 12 – 1 / 99m ² No. 16 – 1 / 93m ²

ATTACHMENT 1

Map	DA Number	Description - Development	Address	Consent Authority	Max. Height	Density	
						Req'd	Approved
8.	16-1999-1188-1	7 Units	25 Tomaree St, NB	Council	15.0m	1 unit / 100m ²	Complies
9.	16-2000-993-1	17 Units (6 storeys + basement) (s/s by 16-2001-1755-1)	21 & 23 Tomaree St, NB	Council	15.0m	1 unit / 100m ²	1 unit / 83.4m ²
	16-2001-1755-1	18 Units (1 extra unit)	21 & 23 Tomaree St, NB	Council	15.0m	1 unit / 100m ²	1 unit / 78.7m ²
10.	25-2005-1-1	3 Units (4 storey + basement)	17 Laman St, NB	Dept of Planning	15.5m	1 / 150m ²	Complies
11.	16-2000-897-1	5 Units (5 storey)	9 Church St, NB	Council (LEP 1987)	14.75m	1 unit / 100m ²	Complies
12.	16-2000-1014-1	21 Units	15 Church St, NB	Council	15.9m	1 / 150m ²	Exceed by 7 1 / 100m ²
13.	16-2000-103-1	14 Units (6 Storey)	5 Laman St, NB	Council	15.6m (main bldg betw 13.1 – 14.7m)	1 unit / 145m ²	Exceed by 6 1 / 73.5m ²
14.	1999-1071-1	16 Units	6 Government Rd, NB	Council	15.0m	1 unit / 145m ²	Exceed by 7 1 / 82.5m ²

ATTACHMENT 1



ATTACHMENT 2

MEMORANDUM DATED 11 APRIL 2007

Memorandum



To: Amanda Gale
From: Matthew Borsato
Date: 11 April 2007
File No: 16-2000-380-10
Subject: 11-13 Church Street Nelson Bay

The purpose of this memo is to provide an assessment of the proposed urban housing development against the provisions of Chapter 8 Residential Flat Buildings of PS Consolidated DCP 2007.

B3.8 SCHEDULE OF CARPARKING REQUIREMENTS

The proposed development provides 69 carparking spaces.

The following dot points list the number of carparking spaces required:

24 x 2 bedroom units = 24 spaces
18 x 3 bedroom units = 36 spaces
Visitor spaces = 14
Total required = 74

Therefore according to PS Consolidated DCP 2007 there is a shortfall of 5 carparking spaces.

B8.7 BULK AND SCALE

B8.C34 Development must comply with the standards for minimum site area per dwelling, and maximum permissible floor space ratio specified in Port Stephens LEP 2000.

The proposed development does not comply with the development standards specified in PS LEP 2000 for minimum site area per dwelling and maximum floor space ratio. The compliance of the proposed development with these development standards is discussed in the existing assessment report.

B8.8 BUILDING HEIGHT

B8.C36 Development must comply with the standards for maximum permissible height as stated in PS LEP 2000

The proposed development does not comply with the development standard specified in PS LEP 2000 for height. The compliance of the proposed development with this development standard is discussed in the existing assessment report.

B8.C37 Development in the Residential(c) zone must not exceed 5 storeys and 15m in height

The proposed development is 8 storeys and 24 metres in height and therefore does not comply with the height controls provided in PS Consolidated DCP 2007.

B8.C41 Habitable rooms in residential flat buildings must have a minimum floor to ceiling height of 2.7m

The revised plan has reduced the floor to ceiling height down to 2.5m

B8.9 BUILDING DEPTH

B8.C45 Development must provide a minimum rear setback of 25% of the lot depth or 6m (whichever is the lesser) that is entirely reserved for landscape planting in deep soil

The proposed development only provides, at most, a 2.5m setback from the rear boundary for landscape planting in deep soil. The minimum provision for the proposed development is 6m.

B8.19 VEHICULAR ACCESS AND PARKING

B8.C86 A residential flat building must have no more than one driveway access crossing on the primary street frontage with a maximum width of 6.5m

The proposed development provides three driveway access points onto Church Street and therefore exceeds the number of permitted driveway access points.

B8.21 LANDSCAPE

B8.C104 Development must provide landscape planting in deep soil to no less than 20% of the site.

The deep soil landscape planting areas provided for the proposed development is only approximately 132m² or 5% of the site's total land area. Therefore the proposed development does not comply with the deep soil landscape planting area controls provided in PS Consolidated DCP 2007.

The main areas of non-compliance of the proposed development relate to building height, minimum site area per dwelling, floor space ratio and carparking. Non-compliance with respect to these elements leads to a conflict with the principles of the PS Consolidated DCP

2007 such as building height and bulk and scale. The proposed development also demonstrates a lack of compliance with other elements relating to building depth, vehicular access and parking and landscaping.

Matthew Borsato
Strategic Planner

Ext:247

**ATTACHMENT 3
DRAFT REASONS FOR REFUSAL**

- 1) The development does not comply with Council's Height limit development standard pursuant to Clause 19 of Port Stephens Local Environmental Plan 2000, with the extent of variation to the standard considered unacceptable.
- 2) The development does not comply with Council's Minimum Area per Dwelling development standard pursuant to Clause 19 of Port Stephens Local Environmental Plan 2000, with the extent of variation to the standard considered unacceptable.
- 3) The development is contrary to the public interests and expectations, of an orderly and predictable built environment.
- 4) The development does not comply with Council's Parking and Traffic Development Control Plan PS2 and Australian Standard: Parking facilities for off-street parking. The development does not provide for carparking, appropriately located and without compromising compliance with adequate turning and passing on site.

ITEM NO. 4

FILE NO: 16-2004-1181-1

DEVELOPMENT APPLICATION FOR COMMERCIAL BUILDING AND URBAN HOUSING (7 DWELLINGS) AT NO. NO. 9 COOK PARADE, LEMON TREE PASSAGE

REPORT OF: SCOTT ANSON, MANAGER - DEVELOPMENT & BUILDING

RECOMMENDATION IS THAT COUNCIL:

- 1) Approve the application subject to the conditions contained within Attachment 3.

OPERATIONS COMMITTEE MEETING – 26 June 2007

RECOMMENDATION:

That Council defer considering the Development Application for commercial building and urban housing at No. 9 Cook Parade, Lemon Tree Passage until the Lemon Tree Passage DCP has been submitted to Council for adoption.

ORDINARY MEETING OF COUNCIL – 26 JUNE 2007

RESOLUTION:

154	Councillor Tucker Councillor Francis	That the Operations Committee Recommendation be adopted.
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BACKGROUND

The purpose of this report is to present a development application to Council for determination.

The application seeks approval for Commercial Units and Urban Housing Development (six [6] Residential Dwellings). The proposal will take the form of a three (3) storey building.

The subject land has a frontage to Cook Parade and to the rear adjoins land zoned 2(a) Residential. This 2(a) zoned land contains a mix of single dwellings and two storey Urban Housing developments. The surrounding area within Cook Parade contains a mix of uses including single story dwellings and commercial premises.

Each dwelling contains two bedrooms, living/dining areas plus balconies. The development is accessed via Cook Parade and contains ten (10) parking spaces in a below ground level of the building incorporating carparking spaces for the commercial component, residents and visitors.

The key issues associated with this proposal are as follows:-

- Compliance with the 3(a) zone description and objectives;
- Residential amenity (solar access, visual/acoustic privacy & boundary setbacks);
- Visual appearance (height, bulk and scale) and compatibility with streetscape;
- Traffic and parking.
- Compatibility with anticipated outcomes of the Structure Plan and draft Development Control Plan which is currently being prepared.

The application contains no areas of non-compliance with respect to the current development controls relevant to the site. An assessment of these issues is provided within the attachments.

Subsequent to the receipt of this application however, Council has commissioned Ruker and Associates Urban Design to undertake and develop a Structure Plan and Development Controls specific to the Lemon Tree Passage Area.

This study will have implications for the subject site in terms of Development Potential and Built Form, and it is considered that the site plays an integral role in ensuring that the objectives of the plan are ultimately realised.

It is envisaged that the study undertaken will result in the potential for additional development potential on the subject site in terms of height, floor space ratio and side setbacks.

Given the importance of this site to the Lemon Tree Passage Structure Plan and Development Controls being prepared, it consideration has been given to deferring determination to allow the design outcomes to be taken into consideration in the design of the sites built form. In response the applicant has written to Council seeking a determination.

The site is critical to the success of the Controls under development and it is considered at this point in time that the design is not consistent with the desired outcome for the area under the new controls and provisions currently being formulated. These include a potential recommendation for rear laneway access that will enable improved design and streetscape outcomes.

Given the proposals compliance with the Local Environmental Plan 2000, and current Development Control Plans applicable to the zone, it is recommended that the application be approved, however consideration should be given to the future desired Urban Design and development controls for the Lemon Tree Passage precinct.

LINKS TO CORPORATE PLANS

This report relates to the Goal in the Assessment and Approvals program of Council's Management Plan, which is an ordered and predictable built environment in Port Stephens.

FINANCIAL/RESOURCE IMPLICATIONS

Nil

LEGAL AND POLICY IMPLICATIONS

The development application is consistent/inconsistent with Council's Policy.

Australian Business Excellence Framework

This aligns with the following ABEF Principles.

- 8) Effective use of facts, data and knowledge leads to improved decisions
- 10) Organisations provide value to their community through their actions to ensure a clean, safe, fair and prosperous society
- 11) Sustainability is determined by an organisation's ability to create and deliver value for all stakeholders

SUSTAINABILITY IMPLICATIONS

SOCIAL IMPLICATIONS

The site is a fully serviced commercial allotment zoned to permit buildings up to eight (8) metres in height. The development offers lifestyle opportunities for people to reside in close proximity to the Port Stephens waterways and local businesses. The development is not considered to result in a negative social impact.

ECONOMIC IMPLICATIONS

The proposed development should create a positive multiplier effect on the local economy, initially through income to the local contractors during the construction phase, and in the longer term through the increased demand for services by residents and visitors.

ENVIRONMENTAL IMPLICATIONS

The development site currently contains two single storey detached dwellings over a single allotments and has previously been cleared of significant vegetation. As such the development will not adversely impact on any threatened species, populations or ecological communities.

CONSULTATION

The application was exhibited in accordance with Council policy and four (4) submissions were received. These are discussed in the Attachments.

OPTIONS

- 1) Adopt the recommendation.
- 2) Reject or amend the Recommendations.
- 3) Defer determination of application to enable negotiations with the applicant in terms of improving design – including rear laneway access and, potentially increased development yield and lane with development controls and provisions foreshadowed in the urban design study for this site.

ATTACHMENTS

- 1) Locality Plan
- 2) Assessment
- 3) Conditions of Approval

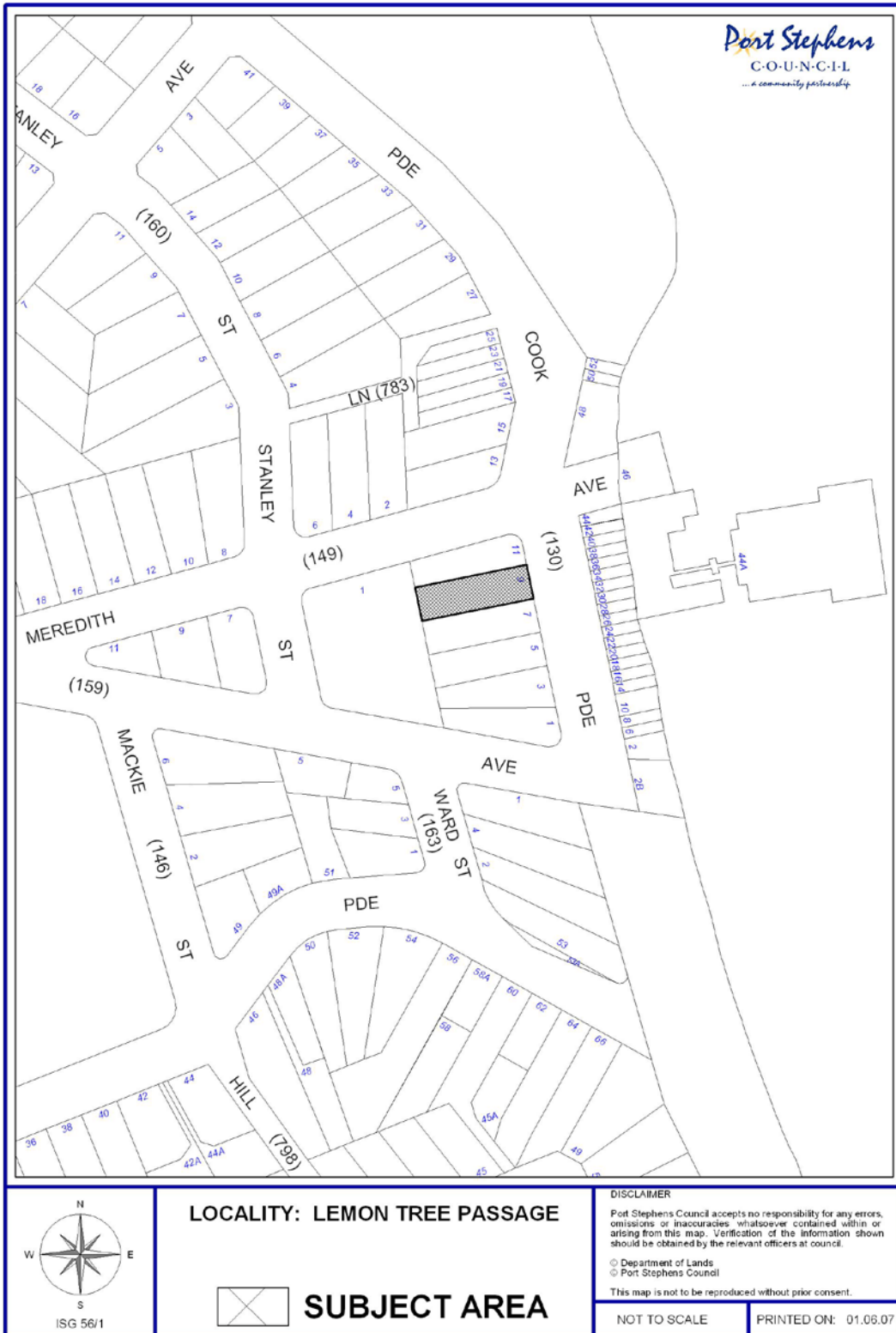
COUNCILLORS ROOM

- 1) Development Plans
- 2) Submissions

TABLED DOCUMENTS

Nil.

ATTACHMENT 1
LOCALITY PLAN



ATTACHMENT 2 ASSESSMENT

The application has been assessed pursuant to Section 79C of the Environmental Planning and Assessment Act 1979 and the following is a summary of those matters considered relevant in this instance.

THE PROPOSAL

The application seeks approval for commercial space and residential dwellings (seven units) in the form of a three-storey building.

It is proposed that the ground floor will accommodate a commercial unit comprising of 75m², ten (10) Car parks. Two additional levels will contain six (6) residential units ranging from one to two bedrooms.

THE APPLICATION

Owner	Mr S A G Perera
Applicant	Mr A Somanader
Detail Submitted	Development Plans (including site, floor plans, elevations, landscape plans), Statement of Environmental Effects, NatHERS Assessment, Drainage Details

THE LAND

Property Description	Lot 27 DP 15682
Address	9 Cook Parade, Lemon Tree Passage
Area	Total Site Area 627m ²
Dimensions	13.675m frontage to Cook Parade 45.68m depth
Characteristics	The land fronts Cook Parade and adjoins residential land to the rear with a frontage to Meredith Avenue, Shearman Avenue and Stanley Street. The site is generally flat.

THE ASSESSMENT

1. Planning Provisions

LEP 2000 – Zoning	Business General 3a
Relevant Clauses	21, 44, 51A
Development Control Plan	PS2, PS4
State Environmental Planning Policies	SEPP71, SEPP65

ATTRIBUTE	PROPOSED	REQUIRED	COMPLIES
DCP Requirements			
Floor Space Ratio	0.86:1	1.8:1	Yes
Building Line	Nil	Nil	Yes
Setbacks	Side – nil Rear – nil	Side – nil Rear – nil	Yes
Height	8m	8m	Yes
Landscaping	Landscaping in gardens on garage roof.	Nil	Yes
Car Parking	Commercial – 2 Residential – 6 Visitor – 2 Total – 10	Commercial – 2 Residential – 6 Visitor – 2 Total – 10	Yes

State Environmental Planning Policy 65 – Design Quality of Residential Flat Development

An assessment of the proposal under the provisions of SEPP65 was provided by the applicant in Section 6.0 of the Statement of Environmental Effects.

State Environmental Planning Policy 71 – Coastal Protection

The application was referred to the Department of Planning under State Environmental Planning Policy 71 (SEPP71) Clause 11(2). Correspondence received from the Department of Planning has advised that the Director-General does not wish to specify any matters in addition to those contained within Clause 8 of SEPP71. The development is not considered to be contrary to the provisions of Clause 8 of SEPP71.

Port Stephens Local Environmental Plan 2000

Clause 21

The land is zoned General Business 3(a) under the provisions of the Port Stephens Local Environmental Plan (LEP) 2000. The proposed commercial/residential development is a permissible form of development with the consent of Council. The proposal is considered to be consistent with the zone description, which identifies this area for a mix of commercial uses and some associated residential uses.

Clause 44

The proposed development is considered to be consistent with the requirements of clause 44. The visual appearance of the development is considered consistent with the zone description. The urban streetscape consists of a variety of architectural styles, materials and colours. The development has sufficient architectural relief and is considered unlikely to have

any detrimental effects on the aesthetic appearance of Lemon Tree Passage when viewed from the waterways.

Clause 51A Development of Land identified on Acid Sulfate Soils Planning Maps.

The subject land is identified as Class 3 Acid Sulfate Soils under the provisions of the Port Stephens Local Environmental Plan, 2000. In accordance with the LEP, 2000 the applicant provided an Acid Sulfate Soils test prepared by Barker Harle (Ref: 60926 Dated 8 November 2006), which demonstrated that the immediate area of the subject site could not be classified as containing Acid Sulfate Soils.

Notwithstanding this, the recommendations of the report have been incorporated into the proposed conditions of consent.

PS 2 – Traffic and Parking Guidelines

Under the provisions of PS2 – Traffic and parking Guidelines, the development is required to provide the following levels of parking.

Commercial	- 2 spaces
Residential	- 6 spaces
<i>Visitor</i>	- 2 Spaces
Total	- 10 spaces

The development proposes to provide 10 car parking spaces, meeting the requirements of Development Control Plan PS 2. The parking layout is considered acceptable and provides sufficient area for vehicles to manoeuvre and leave the subject site in a forward direction. The trafficable width of Cook Parade is adequate to accommodate the traffic generated by this development.

PS 4 – Commercial and Industrial Development Guidelines

Floor Space Ratio

Development Control Plan PS4 specifies a maximum floor space ratio of 1.8:1 for the General Business 3(a) zone. The development is considered to comply having a floor space ratio of 0.86:1.

Building Lines

Within the 3(a) zone a nil building line setback as proposed is permissible.

Setbacks

Within the 3(a) zone, setbacks may be nil, unless the subject site adjoins either a reserve or residential property. In this case Council will determine the setback.

Given that the adjoining properties to the side are also zoned 3(a), the proposed side zero setbacks for the ground floor are considered to be acceptable as it does not present any adverse impacts in terms of privacy or solar access.

The roof of the garage cavity contains a rear setback of zero and is consistent with the setback requirements on 3(a) zoned land. The roof and supporting wall of the garage stand to a height of 1m above ground level and are considered to not present any adverse impacts in terms of residential amenity to the adjoining residential properties. The rear wall of the development is setback a minimum of 3.2m to the western boundary and stands to a height of 7.4m above the existing natural ground level.

Height

Section 8.5 of PS4 – Commercial and Industrial Guidelines specifies a height limit of 8m for the subject site. The development proposal is considered to comply with this provision with an overall height of 8m.

The development contains a below ground garage level. The overall height of the development has been calculated with height measured from natural ground level vertically to the highest point of the building in accordance with the height definition contained within the Port Stephens Local Environmental Plan 2000.

Landscaping

There is no requirement for the provision of landscaping in the 3(a) zone. The development does however provide for areas of landscaping on the garage roof top areas.

Car parking

Issues relating to car parking are discussed above under the heading PS2 – Traffic and Parking Guidelines.

PS1 – Urban Housing and Dual Occupancy Guidelines

The principles of development control plan PS1 have been applied for the assessment of the residential component of the proposal with relevant elements assessed below..

Solar Access

Given that the property immediately to the south of the proposal is a commercial 3(a) zoned allotment containing a small vacant commercial building, it is considered that the development will not result in any adverse impacts in terms of Solar Access.

Streetscape, Building Height, Bulk and Scale

The immediate locality consists of a mixture of building types ranging from single dwellings to tourist accommodation and commercial premises. The proposed development is consistent with the Business General 3(a) zone description, which identifies the desired future character

of the land use zone. Furthermore, the surrounding properties may be subject to redevelopment.

The building height, bulk and scale are considered compatible with surrounding developments as well as the envisaged future commercial/residential streetscape in this location.

In terms of density, it should be noted that there are no specific controls in terms of site density for the 3(a) General Business zone. When compared to the 2(c) Residential zoning, the development represents a significant departure from the controls contained within PS1 and LEP 2000 for urban housing in the higher density 2(c) zone.

The maximum density allowed within the 2(c) zone for urban housing or residential flat buildings is 150m² per dwelling. The site has a total area of 327m² and the development proposes a site area per dwelling of some 104.3m² per dwelling. It is considered that the development site is suitable for the proposed density and that development of this intensity will not result in any undue adverse impacts upon the immediate area.

Visual Privacy

The rear (Western) elevation of the proposal does not contain any major windows and as such is not considered to present any privacy issues to the adjoining residential properties to the rear of the subject site. The buildings (side) elevations face commercially zoned land and do not present any adverse privacy impacts.

Acoustic Privacy

The development is not considered to pose an unreasonable acoustic privacy impact. All noise generated (construction and on-going) from this development will need to comply with the Protection of the Environment Operations Act 1997.

Views

The development does not unreasonably compromise water views. It is considered that the development will not present adverse view impacts when the site is viewed from nearby waterways.

Parking & Traffic

Issues relating to car parking are discussed above under the heading PS2 – Traffic and Parking Guidelines.

Useable Open Space

The proposal provides open space to each unit in the form of open balconies. Each balcony contains at least the minimum 8m² area containing a minimum dimension of 2m. The open space provided is considered to be both useable and private and as such in accordance with the principles of PS2 – Urban Housing and Dual Occupancy Guidelines.

Flooding

The development is located in land classified as flood prone, having a flood planning level of 2.5m AHD.

The subject development site is located below the flood planning level and proposes that the carparking be located in an underground basement. The Development Engineers have required that a bunded area be created around the underground entrance to hold out flood waters due to concerns for public safety. The bund level of 1.8m AHD was selected to hold out the 1% AEP flood level and as not to create undue construction issues to the development site or road verge.

2. Likely Impact of the Development

This area of Lemon Tree Passage is currently experiencing a transition from older commercial buildings and single storey residential to a more densely populated mix of commercial and residential and therefore is likely to encounter conflict between existing residents and proposed developments within the parameters of the 3(a) Business General zone.

The long-term likely impact is that this area of Lemon Tree Passage will accommodate a large number of residents within the commercial centre that will be able to provide economic support for the centre. The likely impact of the development will be that Cook Parade and the surrounding area will move closer to the intention of the objectives of the 3(a) Business General zone gazetted in Council's Local Environmental Plan in 2000.

3. Suitability of the Site

The subject site is zoned 3(a) – Business General, within which commercial developments with associated residential components are permissible.

4. Submissions

The original and revised applications were exhibited in accordance with Council's requirements. A total of 4 submissions were received by way of objection to the Development Application. The main points of objection are summarised as follows:-

- Bulk and Scale
- Setback
- Height
- Solar Access
- Security
- Visual Impact
- Privacy

The above issues have been discussed in the planning assessment contained in Attachment 3.

5. Public Interest

The proposal is not considered contrary to the public interests as the development satisfies relevant planning considerations and maintains an acceptable level of residential amenity.

**ATTACHMENT 3
CONDITIONS OF APPROVAL
SCHEDULE 1**

APPROVAL UNDER SECTION 78A(3)

1. Swing or hoist goods across or over any part of a public road by means of a lift, hoist or tackle projecting over the footway.

SCHEDULE 2

CONDITIONS OF APPROVAL

6. A Construction Certificate is required prior to commencement of works approved by this application. The person having the benefit of this consent must appoint a principal certifying authority. If Council is not appointed as the Principal Certifying Authority then Council must be notified of who has been appointed. Note: at least two (2) days' notice must be given to Council of intentions to start works approved by this application.
7. The development is to be carried out in accordance with the approved plans and documentation submitted with the application set out in Schedule 3, except as modified by the conditions of this development consent or as noted in red by Council on the approved plans.
8. Failure to comply with the conditions of consent constitutes a breach and on the spot fines may be issued under the Environmental Planning & Assessment Act 1979 and or the Protection of the Environment Operations Act 1997.
9. The development application has not been assessed against the provisions of the Building Code of Australia. A Section 96 application under the Environmental Planning & Assessment Act 1979 will be required if design amendments are necessary to comply with the provisions of the Building Code of Australia.
10. The excavated and/or filled areas of the site are to be stabilised and drained to prevent scouring and the finished ground around the perimeter of the building is to be graded to prevent ponding of water and ensure the free flow of water away from the building.
11. Certification is to be prepared by a registered surveyor and submitted to the Principal Certifying Authority at the following stages of construction:
 - a. On completion of ground floor construction, confirming that the floor levels are in accordance with the Reduced Levels indicated on the approved plan.
 - b. When the roof has been completed, confirmation that the building does not exceed the Reduced Levels, as indicated on the approved plan.

