

Minutes 16 December 2008



Minutes of Ordinary meeting of the Port Stephens Council held in the Council Chambers, Raymond Terrace on 16 December 2008, commencing at 6.01pm.

PRESENT: Councillors B. MacKenzie (Mayor); G. Dingle; S. Dover, G. Francis; P. Kafer; K. Jordan; D, Maher, J. Nell; S. O'Brien; S. Tucker, F. Ward; General Manager; Acting Group Manager, Corporate Excellence, Acting Facilities and Services Group Manager; Sustainable Planning Group Manager; Group Manager Commercial Services and Executive Officer.

RESOLUTION:

373	Councillor Ken Jordan Councillor Bruce MacKenzie	Resolved that the minutes of the Ordinary meeting of Port Stephens Council held on 27 November & 9 December 2008 be confirmed.
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RESOLUTION:

374	Councillor Bruce MacKenzie Councillor Ken Jordan	It was resolved that apologies be accepted from Cr Westbury & Cr Francis. Councillor Francis entered the meeting at 6.08pm.
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MAYORAL MINUTE

MAYORAL MINUTE

ITEM NO. 1

FILE NO:A2004-0358 PSC 2008 - 1216

RAYMOND TERRACE LOCAL AREA COMMAND – NEW POLICE STATION

THAT COUNCIL:

That Council note that the Mayor, General Manager and Group Manger Sustainable Planning will conduct urgent discussions with the property division of NSW Police – and potentially the NSW Minister for Police and the NSW Police Commissioner – in order to achieve significant improvements in the design of the proposed building for the Raymond Terrace Local Area Command.

ORDINARY MEETING – 16 DECEMBER 2008

RESOLUTION:

375	Councillor Bruce MacKenzie	There being no objection it was resolved that the Mayoral Minute be adopted.
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BACKGROUND

- 1) The United Group Services Limited and Caldis Cook Group attended Council's Development Assessment Panel meeting on 5 December 2008 for pre-lodgement discussions for the proposed new Police Station to accommodate the Raymond Terrace Local Area Command. The Development Application was formerly lodged on 10 December 2008.
- 2) It is important to emphasise Council's total support for the establishment of the Raymond Terrace Local Area Command and its location in Raymond Terrace. It is however crucially important that the building creates a "positive presence" in the Raymond Terrace Township and streetscape and as an entry statement into William Street. It is a very important "community building" in Raymond Terrace which is identified in the Lower Hunter Regional Strategy as a sub regional district centre.
- 3) The existing police station will be demolished and replaced by a building that will accommodate approximately 70 staff – only 50% of which are expected to be actually present in the building at any one time. Estimated value of the development is \$9M with a targeted completion timing during 2010. The building design has important pre-requisites in terms of security and functional relationships to the adjoining Court House.

4) However, the plans tabled at the pre-lodgement meeting with Council's Development Assessment Panel and lodged as part of a formal development application raise some significant concerns:

- The proposed building design presents essentially a blank wall to William Street rather than contributing positively to the streetscape;
- The building also has essentially a blank wall presentation to the Civic Place adjacent to the current Council administration building and this wall is proposed to be to the approximate level of the current clock on the tower structure. Height details are set out below:

The Parapet wall - Reduced Level = 16.4 (10 metres above Natural Ground Level at the clock tower) and Ridge - Reduced Level 17.6 (11.2 metres above Natural Ground Level at the clock tower).

- The site of the existing police station is listed as a heritage item of local significance in the Port Stephens Local Environmental Plan 2000. The adjoining site of the existing Court House is listed as a *state significant site* in the Port Stephens Local Environmental Plan 2000 and part of the lot on which the Court House is located is within the Raymond Terrace Heritage Conservation area. A Statement of Heritage Impact is therefore required to be lodged with the Development Application but this has not been received. The current design is considered by the Development Assessment Panel as being very unsympathetic to the heritage value of the area and the adjoining Court House.
- The building design, bulk and scale and the general relationship to "William Street streetscape", Heritage buildings and heritage Conservation area and adjoining properties is therefore of significant concern;
- Traffic/access/parking - Access arrangements and parking manoeuvring as proposed raise concerns about traffic pedestrian conflict on William Street:
 - It is suggested therefore that the potential for vehicle access provision from the rear or side of the development to reduce this conflict be strongly considered
 - No car parking is being provided for staff of the Local Area Command - the proposed design includes 17 spaces within the basement but these are for operational vehicles only. If car parking were to be provided in line with Council's Development Control Plan 2007 then 50 car parking spaces would be required. The car parking spaces on William Street adjacent to the building will be reserved for police vehicles only.

CONCLUSION

Hence whilst Council should reaffirm its strong support for the presence of the Local Area Command in Raymond Terrace the building design also needs significant improvement. The General Manager has commenced discussions with the Police Department. This Motion will reinforce the Council's concerns.

MOTIONS TO CLOSE

ITEM NO. 1

FILE NO:PSC2007-2449

MOTION TO CLOSE MEETING TO THE PUBLIC

REPORT OF: TONY WICKHAM – EXECUTIVE OFFICER

RECOMMENDATION:

- 1) That pursuant to section 10A(2)(d) (i) & 10A(2)(d)(ii) of the Local Government Act, 1993, the Committee and Council resolve to close to the public that part of its meetings to discuss Rescission Motion - Confidential Item 1 on the Ordinary agenda namely *Lease of 42 William St, Raymond Terrace Part Lot 104 in DP 583648 known as Shop 15 & 16 Terrace Shopping Village.*
- 2) That the reasons for closing the meeting to the public to consider this item be that the report and discussion will include details of commercial information of a confidential nature that would, if disclosed,
 - a) prejudice the commercial position of the person who supplied it
 - b) confer a commercial advantage on a competitor of the Council.
- 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 it may prejudice Council's commercial position and Council should have the same protection for its confidential commercial activities as that applying to other persons.
- 4) That the minutes of the closed part of the meeting are to be made public as soon as possible after the meeting and the report is to remain confidential.

ORDINARY MEETING – 16 DECEMBER 2008

RESOLUTION:

376	Councillor John Nell Councillor Daniel Maher	It was resolved that the recommendation be adopted.
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**OPERATIONS
COMMITTEE
RECOMMENDATIONS**

ITEM NO. 1

FILE NO: A2004-0818

TRANSFER OF LAND - LOT 402 DP 753204, KNOWN AS TOM O'DWYER OVAL, NELSON BAY

REPORT OF: CARMEL FOSTER – COMMERCIAL PROPERTY MANAGER

RECOMMENDATION IS THAT COUNCIL:

- 1) Accepts the transfer of Lot 402 DP 753204 at Nelson Bay from NSW Department of Education and Training for the nominal consideration of one dollar.
 - 2) Classifies the above lot as COMMUNITY land.
 - 3) Grants authority to affix Councils' Seal to the required legal documents.
-

OPERATIONS COMMITTEE – 9 DECEMBER 2008

RECOMMENDATION:

Councillor Frank Ward Councillor Bob Westbury	That the recommendation be adopted.
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ORDINARY MEETING – 16 DECEMBER 2008

RESOLUTION:

377	Councillor John Nell Councillor Ken Jordan	It was resolved that the recommendation be adopted.
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BACKGROUND

The purpose of this report is to recommend the transfer of Lot 402 DP 753204 to Council from NSW Department of Education and Training for a nominal sum of one dollar.

The subject land previously formed part of the former high school at Nelson Bay and was utilised as playing fields. The NSW Department of Education and Training (DET) no longer require the land as the school has been relocated. Following negotiations between Council and DET, it was agreed to transfer the whole parcel to Council for one dollar, Council will be responsible for the legal costs associated with the transfer. The transfer of the land will be subject to a restrictive covenant stating that the property cannot be used for non-government school purposes. A positive covenant will require the land to be used for Community purposes only, which is compatible with the use of the adjoining Council owned land which is currently used for passive recreation.

Negotiations for the transfer have been underway for approximately 5 years and this report will finalise the process and transfer between both parties. It should be noted that the subject land is a critical component in the drainage solution relating to the Seabreeze Estate. Prior to finalisation of the transfer, DET granted permission for the construction of a detention basin on the subject land to enable Council to comply with its obligations in this regard. Construction of the detention basin is now complete.

An option for future use of the site is for the construction of tennis courts. This is consistent with a possible relocation of the Nelson Bay tennis courts in the future. Preliminary discussion with club executive has occurred on this issue and there are a range of benefits that could be derived from this for Council and the community.

LINKS TO CORPORATE PLANS

The links to the 2008-2012 Council Plan are:-

- | | |
|--------------------------------|---|
| SOCIAL SUSTAINABILITY – | <i>Council will preserve and strengthen the fabric of the community, building on community strengths.</i> |
| ENVIRONMENTAL | <i>Council will protect and enhance the environment while</i> |
| SUSTAINABILITY – | <i>considering the social and economic ramifications of decisions.</i> |

FINANCIAL/RESOURCE IMPLICATIONS

The transfer costs will be approximately \$250.

There will be recurrent expenses for the ongoing maintenance of the area. This has not yet been costed but will be considered in as part of the 2009/10 budgeting process. Costs for the current year will be absorbed in the existing parks maintenance budget via re-allocations.

The drainage maintenance budget will fund the ongoing maintenance of the detention pond and the parks maintenance budget will fund the maintenance of the remainder of the site in the interim before the site is redeveloped.

LEGAL AND POLICY IMPLICATIONS

The transfer of this land allows Council to comply with the terms of the judgement handed down in relation to the Seabreeze Estate legal case. This component is critical to the resolution of this matter.

Business Excellence Framework

Port Stephens Council is a quality driven organisation. We use the Business Excellence Framework as a basis for driving organisational excellence. The Framework is an integrated leadership and management system that describes elements essential to organisational excellence. It is based on eight (8) principles.

These outcomes align with the following Business Excellence principles:-

- 1) **LEADERSHIP** – *Lead by example, provide clear direction, build organisational alignment and focus on sustainable achievement of goals.*
- 2) **CUSTOMERS** – *Understand what markets and customers value, now and into the future, and use this to drive organisational design, strategy, products and services.*
- 3) **SYSTEMS THINKING** – *Continuously improve the system.*

SUSTAINABILITY IMPLICATIONS

SOCIAL IMPLICATIONS

Development of the land for additional recreational and community activities will enhance the overall amenity of the area and provide additional community and recreational facilities.

ECONOMIC IMPLICATIONS

Nil

ENVIRONMENTAL IMPLICATIONS

The transfer of the land will allow Council to continue to improve the drainage system for the surrounding area.

CONSULTATION

NSW Department of Education and Training,
Facilities & Service Staff
Recreation Services Manager
Property Section Manager
Principal Property Advisor

OPTIONS

- 1) Accept transfer of land.
- 2) Reject Proposal from owner.

ATTACHMENTS

- 1) Location Map
- 2) Public Positive Covenant

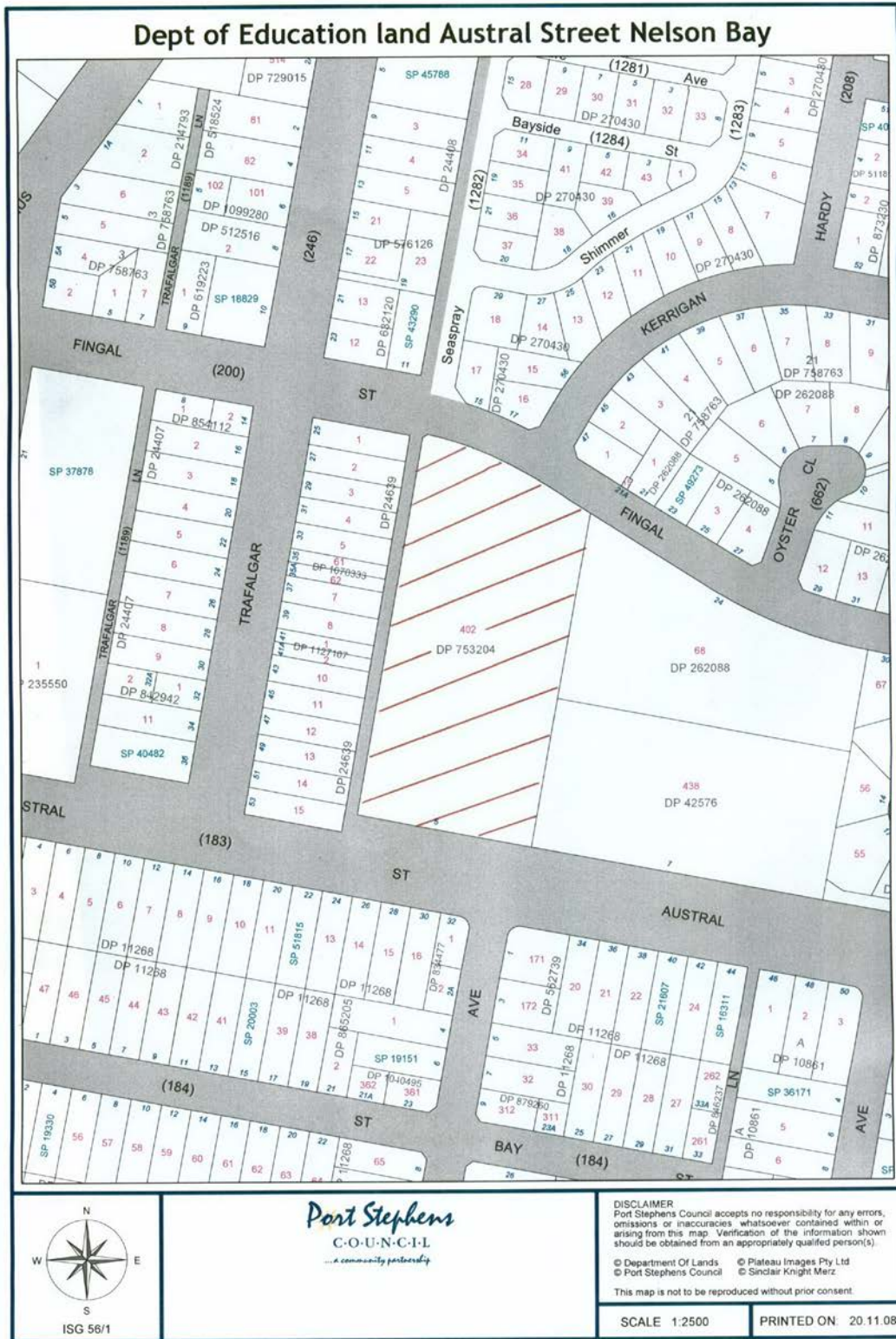
COUNCILLORS ROOM

- 1) Nil

TABLED DOCUMENTS

- 1) Nil

ATTACHMENT 1



ATTACHMENT 2

Form: 11R
 Licence: 05-11-683
 Licensee: Softdocs
 Makinson & d'Apice Lawyers

REQUEST
 New South Wales
 Real Property Act 1900

Leave this space clear. Affix additional pages to the left-hand corner.

PRIVACY NOTE: Section 31B of the Real Property Act 1900 (RP Act) authorises the Registrar General to collect the information required by this form for the establishment and maintenance of the Real Property Act Register. Section 96B RP Act requires that the Register is made available to any person for search upon payment of a fee, if any.

(A) **STAMP DUTY** If applicable. Office of State Revenue use only

(B) **FOLIO OF THE REGISTER** 402/753204

(C) **REGISTERED DEALING**

Number	Folio of the Register
--------	-----------------------

(D) **LODGED BY**

Document Collection Box 557V	Name, Address or DX, Telephone, and LLPN if any LLPN: 557V MAKINSON & D'APICE DX 296 SYDNEY Tel: 02 9233 7788 Reference (optional): NBM:AXS:81789	CODE R
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(E) **APPLICANT** MINISTER FOR EDUCATION AND TRAINING

(F) **NATURE OF REQUEST** Record Public Positive Covenant

Section 88D Conveyancing Act 1919

(G) **TEXT OF REQUEST** The Applicant being a prescribed authority within the meaning of s 88D(1) of the Conveyancing Act 1919 and being the registered proprietor of the Land pursuant to the provisions of the Education Act 1990 hereby applies to have a recording made in the register of a public positive covenant, the terms of which are specified in the Order dated (a true copy of which is annexed hereto and marked "A") and which affects the Land.

DATE / /

(H) I certify that the person(s) signing opposite, with whom I am personally acquainted or as to whose identity I am otherwise satisfied, signed this instrument in my presence.

Certified correct for the purposes of the Real Property Act 1900 by the authorised officer named below.

Signature of witness:

Signature of authorised officer:

Name of witness:

Authorised officer's name:

Address of witness:

Authority of officer: Delegate of the Minister for Education and Training, Verity Firth pursuant to section 125 of the Education Act 1990
 Signing on behalf of: New South Wales, Department of Education & Training

ATTACHMENT 2

Annexure A to REQUEST

Parties: By MINISTER FOR EDUCATION AND TRAINING

Dated:/...../.....

ORDER

Order made the _____ day of _____ 2008 by THE HONORABLE VERITY FIRTH Minister for Education and Training for the State of New South Wales IN PURSUANCE of section 88D(2) Conveyancing Act 1919.

I, THE Minister for Education and Training do, by this my Order, make an order that the Land described in Schedule One hereto be subject to a public positive covenant, particulars of which are specified in Schedule Two hereto. The Prescribed Authority in which the land is vested is the Minister for Education and Training.

Signed by me

As delegate of the Minister for Education and Training, Verity Firth pursuant to section 125 of the Education Act 1990 and I hereby certify that I have no notice of revocation of such delegation

as delegate of Verity Firth
Minister for Education and Training

SCHEDULE ONE*

ALL THAT piece of parcel of land located at Nelson Bay in the Local Government Area of Port Stephens, Parish of Tomaree, Country of Gloucester being Lot 402 in DP753204 being the whole of the land comprised in certificate of title folio identifier 402/753204.

SCHEDULE TWO

A public positive covenant that the Land described in Schedule One hereto will:

- (a) be classified as community land within the meaning of the Local Government Act 1993 and will remain so classified and that all other requirements of the Local Government Act 1993 in relation to community land will be met in relation to Land;
- (b) not be reclassified as operational land;
- (c) not be sold or otherwise transferred without the consent of the Minister for Education and Training or otherwise of the Minister administering the Education Act 1990 ; and
- (d) be used only for public recreational purposes.

ITEM NO. 2

FILE NO: PSC2005-3533

355(B) COMMITTEE CONSTITUTION AMENDMENT

REPORT OF: JASON LINNANE - RECREATION SERVICES MANAGER

RECOMMENDATION IS THAT COUNCIL:

- 1) Adopt the amendment to the Boat Harbour Parks & Reserves Committee Constitution Schedule.

OPERATIONS COMMITTEE – 9 DECEMBER 2008**RECOMMENDATION:**

Councillor Bob Westbury Councillor John Nell	That the recommendation be adopted.
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ORDINARY MEETING – 16 DECEMBER 2008**RESOLUTION:**

378	Councillor Ken Jordan Councillor Geoff Dingle	It was resolved that the recommendation be adopted.
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BACKGROUND

The purpose of this report is to recommend to Council the adoption of the amendment to the Constitution Schedule of the Boat Harbour Parks & Reserves Committee.

355(b) Committee Constitutions consist of the Standard 355(b) Committee Constitution, adopted by Council, 24 June 2003, Minute No 251, and a customised Schedule of each committee's individual activities. Council must approve any amendments to a committee's Constitution Schedule.

Boat Harbour Parks & Reserves Committee has requested an amendment to their Constitution Schedule to allow their membership numbers to increase to provide the opportunity for additional community members to participate in committee activities

Proposed Change to Item 7 of Boat Harbour Parks & Reserves Committee Constitution Schedule – increase the membership from nine members to fourteen.

Current	Proposed
Item 7 Maximum number and make up of committee members – up to 9 interested community members.	Item 7 Maximum number and make up of committee members – up to 14 interested community members.

LINKS TO CORPORATE PLANS

The links to the 2008-2012 Council Plan are:-

- SOCIAL SUSTAINABILITY –** *Council will preserve and strengthen the fabric of the community, building on community strengths.*
- CULTURAL SUSTAINABILITY –** *Council will assist to inspire a sense of pride and place as well as enhancing quality of life and defining local identity.*
- ECONOMIC SUSTAINABILITY –** *Council will support the economic sustainability of its communities while not compromising its environmental and social well being.*
- ENVIRONMENTAL SUSTAINABILITY –** *Council will protect and enhance the environment while considering the social and economic ramifications of decisions.*
- BUSINESS EXCELLENCE –** *Council will use the Business Excellence Framework to innovate and demonstrate continuous improvement leading to long-term sustainability across operational and governance areas in a Business Excellence Journey*

FINANCIAL/RESOURCE IMPLICATIONS

Nil

LEGAL AND POLICY IMPLICATIONS

Under Section 355(b) of the Local Government Act, 1993, Council may exercise its functions itself or by delegation to another person or persons. Council must approve the constitution and any amendments to the constitution of such delegated committees.

The constitution of the Boat Harbour Parks & Reserves Committee consists of the Standard 355(b) Committee Constitution adopted by Council 34 June 2003, Minute No 251 and a Customised Schedule of the committee's individual activities.

Amendments to individual committee constitution schedules do not affect the Standard 355(b) Committee Constitution, which remains in place unless amended by Council.

Business Excellence Framework

Port Stephens Council is a quality driven organisation. We use the Business Excellence Framework as a basis for driving organisational excellence. The Framework is an integrated leadership and management system that describes elements essential to organisational excellence. It is based on eight (8) principles.

These outcomes align with the following Business Excellence principles:-

- 1) **LEADERSHIP** – *Lead by example, provide clear direction, build organisational alignment and focus on sustainable achievement of goals.*
- 2) **CUSTOMERS** – *Understand what markets and customers value, now and into the future, and use this to drive organisational design, strategy, products and services.*
- 3) **SYSTEMS THINKING** – *Continuously improve the system.*
- 4) **PEOPLE** – *Develop and value people's capability and release their skills, resourcefulness and creativity to change and improve the organisation.*
- 5) **CONTINUOUS IMPROVEMENT** – *Develop agility, adaptability and responsiveness based on a culture of continual improvement, innovation and learning.*
- 6) **INFORMATION AND KNOWLEDGE** – *Improve performance through the use of data, information and knowledge to understand variability and to improve strategic and operational decision making.*
- 7) **CORPORATE AND SOCIAL RESPONSIBILITY** – *Behave in an ethically, socially and environmentally responsible manner.*
- 8) **SUSTAINABLE RESULTS** – *Focus on sustainable results, value and outcomes.*

SUSTAINABILITY IMPLICATIONS

SOCIAL IMPLICATIONS

Council establishes community committees to undertake projects, to provide a link between Council and the community and to assist in the care of parks, sporting facilities, reserves, and services. This is part of Council's commitment to community partnerships and provides opportunities for the community to be involved with the management of the facilities they use.

The Boat Harbour Parks & Reserves Committee provides opportunities for community participation in the Boat Harbour area.

ECONOMIC IMPLICATIONS

The activities and projects undertaken by committees are often those not financially possible for Council without volunteer assistance.

ENVIRONMENTAL IMPLICATIONS

The Boat Harbour Parks & Reserves Committee operates under direction from Council staff to ensure their activities are performed in accordance with recognised practices that may provide long term benefits to the environment. Under the Volunteer Strategy Framework the focus of the committee will be on achievable and sustainable environmental projects.

CONSULTATION

Boat Harbour Parks & Reserves Committee
Volunteer Strategy Co-ordinator
Parks Facilities Co-ordinator
Community Support Officer

OPTIONS

- 1) As per recommendation
- 2) Reject/amend constitution change

ITEM NO. 3

FILE NO: A2004-0323

PRESENTATION OF 2007/2008 FINANCIAL REPORTS**REPORT OF: CHRIS BRICE – ACTING FINANCIAL SERVICES MANAGER****RECOMMENDATION IS THAT COUNCIL:**

- 1) Present the audited financial reports, together with the Auditor's reports for the year ended 30 June 2008 to the public as a public document at the 16 December 2008 Council Meeting.
- 2) Refer to Council's Auditor for comment, any submissions received within 7 days of this meeting which are in respect of the reports, after which, a report in respect of the submissions be presented to Council for consideration.

OPERATIONS COMMITTEE – 9 DECEMBER 2008**RECOMMENDATION:**

Councillor Glenys Francis Councillor Shirley O'Brien	That the recommendation be adopted.
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ORDINARY MEETING – 16 DECEMBER 2008**RESOLUTION:**

379	Councillor John Nell Councillor Ken Jordan	It was resolved that the recommendation be adopted.
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MATTER ARISING:

380	Councillor Ken Jordan Councillor Daniel Maher	It was resolved that Council: <ol style="list-style-type: none">1) Thank Statewide Mutual regarding the announcement of the funding surrounding the Swan Bay aircraft noise matter.2) Acknowledge Statewide Mutual to the LGSA regarding this matter.
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BACKGROUND

The purpose of this report is to advise Council that its external auditor, PriceWaterhouseCoopers, has completed the audit of Council's accounts for the year ended 30 June 2008 and has furnished the necessary audit reports..

In compliance with the Act, copies of the reports will be forwarded to the Department of Local Government and the Australian Bureau of Statistics.

The Act also requires that Council give public notice of its intention to present the financial reports to the public as a public document. Public notice has been given.

LINKS TO CORPORATE PLANS

The links to the 2008-2012 Council Plan are:-

BUSINESS EXCELLENCE – *Council will use the Business Excellence Framework to innovate and demonstrate continuous improvement leading to long-term sustainability across operational and governance areas in a Business Excellence Journey*

FINANCIAL/RESOURCE IMPLICATIONS

A complete copy of the financial and audit reports have been forwarded under separate cover.

LEGAL AND POLICY IMPLICATIONS

The presentation to the public of the Financial reports and Auditor's report as a public document and the acceptance and subsequent referral of any submissions, satisfies the requirements of the Local Government Act and Regulations

Business Excellence Framework

Port Stephens Council is a quality driven organisation. We use the Business Excellence Framework as a basis for driving organisational excellence. The Framework is an integrated leadership and management system that describes elements essential to organisational excellence. It is based on eight (8) principles.

These outcomes align with the following Business Excellence principles:-

- 6) **INFORMATION AND KNOWLEDGE** – *Improve performance through the use of data, information and knowledge to understand variability and to improve strategic and operational decision making.*
- 8) **SUSTAINABLE RESULTS** – *Focus on sustainable results, value and outcomes.*

SUSTAINABILITY IMPLICATIONS

SOCIAL IMPLICATIONS

Completion of the annual financial statements provide Council with the information needed to assist in prudent financial management and decision making which will have a positive social impact on the community.

ECONOMIC IMPLICATIONS

The annual financial statements provide Council with the information needed to assist in the efficient allocation of resources so that the community benefits from effective decision-making.

ENVIRONMENTAL IMPLICATIONS

The annual financial statements provide Council with the information needed to assist in the effective management of resources which will ensure that sufficient funds are available for Council to meet its environmental responsibilities.

CONSULTATION

PriceWaterhouseCoopers, Council's external auditor, provided advice and guidance on accounting concepts and standards, and changes to the Code of Accounting Practice prior to and during the compilation of the reports and external audit.

OPTIONS

- 1) Accept the recommendations
- 2) Amend the recommendations.

ATTACHMENTS

Nil

COUNCILLORS ROOM

Nil

TABLED DOCUMENTS

- 1) 2008 Annual Financial Reports and Special Schedules

ITEM NO. 4

FILE NO: PSC2005-0629

PROPOSED AMENDMENTS TO CONSTITUTION SCHEDULE OF ABORIGINAL STRATEGIC COMMITTEE

REPORT OF: TREVOR ALLEN - INTEGRATED PLANNING MANAGER

RECOMMENDATION IS THAT COUNCIL:

- 1) Adopt the amended Constitution Schedule for Council's Aboriginal Strategic Committee as shown in **Attachment 1** of this report.

OPERATIONS COMMITTEE – 9 DECEMBER 2008

RECOMMENDATION:

Councillor John Nell Councillor Ken Jordan	That the recommendation be adopted.
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ORDINARY MEETING – 16 DECEMBER 2008

RESOLUTION:

381	Councillor Ken Jordan Councillor Shirley O'Brien	It was resolved that the recommendation be adopted.
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BACKGROUND

The purpose of this report is to recommend that Council adopt the updated **Constitution Schedule to Council's S355(b) Aboriginal Strategic Committee (ASC)**.

Council's ASC have reviewed the Schedule to its Constitution to ensure it continues to reflect the roles, functions and operations of the ASC. This has resulted in some minor revisions as shown in bold italics in **Attachment 1**.

LINKS TO CORPORATE PLANS

The links to the 2008-2012 Council Plan are:-

SOCIAL SUSTAINABILITY – *Council will preserve and strengthen the fabric of the community, building on community strengths.*

CULTURAL SUSTAINABILITY – *Council will assist to inspire a sense of pride and place as well as enhancing quality of life and defining local identity.*

ENVIRONMENTAL *Council will protect and enhance the environment*

SUSTAINABILITY – *while considering the social and economic ramifications of decisions.*

FINANCIAL/RESOURCE IMPLICATIONS

There are no financial implications.

LEGAL AND POLICY IMPLICATIONS

Under Section 355(b) of the Local Government Act, 1993, Council may exercise its functions itself or by delegation to another person or persons. Council must approve the constitution and any amendments to the constitution of such delegated Committees.

The Constitution of the Aboriginal Strategic Committee consists of the Standard 355(b) Committee Constitution adopted by Council 24 June 2003, Minute No 251 and a customised Schedule of the Committee's individual activities. Amendments to individual Committee Constitution Schedules do not affect the Standard 355(b) Committee Constitution, which remains in place unless amended by Council.

Business Excellence Framework

Port Stephens Council is a quality driven organisation. We use the Business Excellence Framework as a basis for driving organisational excellence. The Framework is an integrated leadership and management system that describes elements essential to organisational excellence. It is based on eight (8) principles.

These outcomes align with the following Business Excellence principles:-

- 1) **LEADERSHIP** – *Lead by example, provide clear direction, build organisational alignment and focus on sustainable achievement of goals.*
- 2) **CUSTOMERS** – *Understand what markets and customers value, now and into the future, and use this to drive organisational design, strategy, products and services.*
- 7) **CORPORATE AND SOCIAL RESPONSIBILITY** – *Behave in an ethically, socially and environmentally responsible manner.*

SUSTAINABILITY IMPLICATIONS

SOCIAL IMPLICATIONS

ECONOMIC IMPLICATIONS

ENVIRONMENTAL IMPLICATIONS

CONSULTATION

The proposed revisions have been formulated in consultation with Council's Aboriginal Strategic Committee and with Council's Volunteer Strategy Co-ordinator who coordinates Council's S355 Committees.

OPTIONS

- 1) To accept the recommendation
- 2) To reject the recommendation and call for more information

ATTACHMENTS

- 3) Updated Schedule to Constitution of Aboriginal Strategic Committee

COUNCILLORS ROOM

- 2) Nil

TABLED DOCUMENTS

- 1) Nil

**ATTACHMENT 1
SCHEDULE TO CONSTITUTION
OF ABORIGINAL STRATEGIC COMMITTEE**

Item 1	Name of Committee	Aboriginal Strategic Committee
Item 2	Name of Council Team	<i>Integrated Planning</i>
Item 3	Functions delegated by Council to committee	<ol style="list-style-type: none"> 1) To advise Council in relation to issues of concern between Council and the Aboriginal community, 2) To promote a positive public image with respect to issues for Aboriginal people in Port Stephens, 3) To provide a consultative mechanism with respect to development issues, 4) To improve relations between the Aboriginal and non Aboriginal community of Port Stephens, 5) To exchange information between the Aboriginal community and Council on issues affecting Aboriginal people, 6) To promote mutual awareness and respect for the cultures of both Aboriginal and non Aboriginal communities, and 7) To promote an increased awareness of the needs of Aboriginal communities and to assist with the development of programs to address those needs where possible and appropriate.
Item 4	Restrictions on functions delegated	The committee may only resolve to undertake actions outlined within this constitution.
Item 5	Policies, legislation the committee is required to comply with	<p>Principle policies & legislation include:</p> <p>OH&S, 2000 OH&S Regulations, 2001 Local Government Act & Regulations 1993 PIPA 1988 Code of Conduct Code of Meeting Practice Accessing Information Policy Child Protection Policy Volunteers Policy</p>

ORDINARY MINUTES – 16 DECEMBER 2008

Item 6	Date on which constitution concludes	September of Council Election each four years. Council to re adopt constitution within three months following election.
Item 7	Maximum number and make up of committee members	<p>8) The Committee is to consist of up to eleven (11) Aboriginal Community Representatives.</p> <p>9) The Committee is to also consist of the following ex-officio members: the Manager Sustainable Planning, or their delegates.</p> <p>10) Decisions of the Committee shall be by consensus.</p> <p>11) Non members may attend meetings of the Committee and may speak to the Committee <i>by invitation only</i>.</p> <p>12) Aboriginal Community members will be nominated according to the following formula:-</p> <p>a) Three representatives nominated by the Karuah Local Aboriginal Land Council (LALC),</p> <p>b) Three representatives nominated by the Worimi LALC,</p> <p>c) Two elders nominated jointly by the Karuah and Worimi LALC's.</p> <p>13) Casual vacancies may be filled by the Committee according to the formula outlined above.</p>
Item 8	Councillors	As resolved by Council.
Item 9	Council employees	<i>To be determined by the General Manager</i>
Item 10	Name of financial institution and type of account	Not applicable
Item 11	Name of any account operated by the committee	Not applicable
Item 12	Area assigned to committee and/or map	Not applicable
Item 13	Additional clauses or amendments to Standard Constitution or Schedule.	<p>AMENDMENTS TO STANDARD CONSTITUTION</p> <p>The Aboriginal Strategic Committee is an Advisory Committee which means that some clauses of the Standard 355(b) Committee Constitution require</p>

	<p><i>To be listed in full - body of constitution not to be altered.</i></p>	<p>amendment to reflect the operation of the committee.</p> <p>The general operating functions of the Aboriginal Strategic Committee are undertaken by Council Officers.</p> <p>Clause 4. Functions of the Committee</p> <p>4.7 Confidentiality And Conflict Of Interest According to Councils Code of Conduct:- "A conflict of interest arises if a person with a private or personal interest could be influenced in the performance of his or her public or professional duties".</p> <p>4.7 a) Committee members are to declare any conflicts of interest at the commencement of the meeting or as the relevant item is raised in General Business.</p> <p>4.7 b) Conflicts of interest will be noted reported in minutes and the Chairperson may request the parties involved to leave the room while the matter is decided.</p> <p>4.7 c) A majority of members may decide at any time to close the meeting and begin confidential discussions. Participants excluded from the meeting should be provided with reasons for moving into confidential session.</p> <p>4.7 d) Breach of confidentiality is grounds for dismissal.</p> <p>Clause 7 The Executive – not applicable</p> <p>Clause 9 Meetings <i>The following sub clauses replace the same numbered sub clauses in the Standard 355 (b) Constitution.</i></p> <p>9.1 The Committee will be chaired by the Mayor or their nominee.</p> <p>a) Meetings will be held at the Port Stephens Council Administration Building, but can be held at other community venues as appropriate.</p> <p>b) All agenda items to be submitted prior to the meeting.</p> <p>9.3</p>
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ORDINARY MINUTES – 16 DECEMBER 2008

		<p>Ordinary meetings shall comprise of separate bi-monthly meetings alternating between Karuah and Worimi Local Aboriginal Land Councils.</p> <p>At all ordinary meetings with the Karuah Local Aboriginal Land Council, four members consisting of three nominated representatives from the Karuah Local Aboriginal Land Council (LALC), and one Councillor shall constitute a quorum.</p> <p>At all ordinary meetings with the Worimi Local Aboriginal Land Council, four members consisting of three nominated representatives from the Worimi Local Aboriginal Land Council (LALC), and one Councillor shall constitute a quorum.</p> <p style="padding-left: 40px;">The committee shall hold ordinary meetings at least six times a year at a time and frequency to be determined by the committee.</p> <p>Clauses 10 Finances, 11 Records, 12 Reports <i>Not applicable</i></p> <p><i>The Social Planning Co-ordinator shall be responsible for the correct recording of all proceedings of the Committee, conduct all correspondence on behalf of the Committee, the receipt of monies and payments of accounts and all other things necessary for the proper control of the Committee's affairs.</i></p>
Item 14	Changes to constitution or Schedule – Adopted by Council: Meeting Date: Minute No: Resolution:	N/A Adopted by Council 24 th April 2007 Min No.

ITEM NO. 5

FILE NO: PSC2006-6510

BUILDING OVER EASEMENT POLICY

REPORT OF: SCOTT ANSON –DEVELOPMENT & BUILDING MANAGER

RECOMMENDATION IS THAT COUNCIL:

- 1) Endorse the assessment principles relating to building over easements contained in this report,
- 2) Request the Manager, Development & Building to provide a further report to Council within six (6) months.

OPERATIONS COMMITTEE – 9 DECEMBER 2008

RECOMMENDATION:

Councillor Bob Westbury Councillor Ken Jordan	That the recommendation be adopted.
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ORDINARY MEETING – 16 DECEMBER 2008

RESOLUTION:

382	Councillor Ken Jordan Councillor Steve Tucker	It was resolved that the recommendation be adopted.
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Councillor Glenys Francis entered the meeting at 6.08pm prior to Item 6

BACKGROUND

The purpose of this report is to outline Council’s approach to building over easements and to obtain Council endorsement in relation to the principles applied where building over easements are proposed.

In response to a Notice of Motion (NOM) to develop a policy on building over easements, Council contacted other Hunter Councils to determine how other local government authorities address the issue.

Based on Council’s enquiries, there are various approaches to building over easements. It appears that Dungog, Great Lakes, Maitland, Newcastle and Singleton Councils do not allow building over easements.

In the absence of a specific policy, Cessnock Council, in general, do not allow building over easements but consider proposals on their individual merit. In these

instances, approval is granted subject to a legal agreement indemnifying Council if Council needs to do any works in the easement.

It is understood that Lake Macquarie Council has a draft policy addressing building over easements. The policy is introduced as follows:

“Council would prefer private works not to encroach into easements. However where, in Council’s view, no reasonable alternative can be found, approval may be given for the construction of private works that encroach into easements.

Council may control and regulate any private works in easements and immediately next to easements and only provide approvals after considering each application on its merits. If approval is given, Council may set conditions on any private works.”

The draft policy provides coverage for buildings, driveways, garages and carports. Each application is considered on its merits. Recent enquiries of Lake Macquarie Council confirmed that the draft Policy has not been adopted.

OTHER AGENCIES

It is noted that Hunter Water Corporation permits development over sewer and water main easements (including zone of influence) in certain circumstances. In these instances, Hunter Water requires an engineering assessment by a suitably qualified person recommending appropriate measures proposed to protect the infrastructure from damage. Measures may include special foundation requirements, realignment of pipes or engineered encasement.

SUMMARY OF OPTIONS

- 1 Do not allow building over easements
- 2 Consider proposals to build over easements on their individual merits including an agreement indemnifying Council if Council needs to do works in the easement.
- 3 Prepare a detailed policy framework for building over easements.

DISCUSSION OF OPTIONS

A blanket prohibition on building over easements is very clear, avoids ambiguity and streamlines development assessment. Alternatively, if Council wishes to entertain options for building over easements development assessment is potentially complicated and delayed. A blanket approach may also result in unintended consequences where reasonable, practical steps or works undertaken by the proponent could overcome future construction and/or access issues and optimise the use of land.

PREFERRED APPROACH FOR PORT STEPHENS LOCAL GOVERNMENT AREA

The preferred approach within the Port Stephens Local Government Area (LGA) has been to avoid building over easements wherever practical. In instances where building over easements has been considered unavoidable and/or reasonable the following principles have been applied:

- (a) Overland flows to generally follow alignment of pipe systems
- (b) Lightweight structures capable of being dismantled are preferred
- (c) Paving in preference to concrete slabs
- (d) Limited to outbuildings (detached structures)

This report also proposed to include:

- (e) Proponent to provide engineering assessment by a suitable qualified person recommending appropriate measures proposed to protect the infrastructure from damage. Measures may include special foundation requirements, realignment of pipes or engineered encasement
- (f) Proponent to provide indemnification to Council if Council needs to do work within the easement; and

- (g) Council is not responsible to remove or reinstate any structures required to enable work to be undertaken by Council in the easement.

LINKS TO CORPORATE PLANS

The links to the 2008-2012 Council Plan are:-

- SOCIAL SUSTAINABILITY –** *Council will preserve and strengthen the fabric of the community, building on community strengths.*
- CULTURAL SUSTAINABILITY –** *Council will assist to inspire a sense of pride and place as well as enhancing quality of life and defining local identity.*
- ECONOMIC SUSTAINABILITY –** *Council will support the economic sustainability of its communities while not compromising its environmental and social well being.*
- ENVIRONMENTAL SUSTAINABILITY –** *Council will protect and enhance the environment while considering the social and economic ramifications of decisions.*
- BUSINESS EXCELLENCE –** *Council will use the Business Excellence Framework to innovate and demonstrate continuous improvement leading to long-term sustainability across operational and governance areas in a Business Excellence Journey*

FINANCIAL/RESOURCE IMPLICATIONS

Nil

LEGAL AND POLICY IMPLICATIONS

The draft policy will provide clear advice and direction to applicants and assist assessment and assist officers to consistently consider requests to build over Council easements.

Business Excellence Framework

Port Stephens Council is a quality driven organisation. We use the Business Excellence Framework as a basis for driving organisational excellence. The Framework is an integrated leadership and management system that describes elements essential to organisational excellence. It is based on eight (8) principles.

These outcomes align with the following Business Excellence principles:-

- 1) **LEADERSHIP** – *Lead by example, provide clear direction, build organisational alignment and focus on sustainable achievement of goals.*
- 2) **CUSTOMERS** – *Understand what markets and customers value, now and into the future, and use this to drive organisational design, strategy, products and services.*
- 3) **SYSTEMS THINKING** – *Continuously improve the system.*
- 4) **PEOPLE** – *Develop and value people's capability and release their skills, resourcefulness and creativity to change and improve the organisation.*

- 5) **CONTINUOUS IMPROVEMENT** – *Develop agility, adaptability and responsiveness based on a culture of continual improvement, innovation and learning.*
- 6) **INFORMATION AND KNOWLEDGE** – *Improve performance through the use of data, information and knowledge to understand variability and to improve strategic and operational decision making.*
- 7) **CORPORATE AND SOCIAL RESPONSIBILITY** – *Behave in an ethically, socially and environmentally responsible manner.*
- 8) **SUSTAINABLE RESULTS** – *Focus on sustainable results, value and outcomes.*

SUSTAINABILITY IMPLICATIONS

SOCIAL IMPLICATIONS

There are no social implications applicable to this draft policy.

ECONOMIC IMPLICATIONS

There are no economic implications to Council associated with this draft policy. Proponents will incur legal and survey costs commensurate with additional opportunities to utilise their land encumbered by easements.

ENVIRONMENTAL IMPLICATIONS

There are no environmental implications applicable to this draft policy.

CONSULTATION

- Dungog Council
- Great Lakes Council
- Maitland Council
- Newcastle Council
- Singleton Council
- Cessnock Council
- Lake Macquarie Council

OPTIONS

- 1) Adopt the recommendation;
- 2) Reject the recommendation and request the Group Manager, Sustainable Planning to prepare a further detailed policy framework for building over easements.

ATTACHMENTS

Assessment Principles

COUNCILLORS ROOM

Nil

TABLED DOCUMENTS

Nil

**ATTACHMENT 1
DRAFT BUILDING OVER EASEMENTS - ASSESSMENT PRINCIPLES**

GENERAL

Council will generally not approve the construction of any *permanent structure* or the *placing of fill* over a piped drainage system or easement that will prevent or hamper constructing, reconstructing, maintaining, repairing, cleaning or gaining access to the pipeline or easement.

Permanent structures include habitable dwellings, eaves and balconies, garages, impervious fences, swimming pools and retaining walls.

WHERE BUILDING OVER EASEMENTS MAY BE CONSIDERED

Consideration may be given in exceptional circumstances to permanent structures subject to an adequate and safe overland flow path being provided (this can include eaves and balconies with a minimum of 2.1m clearance).

In all circumstances, a registered surveyor shall accurately locate the pipe and the footing and retaining wall details submitted by a structural engineer prior to determination of the development application.

The structure or filling must not be placed within the 1 in 100 year flowpath where it would cause a rise in the flood level of more than 50mm, increase the depth/velocity product beyond the allowed limitations (see Council Design Specification) or have an adverse affect on other properties.

Where a footing or structure is proposed over an easement, Council may require pits to be located at either side of the structure to help identify that a pipeline is located below, and to aid inspection and maintenance of the pipeline.

DRIVEWAYS AND ACCESS

On-ground vehicular driveways may be permitted over an easement, however the structural stability of an existing pipeline may be considered before consent is given to an application that proposes to introduce additional live loads to the Council pipeline. Similar considerations will be made when it is proposed to reduce cover over the pipeline.

Pedestrian and vehicular bridges may be permitted to encroach an easement provided they can be easily removed to facilitate access to the easement and suitable alternate vehicular and pedestrian access to the property exists if they were removed.

CARPORTS

Demountable carports and other easily removable structures that do not involve habitable floor space may be approved over inter-allotment drainage easements.

LANDSCAPED AREAS

Landscaped areas may be permitted over an easement, however the structural stability of an existing pipeline may be considered before consent is given to an application that proposes to introduce additional live loads to the Council pipeline. Similar considerations will be made when it is proposed to reduce cover over the pipeline.

When proposing landscaping within easements, species shall not have a mature height greater than 3 metres.

RETAINING WALLS

Retaining walls constructed across an easement must cross the easement at an angle of not less than 60°.

The section of wall spanning the easement shall be constructed to enable its easy removal without resulting in the failure of the remainder of the structure.

Any footings or retaining walls designed within or against the easement must be constructed to prevent any loading imposed on the pipe, and support the structure should the pipe be excavated.

It shall also demonstrate that the retaining wall and the footing have sufficient clearance from the pipe. Consideration may also need to be given to widening the easement and/or moving the pipeline to provide sufficient clearance for the pipe.

INDEMNITY

Prior to approval for such a structure, the owner may be required to place a "Restriction as to user" or "positive covenant" in favour of Port Stephens Council on the title of the lot that is binding on successors in title, indicating that the property owner will remove the structure at their own expense if Council or the benefiting party(s) deems it necessary for the purposes of accessing the easement. Any such approvals will not extinguish or limit Councils or the benefiting party(s) rights under the easement.

ITEM NO. 6

FILE NO: PSC2005-3943

HUNTER AREA ASSISTANCE SCHEME – PORT STEPHENS LOCAL RANKING COMMITTEE

REPORT OF: TREVOR ALLEN - INTEGRATED PLANNING MANAGER

RECOMMENDATION IS THAT COUNCIL:

- 1) Nominate two Councillors for the Hunter Area Assistance Scheme Port Stephens Local Ranking Committee.
-

OPERATIONS COMMITTEE – 9 DECEMBER 2008

RECOMMENDATION:

Councillor Glenys Francis Councillor Geoff Dingle	That the recommendation be adopted.
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ORDINARY MEETING – 16 DECEMBER 2008

RESOLUTION:

383	Councillor Ken Jordan Councillor John Nell	It was resolved that Councillors Ward and Nell be elected as Council representatives on the Hunter Area Assistance Scheme Port Stephens Local Ranking Committee
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BACKGROUND

The purpose of this report is to seek the appointment of two Councillors to the Hunter Area Assistance Scheme Port Stephens Local Ranking Committee. Council has been advised that each representative is only allowed to serve a two (2) year term. The current representatives are Councillors Dingle and Francis, both of whom have already served for over 2 years.

