

## Minutes 08 September 2009



Minutes of Ordinary meeting of the Port Stephens Council held in the Council Chambers, Raymond Terrace on 8 September 2009 2009, commencing at 7.38pm.

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

291	<b>Councillor John Nell</b> <b>Councillor Ken Jordan</b>	It was resolved that the apology from Councillor Peter Kafer be received and noted.
		Councillor Ken Jordan declared a significant non-pecuniary interest Confidential Item No. 3.  Group Manager Commercial Services declared a pecuniary interest in Confidential Item No. 1 as Council was a tenderer.

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# MOTIONS TO CLOSE

ITEM NO. 1

FILE NO: 3200-003

**MOTION TO CLOSE MEETING TO THE PUBLIC**

**REPORT OF: TONY WICKHAM – EXECUTIVE OFFICE**

**GROUP: GENERAL MANAGERS OFFICE**

**RECOMMENDATION:**

- 1) That pursuant to section 10A(2)(d) of the Local Government Act, 1993, the Committee and Council resolve to close to the public that part of its meetings to discuss Confidential Item 1 on the Operations Committee meeting agenda namely ***Tender for Cemetery Mowing Services T15-2009.***
  
- 2) That the reasons for closing the meeting to the public to consider this item be that:
  - i) The report and discussion will include details of commercial information of a confidential nature that would, if disclosed, prejudice the commercial position of the tenderers; and
  - ii) In particular, the report includes confidential pricing information in respect of the ***Tender for Cemetery Mowing Services T15-2009.***
  
- 3) That on balance, it is considered that receipt and discussion of the matter in open Council would be contrary to the public interest, as disclosure of the confidential commercial information could compromise the commercial position of the tenderers and adversely affect Council's ability to attract competitive tenders for other contracts.
  
- 4) That the report of the closed part of the meeting is to remain confidential and that Council makes public its decision including the name and amount of the successful tenderer in accordance with Clause 179) of the Local Government (General) Regulation 2005.

**ORDINARY MEETING – 08 SEPTEMBER 2009**

<b>292</b>	<b>Councillor John Nell</b> <b>Councillor Glenys Francis</b>	It was resolved that the recommendation be adopted.
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ITEM NO. 2

FILE NO: 3200-003 & PSC2005-5640

## MOTION TO CLOSE MEETING TO THE PUBLIC

REPORT OF: TONY WICKHAM – EXECUTIVE OFFICE

GROUP: GENERAL MANAGERS OFFICE

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### RECOMMENDATION:

- 1) That pursuant to section 10A(2)(d) of the Local Government Act, 1993, the Committee and Council resolve to close to the public that part of its meetings to discuss Confidential Item 1 on the Operations Committee meeting agenda namely **Contract for Provision and Management of Animal Impoundment Facilities**.
  - 2) That the reasons for closing the meeting to the public to consider this item be that:
    - i) The report and discussion will include details of commercial information of a confidential nature that would, if disclosed, prejudice the commercial position of the tenderers; and
    - ii) In particular, the report includes confidential pricing information in respect of the **Contract for Provision and Management of Animal Impoundment Facilities**.
  - 3) That on balance, it is considered that receipt and discussion of the matter in open Council would be contrary to the public interest, as disclosure of the confidential commercial information could compromise the commercial position of the tenderers and adversely affect Council's ability to attract competitive tenders for other contracts.
  - 4) That the report of the closed part of the meeting is to remain confidential and that Council makes public its decision including the name and amount of the successful tenderer in accordance with Clause 179) of the Local Government (General) Regulation 2005.
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### ORDINARY MEETING – 08 SEPTEMBER 2009

293	<b>Councillor John Nell</b> <b>Councillor Glenys Francis</b>	It was resolved that the recommendation be adopted.
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ITEM NO. 3

FILE NO: A2004-0573

## MOTION TO CLOSE MEETING TO THE PUBLIC

REPORT OF: TONY WICKHAM – EXECUTIVE OFFICER

GROUP: GENERAL MANAGER'S OFFICE

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### RECOMMENDATION:

- 1) That pursuant to section 10A(2)(g) of the Local Government Act, 1993, the Committee and Council resolve to close to the public that part of its meetings to discuss Confidential Item 3 on the Ordinary agenda namely **Settlement of Legal Matter**.
  - 2) That the reasons for closing the meeting to the public to consider this item is that the discussion will include information concerning the commercial arbitration and legal costs incurred and advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege
  - 3) That disclosure of the information would, on balance, be contrary to the public interest, as it would prejudice Council's legal position and Council has an obligation to protect its interests and the interests of ratepayers.
  - 4) That the report of the closed part of the meeting remain confidential until the matter is settled.
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### ORDINARY MEETING – 08 SEPTEMBER 2009

294	<b>Councillor John Nell</b> <b>Councillor Glenys Francis</b>	It was resolved that the recommendation be adopted.
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# **OPERATIONS COMMITTEE RECOMMENDATIONS**

**ITEM NO. 1**

**FILE NO: 16-2008-682-1**

**DEVELOPMENT APPLICATION FOR URBAN HOUSING (12 DWELLINGS) AND FIVE (5) INTO TWO (2) LOT SUBDIVISION AT NO. 66 IRRAWANG STREET AND NO'S. 31, 31A, 33, 33A GLENELG STREET RAYMOND TERRACE.**

**REPORT OF: ANTHONY RANDALL – ACTING MANAGER DEVELOPMENT AND BUILDING GROUP: SUSTAINABLE PLANNING**

**RECOMMENDATION IS THAT COUNCIL:**

- 1) That Council use discretion, as enabled, to accept a variation for the contributions required under the Port Stephens Developer Contributions Plan and thereby provide a credit of \$26,730 to the applicant for the development application for urban housing and a five lot subdivision at 66 Irrawang Street and 31-33A Glenelg Street, Raymond Terrace for drainage works completed by the applicant which represents an upgrading to public infrastructure.

**OPERATIONS COMMITTEE – 8 September 2009**

**RECOMMENDATION:**

	<b>Councillor Bruce MacKenzie Councillor Bob Westbury</b>	That the recommendation be adopted.
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**ORDINARY MEETING – 08 SEPTEMBER 2009**

<b>295</b>	<b>Councillor John Nell Councillor Ken Jordan</b>	It was resolved that the recommendation be adopted.
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In accordance with the Local Government Act 1993, a division is required for this item.

Those for the Motion: Councillors Glenys Francis, Geoff Dingle, John Nell, Frank Ward, Bruce MacKenzie, Ken Jordan, Daniel Maher, Steve Tucker, Shirley O'Brien, Bob Westbury and Sally Dover.

Those against the Motion: Nil.



## BACKGROUND

**The purpose of this report is to request a variation to Council's s94 Contributions Plan for the subject application.**

The variation requested is in relation to development application 16-2008-682-1 seeking consent for the construction of an Urban Housing development (12 dwellings) and the consolidation of five (5) allotments into two (2).

Through the assessment of the application, Council has required that the applicant upgrade a section of Council drainage pipe. The applicant has advised that they are willing to upgrade the Council drainage system as requested by Council but have requested that the costs of the pipe be discounted from the Section 94 Contributions levied for the development.

The existing Section 94 Contributions plan does not make provisions for the levying of drainage infrastructure and as such a variation to the Section 94 Contributions plan is required to allow these works to be undertaken in lieu of Section 94 Contributions.

As proposed, the development would require a Section 94 Contribution of \$75,148. The applicant has obtained three quotes, verified by Council officers, for the upgrading and construction of the drainage pipe and has requested that the contributions be reduced by \$26,730 to account for the construction of the pipe. The amended Section 94 levy would then total \$48,418.