12. Landscaping shall be carried out in accordance **with the details submitted**. The landscaping must be completed prior to issue of Occupation Certificate.
13. A garbage storage area is to be provided, designed and constructed so as to conceal its contents from view from public places and adjacent properties and is to be integrated into the landscaping scheme. The storage area shall be located so as to be readily accessible from within the site, and serviceable by the waste collector from the adjoining road.
14. A clothes dryer shall be provided within each dwelling in-conjunction with a shared clothes drying area in the recreational area. No clothes lines will be permitted on balconies and a S88B instrument of the Conveyancing Act shall be placed on each title to give effect to this condition. Council shall be nominated as the sole authority permitted to alter/remove the endorsement.
15. The development shall provide 10 on-site car parking spaces, including 2 disabled parking spaces. These spaces shall be separately accessible, clearly line-marked (disabled spaces clearly signposted) and adequately paved and drained in accordance with the Port Stephens Development Control Plan PS2 Parking and Traffic Guidelines. Car parking must be provided prior to the issue of the occupation certificate or use of the development.
16. The advertising structures shall comply with Council's signage requirements under the Local Environmental Plan and Port Stephens Council Advertising Signs Code adopted 11th April 1995.

No advertisement shall be displayed without the consent of Council, unless the advertisement does not require approval under the Exempt & Complying Development Control Plan or Port Stephens Council Advertising Signs Code.

17. The development shall be constructed in accordance with the recommendations contained in the Acid Sulfate Soils Management Plan prepared by Barker Harle (Ref: 60926) dated 8 November 2006 prepared in accordance with the Acid Sulfate Soils Manual.
18. A waste management plan prepared in accordance with PS11 shall be submitted and approved by the Principal Certifying Authority, which covers demolition and building works through to the management of the finished development **prior to the issue of the Construction Certificate**. The applicant shall recycle any material which is able to be salvaged from the demolition of the existing building/structure. Non salvageable material shall be disposed of at Council approved refuse/land fill sites.

The waste management plan for finished development, needs to be determine the location and capacity of receptacles, odour and vermin control. Quantities shall be based on industry standards and contractor capability.

19. A Construction Management Plan shall be submitted and approved by Council, **prior to the issue of the Construction Certificate**. The construction management plan shall specify operational details to minimise any potential impact to adjoining properties. The construction management plan should include but not limited to the following information:- Construction techniques, noise and vibration management, storage of equipment and building materials, hours of work:, primary route for truck movements, etc.

20. A monetary contribution is to be paid to Council, pursuant to section 80A(1) of the Environmental Planning and Assessment Act, 1979 and Section 94 of the Environmental Planning and Assessment Act, 1979 towards the provision of the following public facilities:-

	Per Lot	Total
Open Space	(\$815)	(\$4075)
Recreation	(\$2709)	(\$13545)
Community Facilities	(\$824)	(\$4120)
Fire & Emergency Services	(\$251)	(\$1255)
Library Resources	(\$125)	(\$625)
Roadworks - Residential	(\$423)	(\$2115)
Roadworks - Commercial	(\$940)	(\$705)

Note:

- a) The above contributions have been determined in accordance with Port Stephens Section 94 Contribution Plan No. 5 – Tilligerry Peninsula. A copy of the Contributions Plan may be inspected at Council's Customer Service Counter, 116 Adelaide Street, RaymondTerrace.
- b) Contributions are to be paid prior to **issue of construction certificate**
- c) The amount of contribution payable under this condition has been calculated on the basis of costs as at the date of original consent. In accordance with the provisions of the Contributions Plan, this amount shall be INDEXED at the time of actual payment in accordance with movement in the Consumer Price Index as published by the Australian Bureau of Statistics. #In this respect the attached fee schedule is valid for twelve months.
21. The disabled space in the basement area must comply with the Australian Standards and be signposted.
22. the access door adjacent to the disabled parking space into the building needs to be a minimum on 850mm in width and easy to open, with no lips or trip hazards to allow level access to the commercial area.
23. All public access doors into the building needs to be a minimum o f850mm in width and easy to open, with no lips or trip hazards to allow level access.
24. The height of entry into the basement should allow for an emergency vehicle (e.g. Ambulance) room to access the basement area in the event of an emergency.
25. The building should be linked to the surrounding area by footpath to promote continuous paths of travel.
26. The vehicle driveway from the roadway to the property boundary incorporating the gutter crossing shall have a width of 5.5 to 6.0m and shall be constructed in concrete or interlocking pavers in accordance with the options shown on **Council's Standard Drawing No. S122 & S105B.**
27. Works-As-Executed plans prepared by a suitability qualified person detailing all driveway and manoeuvring areas (levels, grades, location) are in accordance with

conditions of consent and the approved plan. This shall be submitted to, and accepted by the Certifying Authority, **prior to issue of the occupation certificate.**

28. The stormwater system, including any water quality or quantity components, shall be maintained in perpetuity for the life of the development.
29. Works-As-Executed plans prepared by a suitability qualified person confirming all drainage works (volume, discharge, levels, location, etc) are in accordance with conditions of consent and the approved plan. Any variations are to be clearly identified. The plans shall be submitted to, and accepted by the Certifying Authority, **prior to issue of the occupation certificate.**
30. Works associated with the approved plans and specifications located within the existing Road Reserve shall not commence until:
 - i) a Roads Act Approval has been issued, and
 - ii) all conditions of the Roads Act Approval have been complied with to Council's satisfaction.
31. All civil engineering works associated with the Roads Act Approval shall be carried out to the satisfaction of Council **prior to issue of the Subdivision Certificate or Occupation Certificate.**

All works associated with the Roads Act Approval shall be at no cost to Council.

32. Works associated with the Roads Act Approval are subject to:
 - a. inspection by Council,
 - b. testing by a registered NATA Laboratory and
 - c. approval by Council at each construction stage as determined by Council.
33. Works-As-Executed plans prepared by a suitability qualified person detailing all road and drainage works in accordance with Councils Subdivision Specifications. This shall be submitted to, and accepted by the Certifying Authority, **prior to issue of the Occupation Certificate.** The plans shall certify that the bunded driveway i.e. above RC1.8m AHD.
34. The driveway shall be constructed in accordance with the approved plan and ensure a bunded area shall be constructed around the underground carpark to be no lower than RH1.8m AHD to hold back floodwaters. Details are to be approved by the Principal Certifying Authority or Council **prior to issue of a Construction Certificate.**
35. Driveways, parking and turning areas shall be paved or sealed with either reinforced concrete, pavers or asphalt over a suitably prepared, compacted sub-base. These areas shall be maintained in perpetuity by the existing or future owners and occupiers of the property(s)
36. The stormwater detention system shall be designed and built in accordance with the approved concept plan. Details shall be approved by the certifying authority **prior to issue of the construction certificate.**
37. The stormwater detention system is to be designed in accordance with Section 8.11 of AS 3500.3:2003. Details are to be approved by the Certifying Authority **prior to issue of Construction Certificate.**

38. Structural Certification is required for the below ground stormwater system/ tank(s). Details are to be approved by the Principal Certifying Authority **prior to issue of the Construction Certificate.**
39. A concrete footpath 1.2 metres wide and 100mm thick shall be provided, to Council's Standards, over the full street frontage of the site **prior to Occupation.** Details shall be submitted to, and approved by Council **prior to issue of Construction Certificate.**
40. All works as listed as conditions of development consent, which are located in public roads are subject to approval under section 138 of the Roads Act 1993. Engineering details in accordance with Council's Subdivision and Development Code, of such works shall be submitted with a Roads Act application form and then approved by Council prior to approval to commence these works and **prior to issue of the Construction Certificates.**

The following items are also required to be approved by Council prior to approval being granted to commence works:

- a) Traffic control plans in accordance with the Roads and Traffic Authority – Traffic Control at Worksites Manual;
 - b) Payment of fees and bonds (same Principle Certifying Authority fees, inspection fees and maintenance bonds as relevant to subdivisions);
 - c) Contractors public liability insurances to a minimum value of \$10 million dollars.
41. The following fees and/or bonds are to be paid as part of this consent:
- a) Subdivision construction certificate/plan approval fee, prior to approval of construction certificate or plans.
 - b) PCA/inspection fee, prior to approval of construction certificate or plans.
 - c) Long Service Levy, prior to issue of construction certificate (verification of payment is required if paid directly to Long Service Board)

The rates are as listed in Council's fees and charges. Contact Council's Subdivision Engineer prior to payment.

42. The vehicle entry to the underground carpark shall have a minimum headroom of 2.2m as measured in AS2890.1:2004 off street parking. Signage and other safety measures shall be provided in accordance with Section 5.3.1 & 4.3.4. Details are to be approved by the Principal Certifying Authority or Council **prior to issue of a Construction Certificate.**
43. All building work must be carried out in accordance with the provisions of the *Building Code of Australia.*
44. Where no sanitary facilities currently exist onsite for construction workers toilet accommodation for all tradespersons shall be provided from the time of commencement until the building is complete. The toilet facilities shall be located so as to have minimal impact of adjoining properties and shall not be placed on the road reserve, without separate approval from Council.
45. Construction work that is likely to cause annoyance due to noise is to be restricted to the following times:-

- * Monday to Friday, 7am to 6pm;
- * Saturday, 8am to 1pm;
- * No construction work to take place on Sunday or Public Holidays.

When the construction site is in operation the L_{10} level measured over a period of not less than 15 minutes must not exceed the background by more than 10dB(A). All possible steps should be taken to silence construction site equipment.

46. It is the responsibility of the applicant to erect a PCA sign (where Council is the PCA, the sign is available from Council's Administration Building at Raymond Terrace or the Tomaree Library at Salamander Bay free of charge). The applicant is to ensure the PCA sign remains in position for the duration of works.
47. Where the proposed development incorporates pile-driving activities associated with the construction process the applicant/beneficiary of the consent shall, **prior to commencement of work** associated with the piling system undertake the following actions.
- a) For development incorporating pile-driving activities for a period of 5 days or more, be that consecutive or combined total:
- i) An appropriately qualified Acoustic Engineer shall prepare an report on the impact on adjoining properties in relation to anticipated noise and vibration with reference to compliance with British Standard 6472 - 1996 Guide to evaluation of human exposure to vibration in buildings (1Hz to 80 Hz).
- ii) Where the anticipated impacts exceed the prescribed performance standards of the noted Standard the consultant shall make recommendations on the method of minimising the noted impacts to meet the performance standards.
- iii) For pile driving activities with a duration in excess of 5 days as noted above the applicant/beneficiary of the consent shall engage an Acoustic Engineer to undertake monitoring of the pile driving to verify the identified performance standards noted are not exceeded. Details to be forwarded to Principal Certifying Authority.
48. Pile driving shall only be carried out between the hours of 8.00am - 3.30pm Monday to Friday excluding public holidays.
49. Development incorporating pile-driving activities for a period of less than five (5) days be that consecutive and a total combined throughout the construction process, shall comply with the provision of British Standard 6472- 1996.
50. The applicant or the person who is the beneficiary of the development consent incorporating pile-driving activities shall, **prior to commencement of work** prepare and submit for approval of a Construction Management Plan incorporating notification provisions for the pile-driving activities with practical measures taken to notify all adjoining property occupants of the commencement date and period of pile-driving works.

The notification shall be forwarded a minimum of 2 days prior to the commencement of works.

51. Separate approval is required to occupy, close or partially close the road reserve adjacent to the property under the Roads Act. The storage of materials, placement of toilets and rubbish skips within the road reserve is not permitted.
52. No construction or demolition work shall obstruct pedestrian or vehicular traffic in a public place, a hoarding or fence must be erected between the construction site and the public place.
53. Approved toilet accommodation for all tradespersons on the building site is to be provided from the time work commences until the building is complete. The toilet shall not be placed on the road reserve, without separate approval from Council.
54. A waste containment facility shall be provided on the construction site immediately after the first concrete pour for the building and is to be regularly serviced. **Council may issue 'on the spot' fines for pollution/littering offences under the Protection of the Environment Operations Act 1997.**
55. Tree clearing shall be carried out in accordance with Council's Tree Preservation Order. The development consent and construction certificate must be issued before it is possible to remove any trees within 3m of any approved building, as measured horizontally from the building wall to the outside trunk of the tree. Tree clearing for the vehicle driveway or any other purpose requires separate approval under the Tree Preservation Order. A copy of the **Tree Preservation Order is attached.**
56. Construction details for retaining walls greater than 600mm in height shall be submitted and approved by the Principal Certifying Authority **prior to commencement of works associated with the retaining wall.** All retaining walls in excess of 1m shall be designed by a Practising Structural Engineer.

Where retaining walls exceed 1m in height and located within 500mm of a site boundary, they shall be constructed of masonry material.

It is recommended to construct the retaining walls prior to the commencement of any other work, while the area is readily accessible and to prevent any movement of soil and/or potential damage to adjoining properties.

57. All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with AS2601-2001 and Workcover Authority requirements.

All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.

58. If an excavation associated with the erection or demolition of a building extends below the level of the base of the footings of a building on an adjoining allotment, the person undertaking the excavation must preserve and protect the building from damage, which may involve underpinning and supporting the building in an approved manner.

The adjoining property owner shall be given 7 days notice before excavating below

the level of the base of the footings of a building on an adjoining allotment of land. The owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this condition, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this condition, allotment of land includes a public road and any other public place.

59. The construction site is to be adequately protected and drainage controlled to ensure that erosion and sediment movement is kept on your site. Construction sites without appropriate erosion and sediment control measures have the potential to pollute the waterways and degrade aquatic habitats. Offenders will be issued with an 'on the spot' fine under the Protection of the Environment Operations Act 1997.

Note: Erosion and sediment control measures prepared in accordance with the Erosion and Sediment Control Regional Policy and Code of Practice or Managing Urban Stormwater – Soils and Construction produced by Landcom 2004, need to be maintained at all times. A copy of Landcom 2004 bluebook may be purchased by calling (02) 98418600.

60. A "KEEP PORT STEPHENS WATERWAYS POLLUTION FREE" sign shall be displayed and be clearly visible from the road frontage for public viewing on the site at the commencement of works and remain in place until completion of the development. Signs are available from Port Stephens Council.
61. Prior to the commencement of work, provide a 3m wide all weather vehicle access from the kerb and gutter to the building under construction for the delivery of materials & trades to reduce the potential for soil erosion. Sand shall not be stockpiled on the all weather vehicle access.
62. All stockpiled materials shall be retained within the property boundaries. Stockpiles of topsoil, sand, aggregate, spoil or other materials shall be stored clear of the all weather vehicle access and drainage lines.
63. The development shall take place in accordance with the stated values of the energy efficiency scorecard or NatHERS assessment and/or the BASIX certificate submitted with the application. **Prior to the issue of any occupation certificate** an appropriately qualified person shall certify compliance with these requirements, as applicable.
64. The development shall be carried out in accordance with the Building Sustainability Index (BASIX) certificate number #. Where minor changes to the development occur (eg. colours and the like) these changes shall be referred to Council **prior to the changes being made.**

Where approved, a copy of the amended/new BASIX Certificate shall be submitted to Council within fourteen (14) days and will be considered sufficient to satisfy this condition.

65. The Principal Certifying Authority shall only issue an occupation certificate when the building has been constructed in accordance with the approved plans, specifications and conditions of consent. No occupational use is permitted until the Principal Certifying Authority issues an occupation certificate. NOTE: If an accredited certifier

approves occupation of a dwelling the accredited certifier is to immediately notify Council in writing.

66. Prior to occupying the approved dwelling(s), contact Council's Land Information Section on 49800357 to obtain the correct house numbering.

Certification is to be prepared by a registered surveyor and submitted to the Principal Certifying Authority at the stages of construction indicated:

- a. On completion of ground floor construction, confirmation that the floor levels are in accordance with the Reduced Levels indicated on the approved plan.
 - b. On completion of each subsequent floor level, confirming that the floor levels are in accordance with Reduce Levels indicated on the approved plan.
 - c. When the roof has been completed, confirmation that the building does not exceed the Reduced Levels as indicated on the approved plan.
67. A Construction Management Plan shall be submitted and approved by Council, **prior to the issue of the Construction Certificate**. The construction management plan shall specify operational details to minimise any potential impact to adjoining properties. The construction management plan should include but not limited to the following information:- Construction techniques, noise and vibration management, storage of equipment and building materials, hours of work:, primary route for truck movements, etc.
68. The subject land may contain Potential Acid Sulfate Soils. An Acid Sulfate Soils Management Plan prepared by a qualified consulting engineer in accordance with the Acid Sulfate Soils Manual shall be provided to Council **prior to issue of Construction Certificate or Subdivision Certificate**.

The plan should address the following:-

- a) Whether acid sulfate soils are actually located on the site;
 - b) The extent to which any acid sulfate soils are to be disturbed and the means to be employed to mitigate any harm these soils may cause to proposed structures and/or the environment.
69. The owners of the building shall register with Council any water cooling system, evaporative cooling system or warm water system in accordance with Council's Policy to control Legionnaires Disease and the provisions of the New South Wales Public Health Act and Regulations 1991.
70. A continuous and accessible path of travel, designed in accordance with Australian Standard 1428.1 shall be provided between the entrance to the premises and any disable parking spaces
71. A fire safety schedule pursuant to Section 168 of the Environmental Planning & Assessment Amendment Regulation 2000 must be attached to the construction certificate, which specifies the fire safety measures that should be implemented in the building premises.

72. A fire safety certificate as prescribed by Section 174 Environmental Planning & Assessment Regulations 2000 which certifies the performance of the implemented fire safety measures in accordance with Section 170 of the Regulation must be submitted to the Principal Certifying Authority and the Commissioner of New South Wales Fire Brigades. A copy of fire safety certificate needs to be forwarded to Council, if Council is not nominated as the Principal Certifying Authority. A further copy of the certificate must also be prominently displayed in the building.
73. At least once in each twelve (12) month period, fire safety statements as prescribed by Section 175 Environmental Planning & Assessment Regulations 2000 in respect of each required essential fire safety measure installed within the building are to be submitted to Council. Such certificates are to state that:
- a) The service has been inspected and tested by a person (chosen by the owner of the building) who is competent to carry out such inspection and test; and
 - b) That the service was or was not (as at the date on which it was inspected and tested) found to be capable of operating to a standard not less than that specified in the fire safety schedule for the building.
74. An asbestos audit shall be undertaken in respect of the proposed demolition work by a qualified occupational hygienist to determine the presence or otherwise of materials containing asbestos. Where asbestos is found to be present, a written procedure approved by Workcover Authority is to be used by contractors for the demolition handling and disposal of materials containing asbestos. A copy of such procedure and Workcover approval is to be submitted to Council before undertaking any works.
75. A dilapidation report prepared by a qualified structural engineer shall be submitted to the Principal Certifying Authority **prior to the issue of the Construction Certificate**. The dilapidation report shall document and photograph the current structural condition of the adjoining buildings, infrastructure and roads.
- A second dilapidation report prepared by a suitability qualified person shall be submitted to the Principal Certifying Authority **prior to the issue of the occupation certificate** to ascertain if any structural damage has occurred to the adjoining buildings, infrastructure and roads. The reports shall be forwarded to Council and will be made available in any private dispute between neighbours regarding damage arising from construction works.

ADVICES

The following general information is provided to assist you with the preparation and prompt processing of your **Construction Certificate** where such application is made to Council.

- a) Plans in respect of an application for a Construction Certificate must be submitted to the Hunter Water Corporation for checking & stamping prior to application for the Construction Certificate being made.
- b) In the case of residential building work, prior to commencement of work submit to Council or a private certifying authority a copy of the contract of insurance under Part 6 of the Home Building Act 1989 (specific for the building work the subject of this approval) and builders licence details. (Or alternatively present to Council a copy of an Owner Builders Permit issued by the Department of Fair Trading.)
- c) If the value of the work is \$25,000 or more, you will need to pay a levy to the Long Service Corporation **prior to issue of the construction certificate**. You can either pay the Long Service Levy Corporation direct and show us your receipt OR you can pay us and we'll send your money to them.

Note: Owner builders can ask for a reduction in the levy. For more details contact the Long Service Corporation, Locked Bag 3000, CCDS, Lisarow 2252, phone 131441.

- d) Access to an adjoining property for construction & maintenance work requires the owner(s) consent. It is the responsibility of the owner/applicant to ensure that no part of the structure encroaches onto the adjoining property. The adjoining property owner can take legal action to have an encroachment removed.
- e) This approval relates to **Development Consent** only and does not infer any approval to commence excavations or building works upon the land. **A Construction Certificate should be obtained prior to works commencing.**
- f) Council's Development Control Plan PS 2 Parking and Traffic Guidelines, requires that the car parking spaces have the following dimensions where:-

	<u>Length</u>	<u>Width</u>
-a parking space has a wall or obstruction on one side	5.5m	x 2.8m
-a parking space is enclosed on both sides	5.5m	x 3.0m
-a parking space is parallel to kerb	6.0m	x 2.6m
-a parking space is unobstructed on both sides	5.5m	x 2.6m

The turning area required for 90° parking is 6.7m to 7.0m. Where the required turning area is not available, Council may be approached to approve a reduction where wider car spaces are provided.

- g) The consent shall be sought and obtained prior to any change of use of the premises.
- h) Should any aboriginal site or relic be disturbed or uncovered during the construction of this development, all work shall cease and the **National Parks and Wildlife Service** shall be consulted. Any person who knowingly disturbs an aboriginal site or relic is liable to prosecution under the **National Parks and Wildlife Act 1974**.
- i) The developer is responsible for full costs associated with any alteration, relocation or enlargement to public utilities whether caused directly or indirectly by this proposal. Such utilities include water, sewerage, drainage, power, communication, footways, kerb and gutter.

76. The Commonwealth Disability Discrimination Act makes it an offence to discriminate against people on the grounds of disability, in the provision of access to premises, accommodation, or services. This applies particularly to new buildings or significant building alterations. It is the owner/applicants responsibility to ensure compliance with the requirements of this Act. Further information can be obtained from Council or the Human Rights and Equal Opportunity Commission on 008 021199.

SCHEDULE 3 – APPROVED PLANS AND DOCUMENTATION

Stamped plans numbered Job No. 04512A (Site Plan – Sheet 1), (3D Views – Sheet 2), (3d Views – Sheet 3), (Basement Plan – Sheet 4), (Section A.A – Sheet 5), (1st Floor – Sheet 6), (2nd Floor & Roof – Sheet 7), (Elevations – Sheet 8) and dated 6/3/07

SCHEDULE 4

REASONS FOR CONDITIONS

The conditions to approval are made in accordance with Section 80A of the Environmental Planning and Assessment Act, 1979; and are consistent with the aims and objectives of: Council's Tree Preservation Order; and the provisions of the Port Stephens's Local Environmental Plan 2000 and ensure compliance with the Local Government Act and Building Code of Australia.

FEES AND CHARGES

The fees and charges relating to this application are outlined on the attached sheet. **All** payments must be accompanied by this sheet.

RIGHT OF APPEAL

Section 97 of the Act confers on an applicant who is dissatisfied with the determination of a consent authority a right of appeal to the Land and Environment Court. This right of appeal is only valid for 12 months from the date of the consent.

NOTES:

- (1) To ascertain the date upon which the consent becomes effective refer to Section 83 of the Act.
- (2) To ascertain the extent to which the consent is liable to lapse refer to Section 95 of the Act.

ITEM NO. 5

FILE NO: A2004-0573

SEABREEZE ESTATE

REPORT OF: MIKE TRIGAR – GROUP MANAGER FACILITIES & SERVICES

PLEASE NOTE THIS REPORT IS TO BE PROVIDED UNDER SEPARATE COVER

OPERATIONS COMMITTEE MEETING – 26 June 2007

RECOMMENDATION:

That this matter be deferred until a later date.

ORDINARY MEETING OF COUNCIL – 26 JUNE 2007

That the matter was withdrawn.

ITEM NO. 6

INFORMATION PAPERS

REPORT OF: JUNE SHINE, EXECUTIVE MANAGER - CORPORATE MANAGEMENT

RECOMMENDATION IS THAT COUNCIL:

Receives and notes the Information Papers listed below being presented to Council on 26 June 2007.

No:	Report Title
1	Cash and Investments Held at 30 April 2007
2.	Aboriginal Strategic Committee Meeting with Worimi Local Aboriginal Land Council
3.	Quarterly update on the Hunter Central Coast Regional Environmental Management Strategy
4.	Council Ward Funds.

OPERATIONS COMMITTEE MEETING – 26 June 2007

RECOMMENDATION:

That the Recommendation be adopted.

ORDINARY MEETING OF COUNCIL – 26 JUNE 2007

RESOLUTION:		
155	Councillor Francis Councillor Robinson	That the Operations Committee Recommendation be adopted.

RESOLUTION:		
156	Councillor Robinson Councillor Swan	That the General Manager convey Council's compliments to retiring member of staff, Jenny Smith for her contribution to Council.

OPERATIONS COMMITTEE INFORMATION PAPERS



INFORMATION ITEM NO. 1

CASH AND INVESTMENTS HELD AT 30 APRIL 2007

REPORT OF: JEFF SMITH, MANAGER - FINANCIAL SERVICES
FILE: PSC2006-6531

BACKGROUND

The purpose of this report is present Council's schedule of Cash and Investments Held at 30 April 2007.