The Area Assistance Scheme is a regional community development program run by the Department of Community Services. It provides grants to local Councils and non-government organisations for innovative community-based programs and infrastructure projects that improve community well being. Historically, Port Stephens receives approximately \$100,000 funding through this program annually.

The Area Assistance Scheme focuses on areas experiencing significant social and economic change. The Scheme is a partnership between the NSW Government, local Councils and the community. It actively involves the community in developing and managing community projects and making funding recommendations to the

State Minister. The 2008/2009 Scheme gives priority to programs that provide positive results for communities through capital works projects with a community infrastructure focus. Funding is granted to projects that can best deliver positive outcomes for communities that have a focus on:

1. Connecting communities through partnerships
2. Building community leadership and capacity
3. Promoting safe communities.

The role of the Local Ranking Committee is to:

- Provide advice to the Area Assistance Scheme Regional Advisory Committee on local needs and issues and demographics;
- Assess applications against the Area Assistance Scheme assessment criteria;
- Rank applications for their local area as low, medium or high priority;
- Record on the Area Assistance Scheme project assessment checklist the reason for ranking each project
- Comment on regional and subregional projects (where appropriate).

The Local Ranking Committee has up to eight members, comprising:

- Chairperson
- Two representatives of Port Stephens Council;
- Four community representatives that are able to represent the diverse views of the local community;
- Council's Community Development and Planning Officer (non-voting member)

Council's Community Development and Planning Officer is responsible for providing executive support to the Local Ranking Committee. A package of information about funding proposals and priority community issues will be provided to members prior to the meeting.

The Local Ranking Committee can generally complete the process in one day. The meeting date is planned for late January 2009.

LINKS TO CORPORATE PLANS

The links to the 2008-2012 Council Plan are:-

SOCIAL SUSTAINABILITY – *Council will preserve and strengthen the fabric of the community, building on community strengths.*

CULTURAL SUSTAINABILITY – *Council will assist to inspire a sense of pride and place as well as enhancing quality of life and defining local identity.*

ECONOMIC SUSTAINABILITY – *Council will support the economic sustainability of its communities while not compromising its environmental and social well being.*

FINANCIAL/RESOURCE IMPLICATIONS

Nil

LEGAL AND POLICY IMPLICATIONS

The Local Ranking Committee members must maintain confidentiality in relation to the discussions and recommendations of the Committee. In particular, the views of individual members must not be represented or misrepresented outside the meeting. If any representative on the Local Ranking Committee has a relationship to, or is a sponsor of, a particular project, then that interest must be declared and the representative must leave the meeting whilst the discussion takes place.

Business Excellence Framework

Port Stephens Council is a quality driven organisation. We use the Business Excellence Framework as a basis for driving organisational excellence. The Framework is an integrated leadership and management system that describes elements essential to organisational excellence. It is based on eight (8) principles.

These outcomes align with the following Business Excellence principles:-

- 1) **LEADERSHIP** – *Lead by example, provide clear direction, build organisational alignment and focus on sustainable achievement of goals.*
- 2) **CUSTOMERS** – *Understand what markets and customers value, now and into the future, and use this to drive organisational design, strategy, products and services.*
- 3) **PEOPLE** – *Develop and value people's capability and release their skills, resourcefulness and creativity to change and improve the organisation.*
- 5) **CORPORATE AND SOCIAL RESPONSIBILITY** – *Behave in an ethically, socially and environmentally responsible manner.*
- 6) **SUSTAINABLE RESULTS** – *Focus on sustainable results, value and outcomes.*

SUSTAINABILITY IMPLICATIONS

SOCIAL IMPLICATIONS

The Area Assistance Committee is a key funding source for supporting projects and initiatives aimed at addressing the social needs of the community as identified through Council's community and social planning processes.

ECONOMIC IMPLICATIONS

Nil

ENVIRONMENTAL IMPLICATIONS

Nil

CONSULTATION

No applicable

OPTIONS

- 1) To accept the recommendation.
- 2) To nominate only one Councillor to the Committee.
- 3) To reject the recommendation and call for more information.

ATTACHMENTS

Nil

COUNCILLORS ROOM

Nil

TABLED DOCUMENTS

Nil

ITEM NO. 7

FILE NO: PSC2008-9317

MEDOWIE FLOODING

REPORT OF: TREVOR ALLEN - INTEGRATED PLANNING MANAGER

RECOMMENDATION IS THAT COUNCIL:

- 1) Form a Floodplain Risk Management Committee to frame the Brief and oversee a Flood Study to advise Council on Floodplain Management options for the Medowie township;
- 2) Receive Nominations and appoint up to two Councillors on the Committee;
- 3) Give consideration to funding of the Study in the quarterly budget review;
- 4) Amend the Policy for Areas Affected by Flooding and/or Inundation as provided in Attachment No 1 to restrict subdivision to a minimum of 1 hectare on flood prone land.
- 5) Amend LEP 2000 such that subdivision on flood prone land reflects a minimum lot size of 1 hectare.

OPERATIONS COMMITTEE – 9 DECEMBER 2008

RECOMMENDATION:

Councillor Geoff Dingle Councillor Shirley O'Brien	That the recommendation be adopted.
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In accordance with the Local Government Act, a division is required.

Those for the motion: Crs R. Westbury G. Dingle; S. Dover, G. Francis; K. Jordan; F Ward; J. Nell; S. O'Brien, D. Maher, P. Kafer & S. Tucker.

Those against the motion: Nil.

ORDINARY MEETING – 16 DECEMBER 2008

RESOLUTION:

384	Councillor Geoff Dingle Councillor Steve Tucker	It was resolved that the recommendation be adopted.
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In accordance with the Local Government Act, a division is required.

Those for the motion: Crs B. MacKenzie, G. Dingle; S. Dover, G. Francis; K. Jordan; F Ward; J. Nell; S. O'Brien, D. Maher, P. Kafer & S. Tucker.

THOSE AGAINST THE MOTION: NIL.

BACKGROUND

The purpose of this report is advise Council of flooding issues in Medowie and recommend that a Floodplain Risk Management Committee be formed to oversee a study to investigate the issues and recommend a course of action to Council and to amend the Policy for Areas Affected By Flooding And/Or Inundation where development on low lying land leads to flooding issues.

Medowie has experienced numerous flooding issues since rural and urban residential development began. Many areas are low lying and drainage systems are unable to cope with increased development in the area. The Medowie area drains into, and development has encroached on, the Campvale Swamp to the west and Moffats Swamp to the east, neither of which are naturally draining. Councils Drainage section of the then Engineering Services carried out two internal drainage studies in 1995 for each of these catchments recommending improvement strategies to minimise flooding in the Medowie area. A more recent flood study was also carried out for the lower reaches of the Medowie Structure Plan which did not assess the whole of Medowie. While the earlier studies were adequate at the time, they need updating to account for changes in development, the recommendations in the Medowie strategy and more recent issues identified.

To address all issues it is necessary to undertake a Flood and Management Options study for the whole of Medowie. This will investigate all issues and any options for reducing the impact of flooding on residences and other properties. The reason why this study has not been undertaken to date is that the urban footprint proposed by the draft Medowie Strategy is coming close to finalisation with a forthcoming report proposed to be submitted during the first quarter of 2009 and that other significant planning projects have taken priority.

The formation of a Floodplain Risk Management Committee with Councillor, Agencies and Community representation is the means to ensure all parties are consulted and have ownership of the process and outcomes. The Committee will also consist of Hunter Water and other statutory bodies that are affected by or can provide valuable assistance on flooding issues in the area.

Until a full and complete flood model and study can be undertaken (of the order of \$100,000) a consultant, Rastermatics, has been engaged at a cost of \$6,000 to approximate overland flooding to extent the existing floodprone land mapping in Medowie. This will ensure that residents and staff are aware of flooding issues for development and S149 certificates. The revised floodprone land is shown in attachment 2.

Low Areas affected by Flooding.

Development on floodprone land that is flat is often associated with water ponding and drainage issues and even a small amount of filling creates water back up which often effects adjoining neighbours. Even low rainfall has difficulties draining away from these areas. Council has encountered many issues and complaints from residents in Medowie affected by water problems in these low areas even after minimal rainfall periods. Filling for residential development including driveways in

these flat areas, tends to exacerbate the water ponding or flooding issue on adjacent properties. Creating further residential subdivision or development on small lots intensifies the problem.

Placing a lower limit of 1 hectare on the subdivision lot area will allow the provision of adequate areas for stormwater collection or redirection without creating adverse flooding problems on the current, future or adjacent owner's lands. This provision will require amendments to Councils Flood Prone Land Policy as contained in attachment 1(Policy Statement item 5), and an appropriate zoning or special clause.

LINKS TO CORPORATE PLANS

The links to the 2008-2012 Council Plan are:-

SOCIAL SUSTAINABILITY –	<i>Council will preserve and strengthen the fabric of the community, building on community strengths.</i>
CULTURAL SUSTAINABILITY –	<i>Council will assist to inspire a sense of pride and place as well as enhancing quality of life and defining local identity.</i>
ECONOMIC SUSTAINABILITY –	<i>Council will support the economic sustainability of its communities while not compromising its environmental and social well being.</i>
ENVIRONMENTAL SUSTAINABILITY –	<i>Council will protect and enhance the environment while considering the social and economic ramifications of decisions.</i>
BUSINESS EXCELLENCE –	<i>Council will use the Business Excellence Framework to innovate and demonstrate continuous improvement leading to long-term sustainability across operational and governance areas in a Business Excellence Journey</i>

FINANCIAL/RESOURCE IMPLICATIONS

Funding options for the study will be presented to Council in the next quarterly budget review.

LEGAL AND POLICY IMPLICATIONS

The preparation of a Flood Study and Flood Risk Management Plan will assist Council in determining development guidelines, flood reduction measures, preparation of the draft Medowie Strategy and issuing S149 Planning Certificates. Council is also afforded a level of immunity in respect of advice given, consents issued and works done, where such are given in good faith and in accordance with an adopted Flood Risk Management Plan

Business Excellence Framework

Port Stephens Council is a quality driven organisation. We use the Business Excellence Framework as a basis for driving organisational excellence. The Framework is an integrated leadership and management system that describes elements essential to organisational excellence. It is based on eight (8) principles.

These outcomes align with the following Business Excellence principles:-

- 1) **LEADERSHIP** – *Lead by example, provide clear direction, build organisational alignment and focus on sustainable achievement of goals.*
- 2) **CUSTOMERS** – *Understand what markets and customers value, now and into the future, and use this to drive organisational design, strategy, products and services.*
- 3) **SYSTEMS THINKING** – *Continuously improve the system.*
- 4) **PEOPLE** – *Develop and value people’s capability and release their skills, resourcefulness and creativity to change and improve the organisation.*
- 5) **CONTINUOUS IMPROVEMENT** – *Develop agility, adaptability and responsiveness based on a culture of continual improvement, innovation and learning.*
- 6) **INFORMATION AND KNOWLEDGE** – *Improve performance through the use of data, information and knowledge to understand variability and to improve strategic and operational decision making.*
- 7) **CORPORATE AND SOCIAL RESPONSIBILITY** – *Behave in an ethically, socially and environmentally responsible manner.*
- 8) **SUSTAINABLE RESULTS** – *Focus on sustainable results, value and outcomes.*

SUSTAINABILITY IMPLICATIONS

SOCIAL IMPLICATIONS

The flood study and subsequent Flood Risk Management Plan will provide advice and development controls to reduce the likely impacts of flooding on current and future development.

ECONOMIC IMPLICATIONS

The Flood Risk Management Plan will have some economic implications for individuals and developers constructing dwellings, filling within affected areas and other structures, such as raising floor levels. In some cases it may reduce the amount of development permissible.

ENVIRONMENTAL IMPLICATIONS

The Flood Study and Flood Risk Management Plan will assess and incorporate environmental considerations in the flood affected areas.

CONSULTATION

As well as community representation on the Committee, the studies will be exhibited for public comment. Hunter Water have been consulted during the preparation of the Medowie Strategy. Other organisations including the Department of Environment and Climate Change will be consulted during the process.

OPTIONS

- 1) Adopt the recommendations
- 2) Modify the recommendations
- 3) Not adopt the recommendations

ATTACHMENTS

- 1) Proposed Policy – Areas Affected by Flooding
- 2) Revised Floodprone land Medowie

ATTACHMENT 1
PROPOSED POLICY (INCLUDING MINOR NAMING AMENDMENTS)



POLICY

Adopted: 27/1/98
Minute No: 12
Amended: 19/12/2000
Minute No: 711
Amended: 19/10/2004
Minute No: 375
Amended: 24/10/2006
Minute No: 732
Amended: 25/9/2007
Minute No: 280

FILE NO: PSC2006-2097

TITLE: AREAS AFFECTED BY FLOODING AND/OR INUNDATION

REPORT OF: DAVID BROYD, GROUP MANAGER SUSTAINABLE PLANNING

BACKGROUND

Council's original policy was introduced to manage the development on land within the Council area that is affected by flooding and/or inundation. The Policy was amended in December 2000 and October 2004 in accordance with changes to Government Policy, the NSW Floodplain Development Manual and available flooding information. This policy has been amended to incorporate the revised NSW Floodplain Development Manual 2005 and the provisions of draft and adopted Floodplain Management Plans prepared for land within the Port Stephens Local Government Area.

OBJECTIVE

- To manage the development of land subject to or affected by the likelihood of flooding and/or tidal inundation defined as floodprone land in the Port Stephens Local Environmental Plan 2000.
- To base the nature of the restriction applied to an affected site on the principles of the NSW Floodplain Development Manual 2005, the Port Stephens Foreshore (Floodplain) Management Study and Plan 2002, the

Paterson River Floodplain Management Study and Plan 2001, the draft Lower Hunter Valley Floodplain Management Study 2001, the Williamstown Salt Ash Flood Study and any further flooding information available to Council at the time.

- To ensure that decisions in relation to the acquisition and development of land are made having regard to the best flooding information available.
- To ensure that Council complies with the provision of S733 of the Local Government Act 1993 - Exemption from liability—flood liable land and land in coastal zone

PRINCIPLES

The policy manages development of flood prone and flood-affected land and requires assessment of the risks and consideration of satisfactory precautions where appropriate.

POLICY STATEMENT

1. Land affected by flooding should not be developed without adequate assessment of the risks and consideration of the satisfactory precautions where appropriate.
2. Council must, before granting development consent on flood prone land or on land directly or indirectly affected by flooding, consider the following:
 - The extent and nature of the flooding or inundation hazard affecting the land,
 - Whether or not the proposed development would increase the risk of or severity of flooding or inundation affecting other land or buildings, works or other land uses in the vicinity,
 - Whether the risk of flooding or inundation affecting the proposed development could be reasonably mitigated and whether conditions should be imposed on any consent to further objectives of this plan,
 - The social impact of flooding on occupants, including the ability of emergency services to access, rescue and support residents of flood affected areas, and
 - The provisions of any Floodplain Management Plan, Floodplain Study or Development Control Plan adopted by Council or in draft form.
3. (a) If Council determines that a comprehensive flood report is required to support the development application, then this shall be prepared by an experienced Flood Engineer.

(b) Council will then assess the applicant's flood report as part of the assessment and determination of the application. If the flood report is concluded to be inadequate to achieve full merit assessment, then the Council shall advise the applicant, in writing, within 21 days of receipt.

The applicant will then have 28 days in which to provide a response to the issues. Should the response not be received within that time period, or inadequate justification is given for an extension of time, the application will be refused under delegation.

4. Land use and purchase decisions are best made with the best knowledge available of any potential risks to life and property.
5. Subdivision of Low Risk Flood Prone land shall only be granted where the minimum lot size created is one Hectare. ***[Note: Proposed new clause]***

RELATED POLICIES

N/A

REVIEW DATE

This policy will be reviewed as and when necessary.

RELEVANT LEGISLATIVE PROVISIONS

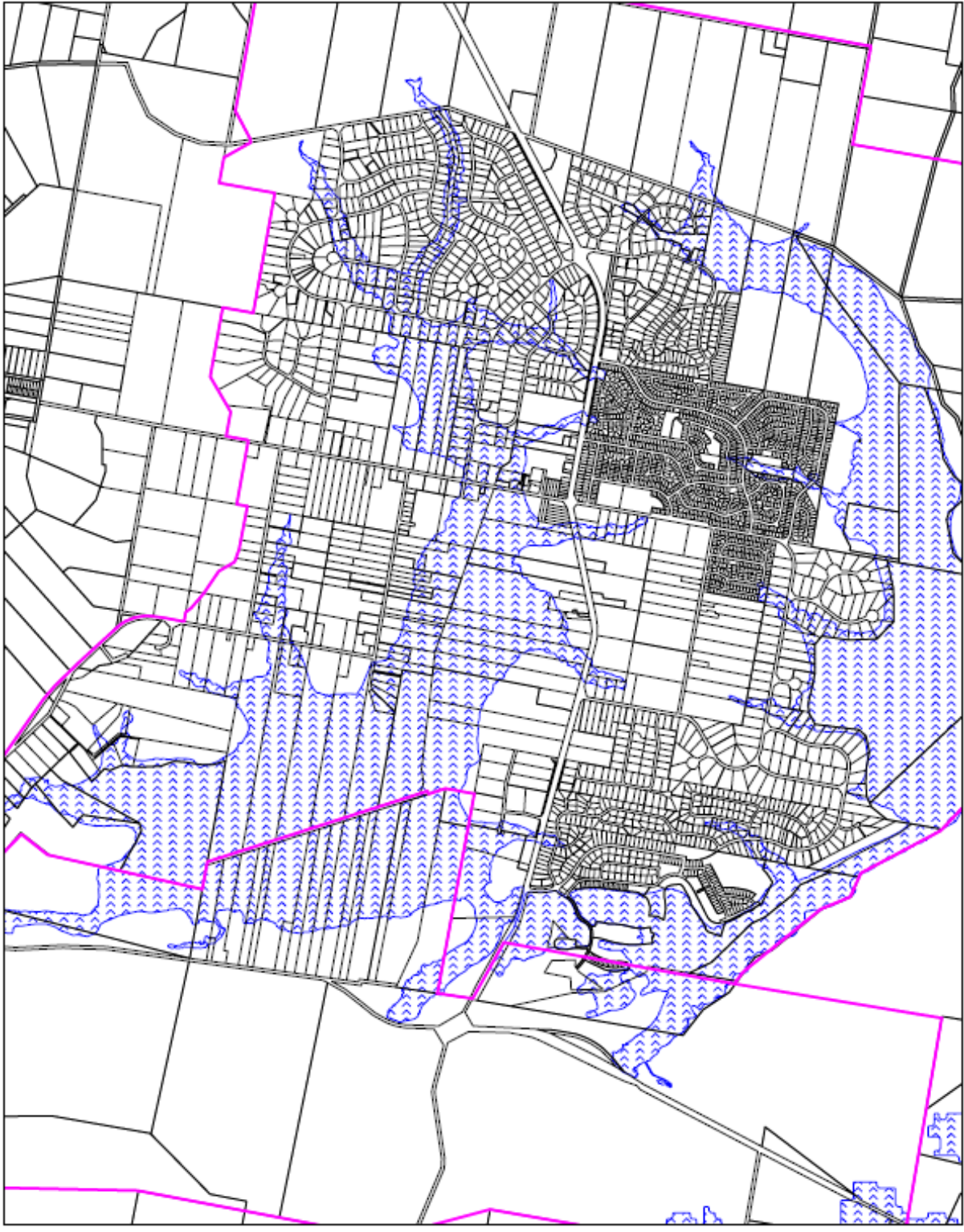
Environmental Planning and Assessment Act 1979 (NSW)
Local Government Act 1993 (NSW)
Port Stephens Local Environmental Plan 2000

IMPLEMENTATION RESPONSIBILITY

The Integrated Planning section of Council, through its Infrastructure Planning Team is responsible for the implementation of this policy in conjunction with other staff as appropriate.

ATTACHMENT 2

REVISED FLOODPRONE MAP MEDOWIE



ITEM NO. 8

FILE NO: A2004-0831

SUNDRY DEBTOR WRITE OFF

REPORT OF: CHRIS BRICE - ACTING FINANCIAL SERVICES MANAGER

RECOMMENDATION IS THAT COUNCIL:

- 1) Write off lease fees totalling \$5,809.32 owing from New Horizons Corporation Pty Limited (sundry debtor account no. 1354.04) as unrecoverable.

OPERATIONS COMMITTEE – 9 DECEMBER 2008**RECOMMENDATION:**

Councillor Bob Westbury Councillor Frank Ward	That the recommendation be adopted.
--	-------------------------------------

ORDINARY MEETING – 16 DECEMBER 2008**RESOLUTION:**

385	Councillor Steve Tucker Councillor Shirley O'Brien	It was resolved that the recommendation be adopted.
------------	---	---

BACKGROUND

The purpose of this report is to obtain approval to write off a debt (sundry debtor account no. 1354.04) that is unrecoverable.

Council leases a parcel of land to Horizons Golf Club for use as a driving range. In March 2004 that lease arrangement was in place with New Horizons Corporation Pty Limited when the company had an administrator appointed. The resort was sold by the mortgagee in possession to Le Meilleur Pty Ltd in May 2005 and a new lease agreement was entered into with Le Meilleur Pty Ltd. Le Meilleur Pty Ltd did not assume responsibility for the debts of New Horizons Corporation Pty Limited. New Horizons Pty Limited was in arrears with Council's lease fees prior to being placed in administration and those lease fees were the subject of debt recovery action initiated by Council, through the courts.

New Horizons Corporation Pty Limited was finally fully wound up and deregistered in May 2008. There were no funds to pay unsecured creditors and Council understands the shortfall was substantial. The amount owing to Council is \$5,809.32 comprising lease fees of \$5,211.40 for the period from June 2004 to May 2005 and debt recovery legal costs of \$597.92.

The General Manager has a delegation to write off bad debts of up to \$5000. As this debt exceeds \$5000, clause 213 of the Local Government (General) Regulation 2005 requires Council to pass a resolution to write off a debt exceeding the General Manager's delegation.

LINKS TO CORPORATE PLANS

The links to the 2008-2012 Council Plan are:-

ECONOMIC SUSTAINABILITY – *Council will support the economic sustainability of its communities while not compromising its environmental and social well being.*

BUSINESS EXCELLENCE – *Council will use the Business Excellence Framework to innovate and demonstrate continuous improvement leading to long-term sustainability across operational and governance areas in a Business Excellence Journey*

FINANCIAL/RESOURCE IMPLICATIONS

Council has already made a provision for this debt in its annual accounts and the write off will have no effect on the current year's budget.

LEGAL AND POLICY IMPLICATIONS

Council can only write off debts where the debt is not lawfully recoverable, or as a result of the decision of a court, or if the Council or General Manager believes on reasonable grounds that an attempt to recover the debt would not be cost effective.

Business Excellence Framework

Port Stephens Council is a quality driven organisation. We use the Business Excellence Framework as a basis for driving organisational excellence. The Framework is an integrated leadership and management system that describes elements essential to organisational excellence. It is based on eight (8) principles.

These outcomes align with the following Business Excellence principles:-

- 1) **LEADERSHIP** – *Lead by example, provide clear direction, build organisational alignment and focus on sustainable achievement of goals.*
- 2) **CUSTOMERS** – *Understand what markets and customers value, now and into the future, and use this to drive organisational design, strategy, products and services.*
- 3) **SYSTEMS THINKING** – *Continuously improve the system.*
- 4) **PEOPLE** – *Develop and value people's capability and release their skills, resourcefulness and creativity to change and improve the organisation.*
- 5) **CONTINUOUS IMPROVEMENT** – *Develop agility, adaptability and responsiveness based on a culture of continual improvement, innovation and learning.*

- 6) **INFORMATION AND KNOWLEDGE** – *Improve performance through the use of data, information and knowledge to understand variability and to improve strategic and operational decision making.*
- 7) **CORPORATE AND SOCIAL RESPONSIBILITY** – *Behave in an ethically, socially and environmentally responsible manner.*
- 8) **SUSTAINABLE RESULTS** – *Focus on sustainable results, value and outcomes.*

SUSTAINABILITY IMPLICATIONS

SOCIAL IMPLICATIONS

Nil

ECONOMIC IMPLICATIONS

Nil

ENVIRONMENTAL IMPLICATIONS

Nil

CONSULTATION

Property Section; Rates and Debtors

OPTIONS

- 1) Accept the Recommendation
- 2) Reject the Recommendation
- 3) Amend the Recommendation

ATTACHMENTS

Nil

COUNCILLORS ROOM

Nil

TABLED DOCUMENTS

Nil

ITEM NO. 9

FILE NO: PSC2005-0829

RATES FINANCIAL ASSISTANCE – TILLIGERRY CREEK OYSTER FARMERS

REPORT OF: CHRIS BRICE – ACTING FINANCIAL SERVICES MANAGER

RECOMMENDATION IS THAT COUNCIL:

- 1) Provide means tested rates financial assistance to Tilligerry Creek oyster farmers affected by closure of parts of the creek to oyster harvesting.

OPERATIONS COMMITTEE – 9 DECEMBER 2008

RECOMMENDATION:

Councillor John Nell Councillor Ken Jordan	That the recommendation be adopted.
---	-------------------------------------

ORDINARY MEETING – 16 DECEMBER 2008

RESOLUTION:

386	Councillor John Nell Councillor Steve Tucker	It was resolved that the recommendation be adopted.
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BACKGROUND

The purpose of this report is to inform Council of public submissions received following advertising of a proposal to provide means tested financial assistance to oyster farmers affected by the closure of parts of Tilligerry Creek to oyster harvesting.

This matter was considered by Council at its meeting on 14 October, 2008 and it was resolved that the matter be placed on public display and a further report be presented to Council. An advertisement was placed in the Port Stephens Examiner on 23 October, 2008. At the time of writing this report no submissions have been received on the proposal. If any submissions are received they will be reported to Council prior to the meeting.

The assistance to be provided is payment of rates and charges on the oyster farmers land based oyster sheds for 2008/2009. The method of determining eligibility for financial assistance is to mirror means testing used for Australian Government Drought Assistance, with the point of difference being that the Australian Government Drought Assistance income test allows up to \$20,000 in additional off-farm income whereas Council's income test will allow up to \$20,000 additional income whether that be **off-farm** or **on-farm** income. Assistance will be provided upon annual application, and will continue for the duration of the closure, or upon review by Council.

LINKS TO CORPORATE PLANS

The links to the 2008-2012 Council Plan are:-

ECONOMIC SUSTAINABILITY – *Council will support the economic sustainability of its communities while not compromising its environmental and social well being.*

ENVIRONMENTAL *Council will protect and enhance the environment while*

SUSTAINABILITY – *considering the social and economic ramifications of decisions.*

FINANCIAL/RESOURCE IMPLICATIONS

The amount involved represents a very small component of Council's annual expenditure.

LEGAL AND POLICY IMPLICATIONS

In order for Council to assist others under Section 356 of the Local Government Act, 1993, the purpose must assist the Council in the exercise of its functions. Oyster farmers in Port Stephens directly fund the Port Stephens Shellfish Quality Assurance Program. This pays for independent water sampling and analysis and the farmers are also required to conduct their own sampling monthly and during rain events. This information is provided to the NSW Food Authority and Council. The water monitoring assists Council in the exercise of its functions as the oyster industry is an early indicator of water quality issues (reflecting catchment health), and also a measure of the effectiveness of Council's On-Site Sewage Management System monitoring program specifically and the impact of development on the environment generally.

Although Council's financial assistance policy is to provide assistance to community groups rather than individuals, this is an exceptional situation and the assistance will be ongoing while parts of the creek remain closed to oyster harvesting.

Council has complied with the requirements of section 356 (2) of the Local Government Act by placing a notice in the Port Stephens Examiner and calling for public submissions for 28 days.

Business Excellence Framework

Port Stephens Council is a quality driven organisation. We use the Business Excellence Framework as a basis for driving organisational excellence. The Framework is an integrated leadership and management system that describes elements essential to organisational excellence. It is based on eight (8) principles.

These outcomes align with the following Business Excellence principles:-

- 1) **LEADERSHIP** – *Lead by example, provide clear direction, build organisational alignment and focus on sustainable achievement of goals.*

- 2) **CUSTOMERS** – *Understand what markets and customers value, now and into the future, and use this to drive organisational design, strategy, products and services.*
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- 7) **CORPORATE AND SOCIAL RESPONSIBILITY** – *Behave in an ethically, socially and environmentally responsible manner.*
- 8) **SUSTAINABLE RESULTS** – *Focus on sustainable results, value and outcomes.*

SUSTAINABILITY IMPLICATIONS

SOCIAL IMPLICATIONS

Council's Hardship Panel grants assistance from time to time writing off interest charges on rates in cases of hardship. It also provides a mechanism for ratepayers suffering hardship to access interest free loans to upgrade defective On-Site Sewage Management Systems or connect to the sewer. The proposed relief for farmers is an appropriate response to a special circumstance.

ECONOMIC IMPLICATIONS

The measure supports the continuation of the local oyster industry.

ENVIRONMENTAL IMPLICATIONS

The oyster growing industry is a measure of the health of Port Stephens waterways. Through the Water Monitoring Program the oyster industry assists Council in its function to conserve the environment in a manner that promotes ecologically sustainable development. It is arguable that the oyster industry also helps to support the sustainability of the tourism industry by providing an early warning signal about the environmental health of the estuary.

CONSULTATION

Department of Primary Industries; NSW Department of Lands; Port Stephens Council Hardship Panel; and call for public submissions.

OPTIONS

- 1) Accept the Recommendation
- 2) Reject the Recommendation
- 3) Amend the Recommendation

ATTACHMENTS

Nil

COUNCILLORS ROOM

Nil

TABLED DOCUMENTS

Nil

ITEM NO. 10

FILE NO: A2004-0511

LOCAL TRAFFIC COMMITTEE MEETING – 11TH NOVEMBER 2008

REPORT OF: TREVOR ALLEN – INTEGRATED PLANNING MANAGER

RECOMMENDATION IS THAT COUNCIL:

Adopt the recommendations contained in the minutes of the Local Traffic Committee meeting held on 11th November 2008.

OPERATIONS COMMITTEE – 9 DECEMBER 2008

RECOMMENDATION:

Councillor John Nell Councillor Steve Tucker	That the recommendation be adopted with the exception of Item C2 being referred back to the Local Traffic Committee for further consideration including suggestions from the Committee for an education program with the school.
---	--

ORDINARY MEETING – 16 DECEMBER 2008

RESOLUTION:

387	Councillor John Nell Councillor Sally Dover	It was resolved that the Operations Committee recommendation be adopted.
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BACKGROUND

The purpose of this report is to bring to Council's attention traffic issues raised and detailed in the Traffic Committee minutes and to meet the legislative requirements for the installation of any regulatory traffic control devices associated with Traffic Committee recommendations.

LINKS TO CORPORATE PLANS

The items referred to the Local Traffic Committee and the subsequent recommendations are linked to the current Council Plan 2008 - 2012. In Parts 5 and 7 of the Plan, the Local Traffic Committee contributes to the following directions and goals:

- 1) Provide programs and planning instruments that enhance the safety of individuals and the community whilst preserving social amenity and discouraging social isolation.
- 2) Providing good community planning and the development of quality infrastructure.

FINANCIAL/RESOURCE IMPLICATIONS

Council has an annual budget of \$41 000 (\$25 000 grant from the RTA and General Revenue) to complete the installation of regulatory traffic controls (signs and markings) recommended by the Local Traffic Committee. The construction of traffic control devices and intersection improvements resulting from the Committee's recommendations are not included in this funding and are listed within Council's "Forward Works Program" for consideration in the annual budget process. The construction of traffic control devices and intersection improvements for items with a **SAFETY PRIORITY** (listed below) have a budget of \$ 25 000 (Safety Around Schools Program).

The Local Traffic Committee procedure provides a mechanism to respond to and remedy problems in accordance with Council's "Best Value Services" Policy. The recommendations contained within the Local Traffic Committee Minutes can be completed within the current Traffic Committee budget allocations and without additional impact on staff or the way Council's services are delivered.

SAFETY PRIORITIES

The installation of regulatory traffic controls or traffic control devices that are noted as having a Safety Priority shall be attended to before other works undertaken by Council. These works are generally of an urgent nature requiring immediate action.

The items with a Safety Priority are listed as follows:

NIL

LEGAL AND POLICY IMPLICATIONS

The Local Traffic Committee is not a Committee of Council; it is a technical advisory body authorised to recommend regulatory traffic controls to the responsible Road Authority. The Committee's functions are prescribed by the Transport Administration Act with membership extended to the following stakeholder representatives; the Local Member of Parliament, NSW Police, Roads & Traffic Authority and Council.

The procedure followed by the Local Traffic Committee satisfies the legal requirements required under the Transport Administration (General) Act furthermore there are no policy implications resulting from any of the Committee's recommendations.

BUSINESS EXCELLENCE FRAMEWORK

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These outcomes align with the following Business Excellence principles:-

- 1) **LEADERSHIP** – *Lead by example, provide clear direction, build organisational alignment and focus on sustainable achievement of goals.*
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- 7) **CORPORATE AND SOCIAL RESPONSIBILITY** – *Behave in an ethically, socially and environmentally responsible manner.*
- 8) **SUSTAINABLE RESULTS** – *Focus on sustainable results, value and outcomes.*

The recommendations from the Local Traffic Committee aim to improve traffic management and road safety.

SOCIAL IMPLICATIONS

A safer road environment reduces costs to the Council and community by reducing the number and severity of accidents on our roads.

ECONOMIC IMPLICATIONS

Improved transport efficiency assists in the reduction in green house gases and vehicle operating costs.

ENVIRONMENTAL IMPLICATIONS

Transport efficiency and road user safety; contribute positively to the quality of life for residents and visitors to Port Stephens. Improved road user safety distributes benefits to all road users including commercial and private motorists, cyclists and pedestrians. These benefits include improved accessibility, mobility and safer road environment.

CONSULTATION

The Committee's technical representatives are the Police, RTA, and Council Officers; they investigate issues brought to the attention of the Committee and suggest draft recommendations for further discussion during the scheduled meeting. One week prior to the Local Traffic Committee meeting copies of the agenda are forwarded to the Committee members, Councillors, Facilities and Services Group Manager,

ORDINARY MINUTES – 16 DECEMBER 2008

Integrated Planning Manager and Road Safety Officer. During this period comments are received and taken into consideration during discussions at the Traffic Committee meeting.

No additional consultation took place as a part of the meeting of 7th October 2008.

OPTIONS

- 1) Adopt the Recommendation.
- 2) Adopt specific item recommendations contained in the minutes of the Local Traffic Committee and refer non-adopted matters back to the next meeting of the Local Traffic Committee with suggested amendments.

ATTACHMENTS

- 1) The minutes of the Local Traffic Committee meeting held on are contained in ATTACHMENT 1.

TABLED DOCUMENTS

- 1) Nil

ATTACHMENT 1

PORT STEPHENS LOCAL TRAFFIC COMMITTEE MEETING

INDEX OF LISTED MATTERS
11TH NOVEMBER 2008

- A. ADOPTION OF THE MINUTES OF TRAFFIC COMMITTEE FROM 7TH OCTOBER 2008
- B. BUSINESS ARISING FROM PREVIOUS MEETING
- C. LISTED MATTERS
 - C.1. PORT STEPHENS DRIVE TAYLORS BEACH - SAFETY CONCERNS REGARDING THE INTERSECTION OF TAYLORS BEACH ROAD AND PORT STEPHENS DRIVE
 - C.2. BAGNALLS BEACH ROAD SALAMANDER BAY - DANGER FOR CHILDREN CROSSING STREET FROM TOMAREE SCHOOL
 - C.3. SOLDIERS POINT ROAD SOLDIERS POINT - REQUEST FOR ONE-WAY TRAFFIC AND MARKING OF BIKE LANE IN SOLDIERS POINT RD BETWEEN BOWLING CLUB AND POINT
 - C.4. VICTORIA PARADE NELSON BAY - REQUEST FOR A RAISED PEDESTRIAN CROSSING AT FLY POINT CYCLEWAY CROSSING
 - C.5. VICTORIA PARADE NELSON BAY - REQUEST FOR VICTORIA PDE TO BE MADE ONE WAY
 - C.6. BEACH ROAD SHOAL BAY - REQUEST FOR TRAFFIC CALMING AT EITHER END OF LITTLE BEACH
 - C.7. GAN GAN ROAD ANNA BAY - REQUEST TO INSTALL 'NO PARKING' OPPOSITE ANNA BAY PUBLIC SCHOOL
 - C.8. GAN GAN ROAD ANNA BAY - REQUEST TO INSTALL SHORT TERM PARKING RESTRICTIONS AT AUSSIE BOB'S TAKEAWAY
 - C.9. WARREN STREET SEAHAM – REQUEST TO BRING THE EXISTING CHILDRENS CROSSING UP TO CURRENT RTA STANDARD GAN GAN ROAD
- D. INFORMAL ITEMS
- E. GENERAL BUSINESS
 - E.1. SCHEDULE OF MEETING DATES FOR PORT STEPHENS LOCAL TRAFFIC COMMITTEE FOR 2009
 - E.2. PARKING FOR TOURIST COACHES AND BUSES AT NELSON BAY

**MINUTES OF THE PORT STEPHENS
LOCAL TRAFFIC COMMITTEE MEETING
HELD ON TUESDAY 11TH NOVEMBER, 2008
AT 9:30AM**

Members Present:

Snr Cnst. John Simmons – Port Stephens Local Area Command
Mr Ian Gillespie – Roads and Traffic Authority
Ms Jackie Silsbey representing Member for Port Stephens
Mr Joe Gleeson - Port Stephens Council

Members Apologies:

Mr Frank Terenzini MP – Member for Maitland
Cr Peter Kafer - Port Stephens Council

Advisors/Observers Present:

Mr Mark Newling - Port Stephens Coaches

Advisors/Observers Apologies:

Cr Bruce McKenzie (Mayor) - Port Stephens Council
Mr Brian Moseley – Hunter Valley Buses

A. ADOPTION OF MINUTES OF MEETING HELD 7TH OCTOBER 2008

The minutes of the previous meeting were adopted noting the following item –
business arising

B. BUSINESS ARISING FROM PREVIOUS MEETING

Committee members noted that the previous minutes did not mention a general business item raised concerning the large number of faded parking signs in the Port Stephens Council area. Committee members asked that this be mentioned again and that steps be taken to replace faded signs as soon as possible, especially considering the busy Christmas holiday period approaching.

C. LISTED MATTERS

Item: C1

PORT STEPHENS DRIVE TAYLORS BEACH - SAFETY CONCERNS REGARDING THE INTERSECTION OF TAYLORS BEACH ROAD AND PORT STEPHENS DRIVE

State MP: Member for Port Stephens
Requested by: Mr Ian Powell - Locked Bag 1 Nelson Bay
Background:

Council has received representations from Mr Ian Powell of NSW Department of Primary Industries regarding his concerns for traffic safety at the above intersection. Council currently has plans for intersection improvement works at this location listed in Council's Forward Works Program. These improvement works are not likely to be funded before 2010-2011 and may be dependant upon developer contributions. The current request is for short term safety improvements.

Comment:

The Traffic Inspection Committee were unable to suggest any obvious solutions apart from further investigation of possible shoulder widening to allow through-traffic to overtake turning vehicles on Port Stephens Drive and for separation of left and right turning vehicles on Soldiers Point Road.

Recommendation to the Committee:

For discussion

Traffic Committee Discussion:

The RTA representative enquired as to the accident history of the location and the adequacy of existing advanced warning signs for the intersection. The Committee discussed the busy nature of Port Stephens Drive and the fact that recent developments in the area had resulted in increased traffic volumes. Port Stephens Buses representative noted that school buses have difficulty turning out onto Port Stephens Drive from Taylors Beach Road. The RTA representative noted that a 70km/h speed limit would be more suited to an area where there are driveways and intersections.

Committee's Recommendation:

The Committee recommended that Council conduct a review of the advanced warning signage on approach to the intersection, as well as request a review of the speed limit by the RTA.

Support for the recommendation:

Unanimous

Item C1 - PORT STEPHENS DRIVE TAYLORS BEACH



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Item: C2

BAGNALLS BEACH ROAD SALAMANDER BAY - DANGER FOR CHILDREN CROSSING STREET FROM TOMAREE SCHOOL

State MP: Member for Port Stephens

Requested by: Cr Sally Dover

Background:

Cr Dover states that: 'There is a dangerous situation at the roundabout of Bagnall Beach Road and Sandy Point Road. Many school children cross here from Tomaree school and I am sure it has been called before the Traffic Committee before but the danger is growing and I would ask that it be reviewed and action recommended by our committee'.

Comment:

This issue has been visited many times with recent measures put in place including: Increased 'No Stopping' distances at crossing points and improved signage. A pedestrian crossing is not an option given multi lane roads.

Legislation, Standards, Guidelines and Delegation:

Recommendation to the Committee:

For Committee discussion

Traffic Committee Discussion:

Committee members commented that the schools in the area were not designed to use Bagnalls Beach Road as a major access point. The lack of parking space and the congestion on Salamander Way has resulted in many parents/carers using Bagnalls Beach Road as a drop-off and pick-up point. The lack of a single focal point along Bagnalls Beach Road means that pedestrians tend to cross the road wherever it is convenient and this makes it more difficult for drivers to remain alert over the whole length of the '40' zone. The RTA representative discussed the requirements for a marked pedestrian crossing re-iterating that Bagnalls Beach Road does not meet the criteria.

Committee's Recommendation:

The recommendation of the Committee is that any future development in the Salamander Centre will need to consider pedestrian traffic across Bagnalls Beach Road and if possible should contribute to the installation of traffic signals and pedestrian fencing to facilitate a safe crossing point.

Support for the recommendation:

Unanimous

Item C2 - BAGNALLS BEACH ROAD SALAMANDER BAY



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Item: C3

SOLDIERS POINT ROAD SOLDIERS POINT - REQUEST FOR ONE-WAY TRAFFIC AND MARKING OF BIKE LANE IN SOLDIERS POINT RD BETWEEN BOWLING CLUB AND POINT

State MP: Member for Port Stephens

Requested by: Mr Geoffrey Warrener - 100 Soldiers Point Road Soldiers Point NSW 2317

Background:

Mr Warrener recently contacted Council with his concerns for cyclist and resident safety in Soldiers Point Road. His major area of concern is the section of curving road from the Soldiers Point Bowling Club to Soldiers Point. The problem, he says, is that this section of road is much narrower than the rest of the road which creates less manoeuvring time to exit driveways on blind corners and means that there is no dedicated bicycle track. This section of road is a popular cycling route, however the whole cycling route from Little Salamander shopping centre to Soldiers Point via Soldiers Point Rd is compromised by parked cars necessitating cyclists to move out into the car lane which, he says, is very dangerous.

Mr Warrener suggests the following changes:

- To dedicate one of the marked parking lanes between Little Salamander Shops and The Soldiers Point Bowling Club as a two way cycle only track and prevent cars parking on that side of the road
- To make that section of road on Soldiers Point Rd between Redman Place and the junction of Cromarty Rd and Soldiers Point Rd, a one way traffic lane for vehicles (going to Soldiers Point), as well as a continuance of the dedicated two way cycle lane which started at Little Salamander shops.

These changes would improve safety for cyclists and would prevent the danger of head on collisions on these narrow corners. It would also allow residents on these blind corners to have a much safer exit to the road.

Comment:

The Traffic Inspection Committee do not favour the One way suggestion. One way traffic would inconvenience residents and would lead to compliance issues and safety concerns if vehicles travel the wrong direction.

Mr Warrener's other suggestion for the removal of on-street parking and provision of a two-way on-road cycleway is also not favoured. The Austroads Guide to Traffic Engineering Practice – Part 14 – (Bicycles) recommends that 3.5m of width and a physical barrier between cyclists and traffic is required for safe operation of a contra-flow cycleway within the road reserve. This would require removal of parking on both sides of the road and remarking of the travel lanes. It would be far safer and more cost effective to simply remove the parking along both sides of the road and mark the parking lanes as exclusive cycle lanes. This however would require full community consultation and would not be likely to be favoured by residents.

Legislation, Standards, Guidelines and Delegation:

Austroads Guide to Traffic Engineering Practice Part 14 – Bicycles
RTA – NSW Bicycle Guidelines

Recommendation to the Committee:

No Action

Traffic Committee Discussion:

The Committee members and advisors agreed with the comments of the Inspection Committee and the recommendation.

Committee's Recommendation:

The recommendation to the Committee be adopted

Support for the recommendation:

Unanimous

Item C3 - SOLDIERS POINT ROAD SOLDIERS POINT



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Item: C4

VICTORIA PARADE NELSON BAY - REQUEST FOR A RAISED PEDESTRIAN CROSSING AT FLY POINT CYCLEWAY CROSSING

State MP: Member for Port Stephens

Requested by: Cr Sally Dover

Background:

Following a meeting with local residents, Cr Dover requests that Traffic Committee again consider this section of Victoria Parade.

The residents have requested that a raised pedestrian crossing be constructed where the cycleway crosses the road near the toilet block. According to residents it is a miracle that no children have been run over as they try to cross because the signage is poor and during holiday times the traffic is very heavy. This request is to cancel the blisters which were recommended in May 2008 as they will not give adequate protection to walkers and cyclists.

Comment:

The Traffic Inspection Committee do not favour installation of a pedestrian crossing. Reasons given are that a raised crossing will encourage cyclists to ride directly across the road without dismounting which is dangerous and illegal. Kerb extensions will bring cyclists and pedestrians safely onto the roadway where drivers will be better able to see them and will at least highlight to cyclists and pedestrians that they are crossing a road and need to take appropriate care.

Legislation, Standards, Guidelines and Delegation:

Recommendation to the Committee:

The Traffic Inspection Committee support the original Traffic Committee approval for kerb extensions to be installed.

Traffic Committee Discussion:

The Committee members and advisors agreed with the comments of the Inspection Committee and the recommendation.

Committee's Recommendation:

The recommendation to the Committee be adopted

Support for the recommendation:

Unanimous

Item C4 - VICTORIA PARADE NELSON BAY



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Item: C5

VICTORIA PARADE NELSON BAY - REQUEST FOR VICTORIA PDE TO BE MADE ONE WAY

State MP: Member for Port Stephens

Requested by: Cr Sally Dover

Background:

Following a meeting with local residents, Cr Dover requests that Traffic Committee again consider that the whole section of Victoria Parade at Fly Point be made 'One Way' thus preventing traffic from driving dangerously reversing back into the current two way section and then entering the beginning of Shoal Bay Road.

Comment:

The Traffic Inspection Committee do not favour the one-way suggestion. Residents and holidaymakers would be unlikely to comply due to the inconvenience of having to travel right around Fly Point and this would become an enforcement issue.

