

Minutes 9 MARCH 2010



Minutes of Ordinary meeting of the Port Stephens Council held in the Council Chambers, Raymond Terrace on 09 March 2010, commencing at 8.20pm.

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

		No apologies were received.
059	Councillor Ken Jordan Councillor Steve Tucker	Resolved that the minutes of the Ordinary meeting of Port Stephens Council held on 23 February 2010 & 02 March 2010 be confirmed.

The General Manager declared a non-pecuniary conflict of interest in Item 13 – Newcastle Airport Ltd Corporate Structure due to his directorship of the Newcastle Airport Board.

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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 OFFICER

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 Council Committee & Ordinary Council agenda namely ***Tender for the Supply of One (1) 22.5 Tonne Single Cab Truck . Chassis (T01/2010).***
- 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 the Supply of One (1) 22.5 Tonne Single Cab Truck . Chassis (T01/2010)***
- 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.

COMMITTEE MEETING – 09 MARCH 2010

RECOMMENDATION:

	Councillor John Nell Councillor Ken Jordan	That this item be deferred to the Ordinary Council meeting of 9 March 2010.
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MINUTES FOR ORDINARY MEETING – 9 MARCH 2010

ORDINARY MEETING – 09 MARCH 2010

060	Councillor Peter Kafer Councillor Ken Jordan	It was resolved that the recommendation be adopted.
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COUNCIL COMMITTEE RECOMMENDATIONS

MINUTES FOR ORDINARY MEETING – 9 MARCH 2010

Cr Jordan moved and seconded by Cr Dover that Item 2 be brought forward and dealt with prior to Item 1.

ITEM NO. 1

FILE NO: 16-2009-890-1

DEVELOPMENT APPLICATION FOR SINGLE STOREY DWELLING AT NO. 29 BOYD BOULEVARD, MEDOWIE

**REPORT OF: KEN SOLMAN - ACTING MANAGER, DEVELOPMENT AND BUILDING
GROUP: SUSTAINABLE PLANNING**

RECOMMENDATION IS THAT COUNCIL:

Give consideration to the draft conditions prepared following Council Resolution No. 029 of the meeting of 16 February 2010.

**COMMITTEE MEETING – 09 MARCH 2010
RECOMMENDATION:**

	Councillor Bruce MacKenzie Councillor Sally Dover	That Council approve the development application, 16-2009-890-1 (29 Boyd Boulevard, Medowie), subject to conditions as listed in Attachment 1.
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In accordance with Section 375A, Local Government Act 1993, a division is required for this item.

Those for the Motion: Crs Peter Chafer, Bruce Mackenzie, Steve Tucker, Shirley O'Brien, Geoff Dingle, Frank Ward, Bob Westbury, Sally Dover and Daniel Maher.

Those against the Motion: Crs Glenys Francis, Ken Jordan and John Nell.

ORDINARY MEETING – 09 MARCH 2010

061	Councillor Bruce MacKenzie Councillor Daniel Maher	It was resolved that the Council Committee recommendation be adopted.
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In accordance with Section 375A, Local Government Act 1993, a division is required for this item.

Those for the Motion: Crs Peter Kafer, Daniel Maher, Steve Tucker, Shirley O'Brien, Geoff Dingle, Frank Ward, Bob Westbury, Sally Dover and Bruce MacKenzie.

Those against the Motion: Crs Glenys Francis, Ken Jordan and John Nell.

BACKGROUND

The purpose of this report is to provide draft Conditions of Consent for consideration by Council for a development application that Council has resolved to support. The application is for a single storey dwelling at premises significantly affected by noise pollution by noise pollution from Williamstown Air Force Base and Australian Noise Exposure Forecast (ANEF) 2025 noise exposure.

On 16 February 2010, Council considered the proposal for determination. At this meeting Council resolved (reference 029) :

“That Council support the development application for the single storey dwelling at 29 Boyd Boulevard, Medowie – that support being on the basis that noise attenuation be not required for the design and construction of the dwelling – and request the Group Manager Sustainable Planning to bring forward appropriate conditions should Council determine the application by way of consent, because

- 1. It is also noted that it is unfortunate that the applicant bought the block of land in early 2009 before the promulgation of the ANEF 2025.*
- 2. The 149 zoning Certificate issued by Council and presumably attached to the contract of sale documents addressed ANEF 2012 and the block was not mapped within the ANEF 20-25 noise exposure contour.*
- 3. Since purchase the owners engaged a builder and chose a design without being aware that the new ANEF 2025 was going to be promulgated on Monday 19th October 2009.”*

In this regard, draft conditions are shown in Attachment 1.

Consent is sought for the construction of a single storey brick veneer dwelling at LOT: 30 DP: 248738 29 Boyd Boulevard. The site has been identified as aircraft noise affected and it is mapped within the 20-25 contours of the Australian Noise Exposure Forecast (ANEF) 2025. The proposed dwelling is conditionally acceptable within the 20-25 contours ANEF 2025 provided the recommendations of an acoustic report prepared in accordance with Australian Standard 2021-2000, are incorporated into the dwelling building design to provide appropriate acoustic attenuation.

The applicant has provided an acoustic report that confirms that the premises are exposed to significant noise pollution levels; however, the applicants do not want the acoustic report recommendations included in the building design specifications. They want the dwelling to be approved without the acoustic measures being implemented due to financial constraints.

MINUTES FOR ORDINARY MEETING – 9 MARCH 2010

The acoustic report concludes that the dwelling can comply "providing the recommendations and procedures outlined in this report are followed, internal noise levels will be consistent with the intent of AS 2021-2000".

In assessing this application it is noted that without an appropriate acoustic attenuation it contravenes Council's Development Control Plan B2.13 Aircraft Noise and Australian Standard 2021-2000. Council must assess the application under 79c of the Environmental Assessment and Planning Act 1979 and consider Australian Noise Exposure Forecast 2025. Approval of the development application for the dwelling, without appropriate acoustic attenuation, can not be supported by Council's professional building and planning assessment officers following a merit assessment under 79C of the Environmental Planning and Assessment Act 1979.

It is noted that the applicant bought the block of land in early 2009 before the promulgation of the ANEF 2025. Since purchase the owners apparently engaged a builder and chose a house design without being aware that the new ANEF 2025 was going to be promulgated on Monday 19th October 2009.

For Council's reference, the report dated 16th February 2010, including the staff assessment of the proposal pursuant to Section 79C of the Environmental Planning and Assessment Act 1979 and supplementary information to the extra ordinary Council meeting dated 16 February 2010 is shown in Attachment 2.

The standard development assessment procedure that has been applied to date of implementation of ANEF 2025 has been (min # 430) (15/12/2009)

1. The ANEF 2025 maps are promulgated – in that they have been endorsed by the Deputy Chief of the Royal Australian Airforce (as per formal advice received on Monday 19 October 2009).

The Department of Defence has, to date, held the position that these ANEF 2025 maps supersede the ANEF 2012 maps.

2. The ANEF 2025 maps therefore are effectively matters for consideration under Section 79c of the Environmental Planning & Assessment Act and are the basis for relevant clauses to be included in Section 149 Certificates – subject of course to identified impacts of the noise contours contained in the ANEF 2025 maps for relevant properties.
3. Notwithstanding Points 1 and 2, the ANEF 2012 maps still represent Council policy under the Port Stephens DCP 2007 until such time as Council resolves to negate their policy effect. Therefore, the ANEF 2012 maps have continued applicability for advice, Section 79c assessment and Section 149 Certificate inclusion as has been recent practice.

It is hoped that that further clarification can be established and a joint position hopefully established with the Department of Defence regarding the implications and policy positions of the new aircraft noise mapping.

The ANEF 2025 maps are based upon assumed commencement of operation of the Joint Strike Fighter in 2017 and the establishment of full operation of the total number of Joint Strike Fighters to be based at Williamstown by 2025.

Clearly 79c assessment relates to applications for development that will sustain beyond 2017 and 2025; however there is at least an 8 year period from now during which the Hawk and Hornet aircraft will still operate and similar noise impacts will accrue as has been the case over recent years and has formed the basis of the ANEF 2012 mapping. Hence, Council needs to proceed on the basis, until Council policy changes, that the 2012 maps are also applicable.

This follows a calculated and sound approach with a view of Councils obligations under Section 79C of the Environmental Planning and Assessment Act 1979, the information at hand submitted to Council from the DOD and application of the Australian Standard AS2021-2000.

To again refer to legal advice on Councils ANEF policy conferred by Harris Wheeler "There may be however, potential consequences if clause 31A requires acoustic testing and compliance with table 3.3 (of AS2021-2000) and Council fails to impose such conditions on development approved; the council would then find itself in the same situation as in *Booth*" (*Moffats- Fishermans Village*).

FINANCIAL/RESOURCE IMPLICATIONS

Reference is made to Attachment 2 - Council Report dated 9 February 2010 and supplementary information to the extra ordinary Council meeting dated 16 February 2010.

LEGAL AND POLICY IMPLICATIONS

Reference is made to Attachment 2 - Council Report dated 9 February 2010 and supplementary information to the extra ordinary Council meeting dated 16 February 2010.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Reference is made to Attachment 2 - Council Report dated 9 February 2010 and supplementary information to the extra ordinary Council meeting dated 16 February 2010. .

CONSULTATION

Reference is made to Attachment 2 - Council Report dated 9 February 2010 and supplementary information to the extra ordinary Council meeting dated 16 February 2010.

OPTIONS

- 1) Approve the development application, **16-2009-890-1** (29 Boyd Boulevard, Medowie), subject to conditions as listed in Attachment 1.

MINUTES FOR ORDINARY MEETING – 9 MARCH 2010

- 2) Delegate to the General Manager to seek to negotiate with the applicant for Development Application **16-2009-890-1** (29 Boyd Boulevard, Medowie) for agreement to formally incorporate adequate acoustic attenuation to provide internal noise levels consistent with Australian Standard 2021-2000, thereby enabling a formal application and determination to be given consent under delegated authority. (as per the recommendation of staff report as per attachment 2 Council Report dated 9 February 2010).
- 3) Amend the conditions (Attachment 1) to support a determination to approve.

ATTACHMENTS

- 1) Draft Conditions of Consent
- 2) Council Report 16 February 2010

COUNCILLORS ROOM

- 1) Plans and elevations/site plan.

TABLED DOCUMENTS

Nil.

**ATTACHMENT 1
DRAFT CONDITIONS OF CONSENT**

1. Separate approval is required to occupy, close or partially close the road reserve adjacent to the property under the roads act. The storage of materials, placement of toilets and rubbish skips within the road reserve is not permitted.
2. No construction or demolition work shall obstruct pedestrian or vehicular traffic in a public place, a hoarding or fence must be erected between the construction site and the public place.
3. Approved toilet accommodation for all tradespersons on the building site is to be provided from the time work commences until the building is complete. The toilet shall not be placed on the road reserve, without separate approval from council.
4. A waste containment facility shall be provided on the construction site immediately after the first concrete pour for the building and is to be regularly serviced. **Council may issue 'on the spot' fines for pollution/littering offences under the protection of the environment operations act 1997.**
5. Tree clearing shall be carried out in accordance with council's tree preservation order. The development consent and construction certificate must be issued before it is possible to remove any trees within 3m of any approved building, as measured horizontally from the building wall to the outside trunk of the tree. Tree clearing for the vehicle driveway or any other purpose requires separate approval under the tree preservation order. A copy of the **tree preservation order is attached.**
6. Retaining walls, not clearly noted on the approved plans or outside the parameters set in council's exempt and complying development criteria, are to be subject to a separate development application.

Such application shall be lodged and approved prior to any works relating to the retaining wall taking place

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

Note: erosion and sediment control measures prepared in accordance with the erosion and sediment control regional policy and code of practice or managing urban stormwater – soils and construction produced by Landcom 2004, need to be maintained at all times. A copy of Landcom 2004 bluebook may be purchased by calling (02) 98418600.

8. A "keep Port Stephens waterways pollution free" sign shall be displayed and be clearly visible from the road frontage for public viewing on the site at the commencement of works and remain in place until completion of the development. Signs are available from Port Stephens Council.
9. Prior to the commencement of work, provide a 3m wide all weather vehicle access from the kerb and gutter to the building under construction for the delivery of materials & trades to reduce the potential for soil erosion. Sand shall not be stockpiled on the all weather vehicle access.
10. All stockpiled materials shall be retained within the property boundaries. Stockpiles of topsoil, sand, aggregate, spoil or other materials shall be stored clear of the all weather vehicle access and drainage lines.
11. The development shall take place in accordance with the stated values of the energy efficiency scorecard or nathers assessment and/or the basix certificate submitted with the application. **Prior to the issue of any occupation certificate** an appropriately qualified person shall certify compliance with these requirements, as applicable.
12. The principal certifying authority shall only issue an occupation certificate when the building has been constructed in accordance with the approved plans, specifications and conditions of consent. No occupational use is permitted until the principal certifying authority issues an occupation certificate. Note: if an accredited certifier approves occupation of a dwelling the accredited certifier is to immediately notify council in writing.
13. The development shall be carried out in accordance with the building sustainability index (basix) certificate number 254326S. Where minor changes to the development occur (eg. Colours and the like) these changes shall be referred to council **prior to the changes being made.**

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

14. **Prior to occupying the approved dwelling(s)**, contact council's mapping section on 49800304 to obtain the correct house numbering. Be advised that any referencing on development application plans to house or lot numbering operates to provide identification for assessment purposes only.
15. **Prior to commencement of any works** within the road reserve for the provision of a driveway crossing, the applicant or their nominated contractor shall make application to council and receive approval for the construction of the driveway.