ATTACHMENTS

- 1) Cash and Investments Held at 30 April 2007.

ATTACHMENT1

CASH & INVESTMENTS HELD - AS AT 30 APRIL 2007							
INVESTED WITH	INV. TYPE	DATE INVESTED	MATURITY OR COUPON DATE	NO. OF DAYS	AMOUNT INVESTED	INTEREST RATE	% OF TOTAL FUNDS HELD
GRANGE SECURITIES							
WIDE BAY CAPRICORN BUILDING SOCIETY	Floating Rate Sub Debt	15-Mar-07	15-Jun-07	92	500,000.00	8.02%	1.69%
MAGNOLIA FINANCE LTD 2005-14 "FLINDERS AA"	Floating Rate CDO	20-Mar-07	20-Jun-07	92	1,000,000.00	7.96%	3.37%
NEXUS BONDS LTD "TOPAZ AA-"	Floating Rate CDO	23-Nov-06	23-May-07	181	1,500,000.00	6.47%	5.06%
HERALD LTD "QUARTZ AA"	Floating Rate CDO	20-Mar-07	20-Jun-07	92	1,000,000.00	7.96%	3.37%
STARTS CAYMAN LTD "BLUE GUM AA-"	Floating Rate CDO	22-Mar-07	22-Jun-07	92	1,000,000.00	7.90%	3.37%
HELIUM CAPITAL LTD "ESPERANCE AA+"	Floating Rate CDO	20-Mar-07	20-Jun-07	92	1,000,000.00	7.56%	3.37%
HOME BUILDING SOCIETY	Floating Rate Sub Debt	25-Jan-07	25-Jul-07	91	500,000.00	7.39%	1.69%
DEUTSCHE BANK CAPITAL GUARANTEED YIELD CURVE NOTE	Yield Curve Note	18-Jan-07	18-Jul-07	90	500,000.00	8.25%	1.69%
GRANGE SECURITIES "KAKADU AA"	Floating Rate CDO	20-Mar-07	20-Jun-07	92	1,000,000.00	7.46%	3.37%
GRANGE SECURITIES "COOLANGATTA AA"	Floating Rate CDO	20-Mar-07	20-Jun-07	92	1,000,000.00	7.76%	3.37%
TOTAL GRANGE SECURITIES					\$9,000,000.00		30.34%
ABN AMRO MORGANS							
REMBRANDT ISOSCELES SERIES 1	Floating Rate CDO	20-Mar-07	20-Jun-07	92	2,000,000.00	7.86%	6.74%
GLOBAL PROTECTED PROPERTY NOTES VII	Property Linked Note	21-Mar-07	21-Mar-08	366	1,000,000.00	7.00%	3.37%
TOTAL ABN AMRO MORGANS					\$3,000,000.00		10.11%
ANZ INVESTMENTS							
ECHO FUNDING PTY LTD SERIES 16 "3 PILLARS AA-"	Floating Rate CDO	8-Jan-07	10-Jul-07	92	500,000.00	7.61%	1.69%
PRELUDE EUROPE CDO LTD "CREDIT SAIL AAA"	Floating Rate CDO	20-Mar-07	20-Jun-07	92	1,000,000.00	7.96%	3.37%
ECHO FUNDING PTY LTD SERIES 20 "ECHO CHARLIE AA"	Floating Rate CDO	20-Mar-07	20-Jun-07	92	500,000.00	7.96%	1.69%
TOTAL ANZ INVESTMENTS					\$2,000,000.00		6.74%
RIM SECURITIES							
HERITAGE BUILDING SOCIETY LTD (2008)	Floating Rate Sub Debt	29-Jan-07	30-Jul-07	91	500,000.00	8.10%	1.69%
CSFB AUSTRALIA PROPERTY LINKED NOTE (2010)	Property Linked Note	21-Mar-07	21-Jun-07	92	1,000,000.00	2.00%	3.37%
GENERATOR INCOME NOTE AAA (2011)	Floating Rate CDO	8-Jan-07	10-Jul-07	92	2,000,000.00	8.41%	6.74%
ELDERS RURAL BANK (2011)	Floating Rate Sub Debt	5-Jan-07	5-Jul-07	90	1,000,000.00	7.10%	3.37%
TOTAL RIM SECURITIES					\$4,500,000.00		15.17%

ATTACHMENT 1

WESTPAC INVESTMENT BANK							
HOME BUILDING SOCIETY (2010)	Floating Rate Sub Debt	29-Jan-07	27-Jul-07	88	500,000.00	7.55%	1.69%
MACKAY PERMANENT BUILDING SOCIETY	Floating Rate Sub Debt	21-Feb-07	21-May-07	89	500,000.00	7.47%	1.69%
TOTAL WESTPAC INV. BANK					\$1,000,000.00		3.37%
LONGREACH CAPITAL MARKETS							
LONGREACH SERIES 16 PROPERTY LINKED NOTE	Property Linked Note	7-Mar-07	7-Sep-07	184	500,000.00	6.66%	1.69%
LONGREACH SERIES 19 GLOBAL PROPERTY LINKED NOTE	Property Linked Note	6-Mar-07	6-Sep-07	184	500,000.00	6.00%	1.69%
TOTAL LONGREACH CAPITAL					\$1,000,000.00		3.37%
FUND MANAGERS							
MERRILL LYNCH INVESTMENT MANAGERS					607,814.11	RATE OF RETURN - MTH 7.21%	2.05%
PERPETUAL INVESTMENTS					150,778.54	6.74%	0.51%
ADELAIDE MANAGED FUNDS					250,000.00	6.40%	0.84%
TOTAL FUND MANAGERS					\$1,008,592.65		3.40%
COMMONWEALTH BANK							
PRINCIPAL PROTECTED YIELD ACCRUAL NOTE	Yield Curve Note	06-Feb-07	07-May-07	90	500,000.00	9.25%	1.69%
PRINCIPAL PROTECTED YIELD ENHANCED ACCRUAL NOTE "COMMENTS AA-"	Yield Curve Note	31-Jan-07	31-Oct-07	273	500,000.00	7.15%	1.69%
CALLABLE CPI LINKED NOTE	Yield Curve Note	04-Apr-07	04-Jul-07	91	500,000.00	9.00%	1.69%
TOTAL COMMONWEALTH BANK					\$1,500,000.00		5.06%
FIGI SECURITIES							
CREDIT SUISSE PRINCIPAL PROTECTED NOTE AQUADUCT AA	Principal Protected Note	22-Mar-07	22-Jun-07	92	1,000,000.00	7.00%	3.37%
TOTAL FIGI SECURITIES					\$1,000,000.00		3.37%
MAITLAND MUTUAL							
	Floating Rate Sub Debt	16-Jan-07	16-Jul-07	90	500,000.00	7.46%	1.69%
	Term Deposit	4-Mar-07	4-Jun-07	92	2,048,471.98	6.60%	6.91%
	Floating Rate Sub Debt	11-Mar-07	10-Jun-07	91	500,000.00	7.35%	1.69%
TOTAL M'LAND MUTUAL					\$3,048,471.98		10.28%
TOTAL INVESTMENTS					\$27,057,064.64		91.21%
CASH AT BANK					\$2,607,338.65	6.20%	8.79%
TOTAL CASH & INVESTMENTS					\$29,664,403.29		100.00%

CERTIFICATE OF RESPONSIBLE ACCOUNTING OFFICER

I, Peter Gesling, being the Responsible Accounting Officer of Council, hereby certify that the Investments have been made in accordance with the Local Government Act 1993, the Regulations and Council's investment policy.

INFORMATION ITEM NO. 2

**ABORIGINAL STRATEGIC COMMITTEE MEETING WITH WORIMI
LOCAL ABORIGINAL LAND COUNCIL**

REPORT OF: JENNIFER SMITH, MANAGER - COMMUNITY PLANNING

FILE: PSC2005-0629

BACKGROUND

The purpose of this report is to present to Council the minutes of the Indigenous Strategic Committee meeting with Worimi Local Aboriginal Land Council on 14 May 2007.

Key issues considered at the meeting included:

- 1) Aboriginal Employment Strategy
- 2) Naidoc Week 2007 Update
- 3) 2007 Joint ISC Meeting Update

ATTACHMENTS

- 1) Minutes of Indigenous Strategic Committee meeting with Worimi LALC on 14 May 2007.

TABLED DOCUMENTS

Nil.

ATTACHMENT 1

**ABORIGINAL STRATEGIC COMMITTEE MEETING
WITH WORIMI LOCAL ABORIGINAL LAND COUNCIL
HELD ON THE 14 MAY 2007
AT THE MURROOK CULTURAL & LEISURE CENTRE**

Present:

Val Merrick	Worimi LALC
Andrew Smith	Worimi LALC
Janice MacAskill	Worimi LALC
Cr Ron Swan	PSC
Cr Helen Brown	PSC
Cr Sally Dover	PSC
Paul Procter	PSC
Cliff Johnson	PSC
Jason Linnane	PSC
Scott Anson	PSC

Apologies:

Delece Manton	Worimi LALC
Peter Gesling	PSC
Stewart Murrell	PSC
David Broyd	PSC
Mike Triggar	PSC

Cr Brown chaired and opened the meeting at 1:15pm

1. MINUTES OF PREVIOUS MEETING

The minutes of the previous meeting held on 12 March 2007 were accepted.

2. BUSINESS ARISING FROM PREVIOUS MINUTES

Item 1: Referring of Development Applications to LALCs for Comment

Council's Manager Development & Building indicated that during the last 6 months Council's Development & Building Team have looked at Council's internal and external referral processes as part of the government's 'Red Tape Reduction Program. In addition to this Council is also advancing the new DA Tracker program that will be demonstrated to anyone interested at the end of this meeting.

The critical factor for the Development & Building Team is getting the map developed which can flag areas which may have cultural significance, thus requiring applicants to seek input at the pre-lodgment stage from the relevant LALC. This could be built into Council's pre-lodgment processes. Each LALC needs to formulate their own position in terms of whether they choose to set their own schedule of fees for providing consultancy advice to applicants.

Council's Manager Development & Building indicated that consideration could be given to investigating the feasibility of linking Section 94 Development Contributions to help resource the additional demands this assessment process may incur.

He also indicated that will need to look at roles and responsibilities of private certifiers.

Action:	1. Council's Principle Property Officer is working with WLALC CEO and WLALC Site Officers to look at mapping locality areas (e.g.; specific areas) that may have archaeological significance.
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Item 2: Middens at Birubi Headland Update

WLALC aiming to start work by early June 2007.

Action:	1. WLALC will give Council's Recreation Services Manager two weeks notice of the works starting, to enable sufficient time for onsite induction processes etc to be carried out.
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Item 3: Land Acquisition for Fingal Bay Link Rd

Council's Principle Property Adviser has been delegated responsibility for handling the negotiations for the proposed land acquisition. WLALC have asked that Council's Principle Property Adviser meet with WLALC members to communicate what is proposed and to clarify the associated issues and known history of the site.

Action:	1. Council's Principle Property Adviser will meet with WLALC CEO to go over the Land Council's priorities.
	2. Following the above meeting, Council's Principle Property Adviser will meet with WLALC members to brief them on proposed land acquisition for the link rd and to discuss associated issues.

Item 4: Aboriginal Employment Strategy

A meeting was convened in late March 2007 with KLALC CEO and Council's Social Planning Co-ordinate and Employment Co-ordinator. Unfortunately the CEO of WLALC was unable to attend. The meeting looked at: -

- i. Identifying the challenges being faced by our Aboriginal Community in terms of accessing employment and;
- ii. Consideration of what role Port Stephens Council could play in working in collaboration with the Local Aboriginal Land Councils and the local Aboriginal community in terms of creating a more even playing field when it comes to maximising the competitiveness of local Aboriginal residents in competing for local jobs.

As a result of this meeting, the working party will look at among other things: -

- i. Identifying areas within Council which would lend themselves well to a voluntary work experience program

- ii. Reviewing and assess existing work experience programs at other Councils that have a significant size Aboriginal population
- iii. Exploring linkages with Council's future Economic Development functions
- iv. Comparative analysis of existing and future employment opportunities and trends in Port Stephens against existing local skill base and associated skill shortages. This will identify areas that training and work experience programs can focus.

Janice MacAskill indicated that she developed a CDP Aboriginal Employment Strategy in 1997 whilst working for Council. She indicated that Council should pursue opportunities around providing work experience in plant operation (eg; backhoe driving). This would help people to attain the hours they require to meet their heavy machinery licensing requirements. Horticultural is another possible opportunity that could also be explored.

In terms of funding, it was mentioned that employment agencies have funding available to employers interested in training people.

At this stage, it is proposed to present to the ASC a draft proposal for consideration at the August 2007 meeting.

Action:	1. The working party will undertake a review of the Aboriginal Employment Models developed in the past at Council as well as investigate the models cited in the '2006 National Local Government Awards' booklet of case studies, as well as exploring funding assistance opportunities.
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Item 5: Cultural Awareness Training

The proposed formulation of a framework for cultural awareness training for relevant Council staff and Councillors has been placed on hold until after the 2007 Naidoc Week activities due to the constraints on Council and LALCS resources. Links will also be explored with Council's DA Tracker System.

Item 6: 2007 Joint ISC Meeting

This year's joint meeting will be held on 17 July 2007 at 5:30pm at Council. In terms of guest speaker, Kelvin Kong is unavailable to attend this year's joint meeting. He has however tentatively confirmed his attendance at next year's meeting.

In terms of this year's joint meeting, the former Social Justice Commissioner Dr William Jonas has kindly accepted an invitation to be this year's guest speaker.

Item 7: Naidoc Week 2007

A working party has been established comprising of representatives from WLALC and KLALC along with Council's Cultural Development Officer and Child-friendly Communities Project Officer to formulate a proposal and funding strategy. This year marks the 50th Anniversary of Naidoc Week. The aim is to get the whole community involved. To date, the working party has met on three occasions including an onsite meeting.

A report has also been submitted to Council seeking an allocation of \$7,000 in Aboriginal Project Funds to assist in covering the costs of the proposed event.

Item 8: Committee Name Change

At the ordinary meeting of Council on 24 April 2007, Council unanimously endorsed the recommendation to change the name of the *Indigenous Strategic Committee* to the new name of *Aboriginal Strategic Committee*.

All associated documentation (eg; Constitution) has since been amended to reflect the change.

3. GENERAL BUSINESS

3.1.1 Birubi Surf Club

Council's Recreation Services Manager indicated that Council has commenced the process to formulate preliminary plans for the construction of a first story addition onto the Birubi Point Surf Club. A Business Consultant has also been recruited to look at income generating opportunities for the Surf Club.

Council is keen to seek feedback from WLALC on the proposed plans to ensure that they are culturally appropriate to the site. It was suggested by ASC members that given the complexities associated with this site, that it could be a good case study to use as part of the proposed reforms being proposed around Council's referral and assessment processes of Development Applications.

Action:	1. Council's Recreation Services Manager will forward a copy of the preliminary plans to WLALC for comment.
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3.1.2 Soldiers Point Boatramp

Council's Recreation Services Manager indicated that a concept plan has been developed which identifies what work is required to improve the boatramp (eg: upgrading car park, fish cleaning facilities)

Actions:	1. Council's Recreation Services Manager will forward a copy of the concept plan to WLALC for comment.
	2. WLALC will also seek comment from the Soldiers Point Working Party on the proposed plans.

3.1.3 Stockton Bight Signage

Council's Recreation Services Manager indicated that he is seeking an onsite meeting with NPWS to discuss the provision of culturally appropriate signage for the new conservation lands. Advice from WLALC is needed, as there is currently no consistency in any of the current signage in the area, as well as no interpretive signage.

Action:	1. Council's Recreation Services Manager will advise WLALC of date of onsite meeting with NPWS so they can also attend.
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3.1.4 2007 Local Government Aboriginal Network Conference

This year's Conference will be held in October at Coffs Harbour. Council has registered an expression of interest to receive further information on the conference once available.

4. NEXT MEETING

The next meeting will be the joint meeting on 17 July 2007 at 5:30pm at Council.

The next ordinary meeting with WLALC will be on 13 August 2007 at 1pm at Murrook.

INFORMATION ITEM NO. 3

**QUARTERLY UPDATE ON THE HUNTER CENTRAL COAST
REGIONAL ENVIRONMENTAL MANAGEMENT STRATEGY**

REPORT OF: BRUCE PETERSEN, MANAGER – ENVIRONMENTAL SERVICES

FILE: PSC2005-4459

BACKGROUND

The purpose of this report is to provide Councillors with an update on the Hunter Central Coast Regional Environmental Management Strategy.

The Lower Hunter Central Coast Regional Environmental Management Strategy (LHCCREMS) was originally conceived in 1993 by Environmental Managers of Lower Hunter Central Coast Councils who felt that there was significant potential to work collaboratively, and more cost effectively, on regional environmental management issues. As a result, a Steering Committee was formed which comprised senior staff and elected representatives of all interested Councils.

The original LHCCREMS project was developed in 1995 through an extensive twelve-month regional community consultation process. Lake Macquarie, Maitland, Newcastle, Port Stephens, Cessnock, Gosford and Wyong Councils endorsed the LHCCREMS Strategy in early 1996. Implementation then commenced based on the prioritisation of a range of key regional issues identified in the consultation phase of its development. In 2002, the project was extended to include the Upper Hunter Councils of Singleton, Muswellbrook, Scone, Murrurundi, Merriwa, Dungog, Gloucester and Great Lakes, and in 2004, Greater Taree City Council was welcomed to the program. At this time the project was renamed the Hunter Central Coast Regional Environmental Management Strategy (HCCREMS).

HCCREMS is supported by the Environment Division of Hunter Councils and all supporting Councils make a financial contribution to the program to allow for the regional coordination. In this current financial year Port Stephens Council contributed \$27,000 to the project.

The steering committee, which is chaired by Cr Helen Brown, meets quarterly and is supplemented by interim meetings that aim to provide the opportunity for a wider range of staff from councils to provide focused input and expertise to the development and implementation of projects that are of particular concern to Councils.

HCCREMS is making good progress in all of the projects currently underway and has resulted in gains for all members including Port Stephens Council. At the last steering committee meeting the need to keep Councils better informed of the progress of HCCREMS was raised and it was agreed that the HCCREMS Director's report to the Steering Committee be distributed to Councils as a means of keeping them informed.

ATTACHMENTS

- 1) Hunter & Central Coast Regional Environmental Management Strategy Steering Committee Report May 2007

COUNCILLORS ROOM

Nil

TABLED DOCUMENTS

Nil.

**HUNTER & CENTRAL COAST REGIONAL
ENVIRONMENTAL MANAGEMENT STRATEGY**
Steering Committee Report



May 2007

GENERAL

I WELCOMING NEW STAFF

Ms Michelle Foate started with HCCREMS in late February 2007 as a Project Officer, working on the Rural Residential Education project two days a week on a casual basis. Michelle has completed the research started by Ms Kim Duncan - identifying resources and materials for the Guide to Rural Residential Living resource kit, writing chapter introductions and documenting resources used. Michelle will commence full time employment with HCCREMS on 21 May 2007 as a Project Officer - undertaking components of a range of HCCREMS projects and supporting Project Coordinators.

Ms Sam King started with HCCREMS as a Trainee Administrative Assistant in March 2007 replacing Ms Alanna Betz. Sam is undertaking an Australian Government Traineeship and will complete Certificate III in Business Administration as part of her traineeship. In addition to providing administrative assistance to the division, Sam will be assisting in the coordination of workshops, meetings and events, production of brochures and fact sheets and processing large format printing requests.

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II GRANTS

Successful Grant Applications

Environmental Trust – Urban Sustainability Program

As verbally reported at the February 2007 Steering Committee meeting, HCCREMS has been successful in receiving a grant for \$1,386,600 under the Environmental Trust's Urban Sustainability Program. This project will aim to develop and implement a regional sustainability education and capacity building program targeting Councillors, council staff and the community. It will focus on three priority themes that include:

1. Integrated Water Cycle Management,
2. Biodiversity conservation and management; and
3. Sustainability awareness and practice.

In accordance with the requirements of the grant funding body, HCCREMS has prepared a Business Plan for the project that was submitted on 1st May 2007. The Business Plan provides the Environmental Trust with greater details regarding the project background, objectives, budget and proposed delivery mechanisms.

Initial consultation has occurred with Upper and Northern Hunter Councils (at the April Interim HCCREMS meeting) in regard to the project and its objectives, and to identify the

educational and capacity building priorities of these councils and their local communities. Consultation of this nature will also be extended to the remaining HCCREMS councils.

New Grant Applications

Summary of Current Grant Applications

Grant Body	Grant Title	Project Title	Funds Requested	Project Total	Status
NRAC	Forging Partnerships	Turning the Pages – The art of managing the Pages River (Detailed Application)	\$57,800	\$101,355	Unsuccessful
NSW Environmental Trust	Urban Sustainability Program	Everybody's Urban Water Tool (EOI)	<\$500,000	n/a	Unsuccessful
NSW Environmental Trust	Urban Sustainability Program	WSUD Above Wetlands Implementation (EOI)	<\$500,000	n/a	Unsuccessful
NSW Environmental Trust	Urban Sustainability Program	WSUD DA Assessment Modelling Support (EOI)	<\$500,000	n/a	Unsuccessful
HCRCMA	Environmental Education Program 07-08	"Rural Residential Living" resource kit - increasing the capacity of Rural Residential Landholders to live sustainably (Detailed Application)	\$25,000	\$65,000	Pending
HCRCMA	Environmental Education Program 06-08	Attitudes, understanding and awareness about the environment of communities across the Central Coast, Lower Hunter, Upper Hunter and Lower North Coast (Detailed Application)	\$70,000	\$120,000	Pending

PROJECT UPDATES

I WATER PROGRAM REPORT

Revised Model Planning Provisions

The *Water Smart Model Planning Revisions*¹ (2003) have been revised, bringing them up to date with changes in legislation and best practice since they were last revised in 2003. This includes changes brought about by the NSW planning reforms over the period 2005 to 2006. These introduced a standard template for local environmental plans and further simplified local planning via restrictions to the use of development control plans. The water efficiency requirements introduced by the BASIX State Environmental Planning Policy in 2004 were also summarised so that councils can making avoid "competing provisions" with respect to residential developments. Numerous other changes were made and comments from councils and other relevant stakeholders are now being sought.

With the assistance of Kim Duncan, text revisions to the 12 Water Smart *Practice Notes* were completed and a new more engaging layout established that better matches the anticipated

¹ LHCCREMS (2002) Model Planning Provisions for the Lower Hunter & Central Coast Region. Revised 2003, LHCCREMS, Sydney Coastal Councils Groups, Western Sydney Regional Organisation of Councils and the Upper Parramatta River Catchment Trust.

audience, i.e. the general community as well as council staff and developers. The practice notes were distributed to the Steering Committee for comment in early March 2007. Subject to comments, it is expected to publish the new versions next quarter.

Central Coast Public Schools Integrated Water Program

The project commenced on schedule in early January with confirmation of each school's participation. The former Minister for Water Utilities, the Hon David Campbell, officially launched the program at the Berkeley Vale Campus of the Tuggerah Lakes Secondary College on the 20th March, at which time smart water meters had been installed at 6 of the 10 schools. Data shows that whilst most schools have few leaks, two exhibit steady or occasional overnight and weekend losses.

A Draft program of curricular activities was prepared to assist teachers implement the curricular learning component of the program. Review by teachers and the Rumbalara Environment Centre and the Hunter Wetland Centres, and regional representatives of the Department of Education and Training's (DET) school Environment Education Program, have been very favourable. These will be finalised next quarter and used to guide school activities.

WSUD Demonstration Sites Register

A *WSUD Demonstration Sites Register* has been developed in MS Access database and populated with those sites for which data is available. Sites range from individual houses or stormwater treatment devices, to holistic approaches for entire developments, such as Murrays Beach (Wallarah Peninsula) and Fern Bay. A structured input form allows a site to be quickly registered by council officers, developers or other stakeholders, with a minimum of essential information, whilst allowing for more detailed "case study" level information to be inserted into pre-defined fields, and/or existing documents to be attached that outline the demonstration site features. Photos, plans and diagrams can also be attached.

Geo-referencing data are an essential part of registration level information to permit the sites to be displayed in geographic information systems (GIS). At a later stage, and subject to obtaining additional funding, it is proposed to publish the database on the internet with map and field search options similar to those available for SE Queensland (Healthy Waterways) and Melbourne (Melbourne Water)².

Over the next quarter copies of the database will be sent to member councils with a request to add those sites that they consider demonstrate particular WSUD features.

Local Water Utility Workshops – IWCM Workshop #2

Inadvertently omitted from the February report was the second the Local Water Utility Workshop held in January, co-hosted by HCCREMS and Hunter New England Population Health. This workshop focused on developing *Drinking Water Management Plans* using the *Community Water Planner Tool* published by the Department of Health. Local Water Utilities representatives from Dungog, Gloucester, Upper Hunter and Muswellbrook councils found the workshop most useful.

Interactions with Water Authorities

In March, the Water Program Coordinator actively participated a second workshop held by MidCoast Water to develop its Sustainable Water Cycle Management Plan. The workshop

² See: http://www.healthywaterways.org/site_register.html and http://wsud.melbournewater.com.au/content/case_studies/case_studies.asp

was directed at identifying and prioritising IWCM options for further assessment and which will be the subject of a third workshop.

The water authorities have demonstrated a high level of engagement with the program. Representatives from each Water Authority have maintained ongoing discussions with the Regional Water Program Coordinator on best practice IWCM initiatives, strengthening the links to council IWCM objectives and regionalising lessons from one area to others.