Legislation, Standards, Guidelines and Delegation:

Recommendation to the Committee:

No action be taken to make Victoria Parade, north of Shoal Bay Road, 'One Way'.

Traffic Committee Discussion:

The Committee agreed with the recommendation

Committee's Recommendation:

The recommendation to the Committee be adopted

Support for the recommendation:

Unanimous

Item C5 - VICTORIA PARADE NELSON BAY



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116 Adelaide Street, Raymond Terrace NSW 2324 Phone: (02) 49800255 Fax: (02) 49873412 Email: council@portstephens.nsw.gov.au

Item: C6

BEACH ROAD SHOAL BAY - REQUEST FOR TRAFFIC CALMING AT EITHER END OF LITTLE BEACH

State MP: Member for Port Stephens

Requested by: Cr Sally Dover

Background:

Following an inspection of Little Beach with Cr Dover, residents have requested that speed humps be installed at either end of Beach Road to slow the traffic and restrict the speed to 40km/h. This is a family area where children are all the time crossing in front of the beach.

Comment:

The Traffic Inspection Committee oppose the installation of speed humps. The existing road environment is essentially low-speed with traffic congestion in peak times reducing vehicle speeds.

Legislation, Standards, Guidelines and Delegation:

Recommendation to the Committee:

Council to conduct vehicle and pedestrian surveys and to determine the need for kerb extensions on pedestrian desire lines

Traffic Committee Discussion:

The Police representative commented that apart from isolated incidents, Police are not aware of speed related issues in the area.

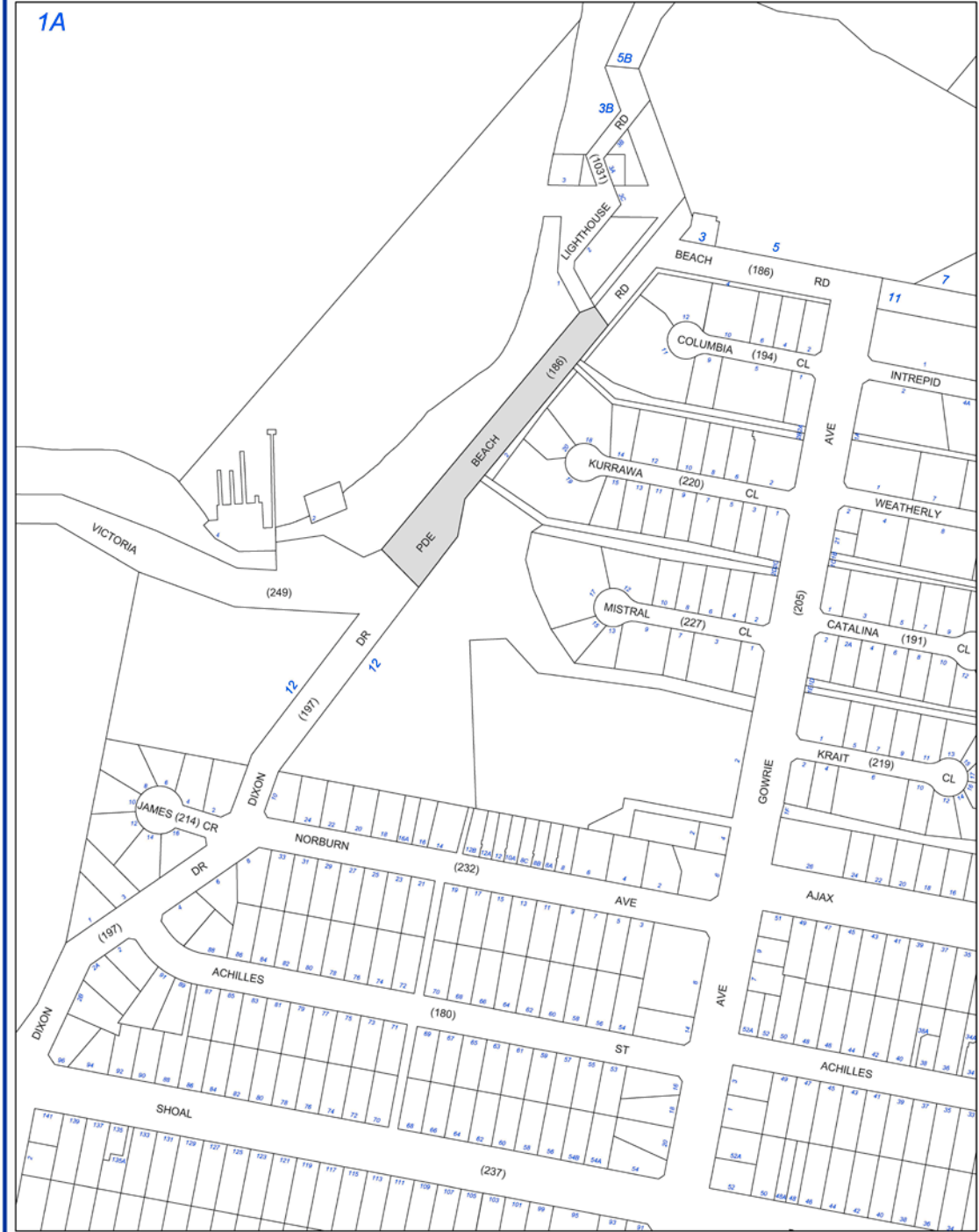
Committee's Recommendation:

The recommendation to the Committee be adopted

Support for the recommendation:

Unanimous

Item C6 - BEACH ROAD SHOAL BAY



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Item: C7

GAN GAN ROAD ANNA BAY - REQUEST TO INSTALL 'NO PARKING' OPPOSITE ANNA BAY PUBLIC SCHOOL

State MP: Member for Port Stephens

Requested by: Port Stephens Council

Background:

Recent upgrading of the drainage and kerb and gutter along Gan Gan Road has allowed an opportunity to provide additional drop-off/pick-up zone on the eastern side of Gan Gan Road.

Comment:

The Traffic Inspection Committee supports the request.

Legislation, Standards, Guidelines and Delegation:

ARR Part 12 Div.2 – Rule 168 – No parking signs

ARR Part 12 Div.7 - Rule 205 – Parking for longer than indicated

AS 2890.5 – On street parking

RTA Regulatory Signs Manual – R5-40

Traffic control devices installed under Part 4 Div. 1 Road Transport (STM) Act

Recommendation to the Committee:

Approve the installation of 20 metres of part-time 'No Parking' in Gan Gan Road Anna Bay, as shown on the attached sketch.

Traffic Committee Discussion:

The Committee members and advisors agreed with the comments of the Inspection Committee and the recommendation.

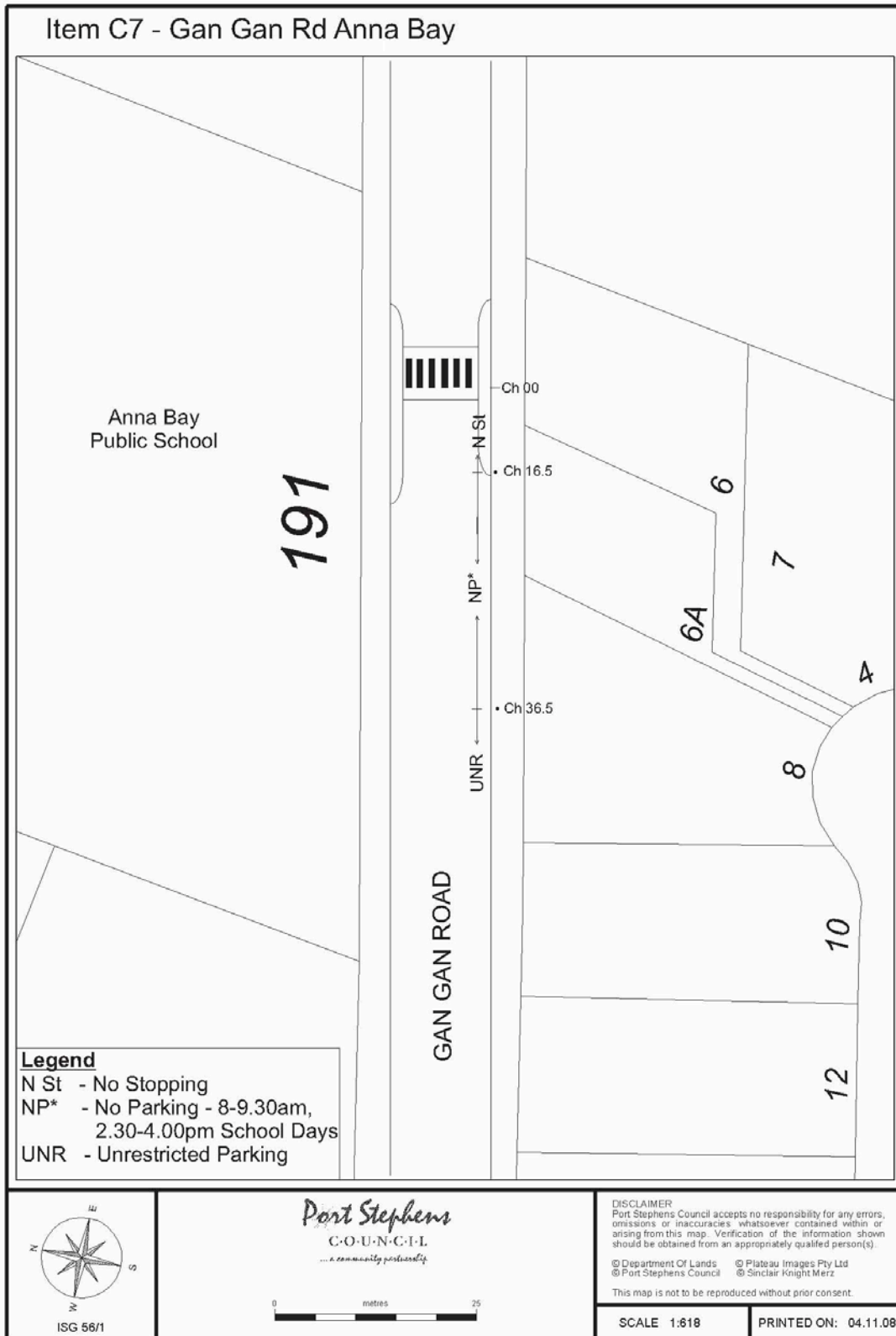
Committee's Recommendation:

The recommendation to the Committee be adopted

Support for the recommendation:

Unanimous

Annexure A



Item: C8

GAN GAN ROAD ANNA BAY - REQUEST TO INSTALL SHORT TERM PARKING RESTRICTIONS AT AUSSIE BOB'S TAKEAWAY

State MP: Member for Port Stephens

Requested by: Ms Gwen Hurle

Background:

Ms Hurle contacted Council to request a reduction of the existing 'No Stopping' at the Gan Gan and Morna Point Road intersection to allow on-street parking at her business. She said that the current lack of parking spaces in the vicinity is affecting her business as people tend to go elsewhere if convenient parking is not available.

Comment:

The Traffic Inspection Committee noted that the existing length of 'No Stopping' at the intersection of Gan Gan and Morna Point Roads was installed to improve the safety of the intersection by increasing available sight distance. Reducing the length of 'No Stopping' would also reduce the safety of the intersection. The Traffic Inspection Committee suggested that some 15 minute parking be provided instead to improve parking turnover.

Legislation, Standards, Guidelines and Delegation:

ARR Part 12 Div.7 - Rule 205 – Parking for longer than indicated

AS 2890.5 – On street parking

RTA Regulatory Signs Manual – R5-1, R5-400

Traffic control devices installed under Part 4 Div. 1 Road Transport (STM) Act

Recommendation to the Committee:

Approve the installation of 20m of 15 minute parking in Gan Gan Road Anna Bay opposite Aussie Bob's takeaway, as shown on the attached sketch.

Traffic Committee Discussion:

Committee members noted that residents would need to be consulted before any parking restrictions could be installed. Parking opposite may not suit takeaway customers and it would seem more logical to provide any short-term parking on the southern side of Gan Gan Road.

Committee's Recommendation:

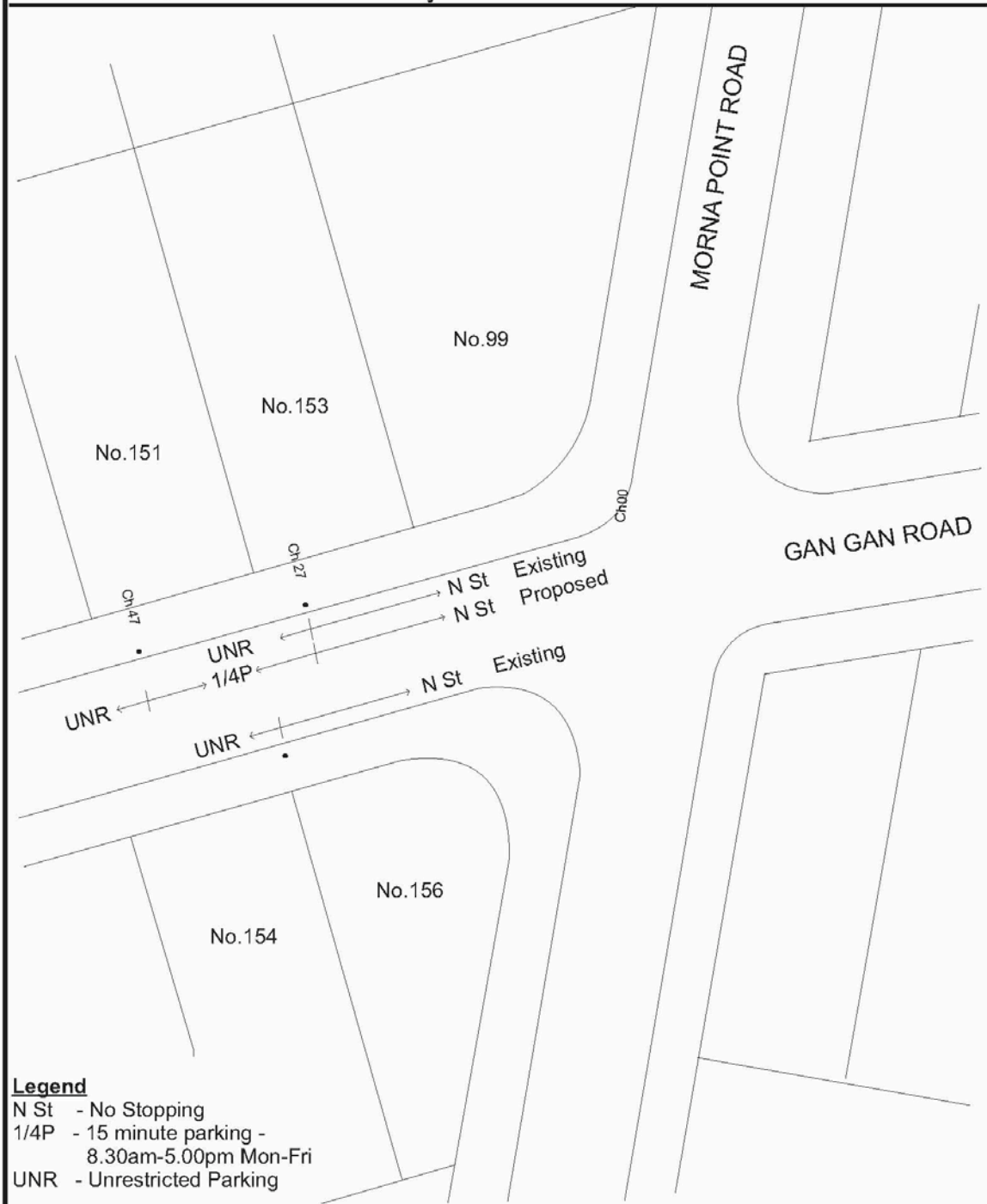
The Committee recommended that this item be deferred until appropriate consultation had been carried out.

Support for the recommendation:

Unanimous

Annexure A

Item C8 - Gan Gan Rd Anna Bay

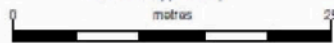


Legend

- N St - No Stopping
- 1/4P - 15 minute parking - 8.30am-5.00pm Mon-Fri
- UNR - Unrestricted Parking



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PRINTED ON: 04.11.08

Item: C9

WARREN STREET SEAHAM – REQUEST TO BRING THE EXISTING CHILDRENS CROSSING UP TO CURRENT RTA STANDARD

State MP: Member for Maitland

Requested by: RTA

Background:

Council has received a request from the RTA to assess the safety of the Children's Crossing at Warren Street Seaham at Seaham Public School.

Comment:

Council currently has plans to upgrade a section of Warren Street Seaham from adjacent to the children's crossing around the corner into Dixon Street. As part of these works Council will be installing kerb extensions on the eastern side of Warren Street at the children's crossing. This will improve safety at the crossing by preventing overtaking of vehicles waiting to turn into the adjacent driveway.

Legislation, Standards, Guidelines and Delegation:

Traffic control devices installed under Part 4 Div. 1 Road Transport (STM) Act

Recommendation to the Committee:

Approve the safety improvements to the children's crossing in Warren Street Seaham, as shown on the attached sketch.

Traffic Committee Discussion:

The RTA representative noted that the holding lines for the children's crossing need to be located as per the RTA standard and not remote from the crossing as indicated on the attached sketch.

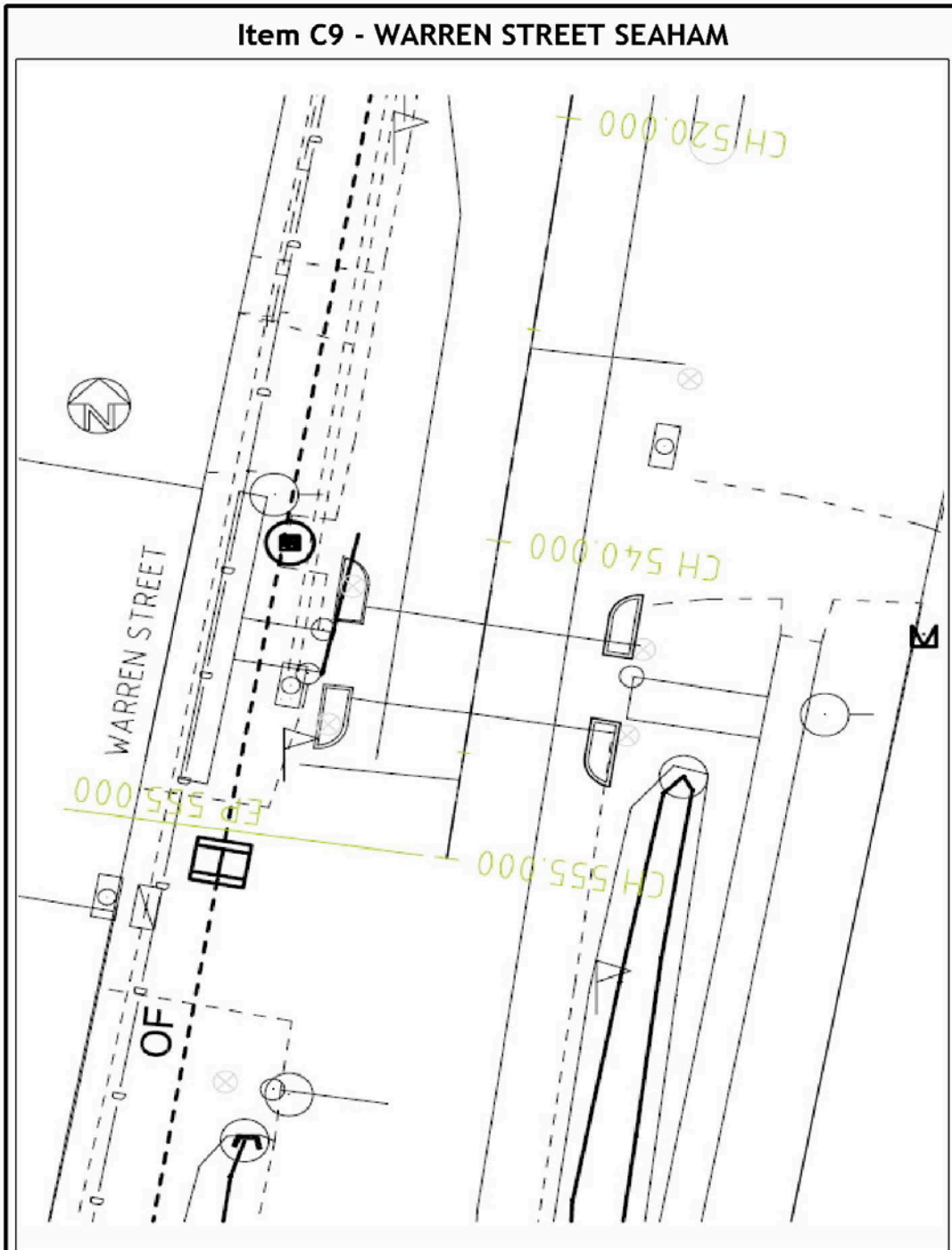
Committee's Recommendation:

The recommendation to the Committee be adopted

Support for the recommendation:

Unanimous

Item C9 - WARREN STREET SEAHAM



ISG 56/1

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PRINTED ON: 06.11.08

General Business

Item: E1

SCHEDULE OF MEETING DATES FOR PORT STEPHENS LOCAL TRAFFIC COMMITTEE FOR 2009

State MP: Members for Maitland and Port Stephens

Requested by: PSC

Background:

Below is a draft schedule of meeting dates for Traffic Inspection Committee and for Port Stephens Local Traffic Committee for 2009.

Comment:

Port Stephens Local Traffic Committee schedule for 2009:

PORT STEPHENS LOCAL TRAFFIC COMMITTEE MEETINGS 2009	
JANUARY	NO MEETING
FEBRUARY	TUESDAY 3 RD
MARCH	TUESDAY 3 RD
APRIL	TUESDAY 7 TH
MAY	TUESDAY 5 TH
JUNE	TUESDAY 2 ND
JULY	TUESDAY 7 TH
AUGUST	TUESDAY 4 TH
SEPTEMBER	TUESDAY 1 ST
OCTOBER	TUESDAY 6 TH
NOVEMBER	TUESDAY 10 TH
DECEMBER	NO MEETING

Traffic Committee meetings will commence at 9.30am and be held in Council's Committee rooms.

Item E2

PARKING FOR TOURIST COACHES AND BUSES AT NELSON BAY

State MP: Member for Port Stephens
Requested by: Mr Mark Newling – Port Stephens Buses
Background:

Tourist bus and coach operators are complaining about a lack of parking facilities at Nelson Bay. A number of tour operators have received parking infringement notices for parking in 'Bus Zones' at the Nelson Bay Marina and have complained to Mr Newling. Under the Australian Road Rules it is an offence for a vehicle other than a public bus to stop in a bus zone. This means that tourist buses cannot legally use bus stops designated with a 'Bus Zone' sign.

Comment:

Mr Newling commented that a number of tourist operators have contacted him to say that they will no longer be coming to Nelson Bay due mainly to the lack of parking facilities for buses and coaches. Mr Newling pointed out that Council was spending a lot of money to promote Port Stephens as a tourist destination and it is contradictory to discourage tourism through a lack of facilities for tourist operators and harsh enforcement of parking restrictions.

Mr Newling commented that existing bus parking is sufficient to cater for a reasonable number of buses in the Marina area but that the sign posted parking restrictions are not suitable.

Committee's Recommendation:

1. Council Officers develop a regulatory sign that allows tourist buses to park for long enough for bus drivers to rest briefly if required or to drop-off or collect passengers without fear of receiving a parking infringement notice. A period of 30 minutes was considered to be long enough while ensuring a reasonable turnover of parking in the Marina area.
2. An area for more remote, long-term bus parking needs to be determined and promoted as well. This would allow buses to park while tour groups are doing other activities such as whale watching etc.



The meeting concluded at 11.10am

Next meeting - Inspections: 21st January 2009
 Traffic Committee: 3rd February 2009

ITEM NO. 11

FILE NO:PSC2007-2094

PORT STEPHENS COUNCIL – SMOKE FREE OUTDOOR AREAS POLICY

REPORT OF: BRUCE PETERSEN – ENVIRONMENTAL SERVICES MANAGER

RECOMMENDATION IS THAT COUNCIL:

- 1) Resolve to adopt a Smoke Free Outdoor Areas Policy.

OPERATIONS COMMITTEE – 9 DECEMBER 2008

RECOMMENDATION:

Councillor Glenys Francis Councillor Peter Kafer	That the recommendation be adopted.
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ORDINARY MEETING – 16 DECEMBER 2008

RESOLUTION:

388	Councillor Glenys Francis Councillor Steve Tucker	<p>It was resolved that Council:</p> <p>1) Receive and note the supplementary information.</p> <p>2) Alter the wording of the policy to read:</p> <p><i>“By 1st July 2009</i></p> <p>1. <i>Smoking on all playing fields, leisure centres, sporting grounds and sporting facilities (including the entire area within the boundaries of those sites)”</i></p>
------------	--	--

Councillor Glenys Francis called for a division.

Those for the motion: Crs B. MacKenzie, G. Dingle; S. Dover, G. Francis; K. Jordan; F Ward; J. Nell; S. O’Brien, D. Maher, P. Kafer & S. Tucker.

Those against the motion: Nil.

BACKGROUND

At the Ordinary Council Meeting of 22 July 2008, it was resolved that:

Council adopt in principal a Smoke Free Outdoor Area Policy in a staged process as follows:

1. *Within 10 metres of all children's playground equipment (endorsed immediately);*
2. *Sports fields and facilities (only following consultation with Sports Council in October 2008);*
3. *Other nominated areas such as Al Fresco dining areas, bushland, parks, reserves and beaches.*

Following this Resolution, Council staff, with the assistance of the NSW Cancer Council and the Heart Foundation, conducted consultation with all Sport Council Committees in October 2008 in relation to the development of a Smoke Free Outdoor Area Policy. All Sport Council Committees unanimously supported Council's Resolution to develop a Smoke Free Policy, which includes sports fields and facilities. Following discussions with relevant Council Managers, it has been decided to also add all Council work areas to the Draft Policy. Non-smoking in Council Work Areas is currently covered by a Management Directive, however it is considered that it is now appropriate to include these areas within the broader policy.

The NSW Cancer Council and the Heart Foundation earlier this year consulted with Council Staff and Councillors regarding the adverse impact of cigarette smoke on people in outdoor areas. As Councillors are aware, Port Stephens Council has established a Community Partnership with the NSW Cancer Council. As part of this relationship, Council is an active participant in *Relay for Life, Sunsmart Awareness* and many other Cancer-related education programs.

Following advice from the Cancer Council and the Sporting Committees, it is proposed to phase the implementation of the Policy in over a 12 month period, starting with children's playgrounds.

FURTHER CONSULTATION

By phasing in the implementation of the Policy over a 12 month period, it will allow for further consultation with stakeholder groups. For example, the Sporting Committees have undertaken to consult with their members over the next 6 months regarding smoking bans on sporting fields and facilities. Council staff will consult with the owners of Al Fresco dining areas and other groups that will be affected by the smoking bans if the draft Policy is adopted by Council.

SIGNAGE

The Cancer Council have stated that they can assist this Council with the cost of non- smoking signage. The phase-in period of the Policy will also allow adequate time to arrange the necessary signage to be installed.

PUBLIC HEALTH IMPACTS

Smoking in enclosed public places in NSW is regulated by the NSW Smoke-Free Environment Act 2000. However, these laws make no provision for controlling outdoor smoking in places where people congregate, such as alfresco dining areas, sporting fields and playgrounds. In 2004, the Act was amended, and from July 2007 smoking will be banned in all enclosed public places, for example in State and Federal offices, shopping centres, hospitals, schools, childcare settings and entertainment venues, as well as the transport sector.

Under the NSW Local Government Act 1993, Councils have the power to legislate in their own jurisdictions to protect their local communities from the effects of second-hand smoke.

Council has an obligation to promote public health outcomes where Council provides assets and services intended to be of benefit to children and other members of the community. They have a commitment to improve the natural environment and the amenity of the local area. In the interests of the health of our local community and environment, Council must consider the adoption of a comprehensive smoke-free outdoor areas policy. This policy would be underpinned by the following:

- Improve the health of community members
- Improve the public amenity and maintenance of Council property
- Raise community awareness of the issues associated with public smoking
- Provide community leadership in taking measures to protect the health and social well-being of the community
- Minimise cigarette butt pollution on Council owned beaches, waterways, parks and other open space areas

There is substantial evidence linking exposure to second-hand smoke with a range of serious and life threatening health impacts including heart disease, cancer, asthma and other respiratory problems. Children exposed to second-hand smoke are at an increased risk of asthma, Sudden Infant Death Syndrome (SIDS), acute respiratory infections and ear problems.

While most of the evidence relates to indoor exposure, there is emerging evidence on how smoking affects air quality in outdoor locations such as alfresco cafes and playgrounds. A recent study which measured cigarette smoke levels in a variety of outdoor locations showed that a person sitting near a smoker in an outdoor area could be exposed to levels of cigarette smoke similar to the exposure of someone sitting in an indoor tavern where smoking is allowed. Therefore, the second-hand smoke in outdoor areas where people tend to congregate, such as alfresco dining areas, sports stadiums and concert venues etc can present a real health risk to patrons and staff.

ENVIRONMENTAL IMPACTS

Cigarettes are the most littered item in the world. Consistently one of the most common items found during Clean Up Australia Day, cigarette butts make up 31% of the top 10 items found and almost 50% of litter in urban areas.

COMMUNITY SUPPORT

Increasing community awareness of the harmful effects of second-hand smoke has led the community to accept, and expect the availability of, smoke-free areas. Given that over 82% of the NSW population are non-smokers, a Council's decision to introduce smoke-free areas is often in response to community expectations. In December 2006, a survey of 2,400 NSW residents found overwhelming support for smoking restrictions in the following areas:

- 92% support bans in children's playgrounds
- 85% support bans outside workplace doors/ entrances
- 80% support bans in sports stadiums
- 69% support bans in outdoor dining areas
- In addition, 65% say they avoid places where they may be exposed to other people's smoke.

COUNCIL APPROACH

More than thirty NSW Councils have already introduced smoke-free outdoor areas within their localities. For example: Mosman Council first banned smoking in playgrounds, sporting fields, bushland, foreshore reserves and beaches in June 2004. These bans were so popular with residents that the Council extended them to cover all parks, public squares, bus shelters, and alfresco dining areas. Through a process aimed at engaging community support, Mosman Council joined neighbouring Councils, Manly and Warringah in the Smoke Free Zones Campaign. This ensured that compliance was self regulated, rather than requiring an enforcement style approach.

Experiences of other Councils suggest that the most successful implementation of a Smoke Free Outdoor Areas Policy is to implement gradually – utilising relevant community engagement processes that are educative and supportive of the communities most affected by the policy.

LINKS TO CORPORATE PLANS

The links to the 2008-2012 Council Plan are:-

SOCIAL SUSTAINABILITY – the	Council will preserve and strengthen the fabric of community, building on community strengths.
ECONOMIC SUSTAINABILITY –	Council will support the economic sustainability of its communities while not compromising its environmental and social well being.
ENVIRONMENTAL - SUSTAINABILITY –	Council will protect and enhance the environment while considering the social and economic ramifications of decisions.
BUSINESS EXCELLENCE –	Council will use the Business Excellence Framework to innovate and demonstrate continuous improvement leading to long-term sustainability across operational and governance areas in a Business Excellence Journey

FINANCIAL/RESOURCE IMPLICATIONS

Under S632(1) and (2e) of the NSW Local Government Act 1993, it is necessary for Council to erect suitably worded and placed signage. However, the suitably recognised symbol for “no smoking” is used by a number of Councils and can be easily and affordably affixed to existing signage.

Some Councils have found that they have actually saved money due to the reduced cleaning costs associated with decreased cigarette butt litter.

LEGAL AND POLICY IMPLICATIONS

Under the NSW Local Government Act 1993, Council has the power to:

- Prohibit smoking in any place within the local government area of Port Stephens, in respect of which Council is the owner or occupier, as a condition of entry to that place (s632)
- Erect suitably worded and strategically placed notices in ‘public places’ within the local government area of Port Stephens prohibited smoking. (s632)
- Serve, by means of an authorised person, a penalty notice upon any person who fails to comply with the terms of any such notice. (s679)

BUSINESS EXCELLENCE FRAMEWORK

Port Stephens Council is a quality driven organisation. We use the Business Excellence Framework as a basis for driving organisational excellence. The Framework is an integrated leadership and management system that describes elements essential to organisational excellence. It is based on eight (8) principles.

These outcomes align with the following Business Excellence principles:-

- 1) **LEADERSHIP** – *Lead by example, provide clear direction, build organisational alignment and focus on sustainable achievement of goals.*
- 2) **CUSTOMERS** – *Understand what markets and customers value, now and into the future, and use this to drive organisational design, strategy, products and services.*
- 3) **SYSTEMS THINKING** – *Continuously improve the system.*
- 4) **PEOPLE** – *Develop and value people’s capability and release their skills, resourcefulness and creativity to change and improve the organisation.*
- 5) **CONTINUOUS IMPROVEMENT** – *Develop agility, adaptability and responsiveness based on a culture of continual improvement, innovation and learning.*
- 6) **INFORMATION AND KNOWLEDGE** – *Improve performance through the use of data, information and knowledge to understand variability and to improve strategic and operational decision making.*
- 7) **CORPORATE AND SOCIAL RESPONSIBILITY** – *Behave in an ethically, socially and environmentally responsible manner.*
- 8) **SUSTAINABLE RESULTS** – *Focus on sustainable results, value and outcomes.*

SUSTAINABILITY IMPLICATIONS

The Smoke Free Outdoor Areas Policy recognises that Council has an obligation to promote public health outcomes where Council provides assets and services intended to be of benefit to children and other members of the community. It also recognises that Council has a commitment to improve the natural environment and the amenity of the local area by reducing the amount of cigarette butt litter found in outdoor spaces.

SOCIAL IMPLICATIONS

There is increasing evidence of the serious and life threatening health impacts of passive smoking on people in outdoor areas. Children are most vulnerable to the effects of passive smoking on respiratory illness and asthma. Evidence shows that risks can be considerably reduced through the implementation of smoking bans in outdoor areas. In addition, evidence shows that smoking bans support smokers who are trying to quit as well as reduce their overall cigarette consumption.

ENVIRONMENTAL IMPLICATIONS

Cigarette butts are not biodegradable and take up to five years to break down. They are also the most common form of litter. Smoking bans have proven to reduce these negative effects to the environment.

ECONOMIC IMPLICATIONS

Associated with the littering of cigarette butts, smoking bans have proven to reduce clean-up costs. In relation to the health implications of passive smoking, smoking bans will ultimately reduce costs and demands of health care.

CONSULTATION

This policy has been developed following consultation with key community stakeholders across Port Stephens - in particular, Port Stephens Sports Councils. Each of these groups unanimously supported the adoption and implementation of a Smoke Free Outdoor Areas policy by Council, prohibiting smoking in children's playgrounds and all sporting fields and facilities by 1st July 2009.

It is proposed that Council undertake further community engagement and consultation to expand this policy by 1st January 2010 to include smoking bans on all beaches, bushland, parks, reserves, and within alfresco dining areas.

OPTIONS

- 1) To Adopt a Smoke Free Outdoor Areas Policy
- 2) To adopt a Smoke Free Outdoor Policy with amendments.
- 3) To not adopt a Smoke Free Outdoor Policy.

ATTACHMENTS

- 1) Smoke Free Outdoor Areas Policy (draft)

COUNCILLORS ROOM

Nil

TABLED DOCUMENTS

Nil



POLICY

Adopted:
Minute No:
Amended:
Minute No:

FILE NO: PSC2007-2094

TITLE: SMOKE FREE OUTDOOR AREAS POLICY

REPORT OF BRUCE PETERSEN – MANAGER, ENVIRONMENTAL SERVICES

BACKGROUND

There is substantial evidence linking exposure to second hand smoke with a range of serious and life threatening health impacts including heart disease, cancer, asthma and other respiratory problems. Children exposed to second-hand smoke are most vulnerable, and at increased risk of asthma, sudden infant death syndrome, acute respiratory infections and ear problems.

Smoking in enclosed public places in NSW is regulated by the *NSW Smoke-Free Environment Act 2000*. In July 2007 the Act was amended to prohibit smoking all enclosed public places for example in State and Federal offices, shopping centres, hospitals, schools, childcare settings and entertainment venues, as well as the transport sector.

Under the *NSW Local Government Act 1993*, Councils have the power to legislate in their own jurisdictions to protect their local communities from the effects of second-hand smoke.

OBJECTIVE

The objectives of this Policy are to:

- Improve the health and amenity of the community by banning smoking in public outdoor areas;
- Raise community awareness of the issues associated with smoking;
- Provide community leadership in taking measures to protect the health and social wellbeing of the community.

PRINCIPLES

1) The Policy applies to:

- The initiation of a process of education and awareness within the community about the impact of smoking on others in public places.
- The banning of smoking in public places including children's playground areas, playing fields, sporting grounds and sporting facilities, alfresco dining areas, beaches, bushland, parks, reserves and Council owned buildings.

POLICY STATEMENT

This policy prohibits

Immediately:

1. Smoking within 10 metres of all children's play areas under Council's care.
2. Smoking within the confines of all Council workplace buildings, vehicles and plant. This includes any area under the roofline of the building.

by 1st July 2009

2. Smoking on all playing fields, sporting grounds and sporting facilities (ie: swimming pools, outdoor sports centres)

By 1st January 2010

1. Within alfresco dining areas on public land where Council has conditioned such approvals to occupy the land
2. On all beaches, bushland, parks and reserves.

RELATED POLICIES

Port Stephens Council Management Directive 2000 "Smoke Free Workplace"

NSW Local Government Act 1993 (S632)

SUSTAINABILITY IMPLICATIONS

The Smoke Free Outdoor Areas Policy recognises that Council has an obligation to promote public health outcomes where Council provides assets and services intended to be of benefit to children and other members of the community. It also recognises that Council has a commitment to improve the natural environment and the amenity of the local area by reducing the amount of cigarette butt litter found in outdoor spaces.

SOCIAL IMPLICATIONS

There is increasing evidence of the serious and life threatening health impacts of passive smoking on people in outdoor areas. Children are most vulnerable to the effects of passive smoking on respiratory illness and asthma. Evidence shows that risks can be considerable reduced through the implementation of smoking bans in outdoor areas. In addition, evidence shows that smoking bans support smokers who are trying to quit as well as reduce their overall cigarette consumption.

ECONOMIC IMPLICATIONS

Associated with the littering of cigarette butts, smoking bans have proven to reduce clean-up costs. In relation to the health implications of passive smoking, smoking bans will ultimately reduce costs and demands of health care.

ENVIRONMENTAL IMPLICATIONS

Cigarette butts are not biodegradable and take up to five years to break down. They are also the most common form of litter. Smoking bans have proven to reduce these negative effects to the environment.

RELEVANT LEGISLATIVE PROVISIONS

NSW Local Government Act 1993.

NSW Smoke-Free Environment Act 2000.

ENFORCEMENT OF THE BAN:

In implementing council's Smoke-free Outdoor Areas policy a program of community education and awareness will be undertaken.

Enforcement of this policy will be by signage, positive persuasion and self-policing through the community.

Suitable signage, including the installation of new signage as well as the appendage of internationally recognised "no smoking" symbols to existing signage.

IMPLEMENTATION RESPONSIBILITY

All staff

REVIEW DATE

December 2012

ITEM NO. 12

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 9 December, 2008.

No:	Report Title	Page:
1.	AUSTRALIAN SHARK AND RAY CENTRE – ROADWORKS UPDATE	92
2.	ACCESS COMMITTEE MINUTES	94
3.	PORT STEPHENS ECONOMIC DEVELOPMENT ADVISORY PANEL	99
4.	LIQUOR ACT 2007	102
5.	COUNCIL RESOLUTION ABOUT BOTTLE SHOP CLOSURE ON NEW YEARS EVE	112
6.	CASH AND INVESTMENTS HELD AT 31 OCTOBER 2008	114
7.	DE-CORPORATISATION OF NSW COUNCILS	118

OPERATIONS COMMITTEE – 9 DECEMBER 2008

RECOMMENDATION:

Councillor John Nell Councillor Geoff Dingle	That the recommendation be adopted.
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ORDINARY MEETING – 16 DECEMBER 2008

RESOLUTION:

389	Councillor Steve Tucker Councillor Geoff Dingle	It was resolved that the recommendation be adopted.
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MATTER ARISING:

Councillor John Nell Councillor Geoff Dingle	That Council express its expectation that item 4 contained in Item 1 of the Information Paper report be dealt with forthwith regarding the width of the access and removal of the gate.
---	---

ORDINARY MINUTES – 16 DECEMBER 2008

ORDINARY MEETING – 16 DECEMBER 2008

RESOLUTION:

390	Councillor Steve Tucker Councillor Geoff Dingle	It was resolved that the matter arising be adopted.
-----	--	---

MATTER ARISING:

Councillor Geoff Dingle	That Council be provided with a 2-way Conversation on the implications of the new Liquor Act impacts and requirements by a suitably qualified person.
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ORDINARY MEETING – 16 DECEMBER 2008

RESOLUTION:

391	Councillor Steve Tucker Councillor Geoff Dingle	It was resolved that the matter arising be adopted.
-----	--	---

OPERATIONS COMMITTEE INFORMATION PAPERS



INFORMATION ITEM NO. 1

AUSTRALIAN SHARK AND RAY CENTRE – ROADWORKS UPDATE

REPORT OF: SCOTT ANSON – DEVELOPMENT AND BUILDING MANAGER
FILE: 7-1995-394-3 & 16-2007-445-1

BACKGROUND

The purpose of this report is to provide Council with a quarterly update on the progress of the roadworks required to be completed by the Australian Shark and Ray Centre.

At the Ordinary Meeting on 27 May 2008, Council resolved that:

- 1) *Council reaffirm the current condition of consent that requires the provision of pavement widening in Marsh Rd for an intersection turnout to the development and provide an extension of time (12 months) for the proprietor to complete required road works in accordance with condition 10 of the development consent.*
- 2) *The General Manager provide regular update reports to Council quarterly.*

As per 2) above, below is a quarterly report as to the applicant's progress.

Breakdown of Works

A breakdown of anticipated works required to be undertaken to fulfil Condition 10 (as modified) consists of, but is not limited to, the following activities. Based on the response received, the progress made by the proprietor is highlighted in bold below.

1. **Clearing of sight lines**
2. **Topographical survey**
3. **Concept plan view of existing driveway / intersection (provided to Council April 10, 2008).**
4. Remove part of the gate to provide sufficient width for required access
5. Prepare Geotechnical investigation of pavement widening (shoulder)
6. Prepare geometric road design and provide a concept plan for Council comment
7. Consult contractors for advice, quote, construction methodology etc.
8. Lodge application to obtain a Roads Act approval
9. Contractor or sub-contractor to develop a Traffic Control Plan for required construction works
10. Approval to remove existing power pole from the driveway swept paths
11. Negotiate with NSW Department of Fisheries to construct shoulder widening
12. Obtain a Roads Act approval

13. Engage a contractor
14. Construct intersection including Council inspection and sign off of hold points specified by Roads Act approval

It is advised that no further action has been taken by the applicant since the 27 May 2008.

The owner has verbally advised that he would like additional assistance from Council staff in terms of progressing the matter. Accordingly, a meeting is to be scheduled with the owner to facilitate this request.

ATTACHMENTS

- 1) Nil.

INFORMATION ITEM NO. 2

ACCESS COMMITTEE MINUTES

REPORT OF: TREVOR ALLEN - INTEGRATED PLANNING MANAGER

FILE: A2004-0226

BACKGROUND

The purpose of this report is to present to Council the minutes of the Access Committee meeting held on 4 November 2008.

Key issues addressed at the meetings included: -

- 1) Access Awareness Day
- 2) 2008 Port Stephens International Day of People with Disabilities
- 3) 2009 Access Committee Planning Day

ATTACHMENTS

- 1) Minutes of the Access Committee meeting held on 4 November 2008.

ATTACHMENT 1

**PORT STEPHENS ACCESS COMMITTEE
MINUTES OF MEETING HELD 4 NOVEMBER 2008
AT THE NELSON BAY RSL CLUB**

Present:

Michelle Page, Cathy Jennings, Kathy Delia, Joe Delia, Margaret O'Leary, Dominique Watson, Sarah James

Apologies:

Joanne Atkins, Helen Brown, Cr. Sally Dover

Meeting Opened: 10.40am

1. ADOPTION OF PREVIOUS MINUTES

Deputy Chairperson Cathy Jennings welcomed members of the Committee. The minutes of the previous meeting on 2 September 2008 were adopted as an accurate record of that meeting. There were no minutes in October as the Access Awareness Day was held in lieu of the October Access Committee Meeting.

2. MATTERS ARISING FROM PREVIOUS MINUTES

Nil

3. COUNCIL'S COMMUNITY PLANNER – AGEING & DISABILITY UPDATE

3.1 OH&S Volunteer Training:

All Council volunteers and Committee members are required to be OH&S inducted. Details as follows:

Raymond Terrace 13 Nov 2008 Council Building~ 6pm
 11 Dec 2008 Council Building ~ 6pm

Tomaree ~ 27 November 2008 ~ Tomaree Library ~ 6pm

Tilligerry ~ 19 November 2008 ~ Mallabula Community Centre ~ 7pm

RSVP is essential; please contact Council's Community Facilities Co-ordinator on 49800202 to make your booking.

3.2 Information Forum for Carers- Hunter New England Health:

Carers are invited to attend a free information forum commencing 14 Oct 2008 till 25 Nov 2008. Will be held at 12.30pm – 2.30pm at the Charlestown Community Room, Charlestown Mall. The forum will include a panel of service providers, information on stress management, practical skills for carers etc. For further information and to rsvp attendance contact EDuCARE on 49214895

3.3 Premiers Christmas Gala Concert:

FREE seniors concert, two concerts at Sydney Entertainment Centre, 10 December 2008 at 10.30am and 2.30pm. Free tickets available from Ticketek.

3.4 Family Advocacy for Students with a Disability Leaving School:

The workshop is for all students with a disability leaving high school of any age. Workshop commences 27 November 2008. For more information contact 1800 620 588

3.5 Post Polio Support Group ~Hunter Area:

Meetings are held the first Wednesday of every month. For more information please call support group on 49575254

4. GENERAL BUSINESS

4.1 Access Awareness Day:

The Access Committee of Port Stephens facilitated the Access Awareness Day on 7 October 2008 in Raymond Terrace. The purpose of the day was to educate and raise the awareness of physical access issues amongst Council Officers responsible for planning, maintaining and making decisions regarding development applications, Council assets and infrastructure. The day comprised: -

- Participants were transported in a Community Transport Bus
- Nelson Bay Community Health provided wheelchairs, walkers and sets of crutches
- Vision Australia supplied special sight glasses
- A light lunch was organised for participants following the completion of all tasks and a debrief

Participants were required to complete a range of experientially based tasks set by the Access Committee with a focus on the local access barriers regularly experienced by users of wheelchairs, walkers, scooters, crutches and prams.