Application shall be made on council's driveway construction application form, **a copy of which is attached** to this consent for your convenience. For further information on this condition please contact council's facilities and services group.

The construction of the footpath crossing must be completed **prior to issue of final occupation certificate.**

16. Collected stormwater runoff shall be piped to an infiltration trench located in the landscaped area(s), in accordance with **Council's Standard Drawing S 136** (without overflow pipe).

ATTACHMENT 2
COUNCIL REPORT AND SUPPLEMENTARY INFORMATION
DATED 16 FEBRUARY 2010.

ITEM NO. 1

FILE NO: 16-2009-890-1

**DEVELOPMENT APPLICATION FOR SINGLE STOREY DWELLING AT NO.
29 BOYD BOULEVARD, MEDOWIE**

REPORT OF: KEN SOLMAN - ACTING MANAGER, DEVELOPMENT AND BUILDING
GROUP: SUSTAINABLE PLANNING

RECOMMENDATION IS THAT COUNCIL:

- 1) Delegate to the General Manager to seek to negotiate with the applicant for Development Application **16-2009-890-1** (29 Boyd Boulevard, Medowie) for agreement to formally incorporate adequate acoustic attenuation to provide internal noise levels consistent with Australian Standard 2021-2000, thereby enabling a formal application and determination to be given consent under delegated authority;
- 2) Note that, in the event of negotiations referred to above being unsuccessful, development consent refusal will be issued under delegated authority.

BACKGROUND

The purpose of this report is to present a development application significantly affected by noise pollution from Williamstown Air Force Base and Australian Noise Exposure Forecast (ANEF) 2025 noise exposure to Council for determination at the request of the Mayor.

Consent is sought for the construction of a single storey brick veneer dwelling at LOT: 30 DP: 248738 29 Boyd Boulevard. The site has been identified as aircraft noise affected and it is mapped within the 20-25 contours of the Australian Noise Exposure Forecast (ANEF) 2025. The proposed dwelling is conditionally acceptable within the 20-25 contours ANEF 2025 provided the recommendations of an acoustic report prepared in accordance with Australian Standard 2021-2000, are incorporated into the dwelling building design to provide appropriate acoustic attenuation.

The applicant has provided an acceptable acoustic report from Reverb Acoustics dated December 2009 (report No. 09-1434-R1). However, the applicants have stated that they do not want the acoustic report recommendations included in the building design specifications. They want the dwelling to be approved without the acoustic measures being implemented due to financial constraints.

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The report received from Reverb Acoustics concludes that the dwelling can comply "providing the recommendations and procedures outlined in this report are followed, internal noise levels will be consistent with the intent of AS 2021-2000".

In assessing this application it is noted that without an appropriate acoustic attenuation it contravenes Council's Development Control Plan B2.13 Aircraft Noise and Australian Standard 2021-2000. The dwelling, without appropriate acoustic attenuation, can not be approved following a merit assessment under 79C of the Environmental Planning and Assessment Act 1979.

It is also noted that it is unfortunate that the applicant bought the block of land in early 2009 before the promulgation of the ANEF 2025. The 149 zoning Certificate issued by Council and presumably attached to the contract of sale documents addressed ANEF 2012 and the block was not mapped within the ANEF 20-25 noise exposure contour. Since purchase the owners engaged a builder and chose a design without being aware that the new ANEF 2025 was going to be promulgated on Monday 19th October 2009.

Council must assess the application under 79c of the Environmental Assessment and Planning Act 1979 and consider Australian Noise Exposure Forecast 2025.

FINANCIAL/RESOURCE IMPLICATIONS

Nil

LEGAL AND POLICY IMPLICATIONS

Approval is sought for Council to approve the dwelling within the 20-25 contours of Australia Exposure Forecast without appropriate noise attenuation. This is inconsistent with Council's Development Control Plan 2007 B2.13 and AS 2021-2000.

Consent of the application above may represent a precedent which has the potential to be used in future Development Applications as reason for consent noting fairness, consistency and equity in the application of Council planning provisions. There are approximately 2090 properties that will be affected in 20-25 ANEF as noted in the Draft Public Environment Report by the Department of Defence dated October 2009.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The social implications directly attributable to aircraft noise impacts and increased land-use conflict include reduced residential amenity and potential restriction of operation of the Williamstown Air-force Base and Newcastle Airport.

It is difficult to quantify the economic impacts of increased land-use conflict and/or changes to aircraft noise pollution due to encroaching development upon the Williamstown Air-force Base and Newcastle Airport. Cost may be significant on a local and national scale.

MINUTES FOR ORDINARY MEETING – 9 MARCH 2010

Aircraft noise has the potentially adverse impact on residential amenity. To permit the erection of dwelling without appropriate acoustic attenuation may unreasonably restrict the lawful ongoing operation of the Williamstown Air Force Base and Airport.

CONSULTATION

The application was not required to be exhibited as the application complied with Council's Local Environmental Plan 2000 and Development Control Plan 2007 – Section B6.

Council has liaised with the department of defence in relation to the promulgation of the ANEF 2025 and the forecast impacts of aircraft noise. The Department of Defence has expressed the view that dwellings such as proposed in this application must incorporate appropriate acoustic attenuation to ensure internal noise levels will be consistent with the intent of Australian Standard AS 2021-2000.

OPTIONS

Council has three options to consider with the proposed development:

- 1) Refuse the application as recommended.
- 2) To indicate support for the Development Application and request the Group Manager, Sustainable Planning to bring back draft conditions to a forthcoming Council meeting in the event that Council determines by way of approval, with such support being based upon a recognition of the need for points of difference to be clear in relation to potential precedent.
- 3) Defer the application to allow the applicant to amend the proposal to include appropriate acoustic attenuation.

ATTACHMENTS

- 1) Locality Plan
- 2) ANEF 20-25 map
- 3) Preliminary Assessment

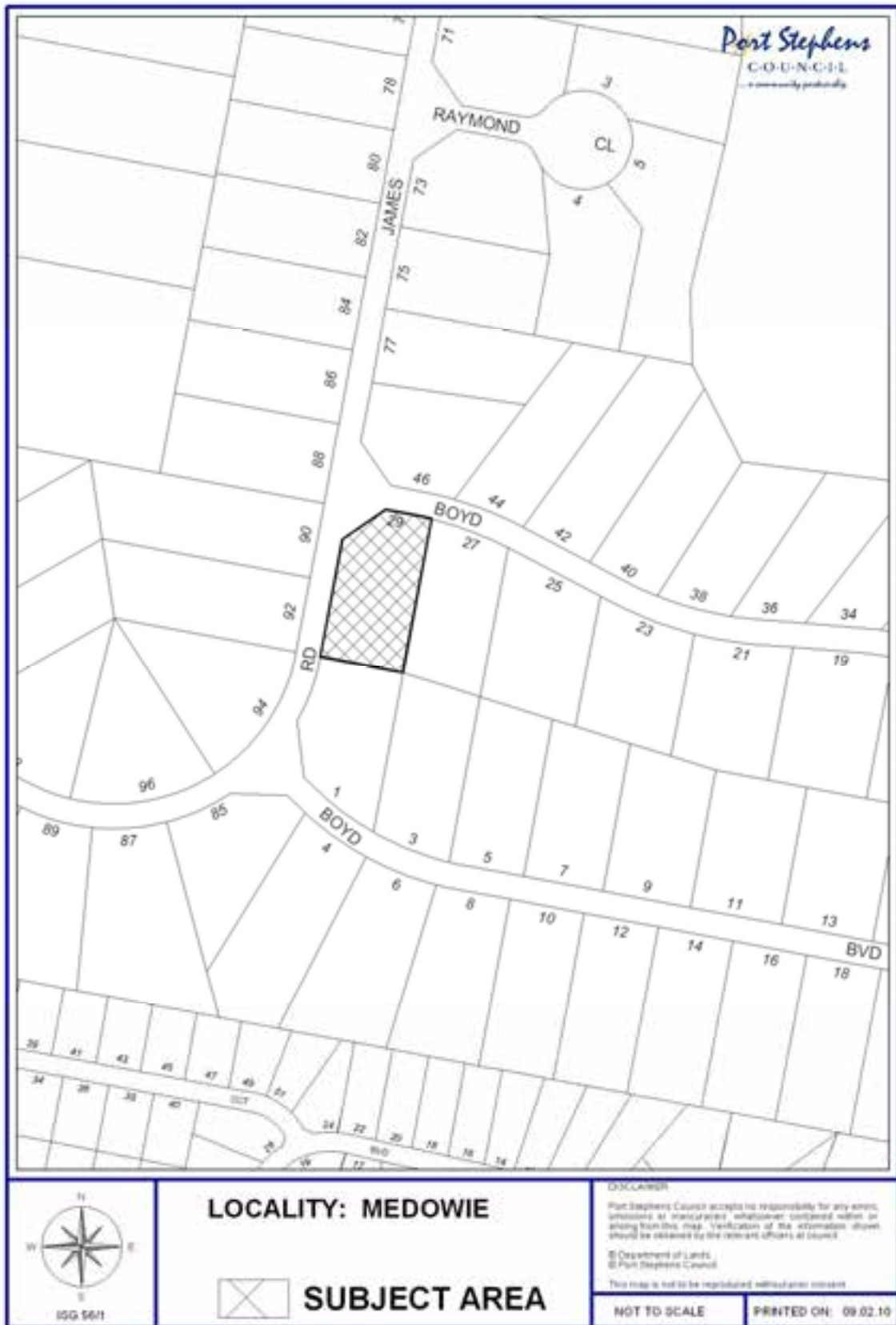
COUNCILLORS ROOM

- 1) Development Plans and Elevations
- 2) Statement of Environmental Effects
- 3) Aircraft Noise Impact Statement prepared by Reverb Acoustics dated December 2009
- 4) Supplementary Information dated 2 & 3 February 2010

TABLED DOCUMENTS

Nil

ATTACHMENT 1
LOCALITY PLAN



ATTACHMENT 2
ANEF 20-25 MAP IN RELATION TO THE LOCALITY PLAN



**ATTACHMENT 3
PRELIMINARY ASSESSMENT**

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

THE PROPOSAL

The proposal is for a single storey brick veneer dwelling.

THE APPLICATION

Owner	Mr M Strain & Ms R M Hann
Applicant	Acroplan Pty Ltd
Detail Submitted	Development Plans Statement of Environmental Effects Acoustic Report

THE LAND

Property Description	LOT 30 DP 248738
Address	29 Boyd Boulevard, Medowie
Area	8167.48m ²
Dimensions	
Characteristics	The block is located on a corner and falls towards the northern boundary, mapped within 20-25 ANEF 2025 contours.

THE ASSESSMENT

1. Planning Provisions

LEP 1987 – Zoning	1 (c3) Rural Small
Development Control Plan	B2.13 Aircraft Noise

ATTRIBUTE	PROPOSED	REQUIRED	COMPLIES
LEP Requirements			
Floor Space Ratio	277m ²	4083m ²	Yes
Height	4.609	9	Yes
DCP Requirements			
Number or Storeys	1	2	Yes
Building Line Setback	28.6m	12m	Yes
Side Setback	2m	13.5	Yes
Rear Setback	2m	40m	Yes

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Privacy			
Resident Parking	2	2	Yes
Basix	Dwelling Valued at \$232 441.00	Yes	Yes

Discussion

The proposed dwelling is permissible on the site and generally complies with Council's Development Control Plan 2007 except Section B2.13 Aircraft Noise.

Council's policy states that Development Applications within 20-25 ANEF is conditionally acceptable provided an acoustic report is submitted and signed and endorsed by an acoustic engineer. The report must demonstrate that Australian Standard 2011-200 has been considered in the design of the building and any proposed attenuation measures must be incorporated into the design and conditions and consent.

The applicant has argued the following:-

- 1) Actual Location of the property in relation to the 20-25 ANEF contour.
- 2) Anticipated noise impact of JSF on the applicant's property, according to Draft PER.
- 3) Financial Constraints placed on the applicant based on Council's policy.
- 4) S149 Certificate received from Council pre ANEF 2025.

2. Likely Impact of the Development

The proposed development will not have an adverse impact on the neighbouring properties but will impact the occupants of the dwelling with regards to excessive noise.

3. Suitability of the Site

The proposed dwelling is suitable for the site provided an appropriate sound attenuation report is provided.

4. Submissions

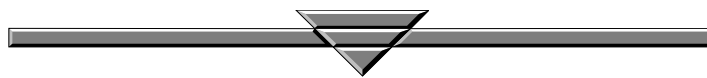
The application wasn't required to be advertised under Port Stephens Development Control Plan 2007.

5. Public Interest

The proposal if approved by Council would have major ramifications on how Council would assess Development Application for dwelling and dwelling additions within the 20-25 ANEF contour. The policy states that all development applications for dwelling and dwelling additions are conditionally acceptable provided an acoustic report is submitted that is signed and endorsed by an acoustic engineer. This would set a precedent within the Port Stephens Shire and the policy would be very hard to police.

SUPPLEMENTARY INFORMATION

EXTRA ORDINARY COUNCIL MEETING TUESDAY 16 FEBRUARY 2010



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***PLEASE NOTE THAT SUPPLEMENTARY INFORMATION WHICH IS HIGHLIGHTED HAS NOT YET BEEN VIEWED BY COUNCILLORS**

Supplementary Information



TO: All Councillors & Executive Team

FROM: David Broyd
Group Manager, Sustainable Planning

DATE: 15 February 2010

RE: Supplementary information for Extraordinary Council Meeting 16
February 2010

FILE No: 16-2009-890-1

ITEM No: 1

REPORT TITLE: DA for Single Storey Dwelling at 29 Boyd Boulevard, Medowie

PURPOSE

The purpose of this supplementary information is to provide advice to Council about wider strategic and legal issues relevant to decision making on this individual development application.