Great Lakes CCI

The coordinator attended a number of workshops and meetings on the Coastal Catchments Initiative for the Great Lakes during the quarter. One of these workshops was devoted to developing WSUS solutions to implement adequate measures to meet the anticipated water quality and flow objectives of the project. It is expected that these measures would have broader application across the region.

Conference Sponsorship

Following an approach from IPQC, event organisers, to co-sponsor an Urban Water Planning and Management conference, it was agreed to provide non-financial support on the basis that HCCREMS member councils and water utilities receive a \$1,000 discount on the registration fee if they book prior to 30 May. The conference will be held in Melbourne 25-26th July 2007.

HCCREMS role is to directly notify potential officers in member councils about the conference. This was done via email and a direct mail out (prepared and distributed at IQPC cost, but without their access to any council mailing list to maintain council confidentiality). Notices have also been posted on the urbanwater.info website.

II BIODIVERSITY PROGRAM

Progress has been made with a number of activities under the Regional Biodiversity Program, including:

1. **Vegetation Mapping of the Hunter, Central and Lower North Coast.** This project is being completed in collaboration with the Hunter-Central Rivers CMA, who has allocated \$700,000 to complete the work by June 2008. Initially, one of the main project outputs was identified as a vegetation community map for the region, however this has been revised by the Project Steering Committee who considered that, given the limited time and resources available, a higher priority should be the development of a robust region-wide vegetation community classification scheme and secondarily (time and resources permitting) a map of these communities in the region.

Project work to date has focussed on data collation and evaluation, an analysis of data gaps, and the selection of sites for botanical survey. In summary, we have collated data for 5870 systematic surveys distributed broadly throughout the study area; vegetation mapping datasets of varying scale, accuracy and coverage; and a range of abiotic datasets to assist gap analysis and modelling. Expressions of interest were called for botanical surveys and from the 16 submissions received, six survey teams have been selected for completing this work. Surveys are expected to take place in two stages: Stage 1 surveys will address broad data gaps and take place over the coming months; Stage 2 surveys will aim to sample finer-scale vegetation patterns and will comprise the bulk of the survey effort over the Spring survey period.

2. **Vegetation community mapping in the Central Coast** – the development of a project proposal for completing a second iteration of mapping using revised data inputs. A proposal has been developed that identifies additional datasets and revised inputs to mapping in order to resolve the deficiencies evident in the first iteration of vegetation community mapping for the Central Coast.
3. **A Conservation assessment of the Lower North Coast** – development of a project proposal. Port Stephens Council is in the process of developing a conservation strategy for their LGA and there is potential for this work to be completed as part of a collaboration with Hunter Councils, Great Lakes Council and Greater Taree City Council.
4. **Conservation Planning in the Hunter, Central and Lower North Coast** – a seminar for Local Government. This seminar is currently scheduled for Wednesday 30 May 2007 and will be focused on tools and techniques for assessing conservation priorities and delivering conservation outcomes. Presentations will be made by two prominent conservation researchers:
 - Dr Michael Looker from The Nature Conservancy, who will present Conservation Action Planning, a systematic approach to determining where to work, what to conserve, what strategies should be used and how effective the conservation measures are. This approach has been developed over a period of 30 years and has been used in more than 30 countries.
 - Professor Bob Pressey from James Cook University who will be presenting an ARC-funded project for integrating multiple conservation values for the protection and restoration of native vegetation in the Hunter Region (availability on the proposed date yet to be confirmed).

III ROADSIDE ENVIRONMENT PROJECT

Systematic vegetation surveys have been completed at 28 'icon' roadside sites throughout the region. Two sites have been surveyed within each council area. Icon sites are defined as having '*regionally significant remnant vegetation in locations that provide opportunities for development of broad community awareness and furthering the engagement of key stakeholders in the development of regional & local roadside vegetation management activities*'. The data obtained from these surveys has been provided to the Roadside Environment Committee for inclusion in the state wide 'Saving Our Corridors' program. A report detailing the results of the surveys and summarizing them within a regional context is also being finalised for distribution to councils.

The first round of consultation with councils has also been completed. In addition to providing an overview and description of the project, the purpose of the consultation process was to identify and document the objectives, priorities, management processes and issues being implemented or experienced by councils in the management of roadside environments. Key findings of the consultation included:

- General support among councils for development of a Regional Roadside Environment Strategy, as it will assist in resolving current management issues they are experiencing.
- There is a high degree of commonality between councils in regard to many of the management issues they are experiencing.
- The current level of awareness and commitment, and extent and nature of implementation of systems, processes, and on ground roadside management initiatives is quite varied throughout the region.

The fact that many councils are experiencing a common suite of management issues means that these can be addressed within the strategy, ensuring its relevance to councils across the region. Sub regional workshops will be convened with Councils during May – June 2007 to actively engage the input of councils in determining the management recommendations to be included in the Regional Strategy.

Project Outputs to be delivered by 30 June 2007 include:

1. Regional Roadside Map identifying NRM issues within road reserves or locations where road management and maintenance practices have the potential to impact on NRM values.
2. Roadside Consultation Report
3. Regional Roadside Environmental Management Strategy
4. Report on the Outcomes of the Systematic Roadside Vegetation Surveys

IV CLIMATE CHANGE PROJECT

As reported in the February 2007 Steering Committee Report, variations to the contract for this project have been approved by the Department of Environment and Conservation. This variation enables the project to encompass a much greater emphasis on research. The need for this was identified from a review of existing research and data that concluded there is insufficient regional scale research and climatology data available to accurately inform the regional scale objectives of the project.

This research has now commenced, with a post doctorate researcher (Danielle Verdon) based at the University starting work on the project in late March. This position is based in the Environmental & Climate Change Group, School of Environmental and Life Sciences, and is being supervised by Professor Ian Goodwin. The first stage of the research will involve identifying the key synoptic patterns relevant to the region, followed by a determination of how these synoptic patterns drive climate and climate related variability in the region. It is anticipated that these first stages of the research program will be completed by October 2007.

Over the coming months HCCREMS will undertake consultation with key land use sectors / industries to be targeted under the project (including councils) to identify key climate variables via which the impact of climate change on their activities can be evaluated.

V RURAL RESIDENTIAL SUSTAINABILITY EDUCATION PROJECT

This project aims to improve the environmental / sustainability management practices of Rural Residential landowners throughout the region via education and training workshops, seminars and field days, and the development of a 'Rural Residential Living' Resource Kit.

The first stage of the project involved surveys of the target audience to (1) inform the development of the resource kit and (2) guide the structure and content of four educational workshops

A Guide to Rural Residential Living in the Hunter, Central and Lower North Coast Region

CONTENTS

- 1 Introduction
 - How do I use the Resource Kit?
 - How to find information on the Web
 - Glossary / Acronyms
- 2 Local Contacts and Resources
- 3 Being a Good Neighbour
- 4 Property Planning
- 5 Aboriginal Heritage
- 6 Water
- 7 Weeds
- 8 Managing Waste
- 9 Fire
- 10 Native Vegetation
- 11 Wetlands, Creeks & Drainage Lines
- 12 Wildlife
- 13 Livestock and Domestic Animals
- 14 Gardens
- 15 Pest Animals
- 16 Fencing **121**
- 17 Saving Energy
- 18 Soil
- 19 Environmental Law
- 20 Other

/ field days – with results of which were summarised in the February report.

The second stage of the project, the development and delivery of the resource kits, is currently being undertaken. The Project Steering Committee has had considerable input into the development of the resource kit – including content, design, layout and distribution. The guide has been produced in a chapter layout – each chapter dealing with a separate topic. The final chapter topic listing can be seen in the box to the right.

Ms Michelle Foate was employed in February as a casual Project Officer to undertake the development of the resource kit. Research to identify appropriate reference materials has been completed – with many chapters currently being reviewed by the project advisory group. Michelle is currently finalising the introductions for the remaining chapters. Ms Emma Newman, a student at University of Western Sydney, has been on work experience with HCCREMS since February and has been assisting in the documentation and layout of the chapters. Michelle and Emma are currently liaising with owners and publishers of the reference materials to obtain hardcopy and electronic versions of the materials for final production. Graphic design and layout of the electronic and hardcopy versions is currently being undertaken by external contractors.

Workshops have been arranged in different parts of the region – Morisset (Lake Macquarie), Brandy Hill (Port Stephens), Scone (Upper Hunter) and Taree (Greater Taree). Each workshop will have a similar format – with an introduction and guide of how to use the kit and sessions on water and weed management (the two issues identified in the surveys of particularly high priority). The dates are currently being arranged with CSOs in each LGA. The workshops will be used to evaluate the usefulness of the resource kits and to identify any changes prior to the final print run of 200 copies of the kits. The resource kit will also be available in electronic format, however further funding has been sought from the HCRCMA for printing of additional hardcopy resources (in line with responses in the surveys).

OTHER INITIATIVES

Environmental Education Working Group

The last meeting of the Local Government Regional Environmental Educators Network was held 13 February 07. A number of guest speakers presented at the meeting (as detailed in the February 07 report).

Of particular interest, however, was the presentation by Mr Evan Stevenson on the results of the Hunter Valley Research Foundation *Environmental Attitudes and Behaviours* surveys for the Hunter Region. These surveys identified a number of opportunities for targeting environmental programs, for example:

- A large majority (80%) of respondents *agreed* (38%) or *strongly agreed* (42%) that climate change would have a direct impact on their lives in the next 20 years
- A majority of respondents (63%) believe that the actions of the average person can have an impact on slowing climate change
- Over three quarters of respondents were prepared to pay more for electricity if it was generated from renewable sources such as solar or wind (52% agreed, 24% strongly agreed).

The network was very enthusiastic about this social research and discussed opportunities for expanding the questions asked and obtaining historical data showing changes over time. It was noted that there



had been some discussions with the Hunter-Central Rivers CMA in 2006 regarding the potential for social research to be undertaken as part of the CMA's Education program. The feedback had been positive; however the development of a proposal had not been possible due to time constraints. The network strongly supported a working group liaison with the HCRCMA and the Hunter Valley Research Foundation to develop a project proposal. As a result, a project proposal for social research was submitted to the CMA's Environmental Education program.

Web based clearing house

The overall design of the clearing house has largely been finalised as part of the overall update of the HCCREMS and Environment Division websites. Initially five subjects will be available for information to be posted on – Water, Biodiversity, Sustainability, Environmental Health and Other. For each of these topics, the information options will be: Brochures & Factsheets, Photos and Images, Project Summaries and Other Resources.

The next meeting of the LG Regional Environmental Educators Network is scheduled for June 07, with the third meeting of the year to be held Oct/Nov. The Network will also have a key role in developing and implementing the Urban Sustainability Education project.

State of Environment Reporting

The SoE Report Writers Network met on 21st February 2007. A key focus of this meeting included a demonstration by the CMA of the Monitoring Evaluation Reporting (MER) database it is developing to record the nature and scale of initiatives being implemented under the Catchment Action Plan. While some numerical data should be available to councils for inclusion in the 2007 SoE Report, it is not anticipated that a fully comprehensive spatial dataset will be available until 2009.

The meeting also reviewed the nature and usefulness of data that has been obtained over recent years from other government agencies and sources, and will attempt to refine this list of information prior to requesting data for the 2007 report.

Additionally, the group discussed the proposed model for Integrated Planning and Reporting proposed by the Department of Local Government and the potential for HCCREMS councils to be involved in piloting this model. While there was general support for the concept it was recognised that the level of resources, awareness and capacity to participate in such a process currently varies substantially between councils. It was also recognised that such an approach would require significant management support and involvement from a wider depth of council staff than SoE Report Writers. There was strong interest however in obtaining more information about the proposed model and in investigating ways of progressing its implementation across the region.

HCCREMS INTERIM MEETINGS

Two HCCREMS Interim Meetings were conducted during April 2007. Interim Meetings aim to provide the opportunity for a wider range of staff from councils to provide focused input and expertise to the development and implementation of HCCREMS initiatives. The Interim Meetings held during April included:

Interim Meeting A - Tree and Vegetation Protection Policies (Wednesday 11th April 2007)

This Meeting included presentations and discussion of the following items:

1. Overview and content of the draft Regional Tree and Vegetation Vandalism Policy;
2. Overview of issues identified by Gosford City Council in regard to the legality of its Tree Preservation Order, and discussion by councils of the various mechanisms via which TPO's are implemented within their LGA's.
3. Overview of the expected outputs of Stage 1 of the Regional Vegetation Mapping Project; and
4. Overview of the Guidelines for the Operation and Administration of the Native Vegetation Act 2003 and Native Vegetation Regulation 2005 developed by the Native Vegetation Working Group.

Interim Meeting B - Regional Sustainability Education and Capacity Building Project (Monday 16th April 2006)

This Interim Meeting was specifically aimed at the Upper Hunter and Northern Councils. The purpose of the meeting included:

1. Providing councils with an overview of the Regional Sustainability Education and Capacity Building Project being funded under the Environmental Trust's Urban Sustainability Program; and
2. Identifying and prioritising the particular educational and capacity building needs of these councils and their local communities.

INFORMATION ITEM NO. 4

COUNCIL WARD FUNDS

**REPORT OF: JUNE SHINE, EXECUTIVE MANAGER- CORPORATE
MANAGEMENT**

FILE: PSC 2007-0183

BACKGROUND

The purpose of this report is to provide the current Ward Funds expenditure and the balance as at 4 June 2007.

ATTACHMENTS

- 1) Ward Funds
- 2) Minor Works

ATTACHMENT 1

2006/2007 ALLOCATIONS OF COUNCILLOR WARD FUNDS

WARDS	EAST	CENTRAL	WEST
ESTIMATED BALANCE B/FWD FROM 30 JUNE 2006	138,436	1,940	170,927
FUNDS REALISED IN 2005-2006	0	0	0
TOTAL AVAILABLE 1 JULY 2006	138,436	1,940	170,927
ALLOCATED TO:-			
From Original Budget			
Corlette SES	15,000		
Contribution to RT Comm & Policing Services Rental assistance CM372/05			15,000
Raymond Terrace Senior Citizens Centre			35000
Medowie Skate Park		77000	
From Revotes and Carry Forwards			
Shelly Beach Amenities	25000		
King Park Landscaping			7000
Anna Bay Oval Upgrade		1697	
Anna Bay Pony Club		-10251	
Bowthorne Park Upgrade			21000
Tomaree Sports Complex - New Water Service	70000		
Little Beach Disability Access ramp	33904		
Raymond Terracs CCC			19108
Tilligerry Creek Erosion Study		5000	
Cycleway Construction Brockelsby Road Medowie		22744	
Cycleway Construction Mustons Road Karuah			0
Bus Facilities Construction Medowie		18571	
Bus Facilities Construction Anna Bay		11299	
Bus Facilities Construction LTP		3314	
Karuah Main Sreet			7894
From Budget Reviews			
Port Stephens Community Arts Centre CM 222/05	10,000		
Salt Ash Sports Ground CM 434/06		35,000	
LTP Development Control Plan CM 469/06		12500	
TOTAL ALLOCATED	153,904	176,874	105,002
BALANCE as at 4.6.07	-15,468	-174,934	65,925

ATTACHMENT 2

2006/2007 ALLOCATION OF MINOR WORKS			
WARDS	EAST	CENTRAL	WEST
BALANCE B/FWD FROM 30 JUNE 2006	0	0	0
2006/2007 BUDGET ALLOCATION FROM REVENUE	20,000	20,000	20,000
TOTAL AVAILABLE 1 JULY, 2006	20,000	20,000	20,000
ALLOCATED TO:-			
Previously Allocated funds paid this Financial year			
Tilligerry Lions and Habitat Arts Festival CM 578/06		500	
Glen Oak School of Arts CM 578/06			339
Allocated 2006/2007 Financial Year			
Medowie Scout Group CM 618/06		110	
Rotary Club of Nelson Bay CM 618/06	2,500		
Shoal Bay Public School CM 618/06	869		
Shoal Bay Public School CM655/06	395		
Access Comm of Port Stephens CM 794/06	595		
1st Tilligerry Scout Group CM 794/06		722.5	
P S Fellowship of Australian Writers CM 679/06	1000		
Hunter River High School CM 679/06			200
Irrawang Public School CM 734/06			200
Glen Oak School of Arts CM734/06			2000
Port Stephens Music Festival CM 734/06	93.2		
1st Paterson Bolwarra Scouts Group CM 761/06			200
Nelson Bay Senior Citizens Hall Clr req 05-1181	3000		
Thou Walla Family Centre CM 031/07			2000
Royal Volunteer Coastal Patrol Car Park CM 031/07	3190		
PS Community Care Senior Expo CM 031/07			1000
Raymond Terrace Water Polo CM 031/07			500
TRT and District tennis Club CM 031/07			1250
Whale and Dolphin Watch (Skyle Bertoli) CM 031/07	500	500	500
Life Education CM 074/07	1400	1400	1400
Karuah Patch Work and Quilters CM 74/07			60
Hunter Botanical Gardens CM 113/07			1335
Glen Oak School of Arts CM 113/07			256
Irrawang High School CM 113/07			500
Grahamstown Public School Clr Req			1000
Mt Kanway Public School CM 113/07			1000
TOTAL ALLOCATED	13,542	3,233	13,740
	BALANCE AVAILABLE	6,458	16,768
	PLUS Expected Property Profits Funds (30%)	0	0
	TOTAL AVAILABLE as at 4.6.07	6,458	16,768

STRATEGIC COMMITTEE RECOMMENDATIONS

ITEM NO. 1

FILE NO: A2004-0026

LOCAL GOVERNMENT TRAINING INSTITUTE

REPORT OF: STEWART MURRELL, GROUP MANAGER - BUSINESS & SUPPORT

RECOMMENDATION IS THAT COUNCIL:

- 1) Resolve to participate in the Local Government Training Institute as proposed by Hunter Councils Inc. by way of sharing of liability to underwrite to the value of \$164,831.
- 2) Authorise the General Manager to enter into all contract agreements or other legal documentation to allow the project to proceed.
- 3) Authorise the attachment of the seal to all necessary contractual documents.

STRATEGIC COMMITTEE MEETING – 26 June 2007

RECOMMENDATION:

1. Resolve to participate in the Local Government Training Institute as proposed by Hunter Councils Inc. by way of sharing of liability to underwrite to the value of \$164,831
2. Authorise the General Manager to enter into all contract agreements or other legal documentation to allow the project to proceed.
3. Authorise the attachment of the seal to all necessary contractual documents.
4. That the General Manager write to Hunter Councils endorsing our support of its current activities and congratulating Dr. Barbara Penson on her role as CEO.

ORDINARY MEETING OF COUNCIL – 26 JUNE 2007

RESOLUTION:

157	Councillor Nell Councillor Robinson	That the Strategic Committee Recommendations be adopted.
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BACKGROUND

The purpose of this report is to recommend Councils involvement in the establishment of a Local Government Training Institute.

The 12 member Councils of Hunter Councils Inc. have implemented a shared services approach to training which has exceeded all expectations since the original Regional Training Coordination Pilot Project, initiated in December 1999.

Now a registered Training Organisation employing 10 staff plus numerous contract trainers, Hunter Councils Learning & Development (HCL&D) provides a highly specialised range of

training services and Local Government qualifications to Council workforces across NSW. These have been developed to meet the needs of local government and range from training courses that are designed to address a raft of legislative compliance requirements, to technical training across a wide range of Council operations and several tiers of leadership and management training developed specifically for local government managers.

By developing and conducting highly specialised training from a central location in the Hunter, HCL&D delivers dramatic cost-efficiencies to member Council's by

- Eliminating the duplication of training research, development and coordination across the 12 local government areas;
- Reducing significant travel and accommodation costs for staff who would otherwise travel out of the region to access training;
- Providing specialised training pathways that would be beyond the resources of many medium to small councils.

This unique approach to regional collaboration has enabled HCL&D to develop local government industry networks and reference groups which are critical to identifying and responding to training needs that directly impact on the competence of council staff to perform their duties effectively.

Building on this solid foundation, it is proposed that a Local Government Training Institute be established at the training unit's current location at Thornton. This centre will provide additional capacity for classroom training and offer an expansion of flexible learning initiatives using information technology and telecommunications, with the potential to be accessed by:

- 1) all council employees aspiring to a career at any level within local government;
- 2) high school students or those with limited local employment options considering a career in local government;
- 3) individuals from disadvantaged communities who are currently unable to access quality training due to their geographical location.

The proposed Local Government Training Institute will provide the necessary training facilities and office infrastructure to:

- Cater for larger classroom numbers, and the provision of multiple courses on the same day, to meet the increased demand for specialised local government training courses;
- Enhance the capacity of the current distance education traineeship programs to be delivered by a blend of e-learning and classroom training enabling the delivery of training to a broader market, particularly small rural and remote communities, which are traditionally more difficult to cater for;
- Commence the delivery of a school-based training program – locally and to rural and remote students – and provide networks and pathways to enhance students' employment opportunities in local government.

- Provide training to youth at risk and indigenous youth who aspire to, or are suited to employment in council related activities, including civil construction works;
- Showcase and promote participants to council networks, who are seeking appropriately trained staff; and
- Leverage off the already established infrastructure to provide further efficiencies and cost-savings through the co-location of training courses for council's in the Hunter Region, across NSW and throughout Australia.

In summary, this project offers the unique opportunity to deliver significant benefits across three of the key areas that are priorities under the Regional Partnerships Program, namely:

1. Improve Access to Services

- It will bring increased access to training for council staff, by providing additional classrooms that can cater for multiple regional courses on the same days. This will assist not only with the growing volume of training courses, but will benefit councils who may only be able to release limited numbers of staff on any given day, or who need to train staff as they are appointed, necessitating the regular repetition of courses. On some weeks up to 12 or 14 courses can be scheduled which is increasingly beyond the capacity of the current single training room to cope.
- It will provide increased opportunities and access to training for the wider community, particularly those in small, rural, remote communities and youth by providing an expanded suite of e-learning options.
- It will provide increased opportunities and access to training for youth and the geographically disadvantaged by delivering practical skills training suited to local government operations.

2. Stimulate Growth in Regions

- It will offer improved employment outcomes for young people, particularly in rural areas, by offering training and skills development targeted to employer requirements, and dramatically improving the interface between council and students.
- It will potentially provide increased opportunities for economic participation by remote and disadvantaged communities by offering training and skills which they would otherwise not have ready access to.

3. Support Planning

- It provides councils with a strategy to assist with workforce planning in a climate of well-documented skills shortages, which are expected to worsen with the aging workforce.
- It provides the potential to assist schools and employment agencies and labour market agencies to plan employment pathways.

LINKS TO CORPORATE PLANS

This report links to the following directional statements contained in the 2007/2011 Council Plan:-

Part 7 – Economic Sustainability

“Council will support the economic communities while not compromising its environmental and social well being by”: “Providing and supporting opportunities for people to become skilled and be flexible in the workforce”.

G.12 - Employment

- Establish a regional employment working group comprising representatives of employers, training organisations and advocacy organisations to develop an employment plan by December 2008.
- Work with regional organisations to coordinate a forum on employment to be held by December 2009.

Part 9 - Business Excellence

Council will use the Australian Business Excellence Framework to innovate and to demonstrate Continuous Improvement leading to long term sustainability across all of its operational and governance areas in the Business Excellence Journey.

G 19 – People

- Enhance Councils ability to attract and retain quality staff
- Employees have an individual learning and development program
- Enhance operations staff training
- Leverage regional partnerships to establish communities of practice
- Build a skilled and progressive workforce

FINANCIAL/RESOURCE IMPLICATIONS

Council would guarantee to underwrite a share of the capital estimated at \$146,831. The Business Plan indicates positive returns ongoing from the 1st full year of operation following the establishment of the Local Government Training Institute.

The guarantee amount is not considered significant in relation to Council’s total financial position. Councils guarantee will be backed by land, building and technology which will provide more than adequate coverage to the commitment to underwrite.

LEGAL AND POLICY IMPLICATIONS

Council has previously determined that regional service delivery is an appropriate option for the provision of activities.

Australian Business Excellence Framework

This aligns with the following ABEF Principles.

- 5) The potential of an organisation is realised through its people's enthusiasm, resourcefulness and participation
- 6) Continual improvement and innovation depend on continual learning

SUSTAINABILITY IMPLICATIONS

SOCIAL IMPLICATIONS

The project is aimed at providing a more sustainable Hunter Region for all its community. It is a practical example of the "Hunter Model" or ILAC proposal. This model asserts that:-

1. All services have a "catchment area" that can be smaller or larger than existing LGA's.
2. Not all existing LGA's can provide the same level of service to the community.

ECONOMIC IMPLICATIONS

Resource sharing and extra LGA agreements are an effective way of reducing the economic cost of service delivery while maintaining or increasing the social benefit to communities.

ENVIRONMENTAL IMPLICATIONS

No environmental implications are involved except those to be resolved through the usual DA process.

CONSULTATION

Extensive consultation has occurred with all 12 Councils in the Hunter Region who are all in the process of committing to the project.

OPTIONS

- 1) Accept the recommendation
- 2) Not participate in the project

ATTACHMENTS

- 1) Nil

COUNCILLORS ROOM

- 1) Nil

TABLED DOCUMENTS

Nil

ITEM NO. 2

FILE NO: PSC2006-1300

COMMUNITY GROUPS LOANS POLICY

REPORT OF: JASON LINNANE, MANAGER - RECREATION SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Adopt the amended Community Groups Loans Policy as per Attachment 1.

STRATEGIC COMMITTEE MEETING – 26 June 2007

RECOMMENDATION:

That the Recommendation be adopted.