The tasks included: -

- Attending supermarkets, amenities, libraries and local businesses all while in wheelchairs and vision impaired
- Collecting evidence based items when completing activities while confined to wheelchairs and wearing vision impaired aids

Following the completion of the set tasks, participants were asked to provide feedback including difficulties, barriers and suggestions about the activities of the day. All participants found the day to be of real value to their respective positions. This initiative and others, assists Council in implementing the Port Stephens Disability Action Plan.

In light of the day's success and value to Council, the Access Committee is planning to conduct this event again in 2009.

4.2 Accessible Parking Provisions at a Tomaree Health Facility:

A committee member submitted a report re the perceived lack of accessible parking at a health facility on the Tomaree Peninsula. The report also pointed out some local traffic hazards in the same area.

ACTION	1. Council's Community Planner - Ageing & Disability will investigate discuss with appropriate Council Officers.
--------	--

4.3 Access Committee Planning Day 2009

Committee discussed agenda items to be included in Access Committee Planning Day which will be held on 3 February 2009 at Council. Items requested by Committee to be included on agenda: -

- membership
- promotion
- tasks and action plan for 2009

The Committee intend to cover within their scope older persons, people with disabilities, carers and parents with young children.

4.4 Access Committee meeting dates for 2009

Access Committee meeting dates for 2009 will be sent out with these minutes.

4.5 International Day of People with Disabilities 2009

This year's event will be held on 3 December 2008 at the Ngioka Centre, Little Beach. An invitation to all Access Committee members will be enclosed with these minutes. For catering purposes please RSVP to Council's Community Planner – Ageing & Disability.

4.6 Update of Access Committee Information for 2008

Projects completed and investigated in 2008 include:

- New access issue register and database commenced
- New Access Committee brochure completed

- Amendment to the Access Committee Constitution to include the whole of the community
- Input into access upgrade at various locations (eg; Shopping centres, Clubs, Restaurants, Resorts, signage upgrades, dish ramps, pedestrian crossings, footpaths, cycle ways)
- Community transport issues addressed
- Bus stops audited
- Current membership of 41 members

Please contact Council's Community Planner – Ageing & Disability for more information.

4.7 Designated Councillor to Access Committee:

After the recent elections, Cr. Sally Dover has been re appointed to the Access Committee.

5. DETAILS OF NEXT MEETING

The next meeting will be the annual Access Committee Planning Day on 3 February 2009 in the Port Stephens Council Administration Building commencing at 10.30am. All are invited to attend.

Meeting closed at 11.40am

INFORMATION ITEM NO. 3

PORT STEPHENS ECONOMIC DEVELOPMENT ADVISORY PANEL

**REPORT OF: LESLEY MORRIS – ECONOMIC DEVELOPMENT MANAGER
FILE: A2004-0645**

BACKGROUND

The purpose of this report is to present to Council the minutes of the Port Stephens Economic Development Advisory Panel on Tuesday 4 November 2008.

ATTACHMENTS

- 1) Minutes of the Port Stephens Economic Development Advisory Panel meeting on 4 November 2008.

ATTACHMENT 1

**MINUTES OF THE PORT STEPHENS ECONOMIC DEVELOPMENT ADVISORY PANEL MEETING HELD 9.30AM
TUESDAY 4 NOVEMBER 2008
AT NEWCASTLE AIRPORT**

PRESENT: Clr Bob Westbury (In the Chair), Robyn Bradbury, Peter Dann, Paul Hughes, Scott Orpin, Ian Rennie, Peter Gesling, Brett Fatches, Boris Novak, Susan Rowe, Clr Steve Tucker, Lesley Morris.

APOLOGIES: Gillian Summers

WELCOME AND INTRODUCTIONS

The Chairman welcomed the EDAP members and in particular, Brett Fatches and Peter Dann to their first meeting.

MINUTES OF THE LAST MEETING

*RESOLVED that the Minutes of the meeting held on 5 August be adopted.
Moved Boris Novak, seconded Robyn Bradbury* *CARRIED*

BUSINESS ARISING

- The EDU Priorities Document and reporting format including KPIs was developed and distributed
- A copy of the Code of Conduct was distributed
- Email addresses were distributed to all EDAP members
- The next stage of the Department of Lands project to Corlette is expected to go on exhibition soon, the Department of Lands project also covers land at Karuah and Raymond Terrace.

NEWCASTLE AIRPORT UPDATE

Paul Hughes gave a presentation regarding the Newcastle Airport.

QUARTERLY REPORT

The September Quarterly Report, Performance Against KPIs and 9 Project Briefs were discussed and noted.

BUSINESS ARISING

- Project costing should also include in-kind contributions, eg. staff time
- Additional linkages to the website are to be investigated
- Funding options for the Marketing Plan are to be discussed with DSRD
- Infonet database to be expanded to include Nelson Bay Chamber members
- Changes to Federal Government assistance programs for Small Business to be followed up
- Investigate additional opportunities for research linkages with CSIRO
- Investigate opportunities for PSTL members to be more involved with the Billabong Pro-Junior next year

Action: Develop a template for Evaluation of Projects which includes both direct and in-kind contributions and assesses performance against the project objectives.

ATTACHMENT 1

GENERAL BUSINESS

- A meeting should be arranged with the new Minister for Hunter and Tourism
- A number of Port Stephens businesses have been successful in regional business awards this year. It was suggested that BPS recognise and promote these achievements through the website and other marketing activities.
- AmpControl will be able to assist with developing marketing material for the Tomago industrial area
- The impact of the future costs of energy and emissions trading to businesses such as Tomago Aluminium was discussed – a meeting is to be arranged with the CEO.
- It was suggested that a briefing be arranged for the EDAP on the local planning strategies that are currently being prepared by Council.

There being no further business, the meeting closed at 11.30am

NEXT MEETING – 9.30AM TUESDAY 3 FEBRUARY 2009

INFORMATION ITEM NO. 4

LIQUOR ACT 2007

REPORT OF: TREVOR ALLEN - INTEGRATED PLANNING MANAGER

FILE: PSC2005-5165

BACKGROUND

The purpose of this report is to inform Council that a new Liquor Act was passed by the NSW Parliament on 5 December 2007 and came into effect on July 1 2008. The new laws recognise the importance of minimising alcohol-related harm and the social and cultural role played by responsible alcohol use. They also provide local government with greater involvement in liquor licence applications.

Most significantly, the new laws require Office of Liquor, Gaming and Racing (OLGR) (previously known as Department of Gaming and Racing – DGR) to work more closely with local government. Councils and Police must be notified within two working days of a licence application being lodged and Council can make a submission to the Authority within 30 days of the application being lodged. With each licence application, each applicant must also submit a Community Impact Statement replacing Social Impact Assessment which requires them to consult with the local community, including the Council, about any issues and concerns they have with a proposed application.

Local government can put conditions on a Development Application that will require the licensee to undertake activities that will minimise the opportunity for anti-social behaviour. Council's Community Planner – Community Safety is currently preparing an amendment to Council's Development Control Plan to control late night trading in Port Stephens. This will be addressed in a future report to Council during the first quarter of 2009.

Liquor and gaming licence applications, including applications to extend trading hours, and disciplinary measures will now be considered by the new *Casino, Liquor and Gaming Control Authority*. The enforcement role of the *Director of Liquor and Gaming* has been expanded. The Director can now determine noise/disturbance claims against licensed venues, impose or vary licence conditions and issue instructions to licensees.

The importance of a liquor accord's role in minimising alcohol-related harm has been enhanced so that compliance with liquor accord terms can be ordered by the Director of Liquor and Gaming. Licensees can also be made to contribute financially to liquor accords to strengthen an accord's ability to address alcohol-related issues in their local community.

COUNCILLORS ROOM

- 1) Copy of the Office of Liquor, Racing and Gaming's *Guide to the New Liquor Laws for Local Councils*

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A guide to the new liquor laws for local councils

www.
olgr.nsw.gov.au

Publication details
July 2008



NSW Office of
Liquor, Gaming & Racing



Department of the Arts, Sport and Recreation

Local councils have an important role in the operation of the NSW liquor laws.

The determination of development approvals under the planning laws for (proposed) licensed venues, and the provision of submissions by councils to the Casino, Liquor & Gaming Control Authority, will affect the outcome of liquor licensing applications. There are also a number of options for councils to deal with local neighbourhood problems involving existing licensed venues. This fact sheet outlines how the liquor laws can be used by local councils to achieve positive outcomes for the community. It also outlines the importance of councils having clear policies when dealing with development applications involving (proposed) licensed venues.

What types of liquor licences can be issued?

This table outlines the categories of liquor licence that can be issued under the *Liquor Act 2007*. All liquor licensing applications are determined by the Casino, Liquor & Gaming Control Authority. In many cases, a liquor licence application must be accompanied by a CIS.

Type of licence	Type of activity	Community Impact Statement (CIS) required
Hotel (including a general bar licence)	Hotel, bar, tavern	Yes
Club	A registered club selling liquor to members and their guests	Yes
On-premises	Can be tailored for one or more types of business activities including a restaurant, entertainment venue, motel, function centre and other settings where liquor is consumed on the premises	Yes, but only where the on-premises licence relates to a restaurant or a public entertainment venue (other than a cinema or theatre)
Packaged liquor	Liquor stores, internet operators selling liquor to the public	Yes
Producer/wholesaler	Brewer, distiller winemaker, wholesaler	No
Limited	Functions held by non-profit organisations, as well as special events and trade fairs	No

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Important things to know

Community impact statements (CIS)

The CIS process is the first opportunity for councils to influence the outcome of a liquor licensing proposal.

A CIS is prepared by a potential applicant for most liquor licence or licence-related authorisation applications. It is prepared before the liquor licensing application is made.

The CIS allows the Authority to be aware of the impact that granting an application will have on the local community. It does this by ensuring the potential applicant consults with the local community – including the local council – before deciding to lodge an application. The CIS summarises the results of consultation between the applicant and the local community about any issues and concerns with a proposed application.

A CIS must be included with the papers lodged with the Authority when a liquor licence application is made. It is required for applications that are most likely to have an impact on the local community – but not for all applications.

The liquor laws require potential applicants to consult with local councils as part of the CIS process. Applicants must provide a notice to the council for this purpose. Councils should be prepared to respond to applicants when they receive the notice.

Where a CIS is required, the Authority cannot grant a licence, authorisation or approval unless it is satisfied that the overall social impact will not be detrimental to the well being of the local or broader community. Councils may wish to consider this issue when consulted by potential applicants.

The CIS process provides an opportunity for councils to be consulted on a licensing application, and in turn, for councils to consult with residents and other stakeholders if they wish. Further information about the CIS process – including a list of the applications that require a CIS – is contained in a CIS toolkit available from the NSW Office of Liquor, Gaming & Racing (OLGR) website www.olgr.nsw.gov.au from 1 July 2008.

Where development consent is required under the *Environmental Planning and Assessment Act 1979* to use the premises for the proposed liquor licence, consultation for a CIS may be undertaken at the same time as stakeholders are consulted about the development application.

Liquor licensing applications

The application process is the second opportunity for councils to influence the outcome of a liquor licensing proposal. The application process occurs after the preparation of a CIS (if a CIS is required).

Further information on the licence application process is outlined in a flowchart (No.4) on page 9.

Local councils (and police) are required to be notified by the applicant within two working days of an application being lodged with the Authority. The types of applications where notification must be provided are:

- for any liquor licence
- some types of licence-related authorisations, including an extended trading hours authorisation and a primary service authorisation
- to remove a licence to another location.

Submissions can be made by local councils (and any other person) to the Authority on these applications within 30 days of the application being lodged (or 14 days in respect of an application for a limited licence).

Any submissions that are made must be taken into account by the Authority.

If development consent is required under the *Environmental Planning and Assessment Act 1979* (or approval under Part 3A of that Act is required) to use the premises as proposed by the liquor licensing application – the Authority must be satisfied that development consent or approval is in force for the application to be granted.

Councils should consider this issue when deciding whether to make a submission to the Authority.

Social profile data to assist councils

Beginning in the second half of 2008, the NSW Office of Liquor, Gaming and Racing will maintain social profile data for local government areas across the State. This data will include relevant crime, health, licensing and population statistics. It will be assessed by the Authority when considering liquor licensing applications.

Reports outlining this data will be progressively made available to councils and the public during 2008-09 (via www.olgr.nsw.gov.au) to assist them in considering their response to liquor licensing proposals (at the CIS stage) and applications.

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NSW Office of
Liquor, Gaming & Racing



Important things to know

Public interest measures in the liquor laws

The NSW liquor laws contain measures that allow local councils to take action against licensed venues that have an adverse impact on a local community.

Disturbance complaints

A disturbance complaint can be made by councils, police or three or more residents to the Director of Liquor and Gaming when the quiet and good order of a neighbourhood is unduly disturbed by the:

- operation of licensed premises
- behaviour of patrons after leaving the premises (such as alcohol-related anti-social behaviour and violence)

In determining a complaint, the Director can impose conditions on a liquor licence relating to:

- noise restrictions
- trading restrictions including lockouts/curfews;
- restrictions on the sale/supply of liquor
- provision of security, or additional security patrols, in and around the venue
- requiring the licensee to participate in a local liquor accord.

The Director will determine if the neighbourhood is being unduly disturbed. Where a council makes a complaint, either in its own right or on behalf of residents, evidence is crucial in establishing the level of disturbance, and what measures may be necessary to address it.

The complaint process operates more efficiently and outcomes are more effective where evidence is precise and complete.

The disturbance complaint process is outlined in a flowchart (No.3) on page 8.

Request to the Director of Liquor and Gaming

Where there are problems associated with a licensed venue, an alternative course of action for councils to consider is to request the Director of Liquor and Gaming to:

- impose conditions on a liquor licence
- issue directions to the licensee.

Conditions can be imposed by the Director on a liquor licence, but only after the Director has given the licensee an opportunity to make submissions in relation to the proposal.

Any proposal to impose conditions on a licence by the Director needs to be supported by evidence to show that the conditions are required to address a

specific issue associated with the operation of the licensed venue eg. a condition to employ additional security in and around the venue to minimise alcohol-related crime and anti-social behaviour late at night.

Written directions can also be issued by the Director to a licensee to improve the operation of a venue and secure compliance with the liquor laws. Directions can cover any aspect of a venue's operations and can relate to the way liquor is sold and promoted, entertainment and other facilities are provided and the dispersal of patrons at closing time.

Further information on these processes is contained in a flowchart (No.1) on page 6.

Disciplinary complaint action

A disciplinary complaint can be made to the Authority by a council, the Director of Liquor and Gaming and police against a licensee or a manager on a number of grounds.

Disciplinary complaint action should only be considered where there are serious problems associated with the operation of a licensed venue that cannot be properly addressed by other means – such as the imposition of conditions, or where there are frequent problems occurring in and around the premises.

Grounds upon which a disciplinary complaint can be taken include:

- a breach of licence conditions
- not complying with a direction given by the Authority, the Director of Liquor and Gaming or police
- allowing activities at the premises that are likely to encourage the misuse and abuse of alcohol
- intoxicated people have frequently been found on the premises or leaving the premises
- acts of violence have occurred frequently on or near the premises involving patrons
- the licence is not being operated in the public interest
- public entertainment is held contrary to the requirements of the *Environmental Planning and Assessment Act 1979*.

The Authority can impose sanctions in determining a disciplinary complaint. This includes cancelling or suspending the licence, disqualifying the licensee and imposing penalties of up to \$44,000 for an individual or \$110,000 for a corporation.

Further information on the disciplinary complaint process is outlined in a flowchart (No.2) on page 7.



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Important things to know

Liquor accords

There are 137 liquor accords operating in NSW. Local councils play an important role in the success of these accords. While many accords are chaired or coordinated by a council representative, others receive funding or in kind support from councils for their work.

The framework to promote and support liquor accords in NSW has been strengthened under the liquor laws. Some of the key features of the liquor laws that impact on liquor accords are:

- they must be approved by the Director of Liquor and Gaming and the Commissioner of Police
- the Director can issue a direction to a licensee to participate in an accord and/or contribute fees to an accord
- an accord licensee can apply to the Authority for a banning order (where a person has been repeatedly drunk, violent or quarrelsome) to prevent the person's entry to multiple premises for up to six months.

More information about the operation of liquor accords is available from the OLGR website.

OLGR provides support to liquor accords through its Liquor Accord Delivery Unit. This unit regularly attends accord meetings around the State, provides updates on topical issues and is the first point of contact for accord coordinators and members within OLGR.

Contact the unit on 02 9995 0312 or by email at accords@olgr.nsw.gov.au

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NSW Office of
Liquor, Gaming & Racing



FAQs

What should councils do under the liquor laws?

Establish clear policies for dealing with licensing proposals

Policies should be established and promoted by councils to enable stakeholders to determine the likely requirements that will need to be met under the planning laws for a licensing proposal. Whether development approval is required for a particular licensing proposal is a key issue.

Three areas where council policies may be required are in relation to:

- a general bar hotel licence
- restaurants that wish to serve liquor without meals (under a primary service authorisation)
- an extended trading authorisation.

General bar hotel licence

A general bar hotel licence is a limited type of hotel licence. It allows liquor to be sold to patrons for consumption on the premises, but does not permit takeaway liquor sales, or the operation of gaming machines or other forms of gaming like keno and wagering.

In some instances, applications for a general bar hotel licence will relate to new premises, while others will be for existing licensed premises eg. a licensed restaurant.

Primary service authorisation

A primary service authorisation enables liquor to be served to patrons without another product or service under an on-premises licence. The most common example is the sale of liquor in a restaurant without a meal.

All restaurants, including those with a primary service authorisation, cannot operate for the primary purpose of selling liquor. Restaurants with a primary service authorisation must have meals available at all times.

A primary service authorisation does not allow a restaurant to operate as a bar. Restaurants that wish to operate as a bar can apply for a hotel or general bar licence.

An application for a primary service authorisation can be made by an existing licensed restaurant, or as part of a licence application by an existing unlicensed restaurant or café.

Extended trading authorisation

An extended trading authorisation is required by a licensee who proposes to trade outside of the standard trading period. Under the *Liquor Act 2007*, the standard trading period is 5am to midnight Monday to Saturday, and 10am to 10pm Sunday.

Special trading arrangements apply on some days – such as Good Friday and Christmas Day.

The hours available under an extended trading authorisation vary depending on the type of licence and location of the premises.

Factors to be considered by councils

The following factors are relevant to liquor licensing proposals. They may be considered by councils when determining planning policies and requirements:

- the size, location and nature of the premises
- whether the proposal will involve extended trading hours (beyond the standard trading period) or an overall increase in the maximum capacity of the premises
- whether planning approval is required to operate the proposed licensed premises – particularly where entertainment is to be provided
- the existing use of the premises eg. an existing licensed restaurant wanting to serve liquor without meals under a primary service authorisation.

Provide a council contact for licensing proposals

The liquor laws provide an opportunity for greater interaction between councils and stakeholders when it comes to licensing proposals and to deal with licensed venues that are impacting adversely on the community.

Councils should consider establishing a contact point that can be accessed by existing and proposed operators, residents and others on licensing matters. This contact should also be able to provide information about council requirements for development approval for licensing proposals and community impact statements.

Key OLGR contacts

General enquiries 02 9995 0333

CIS enquiries 02 9995 0587

Licence application enquiries 02 9995 0894

Disturbance complaint enquiries 02 9995 0837

Liquor Accord enquiries 02 9995 0312

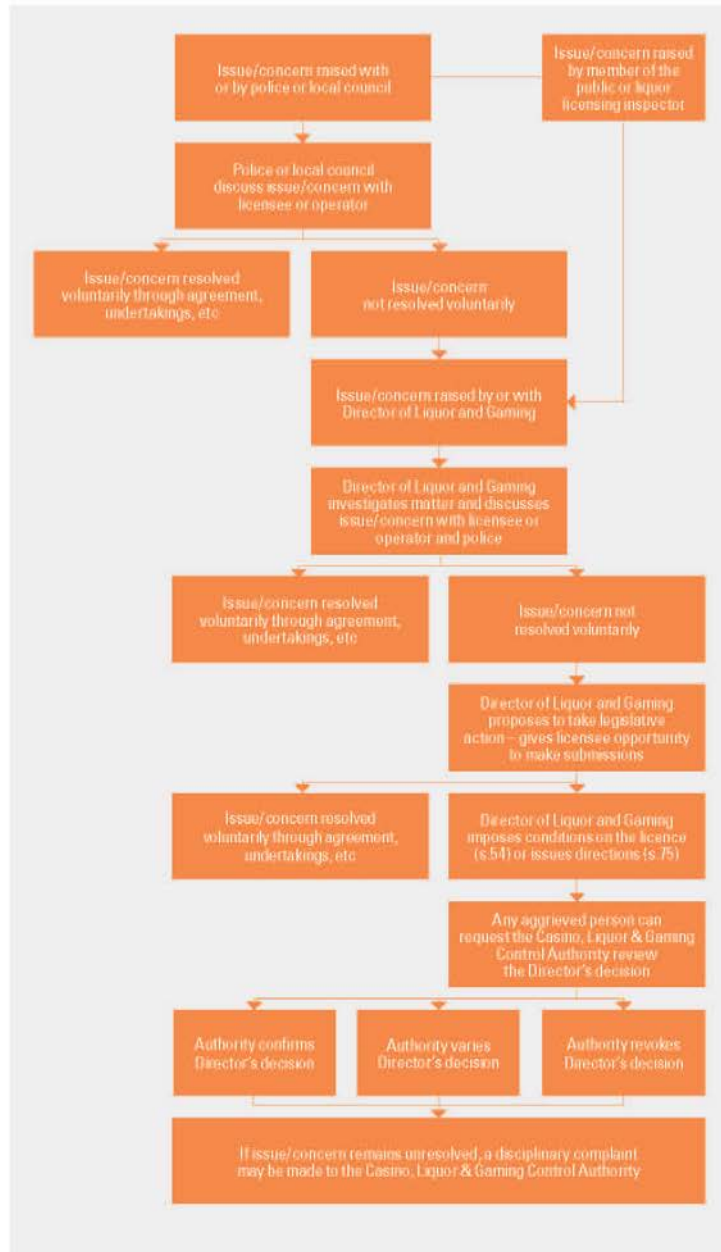
All enquires can also be emailed to info@olgr.nsw.gov.au

Local councils can also keep up-to-date with everything that's happening with the liquor laws by subscribing to our free e-news service at: www.olgr.nsw.gov.au/website_subscribe_form.asp

in:fo July 2008

Flowchart 1

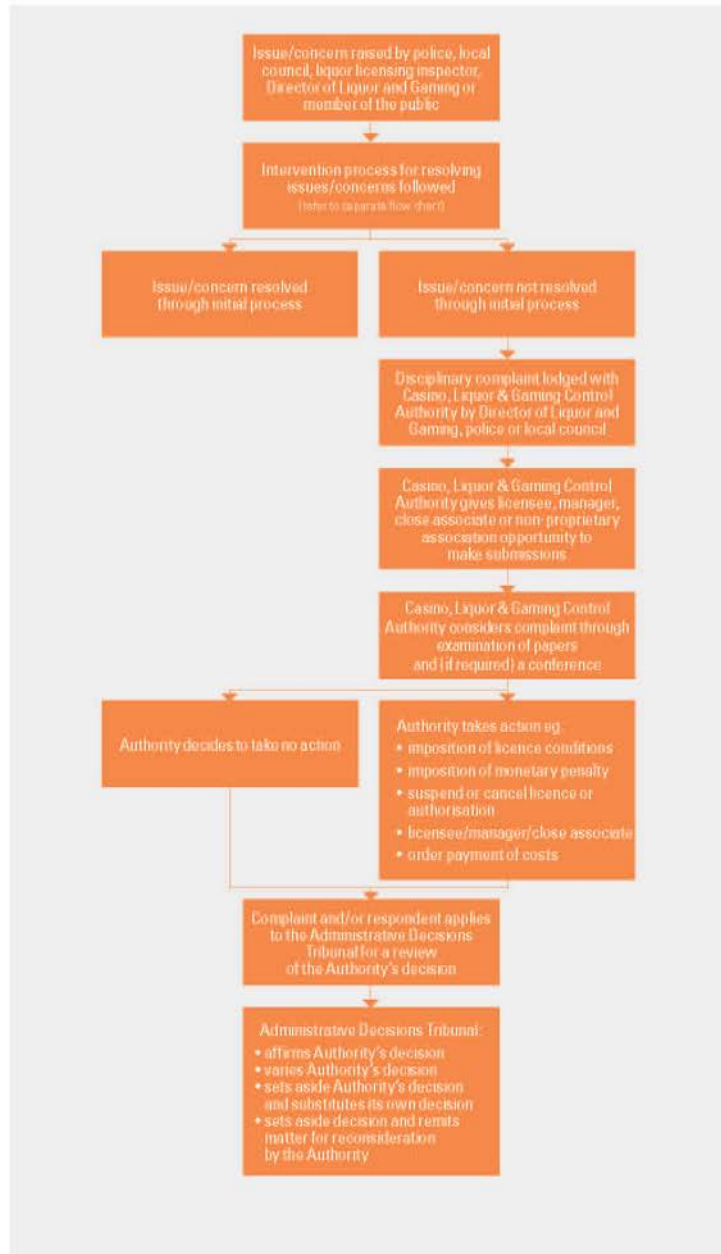
Intervention process
for resolving issues
and concerns regarding
licensed premises



in:fo July 2008

Flowchart 2

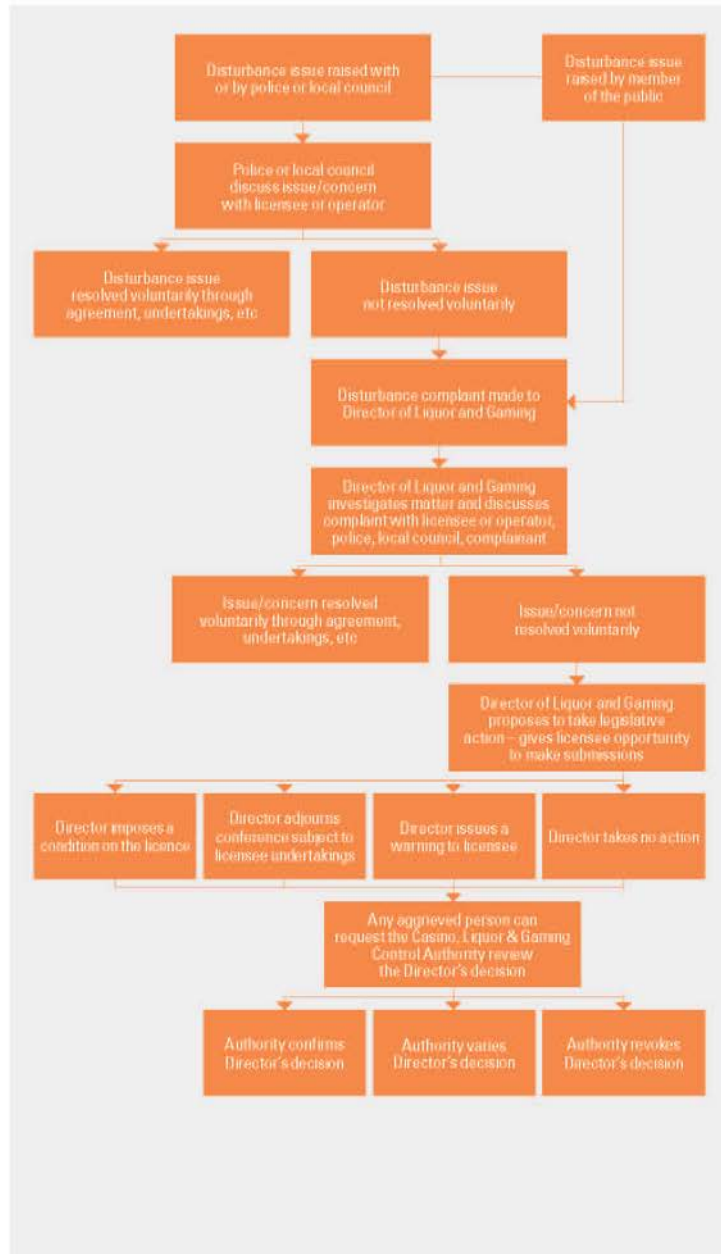
Step by step –
Disciplinary complaint
process



in:fo July 2008

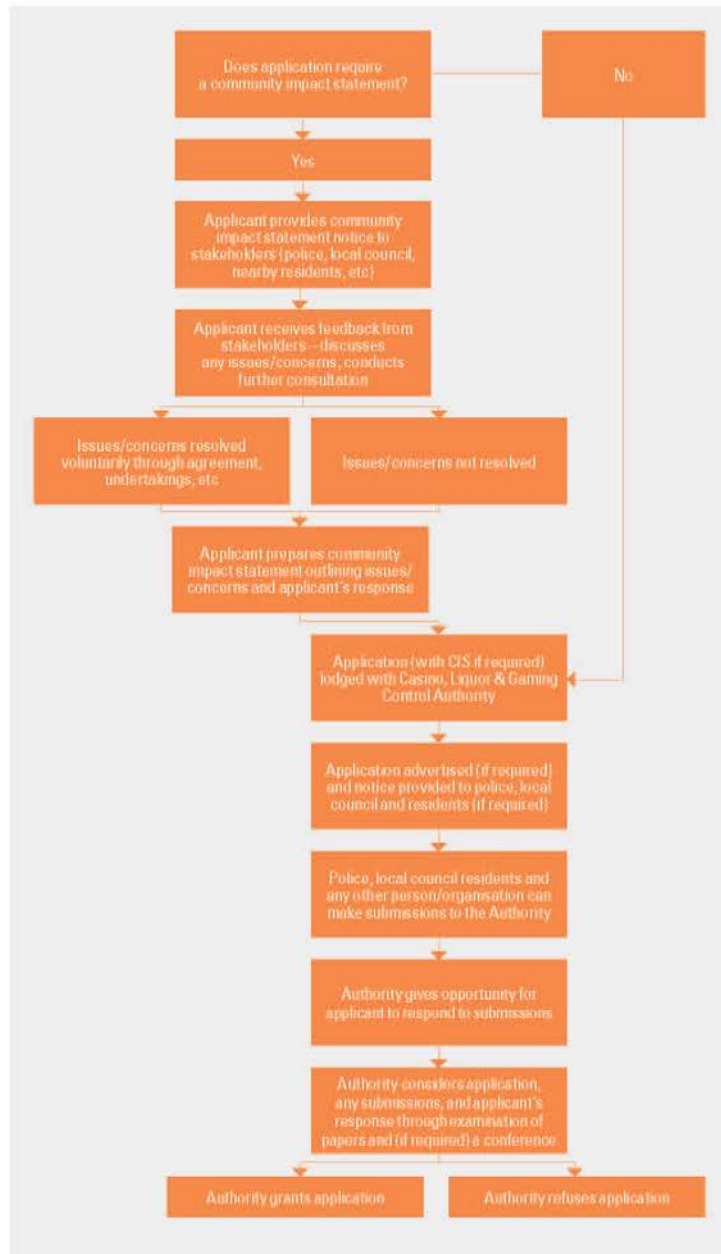
Flowchart 3

Step by step –
Disturbance complaint
process



in:fo July 2008

Flowchart 4
Step by step –
Application process



in:fo July 2008

INFORMATION ITEM NO. 5

COUNCIL RESOLUTION ABOUT BOTTLE SHOP CLOSURE ON NEW YEARS EVE

REPORT OF: TREVOR ALLEN - INTEGRATED PLANNING MANAGER

FILE: PSC2005-3951

BACKGROUND

The purpose of this report is to inform Council about the enactment of the resolution of the Ordinary Council Meeting 21 October 2008 that Council:

- 1) *Approach the Liquor Accord, NSW Police and the Liquor Administration Board, to negotiate closure of bottle shops at 9pm on New Year's Eve across the Port Stephens LGA.*
- 2) *Request NSW Police to enforce Alcohol-Free Zones across the Port Stephens LGA.*

Resolution 1:

Councillor Nell and Council's Community Projects Officer – Community Safety attended a meeting of the Tomaree Liquor Accord (TLA) on 5 November 2008 along with Police from the Port Stephens Local Area Command (LAC). Unfortunately no representatives from the Office of Liquor, Gaming and Racing were in attendance. Since 1 July 2008 the *Casino, Liquor and Gaming Control Authority* has replaced the *Liquor Administration Board* as the new body responsible for determining liquor and gaming licence applications, alterations to licences (eg; extensions of trading hours), and disciplinary matters.

At the TLA meeting Councillor Nell presented Council's resolution which failed to receive support from members of the TLA. A number of concerns were raised by members including:

- There was a perception that Council was being unfair by assuming all bottle shop owners were irresponsible due to the reported inappropriate behaviour of one particular bottle shop outlet
- It was considered unreasonable to ask bottle shops to close as early as 9:00pm.

The Chairperson of the TLA indicated that during 2006 the TLA had adopted a policy that *'no packaged alcohol was to be sold after 10:00pm'* and he moved that all Tomaree licensees be reminded about the existence of this policy and that it also applies to New Years Eve. The motion was adopted.

Resolution 2:

Current legislation requires Police to enforce all existing Alcohol Free Zones. At the TLA meeting the Port Stephens LAC Licensing Co-ordinator indicated that the recent establishment of the Port Stephens LAC has provided the area with additional Police Officers. He is working with the Commander of the Port Stephens LAC and their Crime Manager in relation to managing alcohol-related issues in the Nelson Bay Town Centre and New Year's Eve.

During the TLA meeting it was agreed that an invitation be extended to all East Ward Councillors to attend the next TLA meeting to find out about the positive steps the licensees are taking to minimise alcohol-related issues on the Tomaree Peninsula.

The Tomaree Liquor Accord only covers licenced premises on the Tomaree Peninsula. The remaining licenced premises in the Central and West Wards are covered by the Port Stephens Liquor Accord. Consequently the resolution from the Ordinary Meeting of Council on 21 October 2008 will be presented to the next meeting of the Port Stephens Liquor Accord on 2 December 2008 for their consideration. Central and West Ward Councillors will be invited to attend.

ATTACHMENTS

- 1) Nil

INFORMATION ITEM NO. 6

CASH AND INVESTMENTS HELD AT 31 OCTOBER 2008

**REPORT OF: CHRISTOPHER BRICE - ACTING FINANCIAL SERVICES
MANAGER**

FILE: PSC2006-6531

BACKGROUND

The purpose of this report is to present Council's schedule of Cash and Investments Held at 31 October 2008.

ATTACHMENTS

- 1) Cash and Investments Held at 31 October 2008.
- 2) Monthly Cash and Investments Balance November 2007 – October 2008

ORDINARY MINUTES – 16 DECEMBER 2008

ATTACHMENT 1

CASH & INVESTMENTS HELD - AS AT 31 OCTOBER 2008

INVESTED WITH	INV. TYPE	CURRENT RATING	MATURITY DATE	AMOUNT INVESTED	% of Total Portfolio	Current Int Rate	Market Value August	Market Value September	Market Value October	Current Mark to Market Exposure
GRANGE SECURITIES										
WIDE BAY CAPRICORN BUILDING SOCIETY	Floating Rate Sub Debt		15-Dec-08	500,000.00	1.55%	8.94%	\$496,800.00	\$496,800.00	\$496,800.00	-\$3,200.00
MAGNOLIA FINANCE LTD 2005-14 "FLINDERS AA"	Floating Rate CDO	AA	20-Mar-12	1,000,000.00	3.09%	0.00%	\$750,000.00	\$750,000.00	\$750,000.00	-\$250,000.00
NEXUS BONDS LTD "TOPAZ AA-"	Floating Rate CDO	AA-	23-Jun-15	412,500.00	1.28%	10.45%	\$315,562.50	\$315,562.50	\$315,562.50	-\$96,937.50
HERALD LTD "QUARTZ AA"	Floating Rate CDO	AA	20-Dec-10	450,000.00	1.39%	8.87%	\$317,925.00	\$317,925.00	\$317,925.00	-\$132,075.00
STARTS CAYMAN LTD "BLUE GUM AA-"	Floating Rate CDO		22-Jun-13	1,000,000.00	3.09%	8.77%	\$507,400.00	\$507,400.00	\$507,400.00	-\$492,600.00
HELIUM CAPITAL LTD "ESPERANCE AA+"	Floating Rate CDO	A-	20-Mar-13	1,000,000.00	3.09%	0.00%	\$536,000.00	\$536,000.00	\$536,000.00	-\$464,000.00
HOME BUILDING SOCIETY	Floating Rate Sub Debt		25-Jul-11	500,000.00	1.55%	8.71%	\$470,500.00	\$470,500.00	\$470,500.00	-\$29,500.00
DEUTSCHE BANK CAPITAL GUARANTEED YIELD CURVE NOTE	Yield Curve Note		18-Oct-11	500,000.00	1.55%	0.00%	\$420,500.00	\$420,500.00	\$420,500.00	-\$79,500.00
GRANGE SECURITIES "KAKADU AA"	Floating Rate CDO	AA-	20-Mar-14	1,000,000.00	3.09%	8.37%	\$418,600.00	\$418,600.00	\$418,600.00	-\$581,400.00
GRANGE SECURITIES "COOLANGATTA AA"	Floating Rate CDO	AA	20-Sep-14	1,000,000.00	3.09%	0.00%	\$319,000.00	\$319,000.00	\$319,000.00	-\$681,000.00
ANZ YIELD CURVE NOTE	Yield Curve Note		15-Jan-09	0.00	0.00%	8.25%	\$436,000.00	\$436,000.00	\$0.00	\$0.00
TOTAL GRANGE SECURITIES				\$7,362,500.00	22.76%		\$4,988,287.50	\$4,988,287.50	\$4,552,287.50	(\$2,810,212.50)
ABN AMRO MORGANS										
REMBRANDT ISOSCELES SERIES 1	Floating Rate CDO	AA	20-Sep-09	\$2,000,000.00	6.18%	8.77%	\$1,870,000.00	\$1,866,400.00	\$1,866,400.00	-\$133,600.00
GLOBAL PROTECTED PROPERTY NOTES VII	Property Linked Note		17-Sep-11	\$1,000,000.00	3.09%	0.00%	\$805,900.00	\$817,900.00	\$840,300.00	-\$159,700.00
BANK OF QLD FLOATING RATE NOTE	Floating Rate Note		30-Jun-09	\$1,000,000.00	3.09%	7.49%	\$992,730.00	\$992,730.00	\$994,700.00	-\$5,300.00
TOTAL ABN AMRO MORGANS				\$4,000,000.00	12.36%		\$3,668,630.00	\$3,677,030.00	\$3,701,400.00	(\$298,600.00)
ANZ INVESTMENTS										
ECHO FUNDING PTY LTD SERIES 16 "3 PILLARS AA-"	Floating Rate CDO	AA-	6-Apr-10	\$500,000.00	1.55%	8.96%	\$337,000.00	\$217,500.00	\$217,500.00	-\$282,500.00
PRELUDE EUROPE CDO LTD "CREDIT SAIL AAA"	Floating Rate CDO	AA	30-Dec-11	\$1,000,000.00	3.09%	0.00%	\$607,100.00	\$503,700.00	\$503,700.00	-\$496,300.00
MOTIF FINANCE (IRELAND) PLC	Floating Rate CDO	A	1-Jun-17	\$1,017,876.98	3.15%	4.36%	\$863,724.21	\$812,800.58	\$812,800.58	-\$205,076.40
ADELAIDE BANK SENIOR DEBT	Floating Rate Deposit		22-May-09	\$1,000,000.00	3.09%	7.50%	\$0.00	\$994,290.00	\$994,290.00	-\$5,710.00
TOTAL ANZ INVESTMENTS				\$3,517,876.98	10.87%		\$1,807,824.21	\$2,528,290.58	\$2,528,290.58	(\$989,586.40)
RIM SECURITIES										
GENERATOR INCOME NOTE AAA (2011)	Floating Rate CDO		29-Jul-13	\$2,000,000.00	6.18%	9.76%	\$1,337,780.00	\$1,328,968.00	\$716,560.00	-\$1,283,440.00
ELDERS RURAL BANK (2011)	Floating Rate Sub Debt		8-Oct-11	\$1,000,000.00	3.09%	8.45%	\$942,944.00	\$943,584.00	\$944,404.00	-\$55,596.00
QLD POLICE CREDIT UNION	Term Deposit		6-Nov-08	\$1,000,000.00	3.09%	8.02%	\$0.00	\$1,000,000.00	\$1,000,000.00	\$0.00
QLD POLICE CREDIT UNION	Term Deposit		10-Nov-08	\$500,000.00	1.55%	8.27%	\$0.00	\$500,000.00	\$500,000.00	\$0.00
TOTAL RIM SECURITIES				\$4,500,000.00	13.91%		\$2,280,724.00	\$3,772,552.00	\$3,160,964.00	(\$1,339,036.00)
WESTPAC INVESTMENT BANK										
HOME BUILDING SOCIETY (2010)	Floating Rate Sub Debt		27-Apr-10	\$500,000.00	1.55%	8.94%	\$493,895.00	\$495,300.00	\$487,215.00	-\$12,785.00
MACKAY PERMANENT BUILDING SOCIETY	Floating Rate Sub Debt		20-Nov-11	\$500,000.00	1.55%	8.38%	\$454,710.00	\$442,905.00	\$438,025.00	-\$61,975.00
TOTAL WESTPAC INV. BANK				\$1,000,000.00	3.09%		\$948,605.00	\$938,205.00	\$925,240.00	(\$74,760.00)
LONGREACH CAPITAL MARKETS										
LONGREACH SERIES 16 PROPERTY LINKED NOTE	Property Linked Note	AA	7-Mar-12	\$500,000.00	1.55%	6.60%	\$394,650.00	\$374,300.00	\$392,300.00	-\$107,700.00
LONGREACH SERIES 19 GLOBAL PROPERTY LINKED NOTE	Property Linked Note		7-Sep-12	\$500,000.00	1.55%	0.00%	\$373,300.00	\$368,450.00	\$368,450.00	-\$131,550.00
TOTAL LONGREACH CAPITAL				\$1,000,000.00	3.09%		\$767,950.00	\$742,750.00	\$760,750.00	(\$239,250.00)

ORDINARY MINUTES – 16 DECEMBER 2008

ATTACHMENT 1

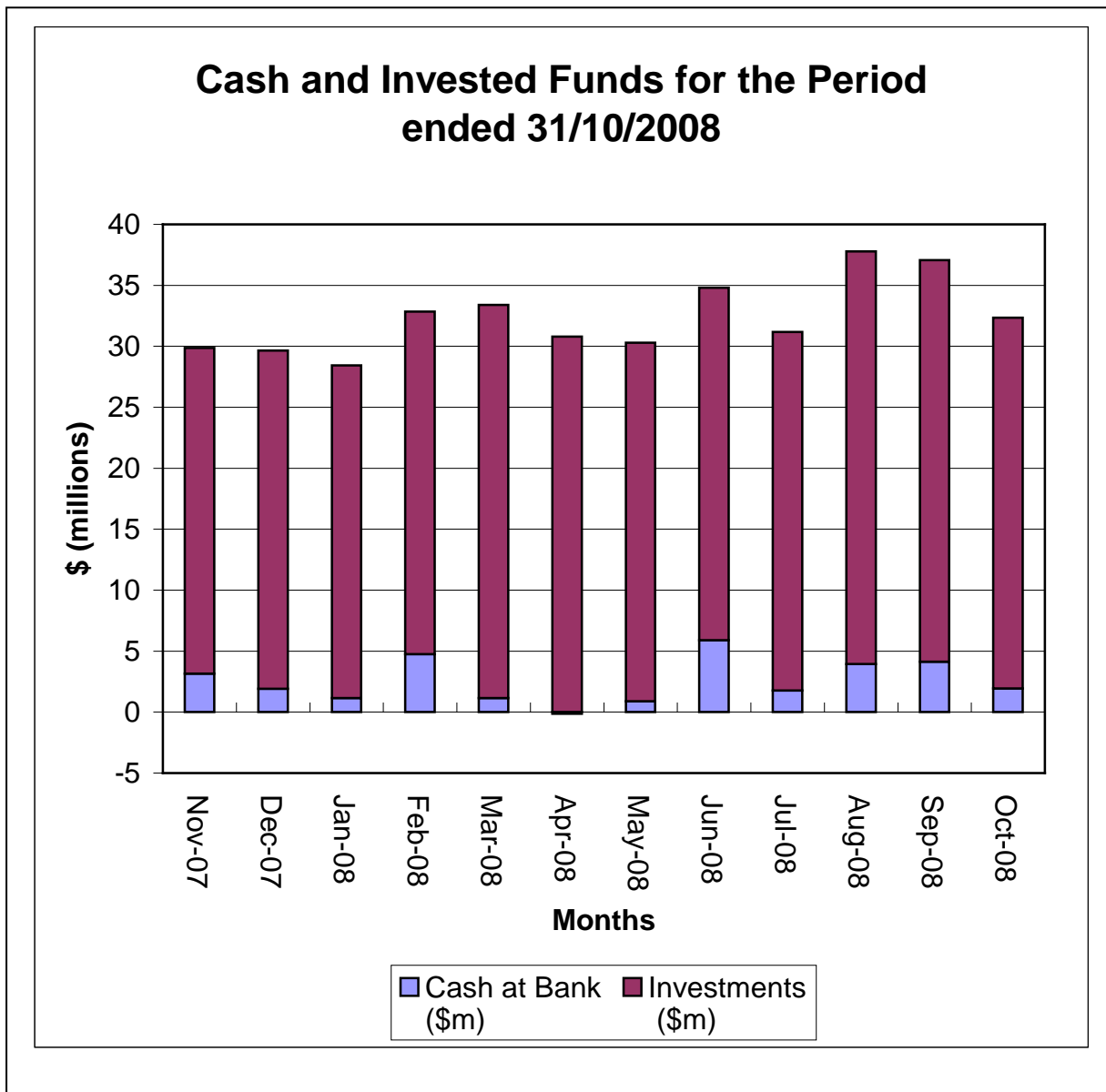
COMMONWEALTH BANK									
PRINCIPAL PROTECTED YIELD ACCRUAL NOTE	Yield Curve Note	06-Nov-11	\$500,000.00	1.55%	9.25%	\$485,850.00	\$498,400.00	\$511,850.00	\$11,850.00
CALLABLE CPI LINKED NOTE	Yield Curve Note	04-Apr-12	\$500,000.00	1.55%	0.00%	\$458,950.00	\$463,100.00	\$475,900.00	-\$24,100.00
EQUITY LINKED DEPOSIT	Equity Linked Note	20-Sep-11	\$500,000.00	1.55%	3.00%	\$446,750.00	\$457,050.00	\$463,250.00	-\$36,750.00
EQUITY LINKED DEPOSIT GI100	Equity Linked Note	03-Aug-10	\$500,000.00	1.55%	3.00%	\$464,100.00	\$467,700.00	\$476,850.00	-\$23,150.00
EQUITY LINKED DEPOSIT ELN SERIES 2	Equity Linked Note	05-Nov-12	\$500,000.00	1.55%	3.00%	\$431,400.00	\$436,800.00	\$441,300.00	-\$58,700.00
BENDIGO BANK SUBORDINATED DEBT	Floating Rate Sub Debt	09-Nov-12	\$500,000.00	1.55%	9.02%	\$461,195.00	\$461,580.00	\$453,965.00	-\$46,035.00
TOTAL COMMONWEALTH BANK			\$3,000,000.00	9.27%		\$2,748,245.00	\$2,784,630.00	\$2,823,115.00	(\$176,885.00)
FIG SECURITIES									
CREDIT SUISSE PRINCIPAL PROTECTED NOTE AQUADUCT AA-	Principal Protected Note	21-Jun-10	\$1,000,000.00	3.09%	0.00%	\$927,800.00	\$900,300.00	\$913,600.00	-\$86,400.00
TELSTRA LINKED DEPOSIT NOTE	Principal Protected Note	30-Nov-14	\$500,000.00	1.55%	8.26%	\$461,650.00	\$420,100.00	\$420,100.00	-\$79,900.00
STATE GOVERNMENT EMPLOYEES CREDIT UNION	Term Deposit	22-Dec-08	\$1,000,000.00	3.09%	7.17%	\$1,000,000.00	\$1,000,000.00	\$1,000,000.00	\$0.00
STATE GOVERNMENT EMPLOYEES CREDIT UNION	Term Deposit	31-Oct-08	\$0.00	0.00%	0.00%	\$1,000,000.00	\$1,000,000.00	\$0.00	\$0.00
AUSTRALIAN DEFENCE CREDIT UNION	Term Deposit	29-Nov-08	\$1,000,000.00	3.09%	8.23%	\$1,000,000.00	\$1,000,000.00	\$1,000,000.00	\$0.00
AUSTRALIAN DEFENCE CREDIT UNION	Term Deposit	16-Nov-08	\$1,000,000.00	3.09%	8.34%	\$1,000,000.00	\$1,000,000.00	\$1,000,000.00	\$0.00
AUSTRALIAN DEFENCE CREDIT UNION	Term Deposit	30-Oct-08	\$0.00	0.00%	0.00%	\$0.00	\$1,000,000.00	\$0.00	\$0.00
TOTAL FIG SECURITIES			\$4,500,000.00	13.91%		\$5,389,450.00	\$6,320,400.00	\$4,333,700.00	(\$166,300.00)
MAITLAND MUTUAL									
	Floating Rate Sub Debt	30-Jun-09	500,000.00	1.55%	8.77%	\$500,000.00	\$500,000.00	\$500,000.00	\$0.00
	Term Deposit	25-Nov-08	537,521.56	1.66%	7.95%	526,881.44	537,521.56	537,521.56	\$0.00
	Floating Rate Sub Debt	31-Dec-08	500,000.00	1.55%	8.73%	\$500,000.00	\$500,000.00	\$500,000.00	\$0.00
TOTAL M'LAND MUTUAL			\$1,537,521.56	4.75%		\$1,526,881.44	\$1,537,521.56	\$1,537,521.56	\$0.00
TOTAL INVESTMENTS			\$30,417,898.54	94.02%		\$24,126,597.15	\$27,289,666.64	\$24,323,268.64	(\$6,094,629.90)
AVERAGE RATE OF RETURN ON INVESTMENTS						5.73%			
CASH AT BANK			\$1,934,484.37	5.98%	5.20%		\$0.00	\$1,934,484.37	
AVERAGE RATE OF RETURN ON INVESTMENTS + CASH						5.70%			
TOTAL CASH & INVESTMENTS			\$32,352,382.91	100.00%		\$24,126,597.15	\$27,289,666.64	\$26,257,753.01	(\$6,094,629.90)
BBSW FOR PREVIOUS 3 MONTHS						6.89%			

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.