BACKGROUND

Council is advised that:

1. The Department of Defence has now agreed to provide a composite map to cover noise impacts of the Hawk, Hornet and Joint Strike Fighter. This is in response to issues raised strongly by Council that the impacts of the Hawk and Hornet need to be formally recognised in this way with the impacts phased out in conjunction with the phasing out of the Hornet and transfer to full operation of the joint Strike Fighter – as programmed to take place between 2018 and 2025.
2. As a consequence of this, the Group Manager, Sustainable Planning has directed that letters be circularised to 3,300 property owners who are affected by aircraft noise to varying extents in the LGA.

3. The Group Manager, Sustainable Planning is aiming, through further consultation with the Department of Defence, to recommend draft amendments to Council's Development Control Plan in April.

1. Draft Public Environmental Report

The Department of Defence Public Environment Report Cl. 6.9.2.3 '*Implications for land use development*' identifies the requirement of more homes requiring attenuation as per AS2021-2000 and certain land uses not being appropriate under the newly promulgated ANEF 2025 contour. It further states that PSC will be required to use the maps to ensure appropriate development and attenuation as required is implemented.

The implementation of the attenuation measures are subject to:-

- ANEF maps (issued by DOD) and
- the Australian Standard 2021-2000 '*Acoustics- Aircraft Noise Intrusion*'.

Council is exercising its functions under the relevant legislative framework in the interests of the homeowner (and subsequent owners of the property) the Department of Defence/ NAL and the community.

Parts of the LGA has been affected by aircraft noise pollution since the establishment of the RAAF Base circa 1945. The noise pollution emitted by the RAAF will increase with the introduction of the Joint Strike Fighter from 2017. PSC, as the development consent authority, will need to adapt policies based upon the ANEF 2025 and the Australian Standard by amending the Port Stephens Development Control Plan.

The changes came about due to amended ANEF maps promulgated by the DOD early October 2009. The actual location of the 20-25 ANEF contour is captured within note 1 of table 2.1 of AS2021 which states "*The actual location of the 20 ANEF contour is difficult to define accurately, mainly because of the variation of flight paths. Because of this, the procedure of clause 2.3.2 (conditionally acceptable-approval with attenuation) may be followed for buildings outside but near to the 20 ANEF contour*".

2. Council Resolutions and Directions from the Group Manager, Sustainable Planning

Note: Council Resolution of 15 December 2009 is Attachment 1.

The standard procedure that has been applied to date of implementation of ANEF 2025 has been (min # 430) (15/12/2009)

1. The ANEF 2025 maps are promulgated – in that they have been endorsed by the Deputy Chief of the Royal Australian Airforce (as per formal advice received on Monday 19 October 2009).

MINUTES FOR ORDINARY MEETING – 9 MARCH 2010

The Department of Defence has, to date, held the position that these ANEF 2025 maps supersede the ANEF 2012 maps.

2. The ANEF 2025 maps therefore are effectively matters for consideration under Section 79c of the Environmental Planning & Assessment Act and are the basis for relevant clauses to be included in Section 149 Certificates – subject of course to identified impacts of the noise contours contained in the ANEF 2025 maps for relevant properties.
3. Notwithstanding Points 1 and 2, the ANEF 2012 maps still represent Council policy under the Port Stephens DCP 2007 until such time as Council resolves to negate their policy effect. Therefore, the ANEF 2012 maps have continued applicability for advice, Section 79c assessment and Section 149 Certificate inclusion as has been recent practice.

It is hoped that that further clarification can be established and a joint position hopefully established with the Department of Defence regarding the implications and policy positions of the new aircraft noise mapping.

The ANEF 2025 maps are based upon assumed commencement of operation of the Joint Strike Fighter in 2017 and the establishment of full operation of the total number of Joint Strike Fighters to be based at Williamstown by 2025.

Clearly 79c assessment relates to applications for development that will sustain beyond 2017 and 2025; however there is at least an 8 year period from now during which the Hawk and Hornet aircraft will still operate and similar noise impacts will accrue as has been the case over recent years and has formed the basis of the ANEF 2012 mapping. Hence, Council needs to proceed on the basis, until Council policy changes, that the 2012 maps are also applicable.

This follows a calculated and sound approach with a view of Councils obligations under Section 79C of the Environmental Planning and Assessment Act 1979, the information at hand submitted to Council from the DOD and application of the Australian Standard AS2021-2000.

To again refer to legal advice on Councils ANEF policy conferred by Harris Wheeler "There may be however, potential consequences if clause 31A requires acoustic testing and compliance with table 3.3 (of AS2021-2000) and Council fails to impose such conditions on development approved; the council would then find itself in the same situation as in *Booth*" (*Moffats- Fishermans Village*).

3. Recent and Current Development Applications

Recent and current development applications (Attachments 2) is a record of recent and current Development Applications relevant to the implementation of aircraft noise policy following the promulgation of the ANEF 2025 maps.

4. Further Advice from Department of Defence

Advice from Manager, Land Planning & Spatial Information, John Kerwan from Department of Defence received on 15 February 2010 is provided below.

The subject land at 29 Boyd Blvd, Medowie is approximately 2.7 km to the west from the target area at Salt Ash Air Weapons Range (SAWR).

** The F-35 Joint Strike Fighter and Hawk aircraft will not directly overfly the site at low altitudes.*

** The forecast is for 13,116 aircraft movements passing at various altitudes over the SAWR per year.*

** There are forecasted, on average, to be 115 flying days a year at SAWR. (The F-35 Joint Strike Fighter is planned to operate up to 52 days a year and the Hawk is planned to operate up to 115 days a year.).*

** On an average flying day, there are forecasted to be more than 10 aircraft noise events over 80 dB(A) at the site per average flying day.*

** We're not aware of the details as to how the 8.7 hours per year was calculated. On an average flying day where SAWR is utilised, it is possible that there could be 4 "sorties" (or missions if you like) of up to 4 aircraft at a time (2, 3, or 4-aircraft formations), lasting no more than one hour (usually ~45mins) and comprising on average approximately 30 noise events affecting the subject land.*

RECOMMENDATION

That Council:

1. Invite the Commonwealth Minister for Defence, Senator John Faulkner to a meeting with all Councillors, the General Manager and the Executive Team regarding the management of aircraft noise in Port Stephens – and should the Minister decline to attend such a discussion in Port Stephens, then a deputation be sought with the Minister comprising :
The Mayor, Deputy Mayor, one Councillor from each of the three Wards, the General Manager and the Group Manager, Sustainable Planning.
2. To note the advice from the Department of Defence (15 February 2010) in relation to the Development Application for 29 Boyd Boulevard, Medowie.

ATTACHMENTS

- 1) Council Resolution of 15 December 2009
- 2) Recent and Current Development Applications.

ATTACHMENT 1
COUNCIL RESOLUTION OF 15 DECEMBER 2009

MINUTES ORDINARY COUNCIL – 15 DECEMBER 2009

ITEM NO. 4

FILE NO: PSC2006-0038

PROPOSED AMENDMENT TO PORT STEPHENS DEVELOPMENT CONTROL PLAN 2007 IN RESPECT OF ANEF 2025

REPORT OF: DAVID BROYD - GROUP MANAGER
GROUP: SUSTAINABLE PLANNING

RECOMMENDATION IS THAT COUNCIL:

- 1) Note the continued implementation of the direction of the Group Manager, Sustainable Planning that the ANEF 2012 and ANEF 2025 noise contour maps will, in combination, be used to assess development applications under Section 79(c) of the Environmental Planning & Assessment Act as amended 1999;
- 2) Note Council's submission in response to the draft Public Environment Report (Attachment 5); and
- 3) Continue, through the General Manager, to make representations to the Commonwealth Department of Defence to review the current situation of the ANEF 2025 maps and the continued noise impacts of the Hawk and Hornet aircraft and provide a suitable ANEF noise contour map as requested in the response to the draft Public Environment Report.

COUNCIL COMMITTEE MEETING – 15 DECEMBER 2009

RECOMMENDATIONS:

<p>Councillor Bob Westbury Councillor Shirley O'Brien</p>	<p>That Council:</p> <ol style="list-style-type: none"> 1) Note the continued implementation of the direction of the Group Manager, Sustainable Planning that the ANEF 2012 and ANEF 2025 noise contour maps will, in combination, be used to assess development applications under Section 79(c) of the Environmental Planning & Assessment Act as amended 1999; 2) Note Council's submission in response to the draft Public Environment Report (Attachment 5); and 3) Continue, through the General Manager, to make representations to the Commonwealth Department of Defence to review the current situation of the ANEF 2025 maps and the continued noise impacts of the Hawk and Hornet aircraft and provide a
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MINUTES ORDINARY COUNCIL – 15 DECEMBER 2009

		<p>composite ANEF noise contour map as requested in the response to the draft Public Environment Report.</p> <p>4) Write to the Department of Defence with copies to the Minister and Shadow Minister for Defence requesting compensation for residents and property owners previously unaffected by aircraft noise under ANEF 2012 but now inside the 2025 ANEF 20-25 noise affected zone to cover the costs of existing or new home attenuation.</p> <p>5) Prepare standardised measures for noise attenuation for dwelling affected by aircraft noise.</p> <p>6) Request a policy report to enable exceptions to noise attenuation requirements for property owners who have current development application that are now impacted by the ANEF 2025.</p>
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In accordance with the Local Government Act 1993, a division is required for this item.

Those for the Motion: Crs Bruce MacKenzie, Ken Jordan, Glenys Francis, Bob Westbury, John Nell, Shirley O'Brien, Sally Dover, Frank Ward, Geoff Dingle and Peter Kafer

Those against the Motion: Crs Steve Tucker

MATTER ARISING:

	<p>Councillor Glenys Francis Councillor Steve Tucker</p>	<p>That Council seek a meeting Minister of Defence, Department of Defence and RAAF regarding the proposed ANEF, BIS seeking reassurance that the current and future flight paths are adhered to.</p>
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MINUTES ORDINARY COUNCIL – 15 DECEMBER 2009

ORDINARY MEETING – 15 DECEMBER 2009

429	Councillor Bob Westbury Councillor Peter Kafer	It was resolved that the Council Committee 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: Crs Bruce MacKenzie, Ken Jordan, Glenys Francis, Bob Westbury, John Nell, Shirley O'Brien, Sally Dover, Frank Ward, Geoff Dingle and Peter Kafer

Those against the Motion: Crs Steve Tucker

MATTER ARISING

430	Councillor Bob Westbury Councillor Peter Kafer	It was resolved that the Matter Arising be adopted.
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**ATTACHMENT 2
RECENT AND CURRENT DEVELOPMENT APPLICATIONS**

(DISTRIBUTED ON THE NIGHT)

Cr Jordan moved and seconded by Cr Dover that Item 2 be brought forward and dealt with prior to Item 1.

ITEM NO. 2

FILE NO: 16-2008-291-1

DEVELOPMENT APPLICATION FOR SINGLE STOREY DWELLING AT NO. 20 NOBLES ROAD, NELSONS PLAINS

**REPORT OF: KEN SOLMAN - ACTING MANAGER, DEVELOPMENT AND BUILDING
GROUP: SUSTAINABLE PLANNING**

RECOMMENDATION IS THAT COUNCIL:

Give consideration to the draft conditions prepared following Council Resolution No. 038 of the meeting of 23 February 2010.

**COMMITTEE MEETING – 09 MARCH 2010
RECOMMENDATION:**

	Councillor Bruce MacKenzie Councillor Peter Kafer	That Council approve the development application, 16-2008-291-1 (20 Nobles Rd, Nelsons Plains) subject to the conditions as listed in Attachment 1.
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	Councillor John Nell Councillor Steve Tucker	That the Motion be put.
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In accordance with Section 375A, Local Government Act 1993, a division is required for this item.

Those for the Motion: Crs Peter Kafer, Bruce MacKenzie, Shirley O'Brien, Geoff Dingle, Bob Westbury and Sally Dover .

Those against the Motion: Crs Glenys Francis, Ken Jordan, Steve Tucker, John Nell, Frank Ward and Daniel Maher.

The Chairperson exercised his casting vote.

The Motion on being put was lost.

MINUTES FOR ORDINARY MEETING – 9 MARCH 2010**FORESHADOWED MOTION**

	Councillor Daniel Maher Councillor Steve Tucker	That Council defer the development application for a single storey dwelling at No. 20 Nobles Road, Nelson Plains for a 2way conversation with Councillors for the development of a draft policy for building on the floodplain and that the item be brought back to Council on the 13th April 2010.
	Councillor Peter Kafer Councillor Glenys Francis	That the matter be deferred to Ordinary Council meeting 9 March 2010.

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

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

Those against the Motion: Nil.

ORDINARY MEETING – 09 MARCH 2010

062	Councillor Ken Jordan Councillor Frank Ward	It was resolved that Council: 1. Council approve the development application, 16-2008-291-1 (20 Nobles Rd, Nelsons Plains) subject to the conditions as listed in Attachment 1. 2. The mound be expanded to accommodate the landing of a helicopter. 3. That a draft floodplain policy for building houses in floods zones for any future development be prepared for Council.
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In accordance with Section 375A, Local Government Act 1993, a division is required for this item.