The site is zoned 2(a) Residential "A" Zone which permits urban housing subject to consent. The proposal is considered to be consistent with the zone objectives and description. The development is considered to be consistent with the requirements of both the Port Stephens Local Environmental Plan 2000 and the Port Stephens Development Control Plan 2007.

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

- Flooding and drainage

The application was referred to Council's Drainage Engineer, given the flooding issues, who provided the following comments;

*The area identified for the development has several drainage issues. It is a low area within this sub-catchment and a Council's drainage system is running through the proposed development area. I have listed a number of drainage issues below and have provided few comments on the drainage proposal submitted for approval.*

- **Location of the existing drainage pipe** – there is an existing drainage pipe running through this proposed development area and this pipeline must be physically identified prior to the design of buildings. This pipe must be upgraded (750 mm diameter) to carry major storm events and two large pits

*must be constructed at the upstream and the downstream of the proposed development. An overland flowpath must be created over the pipe and a minimum of 3m wide easement must be created over the pipeline.*

The development was initially advertised and notified until the 8<sup>th</sup> October 2008. In response to this process one (1) submission was received with respect to the proposal, which further supports the provision of infrastructure now rather than in the future.

The key issue raised in the submission raises concerns about the existing drainage situation whereby water drains from the subject site onto adjoining properties. The submission seeks to have this scenario rectified by the development proposal.

The upgrading of the Council drainage pipe is considered to assist in removing the drainage issues currently experienced by the downstream allotments as well as facilitating the drainage of Council owned land upstream of the development.

It is further considered that Council will be required to upgrade the pipe in the future if it is not undertaken by the developer. Any upgrading of the pipe post development would require the removal of driveway and parking areas while significantly impacting on the access to the rear units.

#### **FINANCIAL/RESOURCE IMPLICATIONS**

A credit of \$26,730 is recommended to be accepted in this case given works undertaken on behalf of the applicant to the drainage system which is a Council responsibility/public infrastructure.

#### **LEGAL, POLICY AND RISK IMPLICATIONS**

The development application is inconsistent with Council's Policy in that the Section 94 Contributions Plan does not allow for the levying of funds for drainage works.

#### **SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

By upgrading the pipe at the construction phase of the development, there will be no need in the future to remove areas of the development's driveway access to install a new pipe.

Socially, the impacts and interruptions caused by the works required to upgrade the drainage pipe for Council can be negated by having the developer upgrade the pipe at the time of construction of the units.

In this instance, the developer will be undertaking drainage works that would otherwise be undertaken by Council in the future.

Funds will however be diverted from the Section 94 contributions to drainage works. As noted in the report, there is no nexus between Section 94 Contributions and drainage.

### **CONSULTATION**

The application was exhibited in accordance with Council policy and one (1) submission was received. This is discussed in the background of the report.

Consultation has been also undertaken with the Manager, Engineering Services and Council's Coordinator, Infrastructure Planning.

### **OPTIONS**

- 1) Adopt the recommendation.
- 2) Reject or amend the Recommendations.