P GESLING

ATTACHMENT 2



INFORMATION ITEM NO. 7

DE-CORPORATISATION OF NSW COUNCILS

REPORT OF: ANNE SCHMARR, PEOPLE & CULTURE MANAGER
FILE: PSC2008-9615

BACKGROUND

The purpose of this report is provide Councillors with information on the *Local Government Amendment (Legal Status) Bill 2008* which has the effect of de-corporatising Councils in NSW.

On 13 November 2008, the Legislative Council passed the *Local Government Amendment (Legal Status) Bill 2008* and the legislation has now been assented to by the Governor.

On 22 October 2008 the Minister for Local Government the Hon. Barbara Perry MP introduced the *Local Government Amendment (Legal Status) Bill 2008* into the Legislative Assembly. The object of the Bill is to amend the *Local Government Act 1993*:

- (a) to convert the status of local and county councils from their existing status as bodies corporate to the status of bodies politic of the State with the legal capacity and powers of an individual;
- (b) to provide that a person who is appointed to an employment position at a council on a temporary basis while the holder of the position is on parental leave may continue in that position for a period of up to 24 months, and
- (c) to include a regulation making power to specify the matters to be taken into account by the minister in granting consent to a council forming or acquiring a controlling interest in a corporation or other entity, and the conditions of such a consent.

The Bill passed through the Legislative Assembly and Legislative Council without amendment. The Local Government and Shires Associations have sought and obtained preliminary legal advice in relation to the Bill's first objective as identified above.

A summary of the advice is set out below:

- The proposed model is substantially better than the QLD model in that it does not increase the liability of councillors for the acts and/or omissions of a council;
- Councils will cease to be "bodies corporate" and become "bodies politic of the State" with the legal capacity and power of an individual. However, a NSW State law will apply to a council in the same way as it applies to and in respect of a body corporate. In other words, for the purposes of NSW State law, councils will be treated as "corporations", and for all other laws (including federal, international and intra-State laws) councils will be treated as "individuals".

The Association's legal counsel are of the view that:

- The NSW State Government has the power to convert councils from being “bodies corporate” to “bodies politic of the State”;
- Notwithstanding the legislative changes to remove the corporate status of councils there is a “slight risk” a court may find that a council is still a body corporate. Historically “bodies politic” have also been “bodies corporate”, however, because the NSW Parliament is able to enact laws to recognise legal persons which are either corporations or individuals, Counsel considers that it is theoretically possible for State Parliament to create bodies politic that are not bodies corporate.
- The Bill achieves the objective of removing NSW councils from coverage of the *Workplace Relations Act 1996* (Cth) but may have a number of unintended consequences.

POTENTIAL CONSEQUENCES

1. **Application of federal, intra-state and international laws** – Federal, intra-state or international laws may require that councils be a body corporate as a precondition to being able to do business with persons in those jurisdictions. For example, banking laws in another jurisdiction may stipulate that financial institutions in the jurisdiction may only lend money to a body corporate or that only a body corporate may invest in a financial institution in that jurisdiction. Potentially, by ceasing to be a body corporate, a council could be in breach of the banking laws in the other jurisdiction or in breach of the terms of its contract with the financial institution. Where there is a fundamental breach of contract, councils could be exposed to damages claims. Councils will need to review their contractual arrangements with persons/bodies operating outside of the NSW legal jurisdiction.
2. **Trade Practices Act (Cth)** – By ceasing to be a body corporate, the *Trades Practices Act (Cth)* (TPA) no longer applies as this Act only applies to corporations. Corporations may be reluctant to do business with councils if they are not bound by the TPA, such as those relating to provisions concerning deceptive and misleading conduct.
3. **Section 50, Interpretation Act 1987 (NSW)** - Notwithstanding the Minister’s speech on 23 October, section 50 of the *Interpretation Act 1987 (NSW)* may no longer apply to councils. Section 50 relates to “statutory corporations” and provides (amongst other things) that a statutory corporation shall have a common seal, and may do and suffer all other things that bodies corporate may, by law, do and suffer and that are necessary for, or incidental to, the exercise of its functions. If s50 does not apply (and therefore the council doesn’t have a common seal) only the general manager or public officer will be able to execute documents on behalf of the council. This could lead to debates over whether council documents have been properly executed (i.e. contracts). Counsel suggests that the proposed legislation expressly state that s50 of the Interpretation Act shall apply to councils as if they were statutory corporations.
4. **Taxation** - Since councils will now be viewed as “individuals” under federal law (as opposed to corporations), they will be subject to different tax rules. In some respects, the tax payable by individuals may be greater than the tax payable by a corporation. Counsel has recommended that the Associations seek further advice on this matter. It is likely that councils will be exposed to costs associated with changing their accounting and payroll administration processes.

In relation to the potential tax implications referred to above, the Associations have obtained advice from PriceWaterhouseCoopers. Overall, the advice is that from both tax application and reporting perspectives the Local Government (Legal Status) Bill 2008 does not bring significant change for councils. The advice identifies a number of employment tax reporting issues that may potentially create additional administrative burdens for councils. The Associations will consult with the ATO to assist councils in alleviating any adverse effects.

5. **Medical, pharmaceutical, aged care and other services regulated by federal law** – Further advice is required to determine whether ceasing to be a body corporate will impact on a council's ability to provide and/or attract funding to provide medical, pharmaceutical and aged care services.
6. **Section 106 unfair contracts** – Will again apply to councils.
7. It is the Associations' understanding that **second tier businesses in local government**, commercial entities that are corporations in their own right will continue to operate as corporations in the federal system.
8. **Unfair dismissal laws** – Whilst councils with less than 100 employees will have their access to unfair dismissal laws restored, designated senior staff will lose access to unfair dismissal rights in the federal jurisdiction.

We are currently seeking advice from our auditors and insurers to ensure that we have adequate systems and coverage in place to cope with any potential unintended consequences of this legislation.

Our employment conditions are already secured under the terms of a NSW Enterprise Agreement and as such there is no concerns in relation to employment matters raised by this legislation.

ATTACHMENTS

- 1) Legal Counsel Opinion - De-Corporatisation of NSW Councils

ATTACHMENT 1

OPINION

IN THE MATTER OF THE QUEENSLAND MODEL FOR THE
DE-CORPORATISATION OF LOCAL GOVERNMENT IN
NEW SOUTH WALES

1. We have been asked to provide a preliminary advice to the Local Government and Shires Associations of New South Wales (the “LGSA”) on issues which may arise in respect of the *Local Government Amendment (Legal Status) Bill 2008* (the “LGA”). In addition, we are requested to answer the following questions:
 - (a) Does the *LGA* make certain that Councils are not constitutional corporations for the purposes of the WRA?
 - (b) Is the liability of councillors still an issue under the *LGA*?
 - (c) What is the effect of the legislation upon second tier businesses in local government? For example the area, incidence and duration clause of the award (cl 40) provides that the award shall apply to all employees in local government including employees of the City of Penrith Regional Indoor Aquatic and Recreation Centre Limited (Ripples) and employees of committees of council?
 - (d) The *LGA* does not appear to deal with transitional arrangements in relation to those councils who are bound by

federal workplace agreements. What happens to those instruments?

- (e) Will Council funding be affected by Council's new status as a body politic of the State with perpetual succession and the legal capacity and powers of an individual?
- (f) What are the consequences, of the *LGA* if passed, upon entities formed pursuant to section 358 of the *Local Government Act 1993*?
- (g) If a nationalised OHS becomes a reality what will the proposed legislation mean (in relation to prosecutions and fines) for Councils as 'individuals'?
- (h) The effect upon Councils in other jurisdictions e.g. discrimination law etc?
- (i) Any other area or concern that we believe to be relevant.

2. We have been provided with a copy of the draft *LGA*. We also understand that the *LGA* may be amended or edited such that this advice is only applicable to the *LGA* provided to the LGSA on 21 October 2008 by the Minister for Local Government.

Overview of the *LGA*

3. At the outset, the model proposed by the Minister is certainly superior to that found in the *Local Government and Industrial Relations Act 2008 (Qld)* since it provides more certainty for those persons who deal with local government and those persons who serve on local government as councillors than currently provided for under the "Queensland model".

4. Section 3 of the *LGA* would amend the *Local Government Act* in the terms of schedule 1 of the *LGA*.
5. Clause 1 of Schedule 1 deletes the current s220 of the *Local Government Act*. This section currently provides that a Council is a body corporate. The proposed s220 would provide:
 - (1) *A council is a body politic of the State with perpetual succession and the legal capacity and powers of an individual, both in and outside the State.*
 - (2) *A council is not a body corporate (including a corporation).*
 - (3) *A council does not have the status, privileges and immunities of the Crown (including the State and the Government of the State).*
 - (4) *A law of the State applies to and in respect of a council in the same way as it applies to and in respect of a body corporate (including a corporation).*
6. Clause 2 of Schedule 1 makes a number of minor amendments to s221 which do nothing more than delete the word “corporate”. This clause has no relevant legal impact.
7. Clause 3 of Schedule 1 deals with amendment to s351(2) concerning temporary appointments. A transitional provision in respect of this proposed amendment will be included in Schedule 8 of the *Local Government Act* at clause 93. We have not been asked to advise on these amendments.

8. Clause 4 of Schedule 1 is similar in form to Clause 1 but applies to County Councils. Clause 5 of schedule 1 is similar in form to Clause 2.
9. Clause 7 of Schedule 1 would insert into Schedule 8 of the *Local Government Act* a new Part 30. The proposed Part relevantly provides:

92 New legal status of existing councils

- (1) *The following provisions apply to a council constituted as a body corporate immediately before the commencement of the 2008 Act:*
 - (a) *the council ceases to be a body corporate on that commencement and becomes instead a body politic of the State as provided by section 220 or 388 (as substituted by the 2008 Act),*
 - (b) *the council is taken for all purposes (including the rules of private international law) to be a continuation of, and the same legal entity as, the council as it existed before the commencement of the 2008 Act (except that the council is no longer a body corporate and is instead a body politic of the State).*
- (2) *The 2008 Act (this clause in particular) does not:*
 - (a) *affect existing property, rights or obligations of a council, or*

- (b) *render defective any legal proceedings by or against a council, or*
- (c) *negate any decision made by a council, or*
- (d) *place a council in breach of contract or otherwise make it guilty of a civil wrong, or*
- (e) *make a council in breach of any instrument, including, for example, an instrument prohibiting, restricting or regulating the assignment or transfer of any right or liability, or*
- (f) *fulfil a condition allowing a person to terminate an instrument or liability or modify the operation or effect of an instrument or liability, or requiring any amount to be paid before its stated maturity, or*
- (g) *release a surety or other obligee, in whole or part, from an obligation.*

(3) *In this clause:*

council includes county council.

2008 Act means the Local Government Amendment (Legal Status) Act 2008.

10. As is made clear in the correspondence of the Minister, the primary purpose of the *LGA* is to provide certainty in relation to WorkChoices for Councils and their employees. It is clear on the face of the *LGA* the Minister seeks to amend the *Local Government Act* to make Councils a body politic (see s220(1) and declare that a Council is not a body corporate (which includes a corporation)(see s220(2)). There are similar amendments governing County Councils. The intended consequences of these amendments is that

a Council and/or County Council will no longer fall within the meaning of “employer” in section 6(1) of the *Workplace Relations Act 1996*.

11. The Minister in her correspondence also asserts that these amendments will not adversely affect the way in which Councils currently operate.

Specific Amendments

(a) Body Politic

12. The effect of Clause 1 of Schedule 1 is that at least for the purposes of State Law, a Council will from proclamation of the *LGA* cease to be a body corporate and become a body politic. This replaces the existing corporate nature of local government in NSW that has been in existence since at least the *Local Government Act 1906* (see s44) and will have ramifications for Councils beyond employment.

13. The term “body politic” is not defined in the *LGA* other than to provide that it has perpetual succession and the legal capacity and powers of an individual (see 220(1), further, as discussed below, these characteristics are some of the historical features of a “body politic”).

14. The terms “person” and “party” are defined in s21 of the *Interpretation Act* to include a “body politic” in any NSW Act or instrument.

15. In order to determine what it is a body politic, it is necessary to consider how that term first developed and how such a body has been treated traditionally by Courts.

16. The term "body politic" (corps politique) is first found in the Year Books in Michaelmas 1478, when Serjeant Starkey said that there was a distinction between bodies politic and natural bodies (see *Mich. 18 Edw.4, pl.17 fol.15b-16a*). Statute first used this term in 1523 (see 14 & 15 Hen. 8, ch. 6, sec. 5). The term corporation is older than the term body politic appearing in the 1429 Year Books, the word corporate from 1408 Year Books as well as in a statute of 1461 (see David J Seipp *Formalism and Realism in Fifteenth-Century English Law Bodies Corporate and Bodies Natural-Speech at Oxford 3 July 2007*). It was recognised in early cases that a body politic could not die (see *Mich. 18 Edw.4, pl.17 fol.15b-16a*).

17. William Blackstone in "Commentaries on the Law of England" (1807) (the "Commentaries") noted at Chapter 18:

We have hitherto considered persons in their natural capacities, and have treated of their rights and duties. But, as all personal rights die with the person; and, as the necessary forms of investing a series of individuals, one after another, with the same identical rights, would be very inconvenient, if not impracticable; it has been found necessary, when it is for the advantage of the public to have any particular rights kept in foot and continued, to constitute artificial persons, who may maintain a perpetual succession, and

enjoy a kind of legal immortality. These, artificial persons are called bodies politic, bodies corporate, (corpora corporata,) or corporations: of which there is a great variety subsisting, for the advancement of religion, of learning, and of commerce in order to preserve entire and for ever those rights and immunities, which, if they were granted only to those individuals of which the body corporate is composed, would upon their death be utterly lost and extinct. To shew the advantages of these incorporations, let us consider the case of a college in either of our universities, founded ad studendum et orandum, for the encouragement and support of religion and learning. If this were a mere voluntary assembly, the individuals which compose it might indeed read, pray, study, and perform scholastic exercises together, so long as they could agree to do so: but they could neither frame, nor receive any laws or rules of their conduct; none at least, which would have any binding force, for want of a coercive power to create a sufficient obligation. Neither could they be capable of retaining any privileges or immunities: for, if such privileges be attacked, which of all this unconnected assembly has the right, or ability, to defend them? And, when they are dispersed by death or otherwise, how shall they transfer these advantages to another set of students, equally unconnected as themselves? So also with regard to holding estates or other property, if land be granted for the purposes of religion or learning to twenty individuals not incorporated, there is no legal way of continuing the property to any other persons for the same purposes, "but by endless conveyances from one to the other, as often as the hands are changed. But when they are consolidated and united into a corporation, they and their successors are then considered as one

person in law: as one person, they have one will, which is collected from the sense of the majority of the individuals: this one will may establish rules and orders for the regulation of the whole, which are a sort of municipal laws of this little republic; or roles and statutes may be prescribed to it at its creation which are then in the place of natural laws: the privileges and immunities, the estates and possessions, of the corporation, when once vested in them will be for ever vested, without any new conveyance to new successions; for all the individual members that have existed from the foundation to the present time, or that shall ever hereafter exist, are but one person in law, a person that never dies: in like manner as the river Thames is still the same river, though the parts which compose it are changing every instant.

18. Blackstone also drew a distinction between corporations in aggregate and sole. A corporation aggregate consisted of many persons united together into one society, and are kept up by a perpetual succession of members, so as to continue for ever of which one example he gave was the mayor and commonalty of a city (see p469 of the Commentaries). However, Blackstone draws little or no distinction between a body corporate and a body politic with the exception as to their general duties at p479 (*the general duties of all bodies politic, considered in their corporate capacity, may, like those of natural persons, be reduced to this single one: that of acting up to the end or design, whatever it be, for which they were created by their founder*) and how they maybe dissolved (see p484).

19. The term "body politic" is defined in Burrill, Alexander M. "*A New Law Dictionary and Glossary: Containing Full Definitions of the Principal Terms of the Common and Civil Law, Together with Translations and Explanations of the Various Technical Phrases in Different Languages, Occurring in the Ancient and Modern Reports, and Standard Treatises; Embracing Also All the Principal Common and Civil Law Maxims. Compiled on the Basis of Spelman's Glossary, and Adapted to the Jurisprudence of the United States; with Copious Illustrations, Critical and Historical.* New York: Reprinted 1998 by The Lawbook Exchange, Ltd. as:

A term applied to a corporation which is usually designated as body corporate and politic. A body to take in succession framed by policy. Particularly applied in the old book to a corporation sole

20. In *Melbourne Harbour Trust Commissioners v Colonial Sugar Refining Co Ltd* (1925) 36 CLR 230 Isaacs J when considering what is a "body politic" held:

"Body politic" is found in the Magdalen College Case (1615) 11 Rep. 66b. at p. 70a.. It is not unworthy of notice that "person" includes "body politic" in the Act of William IV., but the definition of that word does not contain that expression in the Imperial Interpretation Act 1889, sec. 19. The expression "body politic," as distinguished from "body corporate," indicates to my mind a body created for some public purpose. For instance, the Hudson's Bay Company and the East India Company, invested with public functions, were bodies politic. The Sovereign is a body politic (see Magdalen College Case).

21. In *Bristol v Water Conservation and Irrigation Commission* [1975] 2 NSWLR 643 Waddell J held at 647:

It appears from the reasons of the Commission that the only explanation of the expression "body politic" to which it was referred was the definition of "body" in the Oxford English Dictionary. The relevant part of the definition is set out in the Commission's reasons as follows ([1965] AR (NSW) 8 at p 14): "The Oxford English Dictionary states that one of the meanings of the word 'body' is 'A corporate body, aggregate of individuals, collective mass'. In this sense it states that in law it is 'An artificial "person" created by legal authority for certain ends; a corporation; commonly a corporation aggregate, but also applied to a corporation sole. Always, with defining adj body corporate, body politic'. Illustrating that meaning the authors refer to a number of instances of user. We quote only some: Termes de la Ley, 'Bodies Politique are Bishops, Abbots, Prior, Deanes, Parsons of Churches, and such like, which have succession in one person onely': Milton Argt conc Militia 27, 'The King is a body politick, for that a body politique never dieth'; Blackstone Comm I 467. 'These artificial persons are called bodies politic, bodies corporate, or corporations'; Penny Cycl VIII 46/2, 'For the purpose of maintaining and perpetuating the uninterrupted enjoyment of certain powers, rights, property, or privileges, it has been found convenient to create a sort of artificial person, or body-politic, not liable to the ordinary casualties which affect the transmission of private rights, but capable, by its constitution, of independently continuing its own existence. This artificial person is

in our law called an incorporation, corporation, or body-corporate.' The authors then go on to say 'Body politic has also the wide sense of "organized society"'. Examples of that meaning given are: Canne Necess Separ (1849) 185, 'To knit themselves together in a spiritual outward society or body politic'; C Mather Magn Chr 1 vi (1852) 82, 'With mutual consent they became a body-politick, and framed a body of necessary laws and orders'; Yeowell Anc Brit Ch viii 77, 'Associations and bodies politic within the church'. Finally the authors speak of the body politic as meaning 'the nation in its corporate character; the state'."

22. *Hungerford J in Workcover Authority of New South Wales (Inspector Keelty) v The Crown in Right of the State of New South Wales (Police Service of New South Wales) [2000] NSWIRComm 234 held at [22]*

Support for the distinction was drawn by senior counsel from what Isaacs J said in Melbourne Harbour Trust Commissioners v Colonial Sugar Refining Co Ltd (1925)36 CLR 230 at p 279 - "The expression 'body politic', as distinguished from 'body corporate', indicates to my mind a body created for some public purpose". That case involved an issue whether the Melbourne Harbour Trust, a statutory public corporation, was bound by the Statute of Limitations in Pt II of the Real Property Act 1915 (Vic) by being able to claim Crown privilege and immunity from suit. Isaacs J held the corporation could not claim privilege because its incorporating statute made it independent of the Crown and so was covered by the Statute of Limitations as a "person" which was defined therein as including a 'body politic'. In distinguishing the

two types of body, his Honour did so on the basis that a body politic was "a body created for some public purpose" - to me, and having in mind the issue in that case, that says no more than that a body politic is a body corporate but one constituted for a public purpose. However, that is not to say the reverse that every body corporate is a body politic - plainly, in my view, the real distinction between the two types of bodies rests upon, and only upon, the "public purpose" requirement. That approach to the respective terms is consistent with the historical approach stated by the learned editors in Halsbury as quoted earlier herein.

23. Further, Hungerford J at [23] was of the view that there is much to be said for the view that, in a legal context, as distinct from general modern usage, if such be the preferable view of the context, 'a body politic is a body corporate ... established for a public purpose'.
24. The approach of Hungerford J was followed in the Federal Court by Madgwick J in *Coochey v Commonwealth of Australia* [2005] FCA 1164 at [71-72] and His Honour was also of the view that a body politic may be a body corporate at [67].
25. As set out above, a body politic has historically also been considered to be a "type" of body corporate by both courts and commentators.
26. The proposed s220(2) seeks to break that traditional nexus. As noted in *Coochey v Commonwealth of Australia* at [67] a body politic could be created which is not also a body corporate.

27. There is little doubt that the New South Wales Parliament is able to enact laws to recognise legal persons which are neither individuals or corporations and in so doing it is not restricted to the use of existing or customary legal concepts or devices (see *Bank of New South Wales v The Commonwealth* (1948) 76 CLR 1 Dixon J at 361).

28. In our opinion there would only be a slight risk that notwithstanding the terms of s220 and in particular s220(2) that a Court may find that a Council is still a body corporate given the historical approach outlined above. This uncertainty may give rise to the possibility that actions taken or decisions made will be challenged on technical (rather than substantial) grounds. This possibility may result in Councils in NSW being made party to long drawn out and expensive litigation, the sole purpose of which will be to establish whether or not the Council had the capacity to take the action or make the decision under challenge.

29. The proposed amendments goes considerably beyond the approach adopted by the NSW Government in respect to its own employees as demonstrated in the *Public Sector Employment Legislation Amendment Act* which removed the employment functions of certain statutory corporations and transferred their staff to the Government of NSW in the service of the Crown but retained the corporate nature of such corporations.

(b) Powers of Council

30. The proposed s220(1) gives the Council perpetual succession and the legal capacity and powers of an individual. The term “individual” is defined in s21 of the *Interpretation Act* to be a natural person.

31. Prior to this proposed amendment, the legal capacity of the Council was that of a body corporate. It is possible that the change from that status to that of an individual may have some unforeseen consequences in the future albeit the risk of that has been lessened at least in respect to the laws of New South Wales by the terms of s220(4).

32. The proposed amendments in the *LGA* create a tension between the newly created body politic (the Council) which is not a body corporate (the proposed s220(2)) and s50 of the *Interpretation Act* which governs statutory corporations. It is difficult to see how the Council once declared not to be a body corporate could be defined to be a statutory corporation for the purposes of s50. We note that in the Second Reading Speech the Minister states that s50 does continue to apply to Councils. Section 50 does provide a significant utility in that Councils have a seal (s50(1)(b)) and may do and suffer all things that bodies corporate may do and suffer that are necessary for, or incidental to, the exercise of its functions (s50(1)(e)). Potentially the determination of the application of s50 to a Council may involve further non-merit based expensive and drawn out litigation. It would be preferable if the *LGA* stated that s50 did continue to apply to Councils to avoid this potential.

33. This clarity could be achieved by adding to s220(4) "*without limiting the foregoing or affecting the status of a council established by this section, s50 of the Interpretation Act 1987 applies to a Council*" or words to the same effect.

(c) Application of State and Other Laws to Councils

34. The proposed s220(4) ensures that the laws of New South Wales would continue to apply to a Council as if it remained a body corporate which includes a corporation. By way of example this would mean that for the purposes of the *Occupational Health and Safety Act* the liabilities of a Council would remain those of a corporation.

35. However, (assuming the legislation achieves its purpose to de-corporatise Councils) Commonwealth laws which previously applied to Councils as corporations would only apply to Councils as though they were individuals (see s220(1)). The de-corporatisation of local government would also have an impact beyond the *Workplace Relations Act* and may impinge upon a range of current rights, liabilities and obligations under many Commonwealth statutes (albeit some may only be minor) including by way of example *Trade Practices Act* (which may not apply to Councils at all), *Taxation Administration Act*, *Social Security Act*, *Airports Act*, *Bankruptcy Act*, *Privacy Act*, *Food Standards Australia New Zealand Act* and *Age Discrimination Act*. The impact of having status as an individual particularly in relation to taxation is beyond the scope of this advice but may be considerable.

36. We also understand from comments in conference that in Queensland (which has recently de-corporatised local government in that State by use of another model) there have also been some practical difficulties arising from de-corporatisation concerning Councils obtaining finances and/or commonwealth funding and the need for green house gas reporting by Councils in Queensland.

37. Further, these proposed amendments would mean that Councils, their employees and respective unions would be locked out of any new federal industrial relations system even, if at some future point in time, they wish to avail themselves of such legislation including the current standards in the *Workplace Relations Act*. Those standards currently apply to employees employed in local government in New South Wales and provide the only minimum standards for non-award employees.

(e) Transitional Provisions

38. Clause 7 of Schedule 1 the *LGA* inserts a new Part 30 into Schedule 8 of the *Local Government Act* dealing with the transitional effect of the de-corporatisation of local government.

39. The proposed clause 92(1)(b) provides that the Council is taken for all purposes to be a continuation of, and the same legal entity as, the Council as it existed before the *LGA* except that the Council is no longer a body corporate but is now a body politic. The proposed clause 92(2) then provides some further particular provisions that

seek to minimise any impact that may arise from the change in status.

40. The transitional provisions appear to be effective so far as the Council and its dealings are governed by New South Wales law.

41. However, the same certainty does not exist where a Council's dealings or part of its' operations are governed by non-New South Wales laws and in particular the laws of the Commonwealth. An example would be where a Council has an existing contract a fundamental term of which is that the Council be a corporation for the purposes of entering into the contract and being bound by the contract and the law of the contract is not that of New South Wales. In such circumstances the change in status of the Council may amount to a condition allowing the termination of the contract or other adverse result for Council not affected by the proposed clause 92(2).

Specific Questions

Question (a)

42. In our opinion, for the reasons set out above at paragraphs 12-28(above), there is only a slight risk that if the *LGA* was to be enacted and proclaimed that a Court would find a Council to be a "constitutional corporation" after the enactment for the purposes of the *Workplace Relations Act*.

Question (b)

43. We do not believe the potential for individual Councillors being liable for the acts and/or omissions of a Council is increased as a result of the change in Council from a body corporate to a body politic.

Question (c)

44. The effect of the proposed s220(1) gives a Council the same powers as an individual. As an individual, a Council could be a shareholder in a corporation (but we doubt that it could be a Director of a Corporation) and the Council may continue to form and/or participate in such corporations in accordance with s358 of the *Local Government Act*.

45. In our opinion, the enactment of the *LGA* has no impact upon corporate entities formed pursuant to s358 since the only entity whose status is changed pursuant to the *LGA* is that of the Council itself and not any corporate entity created by the Council in whole or in part. In respect to non-corporate entities under s358 they are considered below in the answer to question (f).

Question (d)

46. Your observation that the *LGA* does not deal with a transitional arrangements in respect to those Councils who are covered by federal workplace agreements is correct.

47. Section 347(10) of the *Workplace Relations Act* provides:

(10) If:

- (a) a person or entity is the employer bound by a workplace agreement; and
 - (b) the person or entity ceases to be an employer within the meaning of subsection 6(1);
- the agreement ceases to be in operation.

48. The effect of this section is that if, as intended by the *LGA*, a Council ceases to be an employer for the purposes of s6 of the *Workplace Relations Act* any agreement currently in place will cease to apply and the employer and employees concerned will then be covered by the current Local Government (State) Award or other relevant award.

49. However, it would also be possible that a Council may be legally obliged to continue to provide the terms and conditions of employment contained in any current Federal agreements that are superior to the current Local Government (State) Award or other relevant award notwithstanding the terms of the s347(10). This would occur contractually where the terms of the agreement are incorporated either expressly into an employee's contract of employment (see *Byrne v Australian Airlines Ltd* (1995) 185 CLR 410) or where the agreement itself is a contract (see *Construction, Forestry, Mining & Energy Union v Australian Industrial Relations Commission* (2000) 203 CLR 645) or by virtue of the *Fair Trading Act* (see s42 and s46). In such circumstances Council

could not rely upon any of the terms of such agreements that are more advantageous to it when compared with the terms of the current Local Government (State) Award or other relevant award.

50. In addition, in the event a council is no longer an employer for the purposes of s6 of the *Workplace Relations Act* it once again becomes susceptible to proceedings under s106 of the *Industrial Relations Act*.

Question (e)

51. As set out above there is a risk that any funding a Council receives under Commonwealth laws which rest upon the fact that a Council is a body corporate or corporation would be lost since a Council would no longer be such a body. Further, we understand from comments in respect to Queensland Councils there have been some issues arisen in respect to funding and obtaining finances from other sources as a result of de-corporatisation in Queensland.

52. In the limited time available to us we have not been able to further consider this matter and/or determine whether the risk is real and the extent of any such risk.

Question (f)

53. In our opinion there is little or no consequences for corporate entities that were formed pursuant to s358 by a Council as a result of the enactment of the *LGA*. Such corporate entities would remain

as corporate entities and would if they employed such persons be subject to the provisions of the *Workplace Relations Act*.

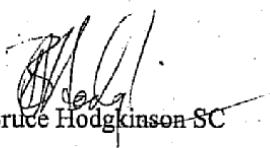
54. Section 358 also covers a range of other types of entities (see s358(4)). It is possible that the change in status could have some consequences for such entities but that would need to be considered on a case-by-case basis.

Question (g)

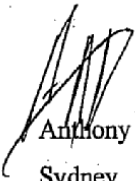
55. We are unable to respond to this question in the absence of any legislation establishing a national scheme of occupational health and safety. It is of course conceivable if such a scheme were to be introduced by way of Commonwealth law and a distinction was made in such legislation between individuals and corporations the effect of the proposed s220 would be that a Council would be treated as an individual. This of course would not be the case if the scheme were based upon States enacting complimentary State legislation that in this case the Council would be treated as a corporation (see s220(4)).

Question (h)

56. The effect of the proposed s220(4) is that where a law of a state applies to a Council eg the Anti-Discrimination Act, would continue to apply to the Council as if it was a body corporate.


Bruce Hodgkinson SC
Sydney

23 October 2008


Anthony Britt
Sydney

INFORMATION ITEM NO. 8

DETERMINED AND UNDETERMINED DEVELOPMENT APPLICATIONS

REPORT OF: SCOTT ANSON –DEVELOPMENT & BUILDING MANAGER
FILE: PSC2007-3153

BACKGROUND

The purpose of this report is to provide Councillors with information on determined and undetermined development applications currently with Council, at the request of Cr Tucker.

As it is considered more convenient for Councillors if the reports are run on the last day of the month, and it is not possible to meet the necessary deadline for the Business Paper, the information will be provided under separate cover.

ATTACHMENTS

- 1) Nil

**STRATEGIC
COMMITTEE
RECOMMENDATIONS**

ITEM NO. 1

FILE NO: PSC 2008-4244

ENVIRONMENTAL NOISE POLICY

REPORT OF: BRUCE PETERSEN – MANAGER, ENVIRONMENTAL SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) That Council adopt the Draft Environmental Noise Policy (Attachment 1)
-

STRATEGIC COMMITTEE MEETING – 2ND DECEMBER 2008

RECOMMENDATION:

Councillor John Nell Councillor Ken Jordan	That the recommendation be adopted.
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ORDINARY MEETING – 16 DECEMBER 2008

RESOLUTION:

392	Councillor Steve Tucker Councillor John Nell	It was resolved that the recommendation be adopted.
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BACKGROUND

The purpose of this report is to recommend that Council adopt the attached draft Environmental Noise Policy.

Public exhibition of draft policy

At Council's Ordinary Meeting in August 2008, Council resolved to place the Draft Environmental Noise Policy on public exhibition for 28 days. A number of enquiries were made by the community in relation to the Policy, however only one (1) formal submission was received. That submission did not make any suggestions or comments in relation to the policy, but rather raised an operational noise matter.

Purpose of the Draft Policy

The purpose of the Draft Policy is to assist Council to deal fairly, consistently and effectively with noise complaints and noise offences. The Draft Policy relates to noise from private and public property and includes the residential, industrial and commercial sectors. It also includes noise from a number of sources such as air conditioners, vehicles, refrigeration units, power tools and equipment, musical instruments, burglar alarms, dogs and other animals.

The Draft Policy provides a guide to the most appropriate way to deal with noise issues and helps to determine which agency(s) should be involved in helping to address unacceptable noise. The Draft Policy will help to improve and reinforce the existing processes used by Council to deal with noise issues. The Department of Environment and Climate Change's Noise Guidelines were used as the basis for the development of the Draft Policy. Assistance was also sought from a number of NSW Councils that have developed and implemented similar policies/ guidelines, including Camden, Parramatta and Wingecarribee Councils.

The Draft Policy does not specifically relate to technical noise matters dealt with as part of a Development Application. These issues are dealt with separately as part of the Development Application process. The Draft Policy does, however, advocate that appropriate thought and planning go into new developments so that future noise issues arising from those developments may be minimised.

There are many noise complaints which are either outside Council's jurisdiction or are best dealt with by the parties involved in a non adversarial manner rather than resorting to regulatory action. There are also a number of other agencies that deal with noise issues including the Police, the Department of Liquor, Gaming and Racing (for licensed premises), the Community Justice Centre and the Department of Environment & Climate Change (for scheduled premises). The Courts may also issue orders on behalf of affected residents in some circumstances.

Council's Approach under the Draft Policy

A spirit of cooperation will be encouraged between all parties and, where it is considered that Council cannot effectively resolve noise issues (due to legislative or other constraints), complainants will be referred to the relevant agency or to the Community Justice Centre for mediation.

When regulatory tools do not assist in resolving some noise matters to the complainant's satisfaction (especially when it involves complex noise impacts on a small number of residents), a person may seek a Noise Abatement Order from the local Court for offensive noise under Section 268 of the Protection of the Environment Act 1997. The Court may issue an Order to prevent or abate the offensive noise. The burden of proof involved in this action by a resident is much less than that on a Council or other Regulatory Agency. The Court only needs to be convinced (on the balance of probabilities) that the offensive noise exists. This service is free.

Draft Policy Objectives

Priority will be given to providing information to the community about noise management issues and the roles that the various agencies have in dealing with these matters. Council will encourage the community to try to deal with and resolve noise issues as they arise before they escalate into significant issues.

The objectives outlined in the Draft Policy are:

- To initiate a process of education and awareness in the community in relation to noise management and minimisation.

- To identify noise issues before they escalate so they can be dealt with appropriately and effectively
- To establish clear guidelines for the exercise of discretion when dealing with a noise matter.
- To define Council's role in dealing with noise issues.
- To help clarify which agencies are responsible for dealing with specific noise complaints.
- To identify the various options for dealing with noise matters including negotiation, education, alternative dispute resolution and regulatory action.

IMPLEMENTATION OF THE DRAFT POLICY

The Draft Policy, if adopted, will apply to all staff that deal with noise matters and noise related complaints. Noise complaints will be assessed under the new Environmental Noise Policy and by reference to Council's Compliance Policy.

LINKS TO CORPORATE PLANS

The links to the 2008-2012 Council Plan are: - G6, G10, G13, G15 and G17.

- SOCIAL SUSTAINABILITY –** *Council will preserve and strengthen the fabric of the community, building on community strengths.*
- CULTURAL SUSTAINABILITY –** *Council will assist to inspire a sense of pride and place as well as enhancing quality of life and defining local identity.*
- ECONOMIC SUSTAINABILITY –** *Council will support the economic sustainability of its communities while not compromising its environmental and social well being.*
- ENVIRONMENTAL SUSTAINABILITY –** *Council will protect and enhance the environment while considering the social and economic ramifications of decisions.*
- BUSINESS EXCELLENCE –** *Council will use the Business Excellence Framework to innovate and demonstrate continuous improvement leading to long-term sustainability across operational and governance areas in a Business Excellence Journey.*

FINANCIAL/RESOURCE IMPLICATIONS

The Draft Policy, if adopted, will be implemented using existing Council resources.

LEGAL AND POLICY IMPLICATIONS

Council has authority to take regulatory action under a number of NSW Acts and Regulations including, but not restricted to:

- The Local Government Act, 1993 (NSW)
- Protection of the Environment Operations Act, 1998 (NSW)
- Protection of the Environment Operations (Noise Control) Regulation 2000
- Environmental Planning and Assessment Act, 1979 (NSW)
- Companion Animals Act 1998

The implementation of the Draft Policy will provide a framework in which to ensure a consistent approach to noise issues by Council in its role as a regulatory Authority.

Business Excellence Framework

Port Stephens Council is a quality driven organisation. We use the Business Excellence Framework as a basis for driving organisational excellence. The Framework is an integrated leadership and management system that describes elements essential to organisational excellence. It is based on eight (8) principles.

These outcomes align with the following Business Excellence principles:-

- 1) **LEADERSHIP** – *Lead by example, provide clear direction, build organisational alignment and focus on sustainable achievement of goals.*
- 2) **CUSTOMERS** – *Understand what markets and customers value, now and into the future, and use this to drive organisational design, strategy, products and services.*
- 3) **SYSTEMS THINKING** – *Continuously improve the system.*
- 4) **PEOPLE** – *Develop and value people's capability and release their skills, resourcefulness and creativity to change and improve the organisation.*
- 5) **CONTINUOUS IMPROVEMENT** – *Develop agility, adaptability and responsiveness based on a culture of continual improvement, innovation and learning.*
- 6) **INFORMATION AND KNOWLEDGE** – *Improve performance through the use of data, information and knowledge to understand variability and to improve strategic and operational decision making.*
- 7) **CORPORATE AND SOCIAL RESPONSIBILITY** – *Behave in an ethically, socially and environmentally responsible manner.*
- 8) **SUSTAINABLE RESULTS** – *Focus on sustainable results, value and outcomes.*

SUSTAINABILITY IMPLICATIONS

Without a clear Policy, it is difficult to maintain a clear and consistent approach to the way Council deals with noise complaints. In other words, Council's future response to noise issues will not be sustainable if a robust and clearly articulated Policy is not adopted.

SOCIAL IMPLICATIONS

There are many positive social implications associated with a noise policy including those of equity, fairness and efficiency in the way Council deals with noise matters. Noise issues that are left unresolved can have a very negative impact on individuals and the broader community. An appropriate Environmental Noise Policy will not only help Council to ensure consistency in its approach to noise complaints but will give the community confidence in its role as a regulator.

ECONOMIC IMPLICATIONS

The Draft Policy, if adopted, will not only help Council to conduct its regulatory role (in relation to noise) in an efficient manner but it will help to minimise staff and legal costs by focussing on education, awareness and negotiation.

ENVIRONMENTAL IMPLICATIONS

The implementation of the Draft Policy should lead to better environmental outcomes due to the Draft Policy's emphasis on helping the community to resolve issues before they escalate into significant environmental noise matters through education and negotiation.

CONSULTATION

The following individuals, groups and organisations have been consulted with:

- Hunter Councils Inc,
- Council's regulatory and support staff,
- Council's Legal Officer
- A number of NSW Councils.
- Members of the community during the public exhibition process.

OPTIONS

- 1) Adopt the Draft Policy;
- 2) Adopt the Draft Policy subject to changes;
- 3) Do not adopt the Draft policy.

ATTACHMENTS

- 4) Draft Environmental Noise Policy

COUNCILLORS ROOM

Nil

TABLED DOCUMENTS

Nil



POLICY

Adopted :#
Minute No. #
Amended: #
Minute No. #

FILE NO: PSC 2008-4244

TITLE: Environmental Noise Policy

BACKGROUND

PURPOSE

The purpose of this Policy is to assist Council to deal fairly, consistently and effectively to noise complaints and noise offences. The Policy relates to noise from private and public property and includes the residential, industrial and commercial sectors. It also includes noise from a number of sources such as air conditioners, vehicles, refrigeration units, power tools and equipment, musical instruments and burglar alarms.

This Policy provides a guide to the most appropriate way to deal with noise issues and helps to determine which agency(s) should be involved in helping to address unacceptable noise.

This Policy does not specifically relate to noise matters dealt with as part of a proposed Development. It does however advocate for appropriate thought and planning to go into new developments so that future noise issues arising from those developments may be minimised.

DEALING WITH NOISE ISSUES

There are many noise complaints which are either outside Council's jurisdiction or are best dealt with by the parties involved in a non adversarial manner rather than resorting to regulatory action.

There are a number of agencies that deal with noise issues including Council, the Police, the Liquor Licensing Board (for licensed premises), the Community Justice Centre (for helping to mediate noise matters) and the Department of Environment & Climate Change (for scheduled premises). The Courts may also issue orders on behalf of affected residents in some circumstances.

ACTION BY AFFECTED PARTIES

When regulatory tools do not assist Council in resolving some noise matters to the complainant's satisfaction (especially when it involves complex noise impacts on a small number of residents), a person may seek a Noise Abatement Order from the local court for offensive noise under Section 268 of the Protection of the Environment Act 1997. The court may issue an order to prevent or abate the offensive noise. The burden of proof involved in this action by a resident is much less than that on a Council or other Regulatory Agency. The Court only needs to be convinced (on the balance of probabilities) that the offensive noise exists. This service is free.

OBJECTIVES

- To initiate a process of education and awareness in the community in relation to noise management and minimisation.
- To identify noise issues before they escalate so they can be dealt with appropriately and effectively
- To establish clear guidelines for the exercise of discretion when dealing with a noise matter.
- To define Council's role in dealing with noise issues.
- To help clarify which agencies are responsible for dealing with specific noise complaints.
- To identify the various options for dealing with noise matters including negotiation, education, alternative dispute resolution and regulatory action.

PRINCIPLES

The Policy applies to:

- The initiation of a process of education and awareness within the community about the impact of noise of others and the reasons for noise controls and minimisation strategies.
- The investigation of noise issues and complaints within the community and the way Council and other agencies deal with these matters.
- Noise issues which Council has some responsibility and regulatory control over.

Council will use to full effect the State Environmental Planning Policy – Places of Public Entertainment – to control noise impacts upon adjoining areas by limiting trading hours and hours of public entertainment events.

POLICY STATEMENT

EDUCATION AWARENESS AND COOPERATION

Priority will be given to providing information to the community about noise management issues and the roles that the various agencies have in dealing with these matters.

Council will encourage the community to try to deal with and resolve noise issues as they arise before they escalate into significant issues.

Council will encourage a spirit of cooperation between all parties and where it is considered that Council cannot effectively resolve noise issues using available legislative tools, will refer such noise matters to the Community Justice Centre or similar organisations for mediation.

RESPONSE

Council is required to respond to noise complaints in a timely manner and in accordance with its Compliance Policy.

Council's response could include referral of the complaint to another agency if the matter is not within Council's area of responsibility.

Where the matter is primarily a neighbourhood matter between two neighbours, Council will recommend in the first instance that the neighbours make an attempt to resolve the issues by negotiation and mediation if necessary. Where the issue is a clear breach of any noise related legislation, Council will act as appropriate.

Council will endeavour to encourage all parties to try and solve noise issues amicably.

Based on the circumstances of the noise issue, Council will respond in a way that reflects public interest, resource implications and the magnitude of the matter.

Not all noise matters will require a regulatory approach by Council.

APPROACH

Council will ensure confidentiality and respect privacy when dealing with noise issues.

Council will ensure procedural fairness in noise matters.

Council will act in a manner that is impartial and objective when dealing with noise complaints and noise related matters.

FEEDBACK AND RECORD KEEPING

Council will provide prompt feedback to complainants regarding investigations into noise complaints and the reasons for decisions relating to these.

Council will keep accurate records of noise complaints.

RELATED POLICIES

Compliance Policy

Prosecution Policy

DECC Noise Guidelines and Policies as amended from time to time.