MINUTES FOR ORDINARY MEETING – 9 MARCH 2010

Those for the Motion: Crs Peter Kafer, Ken Jordan, Steve Tucker, Shirley O'Brien, Geoff Dingle, Frank Ward, Bob Westbury, Sally Dover and Bruce MacKenzie.

Those against the Motion: Crs Glenys Francis, Daniel Maher and John Nell.

The Motion on being put as carried.

AMENDMENT

	Councillor Geoff Dingle Councillor Peter Kafer	That Council approve the development application, 16-2008-291-1 (20 Nobles Rd, Nelsons Plains) subject to the conditions as listed in Attachment 1 of the Council Committee agenda of 9 March 2010.
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In accordance with Section 375A, Local Government Act 1993, a division is required for this item.

Those for the Motion: Crs Peter Kafer and Geoff Dingle.

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

The amendment on being put was lost.

BACKGROUND

The purpose of this report is to provide draft Conditions of Consent for consideration by Council for a development application that Council has resolved to support. The application is for a single storey dwelling to be erected upon an existing "cattle refuge mound" upon premises which are identified as Flood Prone Land.

On 23 February 2010, Council considered the proposal for determination. At this meeting Council resolved (reference 038) :

"That Council express its support in principle for the Development Application and request the Group Manager, Sustainable Planning, to draft Conditions of Consent for the next Ordinary Meeting of Council in the event that Council resolves to determine the Application in terms of Conditional Consent.

In this regard, draft conditions are shown in Attachment 1.

Consent is sought for the construction of a single storey brick veneer dwelling on an existing cattle refuge mound located at LOT: 2, DP: 784901, 20 Nobles Road, Nelsons

Plains. The subject site is zoned 1(a) – Rural Agricultural “A” which is described in *Port Stephens Local Environmental Plan 2000 (LEP)*. The subject site is identified as flood prone land with the site further identified as a floodway and excessive depth zone.

During assessment of this application it is noted that previous applications in regard to similar developments at this site were refused due to inconsistencies with the *Lower Hunter Valley Floodplain Risk Management study*, the *New South Wales Flood Development Manual* and *Port Stephens Council LEP2000*.

When floodwaters inundate this property the nearest flood free land is approximately 3km to the north at the intersection of Hinton and Seaham Rd or alternatively, 3km to the south at Raymond Terrace. With reference to the *Lower Hunter Valley Floodplain Risk Management study* the site is located within an area of Extreme Planning Hazard, with recommendation in that report suggesting no additional residential dwelling be located in that area.

The subject land is typically below 4 metres-Australian Height Datum (AHD) with a 5% Annual Exceedance Probability(AEP) (loosely referred to a 1 in 20 year event) being 4.2M AHD. Within a 0.5% AEP event flood depths or greater than 4m are typical. The subject site has been identified at 2.6m AHD at the base of the cattle refuge mound and 4.2m AHD as an overall height.

To achieve a finished floor level to habitable rooms as stated on the submitted plans of 5.3m AHD an increase in the vicinity of 715mm to 865mm on top of presently constructed cattle refuge mound is required. This gives a finished height of the building platform (cattle refuge mound) of 5.00AHD approximately.

FINANCIAL/RESOURCE IMPLICATIONS

Reference is made to Attachment 2- Council report to the Ordinary Council Meeting dated 23 February 2010.

LEGAL AND POLICY IMPLICATIONS

Reference is made to Attachment 2- Council report dated 23 February 2010 to the Ordinary Council Meeting dated 23 February 2010.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Reference is made to Attachment 2- Council report to the Ordinary Council Meeting dated 23 February 2010.

CONSULTATION

Reference is made to Attachment 2- Council report to the Ordinary Council Meeting dated 23 February 2010.

OPTIONS

Council may:

- 1) Approve the development application, 16-2008-291-1 (20 Nobles Rd, Nelsons Plains) subject to the conditions as listed in Attachment 1;
- 2) Refuse the application.

ATTACHMENTS

- 1) Draft Conditions of Consent
- 2) Council Report 23 February 2010

COUNCILLORS ROOM

- 1) Plans and elevations/site plan.

TABLED DOCUMENTS

Nil.

ATTACHMENT 1
DRAFT CONDITIONS OF CONSENT

17. Separate approval is required to occupy, close or partially close the road reserve adjacent to the property under the Roads Act. The storage of materials, placement of toilets and rubbish skips within the road reserve is not permitted.
18. No construction or demolition work shall obstruct pedestrian or vehicular traffic in a public place, a hoarding or fence must be erected between the construction site and the public place.
19. A waste containment facility shall be provided on the construction site immediately after the first concrete pour for the building and is to be regularly serviced. **Council may issue 'on the spot' fines for pollution/littering offences under the Protection of the Environment Operations Act 1997.**
20. All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with AS2601-2001 and Workcover Authority requirements.

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

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

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

22. A "KEEP PORT STEPHENS WATERWAYS POLLUTION FREE" sign shall be displayed and be clearly visible from the road frontage for public viewing on the site at the commencement of works and remain in place until completion of the development. Signs are available from Port Stephens Council.
23. Prior to the commencement of work, provide a 3m wide all weather vehicle access from the kerb and gutter to the building under construction for the delivery of materials & trades to reduce the potential for soil erosion. Sand shall not be stockpiled on the all weather vehicle access.

24. All stockpiled materials shall be retained within the property boundaries. Stockpiles of topsoil, sand, aggregate, spoil or other materials shall be stored clear of the all weather vehicle access and drainage lines.
25. The Principal Certifying Authority shall only issue an occupation certificate when the building has been constructed in accordance with the approved plans, specifications and conditions of consent. No occupational use is permitted until the Principal Certifying Authority issues an occupation certificate. NOTE: If an accredited certifier approves occupation of a dwelling the accredited certifier is to immediately notify Council in writing.
26. **Prior to occupying the approved dwelling(s)**, contact Council's Mapping Section on 49800304 to obtain the correct house numbering. Be advised that any referencing on Development Application plans to house or lot numbering operates to provide identification for assessment purposes only.
27. The development shall be carried out in accordance with the Building Sustainability Index (BASIX) certificate number 171890S. Where minor changes to the development occur (eg colours and the like) these changes shall be referred to Council **prior to the changes being made**.

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

28. **Prior to commencement of any works** within the road reserve for the provision of a driveway crossing, the applicant or their nominated contractor shall make application to Council and receive approval for the construction of the driveway.

Application shall be made on Council's Driveway Construction Application form, **a copy of which is attached** to this consent for your convenience. For further information on this condition please contact Council's Facilities and Services Group.

The construction of the footpath crossing must be completed **prior to issue of Final Occupation Certificate**.

29. Collected stormwater runoff shall be piped to an infiltration trench located in the front landscaped area(s), in accordance with **Council's Standard Drawing S 136** with an overflow pipe to the street.
30. Upon completion of the landfill activities, submit a survey plan prepared by a registered surveyor confirming that the landfilling has been undertaken in accordance with the approved plans and documentation. Council will insist on the removal of excessive fill.
31. All building structures, components, mounds, storage tanks and equipment are to be designed and engineer certified to withstand the flood forces,

debris impact and buoyancy uplift of the designated flood ie: Flood level 5.1m AHD – Velocity 0.6 m/s. .

Certification from a practising structural engineer showing satisfactory design in compliance with this condition and appropriate standards shall be forwarded to the consent authority **prior to commencement of any works.**

32. The development shall be constructed in accordance with the NSW Government Floodplain Management Manual (2005).
The Flood Planning Level for this development is 5.1 metres AHD and subject to submitting amended plans to Council for assessment.
Flood Compatible Building Materials are listed in the attached Schedule #.

The following design precautions must be adhered to:-

- a. The floor level of any habitable room is to be located at a height not less than the Flood Planning Level. A survey certificate verifying compliance with this condition shall be provided to the Principal Certifying Authority as soon as practical on completion of the floor level.
- b. In sewerred areas some plumbing fixtures may be located below the Flood Planning Level. Where this occurs sanitary drainage is to be fitted with a reflux valve to protect against internal sewage surcharge.
- c. No potentially hazardous or offensive material is to be stored on site that could cause water contamination during floods.
- d. All building materials, equipment, ducting, etc., below the Flood Planning Level shall be flood compatible.
- e. All main power supply, heating and air conditioning service installations, including meters shall be located above the Flood Planning Level.
- f. All electrical wiring below the Flood Planning Level shall be suitable for continuous submergence in water. All conduits below the Flood Planning Level shall be self-draining. Earth core leakage systems or safety switches are to be installed.
- g. All electrical equipment installed below the Flood Planning Level shall be capable of disconnection by a single plug from the power supply.
- h. Where heating equipment and fuel storage tanks are not feasible to be located above the Flood Planning Level then they shall be suitable for continuous submergence in water and securely anchored to overcome buoyancy and movement which may damage supply lines. All storage tanks shall be vented to an elevation above the Flood Planning Level.
- i. All ducting below the Flood Planning Level shall be provided with openings for drainage and cleaning.

- j. Septic and holding tank lids, inspection openings and associated electrical equipment connections and switchgear must be located above the 1% AEP Flood Level.
- k. Any on-site effluent disposal must be carried out in an area above the 5% Flood Level.

Attach schedule for flood compatible materials.

Conditions Prior to issue of Construction Certificate

1. A separate approval is required to install, alter or construct an on-site sewage management system (a waste treatment device or a human waste storage facility). Application shall be made to Council under the Local Government Act 1993 – Section 68C(5). Prior to issuing of the **Construction Certificate** the applicant is to submit to Council and receive, an approval for the proposed on-site sewage management system.
2. Prior to the issue of a Construction Certificate for the proposed dwelling a development consent is to be obtained for the construction of an all-weather driveway from Nobles Road to the dwelling/building site.

Conditions Prior to issue of Occupation Certificate

1. A separate approval is required to operate an on-site management facility. Prior to issuing of an **Occupation Certificate** contact Councils Environmental Services Department to ensure that an Approval to Operate the on-site sewage management system has been granted and is currently in force for the development the subject of this consent.
2. Prior to the dwelling being occupied and/or the issue of an Occupation Certificate, an all-weather driveway is to be fully constructed and a satisfactory final completed in accordance with the relevant development consent.

ATTACHMENT 2
COUNCIL REPORT DATED 23 FEBRUARY 2010

ITEM NO. 1

FILE NO: DA 16-2008-291-1

REVIEW OF DEVELOPMENT APPLICATION SEEKING APPROVAL TO CONSTRUCT A SINGLE STOREY DWELLING AT 20 NOBLES ROAD, NELSONS PLAINS, PUSUANT TO SECTION 82A OF ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979

REPORT OF: KEN SOLMAN – ACTING MANAGER, DEVELOPMENT & BUILDING
GROUP: SUSTAINABLE PLANNING

RECOMMENDATION IS THAT COUNCIL:

Refuse the Section 82A Review of Development Application 16-2008-291-1 for the following reasons:

- 1) The proposed development is inconsistent with the provisions of *Port Stephens Local Environmental Plan 2000*, in particular, the Rural 1(a) Zone objectives and planning considerations for development on flood prone land.
- 2) The proposed development is to be located on a floodplain identified as being an area of *High Hazard* (from a hydraulic point of view ie, floodwater depth and velocity) and the *Lower Hunter Valley Floodplain Risk Management Study* (November 2001) recommends that no additional dwellings should be permitted in this location.
- 3) The proposed development is considered an inappropriate land use under the *Floodplain Development Manual 2005*.
- 4) Approving additional dwelling houses in a known flood area designated as “*High Hazard*” is likely to eventuate into an “*Extreme Planning Hazard*” by placing further demand on the already limited resources of the community as a whole, and emergency services specifically, due to domestic property protection, evacuation and/or re-supply.
- 5) Approval of this application would have an undesirable cumulative effect by increasing the community's susceptibility to flooding in terms of social, economic and environmental/ecological consequences.
- 6) It is not possible to implement an evacuation plan which provides permanent, fail safe, maintenance free measures to ensure the timely, orderly and safe evacuation of occupants.

BACKGROUND

The purpose of this report is to present a Section 82A Review Application to Council for determination.

Development Application 16-2008-291-1 was refused by Council on 28 November 2008. The owner/applicant has lodged a Section 82A Review seeking a formal review of Council's determination.

MINUTES FOR ORDINARY MEETING – 9 MARCH 2010

On 1 August 2005, Council refused a development application (DA 16-2002-712-1) proposing to erect a single storey dwelling upon an earth mound located at the abovementioned property. The application which is the subject of this review (DA 16-2008-291-1) proposes the construction of a single storey dwelling house upon an earth mound situated approximately fifty (50) metres from the western boundary addressing Nobles Road, seventy (70) metres from the Hunter River and eight hundred (800) metres from the eastern boundary addressing Seaham Road.

The subject site is zoned 1(a)-Rural Agricultural "A" which is described in *Port Stephens Local Environmental Plan 2000* (LEP). The subject site is identified as flood prone land and Clause 37 of the LEP addresses development on flood prone land.

The Lower Hunter Valley Floodplain Risk Management Study (November 2001) indicates that the subject property is located in an area of "EXTREME PLANNING HAZARD" where it is recommended that no additional residential dwellings should be permitted and should be actively discouraged in areas where the natural surface is below the level of the 5% Annual Exceedance Probability (AEP) (1 in 20 year) flood. The 5% AEP flood level varies from 4.6 metres Australian Height Datum (AHD) near Green Rocks to 3.2 metres AHD at the downstream end of the zone. Sound planning and engineering practice does not support habitable dwellings on land below the level of the 5% AEP flood level. The subject land is typically below 4 metres AHD.