ORDINARY MEETING OF COUNCIL – 26 JUNE 2007

RESOLUTION:

158	Councillor Francis Councillor Tucker	That the Strategic Committee Recommendation be adopted.
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BACKGROUND

The purpose of this report is to have Council adopt the amended Community Groups Loans Policy.

LINKS TO CORPORATE PLANS

This report relates to the 6th key result area of the 2006-2009 Council Plan which is to “provide facilities and services that meet community needs”

FINANCIAL/RESOURCE IMPLICATIONS

The Community Loans Reserve will be self-supporting over time with repayments to the reserve used to fund further allocations.

The use of the Community Groups Loans Policy has been very successful in the past and the proposed changes will assist in making it more relevant to more community groups into the future.

In the period 2003 to 2006, the sporting community alone in Port Stephens made an average annual contribution to asset development works of approximately \$210,000. Many of these contributions have been made via the existing loans policy.

While staff have allowed variations in original agreements since the policy was created, there have been no actual defaults. It has been strict adherence to the requirements of the policy that has enabled the integrity of the policy to be maintained. There is no intention to change this approach in the future.

The financial changes proposed to the policy relate to:

- the reserve amount increasing from \$100,000 to \$250,000
- the maximum individual loan amount increasing from \$30,000 to \$75,000
- the maximum loan period increasing from 3 years to 7 years, and
- a 50 % reduction in the interest rate for loans that relate to asset rehabilitation projects.

A further process change has been made relating to sporting club loans. All of these in the future will require the relevant Sports Council to be a signatory on the loan application and the Sports Council guaranteeing repayment in the situation where the applicant club fails to make payments in 2 successive instances. This change has been made as an offset to the increased financial scope of the policy as outlined above.

The changes to offer low interest rate loans for asset rehabilitation works will assist Council in the implementation of effective asset management plans in the future. This will also further develop the relationship between Council and its community and provide means for community groups to have greater ownership/commitment in the assets that they utilise.

LEGAL AND POLICY IMPLICATIONS

Nil

Australian Business Excellence Framework

This aligns with the following ABEF Principles. (Please delete what is not applicable)

- 1) Clear direction allows organisational alignment and a focus on the achievement of goals
- 2) Mutually agreed plans translate organisational direction into actions
- 3) Understanding what customers value, now and in the future, influences organisational direction, strategy and action
- 4) to improve the outcome, improve the system and its associated processes
- 5) The potential of an organisation is realised through its people's enthusiasm, resourcefulness and participation
- 11) Sustainability is determined by an organisation's ability to create and deliver value for all stakeholders

SUSTAINABILITY IMPLICATIONS

SOCIAL IMPLICATIONS

This policy provides revenue for community groups to support themselves and the community they serve. It provides a mechanism to allow for Council to continue to build on

the relationships/partnerships that it has with existing and broaden these partnerships to new community groups.

This policy allows for a consistent, responsible and equitable approach to financially assisting community groups right across the local government area.

ECONOMIC IMPLICATIONS

The asset development works that are provided as a result of loans from this policy enable additional investment in capital works in the local government area.

There is also ongoing economic outcomes that are related to future use of these facilities by not only local communities but those that are attracted to the area for events that are centred one use of these facilities.

ENVIRONMENTAL IMPLICATIONS

All future facilities are to be designed and constructed to minimise environmental implications.

CONSULTATION

Financial Services Manager
Community Planning Manager
Sports Facility Co-ordinator
All 5 Sports Councils

OPTIONS

- 1) Adopt recommendation
- 2) Reject recommendation and do not amend current policy

ATTACHMENTS

- 1) Amended Community Group Loans Policy, procedures and forms
- 2) Existing Community & Recreation Groups Loans Policy

TABLED DOCUMENTS

Nil

ATTACHMENT 1



Adopted:
Minute No:
Amended:
Minute No:

FILE NO:

TITLE: COMMUNITY GROUP LOANS POLICY

REPORT OF: JASON LINNANE – RECREATION SERVICES MANAGER

BACKGROUND

This policy applies to groups seeking to develop buildings or facilities that are Council owned; under Council's Care, Control or Management; under Council's Trusteeship, provides services to the local community or responsibility has been devolved to Council by some form of legislation.

OBJECTIVE

To provide equitable access to community, sport, cultural and associated facilities.

To provide equitable access to funding for improvements to community, sport, recreation, cultural and associated facilities through the distribution of available loan funds to the community of Port Stephens.

To provide interest (income) to Council in the Community Groups Loans Reserve equal to investment interest rates available to Council.

The objective will be achieved if:

- A system for submitting and assessing applications is in place and complied with.
- Community groups are made aware of the policy, its benefits and applications.
- Council's assets are enhanced, improved and maintained in a good state of repair.
- The interest from Community Groups Loans Vote, being equal to Indicative Borrowing Rates for Local Government Authorities, is paid to Council on a quarterly basis (except for Asset Rehabilitation Projects).
- An agreed reserve (\$250,000) is established so that loan funds can be drawn upon and Council's financial position managed appropriately.

PRINCIPLES

1. The Community Groups Loans Vote is to provide a fund where groups and clubs can take the initiative of borrowing funds at low interest rates for approved projects.
2. The Community Groups Loans Reserve will be self-supporting over time with repayments to the Vote used to fund further allocation. Then reserves upper limit will be \$250,000
3. For the purpose of this policy a Sports Club must be a member of a Port Stephens Council Sports Council or Sports Reserve Committee. A Community Group must be a properly constituted, incorporated community or cultural organisation providing services in the Port Stephens LGA.
4. Community, sports, recreation, cultural and associated groups must be able to demonstrate the social and community benefit and ongoing financial viability of their project.
5. Applications can be made at any time so long as due process is followed as outlined in the approved procedures of this policy. This will allow groups to take advantage of opportunities that may arise from time to time.
6. Projects will be funded if they meet final approval and if sufficient funds are available.
7. Loans for sporting projects will only be approved if the projects are included in the relevant sport development strategy, the local sports council is a signatory to the application and is also a guarantor for the loan in the instance where the applicant fails to meet two (2) successive payments.
8. Loans for community, cultural or associated projects will only be approved if the projects are included in a relevant community development strategy or Forward Works Program.

POLICY STATEMENT

1. Applications will be processed and assessed according to the procedure outlined in this policy.
2. Applications will be prioritised and assessed on:
 - Financial ability to repay loan (commercial loan conditions).
 - Merit of proposal based on identified community needs, having particular regard to projects identified as a part of the Community Services and Facilities Standards, Community Plan sports development strategy or community development strategy.
3. a) Interest rates are to be set at Indicative Borrowing Rate for Local Government Authorities (IBRLGA) applicable on the day of approval of recommendation by the Group Manager of the respective Group.
b) For projects that are Asset Rehabilitation and are in Port Stephens Council's Asset Management Plans, the interest rate will be 50% of the IBRLGA.
4. Interest to be fixed for the term of the loan.

5. Loans to be for a maximum of 84 months.
6. Applicants have the option to negotiate repayments over the total year or over their active season.
7. Loans have a minimum of \$2,000 and an upper limit of \$75,000. Any increase of this amount will require a formal resolution of Council.
8. Project acceptance (in addition to loan acceptance) to be signed by President, Secretary and Treasurer of the applicant agreeing to commencement and completion date of the project.
9. As part of the agreement, annual financial statements will be made available to Council throughout the duration of the loan if so requested by Council.
10. Clubs and groups must notify Council of change of Executive (names, addresses, contact numbers, etc) during the period of the loan.
11. Should a club or group default on loan payments, Council has the right to take whatever action it considers necessary to recover the funds. In extreme cases, Council may consider closing the use of the facilities to the club or community group in default and taking legal action to recover funds.

PROCEDURE FOR SPORTS CLUBS

1. Clubs wishing to apply for a loan to ensure that the respective project is included in the relevant sports development strategy and has the formal support of the relevant Sports Council for them to become a guarantor for the project.
2. If so, the Club completes the Loan Application Form with required supporting documentation.
3. The application and supporting information is sent to the Sports Facility Co-ordinator for initial assessment.
4. The recommendation of the Sports Facility Co-ordinator will be forwarded to the Recreation Services Manager and Group Manager Facilities and Services for decision.
5. If approved, the Sports Facility Co-ordinator will establish the repayment schedule with the Finance and Assets Co-ordinator. This information is then provided to the Debtors Clerk for provision of funds and recoument of repayments.

LOAN ASSESSMENT CRITERIA: SPORTS CLUBS

- Club must be a current financial member of Port Stephens Council Sports Council or Sports Reserve Committee.
- Club must be financial and up to date with any Council / Sports Council / Committee accounts.

- Club's project must be included in the relevant sports development strategy and have the formal support of the relevant Sports Council for them to become a guarantor for the project .
- Required application forms and supporting documentation are complete and correct.
- The club can clearly demonstrate the capacity to raise the finance equivalent to the loan through its normal operations.
- The club can clearly demonstrate the community benefit of the project.

LOAN APPROVAL

All recommendations will be forwarded to the Recreation Services Manager and Group Manager Facilities and Services.

Council will be notified of the final recommendations by way of a memo.

Once groups are notified that their project and loan has been approved:

- Loan agreement schedule is to be signed by the applicant.
- Loan agreement is to be signed by both applicant and Group Manager Facilities and Services.
- Forms to be completed and returned to Council within 30 days of receipt of notification or loan offer will be withdrawn.

PROCEDURE FOR COMMUNITY GROUPS

1. Community groups should seek an appointment with the Community Services or Community Planning Manager to discuss their proposal.
2. Groups will then be provided with guidelines to lodge a Funding Application Form and allocated a Project Officer.
3. On completion of the Funding Application Form, it will be forwarded to the allocated Project Officer for review and assessment.
4. The Project Officer will liaise with the Finance and Assets Co-ordinator to assess implications on approved reserve and create a history of the applicant.
5. The recommendation of the Project Officer will be forwarded to the respective Section Manager and Group Manager for decision.
6. If approved, the Project Officer will establish the repayment schedule with the Finance and Assets Co-ordinator. This information is then provided to the Debtors Clerk for provision of funds and recoupment of repayments.

LOAN ASSESSMENT CRITERIA COMMUNITY GROUPS

- Community groups must be incorporated non-profit groups operating or providing services in the Port Stephens LGA.

- Community groups should have a business plan that clearly establishes the group's capacity to meet the commitments of a loan.
- The group can clearly demonstrate the community benefit of the project.

LOAN APPROVAL

All recommendations will be forwarded to the Community Services and / or Community Planning Manager.

Council will be notified of the final recommendations by way of memorandum.

Once groups are notified that their project and loan has been approved:

- Loan agreement schedule is to be signed by the applicant.
- Loan agreement is to be signed by both the applicant and the respective Group Manager.

Forms are to be completed and returned to Council within 30 days of receipt of notification or loan offer will be withdrawn.

RELATED POLICIES

IMPLEMENTATION RESPONSIBILITY

REVIEW DATE



COMMUNITY GROUPS LOAN APPLICATION FORM

- ▶ Please complete form in **BLOCK LETTERS**, tick appropriate boxes, complete all relevant sections and sign and date application

APPLICANT DETAILS

CONTACT NAME (& POSITION):	
ORGANISATION:	
POSTAL ADDRESS:	
SUBURB/TOWN:	POSTCODE:
EMAIL ADDRESS:	
PHONE NO:	FAX NO:

PROJECT DETAILS

Description of specific works for which assistance in form of repayable loan is requested:

PROJECT LOCATION / FACILITY

Type of Project:	New Assets	<input type="checkbox"/>	Asset Rehabilitation	<input type="checkbox"/>
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FINANCIAL DETAILS

Financial Contribution	\$	Amount of Loan Requested	\$
PSC Contribution	\$	Total of Estimated Cost of Project	\$
Amount of Grants Available	\$	Preferred Term / Frequency of Repayment:	

SUPPORTING INFORMATION

Sports Development Strategy	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	NA	<input type="checkbox"/>
Copies of Audited Annual Financial Statements for past 3 years (including last bank statement)	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	NA	<input type="checkbox"/>
Project Cash Flow Plan for Term of Loan / Business Plan	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	NA	<input type="checkbox"/>
Proof of incorporation	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	NA	<input type="checkbox"/>
Details of outstanding loans	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	NA	<input type="checkbox"/>

We certify that this application has been authorised at a duly constituted meeting by the application organisation.

PRESIDENT:	SIGNATURE:	DATE:
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ORDINARY COUNCIL MEETING – 26 JUNE 2007

SECRETARY:

SIGNATURE:

DATE:

TREASURER:

SIGNATURE:

DATE:

Office Use Only: Amount of Loan:

Interest Rate:

Period of Loan:

Repayment Periods:

The General Manager
Port Stephens Council
PO Box 42
RAYMOND TERRACE NSW 2324

LOAN AGREEMENT SCHEDULE

We acknowledge receipt of the offer of loan of \$_____ for the purpose of

Interest Rate: _____

Term of Loan: _____

Repayment: _____

Attached is a Loan Repayment Schedule for your records.

We hereby advise that the work will commence on _____ (date)

and completion will be on or before the _____ (date).

We agree to the conditions outlined above and certify that this acceptance has been authorised at a duly constituted meeting by the application organisation.

(Please Print)

PRESIDENT:

SIGNATURE:

DATE:

SECRETARY:

SIGNATURE:

DATE:

TREASURER:

SIGNATURE:

DATE:

ATTACHMENT 2



Adopted :18/04/2000
Minute No. 218
Amended: #
Minute No. #

FILE NO: 7100-083

TITLE: COMMUNITY AND RECREATION LOANS POLICY

BACKGROUND

This policy applies to groups seeking to develop buildings or facilities that are Council owned; under Council's Care, Control or Management; under Council's Trusteeship or responsibility has been devolved to Council by some form of legislation.

OBJECTIVES

To provide equitable access to community, sport and recreation facilities.

To provide equitable access to funding for improvements to community, sport and recreation facilities through the distribution of available loan funds to the community of Port Stephens.

To provide interest (income) to Council in the Community and Recreation Loans Vote equal to investment interest rates available to Council.

The objective will be achieved if:

- A system for submitting and assessing applications is in place and complied with.
- Community groups and Clubs are made aware of the policy.
- Council's assets are enhanced or improved and maintained in a good state of repair.
- The interest from Community and Recreation Loans Vote, being equal to Indicative Borrowing Rates for Local Government Authorities, is paid to Council on a quarterly basis.

PRINCIPLES

1. The Community and Recreation Loans Vote is to provide a fund where groups and clubs can take the initiative of borrowing funds at low interest rates for approved projects.
2. The Community and Recreation Loans Vote will be self-supporting over time with repayments to the Vote used to the fund further allocation.

3. For the purposes of this policy a Sports Club must be a member of a Port Stephens Council Sports Council or Sports Reserve Committee. A Community Group must be a properly constituted, incorporated community or cultural organisation providing services in the Port Stephens LGA.
4. Sporting and community groups must be able to demonstrate the social and community benefit and ongoing financial viability of their project.
5. Applications to be called for in February each year and to be held as current for a 12 month period. If applications are not funded in this period they are required to reapply.
6. If funds from the Community and Recreation Loans Vote are not fully expended, further applications for funds can be considered throughout the year.
7. Projects will be funded according to the recommended priority if they meet final approval and if sufficient funds are available.

POLICY STATEMENT

1. Applications will be processed and assessed according to the procedure outlined in this policy.
2. Applications will be prioritised and assessed on:
 - financial ability to repay loan (commercial loan conditions)
 - Merit of proposal based on identified community needs, having particular regard to projects identified as a part of the Community Services and Facilities Strategy or the Community Plan.
3. Interest rates are to be set at Indicative Borrowing Rate for Local Government Authorities applicable on the day of approval of recommendation by the Manager, Community & Recreation Services.
4. Interest to be fixed for term of loan.
5. Administration Fee of \$25 for each application (non refundable).
6. Loans to be for a maximum of 60 months.
7. Applicants have the option to negotiate repayments over the total year or over their active season.
8. Loans have a minimum of \$2000 and an upper limit of \$30,000.
9. Project acceptance (in addition to loan acceptance) to be signed by President, Secretary and Treasurer of club agreeing to commencement and completion date of project and to be supported by a resolution of the executive of the club or community group.
10. As a part of the agreement annual financial statements will be made available to Council throughout the duration of the loan.

11. Clubs and groups must notify Council of change of Executive (names, addresses, contact numbers etc) during the period of the loan.
12. Should a club or group default on loan payments Council has the right to take whatever action it considers necessary to recover the funds. In extreme cases Council may consider closing the use of facilities to the club or community group in default and taking legal action to recover funds.

ITEM NO. 3

FILE NO: PSC 2006-0170

SUSTAINABILITY, PROPOSAL FOR PORT STEPHENS FUTURES STRATEGY AND THE PORT STEPHENS LOCAL ENVIRONMENTAL PLAN

REPORT OF: DAVID BROYD, GROUP MANAGER - SUSTAINABLE PLANNING

RECOMMENDATION IS THAT COUNCIL:

- 1) Endorse the initiation and preparation of the Port Stephens Futures Strategy, and
- 2) Endorse the establishment of the Reference Group to support the preparation of the Futures Strategy – with the composition as proposed below.

STRATEGIC COMMITTEE MEETING – 26 June 2007

RECOMMENDATION:

- 1) Endorse the initiation and preparation of the Port Stephens Futures Strategy, and
- 2) Endorse the establishment of the Reference Group to support the preparation of the Futures Strategy – with the composition as proposed below.
- 3) Annual Sustainability Conference be organised by Council.

ORDINARY MEETING OF COUNCIL – 26 JUNE 2007

RESOLUTION:

159	Councillor Francis Councillor Tucker	1. Endorse the initiation and preparation of the Port Stephens Futures Strategy, and 2. Endorse the establishment of the Reference Group to support the preparation of the Futures Strategy – with the composition as proposed below. 3. Annual Sustainability Conference be organised by Council. 4. Councillor representation on the Reference Group will be as follows: (a) Councillor Brown represent the West Ward (b) Councillor Swan represent the Central Ward (c) Councillor Nell represent the East Ward.
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BACKGROUND

The purposes of this report are:

1. To seek to give real meaning to sustainability to Council's strategic directions and operations;
2. To propose that Council initiate a longer term strategy for the local government area, namely "Port Stephens Futures", and
3. To propose how sustainability and Port Stephens Futures will be used as the foundation for the annual preparation of the Council Plan, the Port Stephens Local Environmental Plan and for the Integrated Planning Framework.

Sustainability

The Council Plan 2007-2011 has been reframed to have sustainability as a foundation and to be structured upon the five pillars of sustainability – social, cultural, economic, environmental and business excellence.

Sustainability or, as commonly referenced, ecologically sustainable development, is a legislative imperative of NSW Local Government. It is also adopted globally and nationally with different meanings and interpretations for Government policy and actions. Typically, within NSW Local Government, it has had tokenistic and "motherhood" expressions and have mainly led to environmental initiatives. Some Councils are progressively addressing the issues of conflict resolution and balance around the social, economic and environmental pillars of the concept. The intent at Port Stephens Council is to make sustainability a meaningful platform for policies and operations – as reflected in the definition in the Council Plan 2007-2011:

"Port Stephens Council will facilitate a healthy and prosperous community both now and in the future by planning and delivering services that achieve a balanced approach towards social, economic, cultural and environmental considerations through business excellence".

Sustainability therefore is the foundation of Port Stephens Council's Vision, Mission Statement and Strategic Directions. The fundamental principles of sustainability articulated in the Council Plan include:

- Having a long term integrated plan for the Local Government Area that creates a vision and establishes goals/design outcomes for the future of the area and the strategies and actions to achieve these goals/desired outcomes;
- Making short term decisions with full regard to the long term consequences and relevant desired outcomes;
- Balancing the social, cultural, economic and environmental considerations in planning for outcomes and decision making.

Taking sustainability forward therefore requires Council Vision and Mission Statements, strategic directions and consistent priorities. In turn, these should be tested against criteria for implementation capability and financial sustainability. This includes the next major step of taking sustainability forward in planning for the short, medium and long term outcomes for

development, environmental and infrastructure outcomes in the Local Government Area. This also brings to the fore the financial sustainability of the Council, State Government agencies and other stakeholders in funding and actioning the strategic directions, policies, actions and priorities.

The NSW Department of Local Government recently produced a Discussion Paper on “An Integrated Planning Framework for NSW Local Government”. This included an Option 3 which put forward a recommendation for Councils to prepare a long term strategic plan with a 10 year timeframe as a basis for its annually reviewed Council Management Plans. This proposal for the Port Stephens Future Strategy is in line with that NSW Department of Local Government initiative recommendation for Option 3 to be pursued. It is noteworthy that the Department of Local Government were envisaging a three or four year lead time before such strategic planning could be initiated by local government, but the main response from Councils is that this can be initiated for the next financial year as part of the next Council Plan preparation cycle.

LINKS TO CORPORATE PLANS

Giving clear, consistent meaning to sustainability is fundamentally important to the Council Plan, the Integrated Planning Framework and Council's Development/ Environmental Planning Framework, notably the Port Stephens Local Environmental Plan. A workshop with key staff in the organisation (August 2006) emphasised desire to embrace sustainability and give it consistent and tangible meaning (see Attachment 2).

PROPOSAL – PORT STEPHENS FUTURES STRATEGY

The Port Stephens Futures Strategy would devolve into two main streams:

- Preparation and review of the Council Plan, and
- Preparation and review of the Port Stephens Local Environmental Plan and its related Development Control Plans and planning policies.

It is submitted that there are major benefits in preparing such a long term strategy:

1. To follow the principles of sustainability for short term decision-making to be made on the basis of clear visions and directions to decide long term outcomes for the local government area;
2. The Comprehensive Port Stephens Local Environmental Plan, for which preparation is about to commence, (subject to Council endorsement of the provision in the Draft Council Plan and Draft Budget 2007-2011), is laying a foundation for development outcomes for 10 years and beyond;
3. Such a long term perspective is consistent with the NSW Department of Local Government recommendation for a minimum 10 year strategic plan to be prepared for each local government area.

This proposal for Port Stephens Sustainable Futures 2031 is aimed to be consistent with Council's Integrated Planning Framework, the Integrated Planning Framework Discussion Paper by the NSW Department of Local Government and with the structure and approach for the Council Plan 2007/8 – 2011/12 – particularly the Directional Statements.

Outcomes:

1. A broader community-based set of statements for longer term objectives and policies for Port Stephens;
2. A longer term strategy that will evolve into the Council Plan on an annual basis and into the new Port Stephens LEP/Planning Framework;
3. Will support Council's vision of community partnership to guide planning for the future and also provide a basis for governance that combines Council policies and funding with policies and funding of State Government agencies and the private sector.
4. Enhanced working relationship with State Government agencies, private sector organisations and community interest groups.

Means of Preparation and Organisational Approach

A Reference Group is proposed to be established by direct invitation and by seeking of nominations comprised broadly of the following:

- General Manager (Chair)
- Group Manager, Sustainable Planning (Executive Officer)
- The Mayor plus 3 Councillors (one from each Ward)
- 2 Presidents of Chambers of Commerce
- Representative of NSW Property Council – Hunter Branch
- Representative of UDIA – Hunter Branch
- CEO of Newcastle Airport
- Representative of University of Newcastle
- Representative of Hunter Economic Development Corporation
- 2 representatives of conservation groups
- Representative of the Indigenous Strategic Committee
- Representative of Hunter Councils
- Representative of Social Planning
- Representative of Hunter Business Council
- Representative of Access Committee
- Representative of NSW Premiers Department
- Representative of Cultural Committee
- 3 representative of the general community (recruited by seeking Expressions of Interest)

To support the Reference Group, it will be recommended that there be a series of Committees/Taskforces/Project Teams to assist with initiatives, projects and policies based upon the social, economic, environmental and cultural pillars of sustainability.

Potential initiatives include:

- Conservation: ecology, water management, coastal and estuary management;
- Climate change response: energy management, greenhouse gas emissions – policy, advocacy/educational and regulatory recommendations as outputs;
- Infrastructure planning, funding and management;
- Community settlement and urban design;
- Social planning and development;

- Cultural planning and development, and
- Economic planning and development.

The above Committees/Taskforces will operate for limited periods – and some will be one-off workshops/conferences - to provide outputs based upon a framework that will be established by the Reference Group. The emphasis must be on principles of pragmatic approach and outcomes that have real connection with Council's directional statements, policies, priorities, budgeting and actions and – most importantly, are deliverable in terms of financial sustainability and resources.. There should also be an underlying principle of "Think global, act local".

FINANCIAL/RESOURCE IMPLICATIONS

Financial sustainability of Council is fundamental to the Port Stephens Futures Strategy.

Strong linkages have been built up with the CSIRO and with the Gould Group and the Draft Budget for 2007-2011 does not propose any net additional costs for the preparation of the Futures Strategy over and above the studies that are integral to the Port Stephens LEP. For the latter, the Draft Budget contains a proposal for \$353,000 to be allocated 2007-2011 and the total cost of preparing and completing a new Comprehensive Port Stephens LEP by early 2011 at the latest is \$750-800,000.

The recent announcements of the Minister for Planning in relation to allocations under the NSW Planning Reform Funds provided \$30,000 for the preparation of a Rural Land Study, whereas the Council's application was for \$123,000. This is a disappointing outcome. Council has previously resolved to write to the Minister for Planning to seek greater allocations under the Planning Reform Fund for the preparation of the Port Stephens LEP. To date, there has been no response from the Minister in this regard. It is noteworthy that up to December 2006, the levy applied by the State Government for development applications for the Planning Reform Fund had yielded \$527,000 – which Council administers, receipts and then reallocates to the NSW State Government. Council has received to date \$75,000 for the Draft Medowie Strategy from the Planning Reform Fund and now has an additional \$30,000 committed, therefore totalling \$105,000 or 20% of the money collected in Port Stephens. Whilst accepting that such income should be distributed equitably across the State, 20% is not an acceptable proportion and if that proportion was 50% of the income of \$527,000, then Council would benefit with a total of \$263,000, i.e. almost \$160,000 more than currently received/committed.