Dog Noise Strategy

RESPONSIBILITY

All Council staff (and Councillors) that deal with written noise complaints or verbal requests or noise related regulatory issues are responsible for following this Policy.

INVESTIGATING AND RESPONDING TO NOISE COMPLAINTS

The table in Appendix One and Council's Compliance Policy is to be followed when deciding how and who will investigate and respond to a noise complaint.

See also information provided by the Department of Environment & Climate Change (DECC) on their website: www.environment.nsw.gov.au

REVIEW DATE

Twenty four (24) Months from the date it is adopted

RELEVANT LEGISLATIVE PROVISIONS

- The Local Government Act, 1993 (NSW)
- Protection of the Environment Operations Act, 1998 (NSW)
- Protection of the Environment Operations (Noise Control) Regulation 2000
- Environmental Planning and Assessment Act, 1979 (NSW)
- Companion Animals Act 1998

IMPLEMENTATION RESPONSIBILITY

Environmental Services Section is responsible for the implementation and review of this Policy.

DEFINITIONS

AGREEMENT

An agreement is any agreement made between the parties embodying a submission of present or future disputes to mediation and conciliation.

ALTERNATIVE DISPUTE RESOLUTION – ADR

The term “alternative dispute resolution” or “ADR” is often used to describe a wide variety of dispute resolution mechanisms that are short of, or alternative to, full-scale court processes. ADR systems may be generally categorised as negotiation, conciliation/mediation, or arbitration systems.

ANEF

Australian Noise Exposure Forecast (which relates to the assessment of Aircraft and Airport Noise)

ARBITRATION

Arbitration is a formal dispute resolution process governed by the Commercial Arbitration Act 1984 NSW (or the equivalent in other states) in which two or more parties refer their dispute to an independent third person (the arbitrator) for determination. Providing that the arbitration is conducted according to the principles of natural justice its procedures may be varied by the parties to suit the size and complexity of their dispute.

BACKGROUND NOISE

The underlying level of noise present in the ambient noise, excluding the noise source under investigation, when extraneous noise is removed.

CONCILIATION

A process in which parties to a dispute with the assistance of a neutral third party (“the Conciliator”) identify the disputed issues, develop options, consider alternatives and endeavour to reach an agreement. The conciliator may have an advisory role in regard to the content of the dispute or the outcome of its resolution, but not a determinative role. The conciliator may advise on or determine the process of conciliation whereby resolution is attempted, and may make suggestions or give advice on terms of settlement.

DB(A)

Unit used to measure ‘A weighted’ sound pressure levels. A -weighting is an adjustment made to sound level measurement to approximate the response of the human ear.

DECC

NSW Department of Environment and Climate Change

DEVELOPMENT APPLICATION (DA)

A development application is a formal request for permission to carry out development, and includes plans and drawings, a statement of environmental effects and a completed application form.

FACILITATION

The term facilitation is broadly used to describe any activity which makes tasks for others easy. For example:

Facilitation is used in business and organisational settings to ensure the designing and running of successful meetings. A person who takes on such a role is called a facilitator.

MEDIATION

A process in which parties to a dispute with the assistance of a neutral third party ("the Mediator") identify disputed issues, develop options, consider alternatives and endeavour to reach an agreement. The mediator has no advisory or other determinative role in regard to the content of the dispute or the outcome of its resolution, but may advise on or determine the process of mediation whereby resolution is attempted.

NEGOTIATION

At its most basic, negotiation is an informal bargaining process. It takes place directly between the people in dispute, but can be assisted by others e.g. lawyers and advocates. The people involved in the dispute communicate directly to try to reach an agreement. Communication may be written or spoken and may take some time. Effective negotiators know that it is hard to reach an agreement unless everyone feels they get some benefit

SCHEDULED PREMISES

Premises licensed by DECC under the Protection of the Environment Operations Act, 1998

Appendix One

INVESTIGATING AND RESPONDING TO NOISE COMPLAINTS				
NOISE SOURCE	RESPONSIBLE AGENCY	OPTIONS	REGULATORY RESPONSE IF REQUIRED	OPERATIONAL PROCEDURES OF COUNCIL
Power tools, equipment and musical instruments or electrical equipment on a domestic premises	Council or Police	<p>All parties solving the noise problem amicably</p> <p>Mediation through the Community Justice Centre</p> <p>A Noise Abatement Order (under Section 268 of the POEO Act) sought by the person affected by the noise</p> <p>Regulatory action by Council</p>	Council may issue notices to prevent or minimise noise	<p>Investigate to determine compliance with Section 50 POEO (Noise Control) Regulations in regard to hours of use of power tools and equipment.</p> <p>Notify user of correct times of use.</p> <p>Issue noise abatement directions under Section 276 of POEO if "offensive noise" is determined for an immediate resolution or if warning letter not complied with.</p> <p>If noise exceeds a statutory level or articles are used outside of prescribed time, serve Noise Control Notice to prescribe permitted noise level, its location and times of use of article.</p> <p>If statutory requirements are being met but affected parties are still aggrieved,</p>

STRATEGIC COMMITTEE – 2 DECEMBER 2008

				information will be provided regarding individuals ability to commence proceedings under Section 268 POEO Act.
Air Conditioners	Council	<p>Both parties solving the noise problem amicably</p> <p>Mediation through the Community Justice Centre</p> <p>A Noise Abatement Order (under Section 268 of the POEO Act) sought by the person affected by the noise</p> <p>Regulatory action by Council</p>	Council may issue Notices or Orders	<p>Investigate to determine compliance with Section 50 POEO (Noise Control) Regulations re times of use.</p> <p>Where times of use are complied with but “offensive noise” alleged, conduct basic noise assessment to determine noise impact within affected premises.</p> <p>Noise criteria for intrusive noise are 5dB(A) above background noise level however, may be corrected by 5dB(A) i.e.; not exceeds background, if determined to be tonal.</p> <p>Where air conditioner appears to be generating excessive noise, operator may be directed to seek advice of an acoustic consultant to report an impact and noise mitigation.</p> <p>Council may service Noise Control Notice under Section 264 POEO Act to prescribe noise limits, hours of operation.</p>

STRATEGIC COMMITTEE – 2 DECEMBER 2008

				Where statutory controls do not assist complainants will be provided with information regarding Noise Abatement Orders under Section 268 POEO Act.
Vehicles (except when leaving or entering residential premises)	<p>Council (off road noise from vehicles including trail bikes etc)</p> <p>Police (on road or off road noise)</p> <p>DECC</p> <p>RTA (for heavy vehicles)</p>	<p>Negotiating a reasonable outcome</p> <p>Mediation through the Community Justice Centre</p> <p>Regulatory action</p> <p>Most vehicle noise issues are dealt with by the Police, RTA or DECC as the majority are associated with noisy vehicles on the road</p>	<p>Council may issue Notices or Orders</p> <p>Defect notices can be issued by the Police, RTA or DECC depending on the noise issue and the circumstances</p>	<p>Council will investigate matter to determine "offensive noise".</p> <p>Council will liaise with operator and complainant to determine expectations and negotiate reasonable outcomes.</p> <p>After investigation, the investigating officer may use discretion in serving a Noise Abatement Direction (Section 276) to address offensive noise by limiting usage of vehicle, prescribing times or locations of usage.</p> <p>Where complainants are further aggrieved by Council's decision they will be provided with information regarding Noise Abatement Orders under Section 268 POEO Act.</p> <p>Authorised Council officers may issue infringement notices under Section 16 POEO (Noise Control) Regulation to Owners</p>

STRATEGIC COMMITTEE – 2 DECEMBER 2008

				of vehicles where that officer personally experiences offensive noise from a car stereo when the car is being driven or is parked in a public place.
Aircraft (RAAF)	Department of Defence	Council to refer all Aircraft noise related complaints to these departments		
Aircraft (Civil)	Civil Aviation Authority			
Motor Sports	Council	Negotiating a reasonable outcome Mediation through the Community Justice Centre Regulatory action	Council may issue Notices or Orders	<p>Council will conduct a basic investigation to determine the substance of complaint.</p> <p>Investigating officers will consider the merits of the complaint, along with the requirements of any development consent condition or Council policy relating to the event.</p> <p>Council may require operators to provide a report from an Acoustic Consultant which provides details of noise levels and compliance with Statutory requirements. Council may require such a report through the service of a Prevention Notice under Section 96 of the POEO Act.</p> <p>Council may serve a Prevention Notice (Section 96) to set operational conditions for motor sport facilities.</p>

STRATEGIC COMMITTEE – 2 DECEMBER 2008

Noise from Alarms	<p>Police</p> <p>Council may assist the Police to enter a premises</p> <p>Maritime NSW (faulty alarms on boats and vessels etc)</p> <p>DECC (faulty car alarms)</p>	<p>Negotiating a reasonable outcome</p> <p>Regulatory action</p>	<p>Police and Council may enter the premises (with a warrant) to stop a faulty alarm</p> <p>DECC may issue a defect notice on faulty vehicle alarms</p> <p>Infringement notices may be issued by the Police, Council, Waterways Authority or DECC under specific circumstances</p>	<p>Council will investigate to ensure compliance with the requirements of POEO Act Regulations.</p>
Scheduled Premises including Large Industrial Complexes	DECC	<p>Council to refer all noise complaints to DECC where it involves a Scheduled Premises.</p>		
Small Factories and workshops	Council	<p>All parties solving the noise problem amicably</p> <p>A Noise Abatement Order (under Section 268 of the POEO Act) sought by the person affected by the noise</p> <p>Regulatory action by Council</p>	<p>Council may issue Notices or Orders</p>	<p>Council will conduct a basic noise assessment taking into account statutory requirements and conditions of development consent if applicable.</p> <p>Council may require proprietors to prove compliance by engaging an acoustic consultant.</p> <p>Council may issue a Noise Control Notice</p>

STRATEGIC COMMITTEE – 2 DECEMBER 2008

				<p>Section 264 POEO Act to control noise levels from equipment or activities or their times of use.</p> <p>Where regulatory tools do not assist and complainants are further aggrieved, Council will provide information regarding Noise Abatement Orders (Section 268 POEO Act).</p>
Vessels, boats, jet skis and ships	Maritime NSW	Council to refer these issues to Maritime NSW		
Building Construction	Council (or Private Certifier)	<p>All parties solving the noise problem amicably</p> <p>A Noise Abatement Order (under Section 268 of the POEO Act) sought by the person affected by the noise</p> <p>Regulatory action by Council</p>	Council may issue Notices or Orders	<p>Council will investigate matters to assess compliance with conditions of Development Consent as well as times of use of equipment under Section 50 POEO (Noise Control) Regulations.</p> <p>Where building site is controlled by a Private Certifier, the Private Certifier will be contacted to resolve the issue.</p> <p>Where issues relating to hours of operation continue Council may serve a Noise Control Notice Section 264 (POEO Act).</p> <p>Where noise issue relates to excessive</p>

STRATEGIC COMMITTEE – 2 DECEMBER 2008

				noise from equipment during permissible hours, Council may require the occupant to provide an acoustic consultants report to confirm compliance or recommend mitigation measures.
Concert Facilities	Council	<p>Negotiating a reasonable outcome</p> <p>A Noise Abatement Order (under Section 268 of the POEO Act) sought by the person affected by the noise</p> <p>Regulatory action</p>	Council may issue Notices or Orders	<p>Council will conduct a basic noise assessment taking into account statutory requirements and conditions of development consent if applicable.</p> <p>Council may require proprietors to prove compliance by engaging an acoustic consultant.</p> <p>Council may issue a Noise Control Notice Section 264 POEO Act to control noise levels from equipment or activities or their times of use.</p> <p>Where regulatory tools do not assist and complainants are further aggrieved, Council will provide information regarding Noise Abatement Orders (Section 268 POEO Act).</p>
Pubs, Clubs and Hotels	Department of Liquor, Gaming and Racing (noise from	The Department of Liquor, Gaming and Racing may	Conditions may be imposed by the Department of Liquor	Council will conduct a basic noise assessment taking into account

STRATEGIC COMMITTEE – 2 DECEMBER 2008

	<p>patrons and general noise from the premises)</p> <p>Council (noise from music or equipment)</p> <p>Police</p>	<p>negotiate with these premises to minimise noise from their operations.</p> <p>Mediation through the Community Justice Centre</p> <p>A Noise Abatement Order (under Section 268 of the POEO Act) sought by the person affected by the noise</p>	<p>Gaming and Racing to control noise.</p> <p>Council may issue notices to prevent or minimise noise from music or equipment</p>	<p>statutory requirements and conditions of development consent if applicable.</p> <p>Council may require proprietors to prove compliance by engaging an acoustic consultant.</p> <p>Council may issue a Noise Control Notice Section 264 POEO Act to control noise levels from equipment or activities or their times of use.</p> <p>Where regulatory tools do not assist and complainants are further aggrieved, Council will provide information regarding Noise Abatement Orders (Section 268 POEO Act).</p> <p>Council will liaise with the Department of Liquor, Gaming and Racing to address issues relating to licensed premises. Council will not address alcohol related noise issues or those related to conduct of patrons.</p>
<p>Dogs and other animals</p>	<p>Council</p>	<p>All parties solving the noise problem amicably</p> <p>Mediation through the</p>	<p>Council may issue Orders under some circumstances</p>	<p>Council will encourage parties to communicate and resolve issues.</p> <p>Council will commence</p>

		<p>Community Justice Centre</p> <p>A Noise Abatement Order (under Section 268 of the POEO Act) sought by the person affected by the noise</p>	<p>investigations relating to dog noise only after the documentation required under the Dog Noise Strategy is submitted by the Complainant.</p> <p>If the investigating officer is satisfied that a dog is causing offensive noise, then a Nuisance Order may be served on its owner under the Companion Animals Act.</p> <p>Council will encourage dog owners to resolve nuisance barking through measures such as training and the use of technology such as anti-barking collars.</p> <p>Where a Nuisance Order is not complied with, an infringement notice may be issued.</p> <p>Where offensive noise from other animals (e.g.; rooster, birds) is determined by a Council Officer, a Noise Abatement Direction may be issued under Section 276 POEO Act.</p> <p>Council will encourage the resolution of the matter through strategies such as removal of the animal, reduction in numbers of animals kept, construction of</p>
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STRATEGIC COMMITTEE – 2 DECEMBER 2008

				<p>physical barriers (e.g.; solid fencing, aviaries and coops) and training.</p> <p>Where statutory tools do not assist resolution and complainants are still aggrieved, Council will provide information regarding Noise Abatement Orders under Section 268 POEO Act.</p>
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ITEM NO. 2

FILE NO: PSC2006-1202

PROPOSED AMENDMENT TO PORT STEPHENS LOCAL ENVIRONMENTAL PLAN 2000 – IN RESPECT OF CERTAIN LANDS AT KARUAH – DRAFT PORT STEPHENS LOCAL ENVIRONMENTAL PLAN 2000 (AMENDMENT NO. 24).

REPORT OF: TREVOR ALLEN –INTEGRATED PLANNING MANAGER

RECOMMENDATION IS THAT COUNCIL:

- 1) Submit the exhibited draft Local Environmental Plan (draft Port Stephens LEP 2000 amendment No. 24) to the Department of Planning requesting that the draft plan (**Attachment 1**) be made by the Minister.
- 2) Prior to the draft Plan being forwarded to the Minister, agreement be reached between the Department of Environment and Climate Change (DECC) and landowners to satisfy concerns raised by DECC in relation to bio-banking.

STRATEGIC COMMITTEE MEETING – 2ND DECEMBER 2008

RECOMMENDATION:

Councillor Bruce MacKenzie Councillor John Nell	That the recommendation be adopted.
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In accordance with the Local Government Act, a division is required.

Those for the motion: Councillors B. MacKenzie, G. Dingle; S. Dover, G. Francis; K. Jordan; B Westbury; F Ward; J. Nell; S. O'Brien & S. Tucker.

Those against the motion: Nil.

ORDINARY MEETING – 16 DECEMBER 2008

RESOLUTION:

393	Councillor Glenys Francis Councillor Shirley O'Brien	It was resolved that the recommendation be adopted.
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In accordance with the Local Government Act, a division is required.

Those for the motion: Crs B. MacKenzie, G. Dingle; S. Dover, G. Francis; K. Jordan; F Ward; J. Nell; S. O'Brien, D. Maher, P. Kafer & S. Tucker.

Those against the motion: Nil.

BACKGROUND

The purpose of this report is for Council to consider the results of the exhibition of the draft Port Stephens Local Environmental Plan 2000 (Amendment No.24).

PROPOSAL DETAILS

Owners	Mr M J Gray, Mr W Roome (Snr), Mrs C Roome (Jr) and Ms K Roome, Mr J Hart, Mrs V Hart, Mr J Leith, Mrs J Leith, Mr P Myles, Mr P Butler, Mrs L Butler, Mr D Hasler, Mrs R Hasler, Mr K Hasler, Ms J Hasler.
Proponent	Mr K Lindsay
Date of Submission	January 2005
Subject Land	Lot 271 DP 876238, 31 Johnson Avenue; Part Lot 2 DP 1057535, 22 William Street; Lot 302 DP 1004596, 15 Gray Street; part Lot 303 DP 1004596, 24 William Street; Part Lot 1 DP 436702, 75 Holdom Road, part lot 1 DP 749565 81 Holdom Road and part Lot2 DP 748343, 314 Tarean Road, Karuah.
Current Zone	1(a) - Rural Agriculture
Proposed Zone	Part 2(a) – Residential Part 7(a) – Environmental Protection

In May 2005, Council resolved to prepare a draft LEP. In November 2005, Council requested the Director General of the Department of Planning to issue a Section 65 Certificate to place the draft LEP on exhibition. In March 2006, the Department of Planning (DoP) advised Council to amend the draft LEP No. 24 and incorporate the DoP's requested changes.

To advance the matter, Council in April 2006, and under delegation of the General Manager, resolved to alter the draft Plan to reflect the required changes by Department of Planning including the addition of Lot 1 DP 749565.

In June 2007, the DoP issued a Section 65 Certificate to enable the draft Plan to be placed on public exhibition. In doing so, Department of Planning requested Council to address the objections of the Department of Environment and Climate Change (DECC) and Hunter-Central Rivers Catchment Management Authority (CMA) before forwarding the draft Plan to the DoP for further consideration.

Throughout 2008, Council Officers met with these authorities and landowners and sought to resolve the objections. These discussions sought to clarify the issues of concern and a means by which they could be resolved. DECC indicated that a Voluntary Planning Agreement (VPA) requiring landowners to utilise bio-banking at development stage as an appropriate means of ensuring biodiversity offsets.

LINKS TO CORPORATE PLANS

The links to the 2008-2012 Council Plan are:-

SOCIAL SUSTAINABILITY –	<i>Council will preserve and strengthen the fabric of the community, building on community strengths.</i>
CULTURAL SUSTAINABILITY –	<i>Council will assist to inspire a sense of pride and place as well as enhancing quality of life and defining local identity.</i>
ECONOMIC SUSTAINABILITY –	<i>Council will support the economic sustainability of its communities while not compromising its environmental and social well being.</i>
ENVIRONMENTAL SUSTAINABILITY –	<i>Council will protect and enhance the environment while considering the social and economic ramifications of decisions.</i>
BUSINESS EXCELLENCE –	<i>Council will use the Business Excellence Framework to innovate and demonstrate continuous improvement leading to long-term sustainability across operational and governance areas in a Business Excellence Journey</i>

FINANCIAL/RESOURCE IMPLICATIONS

Should Council resolve to support the recommendations of this report, staff time and resources will be required to prepare the draft Plan and relevant information to be forwarded to the Department of Planning.

LEGAL AND POLICY IMPLICATIONS

Legal – There are no legal or policy implications should Council reject the recommendations of this report. Should Council support the recommendations of this report, it is open to the landowners to enter into a VPA to ensure bio-banking is utilised at Development Application stage.

Policy – The area has been identified in DoP's *Lower Hunter Regional Strategy 2006 (LHRS)* and Council's *Community Settlement and Infrastructure Strategy 2007 (CSIS)* as an area suitable for future urban growth. The proposal is generally consistent with Part F Sustainability Principles Criteria. The criteria are addressed as follows:

F1 Settlement Structure and Movement Network – The draft LEP is consistent with the settlement structure and will result in an extension of the existing neighbourhood. Additional information will be required at development stage to address traffic implications on the surrounding movement networks.

F2 Infrastructure Services and Facilities – Additional infrastructure services and facilities would be provided via Section 94 contributions. Greater demand will be placed on the existing facilities in the area. However; the increase in population could make the existing facilities more viable and increase usage.

F3 Quality Places to Live – The draft LEP will result in an extension of the existing residential land in close proximity to the town centre. An increase in population would attract additional services and facilities to locate within the existing town centre resulting in improvements to the town centre and main street.

F4 Natural Areas and Resources- The draft Plan includes an area identified suitable as 7(a) Environmental Protection which reflects the existing environment (SEPP 14 wetlands and an appropriate buffer). Future development will be required to consider potential impacts on the proposed 7(a) Environmental Land. Development will not be permissible in the proposed 7(a) Environmental Land.

F5 Economics and Employment – The draft Plan will not undermine any existing areas of Karuah. Development consistent with the recommendations of this report will compliment the existing residential areas of Karuah and provide additional support for the town centre.

F6 Sustainability Criteria - This is a matter for consideration by the Department of Planning

Business Excellence Framework

Port Stephens Council is a quality driven organisation. We use the Business Excellence Framework as a basis for driving organisational excellence. The Framework is an integrated leadership and management system that describes elements essential to organisational excellence. It is based on eight (8) principles.

These outcomes align with the following Business Excellence principles:-

- 1) **LEADERSHIP** – *Lead by example, provide clear direction, build organisational alignment and focus on sustainable achievement of goals.*
- 2) **CUSTOMERS** – *Understand what markets and customers value, now and into the future, and use this to drive organisational design, strategy, products and services.*
- 3) **SYSTEMS THINKING** – *Continuously improve the system.*
- 4) **PEOPLE** – *Develop and value people's capability and release their skills, resourcefulness and creativity to change and improve the organisation.*
- 5) **CONTINUOUS IMPROVEMENT** – *Develop agility, adaptability and responsiveness based on a culture of continual improvement, innovation and learning.*
- 6) **INFORMATION AND KNOWLEDGE** – *Improve performance through the use of data, information and knowledge to understand variability and to improve strategic and operational decision making.*
- 7) **CORPORATE AND SOCIAL RESPONSIBILITY** – *Behave in an ethically, socially and environmentally responsible manner.*
- 8) **SUSTAINABLE RESULTS** – *Focus on sustainable results, value and outcomes.*

SUSTAINABILITY IMPLICATIONS

SOCIAL IMPLICATIONS

Since the Pacific Highway bypass of Karuah, the town centre has struggled and viability of the services for the town has declined. Development in this location will provide positive social outcomes for Karuah due to its close proximity to the town centre. Aliceton Reserve is located within walking distance and will enable new residents easy pedestrian access to existing community facilities. The site is continuous with the existing residential land and approximately 300m to the town centre.

Future development will be required to reflect the existing street network and existing urban character. The draft Plan has the potential to strengthen the social and economic viability of Karuah through increasing housing choice and the overall population of Karuah.

ECONOMIC IMPLICATIONS

Rezoning to allow residential use on the subject site will support the re-vitalisation of the Karuah Town Centre which has been subject to significant loss of trade since the opening of the bypass.

The draft Plan will provide additional residential land in Karuah that will lead to a levy for developer contributions to fund additional infrastructure as well as additional use of existing infrastructure and services. Through the development process Council would obtain Section 94 contributions.

The development process could result in increased short term economic activity through the construction phase. Long term economic benefits would occur as new residents locate to the area creating demand and use of facilities and services and increased spending in the area.

ENVIRONMENTAL IMPLICATIONS

The site adjoins a State Environmental Planning Policy – Coastal Wetlands (SEPP 14) The protection of Wetland is proposed under the draft LEP within a 7(a) Environmental Protection zone. The land is currently zoned 1(a) Rural Agriculture but SEPP 14 Wetlands restricts use of the land and the buffers surrounding.

The site proposed 2(a) Residential land under the draft Plan has limited environmental qualities and consists of scattered remnant vegetation and is degraded due to previous agricultural use.

The site has been identified under the LHRS and CSIS as an area suitable for future residential development. Throughout the preparation of the draft Plan, the DoP required that the issues raised by DECC and CMA regarding biodiversity offsets must be resolved before Council request the Minister make the Plan. DECC have indicated a suitable means of ensuring appropriate biodiversity is through the bio-banking tool at Development Application stage.

Prior to forwarding the draft Plan to the Minister for Planning, a Voluntary Planning Agreement (VPA) will be required to ensure the biodiversity offsets are considered and the requirements of DECC are met.

CONSULTATION

The appropriate Government authorities were consulted under Section 62 of the Environmental Planning and Assessment Act 1979. Objections were received from DECC and CMA concerning loss of vegetation and biodiversity offsets required under legislation. Both DECC and CMA considered the loss of vegetation that may occur through the draft Plan as not implementing the “Improve and Maintain Principles”. DECC, CMA and DoP were consulted further to address the concerns raised. DoP indicated that it would not support the Plan unless the outstanding objections by these agencies were addressed. It has been indicated by DECC that establishing a Voluntary Planning Agreement to ensure the bio-banking tool is utilised would address their objection.

Should satisfactory resolution of this matter not be reached between the landowners and DECC, the draft Plan cannot be progressed. The draft Plan requires that landowners enter into a Voluntary Planning Agreement addressing the DECC objections prior to being sent to the Minister for Planning. As this is a matter determined to be between the landowner and DECC, it is now appropriate for Council to consider the results of the exhibition of the draft LEP.

The CMA do not have a role in advising on draft LEP matters relating to urban development.

The draft Plan was exhibited for a total of approximately eight (8) weeks from July through to early September 2007. Ten (10) submissions were received. Issues raised referred mainly to the environmental impacts of future development and existing infrastructure. These submissions have been addressed in the table at Attachment 3. There was some concern that the proposed 7(a) Environmental Protection land was being used as a biodiversity offset for the proposed 2(a) Residential land. DECC has confirmed this is not the case and requires offsets to be obtained through the means of bio-banking.

OPTIONS

- 1) Support the recommendations.
- 2) Reject the recommendations.
- 3) Make amendments to the recommendations.

ATTACHMENTS

- 1) Draft LEP 24 Instrument
- 2) Map
- 3) Summary of Submissions

COUNCILLORS ROOM

- 3) Nil

TABLED DOCUMENTS

- 1) Nil

Port Stephens Local Environmental Plan 2000 DRAFT (Amendment No 24)

under the

Environmental Planning and Assessment Act 1979

I, the Minister for Planning, make the following local environmental plan under the *Environmental Planning and Assessment Act 1979*.

Minister for Planning
Clause 1

Port Stephens Local Environmental Plan 2000 DRAFT (Amendment No24)

**Port Stephens Local Environmental Plan 2000 DRAFT
(Amendment No 24)**

1 NAME OF PLAN

This plan is *Port Stephens Local Environmental Plan 2000 DRAFT (Amendment No 24)*.

2 AIMS OF THE PLAN

The aims of this plan are to:-

- (a) Rezone part of the land to which this plan applies from Zone No 1(a) – Rural Agriculture “A” Zone to Zone 7 (a) – Environment Protection “A” Zone under the Port Stephens Local Environmental Plan 2000 to protect significant wildlife habitat, and;
- (b) Rezone part of the land to which this plan applies from Zone No 1(a) – Rural Agriculture “A” Zone to Zone No. 2 (a) Residential “A” Zone under the Port Stephens Local Environmental Plan 2000 to facilitate residential development.

3 LAND TO WHICH PLAN APPLIES

- 1) To the extent that this plan rezones part of the land to the Zone 7 (a) – Environment Protection “A” Zone, it applies to land situated in the local government area of Port Stephens being; part of Lot 303 DP 1004596, 24 William Street, part of Lot 1 DP 436702, 75 Holdom Road, Part of Lot 1 DP 749565 81 Holdom Road, part of Lot 2 DP 748343, 314 Tarean Road and Part of Lot 2 DP 1057535, 22 William Street as shown edged heavy black, coloured orange and lettered “(7a)” on the map marked “Port Stephens Local Environmental Plan 2000 DRAFT (Amendment No. 24)” deposited in the office of Port Stephens Council.
- 2) To the extent that this plan rezones part of the land to the Zone No. 2 (a) Residential “A” Zone, it applies to land situated in the local government area of Port Stephens being; Lot 271 DP 876238, 31 Johnson Avenue; part of Lot 2 DP 1057535, 22 William Street; Lot 302 DP 1004596, 15 Gray Street; part of Lot 303 DP 1004596, 24 William Street; part of Lot 1 DP 436702, 75 Holdom Road, part of Lot 1 DP 749565 81 Holdom Road and part Lot 2 DP 748343, 314 Tarean Road, Karuah, as shown edged heavy black, coloured pink and lettered “2(a)” on the map marked “Port Stephens Local Environmental Plan 2000 (Amendment No 24)” deposited in the office of Port Stephens Council.

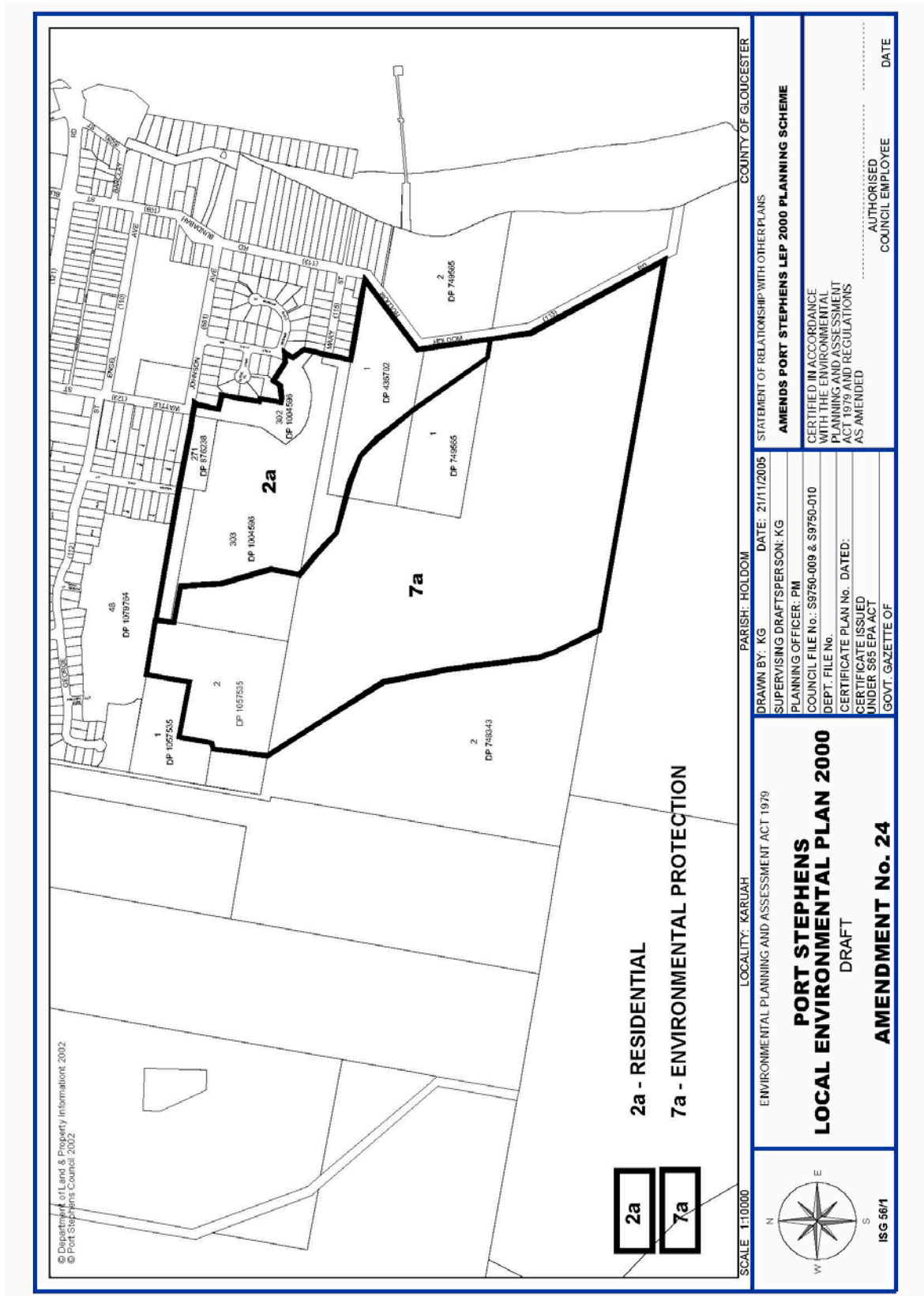
4 AMENDMENT OF PORT STEPHENS LOCAL ENVIRONMENTAL PLAN 2000

Port Stephens Local Environmental Plan 2000 is amended as set out in Schedule 1.

Schedule 1 Amendment

- **[1] Dictionary**
- Insert in appropriate order in the definition of **the map**:
- Port Stephens Local Environmental Plan 2000 (Amendment No. 24)

ATTACHMENT 2
MAP



ATTACHMENT 3
SUMMARY OF SUBMISSIONS

General nature of the issue raised	Comment
Concern regarding if there is a need for additional residential land.	The Department of Planning did not support two other draft Plans within Karuah on this issue. This was based on the availability of land and location of these sites within the regional biodiversity corridor. This draft Plan has been in the rezoning process for approximately 4 years. It is considered appropriate to complete this process which is consistent with the LHRS.
Concern over loss of habitat.	Ongoing consultation has occurred with the CMA and DECC. DECC has indicated that they are satisfied with the draft Plan if biodiversity offsetting is obtained through the Bio-banking tool undertaken at development application stage. The draft Plan includes rezoning approximately 50 hectares land 7(a) Environmental Protection. Note: this portion of the site is not being used as an offset for the proposed 2(a) Residential land; offsets will be obtained through the Bio-banking tool.
Want a reduction in density and number of lots in Karuah.	Reducing density in this location would be an inefficient use of serviced land. Additional residential land in close proximity to the Karuah town centre will enable more efficient use of existing infrastructure.
Increase in open space and improved facilities.	Increased population in this location make additional facilities or upgrades more viable. Adequate open space is available in and around Karuah.
Concerns over lack of community input and the exhibited material.	The draft Plan was placed on public exhibition approximately 8 weeks in total to address concerns raised by submissions throughout the first exhibition period. All submissions have been received and considered throughout the assessment of the rezoning request. More detailed investigations and assessment will be required at development application stage. Any submissions at development stage will be considered through the assessment process.
Traffic impacts area	Traffic implications will need to be considered in detail at the development application stage. This consideration will not only relate increased traffic, but

ORDINARY MINUTES – 16 DECEMBER 2008

	also access and implication on nearby facilities.
Noise pollution associated with additional residential development.	Noted- Residential land is not likely to result in high levels of noise. The existing residential amenity of the area will be maintained.
Environmental Impacts Mosquitoes SEPP 14 Wetlands	The area has been identified in both the LHRS and CSIS. Additional more detailed investigations will be required at Development Application stage. More detailed analysis will be required through the development application stage to indicate how possible impacts on SEPP 14 be managed. This is achievable.
Provision of infrastructure in the rezoning request.	Additional infrastructure associated with the development of the land is required to be provided by the developer. This level of detail should form part of the Development Application. Development will be levied under Section 94.
Request removal of property from the draft Plan expressed concern over inclusion. Concern property is being used as an offset for adjoining development. Throughout the rezoning process concern was raised that rezoning some of the land could restrict possibility of rezoning adjoining lands.	DECC have advised that the proposed 7(a) Environmental Protection land was not being utilised as an offset for the proposed 2(a) Residential land in this instance. DoP indicated it did not support the adjoining lands being rezoned at this time as they considered it to be located within the Watagan- Stockton Green Corridor and is therefore inconsistent with the LHRS.
Bushfire Risk	The NSW Rural Fire Service were consulted at Section 62 stage. The RFS did not indicate an objection. Full assessment of bushfire risk and the implications of developing the site will be required at development application stage. This is to be achieved.
Assumption that majority of development in the western areas of Port Stephens will be catered for at Kings Hill.	Kings Hill is one of a number of areas identified in the LHRS as suitable for future residential growth. The Kings Hill draft LEP is uncertain due to aircraft noise issues raised by Department of Defence.

ITEM NO. 3

FILE NO: PSC2005-2896

ANNA BAY DRAINAGE UNION ACID SULFATE SOILS PLAN OF MANAGEMENT

REPORT OF: BRUCE PETERSEN – MANAGER, ENVIRONMENTAL SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Approve the Anna Bay Drainage Union Acid Sulfate Soils Plan of Management.

STRATEGIC COMMITTEE MEETING – 2ND DECEMBER 2008

RECOMMENDATION:

<p>Councillor John Nell Councillor Glenys Francis</p>	<p>1. That the recommendation be adopted. 2. That the Council acknowledge the Tilligerry Creek Advisory Committee.</p>
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In accordance with the Local Government Act, a division is required.

Those for the motion: Councillors B. MacKenzie, G. Dingle; S. Dover, G. Francis; K. Jordan; B Westbury; F Ward; J. Nell; S. O’Brien & S. Tucker.

Those against the motion: Nil.

ORDINARY MEETING – 16 DECEMBER 2008

RESOLUTION:

<p>394</p>	<p>Councillor John Nell Councillor Steve Tucker</p>	<p>It was resolved that the Strategic Committee recommendation be adopted.</p>
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In accordance with the Local Government Act, a division is required.

Those for the motion: Crs B. MacKenzie, G. Dingle; S. Dover, G. Francis; K. Jordan; F Ward; J. Nell; S. O’Brien, D. Maher, P. Kafer & S. Tucker.

Those against the motion: Nil.

BACKGROUND

The purpose of this report is seek Council's approval of the *Anna Bay Drainage Union Acid Sulfate Soils Plan of Management* as per 51A of the Port Stephens Local Environment Plan (LEP) 2000.

At the August 2008 meeting, Council resolved to:

- 1) *Place the Anna Bay Drainage Union Acid Sulfate Soils Plan of Management on public exhibition for two months.*
- 2) *Participate in discussions being initiated by the Department of Water and Energy through the Department of Premiers and Cabinet, to review drainage management in the Anna Bay locality.*

The plan came off exhibition on 12 November following advertisement in the Port Stephens Examiner and on Council's website. Consultation was also carried out through the Tilligerry Creek Advisory Committee, who monitored the Plan's development. No submissions were received.

Acid Sulfate Soils (ASS) are a natural occurrence and were formed in the last major sea level rise when seawater, which is sulfate-rich, mixed with land sediments containing iron oxides and organic matter. These soils mainly occur in coastal wetland areas and are not a problem until they are exposed to air and oxidise, releasing sulfuric acid, toxic quantities of iron, aluminium and heavy metals. Exposure usually occurs either by excavation or by lowering the water table via drainage or drought.

Acid sulfate soils exist throughout many areas of Port Stephens and in particular throughout the land surrounding Tilligerry Creek. In the last 100 years, this area has been extensively drained and care needs to be taken when maintaining these drains to ensure that works do not disturb these soils more than necessary and that appropriate actions are undertaken to treat any soil that is disturbed.

The Anna Bay Drainage Union (ABDU) undertakes the necessary work of maintaining the two (2) main drains in Anna Bay and there is a need to ensure that all works are undertaken with acid sulfate soil best practice management in mind. To achieve this, members of the ABDU and Council, with assistance from the Department of Primary Industries – Fisheries, and the Department of Water and Energy, have prepared an Acid Sulfate Soils Plan of Management as per 51A of the Port Stephens Local Environment Plan (LEP) 2000.

The Plan is not a Council document and is the responsibility of the Anna Bay Drainage Union. However, as per Clause 51A of the LEP, the Plan needs to be approved by Council. The Plan lets the ABDU continue their essential maintenance activities without needing approval from Council each time they undertake their works while still ensuring that acid sulfate soil best practice management principles are followed.

As there were no submissions on the Plan, the Tilligerry Creek Advisory Committee now intends to amend the Plan to become a guidance document for all landholders that undertake drainage maintenance activities to help them avoid causing Acid Sulfate Soil problems.

LINKS TO CORPORATE PLANS

- SOCIAL SUSTAINABILITY –** *Council will preserve and strengthen the fabric of the community, building on community strengths.*
- CULTURAL SUSTAINABILITY –** *Council will assist to inspire a sense of pride and place as well as enhancing quality of life and defining local identity.*
- ECONOMIC SUSTAINABILITY –** *Council will support the economic sustainability of its communities while not compromising its environmental and social well being.*
- ENVIRONMENTAL SUSTAINABILITY –** *Council will protect and enhance the environment while considering the social and economic ramifications of decisions.*
- BUSINESS EXCELLENCE –** *Council will use the Business Excellence Framework to innovate and demonstrate continuous improvement leading to long-term sustainability across operational and governance areas in a Business Excellence Journey*

FINANCIAL/RESOURCE IMPLICATIONS

There will be some minor impacts on staff time to train representatives of the ABDU on how to operate a pH meter and to monitor the works that are undertaken by the Union.

LEGAL AND POLICY IMPLICATIONS

This Plan is in line with Clause 51A (7) of the LEP, whereby routine maintenance works may be carried out by a private drainage board without consent where an Acid Sulfate Soils Plan of Management relating to such works has been prepared in accordance with the Acid Sulfate Soils Manual, and approved by Council after considering any comments from relevant state agencies (Department of Primary Industries – Fisheries and Department of Water and Energy).

Council has no legal easements over the drains that are currently being serviced by the Anna Bay Drainage Union. Gaining easements is an expensive action to take and is another reason to support the ABDU to continue its current activities and assist them to carry out their works in a manner reflecting the environmentally sensitive nature of the subject land.

Business Excellence Framework

Port Stephens Council is a quality driven organisation. We use the Business Excellence Framework as a basis for driving organisational excellence. The

Framework is an integrated leadership and management system that describes elements essential to organisational excellence. It is based on eight (8) principles.

These outcomes align with the following Business Excellence principles:-

- 1) **LEADERSHIP** – *Lead by example, provide clear direction, build organisational alignment and focus on sustainable achievement of goals.*
- 2) **CUSTOMERS** – *Understand what markets and customers value, now and into the future, and use this to drive organisational design, strategy, products and services.*
- 3) **SYSTEMS THINKING** – *Continuously improve the system.*
- 4) **PEOPLE** – *Develop and value people's capability and release their skills, resourcefulness and creativity to change and improve the organisation.*
- 5) **CONTINUOUS IMPROVEMENT** – *Develop agility, adaptability and responsiveness based on a culture of continual improvement, innovation and learning.*
- 6) **INFORMATION AND KNOWLEDGE** – *Improve performance through the use of data, information and knowledge to understand variability and to improve strategic and operational decision making.*
- 7) **CORPORATE AND SOCIAL RESPONSIBILITY** – *Behave in an ethically, socially and environmentally responsible manner.*
- 8) **SUSTAINABLE RESULTS** – *Focus on sustainable results, value and outcomes.*

SUSTAINABILITY IMPLICATIONS

SOCIAL IMPLICATIONS

The Anna Bay Drainage Union performs an important function within the Anna Bay locality. The maintenance of the drainage system is essential to the existence of the residents within the catchment.

ECONOMIC IMPLICATIONS

The Plan requires works undertaken by the Anna Bay Drainage Union to be in line with the *Acid Sulfate Soils Manual*. Works will now be undertaken in such a way that minimises downstream environmental harm by acid waters. The water from the Anna Bay Drain flows by the Fisheries Research Centre in Taylors Beach before entering Tilligerry Creek. This area is important for the Port Stephens Oyster Industry, a major economic source for the local area. Flow on effects from acid waters could also affect the Marine Park and tourism ventures within the Port.

ENVIRONMENTAL IMPLICATIONS

This Management Plan, if implemented correctly, will decrease environmental harm as result of disturbed acid sulfate soils.

CONSULTATION

The Plan has been drafted by Port Stephens Council Environmental Services Officers in consultation with the Anna Bay Drainage Union, and with assistance from

Department of Primary Industries – Fisheries, and the Department of Water and Energy.

Several versions of the Plan were produced before an agreement was reached with the Anna Bay Drainage Union. As per the Port Stephens LEP, the final version was also sent to the Department of Primary Industries – Fisheries, and the Department of Water and Energy to allow them twenty one (21) days to comment. Both departments were positive about the Plan and no changes were suggested.

Consultation was undertaken through the Tilligerry Creek Catchment Management Committee, who also support the Plan. This Committee is made up of equal numbers of government/industry and community members. The Plan was available from Port Stephens Council administration centre and copies were posted out on request. The Plan was advertised through the Examiner and on the Council website.

OPTIONS

- 1) Adopt the recommendation
- 2) Reject the recommendation
- 3) Amend the recommendation

ATTACHMENTS

Anna Bay Drainage Union Acid Sulfate Soils Plan of Management

COUNCILLORS ROOM

Nil

TABLED DOCUMENTS

Nil

ATTACHMENT 1
ANNA BAY DRAINAGE UNION ACID SULFATE SOILS PLAN OF MANAGEMENT

Anna Bay Drainage Union

ACID SULFATE SOILS PLAN OF MANAGEMENT
as described in 51A of the Port Stephens Council
Local Environment Plan 2000

Floodgate and drain maintenance for acid sulfate
soils as indicated by the acid sulfate soils risk maps
available from Port Stephens Council

The aim of these guidelines is to:

1. Improve drain and floodgate maintenance practices to reduce inappropriate discharges into waterways during and after drain cleaning operations.
2. Increase awareness of options for weed control in drains other than by mechanical works.