Large areas of this *floodplain management* zone are exposed to extreme hazard during large flood events. Flood depths of greater than 4 metres typically occur in the 0.2% AEP flood. *Aspect Development & Survey Pty Ltd* has identified a surface level of 2.6 metres AHD at the base of the existing earth mound and an approximate mound height of 4.2 metres AHD. Based upon these figures it is expected that this property could be inundated by floodwater to a depth of approximately 6.6 metres AHD. Plans submitted with the application show a Finished Floor Level (FFL) for the habitable rooms of the proposed dwelling of 5.3 metres AHD. To achieve this floor level, the applicant proposes to introduce a further 715-865 mm of fill onto the existing mound increasing the height of the earth mound to approximately 5.0 metres AHD. The proposed dwelling and earth mound will have a maximum height of approximately 10.3 metres AHD to the ridge of the roof.

On 11 June 2007, the most recent flooding event occurred. This flood event was calculated to be approximately a 5% Annual Exceedance Probability (AEP) flood event. This flood event was estimated to be in the order of a 1 in 20 year or 1 in 15 year flood event.

The nearest flood free land available to the subject site is situated approximately 3 kilometres to the north at the intersection of Hinton and Seaham Roads and 3 kilometres to the south to Raymond Terrace. If approved, the introduction of an additional dwelling and potential planning precedent for further dwellings in this locality will place further pressure on emergency service resources in a known floodway and excessive depth zone.

Although flood inundation gives rise to temporary/intermittent impacts, the introduction of additional people and dwellings onto a known floodplain is not supported and is contrary to the provisions of the *New South Wales Floodplain Development Manual 2005*. Refusal of this application is recommended due to an extreme risk of flooding on the subject land. The level of risk is determined by flood depths and velocities, flood frequency, isolation, emergency response and the cumulative effect of permitting the construction of additional dwellings with the resultant increases in occupant numbers placed at risk. These contributing factors are discussed further in the assessment.

It is strongly recommended that this application be refused based upon the expected level of flood risk and associated social, economic and environmental impacts.

FINANCIAL/RESOURCE IMPLICATIONS

The financial/resource implications are difficult to determine as Council may accept a significant legal liability if consent is issued for a dwelling house on a property identified as subject to "High Hazard" flooding which is liable to become an "Extreme Planning Hazard".

LEGAL, POLICY AND RISK IMPLICATIONS

Council may become legally liable in cases of property damage and/or loss of life where approval has been given to construct residential dwellings in flood prone areas whilst being specifically aware of the risks.

The Councillors attention is specifically drawn to Sections 733(1) and 733(4) of the Local Government Act 1993 relating to exemption from liability with respect to flood prone land and the basis of "good faith" defence established in legal case law.

Council's solicitors, Harris Wheeler Lawyers' advise:

"This defence (Section 733(1) of the Local Government Act 1993) will be less easily established if the consent is not issued substantially in accordance with the principles established in the Floodplain Management Manual notified under s.733(5). The Manual provides, in effect, that a site specific evacuation plan is ineffectual and should not be the basis of consent, accordingly, simply imposing a condition, including a deferred commencement condition, that an applicant obtains the SES's approval of a site specific evacuation plan, runs the risk that the consent is not in accordance with the Manual. In addition, it is understood that the SES is refusing to approve such plans, having no statutory authority or role in doing so. Accordingly, any such condition would be incapable of being satisfied and is, for that reason, also inappropriate."

If Council approves the subject application, Council will be establishing a significant planning and environmental precedent in this locality and other flood prone areas within the Port Stephens LGA, effectively encouraging residential development in known flood prone areas adjoining an environmentally sensitive water body (the Hunter and Williams Rivers). This raises the potential for liability against which the Council is not protected as referred to in Section 733(1).

Further, Gadens Lawyers report that a recent decision of the NSW Land and Environment Court in *Walker v Minister for Planning* 2007 NSWLEC 741 confirmed that planning authorities must consider the potential impact of climate change and rising sea levels on future developments.

The consequences of the Court's decision demonstrates its' consideration of the significance of "global" environmental factors such as greenhouse emissions and climate change on project assessments. In making his decision, Biscoe J comprehensively outlines the relevancy of Environmentally Sustainable Development (ESD) principles and the scientific data available which supports the existence of pending climate change. Further, His Honour Biscoe J found that the determining authority (in this case Council) was bound to take into account the relevant principles of ESD which fall within the public interest considerations listed in s79C of the EP&A Act. He also held that the Council was required, pursuant to s79C of the EP&A Act, to take into account the relevant principles of ESD, in particular the precautionary principle of

intergenerational equity in the context of climate change when determining a development application.

The Walker decision has implications specifically for applications to develop or expand developments in coastal and flood liable areas. Consequently, in relation to these applications, it is recommended that proponents and councils make an assumption that there is the potential for greater flooding or inundation than is presently the case (ie due to climate change).

Where there is a failure to consider these matters, the Court has demonstrated that it is not hesitant to declare the approval void.

His Honour Justice Biscoe of the NSW Land and Environment Court (LEC) recently acknowledged the efforts to date of those who have demonstrated concern and willingness to take action in bringing litigation. He stated "*The enforcement of Ecologically Sustainable Development (ESD) principles, including in relation to climate change, depends upon the vigilance and willingness of authorities and concerned persons to litigate where there has been an actual or threatened breach of ESD principles. The expanding case law is owed to their initiatives*".

It is evident from the above decisions that the Courts appear to be inclined to pull together statutory and policy provisions and flexibly interpret and apply them in developing jurisprudence for sustainable development and allowing for adaption to climate change. This approach should give Council some confidence that decisions that reasonably take into account climate change will be upheld in courts of law.

This development application is inconsistent with Council's *Areas Affected by Flooding and/or Inundation Policy* originally adopted on 27 January 1998 and most recently amended by Council on 25 September 2007. The objectives of this policy include:

To manage the development of land subject to or affected by the likelihood of flooding and/or tidal inundation defined as flood prone 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 zones.

Specifically, the policy states that:

"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".

The applicant has submitted a report prepared by Molino Stewart Pty Ltd (Environment & Natural Hazards) which has shortcomings as indicated in the discussion section of the assessment.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Approval of this application increases the community's susceptibility to the effects of flooding and the associated consequences. The effects of flooding may be distinguished between social, economic and environmental implications.

The social implications directly attributable to flood inundation include but are not limited to risks to public safety, community disruption, direct and indirect damages caused by floodwaters (property damage, loss of goods and personal possessions), emotional, mental and physical health costs, provision of food and accommodation for evacuees, loss of wages and opportunity cost to the public caused by the closure or limited operation of public facilities.

Introducing additional dwelling houses into known high flood risk areas zoned 1(a) Rural Agricultural "A" is not desirable. Refusal of this application reduces private and public losses attributed to flooding.

The temporary and intermittent impacts of unsuitable development on flood prone land contribute to environmental pollution through erosion, waterborne debris, residual debris, structural failure of dwellings, fences, outbuildings and other domestic/rural infrastructure and possible effluent pollution (from onsite sewage treatment systems in instances where the occupant chooses not to evacuate).

There are no significant flora and fauna issues associated with this application.

CONSULTATION

This development application has been assessed on its merits with due regard to background information contained in the previous application and report from Council's Flooding Engineer.

The State Emergency Service (SES) has advised that it has no statutory authority to endorse or reject development applications and/or private flood evacuation plans. A letter from the Lower Hunter Division Executive Officer of the SES (dated 9 September 1998) advises that approving the construction of dwelling houses in known flood prone areas is undesirable, placing additional demand upon already limited resources attending to property and infrastructure protection, evacuation and/or re-supply. The preparation of private evacuation plans may reduce the demand upon SES resources however these plans are usually ineffective during significant flood events and are not to be relied upon. Refusal of this application is recommended based on the level of flood risk upon the proposed development and not as a consequence of advice received by the SES.

OPTIONS

Adopt the recommendation.

Reject or amend the recommendation.

Council express its support in principle for the Development Application and request the Group Manager, Sustainable Planning to draft Conditions of Consent for the next Ordinary

MINUTES FOR ORDINARY MEETING – 9 MARCH 2010

Meeting of Council in the event that Council resolves to determine the Application in terms of Conditional Consent.

ATTACHMENTS

Locality Plan
Assessment

COUNCILLORS ROOM

Plans and elevations
Council policy – areas affected by flooding and/or inundation
S733(4) Local Government Act 1993 – exemption from liability – flood liable land and land in coastal zone

TABLED DOCUMENTS

NIL

ATTACHMENT 1
LOCALITY PLAN



**ATTACHMENT 2
ASSESSMENT**

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

THE PROPOSAL

The applicant seeks approval to construct a single storey dwelling house upon an elevated earth mound located approximately 50 metres to the east of Nobles Road, Nelsons Plains and 800 metres from the western boundary (Seaham Road). The Hunter River is approximately 70 metres to the west of the raised mound. The dwelling consists of a lounge/dining/kitchen/family/rumpus/study area, four (4) bedrooms and associated bathroom/ensuite and a two (2) vehicle garage with attached workshop.

The application proposes to construct a habitable floor level at 5.300 metres AHD.

THE APPLICATION

Owner	Mr Noel Martin
Applicant	Mr Noel Martin
Detail Submitted	Development plans which include site and floor plans and elevations.

THE LAND

Property Description	Lot 2, DP 784901
Address	20 Nobles Road, NELSONS PLAINS
Area	10.21 Hectares
Dimensions	Northern boundary – 874.800 metres Southern boundary – 743.270 metres East/west boundary – 109.910 metres
Characteristics	The land is generally level with an average elevation of approximately 2.00 metres AHD. The dwelling is proposed to be constructed upon an earthen mound located approximately three (3) kilometres distance from flood free land in the townships of Osterley and/or Raymond Terrace. The height of the existing earthen mound is generally 4.00 metres AHD. The submitted plans indicate that the applicant proposes to raise the height a further 715-865 mm to a final level of approximately 4.90 metres AHD

THE ASSESSMENT

1. Planning Provisions

LEP 2000 – Zoning
Relevant Clauses

Rural 1(a) RURAL AGRICULTURAL “A”
Clause 11(2)(e) and Clauses 37 and 38
(including “**Objectives for development on flood prone land**”)

Development Control Plan

Port Stephens Development Control Plan
2007 (Adopted 31 May 2007). This
application received 21 April 2008.

State Environmental Planning Policies

Not applicable

ATTRIBUTE	PROPOSED	REQUIRED	COMPLIES
LEP Requirements			
Minimum area per dwelling	10.21 Hectares (102,000 m ²)	4000 m ² minimum	Yes
Finished Floor Level (Flood Prone Land)	5.30 metres AHD	Flood Planning Level 5.30 metres AHD	Yes*
EXTREME HAZARD ZONE	New dwelling	No habitable dwellings	No**
DCP Requirements			
Building Line Setback	Approximately 50 metres from west boundary (Nobles Road)	12 metres from west boundary (Nobles Road)	Yes
Side Boundary Setbacks	44 metres (north boundary) and 52 metres (south boundary)	900 mm	Yes
BASIX Requirements	Water Score 40 Energy Score 48	Target 40 Target 40	Yes Yes

- **Flood Planning Level (FPL). Flood levels selected for planning purposes which should be based on an understanding of the full range of flood behaviour and the associated flood risk including the social, economic and ecological consequences associated with floods of different severities. Different FPL's may be appropriate for different categories of land-use and for different flood plans.*
- ***The proposal is not consistent with Clause 52 of the Hunter Regional Management Plan, Clauses 37 and 38 of Port Stephens LEP 2000, Flood Management Manual 2001 or the Lower Hunter Valley Floodplain Risk Management Study 2001 and is the primary basis for recommending refusal in this instance. In a 1% Annual Exceedence Probability flood event, the proposed dwelling will be physically isolated due to severe*

flood inundation. The nearest flood free land in proximity to the subject land is located at Mount Osterley and/or Raymond Terrace, placing further pressure upon emergency services and potentially placing dwelling occupants and volunteer emergency personnel at risk. The June 2007 flood event was calculated as approximately a 5% Annual Exceedence Probability flood event.

Discussion

The report by Molino Stewart discusses the probability of flooding affecting the dwelling and occupants while on the mound. It does not address the issue of floodwaters affecting residents or rescuers evacuating or travelling through or relying on public utility services in the surrounding high hazard floodway. Nor does it address the cumulative effect of residences in the high hazard floodway.

The proposed dwelling is to be located on land currently zoned 'Rural 1(a)' Rural Agriculture pursuant to LEP 2000.