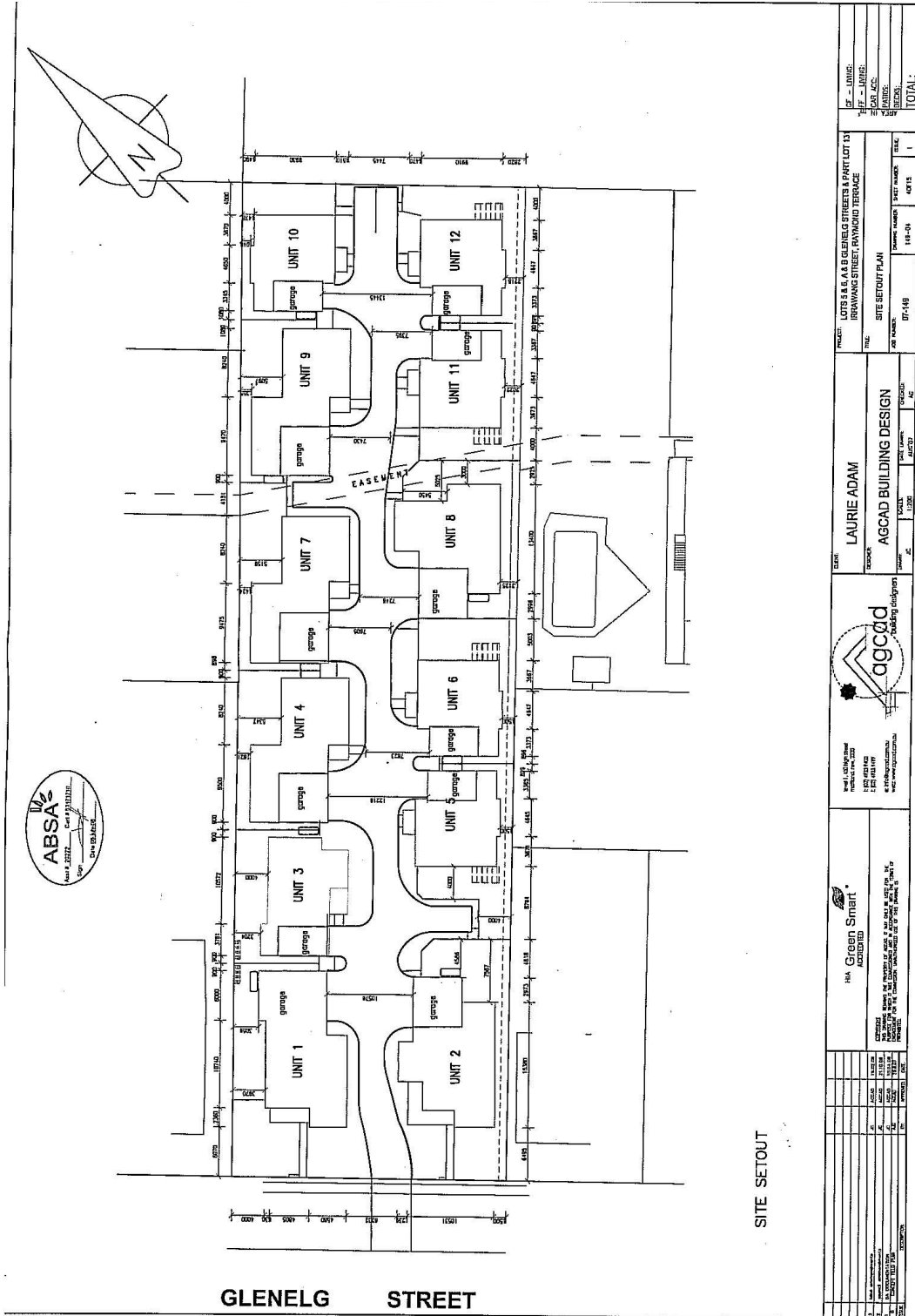
### **ATTACHMENTS**

- 1) Locality Plan
- 2) Site Plan


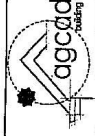
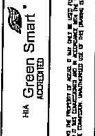
ATTACHMENT 1  
LOCALITY PLAN



ATTACHMENT 2  
SITE PLAN



SITE SETOUT

					
PROJECT: LOTS 5, 6, 7, 8, 9, 10, 11, 12 GLENELG STREET & PART LOT 13 RAWANG STREET, RAWANG TERRACE		CLIENT: LAURIE ADAM		DESIGNER: AGCAD BUILDING DESIGN	
TITLE: SITE SETOUT PLAN		DRAWN BY: [Name]		CHECKED BY: [Name]	
DATE: 07-1-09		SCALE: 1:100		SHEET NUMBER: 1	
TOTAL: 1		SHEET NUMBER: 1		SHEET NUMBER: 1	

# GENERAL MANAGER'S REPORT

PETER GESLING  
GENERAL MANAGER

ITEM NO. 1

FILE NO: A2004-0168

## NEWCASTLE AIRPORT LIMITED - DELEGATIONS

REPORT OF: TONY WICKHAM – EXECUTIVE OFFICER  
GROUP: GENERAL MANAGER'S OFFICE

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### RECOMMENDATION IS THAT COUNCIL:

- 1) Approve the affixing of the Seal of Council to the delegations for Newcastle Airport Ltd.