LEGAL AND POLICY IMPLICATIONS

The Port Stephens Futures Strategy will provide for well-founded planning and policies based on a long term view and broad community/stakeholder ownership.

Australian Business Excellence Framework

This proposal aligns with the following ABEF Principles – particularly Principles numbered 1, 2, 3, 8, 10 and 11.

- 1) Clear direction allows organisational alignment and a focus on the achievement of goals
- 2) Mutually agreed plans translate organisational direction into actions

- 3) Understanding what customers value, now and in the future, influences organisational direction, strategy and action
- 4) To improve the outcome, improve the system and its associated processes
- 5) The potential of an organisation is realised through its people's enthusiasm, resourcefulness and participation
- 6) Continual improvement and innovation depend on continual learning
- 7) All people work IN a system; outcomes are improved when people work ON the system
- 8) Effective use of facts, data and knowledge leads to improved decisions
- 9) All systems and processes exhibit variability, which impacts on predictability and performance
- 10) Organisations provide value to their community through their actions to ensure a clean, safe, fair and prosperous society
- 11) Sustainability is determined by an organisation's ability to create and deliver value for all stakeholders
- 12) Senior leadership's constant role-modelling of these principles, and creating a supportive environment in which to live these principles will help the enterprise and its people to reach their full potential

SUSTAINABILITY IMPLICATIONS

The proposed Port Stephens Futures Strategy is fundamentally aimed at enhancing social, cultural, economic and environmental planning – and policies that address trade-off and balances between competing interests.

CONSULTATION

Consultation has been undertaken with: the Executive Team; the Management Team of Sustainable Planning Group; the Integrated Planning Panel; CSIRO; Gould Group and is also largely founded upon the workshop conducted in August 2006 involving key staff from across the Council organisation.

Strong linkages have been built up with the CSIRO and their engagement as one of 8 Councils nationally for this project has very positive prospects.

OPTIONS

Council essentially has the following options:

- 1) To proceed to prepare and review the Council Plan and undertake a major review of the LEP without such a strategic long term basis. This would lower costs and achieve more prompt preparation in some ways but ultimately content of these documents would be less well founded and be based on a much lower level of community engagement/partnership. This is also not aligned with Option 3 of the NSW Department of Local Government Discussion Paper.

- 2) To undertake more limited strategic planning and without engagement of the reference group which is recommended or vary its composition to progress to a strategic plan that is a foundation for the Council Plan and foundation of the Port Stephens LEP review.

ATTACHMENTS

- 1) Sustainability – Legislative and Policy Context – International, National and State
- 2) The Corporate Organisation – Where are We Now and What Do We Want to Achieve in the Future?
- 3) Summary of Approach and Costs for Port Stephens New Comprehensive LEP

COUNCILLORS ROOM

Nil

TABLED DOCUMENTS

Nil

ATTACHMENT 1

SUSTAINABILITY – LEGISLATIVE AND POLICY CONTEXT – INTERNATIONAL, NATIONAL AND STATE

(Based on Extract from Reference Project: “Ecologically Sustainable Development – What Does It Mean To NSW Local Government?” – David Broyd (2001))

Exploring the international history of sustainable development assists the understanding of how the national and NSW state legal and policy obligations on NSW councils came to be framed the way they are and what NSW councils should be doing to contribute to global needs and principles.

Origins

Principles of Ecologically Sustainable Development were initially pronounced as part of the Stockholm Declaration of 1972 – almost 30 years ago. The World Conservation Strategy (1980) focused on the need for global action on environmental degradation, resource depletion and action on socio-economic inequities. The National Conservation Strategy of Australia (1983) adopted features of the World Conservation Strategy.

Also in 1983, the United Nations established the World Commission on Environment and Development (WCED) to “formulate a global agenda for change”. The Commission report of 1987: “*Our Common Future*” (the Brundtland report) concluded that the world’s pattern of economic growth, scale and nature of human activities was not sustainable on ecological grounds and that:

“what is needed now is an era of economic growth – growth that is forceful and at the same time soundly and environmentally sustainable.”

The WCED Report defined sustainable development as:

“Development that meets the needs of the present generation without compromising the ability of future generations to meet their own needs” (WCED, 1987).

The report acted as a catalyst for a number of international developments on environmental and development issues – including negotiation of a range of international treaties and conventions culminating in the United Nations Conference on Environment and Development in 1992.

The United Nations Conference on Environment and Development (UNCED) 1992

Better known as the Earth Summit, the UNCED was held in Rio de Janeiro in June 1992. The conference resulted in a number of key outcomes that have shaped the sustainable development movement, two of which were:

- (a) The Rio Declaration – 27 principles to guide the achievement of sustainable development, and
- (b) Agenda 21 – an international strategy for combating problems of poverty, development and environmental degradation with actions to move the world towards sustainability.

Agenda 21

Agenda 21 was adopted at the UNCED Summit meeting on 14 June 1992 and signed by 170 national governments including Australia. It is divided into 4 sections:

1. Social and economic dimensions – human factors, trade and integrated decision-making;
2. Conservation and management of resources for development – examines resources and other issues related to sustainable development at global, national and local levels
3. Strengthening the role of major groups – government, international agencies, community organisations and industry association and
4. Means of implementation – finance, technology, education, institutional and legal structures, data and information and building of national capacity.

Local Agenda 21

Local Agenda 21 is a part of Agenda 21 focusing on local government and local communities. It explicitly recognised that:

“because so many problems and solutions being addressed by Agenda 21 have their roots in local activities, the participation and co-operation of local authorities will be a determining factor in fulfilling its objectives. Local authorities construct, operate and maintain economic, social and environmental infrastructure, oversee planning processes, establish local environmental policies and regulations and assist in implementing national and sub-national environmental policies. As the level of governance closest to the people, they play a vital role in education, mobilising and responding to the public to promote sustainable development”. (Chapter 28, Local Agenda 21).

Five action areas were considered crucial to develop the LA21 process: preparing the ground, building partnerships, determining vision, goals, targets and indicators, creating a Local Action Planning document and implementing, reporting, monitoring and reviewing.

Results of an effective LA21 process were put forward as:

1. strong partnership between local government and community;
2. ongoing community involvement in the resolution of sustainability issues;
3. integrated decision-making – taking economic, social and environmental considerations into account;
4. development, implementation, periodic review of a long-term, integrated sustainability action plan
5. changes that promote greater sustainability and better environmental outcomes for all communities.

The expressed objectives of Chapter 28 of Agenda 21 were:

- a) by 1996, most local authorities in each country should have undertaken a consultative process with their populations and achieved a consensus on “a Local Agenda 21” for the community (this was not achieved in any country but the idea continues)
- b) by 1993 the international community should have initiated a consultative process aimed at increasing co-operation between local authorities
- c) by 1994, representatives of associations of cities and other local authorities should have increased levels of co-operation and co-ordination with the goal of enhancing the exchange of information and experience among local authorities
- d) all local authorities in each country should be encouraged to implement and monitor programmes which aim at ensuring that women and youth are represented in decision-making, planning and implementation processes.

Local Agenda 21 also stated that each local authority should enter into a dialogue with its citizens, local organisations and private enterprises and adopt a “Local Agenda 21”. It strongly recognised the critical requirement of integrated decision-making for an integrated response to the environmental, social and economic considerations through four broad areas:

- Integrated environment and development policy, planning and management;
- Effective regulatory and legal frameworks;
- Effective use of market and economic instruments and incentives, and
- Integrated environmental and economic accounting.

The World Bank Study of 1997 found that over 100 countries had national strategies for sustainable development.

The Kyoto Protocol and Cities for Climate Protection

The Kyoto Protocol followed from the Framework Convention on Climate Change that originated at the Earth Summit in Rio de Janeiro of 1992. The Protocol established international agreement on a program to reduce greenhouse gas emissions and protect the ozone layer, except for a few countries including Australia which had an 8% increase above 1990 levels set for 2008. In Australia, the response has been the National Greenhouse Strategy which in turn has led to the Commonwealth funded Cities for Climate Protection program (CCP).

The CCP is a program of the International Council for Local Government Initiatives (ICLEI) supported in Australia by the Australian Greenhouse Office. The CCP has been set up to assist Councils and communities to identify their greenhouse emissions from energy use, waste and transportation and to reduce emissions and costs to Councils, residents, businesses and industry.

As LA21 emphasises, monitoring is vitally important to assessing whether programs are actually achieving what is intended – “if you don’t measure it, you can’t manage it”. Means of monitoring are crucial to local government therefore, and some important international initiatives are explored below.

The Organisation for Economic Cooperation and Development (OECD)

The Organisation for Economic Cooperation and Development (OECD) initiated and applied the “pressure (or driving force) – state – response” model. This model can be summarised as:

- Pressure on the environment by use of materials by humans attempting to improve human conditions – changes the:
- State of the environment in terms of its quality and stock of natural resources leading to a:
- Response by society to these changes by institutional, legal or financial measures which in turn change human behaviour and affect the
- Pressures caused by human activities (whether by reducing these or by introducing additional pressures elsewhere).

This model has been used in most State of the Environment reports in NSW Councils and is a requirement for Local Government reports in NSW. Councils are required to use indicators. There is a strong emphasis on the environment in how this is applied. Hence, there is an established practice of some monitoring of environmental trends.

The international history comprehensively references sustainable development, not ecologically sustainable development. Eleven of the twenty seven principles of the RIO Declaration embody sustainable development as the foundation with no references to ESD. However, Australia has embraced the movement as ecologically sustainable development.

Agenda 21 and Local Agenda 21 emphasise action areas and key results of an effective LA21 process that inform a framework of desirable practices by NSW State and Local governments today.

These are summarised from the above as:

1. Building partnerships – particularly between local government and local communities, and on-going community involvement in the resolution of sustainability issues;
2. Determining vision, goals, targets and indicators as fundamental components of a long-term Local Sustainability Action Planning document with subsequent, integrated implementation and periodic reporting, monitoring and reviewing
3. Integrated decision-making for integrated responses to the environmental, social and economic considerations through four broad areas:
 - i. integrated environment and development policy, planning and environment
 - ii. effective regulatory and legal frameworks
 - iii. effective use of market and economic instruments and incentives, and
 - iv. integrated environmental and economic accounting.
4. Demonstrable changes which promote greater sustainability and better environmental outcomes.

Australian Adoption and the National Context

The Inter-Governmental Agreement on the Environment (IGAE) – 1992

The Prime Minister’s ‘One Nation’ Statement of 26 February 1992 announced that agreement had been reached on an Inter-Governmental Agreement on the Environment

(IGAE). The intention to develop the agreement had been announced in the communiqué issued by the first Premiers' Conference in October 1990. The Commonwealth Organisation of all Governments (COAG) – Commonwealth, State and Territory Governments and the Australia Local Government Association signed the IGAE in May 1992. This Agreement purported to clarify responsibilities of each level of government and was the first national policy to recognise ESD and set out the objectives responsibilities and obligations of the three spheres of government. It made provision “for the Commonwealth Government to become involved in those issues where it has demonstrated responsibilities and interests” – in fact, the Commonwealth has very limited responsibilities in the broad range of issues which were encompassed by this Agreement.

IGAE Principles, Definitions and Purposes

The IGAE commits all levels of Government to the objectives of ESD based upon four principles:

- Conservation of biodiversity and ecological integrity;
- Inter-generational equity;
- Improved valuation, pricing and incentive mechanisms, and
- The precautionary principle.

The IGAE definition is:

“ESD aims to meet the needs of Australians today, while conserving our eco-systems for the benefit of future generations” and ‘using, conserving and enhancing the community’s resources so that ecological processes, on which life depends, are maintained and the total quality of life, now and in the future, can be increased”.

The purposes of the Agreement are:

- *“a co-operative national approach to the environment;*
- *Better definition of the roles of respective governments with respect to the environment;*
- *A reduction in inter-governmental environmental disputes;*
- *More certain government and business decision-making, and*
- *Better environment protection”.*

The Agreement made it clear that “sustainable development”, i.e. development which is consistent with and promotes the principles of ESD is the “basic principle of environmental policy and practice for all spheres of government”. The IGAE identified the principles to be adopted by all spheres of government “for the successful integration of economic and environmental considerations into decision-making processes”. The responsibilities of local government under the IGAE were expressed mainly as relating to the preparation of local environmental policies.

As explained below, these principles have been incorporated into the NSW Local Government Act and Environmental Planning and Assessment Act with consequent, major obligations for local government – reflecting the environmental emphasis.

The National Strategy on Ecologically Sustainable Development (1992)

The National Strategy on Ecologically Sustainable Development (NSED) stated that ESD was one of the greatest challenges facing Australia's governments, business and community in the coming years.

NSED Definition, Goal, Core Objectives and Guiding Principles

The NSED states that: "*while there is no universally accepted definition of ESD*", suggests the definition of:

"using, conserving and enhancing the community's resources so that ecological processes, on which life depends, are maintained and the total quality of life, now and in the future, can be increased". Put more simply, ESD is development which aims to meet the needs of Australians today, while conserving our eco-systems for the benefit of future generations. To do this, we need to develop ways of using those environmental resources which form the basis of our economy in a way which maintains and, where possible, improves their range, variety and quality. At the same time we need to utilise those resources to develop industry and generate employment".

The goal of the Strategy is:

"Development that improves the total quality of life, both now and in the future, in a way that maintains the ecological processes on which life depends".

Core Objectives are:

- To enhance individual and community well-being and welfare by following a path of economic development that safeguards the welfare of future generations;
- To provide for equity within and between generations, and
- To protect biological diversity and maintain essential ecological processes and life-support systems.

Guiding Principles are:

- Decision-making processes should effectively integrated both long-term and short-term economic, environmental and social and equity consideration;
- Where there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation
- The global dimension of environmental impacts of actions and policies should be recognised and considered;
- The need to develop a strong, growing and diversified economy which can enhance the capacity for environmental protection should be recognised;
- The need to maintain and enhance international competitiveness in an environmentally sound manner should be recognised;
- Cost effective and flexible policy instruments should be adopted, such as improved valuation, pricing and incentive mechanisms,
- Decisions and actions should provide for broader community involvement on issues which affect them.

These Guiding Principles and Core Objectives are stated as needed “to be considered as a package” and that “no objective or principle should predominate over the others. A balanced approach is required that takes into account all these objectives and principles to pursue the goal of ESD”.

The NSESD puts forward to main features that distinguish an ESD approach:

1. *“We need to consider, in an integrated way, the wider economic, social and environmental implications of our decisions and actions for Australia, the international community and the biosphere; and*
2. *We need to take long-term rather than short-term view when taking those decisions and actions.”*

The NSESD requires governments to improve the efficiency and effectiveness of the development, implementation and integration of ESD related policies, clearly define the roles and responsibilities of each level of government, avoid duplication of functions and establish effective processes for co-operation between governments. Governments were to ensure that a range of changes occurred to their institutional arrangements to ensure that ESD principles and objectives are taken into consideration in relevant policy-making processes. This was stated to include strengthening of Cabinet processes, establishing more effective coordination arrangements between Ministerial Councils and reviewing the charters and corporate plans of relevant government agencies to include ESD objectives. It was recognised that the appropriateness of some policies and progress on implementation will vary between regions because of concerns of governments not to result in an “unequal burden on particular regions, sectors or groups in society”. Partnerships between government, the corporate world and community groups that have a particular interest in, or capacity to contribute to, ESD are advocated.

Commonwealth Obligations and Legislation

The following Commonwealth obligations and legislation affect local government if Commonwealth land is located within the area in terms of translation through some State legislation and potentially in legal proceedings if a Council is called upon to justify decisions in relation to the treaties and conventions.

The Environmental Protection and Biodiversity Conservation Act, 1999

The Environmental Protection and Biodiversity Conservation (EPBC) Act, 1999 fulfils part of Schedule 9 of the IGAE and aims to:

1. promote protection of the environment, especially those areas of natural significance;
2. promote ESD through the conservation and sustainable use of natural resources;
3. promote a co-operative approach to the protection and management of the environment, and
4. assist in the co-operative implementation of Australia’s international environmental responsibilities.

The EPBC Act describes, significantly, one of five ESD principles as:-

“Decision making processes should effectively integrate both the long term and short term economic, environmental, social and equitable considerations”.

Section 516(a) requires Commonwealth agencies to submit annual ESD Performance Reports.

The Act also triggers the requirement for proponents of developments that may affect international treaties are responsible for reporting to the Commonwealth government.

The translation of the internationally negotiated agreements to national Australian policy appears to have led to a comparatively enhanced environmental emphasis – sustainable development became ecologically sustainable development. There appear to have been political reasons in the late 1980's and early 1990's to explain this – the Tasmanian Dams issues, forestry issues, the strength of the environmental lobby and the desire to capture the “environmental vote”. Social and economic issues receive comparatively less prominence in the Commonwealth policies and strategies on ESD and the environmental issues dominate. Whilst these questions certainly do not detract from the worthiness of the environmental initiatives at all levels of government, there would appear to be an imbalanced lack of regard to social and economic considerations in the sustainability context. Neither the National Strategy, nor the IGAE contained clear mechanisms to clarify the social and economic responsibilities considered to fall under the ESD banner.

In retrospect, the IGAE may be concluded to have been unrealistic in terms of the extent of adoption of ESD and the recommended institutional changes to government. Also, there was no built in follow up by the representatives of the three levels of government and perhaps most importantly there was no assessment of the regulatory impact – including resources implications for local government.

The NSESD does emphasise, in general terms, the crucial importance of integrated consideration of the wider and long term economic, social and environmental implications of decisions and actions – from local to national to international levels. ESD/Sustainability essentially requires planning for its achievement in these terms. Planning requires more political endorsement to effectively achieve that end – including at the national level of Government. Rod Simpson made the statement that Australian society is less accepting of interventionist planning than all other Western, developed nations (Sustainable Sydney Conference: November 2000 – unpublished) and, in the author's opinion, there is much validity in his comment. This may well reflect the lesser social and economic pressures for such interventionism because of comparative affluence, comparatively low level social tensions and inequities, and an “individualistic ethic” of Australia.

NSW Legislative, Policy and Organisational Context

NSW councils are accountable to the NSW State Government and are obligated to implement ESD by various legislature and policies. Organisational approaches of the State government are also fundamental to enabling councils to interact and implement ESD.

States and Territories in Australia have enacted 150 pieces of environmental legislation that have varying implications for local government activities. A myriad of other legislation affects local government management and planning on social and economic issues. The fragmentation of legislation and related organisational management undermines holistic

approaches to ESD at every level of government. This is certainly the case in New South Wales.

The NSW Local Government Act 1993 (as amended 1997)

Local councils in New South Wales are entirely the creation of State government. Section 2 of the Constitution Act 1902 (NSW) states: “the manner in which local government bodies are constituted and the nature and extent of their powers, authorities, duties and functions shall be as determined by or in accordance with the laws of the legislature”. (The reference to the Legislature is, of course, the NSW Parliament).

Purposes of the Act and Charter for NSW Councils

The first stated purpose of the Act (Section 7a) is:

“(a) to provide the legal framework for an effective, efficient, environmentally responsible and open system of local government in New South Wales”

Another stated purpose of the Act: Section 7e is:

“(e) to require Councils, councillors and Council employees to have regard to the principles of ecologically sustainable development in carrying out their responsibilities”.

The Local Government Act Amendment 1997 (Section 8) sets out the charter of a local Council in NSW and includes the requirement for a Council to “properly manage, develop, protect, restore, enhance and conserve the environment of the area for which it is responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development” and “have regard to the long term and cumulative effects of its decisions”.

When the Local Government Act was first enacted in 1993, there were no references in Sections 7 and 8 of the need for Councils to act in a manner consistent with, and which would promote, ESD and these were introduced in the Local Government (Ecologically Sustainable Development) Amendment Act 1997.

Principles of ESD

The principles of ESD, reflecting the international and national origins, are defined in the dictionary of the Local Government Act as follows:

Principles of ecologically sustainable development mean the following statements of principle:

“Ecologically sustainable development requires the effective integration on economic and environmental considerations in decision-making processes. Ecologically sustainable development can be achieved through the implementation of the following principles and programs:

- (a) The precautionary principle – namely, that if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

In the application of the precautionary principle, public and private decisions should be guided by:

- (i) careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment; and
 - (ii) an assessment of the risk-weighted consequences of various options
- (b) inter-generational equity – namely, that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations
- (c) conservation of biological diversity and ecological integrity – namely that conservation of biological diversity and ecological integrity should be a fundamental consideration
- (d) improved valuation, pricing and incentive mechanisms – namely that the environmental factors should be included in the valuation of assets and services such as:
- (i) polluter pays – that is, those who generate pollution and waste should bear the cost of containment, avoidance or abatement
 - (ii) the users of goods and services should pay prices based on the full cycle of costs of providing goods and services, including the use of natural resources and assets and the ultimate disposal of any waste
 - (iii) environmental goals, having been established, should be pursued in the most cost effective way, by establishing incentive structures, including market mechanisms that enable those best placed to maximise benefits and minimise costs to develop their own solutions and responses to environmental problems”.

Hence, with the exception of the opening statement, the whole emphasis is on the natural environment. At no point are the social responsibilities referenced.

ESD and Councils’ Management Plans

Section 402 of the Local Government Act (1997) sets out the contents of a Council’s draft management plan and requires that the Statement of Principal Activities must include particulars with respect to “activities to properly manage, develop, protect restore and conserve the environment in a manner that is consistent with and promotes the principles of ecologically sustainable development.” (The 1993 Act provision was: “activities to protect environmentally sensitive areas and to promote the ecological sustainability of the area undertaken by the Council”).

NSW Councils are therefore legally bound to reference ESD in relation to a range of programs for works and planning (strategic planning and development assessment) in their draft management plans.

The Environmental Planning and Assessment Act 1979

Objects of the Act

The stated object of the Act include: “the sharing of the responsibility for environmental planning between the levels of government in the State” and “to encourage ecologically sustainable development.”

Legal Obligations for ESD

Councils are responsible for:

- The preparation of Environmental Planning Instruments (EPI’s) - in particular local environmental plans and development control plans – which establish the bases for future development and environmental conservation of the local area;
- The assessment and determinations of applications for development consent and the assessment of applications for activities under Part 5 of the Act.

By inference rather than by direct requirement, Planning Instruments should therefore be founded on the principles of ESD. The heads of consideration (Section 79C) for determining Development Applications do not directly reference ESD, but have foundation in ESD principles and the public interest may well be found to legally embrace ESD given the other legal referencing in NSW legislation. Environmental Impact Statements prepared by proponents must include “the reasons justifying the carrying out of the development or activity in the manner proposed, having regard to biophysical, economic and social considerations and the principles of ecologically sustainable development”.

In addition to the order making powers conferred upon Councils by the Local Government Act, Section 121B of the Environmental Planning and Assessment Act expresses the intent that these powers be exercised in appropriate cases having regard to the need to “properly manage, develop, protect, restore, enhance and conserve the environment of the area for which the Council is responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development.”

The 1998 amendments to this Act introduced “integrated Development” – applications for development that required assessment and “general terms of conditions” from State agencies that have to give related approvals (licences etc.) The legislation only covered some of the agencies and functional responsibilities relevant to ESD and significantly not included was the NSW National Parks and Wildlife Service for flora and fauna responsibilities.

Sustainability, or ecologically sustainable development, is also embodied in other State Government legislation, but has different expressions in different legislation and therefore lack of consistency as a policy expression at the State Government level.

There are also compelling and highly significant global, national, regional and local trends and forces that should influence how this Council approaches sustainability and these include climate change, water conservation, energy conservation, economic trends and changes, ecological impacts and threats and the significant question of the financial sustainability of local government (particularly in relation to asset and infrastructure management and funding).

At the regional and local levels, the Lower Hunter Regional Strategy and Draft Regional Conservation Plan are significant policy statements by the State Government to set directions for future development patterns and environmental management. Similarly, the Marine Park has significant consequences on the marine ecology and foreshore management of the PS LGA.

Recent initiatives by this Council, as well as the substantial reframing of the Council Plan, has involved the Gould Group and, to a limited extent so far, the CSIRO. The Gould Group will shortly be reporting on the Council's organisational approach to sustainability - priorities and aspects of organisational education, community education and technical approaches towards implementing the whole concept of sustainability.

ATTACHMENT 2

THE CORPORATE ORGANISATION – WHERE ARE WE NOW AND WHAT DO WE WANT TO ACHIEVE FOR THE FUTURE

The August 2006 workshop involving key staff across the organisation established the corporate statements on “Where are we now?” “Where do we want to be?” and the “negative and positive forces that influence that transition”.

Where are we now – the present

- Importance of sustainability is recognised;
- ABEF is a real positive to seek to achieve sustainability;
- There is high level endeavour and will but different parts of the organisation are not on the same page or talk in the same language about sustainability;
- There is limited understanding about sustainability across the organisation and how to activate sustainability effectively;
- There is a lack of Councillor/political commitment;
- There is a major need to improve integration and inter-sectional working;

Where do we want to be – the future

- To be an integrated organization and to cross-reference decision making based on sustainability;
- Councillors are committed;
- There is a clear statement about sustainability that is realistic that can take the organization forward in a cohesive way;
- Sustainability is interpreted with the same language and has the same meaning to all staff in their position;
- There is limited political intervention because of the cohesive approach of the organisation.