The proposed development is within the area classified as flood prone land under LEP 2000 and as such Council must consider the following requirements in accordance with that LEP before granting consent:

(A) THE EXTENT AND NATURE OF THE FLOODING OR INUNDATION HAZARD AFFECTING THE LAND

FLOOD DEPTHS AND VELOCITIES

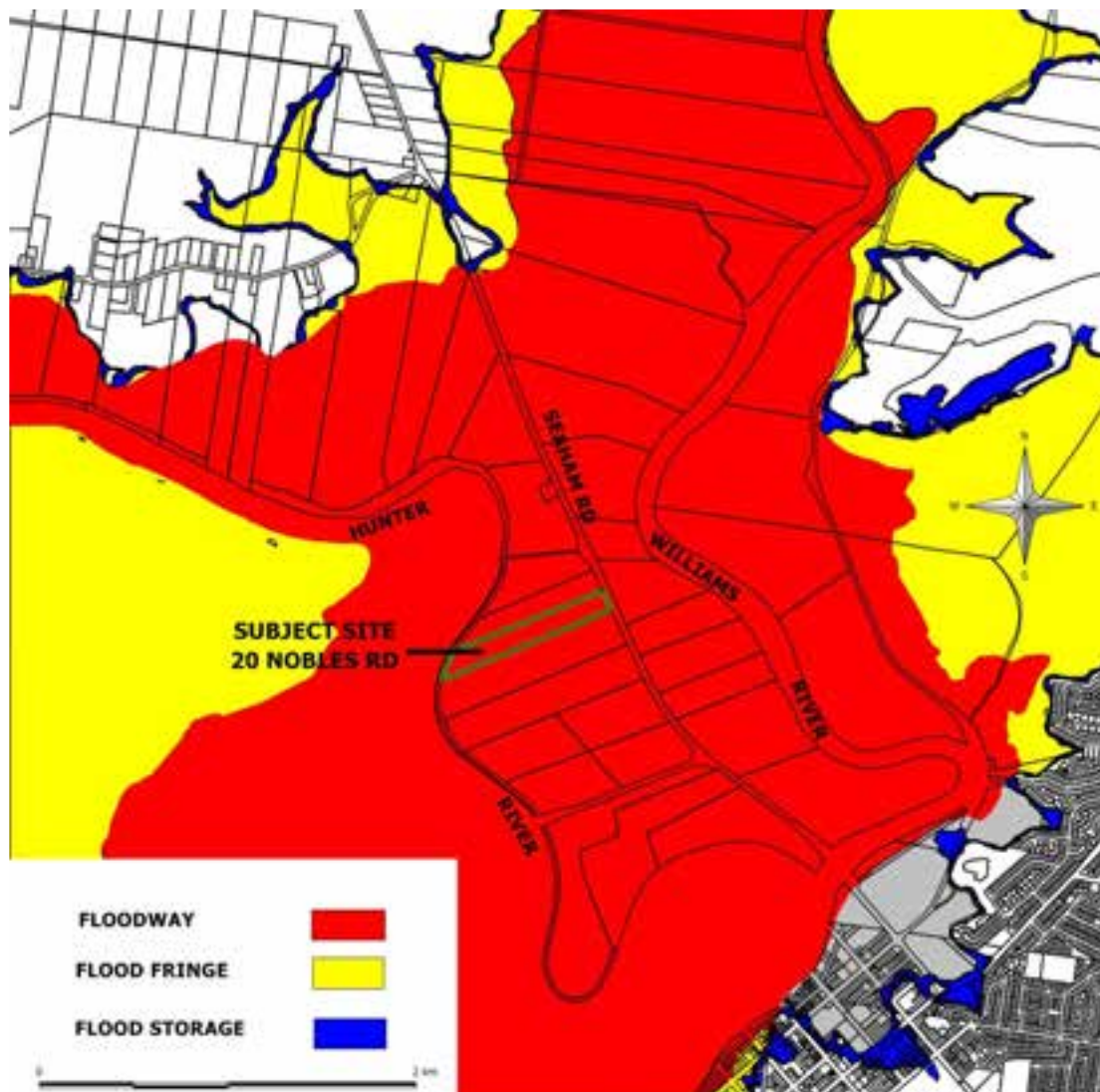
The Williams River Flood Study 2009 indicates the following information for this site, with a ground level of approx. 1.8 to 2.6 metres AHD (as indicated by the Flood Consultant report):

AEP Flood	AHD Level (Metres)	Velocity (Metres/sec)	Depth water at site (Metres)
10%	Not flooded but river (may be affected by local rainfall)		
5%	4.2	0.2 to 0.6	1.6 to 2.4
1%	4.6	0.2 to 0.6	2.0 to 2.8
0.5%	5.1	0.2 to 0.6	2.5 to 3.3
extreme	9.7	0.2 to 0.6	7.1 to 7.9

Although the site is not affected by flooding from the Williams and Hunter rivers in a 10% AEP and smaller flood, roads leading to the site may be cut off by flooding elsewhere.

FLOOD HAZARD

The Williams River Flood Study indicates that this property is in the middle of a High Hazard Floodway excluding planning provisions as shown in the following figure:



The Draft Lower Hunter River Floodplain Management Study (August 1999) recommends that no habitable dwellings should be permitted on land below the 5% AEP flood on Nelsons Plains as they are subject to this flood hazard and the risks associated with main flood flows and the obstruction to the flow of floods. The property in question is approximately 1.6 to 2.4 metres below the 5% AEP flood.

(B) WHETHER OR NOT THE PROPOSED DEVELOPMENT WOULD INCREASE THE RISK OR SEVERITY OF FLOODING OR INUNDATION AFFECTING OTHER LAND OR BUILDINGS, WORKS OR OTHER LAND USES IN THE VICINITY

The proposed development, in isolation, would not cause any detrimental affect on other properties as the filling is proposed to a height of approximately 2.5 to 3 metres

above the natural ground, however there would be a visual intrusion into the landscape.

(C) 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 THE OBJECTIVES OF THIS PLAN

The risk of flooding on the proposed dwelling will be reduced by the adoption of the proposed pad level. Raising the access track to the level of Nobles Road would still be flooded by even the 5% AEP flood. Access to high ground is still via several flood prone roads including Nobles, Seaham and Raymond Terrace Roads which are subject to moderate flooding.

(D) THE SOCIAL IMPACT OF FLOODING ON OCCUPANTS, INCLUDING THE ABILITY OF EMERGENCY SERVICES TO ACCESS, RESCUE AND SUPPORT RESIDENTS OF FLOOD PRONE AREAS

EMERGENCY RESPONSE

The State Emergency Service has commented on similar developments on the issue that individual acceptance of responsibility for flood emergencies does not always work in practice, and that the SES does not have the resources to provide support to those that do not. Furthermore there is no telemetered flood warning system, nor does the Bureau of Meteorology advise predicted flood levels for this particular area (and downstream).

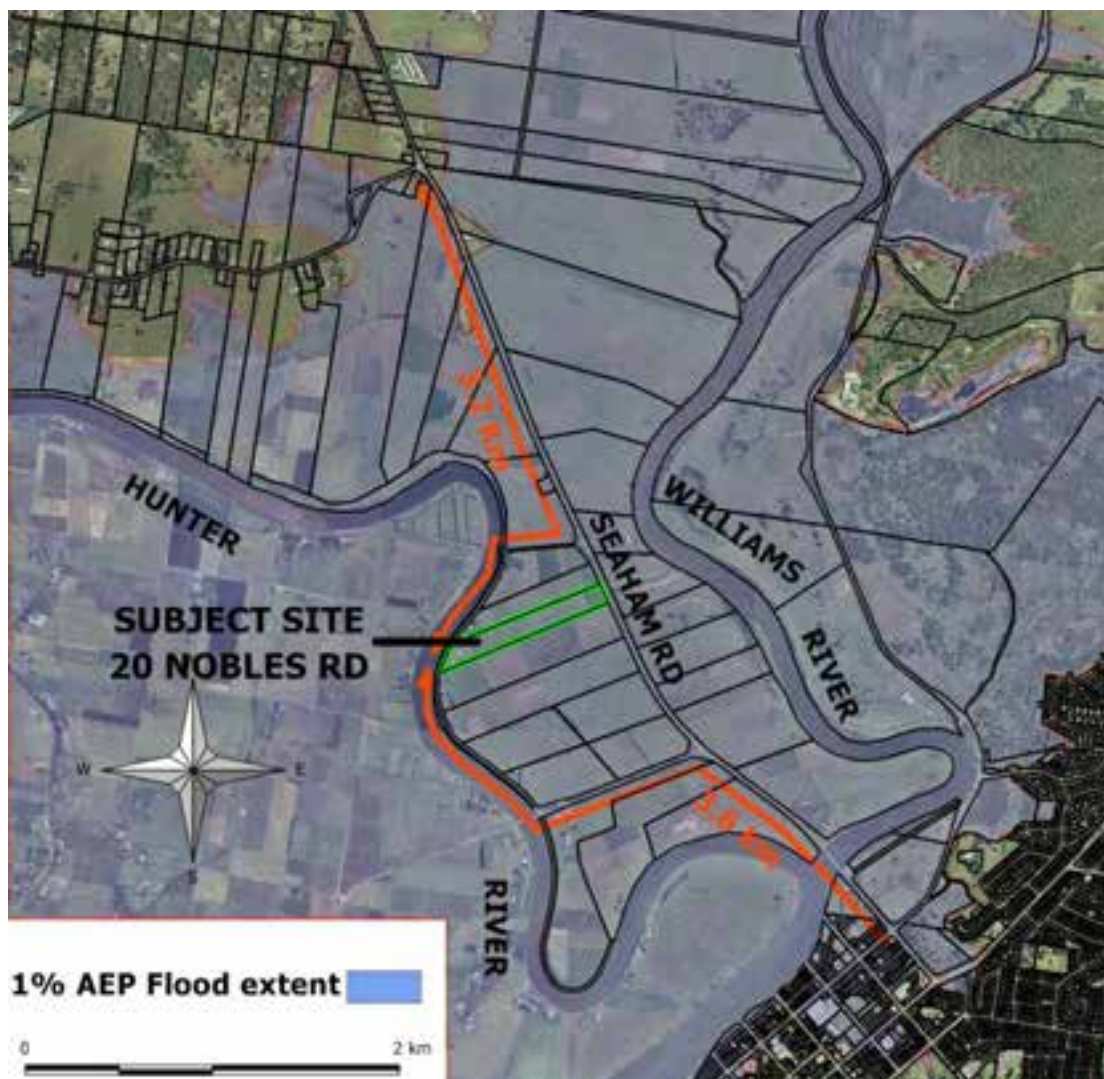
FLOOD FREQUENCY

While Council does not have records to indicate how frequently this area is flooded this repetitive occurrence must also be considered. The levee banks constructed in the Lower Hunter area, including on the Hunter and Paterson Rivers were constructed in such areas, to protect the farming lands from nuisance flooding. This means that structures in these areas, including dwellings, may be isolated by flood waters on a number of occasions during a single generation of occupation. This creates re-occurring emergency needs, possible damage or loss of property, possible loss of income and stress.

ISOLATION

This site is approximately 2.8 km to flood free land and 3.8 km to flood free land which provides access to food and medical supplies. Even though dwellings may be constructed above the 1% flood, the isolation of this area in even a moderate flood (as can occur in these areas) and the moderate frequency of flooding of Nobles, Seaham and Raymond Terrace Roads can create difficulties for emergency food and medical supplies and possibly evacuation. Dwellings on these sites require earlier flood warning times and warning for lower floods than other flood affected sites to allow adequate time for supplies and/or evacuation. The surrounding floodwaters may damage

communication and electricity supplies and cause sanitation problems. The isolation is shown in the following flood extent figure:



CUMULATIVE EFFECTS

The NSW Floodplain Management Manual (2005) advises that Councils need to consider the cumulative effects of a number of such developments in the floodplain. Whilst each development by itself may not lead to a significant increase in flood levels, risk, evacuation needs or potential damage, the Manual considers the increase occasioned by the cumulative effects of a number of such developments is often inappropriate and unacceptable. This area of Nelsons Plains has over 70 individual lots which, should dwellings be permitted, would allow over 70 households to be exposed or cause others to be exposed to high hazard floodway safety issues.

It is considered that due to Emergency Response, Flood Frequency and Isolation in this area of the floodplain and high hazard floodway, the cumulative effects of residential development is unacceptable.

(E) THE PROVISIONS OF ANY FLOODPLAIN MANAGEMENT PLAN OR DEVELOPMENT CONTROL PLAN ADOPTED BY THE COUNCIL.

While there are no Floodplain Management or Development Control Plans adopted by Council for this area, the Draft Lower Hunter River Floodplain Management Study has been referenced in the consideration of this application. That draft document does not support habitable dwellings on this site.

Further, the proposed development is inconsistent with the provisions of:

- Port Stephens Local Environmental Plan 2000
- Floodplain Management Manual 2001
- Lower Hunter Valley Floodplain Risk Management Study 2001

Port Stephens Local Environmental Plan 2000

The subject land is zoned Rural 1 (a) and under the provisions of Port Stephens Local Environmental Plan 2000, dwelling houses are permissible with development consent.

The proposal is inconsistent with the Rural 1 (a) zone objective to maintain the rural character of the area and to promote the efficient and sustainable utilisation of rural land and resources.

New developments should not increase the community's susceptibility to flood inundation and related impacts. In this instance, the construction of a dwelling house in a high flood risk area increases the social, economic and environmental consequences caused by flooding.

Clause 37 outlines the factors to be considered by Council in the assessment of a development on flood prone land. These are outlined as follows:-

- (a) The extent and nature of the flooding or inundation hazard affecting the land.
- (b) Whether or not the proposed development would increase the risk or severity of flooding or inundation affecting other land or buildings, works or other land uses in the vicinity.
- (c) 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 the objectives of this plan.
- (d) The social impact of flooding on occupants, including the ability of emergency services to access, rescue and support residents of flood prone areas.
- (e) The provisions of any floodplain management plan or development control plan adopted by the Council.

This proposed development is located in a high flood risk area (HIGH HAZARD) as identified by the Lower Hunter Valley Floodplain Risk Management Study (2001), where the 1% Annual Exceedence Probability (AEP) flood level is recorded at 5.3 metres AHD, with a velocity between 0.8 and 3.0 metres per second. Based on a

natural ground level of 2.5 metres AHD, the land will be inundated by floodwater to a depth of 2.8 metres. Even in moderate floods, for example, the 5% AEP in this location is 4.9 metres AHD, the property will be inundated by floodwaters to a depth of 2.4 metres.