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### ORDINARY MEETING – 08 SEPTEMBER 2009

296	Councillor Geoff Dingle Councillor Shirley O'Brien	It was resolved that the recommendation be adopted.
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### BACKGROUND

The purpose of this report is to request Council to approve the use of the Council Seal.

Council at its meeting of the 25<sup>th</sup> August 2009 approved the delegations for Newcastle Airport shown in **ATTACHMENT 1**.

This report is to approve the affixing of the Council Seal to the delegations.

### FINANCIAL/RESOURCE IMPLICATIONS

Financial and resource implications with respect to this report are all met by Newcastle Airport Ltd.

### LEGAL, POLICY AND RISK IMPLICATIONS

In accordance with the *Local Government Act 1993*, Council can delegate functions to the General Manager or any other person or body. This delegation allows Newcastle Airport Ltd to operate on a day to day basis.

### **SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

The operation of Newcastle Airport has major economic benefits for the Port Stephens Local Government area and also for the Hunter as a region with the increase in traffic and demand. Areas such as business, tourism and leisure will all benefit from a social and economic view.

### **CONSULTATION**

Council's Legal Services Manager  
Harris Wheeler

### **OPTIONS**

- 1) Adopt the recommendation.
- 2) Amend the recommendation.
- 3) Reject the recommendation.

### **ATTACHMENTS**

- 1) Newcastle Airport Ltd Delegations

### **COUNCILLORS ROOM**

Nil

### **TABLED DOCUMENTS**

Nil



ATTACHMENT 1



**INSTRUMENT OF DELEGATION TO NEWCASTLE  
AIRPORT LIMITED**

Review Date: 22 May 2001  
21 December 2004

**Delegations.**

Pursuant to Sections 355, 377 and 381 of the *Local Government Act 1993* (NSW) ("the Act") and in previous delegation reliance upon Declaration of Trust dated 3 June 1993 and executed by Newcastle Airport Limited ACN 060 254 542 ("the Company") a copy of which is set forth in the attached Schedule, Port Stephens Council hereby delegates the following powers, authorities, duties or functions to the body known as Newcastle Airport Limited. These delegations are to be exercised according to:

- the requirements of the Local Government Act, 1993, and Regulations thereunder;
  - the requirements of any other relevant Act, law or regulation;
  - any expressed resolution or policy of Port Stephens Council.
- Authority to establish, develop, maintain and regulate a facility for the conduct of civil aviation and all associated and/or supporting activities being a service and/or facility and/or activity within the meaning of Section 24 of the Act at the civil area of Williamstown Airport.

The authorisation immediately above is conditional upon:

- The delegation of authority by Newcastle City Council to the Company ("the Newcastle City delegation") in terms identical with this delegation; and
- The continuance in full force and effect of the Newcastle City Delegation.

This delegation shall be deemed revoked upon revocation of the Newcastle City delegation.

Nothing in this delegation shall be construed so as to amount to a power or function which cannot be delegated under Section 377 of the Act, being:-