Drain Maintenance Options for weed control

The feasibility of implementing non-mechanical maintenance strategies to manage aquatic vegetation in open drains in preference to mechanical weed removal should be thoroughly investigated. These options include:

1. Filling in redundant drains;
2. Reshaping the drain so that they are shallow and wider so drain can be slashed or mulched;
3. Spraying weeds in the drain
4. Promote tree growth along the northern edge of drains to shade out weeds ;
5. Modify floodgates to allow for controlled salt water exchange to aid in-stream weed management;

ALTERNATIVE METHODS FOR DRAIN AND FLOODGATE MAINTENANCE

RECOMMENDED PROCEDURES		COMMENTS/EXPLANATION
<i>Saltwater Flushing</i>	<p>If floodgates need repair they should be modified to allow tidal exchange (automated tidal exchange device or sluice gate).</p> <p>Investigate floodgate redesign (automated tidal exchange device or sluice gate).</p> <p>Assess seasonal opening of floodgates.</p>	<p>Leaking floodgates can have environmental benefits by flushing drains thus improving water quality, controlling some freshwater weeds and maintaining elevated ground water levels. Repair should ensure tidal flushing continues.</p> <p>Controlled opening allows the extent of salt water intrusion to be measured and/or controlled.</p> <p>Major structural repairs to floodgates or floodgate redesign will require approval from DPI Fisheries</p> <p>Saltwater flushing should be done gradually to avoid catastrophic changes in the drain as a result of the rapid change in water</p>

		<p>chemistry.</p> <p>Saltwater introduction into drains should also consider hydraulic conductivity of the soils along the drain. Hydraulic conductivity will control the rate and probably the distance of saltwater penetration into the groundwaters.</p>
<p><i>Spraying Drains to Control Aquatic Weeds</i></p>	<p>Apply herbicides only in dry periods to avoid adverse impacts from the export of herbicide and decaying plant material from the works area.</p> <p>Floodgates should not be mechanically held open during and after spraying for the period specified by the chemical manufacturer to allow any surplus chemical to breakdown before entering the river.</p> <p>Ensure any spray contractors are appropriately licensed.</p> <p>Ensure that the proposed herbicide is fully compliant with an EPA licence for use on aquatic weeds and comply with label directions.</p> <p>An EPA permit is required for any spraying into water.</p>	<p>Herbicide use in aquatic situations is strictly controlled because the containment of the herbicide during and after spraying can be affected by dispersion of the chemical in water and any water movement through the work area. Also decaying vegetation matter can pollute waterways. i.e. Vegetation rotting in drains reduces Dissolved Oxygen of drain waters and can contribute to monosulphide black ooze formation.</p> <p>Vegetation on the edge of drains assist with erosion control and care must be taken when using herbicides near water as a small error in the application of the chemical could have rapid and adverse consequences beyond the drain. Consider spot spraying weeds rather than broad applications.</p> <p>EPA contact [02] 4908 6800</p> <p>A list of chemicals registered for this use is available from DPI</p>
<p><i>Use of Tree Cover for Weed Control</i></p>	<p>Allow full tree cover on the northern, north-west or north-east side of the drain to inhibit weed growth through shading.</p>	<p>Weeds will not grow well in shade. Maximum shade is achieved when trees are growing on the northern and north-west side of the drain. An added benefit is that tree root</p>

		<p>systems stabilise drain banks. The reduced water temperatures provided by shading also offer numerous benefits to water quality.</p> <p>This allows unobstructed access for cleaning while allowing trees on the northern side to grow without the need for removal.</p> <p>Trees can also exacerbate acid in areas of shallow acid sulphate soils. Site assessments are necessary to determine if tree planting is appropriate in high-risk areas.</p>
<i>Documenting Procedures</i>	This ensures that a record of what activities were conducted in the drain and when they occurred is kept and information can be gathered as to the effectiveness of the treatments.	

In the event that mechanical drain maintenance is the only viable option, operators should use a reed bucket and adhere to the following procedures.

DRAIN AND FLOODGATE MAINTENANCE PROCEDURE

RECOMMENDED PROCEDURES		COMMENTS/EXPLANATION
1 <i>Notification</i>	<p>The landholders and operators need to ensure any proposed works comply with all relevant legislation. Lack of knowledge is not an option for appeal if a breach occurs.</p> <p>Notify other stakeholders</p> <ul style="list-style-type: none"> - Oyster farmers through Oyster Quality Assurance Program. This will give oyster growers the opportunity to move stock if necessary. - Marine Park Authority. <p>Part of the Anna Bay drainage system flows</p>	<p>A permit may be required for damage or removal of mangroves, and for dredging or reclamation works near waterways & drains. Contact: DPI (NSW Fisheries) (02) 4982 1232.</p> <p>A Property Vegetation Plan may be required for the removal of any native vegetation that was growing prior to 1990. Contact: Hunter Central Rivers CMA (02) 4930 1030</p> <p>Oyster QAP – (02) 4981 1257 (ah)</p>

	<p>into a Marine Park Sanctuary Zone. - Port Stephens Council, so they can respond to any enquiries.</p>	<p>Marine Park Authority – (02) 4916 3970 PSC – (02) 4980 0241</p>
<p>2 <i>Timing of works</i></p>	<p>Drain cleaning works should be scheduled for drier climatic conditions to minimise the potential for any runoff. (Usually February).</p> <p>If sufficient rain (25mm) occurs during work so as to increase the potential of uncontrolled discharge, work should stop immediately and any potential discharge minimised and any actual discharge monitored and treated as required. Works are not to recommence until runoff ceases.</p>	<p>There is a high risk of severe environmental impacts on receiving waters when water flows over drain spoils or through recently worked drains and discharges into waterways.</p>
<p>3 <i>Machinery Access</i></p>	<p>Although the Drainage union has a statutory right to enter any land inside or outside of its drainage district in the interest of cooperation notification should be given.</p> <p>Before entering other private property with excavating equipment, at least verbal notification should be provided to property owners.</p>	<p>It is important to ensure that all affected landholders (as well as all stakeholders) are aware of the proposed works to be undertaken on or adjacent to their property.</p>

<p style="text-align: center;">4 <i>Excavator Operators</i></p>	<p>If a contractor is doing the work, preference should be given to contractors who have attended relevant training.</p> <p>The contractor should be provided with a Works Procedure Plan by the Anna Bay Drainage Union.</p> <p>The contractor should work in such a way as to minimise sediment disturbance when removing aquatic weeds. The excavator must only use a reed bucket.</p> <p>The excavator should only use an approved reed bucket. The bucket must not be used to remove sediments or reshape the drain.</p>	<p>Contractors must have received accreditation and approved training in recognising and handling ASS material to ensure work is properly carried out.</p> <p>Written instructions are an important means of risk management as well as assisting the operator in understanding their task. (Example Plan available on request)</p> <p>Many aquatic plants have rooted systems within the drain sediments that make it impossible to avoid sediment disturbance when removing drain weeds. However all care should be taken to minimise sediment disturbance or removal.</p> <p>A reed bucket is used to minimise potential of removing or disturbing sediments potentially being acid sulphate soils. The reed bucket must not be used in a way to remove sediments.</p>
<p style="text-align: center;">5 <i>Pre-works management</i></p>	<p>The pH level of the drain must be assessed prior to works.</p> <p>Lime must be immediately available for delivery, prior to any works.</p> <p>Do not lift floodgate, remove temporary weir and/or silt curtain for two weeks after works are completed to allow sediment to settle and water pH to return to pre work levels. Lime may be added to assist pH to</p>	<p>The landholder needs to ensure they can access lime when and if necessary during the planned works.</p> <p>Sediment curtain can be obtained from most hardware shops. This will assist in containing any disturbed sediment and preventing discharge of turbid water to waterways.</p> <p>Existing vegetation can help 'filter' sediment laden water and allows time for sediment to settle out prior to reaching</p>

	<p>return to acceptable levels.</p> <p>All works should commence in the upper reaches of the drain and progressively work towards the outlet.</p> <p>Mature riparian vegetation should not be disturbed and/or removed unless absolutely necessary to facilitate access for the excavating machinery.</p>	<p>the outlet.</p> <p>Riparian vegetation helps shade drains to minimise weed growth and should be encouraged to reduce maintenance frequency and costs.</p>
<p>6 <i>Determination of Liming Rate</i></p>	<p>Drain sediment and spoil should be tested to confirm the presence of ASS and determine an appropriate liming rate.</p> <p>Liming will only be required if spoil has been removed.</p> <p>An alternative to testing drain sediment in smaller scale projects involving maintenance activities less than 500 metres is to apply a conservative generic liming rate of 75kg/m³.</p> <p>For any drain maintenance activities greater than 500m it would be advisable to sample and laboratory test to reduce liming costs and avoid over liming.</p> <p>Any removed sediment additional to that associated with weeds or grass is then spread in a thin layer over the lime, with the rest of the lime</p>	<p>More appropriate management strategies can be developed with detailed laboratory information on soil/drain sediment properties.</p> <p>This conservative generic rate has been set to allow landholders to minimise testing costs while also minimising adverse environmental risk from disturbance.</p> <p>Amount of lime required can be calculated by: Length of drain x Width of drain x Depth of disturbance x Liming rate/m³ spoil (75kg/m³) eg 400m x 2m x 0.2m x 75 = 12,000 kg lime</p> <p>It may be more economical to carry out tests for drain cleaning work over 500m in length rather than applying generic liming rate.</p> <p>Liming is more effective when it is mixed through the sediment.</p>

	<p>spread over the sediment. Mix the top lime into spoil as soon as the material is dry enough to be cultivated.</p>	<p>Lime will assist in the neutralisation process. Spreading spoil in a thin layer will assist the mixing of lime by cultivation.</p> <p>Note: Spoil piles can contribute oxidation products (sulfuric acid and metals) through leaching and erosion back into the drain.</p>
<p>7 <i>Mangrove Removal</i></p>	<p>A permit is required from DPI (NSW Fisheries) to cut, damage or destroy marine vegetation and this applies for any mangrove removal in front (outside) of floodgates.</p> <p>Under permit, to maintain the function of the drain and floodgates, limit mangrove removal in front of floodgate to the base of the drain and remove young mangroves by hand.</p> <p>NSW Fisheries have advised that no permit is required to remove problematic mangroves from the base of drains <u>behind</u> operational floodgates</p> <p>Where possible, leave mature mangroves. If mangroves must be removed, replace with other tree species planted on the levee to shade the water, improve fish habitat and prevent the germination and growth of reeds.</p>	<p>Mangroves are protected under the NSW Fisheries Management Act (1994) because of their importance as fish habitat. The permit process minimises the removal of important habitat for aquatic species and ensures that any works minimise disturbance to the site.</p> <p>Removal of young plants (only with approval from NSW DPI - Fisheries) by hand outside the floodgate minimises disturbance of drain sediment and reduces long-term maintenance. A permit from NSW Fisheries will be required to do this.</p> <p>Mangrove removal <u>behind</u> floodgates without permits should only be undertaken along the centre of the drain and by hand tools only.</p>

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8 <i>Deepening or Widening Drains</i>	The original profile of the drain must not be enlarged.	Any widening or deepening of drains, during maintenance procedures or at any other time, will require development consent from Council.
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RECOMMENDED PROCEDURES		COMMENTS/EXPLANATION
<i>Monitor</i>	Spot sampling before and after. This will help determine if the management is working.	pH to be measured Facts sheets on how to measure pH can be obtained from Council.
<i>Document</i>	Keep a file of what was done and when. Write a little report. Include pre and post water testing, lime rates, dates of work, rainfall conditions, flow rates etc. Pass this information onto Council and other stakeholders	Will be valuable for future drain management. Will assist new drain managers Will be able to determine if it is effective drain management or not.
<i>Report</i>	Immediately report environmental concerns to Port Stephens Council.	These are better reported early in the event rather than later when damage has already occurred.

Clearing of drains can enhance their flood mitigation capacity but can also increase their capacity to drain the sub-surface groundwater, which was one of the main original purposes of these drains. However this can lead to oxidation and export of acid sulphate soil products including pure sulphuric acid. If drain clearing lowers the water level in the drain, pen stocks or a weir should be fitted to the drain to maintain water table levels.

Any new drain construction work will require development consent from Council and approval from NSW DPI and Department of Water and Energy.

If you wish to seek any further information on these guidelines contact Port Stephens Council on 49800139.

This document will be reviewed every 5 years from the date of approval by Port Stephens Council as set out in clause 51A of the 2000 LEP, or as needed.

ITEM NO. 4

FILE NO: PSC2006-6433

DRAFT ANNA BAY STRATEGY AND TOWN PLAN

REPORT OF: – TREVOR ALLEN – MANAGER, INTEGRATED PLANNING

RECOMMENDATION IS THAT COUNCIL:

- 1) Adopt the draft Anna Bay Strategy and Town Plan (Attachment 1 – provided under separate cover);
 - 2) Insert the strategic directions from the Anna Bay Strategy and Town Plan into the Port Stephens Community Settlement and Infrastructure Strategy 2007;
 - 3) Note that background and research information for the draft Anna Bay Strategy and Town Plan will be consolidated into a supporting document titled Anna Bay Strategy and Town Plan – Technical Report;
 - 4) Resolve to prepare, in accordance with Section 54, a draft amendment to the Port Stephens Local Environmental Plan 2000 to rezone lots 478-482 in DP 17775 and lots 567-569 in DP 17775 from 2(a) Residential “A” Zone to 3(a) Business General “A” Zone (Attachment 2), and
 - 5) Resolve to prepare a Development Control Plan for the Anna Bay town centre that guides the implementation of the draft amendment to the Port Stephens Local Environmental Plan 2000 subject of Recommendation 4 above and future redevelopment activities within the town centre already zoned for commercial development.
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STRATEGIC COMMITTEE – 2 DECEMBER 2008

RECOMMENDATION:

Councillor Shirley O'Brien Councillor	That the recommendation be adopted.
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MOTION:

Councillor Ken Jordan Councillor Bob Westbury	That the recommendation be endorsed with the exception of the land recommended to become environmental protection north of Old Main Road and Gan Gan Road remain as Rural 1(a) zoning.
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In accordance with the Local Government Act, a division is required.

Those for the motion: Councillors B. MacKenzie, G. Dingle; S. Dover, G. Francis; K. Jordan; B Westbury; F Ward; J. Nell; S. O'Brien & S. Tucker.

Those against the motion: Nil.

ORDINARY MEETING – 16 DECEMBER 2008

RESOLUTION:

395	Councillor Sally Dover Councillor John Nell	It was resolved that Council endorse the recommendation with the exception of the land recommended to become environmental protection north of Old Main Road and Gan Gan Road to remain as Rural 1(a) zoning.
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In accordance with the Local Government Act, a division is required.

Those for the motion: Crs B. MacKenzie, G. Dingle; S. Dover, G. Francis; K. Jordan; F Ward; J. Nell; S. O'Brien, D. Maher, P. Kafer & S. Tucker.

Those against the motion: Nil.

BACKGROUND

The purposes of this report are to:

1. Advise Council of the recommended changes to the draft Anna Bay Strategy and Town Plan (the draft Strategy) following its re-exhibition;
2. Recommend to Council adoption of the draft Strategy;
3. Advise Council of the necessary administrative measures to ensure that Council's strategic planning documentation is not duplicated and is easy to use, and
4. Recommend to Council to resolve to prepare a draft Local Environmental Plan that will permit mixed use development in the town centre consistent with the draft Strategy.

A discussion/briefing will be held with Councillors on the draft Strategy on 9 December 2008.

Anna Bay is identified in the *Lower Hunter Regional Strategy* (LHRS, 2006) and the *Port Stephens Community Settlement and Infrastructure Strategy* (CSIS, 2007) as a proposed urban growth area with boundaries to be defined through local planning. This has led to the preparation of the *Anna Bay Strategy and Town Plan*. The

coastal and natural setting of Anna Bay means that development and investment interest are likely to be increasingly strong.

The draft Strategy is a combination of three draft plans undertaken or commissioned by Council. They are; draft *Anna Bay Urban Management Plan and Design Guidelines* (2002), draft *Anna Bay Local Area Plan* (2004); and draft *Anna Bay North Structure Plan* (2005). These Plans have all been exhibited but not adopted.

This report is based on previous reports to Council on the draft Strategy as many of the issues or constraints (such as drainage and flora and fauna) remain unchanged. Changes in the recommended draft Strategy to that publicly exhibited are detailed under the section titled Sustainability Implications.

This report also addresses an application to rezone land to permit a mixed-use development in the town centre. As this rezoning request is consistent with the strategic directions of the draft Strategy and given the need for investment to be encouraged into the town centre, it is prudent for Council to consider this rezoning request together with the draft Strategy. Rezoning details are as follows:

Owner: Havenwood Pty Ltd
Proponent: ADW Johnson
Date of Submission: 11 July 2008
Subject Land: Lots 478-482 in DP 17775 and Lots 567-569 in DP 17775
Current zone: 2(a) Residential
Proposed Zone: 3(a) Business

LINKS TO CORPORATE PLANS

The links to the 2008-2012 Council Plan are:-

- SOCIAL SUSTAINABILITY –** *Council will preserve and strengthen the fabric of the community, building on community strengths.*
- CULTURAL SUSTAINABILITY –** *Council will assist to inspire a sense of pride and place as well as enhancing quality of life and defining local identity.*
- ECONOMIC SUSTAINABILITY –** *Council will support the economic sustainability of its communities while not compromising its environmental and social well being.*
- ENVIRONMENTAL SUSTAINABILITY –** *Council will protect and enhance the environment while considering the social and economic ramifications of decisions.*
- BUSINESS EXCELLENCE –** *Council will use the Business Excellence Framework to innovate and demonstrate continuous improvement leading to long-term sustainability across operational and governance areas in a Business Excellence Journey*

FINANCIAL/RESOURCE IMPLICATIONS

Implementation of the draft Strategy will, in due course, require resources to prepare a Development Control Plan (DCP) for Anna Bay, amendments to the *Port Stephens Section 94 Contributions Plan* and facilitate developer agreements to fund infrastructure including the funding of drainage infrastructure. Staff time and resources for this will be covered under existing planning budget.

Over the last six (6) years, Council has spent significant time and resources on preparing a strategy for Anna Bay including exhibiting the current draft Strategy twice.

Council currently makes a contribution to the Anna Bay Drainage Union for maintenance of the drainage network. Future management and funding for the drainage network need to be considered with any increased development draining into the catchment area currently managed by the Drainage Union.

LEGAL AND POLICY IMPLICATIONS

The draft Strategy is a policy document to guide the future development of the town including the consideration of rezoning requests. If adopted, a landowner may make a rezoning request that is inconsistent with the draft Strategy and have that request considered on its merits. However, subsequent advice to Council would be guided by the provisions of the draft Strategy, the *Lower Hunter Regional Strategy* and *Port Stephens Community Settlement and Infrastructure Strategy* and the relevant Ministerial directions under Section 117 of the Environmental Planning and Assessment Act.

The draft Strategy is also aimed to give more certainty about the future of Anna Bay to the community, land owners, investors and other stakeholders.

Business Excellence Framework

Port Stephens Council is a quality driven organisation. We use the Business Excellence Framework as a basis for driving organisational excellence. The Framework is an integrated leadership and management system that describes elements essential to organisational excellence. It is based on eight (8) principles.

These outcomes align with the following Business Excellence principles:-

- 1) **LEADERSHIP** – *Lead by example, provide clear direction, build organisational alignment and focus on sustainable achievement of goals.*
- 2) **CUSTOMERS** – *Understand what markets and customers value, now and into the future, and use this to drive organisational design, strategy, products and services.*
- 3) **SYSTEMS THINKING** – *Continuously improve the system.*
- 6) **INFORMATION AND KNOWLEDGE** – *Improve performance through the use of data, information and knowledge to understand variability and to improve strategic and operational decision making.*

- 8) **SUSTAINABLE RESULTS** – *Focus on sustainable results, value and outcomes.*

SUSTAINABILITY IMPLICATIONS

FLOODING AND DRAINAGE

Large areas of land in Anna Bay and Port Stephens generally are flood-prone and are thereby constrained for urban development. A principle of the *Community Settlement and Infrastructure Strategy* and the *Lower Hunter Regional Strategy* is that urban development will not be located on flood prone land or in areas of high risk from natural hazards. These hazards include sea level rise, coastal recession, rising watertable and flooding. Much of the low lying land at Anna Bay can be described as being subject to these hazards. The draft Strategy generally recommends that development not be supported on flood prone land.

However, there may be opportunity for limited development on flood prone land in close proximity to the town centre. Development in this location has economic and social advantages in terms of increased population within a walkable distance to the town centre. The Anna Bay Catchment Drainage/Flood Study Master Plan (Sinclair Knight Merz 1995) and Drainage Investigation Report – Anna Bay North Structure Plan (Parsons Brinkerhoff 2004) have indicated that limited filling and development on flood prone land is unlikely to increase existing flood levels. Development in this location will need further investigations during future rezoning processes to identify how development of this land and associated public and private infrastructure can be technically achieved that is also financially and economically appropriate.

It is important to note that the proposed neighbourhood at Anna Bay East forms an enclosed catchment, and there are subsequently significant drainage requirements associated with its rezoning and development. Development in this catchment will require the provision of significant drainage infrastructure, including the construction of a drain through the ridge to the north and two large detention basins. Developer contributions will be required for to facilitate development of the area.

VEGETATION MANAGEMENT

The conservation recommendations in the draft Strategy are principally based on the location of preferred and supplementary koala habitat. Koalas are a crucial species and act as an indicator of the health of the environment. Therefore, protecting koala habitat generally leads to the protection of biodiversity.

The Port Stephens Comprehensive Koala Plan of Management (2002) applies to the entire local government area and provides a framework for the management of koala habitat. It describes the Anna Bay area as one of the most significant koala habitats on the Tomaree Peninsula and notes that existing clearing has isolated several small sub-populations in the area. It provides that rezoning requests should only permit development that has a low-impact on koala habitat.

It is confirmed in a number of studies that Anna Bay comprises significant areas of preferred and supplementary koala habitat. These areas also generally coincide with

land mapped as flood prone and the scenic ridge to the north of the town. These areas remain identified for conservation in the draft Strategy.

The draft Strategy also identifies “koala movement corridors” that are intended to facilitate the continued movement of wildlife within Anna Bay, while permitting additional development to occur. Environment living lots with an area of between 1000 to 1500 square metres are identified for land within these corridors. Special development controls will be required to ensure continued movement of wildlife. The location of “koala movement corridors” is based upon a review of available data by Council’s Environment Services Section and is attached to Appendix 3 to the draft Strategy.

The exhibited draft Strategy identified large areas of the land north of the town and the vegetated sand dune for environmental protection. The draft Strategy, as recommended now to Council, has been amended so that remnant vegetation is identified for conservation and cleared farmland is retained as agricultural land.

ROAD NETWORK

Additional residential development in Anna Bay will lead to additional demand on the road network. A traffic study was undertaken to investigate the impact of potential future development in accordance with the draft Strategy and the following recommendations were made:

1. Upgrade the intersection of Gan Gan Road and Nelson Bay Road at the eastern intersection to a roundabout. Council is currently in negotiation with the NSW Roads and Traffic Authority (RTA) regarding this matter as part of the proposed Fingal Bay Link Road and the issue is considered to be addressed.
2. Upgrade to the intersection of Frost Road and Nelson Bay Road. As this is an RTA road, Council will need to liaise with the RTA on any proposed upgrades of this intersection. This upgrade is not considered necessary to implement the Strategy as the need for the upgrade is driven from the Nelson Bay Road traffic volumes.
3. Provide a 4WD air and water facility with parking at the existing 4WD access road to Stockton Beach to alleviate traffic problems in the town centre. The study notes the large number of 4WDs use the service station after driving on the Stockton Beach that contribute to congestion. Private enterprise should be encouraged to provide a mobile or stationary air and water facility in the vicinity of the existing 4WD access track. There is scope for Council to provide an air and water facility in the road reserve.

STOCKTON SAND DUNES – LAND USE

Land in the dune area at the western entrance to Anna Bay is no longer identified as an “investigation area” and is recommended to retain current zones in the draft Strategy. At its meeting on 28th August 2007 Council resolved to prepare a draft LEP for tourism development at this location. The draft LEP was forwarded to Department

of Planning and advice was received that the rezoning was not supported for the following reasons:

- The LHRS identifies the land as part of a regional green corridor which is to be managed for conservation purposes.
- The land is not identified in the LHRS for future urban purposes, and its inclusion in a green corridor precludes the consideration of one-off rezonings as proposed.
- The current 1(a) Rural Agriculture zone applying to the land is considered to be inconsistent with the Lower Hunter Regional Strategy and consideration should be given to an appropriate zoning for the land.

The Department of Environment Conservation and Climate Change (DECC) and the Worimi Conservation Lands Interim Management Committee have also advised that they do not support rezoning of land for urban development in the dune area.

For these reasons it is very unlikely that the land will be rezoned for urban development, its status as land for "investigation" has been removed and the current zoning of Rural 1(a) recommended for retention.

The proposed road linking the Landcom site to Clark St in the Anna Bay East neighbourhood has been removed. Although the road would have provided an additional route option for local traffic, it is very difficult to implement because of topography, funding and the number of privately owned properties that would be affected.

The draft Strategy does not propose the reopening either Old Main Road or any of the existing cul-de-sacs. A possible future street connection from the Landcom site through Council-owned land at Clonmeen Circuit is identified. This simply notes an opportunity and its merits can be considered in the event of detailed planning for the Landcom site.

Dwellings within environmental conservation areas

The long parcels of land running north/south fronting Old Main or Gan Gan Road are identified to be developed for urban purposes on the southern portion, whilst the remainder on the northern portion be protected for rural and environmental conservation purposes. It is the intent of the draft Strategy that these residual portions of individual lots would have a dwelling entitlement. Where and how this will be achieved will be determined through the rezoning process.

Flexibility of the ten (10) metre contour for scenic protection of the dune vegetation

The east/west vegetated dune that forms the northern boundary of the town varies considerably in its landform and contours. Therefore, there is significant variation of visual sensitivity of this dune when observed from Gan Gan or Old Main Road. It is the intent of the draft Strategy that the 10m contour be applied to protect the visual

back drop to the town but this can be varied through the rezoning process if a supporting visual analysis can demonstrate that such a variation maintains the vegetated dune as a back drop to the town as viewed from Gan Gan or Old Main Road or from important public vantage points.

IMPLEMENTATION

The Strategy will be implemented through rezoning requests made by prospective developers and landowners and be accompanied by the relevant supporting information.

There is a need to consider rezoning land in a strategic manner and avoid 'spot' rezoning, to achieve savings in cost and administration. The NSW Department of Planning actively discourages 'spot' rezoning requests. For these reasons it is important that the adjoining landowners cooperate with each other to lodge rezoning requests.

Significant opposition to the draft Strategy when exhibited has come from rural landowners in that it does not meet their aspirations. The draft Strategy has investigated and considered the location and attributes of the rural land and identified future development opportunities. These opportunities include proposing urban development on part of some rural lands facing Gan Gan or Old Main Road with the remainder of the land generally proposed for environmental conservation and agriculture.

Despite this, a landowner may make a rezoning request to Council that is inconsistent with the Strategy and having that request considered on its merits. In doing so, such requests need to clearly demonstrate the extenuating factors that support the rezoning request whilst delivering public social, economic and environmental benefits to the town.

To ensure integrated use of Council's strategic planning documents, the strategic directions in the draft Strategy, when adopted, should be included in the *Community Settlement and Infrastructure Strategy* under Part E Local Area Strategies with the remainder of the retitled as a Background Report. It has always been the intention that the *Community Settlement and Infrastructure Strategy* be updated in this manner so that there would only be one overall Strategy document.

CONSULTATION

The draft Strategy has been subject to two formal exhibition periods. The first exhibition period was from 6th September to 5th October 2007 and changes were made as a result of the submissions received. The draft Strategy was revised and reported to Council on the 26th February 2008, where it was resolved to place the draft Strategy on exhibition for eight (8) weeks from 27th March to 29th May 2008.

Twenty five (25) submissions were received during the most recent exhibition and the issues raised in the submission are summarised in Attachment 3. A folder containing the submissions is located in the Councillors room.

REZONING REQUEST – ANNA BAY TOWN CENTRE

The proponent has met with Council's Rezoning Assessment Panel on 11th June 2008 where in principle support was given to the proposal. The site, (Attachment 2) is adjacent to existing commercial land. The request is consistent with the draft Strategy.

The site is under single ownership or control and allows for easier management of the development process and provides opportunity for a coordinated development of the site. Documentation submitted with the request notes that the developer will propose a mixed use development incorporating specialty retail shops, restaurants, car parking and commercial/professional office space. This proposal would provide the opportunity for much needed investment into the town centre and address some of the poor economic, social and environmental attributes of the town centre.

Preparation of the draft LEP will also include preparation of a DCP to establish planning controls suggested in the draft Strategy and guide development of the subject land in particular, the physical and visual relationships of the proposed development to existing adjoining development and to public streets and spaces.

OPTIONS

- 1) Adopt the recommendations of this report and therefore adopt the Anna Bay Strategy and Town Plan;
- 2) Not accept the recommendations and require certain modifications to be considered in the draft Strategy and Town Plan;
- 3) Resolve to place the draft Strategy and Town Plan on public exhibition again for say 28 days and/or to enter into consultations with local stakeholder organisations and individuals;
- 4)
 - (a) Resolve to retain the current Rural 1(a) zoning given the strong representations made by the owners of land currently zoned Rural 1(a) north of Gan Gan Road and Old Main Road. However, the implications of this are that the zones identified on these properties as preferred and supplementary koala habitat are not protected in the terms that the Port Stephens Koala Plan of Management would require.
 - (b) Another alternative with these properties is to introduce an Environmental Living Area Zone (as provided for in the State Government's Standard LEP Instrument), which enables some limited development of subdivided lots and dwellings in certain parts of these properties but requires protection of potential voluntary conservation agreements on those parts of these properties identified as preferred and supplementary koala habitats with associated buffers in the Port Stephens Koala Plan of Management.

ATTACHMENTS

- 1) Draft Anna Bay Strategy and Town Plan

- 2) Rezoning Request – Anna Bay Town Centre
- 3) Response to Submissions

COUNCILLORS ROOM

- 1) Submissions Folder

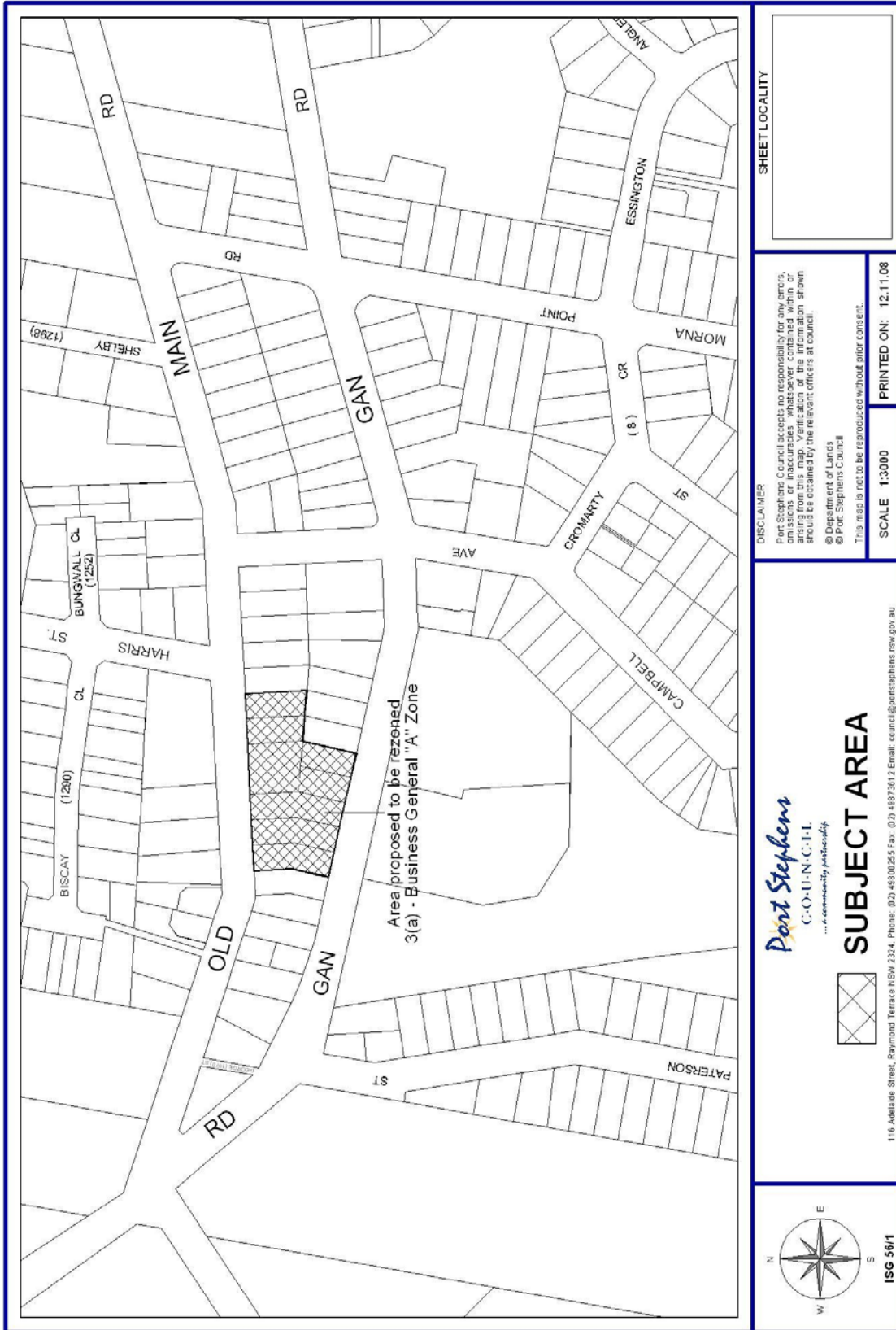
TABLED DOCUMENTS



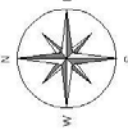
- 1) Nil

**ATTACHMENT 1
DRAFT ANNA BAY STRATEGY AND TOWN PLAN**

Provided under separate cover

ATTACHMENT 2
 REZONING REQUEST – ANNA BAY TOWN CENTRE



 <p>SUBJECT AREA</p> <p>116 Adelaide Street, Raymond Terrace NSW 2324. Phone: 02 48930055 Fax: 02 48979812 Email: council@portstephens.nsw.gov.au</p>			 <p>ISG 56/1</p>
<p>DISCLAIMER Port Stephens Council accepts no responsibility for any errors, omissions or inaccuracies whatsoever contained within or arising from this map. Verification of the information shown should be obtained by the relevant officers at council. © Department of Lands © Port Stephens Council This map is not to be reproduced without prior consent.</p>		<p>SCALE 1:3000</p>	<p>PRINTED ON: 12.11.08</p>
<p>SHEET LOCALITY</p>			

**ATTACHMENT 3
RESPONSE TO SUBMISSIONS**

Issue	Submission	Response
Environment	Remove land identified for "conservation" and "scenic conservation" and leave blank, or replace with "environmental living" to receive support of large landholders.	<p>Land identified "conservation" and "scenic conservation" has environmental value and is generally constrained because it is flood prone or is vegetated and protected by the PS Koala Plan of Management and legislation.</p> <p>The benefits to current lots is that the southern portion of these lots fronting GanGan and Old Main Road are proposed for urban development by the Strategy. The residual areas (having environmental and agricultural values) would remain under private ownership with a dwelling entitlement – the location of which would be determined through the rezoning process.</p>
	Land north of the ridge should remain identified for agriculture and not conservation.	The Strategy was revised so that land identified for "conservation" generally coincides with vegetated areas with the remaining cleared areas retained for agriculture.
	Land in the vicinity of Harris Road is close to the town centre and represents an opportunity for ecologically sustainable development. It should not be identified for conservation. It should remain rural or be identified for "residential" or "environmental living".	See above.
	There is too much land identified for conservation and not enough land identified for development on allotments. For example, on one property only 5% of its area is identified for development. It is not viable to fund relevant studies or develop.	The land uses identified in the Strategy are based on the constraints of the land, not the area of land owned. The past pattern of subdivision into long and often narrow shaped allotments will require land owners to work together to share planning and development costs if they wish to realise urban development opportunities on their land.
	Identifying the land for conservation will devalue the land and prevent its development.	<p>The land identified for conservation has limited development potential because it is flood prone and/or has high value vegetation protected by the PS Koala Plan of Management and legislation.</p> <p>Affected land owners do have the benefit that the southern portion of their lands have been identified in the Strategy for urban development.</p> <p>Affected landowners can submit a rezoning request that varies from the</p>

ORDINARY MINUTES – 16 DECEMBER 2008

		Strategy and have it considered on its merits. Any such rezoning would have to demonstrate how it is proposed to address the issues and constraints identified in the strategy and the relevant Section 117 planning policies established by the Minister for Planning.
	The land has always been viewed as landowners' superannuation, and identifying land for conservation will devalue it.	Affected lands are currently zoned Rural 1(a). Draft Strategy proposes the southern portion of affected lots for urban development with the remainder a mix of agriculture and environmental protection with a dwelling entitlement. It is often the case that the development aspirations of landholders are not matched by the constraints of their land and the associated strategic and legal policies and controls affecting their land..
	Landowners should be compensated if their land is identified for conservation. They provide their land for public benefit.	The Strategy identifies that land owners with lots fronting onto Gan Gan and Old Main Road get the benefit of being able to develop the southern portion of their land for urban development.
	The proposed lot sizes for "environmental living" are too small and should at least be increased so they are consistent with the Medowie Strategy.	The lot size in "environmental living" areas has been increased to 1000-1500 square metres, consistent with the Medowie Strategy.
	Residential dwellings should not be permitted in the conservation area to maintain integrity of the zone.	Dwellings are recommended in residual allotments to encourage ongoing management of the land. The location of such dwellings would be determined as part of the draft LEP process.
	A development control plan needs to be developed for the area to improve environmental outcomes in developable areas	Agreed and will be prepared in conjunction with the preparation of draft LEPs in the Anna Bay area.
	The Landcom site is already zoned for residential development and should be considered against the development application provisions of the Port Stephens Comprehensive Koala Plan of Management.	Agreed. Draft Strategy acknowledges this site as already zoned for urban development.
Development	Land in the "investigation area" should be identified for urban development.	The NSW Department of Planning have advised that the land is within the Stockton Green Corridor (identified in the Lower Hunter Regional Strategy) and therefore rezoning for urban development is excluded.
	Land to the north of the ridge should be identified for development	See above responses.
	Landowners should be able to develop at least one dwelling on the ridge.	The Strategy does not prevent landowners from lodging a development application for a dwelling on the ridge.

ORDINARY MINUTES – 16 DECEMBER 2008

	The inclusion of the Anna Bay East neighbourhood is unrealistic and landowners will not take part. A new neighbourhood should be included north of Anna Bay.	There is interest in developing this area. There is an existing rezoning request and development concepts discussed with another landowner.
	Support redevelopment of the town centre and request support for rezoning additional land in that location to support a mixed use development.	The redevelopment of the town centre is supported and a rezoning request has been received and included in this report to facilitate this.
	The inclusion of a limited number of "environmental living" lots north of the ridge is essential to fund drainage infrastructure in Anna Bay East, at no public cost.	The "environmental living" lots at Anna Bay East are supported for this reason.
General	There are numerous recommendations from past plans that are very desirable but have not yet been implemented. Anna Bay has a history of infrastructure underfunding which needs to be corrected.	Agree. Council's <i>Forward Works Program</i> identifies projects for funding in order of priority including numerous projects identified for Anna Bay. Funds for infrastructure associated with new development will be obtained through "Section 94" developer contributions
	Shelly Beach boat ramp is being used illegally by 4WD's and motorbikes and should be a priority to stop.	This is an enforcement matter and not a matter for the draft Strategy.
	The minimum developable area to make a rezoning request should not be relaxed because it does not allow strategic consideration of impacts on wildlife.	Rezoning requests should be strategic. "Spot" rezoning requests are not encouraged so that all matters can be dealt with on a strategic basis across Anna Bay.
	There is little or no change to the Strategy from previous versions, and suggestions from landowners are discounted.	Submissions from landowners focus on getting the majority or all of their land identified for urban development. The investigations and findings of the draft Strategy do not support this view

GENERAL MANAGER'S REPORT

PETER GESLING
GENERAL MANAGER

ITEM NO. 1

FILE NO: PSC2005-5185

REQUEST FOR FINANCIAL ASSISTANCE

REPORT OF: TONY WICKHAM – EXECUTIVE OFFICER

RECOMMENDATION IS THAT COUNCIL:

- 1) Approves provision of financial assistance under Section 356 of the Local Government Act from the respective Mayor and Ward Funds to the following:-
- a) Port Stephens Family Sports Service - Donation towards pool entry for families affected by domestic violence - \$200.00 – (Mayoral funds)
 - b) Port Stephens Council Picnic Committee - Donation towards entertainment for children at the Picnic - \$1000.00 - (Mayoral funds)
 - c) Port Stephens RAAF Support Group - Sponsorship of the PS RAAF Williamtown Citizen of the Year Award – \$500.00 - (Mayoral funds)
 - d) POWERAGE Band – Donation towards overseas costs - \$850.00 (Mayoral funds)
 - e) Lions Club of Raymond Terrace - Inspection food van - \$80.00 – (West Ward funds)
 - f) Irrawang High School - Presentation Ceremony - \$300.00 – (West Ward funds)
 - g) Torchbearers for Legacy - Council to waive food inspection fees & charges for local stalls at Nelson Bay - \$125.00 (East Ward funds)
 - h) Nelson Bay Baptist Church Playtime - Providing a safe play environment - \$2500 (East Ward funds)
 - i) Hunter Surf Life Saving - Seeking reimbursement for beach fees for beach carnival - \$285.00 (East Ward funds)
 - j) Fingal Bay Lions Club - Licence to provide food service for Carols by Candlelight - \$130.00 (East Ward funds)

ORDINARY MEETING – 16 DECEMBER 2008

RESOLUTION:

396	Councillor Ken Jordan Councillor Steve Tucker	It was resolved that the recommendation be adopted.
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BACKGROUND

The purpose of this report is to determine and, where required, authorise payment of financial assistance to recipients judged by Councillors as deserving of public funding. The Council's policy gives Councillors a wide discretion to either grant or to refuse any requests.

The Council regularly receives requests for financial assistance from community groups and individuals. However, Council is unable to grant approval of financial assistance to individuals unless it is performed in accordance with the Local Government Act. This would mean that the financial assistance would need to be included in the Management Plan or Council would need to advertise for 28 days of its intent to grant approval. Council can make donations to community groups.

Council's policy for financial assistance has been developed on the basis it is "seed" funding and that there is benefit to the broader community. Funding under Council's policy is not intended for ongoing activities.

The requests listed below were considered by the former Ward Councillors and approved however these were not reported to Council prior to the Local Government election. Due to the timing Items (a) and (b) have been approved by the General Manager and are before Council for ratification by Council.

The requests for financial assistance are shown below:-

MAYORAL DONATIONS

Port Stephens Family Support Service	Donation towards pool entry for families affected by domestic violence.	\$200.00
Port Stephens Council Picnic Committee	Donation towards entertainment for children at the Picnic.	\$1,000.00
Port Stephens RAAF Support Group	Sponsorship of the PS RAAF Williamtown Citizen of the Year Award	\$500.00
POWERAGE Band	Donation towards overseas costs	\$850.00

WEST WARD – Councillors Jordan, Francis, Maher & Kafer

Lions Club of Raymond Terrace	Inspection food van	\$80.00
Irrawang High School	Presentation Ceremony	\$300.00

EAST WARD – Councillors Nell, Westbury, Dover & Ward

Torchbearers for Legacy	Council to waive food inspection fees & charges for local stalls at Nelson Bay.	\$125.00
Nelson Bay Baptist Church Playtime	Providing a safe play environment	\$2500.00
Hunter Surf Life Saving	Seeking reimbursement for beach fees for beach carnival	\$285.00
Fingal Bay Lions Club	Licence to provide food service for Carols by Candlelight	\$130.00

LINKS TO CORPORATE PLANS

The Council's Management Plan does not have any program or stated goal or objective for the granting of financial assistance.

FINANCIAL/RESOURCE IMPLICATIONS

Council Ward Funds are the funding source for all financial assistance.

LEGAL AND POLICY IMPLICATIONS

To qualify for assistance under Section 356(1) of the Local Government Act, 1993, the purpose must assist the Council in the exercise of its functions. Functions under the Act include the provision of community, culture, health, sport and recreation services and facilities.

The policy interpretation required is whether the Council believes that:

- a) applicants are carrying out a function which it, the Council, would otherwise undertake;
- b) the funding will directly benefit the community of Port Stephens;
- c) applicants do not act for private gain.

The policy has other criteria, but these have no weight as they are not essential. These criteria are:

- a) a guarantee of public acknowledgment of the Council's assistance
- b) the assistance encouraging future financial independence of the recipient
- c) the assistance acting as 'seed' funding with a multiplier effect on the local economy.

Australian Business Excellence Framework

This aligns with the following ABEF Principles.

- 3) Understanding what customers value, now and in the future, influences organisational direction, strategy and action
- 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

Nil

ECONOMIC IMPLICATIONS

Nil

ENVIRONMENTAL IMPLICATIONS

Nil

CONSULTATION

Mayor
Councillors

OPTIONS

- 1) Adopt the recommendation.
- 2) Vary the dollar amount before granting each or any request.
- 3) Decline to fund all the requests.

ATTACHMENTS

Nil

COUNCILLORS ROOM

Nil

TABLED DOCUMENTS

Nil

ITEM NO. 2

FILE NO: A2004-0284

REVIEW OF THE CODE OF MEETING PRACTICE

REPORT OF: TONY WICKHAM – EXECUTIVE OFFICER

RECOMMENDATION IS THAT:

- 1) Revoke the previous Code of Meeting Practice dated 26 September 2006 Min No. 679.
 - 2) Adopt the tabled Code of Meeting Practice.
-

ORDINARY MEETING – 16 DECEMBER 2008

RESOLUTION:

397	Councillor John Nell Councillor Sally Dover	<p>That Council;</p> <p>1) Adopt Item 1 of the recommendation and endorse the advertised Code of Meeting Practice and re-advertise the Code to include:</p> <p><i>“Members of the public be able to speak at Committee meetings by resolution of the Committee and agreement of the Mayor.”</i></p> <p>2) Subject to there being no submissions following re-advertising the Code be adopted.</p>
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BACKGROUND

The purpose of the report is to provide Council with any response received from the community following public exhibition of the Code of Meeting Practice.

Council at its meeting on 21st October 2008 resolved to place the Code of Meeting Practice on public exhibition for a period of 28 days. Public exhibition was from 30 October 2008 to 13 November 2008. No submissions were received.

Council is now asked to consider the adoption of the Code.

LINKS TO CORPORATE PLANS

The links to the 2008-2012 Council Plan are:-

BUSINESS EXCELLENCE – *Council will use the Business Excellence Framework to innovate and demonstrate continuous improvement leading to long-term sustainability across operational and governance areas in a Business Excellence Journey*

FINANCIAL/RESOURCE IMPLICATIONS

The Code will be implemented within current financial and human resources.

Once adopted, the Code of meeting practice must be available for public inspection free of charge at the office of the Council during ordinary office hours. Copies of the Code must be available free of charge or, if the Council determines, on payment of the approved fee.

LEGAL AND POLICY IMPLICATIONS

Under Section 361 of the Local Government Act, the draft Code must be placed on public exhibition for not less than 28 days. The public notice must also specify a period of not less than 42 days after the date on which the draft code is placed on public exhibition during which submissions may be made to the Council. The council must consider all submissions received before determining the Code.

Business Excellence Framework

Port Stephens Council is a quality driven organisation. We use the Business Excellence Framework as a basis for driving organisational excellence. The Framework is an integrated leadership and management system that describes elements essential to organisational excellence. It is based on eight (8) principles.

These outcomes align with the following Business Excellence principles:-

- 1) **LEADERSHIP** – *Lead by example, provide clear direction, build organisational alignment and focus on sustainable achievement of goals.*
- 3) **SYSTEMS THINKING** – *Continuously improve the system.*
- 5) **CONTINUOUS IMPROVEMENT** – *Develop agility, adaptability and responsiveness based on a culture of continual improvement, innovation and learning.*
- 7) **CORPORATE AND SOCIAL RESPONSIBILITY** – *Behave in an ethically, socially and environmentally responsible manner.*

SUSTAINABILITY IMPLICATIONS

SOCIAL IMPLICATIONS

The code allows Councillors to effectively carry out their responsibilities at meetings of the council and committees of which all the members are councillors.