It is not possible to condition this application to mitigate the effects of flooding. The applicant could prepare an evacuation plan but this would need to demonstrate to Council that there are permanent, fail safe, maintenance free measures available to ensure the timely, orderly and safe evacuation of occupants should flooding occur. The SES has advised that private evacuation plans are usually ineffective thereby placing additional demand upon limited SES resources.

Without a permanent fail safe evacuation plan addressing the approval of additional dwelling houses in high flood risk areas, the adverse social implications discussed throughout this report can be expected.

Council has not yet adopted a floodplain management plan. However, the Lower Hunter Valley Floodplain Risk Management Study (2001) recommends that additional residential dwellings should not be permitted in these areas.

Based on the abovementioned considerations, this application is inconsistent with the provisions of Port Stephens Local Environmental Plan 2000.

Floodplain Development Manual 2005

The primary objective of the Floodplain Development Manual 2005 is to reduce the impact of flooding and flood liability on individual owners and occupiers of flood prone properties and to reduce private and public losses as a result of flooding.

The Lower Hunter Valley Floodplain Risk Management Study (2001) has been prepared in accordance with this manual and it stipulates appropriate land use management policies. As already mentioned in this report, the Study recommends that no additional residential dwellings be permitted in this locality.

The Floodplain Management Manual (2001) provides interim guidelines for determining appropriate land uses in flood prone areas (refer Appendix I). Under these guidelines, the subject land is categorised as an HIGH HAZARD AREA generally inundated by more than 1 metre depth of flood water.

Floodways are those areas where a significant volume of water flows during floods and are often aligned with obvious natural channels. They are areas that, even if only partially blocked, would cause a significant increase in flood levels and/or a significant redistribution of flood flow, which may in turn adversely affect other areas.

Flood storage areas are those parts of the floodplain that are important for the temporary storage of floodwaters during the passage of the flood. If the capacity of a flood storage area is substantially reduced by, for example, the construction of levees or by landfill (approved and/or unapproved earthen mounds constructed for livestock refuges etc), flood levels in nearby areas may rise and the peak discharge

downstream may be increased. Substantial reduction of the capacity of a flood storage area can also cause a significant redistribution of flood flows.

The Manual suggests that the property owner be required to demonstrate that the proposed development will not increase the flood damage or flood hazard to other properties or adversely affect flood behaviour. A detailed report by an appropriately qualified consulting engineer and a detailed study assessing the social, environmental and ecological impacts should be required in support of a development application. This has not been requested at this point in time so as not to impose additional costs upon the applicant.

The proposed development should be refused since it increases the community's susceptibility to flooding. There is no permanent, fail safe evacuation plan in place to demonstrate and ensure a timely, orderly and safe evacuation of occupants. In an emergency, evacuation of occupants would only be possible by boat or helicopter, which may place rescuers/operators at an unacceptable risk.

Lower Hunter Valley Floodplain Risk Management Study (2001)

The *Lower Hunter Valley Floodplain Risk Management Study (2001)* defines *Floodways* as those areas of the floodplain where a significant discharge of water occurs during floods. They are often aligned with naturally defined channels. Floodways are areas which, even if only partially blocked, would cause a significant redistribution of flood flow, or a significant increase in flood levels. Floodways are often areas of deeper flows or areas where higher velocities occur. As for flood storage areas, the extent and behaviour of floodways may change with flood severity. Areas that are benign for small floods may cater for much greater and more hazardous flows during larger floods. An objective of the study is to prevent intensification of the use of floodways and, wherever possible, allow for their conversion to natural waterway corridors.

The Floodway and Excessive Depth Zone identifies that part of the floodplain where there is considered to be no potential to implement ameliorative measures and/or allow for any structures or intensive activity at a level of risk which would be considered acceptable to the community. Floodways are areas conveying a significant proportion of the flood flow and where partial blocking will adversely affect flood behaviour to a significant and unacceptable extent. The principal risk criterion in this zone exists when flood water velocities exceed levels which may threaten the integrity of built structures or the safety of persons. The threat to personal safety and to gross structural damage caused by floods depends largely upon the speed and depth of floodwaters. These, in turn, are dependent upon both the size of the flood and the hydraulic characteristics of the river and its floodplain. If the flood velocity is significant, buildings can be severely damaged (even destroyed). The build up of debris and the impact of floating logs etc can cause significant structural damage to buildings. Consequently, the property owner should demonstrate that any building or structure can withstand the force of flowing floodwater, including debris and buoyancy forces as appropriate. A detailed report from an appropriate consulting structural engineer should be required in support of a

development application. This has not been requested as part of this assessment so as not to impose additional costs upon the applicant at this point in time.

2. Likely Impact of the Development

As discussed throughout this report, the approval of this application increases the community's susceptibility to the effects of flooding in terms of social, economic and environmental consequences.

Rural Amenity

The proposed development maintains an acceptable level of residential amenity in regards to visual appearance, boundary setbacks and visual and acoustic privacy.

The single storey dwelling and earthen mound will have a finished height of 10.280 metres AHD. This is considered compatible with existing dwellings located upon the floodplain.

Access

The surrounding road system is sufficient to accommodate vehicular traffic associated with the proposed development. However, in moderate floods, the access roads in this location will be inundated by floodwaters, rendering the occupants isolated and reliant upon the SES for property protection, evacuation and/or supplies.

Emergency Response

The SES advise that it is undesirable to increase the number of dwellings and occupants susceptible to flooding since it places an excessive demand upon already limited SES resources due to the ineffectiveness of private evacuation plans.

In this locality, the awareness of property owners/occupants is hampered by the lack of a telemetered flood warning system and the Bureau of Meteorology does not advise of predicted flood levels. The *Lower Hunter Valley Floodplain Risk Management Study 2001* suggests that a telemetered flood warning system be developed for the Lower Hunter with specific provisions for the mostly rural lands between Green Rocks and Raymond Terrace.

Cumulative Effect

Approval of this application further increases the number of people susceptible to the effects of flooding in this locality. The problem arises when the cumulative impacts of developments that have individually small or even no impact, but which collectively have significant effects on flood behaviour. The most common examples of this are:

- blocking of floodways and flowpaths by individual developments and levees;

- loss of flood storage due to filling of floodplain areas for individual developments
- and the consequential rise in flood levels and
- increase over time in the at-risk population living and working on flood prone
- land and their impacts on emergency management resources or the capacity
- of evacuation routes.

Whilst it is true that each development by itself may not lead to a significant increase in flood levels, risk, evacuation needs or potential damage, the increase occasioned by the cumulative effects of a number of such developments is often unacceptable. Land use on a floodplain should be compatible with and able to withstand the effects of flooding.

3. Suitability of the Site

The subject land is considered unsuitable for rural-residential development taking into account the level of flood risk and likely social, economic and environmental consequences.

4. Submissions

This application is not subject to Council's policy regarding advertising and notification.

5. Public Interest

This proposal is contrary to the public interest in that it has the potential to further exacerbate the impact of flooding and private and public losses in the locality, the potential to increase demand upon emergency services and an unnecessary and unreasonable demand on limited SES resources. Development should not detrimentally increase the potential flood displacement onto other development/properties within this area.

ITEM NO. 3

FILE NO: 16-2008-827-1

DEVELOPMENT APPLICATION FOR CHANGE OF USE FROM SHED TO DWELLING AT NO. 470 MARSH ROAD, BOBS FARM

REPORT OF: KEN SOLMAN – ACTING MANAGER, DEVELOPMENT & BUILDING
GROUP: SUSTAINABLE PLANNING

RECOMMENDATION IS THAT COUNCIL:

Consider the draft conditions of consent, prepared in accordance with Council Resolution on 9 February 2010 (Minute 5).

COMMITTEE MEETING – 09 MARCH 2010**RECOMMENDATION:**

	Councillor Bruce MacKenzie Councillor Sally Dover	That Council approve the development application, 16/2008/827/1, subject to conditions as listed in Attachment 1.
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In accordance with Section 375A, Local Government Act 1993, a division is required for this item.

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

Those against the Motion: Nil.

ORDINARY MEETING – 09 MARCH 2010

063	Councillor Bruce MacKenzie Councillor Glenys Francis	It was resolved that the recommendation be adopted.
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In accordance with Section 375A, Local Government Act 1993, a division is required for this item.

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

Those against the Motion: Nil.

BACKGROUND

The purpose of this report is provide draft Conditions of Consent for consideration by Council for a development application for a proposed permanent conversion of an existing shed to a dwelling.

On the 9 February 2010 Council considered the proposal for determination. At this meeting Council resolved:

'That Council note its support for the development and that the Sustainable Planning Group Manager be requested to draft Conditions of Consent for consideration by Council.'

In this regard, draft conditions are shown in Attachment 1.

For Council's reference, the report dated 9 February 2010, including the staff assessment of the proposal pursuant to Section 79C of the Environmental Planning and Assessment Act 1979 is shown in Attachment 2.

FINANCIAL/RESOURCE IMPLICATIONS

Reference is made to Attachment 2 - Council Report dated 9 February 2010.

LEGAL, POLICY AND RISK IMPLICATIONS

Reference is made to Attachment 2 - Council Report dated 9 February 2010.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Reference is made to Attachment 2 - Council Report dated 9 February 2010.

CONSULTATION

Reference is made to Attachment 2 - Council Report dated 9 February 2010.

OPTIONS

That Council:

- 1) Refuse the development application 16/2008/827/1 for the reasons as listed in the recommendation at item 2 of the Council Committee meeting of 9/02/2010.
- 2) Progress compliance action by issuing a penalty notice for 'development carried out without development consent' with a maximum penalty of \$600.
- 3) Approve the development application, 16/2008/827/1, subject to conditions as listed in Attachment 1.

- 4) Reject or amend the Recommendations.

ATTACHMENTS

- 1) Draft Conditions of Consent
- 2) Council Report dated 9 February 2010

COUNCILLORS ROOM

- 1) Development Plans and supporting documentation.

TABLED DOCUMENTS

Nil.

**ATTACHMENT 1
DRAFT CONDITIONS OF CONSENT**

1. A Construction Certificate application is required to be submitted to the Principal Certifying Authority for the proposed works. The person having the benefit of this consent must appoint a principal certifying authority. If Council is not appointed as the Principal Certifying Authority then Council must be notified of who has been appointed. Note: at least two (2) days' notice must be given to Council of intentions to start works approved by this application.
2. The development is to be carried out in accordance with the approved plans and documentation submitted with the application set out in Schedule 3, except as modified by the conditions of this development consent or as noted in red by Council on the approved plans.
3. Failure to comply with the conditions of consent constitutes a breach and on the spot fines may be issued under the Environmental Planning & Assessment Act 1979 and or the Protection of the Environment Operations Act 1997.
4. The development application has not been assessed against the provisions of the Building Code of Australia. A Section 96 application under the Environmental Planning & Assessment Act 1979 will be required if design amendments are necessary to comply with the provisions of the Building Code of Australia.
5. A separate wastewater application for the installation of a waste treatment device human waste storage facility shall be approved by Council prior to the issue of any Construction Certificate for works associated with this Development Consent. The application is to be accompanied by full details of the proposed system including a site assessment complying with Division 4 of the Local Government (General) Regulation, 2005 and Council requirements.
6. The development shall be constructed to level 1 under AS3959 – 1999 'Construction of Buildings in bushfire prone areas'. Details shall be submitted within three (3) months of the consent, or prior to the issue of the Construction Certificate for any proposed alterations to the building, whichever occurs first.
7. A sixteen (16) metre 'Inner Protection Area' (IPA) as outlined within the Planning for Bushfire Protection 2006 Guidelines shall be provided around the building. Clearing shall be selective and minimised in the required Asset Protection Zone. Within three (3) months from the date of the consent or prior to issue of the Construction Certificate, whichever occurs first, a plan shall be submitted and approved by Council's Vegetation Management Officer, which demonstrates all necessary clearing for the Asset Protection Zone, to achieve the requirements of Planning for Bushfire Protection.
8. The development shall take place in accordance with the stated values of the energy efficiency scorecard or NatHERS assessment and/or the BASIX certificate submitted with the application. Prior to the issue of any Occupation certificate an appropriately qualified person shall certify compliance with these requirements, as applicable.

9. The existing building works shall be carried out in accordance with BASIX certificate 230939S. Certification of such works shall be forwarded to the Principal Certifying Authority prior to the issue of the Construction Certificate for all proposed works.
10. The owner shall provide certification from a Practising Structural Engineer, certifying that the existing building is capable of withstanding all loads likely to be imposed on it for a Class 1a building in accordance with Australian Standards 1170 series. Details shall be submitted within three (3) months of the date of the consent, or prior to the issue of the Construction Certificate for any proposed alterations to the building, whichever occurs first.
11. The owner shall provide certification from a registered surveyor that all electrical installations on the property are located above the Flood Planning Level of 2.5 metres AHD, in accordance with the NSW Government Floodplain Management Manual 2005. Details shall be submitted within three (3) months of the date of the consent, or prior to the issue of the Construction Certificate for any proposed alterations to the building, whichever occurs first.
12. The applicant/builder shall ensure that smoke alarm/s are provided, and compliant with the following requirements:
 - a) Complying with Australian Standard 3786 or listed in the SSL Register of Accredited Products; and
 - b) Where the building is provided with mains electrical power, the smoke alarm/s are connected to the mains and have a standby power supply; and
 - c) Installed in suitable locations on or near the ceiling in –
 - I. Any storey containing bedrooms-
between each area containing bedrooms and the remainder of the dwelling, including any hallway associated with the bedrooms; and
 - II. Any storey not containing bedrooms.
13. The owner shall provide certification that the smoke alarms within the building comply with Australian Standard 3786. Details shall be submitted within one (1) month of the date of the consent, or prior to the issue of the Construction Certificate for any proposed alterations to the building, whichever occurs first.
14. The owner shall provide certification from a licensed pest control agent, certifying that the existing floor slab construction and any floor penetrations have a termite protection barrier in accordance with Australian Standard 3660.1-2000. Details shall be submitted within three (3) months of the consent, or prior to the issue of the Construction Certificate for any proposed alterations to the building, whichever occurs first.
15. All existing building works including linings below the existing 2.5 metre AHD Flood Planning Level shall be constructed with flood compatible materials. The applicant shall submit certification to the Principal Certifying Authority from a licensed accredited tradesman that such works have been installed. Details shall be submitted within one (1) month of the consent, or prior to the

issue of the Construction Certificate for any proposed alterations to the building, whichever occurs first.