- the appointment of a general manager
- the making of a rate
- a determination under section 549 as to the levying of a rate
- the making of a charge
- the fixing of a fee
- the borrowing of money
- the voting of money for expenditure on its works, services or operations
- the compulsory acquisition, purchase, sale, exchange or surrender of any land or other property (but not including the sale of items of plant or equipment)
- the acceptance of tenders which are required under this Act to be invited by the council
- the adoption of a management plan
- the adoption of a financial statement included in an annual financial report
- a decision to classify or reclassify public land under Division 1 of Part 2 of Chapter 6
- the fixing of an amount or rate for the carrying out by the council of work on private land
- the decision to carry out work on private land for an amount that is less than the amount or rate fixed by the council for the carrying out of any such work
- the review of a determination made by the council , and not by a delegate of the council , of an application for approval or an application that may be reviewed under section 82A of the Environmental Planning and Assessment Act 1979
- the power of the council to authorise the use of reasonable force for the purpose of gaining entry to premises under section 194
- a decision under section 356 to contribute money or otherwise grant financial assistance to persons
- the making of an application, or the giving of a notice , to the Governor or Minister
- this power of delegation
- any function under this or any other Act that is expressly required to be exercised by resolution of Council

The authorisation immediately above is delegated to Newcastle Airport Limited by Port Stephens Council as the authority for the Port Stephens Local Government Area and its continuance in full force and effect is not subject to identical delegation by Newcastle City Council.

The above delegations revoke all previous delegations to Newcastle Airport Limited.

**MINUTES FOR ORDINARY MEETING – 08 SEPTEMBER 2009**

The delegation to Newcastle Airport Limited is effective from the date of this Instrument of Delegation as authorised by Council.

The common seal of the Port Stephens Council)

was hereto affixed pursuant to a Resolution of )

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Mayor

the Council at its meeting of \*\*\*\*\* Min \*\*\*\*\*)

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Councillor

ITEM NO. 2

FILE NO: A2004-0028

## NEWCASTLE AIRPORT LIMITED – HEAD OF LEASE

REPORT OF: PETER GESLING – GENERAL MANAGER  
GROUP: GENERAL MANAGER'S OFFICE

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### RECOMMENDATION IS THAT COUNCIL:

- 1) Authorise Newcastle Airport Limited to negotiate amendments to the Head Lease on behalf of Port Stephens Council as a part owner.

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### ORDINARY MEETING – 08 SEPTEMBER 2009

297	<b>Councillor Geoff Dingle</b> <b>Councillor Bob Westbury</b>	It was resolved that the recommendation be adopted.
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### BACKGROUND

**The purpose of this report is to request Council to authorise Newcastle Airport Limited to negotiate amendments, on its behalf, to the Head Lease for the Airport.**

As part of the Newcastle Airport development, additional infrastructure is proposed eg. a taxiway. This will require an expansion to the lease area for Newcastle Airport Limited to manage it and other opportunities exist to expand the lease area for strategic reason eg. land off Slades Road.

This requires an amendment to the existing Head Lease with the Department of Defence. Council is requested to authorise Newcastle Airport Limited to negotiate on its behalf the amendments to the Head Lease to allow these matters to progress.

### FINANCIAL/RESOURCE IMPLICATIONS

All financial implications are covered by Newcastle Airport Limited.

### LEGAL, POLICY AND RISK IMPLICATIONS

Nil.

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

The Head Lease allows the Airport to operate on Defence Land and provides a major economic base for the region, whilst having consideration to the environmental implications.

**CONSULTATION**

Newcastle Airport Limited Board

**OPTIONS**

- 1) Adopt the recommendation.
- 2) Amended the recommendation.
- 3) Reject the recommendation.

**ATTACHMENTS**

Nil

**COUNCILLORS ROOM**

Nil

**TABLED DOCUMENTS**

Nil

# CONFIDENTIAL ITEMS



*In accordance with Section 10A, of the Local Government Act 1993, Council can close part of a meeting to the public to consider matters involving personnel, personal ratepayer hardship, commercial information, nature and location of a place or item of Aboriginal significance on community land, matters affecting the security of council, councillors, staff or council property and matters that could be prejudice to the maintenance of law.*

*Further information on any item that is listed for consideration as a confidential item can be sought by contacting Council.*

## ORDINARY MEETING – 08 SEPTEMBER 2009

298	<b>Councillor John Nell</b> <b>Councillor Daniel Maher</b>	It was resolved that Council move into Confidential session.
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Group Manager Commercial Services declared a pecuniary interest in Item 1 as Council was a tenderer and left the meeting at 7.39pm and did not return.