Negative forces

- Lack of understanding and education about sustainability;
- Development/growth pressures;
- The weight of community expectations and diversity and pressure to workload;
- Limited time and resources to be able to focus on sustainability;
- Lack of leadership.

Positive forces

- The motivation and will of committed and skilled staff generally and activate;
- Business Excellence and ABEF principles;

What has the Organisation Done So Far?

In September 2003, Council adopted the sustainability policy, which was an excellent range of statements and commitment. However the level of commitment and translation of the

policy as a meaningful basis for planning policies and operations in the organisation has been limited.

The Community Settlement and Infrastructure Strategy that was adopted by Council in April 2007 has a very strong foundation based upon sustainability.

The excellent work completed by the PDSA team on the Integrated Planning Framework is a basis for activating integration of Council's future planning based upon directional statements expressing sustainability.

The Councillors' initial workshop in early November 2006 on the Council Plan 2007-2011 essentially established situation analyses and future directions based upon five pillars of sustainability:
social, cultural, economic, environmental and Business Excellence

The Executive Team considered the implementation of sustainability at a meeting in October 2006. Short term actions that have been fulfilled based upon the outcomes of the Executive Team decisions are:

- Developing the operational meaning of strategic directions for sustainability as a strong contribution for the November workshop for Councillors to prepare the Council Plan for 2007-2011;
- Conduct a workshop on the review of the Port Stephens Local Environmental Plan 2000;
- Enhance the debate and preparational content for triple bottom line analysis of budget proposals for 2007/2008;
- Review the job design and responsibilities within a replacement position in the Environmental Services Section to provide additional resources with dedicated research and support for sustainability at nil net cost to the organisation;
- Improved organisational integration – this will be taken further through the Integrated Planning Framework Panel (TP²);
- Publicising and presenting the Community Settlement & Infrastructure Policy to give it higher organisational and community profile.

ATTACHMENT 3

SUMMARY OF APPROACH AND COSTS FOR PORT STEPHENS NEW COMPREHENSIVE LEP

In line with Council's resolution of 19 December 2006, below is a summary of the currently proposed strategic studies and overall costing of the preparation of the new Comprehensive Port Stephens LEP.

This is essentially comprised of strategic studies to fill crucial "data gaps" involving a total cost of \$433,000 with a planned Council contribution of \$210,000.

Study	Approximate Cost	Responsibility	Funding Source
Economic Development Strategy	90,000	Group Managers SP and B&S	50% DSRD 50% Council
Infrastructure Study	Internal Study 10,000	Infrastructure Coordinator	Council
Rural Lands Study	123,000	LEP Planner	DoP – Planning Reform Fund
Retail and Commercial Study	70,000	LEP Planner	DoP, Reform Fund/Council
Transport Plan	30,000	Transport Engineer	DoP, reform fund/Council
Coastal Change Study	90,000	LEP Planner	DoP Reform Fund/Council
Scenic Evaluation	20,000	LEP Planner	Council
Total	Approx. 433,000		
Council Contribution	22,000		
External Contributions	213,000		

To fulfil this level of LEP review, a net additional position would be required of a Senior Strategic Planner for a 3 or 4 year period with also additional GIS resource. This would require a net additional commitment of between \$130,000 and \$150,000 a year. Hence, for Council to achieve this level, the total costs of between \$700,000 and \$800,000 over the period 2007-2011 would be required. The draft budget proposal for 2007/08 is \$353,000.

ITEM NO. 4

FILE NO: PSC2006-1300

COMMUNITY GROUP LOANS

REPORT OF: JASON LINNANE, MANAGER – RECREATION SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Approve Community Group Loans as outlined in Attachment 1.
-

STRATEGIC COMMITTEE MEETING – 26 June 2007

RECOMMENDATION:

That the Recommendation be adopted.

ORDINARY MEETING OF COUNCIL – 26 JUNE 2007

RESOLUTION:		
160	Councillor Nell Councillor Brown	That Item 4 – Community Group Loans be considered by Council.

RESOLUTION:		
161	Councillor Nell Councillor Brown	That the Strategic Committee Recommendation be adopted.

BACKGROUND

The purpose of this report is to have Council approve the following Community Group loans:

- 1) Tomaree Sports Council - \$75,000 (Capital works)
- 2) Hinton Tennis Club - \$13,000 (Asset rehabilitation)
- 3) Raymond Terrace Cricket Club - \$55,000 (Replacement & improvement to current standard)

All works are in relevant Sports Council Sports Development strategies. The financial capability of the applicants has been reviewed by Recreation Services, leaving no reason to believe that each applicant cannot make the required payments.

Please note a separate report to Council as part of the June meeting provides recommendations to amend the existing Community Loans Policy. These applicants meet the conditions of the amended policy.

LINKS TO CORPORATE PLANS

This report relates to the 6th key result area of the 2006-2009 Council Plan which is to *“provide facilities and services that meet community needs”*

FINANCIAL/RESOURCE IMPLICATIONS

An additional three (3) Community Group loans totalling \$143,000 for three (3) separate projects.

One of the loans (\$13,000) is for asset rehabilitation purposes and therefore will be subject to a low interest payment (50% of the Local Government rate).

With the change in the Community Groups Loans Policy there will be sufficient funds to allow for these loans.

LEGAL AND POLICY IMPLICATIONS

Nil

Australian Business Excellence Framework

This aligns with the following ABEF Principles:

- 1) Clear direction allows organisational alignment and a focus on the achievement of goals
- 2) Mutually agreed plans translate organisational direction into actions
- 3) Understanding what customers value, now and in the future, influences organisational direction, strategy and action
- 4) to improve the outcome, improve the system and its associated processes
- 5) The potential of an organisation is realised through its people’s enthusiasm, resourcefulness and participation
- 11) Sustainability is determined by an organisation’s ability to create and deliver value for all stakeholders

SUSTAINABILITY IMPLICATIONS

SOCIAL IMPLICATIONS

These loans provide revenue to community groups to support themselves by contributing to capital & asset rehabilitation projects. It allows Council to continue to build on the relationships/partnerships that it has with existing and new community groups.

ECONOMIC IMPLICATIONS

The approval of these loans enables additional investment in capital works & asset rehabilitation in the local government area, that would otherwise not proceed or be significantly delayed due to inadequate funding.

There are also ongoing economic outcomes that are related to future use of Tomaree Sports Complex (Project 1) by not only local communities but those that are attracted to the area for events that are centred one use of these facilities.

ENVIRONMENTAL IMPLICATIONS

Nil

CONSULTATION

Financial Services Manager
Recreation Services Manager
Tomaree Sports Council Executive
Raymond Terrace Cricket Club Sports Council delegates
Hinton Tennis Club Sports Council delegates

OPTIONS

- 1) Adopt recommendation
- 2) Reject recommendation and do approve

ATTACHMENTS

- 1) Community Group Loans

COUNCILLORS ROOM

Nil

TABLED DOCUMENTS

Nil

ATTACHMENT 1

Community Group Loan 1

Community Group: Tomaree Sports Council
Total Project Cost: \$345,000
Loan Amount: \$75,000
Project: Tomaree Sports Complex Lighting Project

This project has been identified by Tomaree Sports Council as a priority to ensure grounds are providing competition standard lights and that PLC technology is installed to ensure power efficiency and an accurate billing system. Phase 1 of this project is currently underway and we have secured section 94 funds for the remainder of the project. The total cost of the projects \$345k and the total S94 CTW to the works would go from \$190k. The outstanding amount to complete the project is \$75,000 (the amount of the loan request)

Community Group Loan 2

Community Group: Hinton Tennis Club
Total Project Cost: \$56,000
Loan Amount: \$13,000
Project: Resurface of Stuart Park Tennis Courts, Hinton

The court surface at Stuart Park Tennis Courts is in disrepair requiring works to commence ASAP. Structural works as well as some tree root work are required as Moreton Bay figs have caused damage to the surface base. Total cost of project is \$56,000 being funded \$33,000 from Section 94, \$10,000 from Hinton Tennis Club with the \$13,000 outstanding.

Community Group Loan 3

Community Group: Raymond Terrace Cricket Club
Total Project Cost: \$55,000
Loan Amount: \$55,000
Project: Fence for King Park Field1

This project involves replacing the existing perimeter fence surrounding the Jack Collins Oval with a powder-coated aluminium or steel picket fence. The existing fence requires replacement in the near future, however the club are enthusiastic to upgrade the quality of fence to improve the aesthetics of the field immediately.

ITEM NO. 5

FILE NO: PSC2006-006

DEVELOPER CONTRIBUTIONS (SECTION 94) – PROGRAM FOR REPEAL AND REVISED SECTION 94 DEVELOPER CONTRIBUTION PLAN

REPORT OF: DAVID BROYD, GROUP MANAGER - SUSTAINABLE PLANNING

RECOMMENDATION IS THAT COUNCIL:

- 1) Adopt the Section 94 Contributions Plan 2007 as amended by this report.
- 2) Undertake discussions with Newcastle Council with a view to preparing a cross boundary Contributions Plan.

STRATEGIC COMMITTEE MEETING – 26 June 2007

RECOMMENDATION:

- 1) Adopt the Section 94 Contributions Plan 2007 as amended by this report.
- 2) Undertake discussions with Newcastle Council with a view to preparing a Cross Boundary Contributions Plan.
- 3) Undertake discussions with adjoining Councils to consider Cross Boundary Contributions Plans as the need arises.

ORDINARY MEETING OF COUNCIL – 26 JUNE 2007

RESOLUTION:

162	Councillor Tucker Councillor Dingle	That the Strategic Committee Recommendations be adopted.
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BACKGROUND

The purpose of this report is advise Council of the submissions received in relation to the exhibition of the new S94 Plan and recommend action in relation to those submissions.

Council resolved on 27 March 2007 to “endorse the ‘Port Stephens Draft Section 94 Contributions Plan 2007’ for Public Exhibition purposes and that a report be presented to Council following Public Exhibition”. The draft Plan was placed on exhibition from 31 March to 14 May 2007 being 45 days exceeding the statutory 28 day period by 17 days.

Four submissions were received before the closing date of the exhibition as included in attachment 5. These are summarised with responses in attachment 1. As a result of the submissions the standard of provision and calculations for the “Undeveloped Natural Areas / Open Space” and “Foreshore Open Space” have been reviewed with the Recreation Services Manager and it has been found that some items have been duplicated from the “District Open Space” and the standards and some calculations have needed adjusting. As a result the Open Space levy has reduced and the overall S94 levy reduced from \$13,111 to \$10,479 per residential lot. The proposed changes to the standards are included in Attachment No 2 and 3.

The comparison of the total proposed levy, as amended, with the current levies and other Councils are shown in attachment No 4.

In response to the Newcastle Council submission and discussion with them a future Contributions Plan is proposed to incorporate cross boundary projects in relation to Fern Bay and Stockton community facilities.

LINKS TO CORPORATE PLANS

The new draft Section 94 Plan addresses the strategic and future directions of Council’s Plan 2006-2009 in particular:

8.1.3 Build the capacity of the community to be involved with Council’s activities and decision-making.

8.2.1 Provide a range of quality, affordable and accessible facilities and services.

8.2.3 In partnership with the community, Council will enhance the capacity and opportunities for all members of the community to participate in social, economic, recreational and cultural interaction.

8.5.2 Ensure that our planning framework provides appropriate levels of housing, transport, infrastructure, human services and community facilities across all of our communities.

8.6.1 Deliver facilities and services to meet community needs now and in the future.

8.6.2 Manage facilities and services to meet community needs in a way that protects and enhances the environment and community values.

8.6.3 Ensure Council’s forward planning framework for infrastructure matches development.

8.6.4 Encourage government, business and community partnerships for effective planning, maintenance and renewal of facilities and services.

FINANCIAL/RESOURCE IMPLICATIONS

There are no additional revenue costs to Council. S94 staff will amend the accounting records and processes. As the Development Consent process for levying S94 is by automatic database there are no additional resource requirements.

The new Section 94 Plan will provide a simplified process in providing services and facilities demanded by new development.

LEGAL AND POLICY IMPLICATIONS

Selection of projects and enabling Council to obtain developer contributions must follow the requirements of Section 94 of the Environmental Planning and Assessment Act (1979) and Regulation as amended from time to time. Public notice of Council's decision is required to be placed in a local newspaper within 28 days after the decision is made and the contributions plan comes into effect on the date that public notice of its approval is given, or on a later date specified in the notice.

Australian Business Excellence Framework

This aligns with the following ABEF Principles.

- 1) Clear direction allows organisational alignment and a focus on the achievement of goals
- 2) Mutually agreed plans translate organisational direction into actions
- 3) Understanding what customers value, now and in the future, influences organisational direction, strategy and action
- 4) To improve the outcome, improve the system and its associated processes
- 5) The potential of an organisation is realised through its people's enthusiasm, resourcefulness and participation
- 6) Continual improvement and innovation depend on continual learning
- 7) All people work IN a system; outcomes are improved when people work ON the system
- 8) Effective use of facts, data and knowledge leads to improved decisions
- 9) All systems and processes exhibit variability, which impacts on predictability and performance
- 10) Organisations provide value to their community through their actions to ensure a clean, safe, fair and prosperous society
- 11) Sustainability is determined by an organisation's ability to create and deliver value for all stakeholders
- 12) Senior leadership's constant role-modelling of these principles, and creating a supportive environment in which to live these principles will help the enterprise and its people to reach their full potential

SUSTAINABILITY IMPLICATIONS

SOCIAL IMPLICATIONS

The new Section 94 Plan will assist to provide an equitable level of facilities for the increased population within the Council area including community and open space/recreational facilities.

ECONOMIC IMPLICATIONS

The new Section 94 Plan will enhance the ability to provide facilities when funds are available and reduce the burden on Council's finances.

ENVIRONMENTAL IMPLICATIONS

All projects will be assessed by Council staff for environmental implications prior to construction.

CONSULTATION

Consultation has been undertaken with Council's Developer Contributions Panel (Crs Westbury, Tucker and Jordan; staff representatives from each of Sustainable Planning, Business and Support, Facilities and Services).

The draft "Section 94 Developer Contributions Plan 2007" including the "Review of Standards Guiding the Provision of Council's Community and Recreational Facilities" was placed on Public exhibition beyond the statutory period. The document was also sent to the Urban Development Institute Australia NSW, the NSW Property Council and each Port Stephens Precinct Committee.

OPTIONS

- 1) Adopt the recommendations
- 2) Amend the recommendations

ATTACHMENTS

- 1) Summary and responses to submissions
- 2) Proposed amendments to Appendix A – standards and Part 1
- 3) Comparison of current and proposed levy with other Councils

COUNCILLORS ROOM

- 1) Submissions

TABLED DOCUMENTS

Nil.

ATTACHMENT 1

Date Recd	Submission	Summary of Comments	Response
14/5/07	No1 Email: Eric Johnson UDIA Hunter Chapter Chairman	Concerned that the draft plan will increase contributions in the Tilligerry Peninsula by \$7993 and Tomaree by \$7541.	The total S94 Levy has been reduced from \$13,111 to \$10,479 as Item No 3 below.
14/5/07	No2 letter: Craig Marler Asquith and de Witt Pty Ltd	Kingston Medowie and Kingston Ferodale have only just been made aware of the draft plan and will be making a late submission.	No submission received.
15/5/07	No3 Email: Tim Robertson UDIA NSW	Contributions – Open Space Contentends that open space needs should be determined in the context of an LGA specific Open Space Strategy rather than a standard of 3ha/1000 persons, as the latter is the adopted best management practice in an increasing number of Councils in NSW. Preparing an Open Space Strategy is an open, transparent and equitable manner in which to determine open space requirements and to inform a justifiable development contribution quantum.	Section 4.2 “Public Open Space, Parks And Reserves” of the draft document inadvertently retained the standard of the current S94 Plan. This has been amended to read “ <i>adopts standards as defined within Appendix A - ‘Review of Standards Guiding the Provision of Council’s Community and Recreational Facilities’</i> ”. A review of Appendix A sections 5.6 “Undeveloped Natural Areas / Open Space” and 5.7 “Foreshore Open Space” indicates that there is a misunderstanding in the standards and some items have been duplicated from the District Open Space. The document has been amended as shown highlighted in attachment 2. This reduces the total S94 Levy from \$13,111 to \$10,479.
		Contributions – Regional Context UDIA NSW is generally not opposed to the increases providing a justifiable and evidenced nexus, physical, casual, and/or temporal, can be demonstrated.	Appendix A is an in-depth study of base line standards required by development and together with the expenditure of the funds within the development catchments, the requirements of nexus are satisfied.
		UDIA NSW reserves its position on the increase in the quantum of the contributions until there is certainty regarding any regional levies.	No Regional levies are proposed by the State Government at this point in time.
		UDIA NSW recommends that S94 be levied under the plan that applied at the date of the submission of the application rather than at the date of determination of the application.	The proposed clause is the same as that recommended by the Department of Planning S94 Practice Notes and being introduced by all councils in new S94 Plans. The Regulations require that a contributions plan must be prepared having regard to any relevant practice notes adopted for the time being by the Director-General.
14/5/07	No4 letter: Paul Douglass ERM	ERM advise that it is the Department of Planning’s view that Port Stephens and Newcastle Council’s should consider the potential for a cross boundary plan for Fern Bay.	Discussions are underway to implement a cross boundary Plan in the future.

ORDINARY COUNCIL MEETING – 26 JUNE 2007

Date Recd	Submission	Summary of Comments	Response
14/5/07	No4 letter: Paul Douglass ERM	Concerned with the Levy increases and the negative impact for developing within the Port Stephens LGA.	The total S94 Levy has been reduced from \$13,111 to \$10,479 as Item 3 above.
15/5/07	No5 letter: Newcastle City Council	Requests that acknowledgement of cross border impacts in the Fern Bay – Stockton area be included in a revised Draft Port Stephens S94 Plan.	It is acknowledged that there will be cross border impacts. However a strategy needs to be undertaken to determine the extent of facilities required in each Local Government area and to what extent existing facilities require expanding. It is recommended that the draft document be adopted and that a further report be presented to Council when the strategy is complete.
		How does the Works Schedule correlate with the various benchmarks?	The Works Schedule complies with the requirements of nexus and legislation. Benchmarks (standards) are used to determine each project. These may be modified depending on site specific community requirements.
		Does completion of the Works Schedule ensure that residents of the various areas will, over time, be provided with facilities in accordance with the benchmarks?	Yes
		How is the physical nexus applied? For example, are contributions collected from a particular area to be expended only in that area?	Monies received from S94 are to be spent in the catchment of the category from which it is collected.

ATTACHMENT 2

APPENDIX A OF CONTRIBUTIONS PLAN - AMENDED SECTIONS SHOWN THUS
BOLD ITALIC UNDERLINE

5.6 Undeveloped Natural Areas / Open Space

Definition

Land maintained primarily for conservation and compatible passive recreation purposes. This land may be either community land that Council owns or it may be Crown land that Council has care, control and management of and which is set aside for recreation or open space purposes.

Demand, Supply and Accessibility Considerations

The following demand, supply and accessibility considerations have been identified with regards to undeveloped natural area / open space.

Table 5.29: Demand, Supply and Accessibility Considerations

Factor	Reference
Demand	
Provision by other authorities	Port Stephens Council
Conservation needs of the local area such as wildlife habitat, biodiversity, etc.	Port Stephens Council
Aesthetics of an area, or the existence of significant natural features	Port Stephens Council
Population growth rate (faster growth rate will require more land set aside)	Port Stephens Council
Tourism (eco tourism)	Port Stephens Council
Supply	
Suitability, accessibility, aesthetics and linkages of sites, bio-banking	Port Stephens Council
Accessibility	
Becomes relevant when land is associated with passive recreation	Port Stephens Council

Benchmarks

The following benchmarks have been identified for undeveloped natural areas / open space.

Table 5.30: Undeveloped Natural Area / Open Space Benchmarks

Benchmark	Reference
38.73 ha per 1,000 people	Hornsby Shire Council
4 ha per 1,000 people (includes foreshore)	Mackay City Council

Recommended Standard of Provision

Based on the above benchmarks and current natural area supply, **a standard of 2.5 hectare of undeveloped natural areas / open space for every 1,000 people is considered appropriate for the Port Stephens Council area**, with a minimum of 5 hectares per site.

Assumptions

The assumptions used in assessing cost per person are outlined in the table below.

Table 5.31: Assumptions for Construction Cost Calculations

Assumptions	Value	Measure	Comments
Size	5	ha	
<i>Support infrastructure</i>			
Boardwalk	250	m	Average width of 1 m
Signage	3	signs	
Bin receptacles	2	bins	

Cost Per Person

Using these assumptions, the estimated cost of providing undeveloped natural areas / open space are outlined in the table below (not including the cost of acquiring the land).

Table 5.32: Indicative Construction Costs

Component	Cost
Site works ^(a)	\$150,000
Boardwalk ^(b)	\$13,000
Access barriers ^(b)	\$11,000
Nest boxes ^(b)	\$1,000
Signage ^(b)	\$3,000
Bin receptacles ^(b)	\$1,000
Contingency (5%)	\$9,000
Professional fees (20%)	\$38,000
Total Cost	\$226,000

Note: (a) This includes clearing of weeds and other infestations. (b) The costs displayed in this table are sourced from unpublished data held by Port Stephens Council.

This equates to a cost per hectare of undeveloped natural area / open space (CPH) of:

$$CPH = \left(\frac{\$226,000}{5} \right) \text{ per hectare}$$

$$CPH = \$45,200 \text{ per hectare}$$

Cost Per Person (CPP)

The estimated cost per person of providing undeveloped natural area / open space:

$$CPP = \left(\frac{\$45,200}{400} \right) \text{ per person}$$

$$CPP = \$113.00 \text{ per person}$$

Public Art Component (PAC)

The public art component for this facility is estimated to be:

$$PAC = \$113.00 \times 2\% \text{ per person}$$

PAC = \$2.26 per person

Total Cost Per Person (TCPP)

The total cost per person for providing this facility is estimated to be:

$TCPP = CPP + PAC$ per person

$TCPP = \$113.00 + \2.26 per person

$TCPP = \$115.26$ per person

5.7 Foreshore Open Space

Definition

Foreshore areas maintained primarily for conservation and compatible passive recreation purposes. This land may be either community land that Council owns or it may be Crown land that Council has care, control and management of and which is set aside for recreation or foreshore open space purposes.

Demand, Supply and Accessibility Considerations

The following demand, supply and accessibility considerations have been identified with regards to foreshore open space.

Table 5.33: Demand, Supply and Accessibility Considerations

Factor	Reference
Demand	
Provision by other authorities	Port Stephens Council
Conservation needs of the local area	Port Stephens Council
Aesthetics of an area, or the existence of significant natural features	Port Stephens Council
Tourism (eco tourism)	Port Stephens Council
Supply	
Suitability, accessibility, aesthetics and linkages of sites	Port Stephens Council
Erosion	Port Stephens Council (3)
Accessibility	
Becomes relevant when land is associated with passive recreation	Port Stephens Council

Benchmarks

The following benchmarks have been identified for foreshore open space.

Table 5.34: Undeveloped Natural Area / Open Space Benchmarks

Benchmark	Reference
4 ha per 1,000 people (total open space)	Mackay City Council

Recommended Standard of Provision

Based on the above benchmark and current foreshore supply, for the Port Stephens Council area it is considered appropriate that the provision of foreshore open space be included in the provision of 1 hectare of undeveloped natural areas / open space or neighbourhood/district parkland reserve for every 4,000 people (see Sections 5.4.2 and 5.6), with the composition determined with regard to site conditions and local need.

Assumptions

The assumptions used in assessing cost per person are outlined in the table below.

Table 5.35: Assumptions for Construction Cost Calculations

Assumptions	Value	Measure	Comments
Size	1	ha	
<i>Support infrastructure</i>			
Sea wall	100	m	
Public amenities	40	sqm	
Playgrounds & equipment	10	activities	
Seating	4	benches	
Shelters	4	shelters	
BBQ and shelter	2	BBQs	
Potable water/ electricity	1	ha	
Pathways/ boardwalks	1,500	sqm	1 km of pathways/ boardwalks with average width of 1.5 m
Car parks	30	parks	
Signage	3	signs	
Bin receptacles	2	bins	

Cost Per Person

Using these assumptions, the estimated cost of providing additional facilities to that of undeveloped natural areas/open space or neighbourhood/district parkland within 1 hectare of foreshore open space is outlined in the table below.

Table 5.36: *Indicative Construction Costs* ^(a)

Component	Cost
Site works	\$10,000
Sea wall and erosion management	\$400,000
Picnic facilities	\$20,000
Pathways/ boardwalks	\$20,000
Contingency (5%)	\$22,500
Professional fees (20%)	\$90,000
Total Cost	<u>\$562,500</u>

Note: (a) The costs displayed in this table are sourced from unpublished data held by Port Stephens Council.