ECONOMIC IMPLICATIONS

Nil

ENVIRONMENTAL IMPLICATIONS

Nil

CONSULTATION

General Manager
Councillors
Port Stephens Community

OPTIONS

- 1) Adopt the recommendation
- 3) Retain the existing policy

ATTACHMENTS

- 1) Nil

TABLED DOCUMENTS

- 1) Draft Code of Meeting Practice

ITEM NO. 3

FILE NO: A2004-0284

COUNCILLOR REIMBURSEMENT POLICY REVIEW

REPORT OF: TONY WICKHAM – EXECUTIVE OFFICER

RECOMMENDATION IS THAT COUNCIL:

- 1) Council revoke the Councillor Reimbursement Policy dated 23 March 2008 (Min No. 069)
 - 2) Council adopt the revised Councillor Reimbursement Policy as advertised.
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ORDINARY MEETING – 16 DECEMBER 2008

RESOLUTION:

398	Councillor John Nell Councillor Shirley O'Brien	It was resolved that the recommendation be adopted.
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BACKGROUND

The purpose of this report is to provide Council with any response received from the community following public exhibition of the Councillors Reimbursement Policy.

Council at its meeting on 21st October 2008 resolved to place the Councillors Reimbursement Policy on public exhibition for a period of 28 days. Public exhibition was from 30 October 2008 to 13 November 2008. No submissions were received.

Council is now asked to consider the adoption of the Policy as resolved at the meeting of the 21st October 2008.

FINANCIAL/RESOURCE IMPLICATIONS

Council's 2007-08 budget allocation provides for the inclusions covered in the Policy.

LINKS TO CORPORATE PLANS

The links to the 2008-2012 Council Plan are:-

BUSINESS EXCELLENCE – *Council will use the Business Excellence Framework to innovate and demonstrate continuous improvement leading to long-term sustainability across operational and governance areas in a Business Excellence Journey*

LEGAL AND POLICY IMPLICATIONS

Under Section 252 Council must adopt a policy concerning the payment of expenses incurred by Councillors in relation to discharging the functions of civic

office. It is a requirement of the Local Government Act that Council adopt the policy after June 30 each year and lodge the adopted policy with the Department prior to November 30 each year.

Business Excellence Framework

Port Stephens Council is a quality driven organisation. We use the Business Excellence Framework as a basis for driving organisational excellence. The Framework is an integrated leadership and management system that describes elements essential to organisational excellence. It is based on eight (8) principles.

These outcomes align with the following Business Excellence principles:-

- 7) **CORPORATE AND SOCIAL RESPONSIBILITY** – *Behave in an ethically, socially and environmentally responsible manner.*
- 8) **SUSTAINABLE RESULTS** – *Focus on sustainable results, value and outcomes.*

SUSTAINABILITY IMPLICATIONS

SOCIAL IMPLICATIONS

The policy allows Councillors to effectively carry out their responsibilities as members of the Council and as community representatives without suffering financial hardship.

ENVIRONMENTAL IMPLICATIONS

Nil

CONSULTATION

General Manager
Councillors
Port Stephens Community

OPTIONS

- 1) Adopt the recommendation
- 2) Amend the draft policy

ATTACHMENTS

Nil

TABLED DOCUMENTS

Councillors Reimbursement Policy

ITEM NO. 4

FILE NO: A2004-078

DONALD STREET EAST CARPARK – PROPOSED PUBLIC PRIVATE PARTNERSHIP (PPP)

REPORT OF: CARMEL FOSTER, COMMERCIAL PROPERTY MANAGER

RECOMMENDATION IS THAT COUNCIL:

- 1) Authorise the General Manager to prepare and submit to the Department of Local Government pursuant to section 400F of the Local Government Act 1993 NSW an assessment of the proposed Public Private Partnership described below between Coral Corp Pty Limited (or its nominee) and Council (the Proposed PPP).
- 2) Authorise the Mayor and The General Manager to affix the seal of Council to the assessment referred to above.
- 3) Authorise the Mayor and the General Manager to negotiate the relevant contractual documentation for the proposed Public Private Partnership in accordance with the Public Private Partnership provisions of the Local Government Act.

ORDINARY MEETING – 16 DECEMBER 2008

RESOLUTION:

399	Councillor Ken Jordan Councillor Steve Tucker	It was resolved that the recommendation be adopted and further include that the terms and conditions of the PPP be presented to Council prior to the affixing of the seal.
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In accordance with the Local Government Act, a division is required.

Those for the motion: Crs B. MacKenzie, G. Dingle; S. Dover, G. Francis; K. Jordan; J. Nell; S. O'Brien, D. Maher, P. Kafer & S. Tucker.

Those against the motion: Cr Ward.

BACKGROUND

The purpose of this report is to seek Councils consent to prepare and submit to the Department of Local Government an assessment of the Proposed PPP pursuant to section 400F of the Local Government Act. This is the first procedural step Council must comply with in obtaining approval from the Minister to enter into a Public Private Partnership. A general outline of the proposed Public Private Partnership is set out below.

It is proposed that Port Stephens Council enter into a joint venture with a developer Coral Corp Pty Limited (or its nominee) for a proposed mixed use development to be located partial on Council owned land at 14-20 Donald Street and 61-65 Magnus Street, Nelson Bay.

The subject property is an existing Council owned car park providing 160 car spaces situated on the northern side of Donald Street, approximately 25m east of the intersection with Yaccaba Street at Nelson Bay. The site is zoned 3(a) Business General "A" zone.

Since 2003 Port Stephens Council have engaged the market in a series of Calls for Proposals with the specific aim of encouraging development upon the land which would provide enhanced public car parking facilities in the Nelson Bay CBD.

In 2007 Council indicated Coral Corp Limited (or its nominee) was its preferred partner to allow Coral Corp Pty Limited to develop the land.

To enter into a Public Private Partnership, Council must comply with Chapter 12 Part 6 of the Local Government Act. Amongst other things, this requires compliance with the Department of Local Government's "*Guidelines on the Procedures and Processes to be followed by Local Government in Public Private Partnerships*" dated 1 September 2005: section 400E Local Government Act. At the minimum, this will require Council to:

1. Formulate the project proposal and prepare a report to the Director General for assessment pursuant to section 400F of the Local Government Act: and
2. Obtain the Minister's approval to enter into the joint venture under section 358(1)(a) of the Local Government Act.

The purpose of this report is to obtain Council's consent to proceed with step 1 above and proceed to negotiate the relevant contractual documentation for the Proposed PPP in accordance with the Local Government Act. A further resolution from Council will be sought prior to undertaking step 2 above or entering into the Proposed Public Private Partnership.

LINKS TO CORPORATE PLANS

The links to the 2008-2012 Council Plan are:-

SOCIAL SUSTAINABILITY – *Council will preserve and strengthen the fabric of the community, building on community strengths.*

CULTURAL SUSTAINABILITY – *Council will assist to inspire a sense of pride and place as well as enhancing quality of life and defining local identity.*

ECONOMIC SUSTAINABILITY – *Council will support the economic sustainability of its communities while not compromising its environmental and social well being.*

ENVIRONMENTAL	<i>Council will protect and enhance the environment while</i>
SUSTAINABILITY –	<i>considering the social and economic ramifications of decisions.</i>
BUSINESS EXCELLENCE –	<i>Council will use the Business Excellence Framework to innovate and demonstrate continuous improvement leading to long-term sustainability across operational and governance areas in a Business Excellence Journey</i>

FINANCIAL/RESOURCE IMPLICATIONS

Administrative and legal costs will be associated with the preparation of the report.

LEGAL AND POLICY IMPLICATIONS

The report to the Department of Local Government will be prepared under the provisions of the various sections of the Local Government Act. It should be noted that the approval from the Department of Local Government to enter in the Public Private Partnership does not commit Port Stephens Council to any contractual agreement with the proponent.

Business Excellence Framework

Port Stephens Council is a quality driven organisation. We use the Business Excellence Framework as a basis for driving organisational excellence. The Framework is an integrated leadership and management system that describes elements essential to organisational excellence. It is based on eight (8) principles.

These outcomes align with the following Business Excellence principles:-

- 1) **LEADERSHIP** – *Lead by example, provide clear direction, build organisational alignment and focus on sustainable achievement of goals.*
- 5) **CONTINUOUS IMPROVEMENT** – *Develop agility, adaptability and responsiveness based on a culture of continual improvement, innovation and learning.*
- 7) **CORPORATE AND SOCIAL RESPONSIBILITY** – *Behave in an ethically, socially and environmentally responsible manner.*
- 8) **SUSTAINABLE RESULTS** – *Focus on sustainable results, value and outcomes.*

SUSTAINABILITY IMPLICATIONS

SOCIAL IMPLICATIONS

Nil

ECONOMIC IMPLICATIONS

Nil

ENVIRONMENTAL IMPLICATIONS

Nil

CONSULTATION

Harris Wheeler Solicitors
Department of Local Government
Peter Quinlivan – PSC Consultant

OPTIONS

- 1) Adopt the recommendation
- 2) Amend the recommendation
- 3) Reject the recommendation

ATTACHMENTS

- 5) Nil

COUNCILLORS ROOM

- 4) Nil

TABLED DOCUMENTS

- 1) Nil

ITEM NO. 5

INFORMATION PAPERS

REPORT OF: TONY WICKHAM – EXECUTIVE OFFICER

RECOMMENDATION IS THAT COUNCIL:

Receives and notes the Information Papers listed below being presented to Council on 16th December, 2008.

No:	Report Title	Page:
1	2008 Local Government Election – Observation Team Report	46
2	Offsetting Land Constraints by Aircraft Noise	64

ORDINARY MEETING – 16 DECEMBER 2008

RESOLUTION:

400	Councillor John Nell Councillor Shirley O'Brien	It was resolved that the recommendation be adopted.
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GENERAL MANAGERS INFORMATION PAPERS



INFORMATION ITEM NO. 1

2008 LOCAL GOVERNMENT ELECTION – OBSERVATION TEAM REPORT

REPORT OF: TONY WICKHAM – EXECUTIVE OFFICER

FILE: PSC2007-2662

BACKGROUND

The purpose of this report is to provide Council with the outcomes and recommendations from the Election Observation Team established by the NSW Electoral Commission.

As part of the 2008 Local Government Election the NSW Electoral Commissioner established an independent Observation Team to observe the NSW Electoral Commission's planning and operation of the centralised computer count in Sydney. The Observation team was chaired by Glenda Frazer, a senior staff member of the Victorian Electoral Commission and nominees from the Local Government & Shires Associations and the Department of Local Government.

A report will also be provided to Council in the New Year on the final costs for the election and the referendum. The Electoral Commission are still to provide Council with these final costs.

ATTACHMENTS

- 1) Report on Observation of NSW Electoral Commission Central Vote Count September 2008 – Local Government Elections.

ATTACHMENT 1

▶ Report on Observation of
NSW Electoral Commission
Central Vote Count
September 2008
Local Government Elections

17 October 2008

Report on Observation of New South Wales Electoral Commission Central Vote Count

Foreword to the Electoral Commissioner

The NSW Central Vote Count Observation team have completed the tasks as set out in the Terms of Reference.

On behalf of the observation team, I am pleased to submit to you, our final report.



Glenda Frazer (Chair)

Overview

The New South Wales Electoral Commission (NSWEC) established an independent group of people to be the central vote count observation team in connection with the New South Wales local government elections conducted in September 2008 and counted at the central vote count centre in Riverwood, Sydney.

The observation team consisted of Glenda Frazer, Manager Elections Services, Victorian Electoral Commission (Chair), Peter Coulton, Director Corporate Services, Local Government and Shires Association of NSW and Wayne Trudgen, Principal Policy Officer, Department of Local Government.

Terms of Reference

The NSWEC established 'Terms of Reference' for the team. These were discussed at an initial meeting of the team with Colin Barry, Electoral Commissioner and Brian Decelis of the NSWEC at a meeting held at the NSWEC on Thursday 10 July 2008.

The Terms of Reference were:

1. To review the NSWEC's preparations for the central vote count of those local Government areas and wards where proportional representation voting applies and there are group voting squares above the line.
2. To review the security and set up of the central vote count centre and to be satisfied that the NSWEC's security arrangements are appropriate, taking into consideration similar arrangements in other electoral jurisdictions in Australia for such election counts.
3. To review the NSWEC's plans for advising candidates and councils of the time when their ballot papers will be counted in the central vote count centre.
4. To review the NSWEC's operational layout of the central vote count centre and be satisfied that quality control measures are in place to ensure that there is no mix up in ballot papers being data entered.
5. To observe the operation of the central vote count centre and be satisfied that the NSWEC's operational plans have been implemented.
6. To write a report to the Electoral Commissioner following the observation team's inspections and review of documentation, commending on any aspect of the NSWEC's preparations for and management of the central vote count centre.

Report on Observation of NSWEC Central Vote Count

Background

The observation team were provided with copies of all documentation supporting the count process. The documentation included:

- Verification procedures
- Data entry procedures
- Counting staff organisation structure
- Position descriptions
- LG counting centre procedures
- LCLG count software project management plan
- LGCC project management plan
- LGCC disaster recovery and security summary
- LCLG system operation test plan
- LGCC IT infrastructure and support services specification.

Brian Decelis presented an overview of the count process to the observation team and subsequently provided a copy of the presentation to the team. Team members reconvened on Wednesday 30 July 2008 to discuss individual reviews of the documentation and to establish the observation areas.

A consolidated list of councils to be counted at the count centre including the total number of electors, estimated returns and estimated total number of ballot papers to be transported to the count site was distributed to team members before the meeting.

A number of items were identified while discussing the documentation provided to the team. These included:

- *Absence of detailed plan or time schedule for the count*
Whilst it was agreed detailed documentation had been provided the panel were unable to get a clear handle on how the lay out and flow of ballot papers had been determined given the absence of documentation supporting the estimated number of ballot papers to be counted at the count centre. This item was raised with NSWEC in late July however the team was informed that numbers wouldn't be known until the close of nominations. The team felt that some estimates documentation based on previous count times and ballot paper numbers would have been useful as it would

assist in getting an understanding of the size of the count and would give better estimates of scheduling, count times and anticipated volumes of ballot papers. This became more apparent once details of the number of ballot papers to be managed at count site had been distributed

- Concerns were raised regarding the costing for NSW local government elections and felt that better estimates would assist with costing. After some discussion it was agreed that this area was outside the scope of the panel and should be discussed directly between LGSA and NSWEC.
- The team noted the absence of the inclusion of a flow chart of the whole end to end process in the documentation provided and were unable to get a clear understanding of the flow of ballot papers from the returning officers to Riverwood.
- Security of ballot papers during transport and at Riverwood is not apparent. The matter was raised re the distance that some papers had to travel that could mean possible overnight stays during the journey etc. It is unclear what security arrangements are in place in these instances given that driver fatigue and OH & S need be considered during long journeys.
- The panel could not get a good feel of the area identified at Riverwood for the receipt of ballot papers. Tied into the delivery and lack of a schedule of delivery, would the area cope where numerous deliveries and volumes arrive at the same time? There didn't seem to be enough space to expand the receiving and record & reconciliation areas. Management of incoming ballot papers is considered extremely important.
- Concerns were raised by all panel members in the size of batches to be created and managed. Balancing and reconciliation of ballot papers is considered extremely important and smaller batches may be easier to manage because:
 - Risk is reduced during change of shifts
 - There is the ability to remove ballot papers from data entry tables and secure overnight
 - Risk is inherent with the use of sticky notes
- The team was unclear as to what information would be available during the count re the count process.

- The issue was raised re the rationale of the priority list, after some discussion the team agreed that this was out of scope for the team and the responsibility of the NSWEC.
- Overall it was agreed that some of the items discussed would become clearer once the process was observed.
- The absence of an OH & S checklist within the documentation was noted.
- The team noted the absence of checklists for each area of the count set up.
- The team also noted the absence of a 'code of conduct' for count centre staff and also the absence of data entry staff briefing notes.

Ballot paper preparation at returning office

Three types of ballot papers were used for voting for councillors during the local government elections:

- o legislative assembly type (counted locally by RO)
- o groups with no group voting squares (no ATL - counted locally by RO)
- o groups with group voting squares (ATL - counted at LGCC)

Only ballot papers with above-the-line (ATL) and below-the-line (BTL) voting were counted at the central count centre. A preliminary count of all ballot papers took place at polling places on election night. Additionally counts took place for declaration votes (silent, declared institution, postal, pre-poll and section votes). On Sunday after Election Day ballot papers were reconciled and sorted to single ATL (Single 1, ✓ or X Above The Line) and 'others'. The single ATL ballot papers were retained at the returning office and all other ballot papers were transported to the count centre. Each parcel of ballot papers for each polling place and declaration vote type were kept in separate parcels at all times.

Returning officers, working parcel by parcel batched ballot papers for the count centre into batches of 100 ballot papers (some short batches had less than 100 ballot papers), placing a post-it note at every 25 papers. Batches were hole punched, a backing card attached and plastic sleeve

inserted at the front of the batch before being secured with a tie tube clip.

Scrutineers were present during the sorting and batching process.

Completed batches were secured in plastic bags ready for transport to the count centre.

Count observation

Utilising documentation provided by the NSWEC and from discussion held between observation team members an observation checklist was developed

The checklist covered all aspects of the count and considered a number of main areas:

- o Set up at count centre
- o Ballot paper handling prior to count
- o Procedures prior to count commencement
- o The count
- o Results processing
- o Disaster recovery

A copy of the checklist can be found at Appendix 1.

The observation team attended the Riverwood count centre on Tuesday 16 September 2008 at 9:30am. The count centre had been established in the NSWEC warehouse facility at Riverwood. Secure sign in procedures were followed by NSWEC staff at the count centre and observation team members were each issued with a security pass. Observation team members were given a guided tour of the facility and an overview of each stage of the count process from delivery of ballot papers to the storage procedures at the end of the count. Team members were then free to independently move within the count centre to observe processes and procedures and to converse with NSWEC staff re any questions raised during the observation.

Below are detailed notes from the observation team re the count process.

Set up at count centre

Referring to *Local Government Counting Centre Procedures* items 12.12 and 12.13, the observation team reviewed the layout of each area of the count

Report on Observation of NSWEC Central Vote Count

centre. The proposed layout of the centre was clearly documented and well thought out with good flow of traffic and ballot papers. The observation team had no issues with the layout of the count centre. The team questioned what OH&S considerations been made and implemented at the count centre. It was agreed that to a degree OH&S considerations had been made. Team members were made to wear fluorescent vests when entering areas where forklifts or traffic were in operation. Of concern was the lack of large scale clearly visible emergency management plans, especially important with the large number of staff at the venue at any one time. Also considered of value was clearly visible manual handling processes. It was noted that there was a lack of designated walkways or clearly defined parking bays for unloading trucks etc. This was considered of major concern for the safety of staff and visitors to the centre. Also noted as a concern was that sorted ballot papers were laid on pallets on the floor, each time staff needed to access the ballot papers it meant bending and lifting actions needed to be undertaken. Additionally there were concerns that staff could trip on the pallets or overbalance when trying to retrieve ballot papers.

Recommendations

For future counts it is recommended that the following OH&S management strategies be considered:

- o Walkways to be clearly defined
- o Vehicle parking and delivery areas be more clearly marked
- o Ballot paper storage to be at waist height

Ballot paper handling prior to count

A number of areas were covered under this heading. These included:

- o Receipt of ballot papers at count site
- o Storage of ballot papers
- o Flow of ballot papers
- o Batch preparation

Below are details observed at each area.

Receipt of ballot papers at count centre

Detailed documentation was in place for the receipt of ballot papers. The plan was observed as being followed. The team was impressed with the methodology for the transport of ballot papers from returning offices to the count centre and receipt at the centre. TNT couriers fully managed this process and had a staff member located on site at the count centre to receive deliveries ensuring all anticipated ballot papers were on each truck. This person was also in contact with each delivery driver and could follow up any delays or issues with each despatch.

Returning officers emailed the count centre with the number of bags of ballot papers dispatched, the number of bags received was checked against the email. Discrepancies were isolated and dealt with separately; these appeared to be minor during the time the observation team was in attendance. The one item noted by the team was that whilst plastic bags transporting ballot papers were security sealed, these seals were not in fact recorded and forwarded to the count centre for cross checking on receipt.

The observation team was happy that procedures and processes had been followed by returning officers and staff at the count centre.

Storage of ballot papers

Consideration was given to the ballot paper storage areas allocated at the count centre for each stage of the process. The team questioned if there was sufficient storage at each stage and agreed that in the main there was with the exception of data entry, where it was felt better delineation of areas for ballot papers to be data entered and those where data entry had been completed would be advisable.

The observation team had no concerns with the security of ballot papers.

Flow of ballot papers

The flow of ballot papers between each area of the count was extremely efficient. Transfer of ballot material through the various stages of the count was well managed. The team had no concerns or recommendations in this area.

Batch preparation

As batches were received from each office they were checked against the anticipated number of bags. Staff then checked and recorded the batches received for each polling place and declaration vote type. Where totals anticipated matched the ballot papers moved to the next stage of the process being registration of batches in system. Where numbers did not reconcile batches were set aside and then resolved through communication with the returning officer.

The number of ballot papers to be counted for each polling place were entered into the NSWEC computer system and totals entered reconciled against total anticipated. Once confirmed batch header sheets were generated for each polling place and declaration vote type. This process was undertaken by staff located on the upper level of the count centre. Staff were located completely separate to the receiving, reconciliation and data entry area. Paperwork was ferried between the levels, created batch header sheets were taken back to the lower level and inserted in the relevant clear plastic pockets attached to each batch of ballot papers. At this stage the papers were then ready for data entry. All batches ready for data entry were stored in a specific area at the centre and were moved to the relevant count team as required.

Comments

At all times it seemed that procedures were being followed and issues resolved where required in a timely manner. The batching process went smoothly, the only comment being the location of the batch header sheet preparation area to batch preparation and data entry. A great deal of running up and down stairs was involved.

Additionally the other observation was that the movement of staff between each area did seem to be uncontrolled at some times. Staff allocated to a particular work area were observed in unrelated areas. Not a major issue but did add to confusion of roles.

Recommendations

For future counts it is recommended that the following be considered:

- o Ballot paper parcel seal numbers to be recorded by returning officers and forwarded to count centre for cross checking to ensure papers have not been tampered with.
- o Increase the storage space during data entry to ensure ballot papers to be data entered and those where data entry had been completed are clearly spaced.
- o Locate the batch header sheet preparation area closer to the batch preparation and data entry areas.

Staffing

The team were keen to observe the staff and their roles at the count centre. In the main, detailed positions descriptions had been developed and an project organisation plan established. The only position description not included was one for data entry staff. Our understanding is that this would have been provided to agencies who responded to requests for quote for the provision of the temporary staff.

From observation, staff were clear on their roles and responsibilities.

OH&S requirements

The observation team were slightly concerned as to staff understanding of OH&S requirements at the count site. It was agreed that high definition vests were worn in areas where required but overall there did not seem to be training or instructions to staff available at the centre that outlined their OH&S responsibilities nor proper evacuation procedures in the case of an emergency.

Recommendations

For future counts it is recommended that OH&S briefing of staff take place at each shift commencement and that OH&S documentation is displayed or readily available to staff at the count centre.

Report on Observation of NSWEC Central Vote Count

During the count

The observation team were able to observe start of shift procedures at the count centre. The check in process undertaken by the personnel agency that provided staff for data entry was impressive. It was an extremely well ordered procedure with data entry staff in place within each team in a very short time. The team appreciated the difficulty of the management of 200+ staff at one time. This process was well executed and the personnel agency should be commended. The agency had also provided staff to play the roles of team leaders/supervisors for each of the 10 teams. All were to attend the count centre in advance of the data entry staff to ensure data entry terminals were in readiness for the commencement of the data entry shift. This worked extremely well, batches of ballot papers were in place against each terminal by the time data entry staff appeared meaning once training of data entry staff had been completed there was no delay in commencing ballot paper preference entry into the count application. Team leaders and floor staff ran small training sessions of groups of data entry operators running them through the application and business processes surrounding the ballot paper entry. The software seemed pretty basic as far as the data entry staff were concerned, i.e. they did not seem to have trouble picking things up with only a fairly short training time. Data entry was underway in a short time.

The observation team had initial concerns with the management of ballot paper batches, especially given the fact that data entry operators seemed to have a high level of responsibility in the reconciliation of the ballot papers. It was also a concern that during shift change over partially entered batches would be closed and re-opened by the next shift operator raising the possibility of errors during data entry. These concerns proved to be unfounded, the process experienced worked as anticipated in the procedural manuals provided by the NSWEC.

The observation team were unable to observe end of shift processes, however it was felt that this was unnecessary given their confidence in procedures and processes in place.

The management and handling of batches prior to and during data entry was orderly and well managed. There were clearly defined, well labeled areas for ballot paper storage during each phase of data entry. Labels were affixed to trestle tables indicating storage location of ballot papers at each stage, i.e.

- Awaiting first round data entry
- Awaiting second round data entry
- Awaiting verification
- Verified batches

The likelihood of incorrect preferences for candidates being translated and included in the results calculation was extremely remote given the number of processes ballot papers went through before a result was calculated.

First round data entry:

Batches of ballot papers were allocated to data entry operators by the supervisors. Working ballot paper by ballot papers, data entry operators entered ballot paper preferences exactly as completed by the voter into the count application. If an operator was unsure of any mark on a ballot paper, a yellow sticky dot was placed next to the mark and an interpretation of the mark was written onto the dot. Once all papers in a batch had been entered the batch was saved and closed.

Second round data entry

Batches completed for first round data entry were allocated to a different operator for second round data entry. Data entry operators re-keyed the batch of ballot papers, again exactly as completed by the voter.

Verification

Where the preferences entered at first round data entry did not match those entered at second round data entry, or if the total number of ballot papers entered at each stage did not match, the batches needed to be verified.

A third person then worked through each batch comparing the data entered and correcting inconsistencies or errors.

All batches had to be data entered and go through each of the three processes before they were available for results calculation.

Scrutineers

The observation team were not aware of a scrutineers briefing prior to count commencement. This could have taken place at a time when the team were in another area of the count site. One observation that did concern the team was some scrutineers interaction with the data entry operators. We observed what we considered to be an inappropriate interaction where a particular scrutineer was engaged in full scale debate with a data entry operator that the team felt led to the operator discussing/debating particular ballot papers. When brought to the attention of NSWEC staff this issue was rectified, however given that large amount of activity taking place at that time it did go un-noticed for some time.

NOTE: the observation team were not able to experience the results calculation process.

Recommendations

This process was extremely well managed. Processes were open and transparent at all times with little opportunity for errors to occur.

The only recommendation to be considered is for NSWEC count staff to be more alert to scrutineers and their interaction with data entry staff at the count site.

Disaster recovery

The team spent some time discussing and getting an understanding of the infrastructure supporting the count site and the disaster recovery procedures in place in case of any unexpected issues during the count. Whilst detailed documentation existed, it was not clear to the everyday person what this meant overall.

The teams understanding of this discussion was that where a hardware/software failure took place there would be quite a long delay to reset batches. Given that the system only saved batches at the completion of data entry of each batch there was the inability to recover a batch to the point of the 'disaster'. In fact batches were to be reset to the commencement of the batch.

Part of this issue seemed to relate to the fact that the count software was vested on only one server. The team raised the possibility of using two servers with a load balancer which would provide an inherent redundancy but were advised that the software could not cope with such an arrangement. We do not understand why this would be the case however we lack the technical expertise in this area to question this response.

The teams understanding may not be 100% correct and not being of an IT background we apologise if this has been misinterpreted.

Recommendations

It is recommended that consideration be given to enable the ballot paper save process to occur progressively during data entry to allow speedier, more manageable recovery should an incident occur allowing better protection of the integrity of the data.

Additional items

Referring to item 3 of the terms of reference the teams overall concern regarding the count process was what was considered as a lack of communication between the NSWEC, councils and candidates regarding the scheduling and availability of the counts.

The team could not see any clear rationale as to what guided the decisions and order in which councils were counted. While we observed no issue with this, it is suggested that those councils who were counted "last" may have struggled to understand why.

Additionally, the NSWEC could not make a detailed count schedule available to them to allow for planning of the observation timetable and to allow the team to get an understanding of the anticipated number of count days.

Once scheduling occurred, again this was not completed for the overall count but progressively, the NSWEC made a commitment that in the event of earlier count finishing times that counts scheduled for a particular day may commence

Report on Observation of NSWEC Central Vote Count

earlier than advised. However counts for another day would not be moved to a previously day where the count was ahead of schedule. The team was advised that this was so that candidates could schedule their scrutineers to be in attendance when their particular count was being data entered. This type of information and reasoning, from anecdotal stories during and after the election process did not seem to be widely understood.

The observation team were not across how the counting schedule was communicated other than via the NSWEC website.

It should be noted that the process of recording results as they became available has been efficient. The EC website has been found to be easy to navigate and contains good detail.

The count team also noted that all counts came in ahead of schedule. Whilst this is to be commended it would be good to understand how this was achieved. Was this due to lower anticipated return of ballot papers, fewer candidates or that the schedule was wrong in the first place?

Conflict of Interest Declaration

All panel members completed conflict of interest declarations on 30 July 2008. See Appendix 2.

Peter Coulton advised the other members of the team that the Local Government & Shires Associations of NSW were involved on behalf of its members in a dispute with the Electoral Commission regarding a number of aspects in relation to the conduct and the costs of the elections.

It was acknowledged that the terms of reference established by the NSW Electoral Commissioner for the Central Count Observation Team placed the issues the Associations were disputing outside the scope of the Teams remit, as the scope was specific to the processes and procedures surrounding the central vote counting centre and did not cover all aspects of the election.

Overall comments

The observation team have no overall concerns with the NSWEC count process in accordance with the terms of reference provided to the team. Clear, precise procedures were in place and seemed to be followed. Ballot paper management and reconciliation, considered to be of the utmost importance by all team members, was well executed and raised no concerns.

The team was impressed with the count process and could not fault it, and feel that scrutineers and candidates should have no concerns regarding process, transparency and integrity of the central count conducted by the NSWEC.

The recommendations listed above are for consideration by the NSWEC, it is left to them to decide if they wish to take on board any suggestions.

Glenda Frazer, Peter Coulton and Wayne Trudgen
Observation team panel members

Dated:

17 October 2008

Appendix I

NSW Central Vote Count Observation

Tuesday 16 September 2008

			Yes/No	Comments
Set up at count centre	Layout	Is proposed layout clearly documented?	Yes	Refer LGCC process 12.12
		Are areas clearly defined?	Yes	Refer LGCC process 12.13
		Have OH & S considerations be made & implemented?		
Ballot Papers	Receipt at count centre	Is there a detailed plan for the receipt of ballot papers?	Yes	Refer LGCC process 5.1 & 5.2
		Is the plan being followed?		
		Are any details missing from the plan?		
		Are ballot papers received in orderly fashion?		
		Are there any discrepancies in number of boxes received vs. those expected?		
		If yes - how are these managed?		Refer LGCC process 5.2
		Are RO packaging instructions documented?	Yes	Refer LGCC process 2.2 & 4.1
		Were packaging instructions followed?		
		Were contents of box/es as described?		
		Is the receipt workflow followed?		
	Storage at count site	Is there sufficient storage at each stage?		

Report on Observation of NSWEC Central Vote Count

		Are there any security concerns with storage?		
	Flow of ballot papers	Is there smooth flow of ballot papers between areas?		
	Batch preparation	Are reconciliation procedures documented?	YES	Refer LGCC process 6.2
		Are reconciliation procedures followed?		
		Are ballot papers batched as per instructions?		
		Are discrepancies managed and resolved?		
		Are batches stored in correct area ready for data entry?		
Prior to count commencement	Staff training	Are staff clear on requirements?		
		Are roles and responsibilities clearly defined?		
		Are staff clear on OH & S requirements?		
Count	Procedures	Are detailed procedures available?	Yes	See DEO Procedures
		Are data entry procedures being followed?		
		Are data entry - start of shift procedures working?		
		Are data entry - end of shift procedures working (including dealing with partially entered batches)?		See DEO procedures Chapter 5 page 10
	During first round data	Is manual counting of batches including adjustments taking place		See DEO procedures

Report on Observation of NSWEC Central Vote Count

entry	as described?		Chapter 4
	Are Post It notes being attached?		See DEO procedures Chapter 4
	Is there controlled movement of staff during count?		
	Is 'Next Ballot Paper for Data Entry Sheet' being completed when required		See DEO procedures Chapter 7
During second round data entry and verification	Are there clear procedures?	Yes	See Verification Procedures Chapter 8
	Are procedures being followed?		
	Are issues being identified and corrected?		See Verification Procedures Chapter 8.1
Once data entry completed	Are there procedures for final reconciliation?	Yes	See Verification Procedures Chapter 9.2
	Are all ballot papers reconciled?		
	Are completed ballot papers securely stored?		
Result calculation	Are there clear procedures?	Yes	See Verification Procedures Chapter 9.2 & 10
	Are they followed?		
	Do results calculate?		

» Report on Observation of NSWEC Central Vote Count

Do number of ballot papers distributed = number at final reconciliation?

Additional items	Disaster recovery	Does detailed documentation exist?	Yes	See LCCC Disaster Recovery & Security Summary
		Is back up plan in place?	Yes	See LCCC Disaster Recovery & Security Summary
		Is data physically secure at venue?		

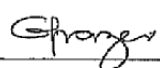
Appendix 2

NSW EC Central Count Observation

Conflict of Interest Statement

Central Count Observation Team

This is to certify that I do not hold any office, possess any property, am not engaged in any business, trade or calling and do not have any obligations by virtue of any contract whereby, directly or indirectly, duties or interests are, or might be created, in conflict with my position as a member of the Central Count Observation Team.

Name Glenda Frazer	Signature 
Title Manager, Election Services Victorian Electoral Commission	Date 30/7/08


Report on Observation of NSWEC Central Vote Count

NSW EC Central Count Observation

Conflict of Interest Statement

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Name Peter Coulton	Signature 
Title Director, Corporate Services LGSA	Date 30.7.08

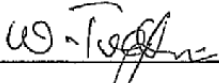
Report on Observation of NSWEC Central Vote Count

NSW EC Central Count Observation

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Name Wayne Trudgen	Signature 
Title Principal Policy Officer Department of Local Government	Date 30/12/08



**ELECTORAL COMMISSIONER'S RESPONSE
TO OBSERVATION TEAM'S REPORT
ON LOCAL GOVERNMENT CENTRAL COUNT**

I have received the report from the independent Observation Team into the central count centre for the 2008 Local Government elections.

I wish to thank all members of the Observation Team for their dedication and commitment to this project. As far as I am aware, this is the first time in Australia that an Electoral Commissioner has established an independent Observation Team to report on a key election outcome.

The purpose of establishing the Observation Team was to give candidates, registered political parties and members of the public confidence in the integrity, effectiveness and efficiency of the centralised count of ballot papers.

For certain Local Government elections (where candidates formed groups and there were group voting squares above the line) it is necessary to use a centralised computerised vote counting system.

Six Terms of Reference were established. I appointed three independent people with a senior experienced election official from the Victorian Electoral Commission as Chair, a representative from the NSW Department of Local Government and a representative from the Local Government and Shires Association of NSW. The New South Wales Electoral Commission (NSWEC) provided the Observation Team with detailed briefings on all aspects of the central count operations. The Observation Team was also provided with copies of all documentation relating to the counting operations. The Observation Team visited the central count operation during the data entry process.

I am pleased that the Observation Team was able to conclude that "scrutineers and candidates should have no concerns regarding processes, transparency and integrity of the central count conducted by the NSWEC".

The comments made by the Observation Team by way of recommendations will be carefully considered by the NSWEC in planning for future central vote counts.

Once again, I would like to thank all members of the independent Observation Team for their dedication and commitment to this important project.

A handwritten signature in black ink that reads 'Colin Barry'.

Colin Barry
Electoral Commissioner

27 October 2008

OFFSETTING LAND CONSTRAINED BY AIRCRAFT NOISE

REPORT OF: DAVID BROYD - GROUP MANAGER SUSTAINABLE PLANNING
FILE: 16-2006-1258

BACKGROUND

The purpose of this report is to provide information on how “offsetting” can occur when land is constrained because of aircraft noise.

Council’s approach to managing development in areas affected by aircraft noise is set down in the Port Stephens Development Control Plan 2007. It is based on using Australian Standard 2021-2000 – Acoustics – Aircraft Noise Intrusion – Building Siting and Construction (AS 2021-2000) in conjunction with Australian Noise Exposure Forecast (ANEF) contour maps, which are produced from time to time by the Department of Defence.

ANEF contour maps and AS 2021-2000 are the recognised planning tools for guiding development in areas affected by aircraft noise in Australia.

AS 2021-2000 provides that some land uses are acceptable, conditionally acceptable or unacceptable depending on where they are located within the ANEF contours. For example, dwellings are:

- Acceptable below the 20 ANEF contour;
- Conditionally acceptable between the 20-25 ANEF contours; and
- Unacceptable above the 25 ANEF contour.

Notwithstanding the above, it is worth noting that in February 2008 the NSW Land and Environment Court approved a dwelling at Salt Ash above the 25 ANEF contour, provided that the dwelling meets the indoor design sound levels provided in AS 2021-2000. On this basis, whilst being contrary to Council policy, there is still scope for dwellings to be located on sites classed as unacceptable under AS 2021-2000.

Council sought advice from the Department of Defence on their position regarding the acquisition of properties affected by aircraft noise in the Port Stephens Local Government Area. Their response, dated 31st May 2007, is as follows:

“Defence generally only acquires property when it is required to meet Defence needs. Defence does not acquire noise affected properties unless there are exceptional circumstances. For properties in the vicinity of the RAAF Base Williamtown and the Salt Ash Weapons Range (SAWR), these exceptional circumstances have been to support operational or training requirements; to expand the boundaries of the Base; to acquire properties in very close proximity to the runway and effectively within the boundaries of the Base; and to purchase vacant land in the vicinity of the Base and SAWR which

has become subject to development restrictions as a result of changes to ANEF contours.

It continues to be Government Policy not to provide noise attenuation of private residents affected by aircraft noise associated with Defence Training or Operations.

Attachments

Nil.

NOTICES OF MOTION

NOTICE OF MOTION

ITEM NO. 1

FILE NO: A2004-0217 + A2004-0237

NAMING OF CYCLE WAY – DUTCHIES TO CORLETTE

COUNCILLOR: NELL, WARD, WESTBURY, DOVER

THAT COUNCIL:

- 1) That Council name the cycleway from Dutchies to Corlette, the “Bartlett Cycleway” and that this name be registered by the NSW Geographical Names Board.
 - 2) That the above cycleway be signposted as the “John Bartlett Cycleway”
-

ORDINARY MEETING – 16 DECEMBER 2008

RESOLUTION:

401	Councillor John Nell Councillor Sally Dover	It was resolved that the Notice of Motion be adopted.
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BACKGROUND REPORT OF: CARMEL FOSTER – COMMERCIAL PROPERTY MANAGER

BACKGROUND

The purpose of this is to officially name the cycleway after a former Councillor.

The Geographical Names Board is the authority to approve and gazette such naming. The Board will not approve ‘John Bartlett Cycleway’ but will approve ‘Bartlett Cycleway’. There is no issue with the existing sign posting remaining as is.

NOTICE OF MOTION

ITEM NO. 2

FILE NO: A2004-0217,

ESTABLISHMENT OF TOMAREE EMERGENCY CENTRE

COUNCILLOR: NELL, WARD, WESTBURY, DOVER

THAT COUNCIL:

That Council seek to establish the Tomaree Emergency Centre at central site on the Tomaree Peninsula by :-

- 1) Initiating discussions with relevant State Government Agencies, State Member for Port Stephens to seek the establishment of the Tomaree Emergency Centre at central site on the Tomaree Peninsula.
 - 2) Identify and reserve a site for the Tomaree Emergency Centre.
 - 3) The aim of the Tomaree Emergency Centre would be the eventual co-location of the following services:-
 - NSW Police
 - NSW Ambulance Service
 - NSW Fire Brigade
 - State Emergency Services
 - Other Services that would benefit from being co-located with the above services.
-

ORDINARY MEETING – 16 DECEMBER 2008

RESOLUTION:

402	Councillor John Nell Councillor Frank Ward	It was resolved that the recommendation be adopted.
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BACKGROUND REPORT OF: TREVOR ALLEN - INTEGRATED PLANNING MANAGER & PETER MURRAY – OPERATIONS MANAGER

BACKGROUND

Preliminary informal discussions have occurred with emergency service agencies on the need for a suitable site that is in close proximity to Nelson Bay Road and centrally located to all population areas of the Tomaree Peninsula.

The NSW Ambulance Service is seeking a suitable site for a new station. Initial investigations has identified that there are a very limited number of Council or NSW State Government owned land that would be suitable.

Whilst NSW Ambulance Service has immediate plans to relocate, subject to a suitable site being secured, the NSW Fire Brigade has also informally indicated their future needs lie in a more accessible and larger site.

It is also apparent that the Council provided State Emergency facility at Corlette is also similarly constrained and would benefit by relocation to a larger, more accessible site.

The establishment of a Tomaree Emergency Centre and the collocation of emergency services to such a centre would have the obvious benefits of improved coordination of services in times of emergency as well as likely shared administration and management and associated financial benefits.

In December 2008 Council's Integrated Planning Section will be conducting an Agency Workshop as part of the Port Stephens Futures Project to bring together government and non-government agencies that are responsible for the provision of infrastructure and services to discuss the long term needs of Port Stephens.

The aim of the workshop is to identify the future needs and directions of the agencies so that, among other things, potential collaborative projects can be identified and facilitated. The issue of a Tomaree Emergency Centre will be raised during this workshop.

The decision to relocate state emergency services is a matter for the State government. However, an outcome of the Port Stephens Futures Project is that Council can facilitate the creation of a centre on the Tomaree Peninsula as the local planning authority, as a land owner and as a local infrastructure provider.

NOTICE OF MOTION

ITEM NO. 3

FILE NO: A2004-0217

ESTABLISHMENT OF ASBESTOS REGISTER

COUNCILLOR: NELL, WARD, WESTBURY

THAT COUNCIL:

- 1) That Council seek to establish a register of asbestos content in its buildings and other structural assets in Port Stephens to advise owners and Builders when proposing renovations or demolitions.
-

ORDINARY MEETING – 16 DECEMBER 2008

RESOLUTION:

403	Councillor John Nell Councillor Frank Ward	It was resolved that the Notice of Motion be adopted with the amendment as follows: 1) That Council seek to establish a register of asbestos content in buildings and other structural assets in Port Stephens to advise owners and Builders when proposing renovations or demolitions. 2) Investigate fact sheets to enable identification, safe removal and disposal of asbestos when buildings are demolished or altered. 3) Request the General Manager to discuss this and what further initiatives can be undertaken with Hunter Regional Councils Building Professionals Group.
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The amendment on being put became the Motion, which was put and carried.

BACKGROUND REPORT OF: PETER AVIS – PROJECTS SERVICES MANAGER

BACKGROUND

The responsibility for identifying, undertaking risk assessments, treatment and recording of asbestos data on any site, as stated in the Occupational Health and Safety Regulations, is that of the controller of the property.

Council undertakes this for its properties and has established an asbestos register for its buildings and structures.

Employers/builders are responsible for the above for works on properties that are not owned by Council.

In assessing applications for building works Council officers consider the potential for asbestos presence and apply standard conditions advising of the requirements and relevant authorities to be contacted when working with asbestos. Council also has a Work Cover brochure on “Fibro & Asbestos” available at the customer counter for reference.

NOTICE OF MOTION

ITEM NO. 4

FILE NO: A2004-0217 + PSC2005-4446

DISCHARGE OF DURALIE COAL MINE INTO THE MAMMY JOHNSON RIVER

COUNCILLOR: JOHN NELL

THAT COUNCIL:

- 1) That Council objects to any discharge of the Duralie Coal Mine into the Mammy Johnson River to protect the oyster industry in the Karuah River and Port Stephens Great Lakes Marine Park.
-

ORDINARY MEETING – 16 DECEMBER 2008

RESOLUTION:

404	Councillor John Nell Councillor Ward	It was resolved that the Notice of Motion be adopted.
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BACKGROUND REPORT OF: BRUCE PETERSEN – MANAGER ENVIRONMENTAL POLICY

BACKGROUND

Duralie Coal Company is located in the Karuah River catchment within the Great Lakes Local Government Area. Duralie Coal has applied for a variation to their environmental protection licence to discharge excess water from their holding dams (on their mine site) to Mammy Johnson's River. This water body then discharges into the Karuah River. Although the proposal is within the Great Lakes Local Government area it would potentially impact on the Gloucester and Port Stephens Local Government areas as well due to its location within the Karuah Catchment.

The Mammy Johnson River originates in the Bulahdelah Mountains and is a major contributor to the Karuah River and the Port Stephens Estuary. The potential impacts of the Duralie Coals proposal need to be carefully considered as there is a well documented history of negative environmental impacts of coal mine discharges to NSW Waterways.

The Karuah River has since 2006 become part of the Port Stephens Marine Park. The status of Port Stephens as a Marine Park also places considerable responsibility on all agencies and stakeholders to ensure that any proposal to discharge mine waters into a tributary of the Port Stephens Estuary is given adequate consideration due to the risks associated with the discharge of mine waters into sensitive waterways.

The Duralie mine has been in operation since 2003 following years of mine infrastructure construction, including provision of sediment dams and wastewater storage areas to prevent the discharge of collected waters into the river. The discharge of collected water from the mine site would be in breach of its original condition of consent issued by the NSW Department of Planning.

The Department of Environment and Climate Change (DECC) have advised that before the application for variation of Duralie's environmental protection licence can be considered, advice from the Department of Planning needed to be sought. Duralie Coal is currently preparing an Environmental Impact Statement for the expansion of their mine, therefore this will provide any opportunity for stakeholders including the 3 local government areas to comment on the proposal as part of that process.

Recent advice from the Department of Planning (DoP) indicates that Duralie Coal will need to apply to the Department of Planning to vary its current consent and gain approval before it could discharge mine water to local waterways such as Mammy Johnson's River. It should be noted that there is no guarantee that the DoP will vary the current conditions of consent in relation to Duralie Coal's application. DECC have further advised that until Duralie Coal has development consent from DoP, that the application to vary the environmental protection licence will be deferred. DECC have also advised that they will provide advice to the DoP in relation to any application made by Duralie Coal to vary the current consent.

It is understood that any application to the DoP to vary Duralie's current consent conditions will be publicly exhibited.

The Duralie Coal proposal has been discussed at a number of Port Stephens Myall lakes Coastal Zone and Estuary Management Committee meetings and it was agreed at the meeting of 26 November 2008 that a Notice of Motion be submitted to PS Council as follows: that Council objects to any discharge of the Coal mine into Mammy Johnson River to protect the oyster industry in the Karuah River and to protect Port Stephens Marine Park.

CONFIDENTIAL RESCISSION MOTION

ORDINARY MEETING – 16 DECEMBER 2008

RESOLUTION:

405	Councillor Steve Tucker Councillor Ken Jordan	It was resolved that Council move into Confidential session.
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There being no further business the meeting closed at 7.40pm.

I certify that all pages of the Ordinary Minutes of Council dated 12 August 2008 were confirmed by Council at its meeting held on 26 August 2008.

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Cr Bruce MacKenzie
MAYOR