**CONFIDENTIAL**

**ITEM NO. 1**

**FILE NO: T15-2009, PSC2005-3605**

**TENDER FOR CEMETERY MOWING SERVICES T15-2009**

**REPORT OF: JASON LINNANE - RECREATION SERVICES MANAGER**  
**GROUP: FACILITIES AND SERVICES**

**RECOMMENDATION IS THAT COUNCIL:**

- 1) Council accept the tender from Pacific Facilities Management Systems for the provision of mowing of Council's cemeteries for a period of two years with an option for Council to extend for an additional maximum period of 24 months.

**OPERATIONS COMMITTEE – 8 September 2009**

**RECOMMENDATION:**

<b>299</b>	<b>Councillor Ken Jordan</b> <b>Councillor Daniel Maher</b>	It was resolved that Council accept the tender from Pacific Facilities Management Systems for the provision of mowing of Council's cemeteries for a period of two years with an option for Council to extend for an additional maximum period of 24 months.
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CONFIDENTIAL

ITEM NO. 2

FILE NO: PSC2005-5640

**CONTRACT FOR PROVISION AND MANAGEMENT OF ANIMAL  
IMPOUNDMENT FACILITIES**

REPORT OF: BRUCE PETERSON – MANAGER, ENVIRONMENTAL SERVICES  
GROUP: SUSTAINABLE PLANNING

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**RECOMMENDATION IS THAT COUNCIL:**

- 1) Award the contract for the provision and management of Animal Impoundment facilities to Belmont Park Williamtown Pty Ltd for the period 1/10/09 to 30/09/2014 under the terms and conditions provided in Council Contract T02-2009.

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**OPERATIONS COMMITTEE – 8 September 2009**

**RECOMMENDATION:**

<b>300</b>	<b>Councillor John Nell Councillor Sally Dover</b>	It was resolved that Council award the contract for the provision and management of Animal Impoundment facilities to Belmont Park Williamtown Pty Ltd for the period 1/10/09 to 30/09/2014 under the terms and conditions provided in Council Contract T02-2009.
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**MINUTES FOR ORDINARY MEETING – 08 SEPTEMBER 2009**

Councillor Ken Jordan declared a significant non-pecuniary interest in Item No. 3 and left the meeting at 7.41pm and did not return.

**CONFIDENTIAL**

**ITEM NO. 3**

**FILE NO: PSC2008-4603**

**SETTLEMENT OF LEGAL MATTER**

**REPORT OF: PETER GESLING - GENERAL MANAGER**  
**GROUP: GENERAL MANAGER'S OFFICE**

**RECOMMENDATION IS THAT COUNCIL:**

- 1) Endorse the General Manager's actions in settling the legal matter.

**ORDINARY MEETING – 8 September 2009**

**RECOMMENDATION:**

<b>301</b>	<b>Councillor Sally Dover</b> <b>Councillor Daniel Maher</b>	It was resolved that Council endorse the General Manager's actions in settling the legal matter.
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**MATTER ARISING**

	<b>Councillor Geoff Dingle</b> <b>Councillor John Nell</b>	That Council allocate the settlement amount to support infrastructure in Fullerton Cove.
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The matter arising was put and lost.

**ORDINARY MEETING – 08 SEPTEMBER 2009**

<b>302</b>	<b>Councillor Bob Westbury</b> <b>Councillor Steve Tucker</b>	It was resolved that Council move out of Confidential session.
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*I certify that pages 1 to 26 of the Open Ordinary Minutes of Council 08 September 2009 and the pages 27 to 41 of the Confidential Ordinary Minutes of Council 08 September 2009 were confirmed by Council at its meeting held on 22 September 2009.*

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**Cr Bruce MacKenzie**  
**MAYOR**