Cost Per Person (CPP)

The estimated cost per person of providing 1 hectare of foreshore open space is:

$$\underline{\underline{CPP = \left(\frac{\$562,500}{4,000} \right) \text{ per person}}}$$

$$\underline{\underline{CPP = \$140.63 \text{ per person}}}$$

Public Art Component (PAC)

The public art component for this facility is estimated to be:

$$\underline{\underline{PAC = \$140.63 \times 2\% \text{ per person}}}$$

$$\underline{\underline{PAC = \$2.81 \text{ per person}}}$$

Total Cost Per Person (TCPP)

The total cost per person for providing this facility is estimated to be:

$$TCPP = CPP + PAC \text{ per person}$$

$$\underline{\underline{TCPP = \$140.63 + \$2.81 \text{ per person}}}$$

$$\underline{\underline{TCPP = \$143.44 \text{ per person}}}$$

ATTACHMENT 3

AMENDMENT TO CONTRIBUTIONS CALCULATION

SECTION 4.2 PUBLIC OPEN SPACE, PARKS AND RESERVES

Calculation of Section 94 Contribution:

Appendix A - Standards Guiding the Provision of Council's Community and Recreational Facilities identifies the following costs per person of providing Public Open Space, Parks and Reserves:

Facility	Cost/Person
Local Parks and Playgrounds	\$155.55
Neighbourhood and District Parkland Reserves	\$174.17
Undeveloped Natural Areas / Open Space	<u>\$115.26</u>
Foreshore Open Space	<u>\$143.44</u>
Boat Ramps	\$71.40
Wharves	\$84.32
Total	<u>\$744.14</u>

The occupancy factor for the whole of Port Stephens is 2.6 (2001 Census).

The following formula is used for the calculation of the Section 94 contribution for Open Space & Parkland.

$$\begin{aligned}
 \text{Cost per Lot} &= \text{Cost per person x occupancy factor per household} \\
 &= \underline{\$744.14} \times 2.6 \\
 &= \underline{\$1,934.76}
 \end{aligned}$$

$$\text{Contribution} = \underline{\$1,934.76}$$

The Section 94 Contribution per additional lot or dwelling is \$1,934.76. (Note: was \$4,567)

ATTACHMENT 4

Comparison of S94 Levies for single dwelling lot

Port Stephens Council			
Current S94 Plan	Current	Proposed	Increase
Western Shire	\$5,424	\$10,479	\$5,055
Raymond Terrace	\$7,699	\$10,479	\$2,780
Medowie	\$4,935	\$10,479	\$5,544
Karuah/Swan Bay	\$4,342	\$10,479	\$6,137
Tilligerry Peninsula	\$5,570	\$10,479	\$4,909
Tomaree Peninsula	\$5,118	\$10,479	\$5,361
Rural East	\$1,930	\$10,479	\$8,549
Fern Bay	\$4,090	\$10,479	\$6,389

Council	Low	High
Baulkham Hills	\$4,339	\$32,914
Campbelltown	\$25,017	\$25,017
Port Macquarie Hastings	\$14,156	\$16,735
Lake Macquarie	\$10,559	\$15,102
Cessnock	\$2,141	\$13,581
Maitland	\$8,907	\$12,608

GENERAL MANAGER'S REPORTS

ITEM NO. 1

FILE NO: A2004-0266

MAYOR AND COUNCILLOR FEES 2007/08

REPORT OF: JUNE SHINE – EXECUTIVE MANAGER, CORPORATE MANAGEMENT

RECOMMENDATION IS THAT COUNCIL:

- 1) Determine the fees for the Mayor and Councillors for the period 1 July 2007 to 30 June 2008.

ORDINARY MEETING OF COUNCIL – 26 JUNE 2007

RESOLUTION:		
163	Councillor Nell Councillor Tucker	That the maximum allowance as set by the Local Government Tribunal be adopted for the period 1 July 2007 – 30 June 2008..

BACKGROUND

The purpose of this report is to determine the fees payable to the Mayor and Councillors for 2007/2008 financial year.

Pursuant to Section 241 of the Local Government Act 1993, the annual fees to be paid in each of the categories determined under Section 234 to Councillors and Mayors of Councils during the period 1 July 2007 to 30 June 2008.

Port Stephens Council is currently classified category 3 and the Tribunal has determined the range of fees payable as those in the following table.

	Minimum	Maximum		Minimum	Maximum
Councillor	\$6,610	\$14,540	Mayor	\$14,050	\$31,740

The Mayor receives the fee payable as a Councillor with the additional fee as the Mayor. ie. Minimum \$20,660 - Maximum \$46,280.

Council's past practice has been to pay the maximum fees as determined by the Tribunal. In 2006/07 these amounted to \$44,500 for the Mayor and \$13,980 for Councillors.

LINKS TO CORPORATE PLANS

This report is linked to the current Management Plan, which is:

Corporate Accountability – Our Council is open, transparent and accountable in its decision-making.

FINANCIAL/RESOURCE IMPLICATIONS

The 2007/08 Budget adopted by Council allowed for \$31,741 for the Mayoral Allowance and \$14539 for Councillors (\$14539 x 12 = \$174,468).

LEGAL AND POLICY IMPLICATIONS

Annual fees must be paid to Councillors and Mayors in accordance with Section 241 of the Local Government Act, 1993. Council may set the fees anywhere between the minimum and maximum determined by the Tribunal.

Australian Business Excellence Framework

This aligns with Principles 10 and 11 of the ABEF Framework.

- 10) Organisations provide value to their community through their actions to ensure a clean, safe, fair and prosperous society
- 11) Sustainability is determined by an organisation's ability to create and deliver value for all stakeholders.

SUSTAINABILITY IMPLICATIONS

SOCIAL IMPLICATIONS

The Remuneration Tribunals report again rejects the notion that Councillors and Mayors in particular should be paid commensurate to the time and commitment required to carry out their statutory functions. The Tribunal is still of the view that the primary interest of people who become councillors is local government and not remuneration. The report rejects the argument that increased fees will attract better candidates.

ECONOMIC IMPLICATIONS

The fee allows Councillors and the Mayor to effectively carry out their responsibilities as members of the Council and as community representatives without suffering financial hardship.

ENVIRONMENTAL IMPLICATIONS

Nil

CULTURAL IMPLICATIONS

Nil

CONSULTATION

General Manager
Executive Manager – Corporate Management

OPTIONS

1. Adopt the maximum allowance for the Mayor and Councillors as per the Local Government Remuneration Tribunal determinations for a Category 3 Council.
2. Choose to pay fees within the range set by the Local Government Remuneration Tribunal for category 3.

ATTACHMENTS

Nil

TABLED DOCUMENTS

Nil.

ITEM NO. 2

FILE NO: PSC2007-0803

MAKING OF RATES AND CHARGES FOR 2007/2008

AUTHOR: JEFF SMITH- FINANCIAL SERVICES, MANAGER

RECOMMENDATION IS THAT COUNCIL:

- 1) Make rates and charges for 2007/2008 in accordance with **ATTACHMENT 1**.
-

ORDINARY MEETING OF COUNCIL – 26 JUNE 2007

RESOLUTION:

164	Councillor Nell Councillor Francis	That the Recommendation be adopted.
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BACKGROUND

The purpose of this report is to make rates and charges for 2007/2008. Council is required to make its rates and charges by resolution and issue rate notices before 1 August each year. The Minister for Local Government has announced a ratepegging increase of 3.4%.

The rates and charges in attachment 1 take up the full 3.4% rate increase.

LINKS TO CORPORATE PLANS

The estimated rates and charges have been on public exhibition as part of the 2007/2011 Draft Council Plan that has been adopted by Council.

FINANCIAL/RESOURCE IMPLICATIONS

Council originally budgeted for a 3.5% ratepegging increase. The lower than anticipated 3.4% increase determined by the Minister for Local Government equates to a reduction in rate income of approximately \$28,000. Council will not need to reduce it's budget however as additional subdivision growth that has occurred since the original budget was prepared has meant this amount will be more than recouped through additional rate income for new rate assessments.

Should Council fail to make rates and charges and serve notices before 1 August 2007 then Council would not be entitled to make the first rate instalment due until 30 November, 2007 which would adversely impact on Council's cash flow and investment income. It would also impact on all ratepayers who would have both instalments 1 and 2 due on the same date.

The Minister for Local Government has approved a maximum interest rate of 10% to be applied to overdue rates and charges during 2007/2008.

LEGAL AND POLICY IMPLICATIONS

Rates must be made and levied by 31 July 2007 for the first instalment to be due on 31 August 2007. Otherwise, the first two instalments will be due together on 30 November 2007. The proposed rates and charges reflect Council's policy decisions as detailed in the Council Plan adjusted for supplementary valuations received since the Council Plan was prepared.

Council would need to obtain Ministerial approval to exceed the general ratepegging increase of 3.4%

Australian Business Excellence Framework

This aligns with the following ABEF Principles.

- 1) Clear direction allows organisational alignment and a focus on the achievement of goals
- 2) Mutually agreed plans translate organisational direction into actions
- 11) Sustainability is determined by an organisation's ability to create and deliver value for all stakeholders

SUSTAINABILITY IMPLICATIONS

SOCIAL IMPLICATIONS

Rate income will be used to fund the services outlined in the Council Plan. Rate funds used for infrastructure works and environmental programs assist in meeting community expectations. Council has maintained the relativities between farmland, residential and business rates.

ECONOMIC IMPLICATIONS

In the past Council had a target of achieving rates that were below the state average in the Business and Residential land categories however, as Council received a special variation to its rate income in 2006/2007 that target is no longer attainable for all land categories. G.10 in the Council Plan includes a key performance indicator that Council's costs to business are competitive with the region and state LGA's. The proposed rates maintain the existing relativities between residential and business rates and those rates are competitive against the state average and comparable in the region.

ENVIRONMENTAL IMPLICATIONS

Rate income used for environmental asset rehabilitation will assist environmental protection and restoration programmes. This means protecting water quality, enhancing habitat for wildlife, reducing soil erosion and better conservation of natural areas. Waterways and foreshores are particularly under pressure from the built environment and high growth.

CONSULTATION

The appropriate co-ordination and corporate consultation has taken place. The rating and charging proposals were placed on public display in the Council Plan.

OPTIONS

- 1) Accept recommendation.
- 2) Reject the recommendation.
- 3) Amend the recommendation.

ATTACHMENTS

- 1) Proposed rates and charges

COUNCILLORS ROOM

- 1) Copy - Nelson Bay Town Improvement Special Rate Map
- 2) Copy - Hunter Central Rivers Catchment Management Area Map

TABLED DOCUMENTS

- 1) Nelson Bay Town Improvement Special Rate Map
- 2) Hunter Central Rivers Catchment Management Area Map

ATTACHMENT 1

- 1) Make ordinary rates in accordance with the following schedule for 2007/2008 using 2004 land values.

Rate Type	Rate Name	Land Category Rate Applies to	Ad Valorem Rate cents in \$	Base Amount \$	% of Yield from Base Amount
Ordinary	Residential	Residential	0.2253	278.00	35%
Ordinary	Farmland	Farmland	0.2253	278.00	24%
Ordinary	Business	Business	0.7503	1,026.00	35%
Ordinary	Mining	Mining	0.7503	nil	

- 2) Make special rates in accordance with the following schedule for 2007/2008 using 2004 land values.

Rate Type	Rate Name	Land Category Rate Applies to	Ad Valorem Rate cents in \$	Base Amount \$	% of Yield from Base Amount
Special	Nelson Bay Town Improvement	All categories	0.1429	96.00	25%

The benefit area for Nelson Bay Town Improvement Rate is within the CBD at Nelson Bay as defined on the Nelson Bay Town Improvement Special Rate Map.

- 3) Levy on behalf of Hunter-Central Rivers Catchment Management Authority a catchment contribution at the rate determined by the Authority for 2007/2008 on all rateable land with a land value of \$300 or more in the defined benefit area. The defined benefit area for the catchment contribution is shown on the Hunter Central Rivers Catchment Map.
- 4) Fix the interest rate to apply to overdue rates and charges in 2007/2008 at 10.0%.
- 5) Make the following Waste Service Charges for 2007/2008.

An annual Domestic Waste Management Charge of \$52.00 under S.496 of the Local Government Act is to be levied on every rateable assessment categorised as Farmland and every Residential assessment that does not receive a S.496 Domestic Waste Service Charge.

In the case of rateable assessments categorised as Farmland, if there is more than one assessment in the same ownership and they are operated as a single entity, then the full charge of \$52.00 is to be levied on the first assessment and a \$1.00 Additional Farm Waste Management Charge is to be levied on each of the other assessments.

An annual Domestic Waste Service Charge of \$267.00 under S.496 of the Local Government Act is to be levied on every developed rateable assessment categorised as Residential or Farmland, whether occupied or unoccupied. Each additional dual 240 litre bin service will incur an annual charge of \$267.00. Each additional domestic waste service (red lid bin) will incur an annual charge of \$178.00. Each additional

recycling service (yellow lid bin) will incur an annual charge of \$89.00. An additional service is only available if the full Domestic Waste Service Charge has been levied.

An annual Waste Management Charge of \$52.00 under S.501 of the Local Government Act is to be levied on each rateable assessment categorised as Business or Mining, and every rateable assessment categorised as Residential that receives a S.496 Domestic Waste Service Charge, and every non-rateable property using the waste removal service.

An annual Waste Service Charge of \$267.00 under S.501 of the Local Government Act is to be levied on every developed rateable assessment categorised as Business or Mining, whether occupied or unoccupied, and every non-rateable property using the waste removal service. Each additional dual 240 litre bin service will incur an annual charge of \$267.00. Each additional waste service (red lid bin) will incur an annual charge of \$178.00. Each additional recycling service (yellow lid bin) will incur an annual charge of \$89.00. An additional service is only available if the full Waste Service Charge has been levied.

Domestic and Non-Domestic Waste Service Charges and Waste Management Charges commencing part way through the year are to be calculated on a pro-rata basis.

ITEM NO. 3

FILE NO: PSC 2005- 4282

TILLIGERRY CREEK CATCHMENT MANAGEMENT PLAN

REPORT OF: BRUCE PETERSEN - ENVIRONMENTAL SERVICES, MANAGER

RECOMMENDATION IS THAT COUNCIL:

- 1) Adopt the Draft Tilligerry Creek Catchment Management Plan so it can be put on public exhibition during February/March 2007.
-

ORDINARY MEETING OF COUNCIL – 26 JUNE 2007

RESOLUTION:

165	Councillor Westbury Councillor Tucker	That the Recommendation be adopted.
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BACKGROUND

The purpose of this report is seek Council’s support for the adoption of the recently completed Tilligerry Creek Catchment Management Plan so it can go on public exhibition in February for 30 days and then be finalised and implemented.

The Port Stephens/ Myall Lakes Coastal and Estuary Committee formally adopted the Tilligerry Creek Catchment Management Plan in December 2007.

In 2004 the Port Stephens/ Myall Lakes Coastal and Estuary Committee recommended the development of a catchment management plan for Tilligerry Creek. The over riding objective of the plan was to address the sustainable use of Tilligerry Creek as an important estuarine ecosystem that supports oyster harvesting, aquaculture research, tourism and recreational activities.

A consultant (Earth Tech Pty Ltd) was engaged by Council in 2005 to prepare the study.

The study found that ongoing land use pressures have resulted in a decline of habitat quality within the catchment and this has resulted in impacts on water quality, biodiversity, and adversely affected recreational and commercial activities.

The report provides a number of recommendations including:

- The need to repair and upgrade some floodgates and modify others
- The installation of trash racks, wetlands and pollutant traps in areas subject to high pollutant loads.

- Audits of catchment activities including commercial premises to monitor pollution controls on those premises.
- Better management of vegetation particularly along creek banks.
- Weed control and revegetation of degraded areas and the banks of creeks.
- Better management of stock including their removal from saltmarsh areas and from waterways.
- Buyback of marginal agricultural land to reinstate salt marsh and help provide additional fish breeding areas.
- The report did not look at septic system upgrade issues as this was the subject of other studies being undertaken by Council independently of this study.

LINKS TO CORPORATE PLANS

Links to the Council Plan Key Result Area 8.3.

FINANCIAL/RESOURCE IMPLICATIONS

To implement all of the recommendations in this report would cost Council a considerable amount. Rather than attempting to fund all recommendations, it is proposed to work on priority areas and seek State or Federal funding to address these areas over time.

A number of the priority issues identified in the report will be dealt with as part of the agricultural program that is underway at the present time.

LEGAL AND POLICY IMPLICATIONS

There are no significant legal issues arising out of this report. One area of policy that may be affected will be the management of floodgates.

Australian Business Excellence Framework

This aligns with the following ABEF Principles.

- 1) Clear direction allows organisational alignment and a focus on the achievement of goals
- 2) Mutually agreed plans translate organisational direction into actions
- 3) Understanding what customers value, now and in the future, influences organisational direction, strategy and action
- 4) to improve the outcome, improve the system and its associated processes
- 5) The potential of an organisation is realised through its people's enthusiasm, resourcefulness and participation
- 6) Continual improvement and innovation depend on continual learning

- 7) All people work IN a system; outcomes are improved when people work ON the system
- 8) Effective use of facts, data and knowledge leads to improved decisions
- 9) All systems and processes exhibit variability, which impacts on predictability and performance
- 10) Organisations provide value to their community through their actions to ensure a clean, safe, fair and prosperous society

SUSTAINABILITY IMPLICATIONS

SOCIAL IMPLICATIONS

There will be some longer term positive social outcomes associated with the recommendations in this report, particularly where water quality issues are concerned. Many recreational and commercial activities within Tilligerry Creek are affected by poor water quality including oyster farming, swimming, boating and tourism.

Improvements in the Tilligerry catchment will result in improvements in aquaculture operations, tourism related activities and recreation within the creek.

ECONOMIC IMPLICATIONS

Improvements in the quality of the Tilligerry Creek catchment will lead to economic improvements, including a positive impact on oyster farming and tourism. Often negative issues within Tilligerry Creek can have impacts outside the catchment area including negative media coverage, which then affects tourism and oyster harvesting in other parts of Port Stephens.

Land values can also be affected by the amenity of an area and it is anticipated that over time land values will increase as the quality of the Tilligerry catchment improves.

ENVIRONMENTAL IMPLICATIONS

There will be many opportunities for environmental improvements arising from this report, including the revegetation of waterways, water quality improvements, aesthetic enhancements and many more. The most significant improvements are expected to be associated with water quality, which in turn will lead to healthier waterways, increased biodiversity, and improved habitat for fish and oysters.

Many of the recommendations call for improvements in land management practices including better management of stock, the revegetation of buffer zones along waterways to address poor water quality and the installation of pollution traps and wetlands to filter faecal contaminants.

CONSULTATION

The issues raised in this report were discussed with a number of stakeholders by the consultant in the Tilligerry catchment as the report was being developed. Further consultation

MINUTES FOR ORDINARY MEETING – 26 JUNE 2007

was undertaken with the Port Stephens/ Myall Lakes Coastal and Estuary Committee and Council staff on a number of occasions.

OPTIONS

- 1) Adopt the Draft Tilligerry Creek Catchment Management Plan and place it on public exhibition during February/March 2007.
- 2) Adopt the Draft Tilligerry Creek Catchment Management Plan with changes and place it on public exhibition during February 2007.
- 3) Reject the Draft Tilligerry Creek Catchment Management Plan.

ATTACHMENTS

- 1) Executive Summary of the Draft Tilligerry Creek Catchment Management Plan

COUNCILLORS ROOM

- 1) Draft Tilligerry Creek Catchment Management Plan

TABLED DOCUMENTS

Nil

ATTACHMENT 1

**EXECUTIVE SUMMARY OF THE DRAFT TILLIGERRY CREEK CATCHMENT
MANAGEMENT PLAN**

The improved health of Tilligerry Catchment has been identified as being of high priority to Port Stephens Council by numerous studies including the Karuah River / Port Stephens Estuary Management Plan and *Urban Stormwater and Rural Water Quality Management Plan*.

Earth Tech has been commissioned by the Estuary Management Committee of Port Stephens Council to develop this Catchment Management Plan. The objectives for the plan as outlined by Port Stephens Council are:

- Research, identify and investigate the major catchment health issues
- Develop priority recommendations and management actions that are economically, socially and environmentally appropriate to the Tilligerry Creek catchment
- Ensure community acceptance and adoption of the prioritised actions through consultation and involvement in the project processes.

This Catchment Management Plan seeks to provide a clear and defensible basis for the selection of priority actions to improve the health of Tilligerry Creek Catchment to provide long-term sustainability of the system.

The Tilligerry Creek catchment lies in Port Stephens Local Government Area (LGA) and covers an area of 130km², encompassing Fullerton Cove, Bobs Farm, Williamtown, Salt Ash, Tanilba Bay and Lemon Tree Passage. Tilligerry Creek flows generally northeast across a low-lying floodplain, through a network of floodgates where it discharges to Port Stephens itself through a wide estuarine area. Tilligerry Creek is also within the proposed Port Stephens–Great Lakes Marine Park.

The dominant land uses with the catchment are agriculture on reclaimed estuarine wetland, bushland remnants, and small residential communities. Industries of significance within the catchment are tourism, oyster farming, primary production and mining. The Williamtown RAAF base/Newcastle Airport are also contained within the study area.

Acid sulfate soils within the Tilligerry Creek catchment potentially occur wherever estuarine sediments have been deposited during recent geologic history. Acid sulphate soils have the potential to impact on water quality and the aquatic ecosystem health if they are not managed appropriately.

The Tilligerry Creek catchment contains regional and locally significant vegetation communities, species and corridor linkages.

A desktop analysis was undertaken to assist in the prioritisation for field investigations and provide assessors with background information.

Condition assessments undertaken throughout the catchment over four days between 5th May and 4th August 2005. Investigations of catchment threatening processes were identified with data collected at 93 locations including seven Index of Stream Condition (ISC) sites conducted along Tilligerry Creek.

The assessments targeted catchment hotspot sites and included a rapid health assessment of Tilligerry Creek and some water quality monitoring to identify potential acid sulphate soil issues.

The catchment study highlighted the fact that ongoing land use pressures have resulted in the decline of habitat quantity and quality. The areas most affected by vegetation changes are located in the central floodplain.

Drainage, floodgates and clearing have changed the characteristics of the soil and will limit the ability to return original vegetation communities. Weeds of regional and national significance exist within the catchment.

Coastal Saltmarsh was identified as being of a high management priority within the catchment as the level of decline and susceptibility to further deterioration is considered high. Modification to the tidal regime, habitat and catchment inputs is consistent with the proposed Marine Park listing.

Overall the condition of the creek corridor would be considered poor due to a lack of terrestrial vegetation & habitat, in-stream habitat and disturbance associated with grazing. The ability for fish species to migrate and breed is limited a lack of tidal influx brought about by floodgates and in-stream habitat removal.

The literature review identified *Faecal coliform* concentrations after periods of high rainfall from septic systems were a significant problem potentially leading to the cessation of oyster farming in Zone 5B of Tilligerry Creek.

Active mangrove management is required to reduce encroachment into salt marsh. Conversely, the removal of mangroves in some locations has resulted in shoreline erosion due to continued wave action.

To address some of the pressing issues recommendations and management actions are presented below. The actions have not been listed in a single priority table as the priority is dependent on the desired outcome.

MINUTES FOR ORDINARY MEETING – 26 JUNE 2007

Priority	Water Management Actions
1	Action 7: De-regulate tidal flushing regime at Tilligerry Creek (Salt Ash)
2	Action 8: Construct wetland at Oakvale farm to treat waste
3	Action 4: Repair or replace floodgates along Marsh Road
4	Action 6: Introduce opening and closing regime for floodgates at Fullerton Cove
5	Action 9: Protect foreshore from erosion and other damage
6	Action 5: Introduce opening and closing regime for floodgates along Lemon Tree Passage Road
7	Action 3: Install trash rack at Williamtown commercial airport drainage outlet
8	Action 1: Install Gross Pollutant Trap in Tanilba Bay commercial centre
9	Action 2: Install stormwater quality treatment device and small wetland in Lemon Tree Passage industrial area
Priority	Cleaner Production Actions
1	Action 10: Audit and enforce land use maintenance practices
2	Action 11: Targeted initiative to ensure implementation of service station spill procedures
3	Action 12: Conduct compliance audit of car yards
Priority	Habitat Management Actions
1	<i>Action 13: Remove stock from saltmarsh</i>
2	<i>Action 14: Remove juvenile mangroves from saltmarsh communities</i>
3	<i>Action 15: Install Large Woody Debris to increase aquatic habitat diversity</i>
4	<i>Action 17: Strategic and co-operative control of Alligator weed</i>
5	<i>Action 18: Moving existing fences 10–20m from top of bank</i>
6	Action 16: Construct habitat enhancement boxes along central floodplain
Priority	Corridor Improvement Actions
1	Action 19: Fence and revegetate high priority corridor linkages
2	Action 20: Fence and revegetate medium priority corridor linkages
3	Action 21: Fence and revegetate low priority corridor linkages
Priority	Policy Actions
1	Action 22: LEP Amendments for unprotected bushland
2	Action 23: WSUD and biodiversity policy for all new developments
3	Action 24: Buyback marginal agricultural land and re-establish tidal influence and saltmarsh communities

CONFIDENTIAL ITEMS



In accordance with Section 10A, of the Local Government Act 1993, Council can close part of a meeting to the public to consider matters involving personnel, personal ratepayer hardship, commercial information, nature and location of a place or item of Aboriginal significance on community land, matters affecting the security of council, councillors, staff or council property and matters that could be prejudice to the maintenance of law.

Further information on any item that is listed for consideration as a confidential item can be sought by contacting Council.

ORDINARY MEETING OF COUNCIL – 26 JUNE 2007

RESOLUTION:		
166	Councillor Robinson Councillor Tucker	That Council move into Confidential Session.

RESOLUTION:		
167	Councillor Robinson Councillor Nell	That Council move into Committee of the Whole

There being no further business the Council Meeting closed at 10.05pm.

I certify that pages 1-203 of the Ordinary Minutes of Council dated 26 June 2007 were confirmed by Council at its meeting held on 24 July 2007.

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**CR RON SWAN
MAYOR**