16. The Principal Certifying Authority shall only issue an Occupation Certificate when the building has been constructed in accordance with the approved plans, specifications and conditions of consent. No occupational use is permitted until the Principal Certifying Authority issues an Occupation Certificate. NOTE: If an accredited certifier approves occupation of a dwelling the accredited certifier is to immediately notify Council in writing.
17. All building work must be carried out in accordance with the provisions of the Building Code of Australia.
18. Collected stormwater runoff shall be piped to an infiltration trench, in accordance with Council's Standard Drawing S 136 (without overflow pipe).
19. The driveway (within the road reserve) shall have a minimum of 0.5 metres clearance from the edge of existing drainage structures, pits, power poles etc. Details shall be approved by the certifying authority prior to issue of the construction certificate.
20. Driveway access within the road reserve shall be a minimum of 4 metres wide consisting of a granular pavement having a minimum compacted depth of 200mm and bitumen sealed with a two coat flush seal from the property boundary to the edge of the existing road. This shall include 3 metre radius splays at the junction with the road. Associated table drains and trail out drains shall be provided. Details shall be approved by the certifying authority prior to issue of the Construction Certificate.
22. A driveway construction application shall be submitted prior to works in the road reserve being undertaken.
23. Where no sanitary facilities currently exist onsite for construction workers toilet accommodation for all tradespersons shall be provided from the time of commencement until the building is complete. The toilet facilities shall be located so as to have minimal impact of adjoining properties and shall not be placed on the road reserve, without separate approval from Council.
24. Construction work that is likely to cause annoyance due to noise is to be restricted to the following times:-
 - * Monday to Friday, 7am to 6pm;
 - * Saturday, 8am to 1pm;
 - * No construction work to take place on Sunday or Public Holidays.

When the construction site is in operation the L10 level measured over a period of not less than 15 minutes must not exceed the background by more than 10dB(A). All possible steps should be taken to silence construction site equipment.

25. It is the responsibility of the applicant to erect a PCA sign (where Council is the PCA, the sign is available from Council's Administration Building at Raymond Terrace or the Tomaree Library at Salamander Bay free of charge). The applicant is to ensure the PCA sign remains in position for the duration of works.

26. Tree clearing shall be carried out in accordance with council's tree preservation order. The development consent and construction certificate must be issued before it is possible to remove any trees within 3m of any approved building, as measured horizontally from the building wall to the outside trunk of the tree. Tree clearing for the vehicle driveway or any other purpose requires separate approval under the tree preservation order. A copy of the tree preservation order is attached.
27. A waste containment facility shall be provided on the construction site immediately after the first concrete pour for the building and is to be regularly serviced. Council may issue 'on the spot' fines for pollution/littering offences under the Protection of the Environment Operations Act 1997.
28. The construction site is to be adequately protected and drainage controlled to ensure that erosion and sediment movement is kept on your site. Construction sites without appropriate erosion and sediment control measures have the potential to pollute the waterways and degrade aquatic habitats. Offenders will be issued with an 'on the spot' fine under the Protection of the Environment Operations Act 1997.

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

29. A "KEEP PORT STEPHENS WATERWAYS POLLUTION FREE" sign shall be displayed and be clearly visible from the road frontage for public viewing on the site at the commencement of works and remain in place until completion of the development. Signs are available from Port Stephens Council.

**ATTACHMENT 2
COUNCIL REPORT DATED 9 FEBRUARY 2010**

ITEM NO.

FILE NO: 16-2008-827-1

**DEVELOPMENT APPLICATION FOR CHANGE OF USE FROM SHED TO
DWELLING AT NO. 470 MARSH ROAD, BOBS FARM**

**REPORT OF: KEN SOLMAN – ACTING MANAGER, DEVELOPMENT & BUILDING
GROUP: SUSTAINABLE PLANNING**

RECOMMENDATION IS THAT COUNCIL:

Refuse Development Application 16-2009-105-1 for the reasons listed below.

1. The development is contrary to the public interests and expectations, of an orderly and predictable built environment;
2. The development is inconsistent with the 1 (a)—Rural Agriculture “A” Zone objectives of Port Stephens Local Environmental Plan 2000 (LEP2000). The development is out of character with the immediate area and does not maintain an acceptable level of residential amenity;
3. The development is inconsistent with the provisions of Clause 37 (Objectives for development on flood prone land) and Clause 38 (Development on flood prone land) of the LEP2000. The habitable floor levels proposed are below the flood planning level of RL 2.5m AHD and pose an unacceptable risk of damage to property, and do not provide an acceptable residential amenity;
4. The development is inconsistent with Council's Resolution of 24 February 2009;
5. The development is inconsistent with the design requirements of the Port Stephens Development Control Plan 2007 (DCP). The proposed dwelling is not consistent with the requirements relating to unbroken roof ridgelines and blank walls;
6. The development is not consistent with the aims of State Environmental Planning Policy No 71—Coastal Protection. The proposal is not considered to be suitable given its type, location and design and its relationship with the surrounding area;
7. The proposal is not consistent with the rural planning principles contained in State Environmental Planning Policy (Rural Lands) 2008. The development is not considered to provide opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities;

8. The development is inconsistent with the provisions and objectives of the Hunter Regional Environmental Plan 1989 (HREP 1989), in terms of being an inappropriate landuse;
9. Insufficient information submitted to enable a comprehensive assessment under Section 79C of the Environmental Planning and Assessment Act, 1979.

BACKGROUND

The purpose of this report is to present a development application to Council for consideration in regard to a proposed permanent conversion of an existing shed to a dwelling.

Council is in receipt of a development application for a change of use, to permanently convert an existing machinery shed to a dwelling. The site has been occupied as an alleged unauthorised dwelling for at least two years, and has been the subject of an ongoing compliance investigation that was reported to Council. In this regard, on the 24 February 2009, Council resolved to:

'issue orders allowing occupation of the machinery shed for five years until a separate dwelling has been constructed. Milestones would be required to show continued progress and that the wastewater management system be upgraded within six (6) months.'

Further, on 28 April 2009:

'It was resolved that there being no objection, that Council not pursue the upgrading of wastewater disposal facilities in relation to the Shed occupied at Bobs Farm, being Assessment No. 164046, given the review carried out by Bruce Petersen, Manager of Environmental Services.'

It is reinforced that the application currently before Council for consideration is seeking to permanently convert the shed to a dwelling, rather than to construct a separate replacement dwelling, which would have been required to comply with Council's aforementioned resolution.

Reference is made to the previous Council report dated 28 July 2009 (refer Appendix 1) wherein the above proposal was discussed. Council staff made the following recommendation in relation to this matter:

- 1) Defer determination of Development Application 16-2008-827-1 to request applicant to submit additional plans for a separate replacement dwelling to facilitate and reinforce the Council resolution dated 24 February 2009.
- 2) Require submission of additional plans for a separate replacement dwelling within six (6) months.
- 3) Delegate the determination of Development Application 16-2008-827-1 to the General Manager, subject to the receipt of plans for a separate replacement dwelling within six (6) months.

MINUTES FOR ORDINARY MEETING – 9 MARCH 2010

- 4) Should additional plans for a separate replacement dwelling not be received by Council within six (6) months, delegate the refusal of Development Application 16-2008-827-1 to the General Manager

Council's Resolution on 28 July 2009 was:

'that the matter be deferred to allow for a meeting between the applicant and Council's Sustainable Planning Group.'

The above mentioned meeting occurred on the 18 August 2009 with the Mayor Cr MacKenzie, Acting Manager Development Building and Senior Development Planner in attendance on behalf of Council, and a representative from applicant's consultant firm Port Stephens Design. Port Stephens Design proposed design measures to allow the structure to have a more 'standard' dwelling appearance.

Amended plans in this respect were submitted to Council on the 3 November 2009. These plans demonstrate a carport along the eastern elevation and an awning along the northern frontage facing Marsh Road.

These design measures provide visual relief to the structure and accordingly would appear less bulky to street and adjoining properties. However, there are still significant non-compliances with Council's Development Control Plan 2007, as discussed in the report shown at Attachment 1. Further to this concern, the applicant has further amended the proposal to include additional habitable areas on the lower level of the building, including the kitchen. The floor level of this area remains lower than the minimum flood planning level which is RL 2.5m AHD. Non compliance with this floor level creates an unacceptable risk to the owner's property and future amenity.

The proposal to permanently convert the shed to a dwelling is considered to be contrary to the public interest. The development is not considered to be in keeping with the design characteristics of dwellings within the existing area, and would be inconsistent with public expectations of orderly development. Most significantly, the proposal has the potential to create a precedent for other land owners to seek approval to live in sheds, and future applications may be in more visually prominent locations. Conversion of sheds to dwellings is usually sub-standard in terms of built form and should be discouraged to protect the future character of the rural areas in Port Stephens.

On this basis the applicant should lodge a development application for a replacement dwelling.

It is recommended that the permanent approval of the shed/dwelling conversion not be supported by Council, as providing consent in the configuration proposed would create a precedent which has the potential to be used in future development applications as reason for consent noting fairness, consistency and equity in the application of Council's planning provisions. Accordingly, Council may in the future be in a position of dealing with additional compliance matters and the associated liabilities.

FINANCIAL/RESOURCE IMPLICATIONS

The unauthorised occupation of a shed as a dwelling should not be condoned. To do so may encourage other unauthorised developments that will increase the demand on Council's development compliance resources. As demonstrated in Appendix 2 – Chronology, this matter has had a significantly higher demand on time and resources compared to an appropriately compliant dwelling on a suitable site. To investigate and appropriately deal with illegal or unauthorised development demands significant Council resources and limits service provision in other positive areas.

It is further noted that the application for a 'Change of Use' has incurred significantly less development application lodgement fees, than an application that would go through the standard and correct procedures adopted by the Council.

LEGAL AND POLICY IMPLICATIONS

The development application is inconsistent with Council's Policy.

Given the time that has elapsed since this DA was lodged and the lack of adequate information and plans to fully satisfy this application, refusal would normally have been issued under delegation by this time.

Refer to Confidential Information Paper 'Development Application to Change Use from Shed to Dwelling at No.470 Marsh Road Bobs Farm.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

If Council approve the permanent conversion of the shed to a dwelling rather than to encourage the construction of a replacement dwelling, then the development would be contrary to the public interest and expectations of an orderly and predictable built environment.

Council should actively discourage the unauthorised occupation of sheds as dwellings, or additional owners may inhabit structures that are not built to a safe and appropriate standard.

Council has the responsibility to lead, educate, and regulate the community to achieve a fair, transparent and consistent approach to land use planning in the Local Government Area, as well as a duty of care to ensure the safety risks and environmental risks are responsibly and reasonably investigated and actioned in order to fulfil the requirements of the law to protect the community.

It is not considered that the development application is likely to incur any economic implications to Council should any dwelling approved on this property be approved and constructed to the relevant standards.

The development, if approved by Council, may set an undesirable precedent in the Port Stephens Local Government Area (LGA). This precedent may lead to detraction from the accepted rural character and environment of the locality, i.e. the existing character is predominantly single storey weatherboard or brick dwellings with

pitched roofs. As dwellings are replaced over time, Council should encourage sympathetic buildings that do not detract from the desired or established environment.

CONSULTATION

The application was exhibited in accordance with Council policy and no submissions were received. It is advised that subsequent to this matter being reported in July 2009, Council received three letters of support for the proposal from directly adjoining neighbours.

OPTIONS

- 1) Adopt the recommendation to refuse the development application to permanently convert the shed to a dwelling, based on the current plans and information submitted.
- 2) Progress compliance action by issuing a penalty notice for 'development carried out without development consent' with a maximum penalty of \$600.
- 3) Approve the development application to allow temporary use as a dwelling for five (5) years, to align with the Council resolution of 24 February 2009. The use of the shed as a temporary dwelling would be time limited until 24 February 2014, and a development application for a separate dwelling should be required for lodgement with Council by 24 February 2013.
- 4) Defer the determination until additional plans for a permanent replacement dwelling are submitted by the applicant.
- 5) Reject or amend the Recommendations.

ATTACHMENTS

- 1) Previous Council Report dated 28 July 2009
- 2) Chronology

COUNCILLORS ROOM

- 1) Development plans and supporting documentation.

TABLED DOCUMENTS

Nil

ATTACHMENT 1
PREVIOUS COUNCIL REPORT DATED 28 JULY 2009

ITEM NO. 2

FILE NO: 16-2008-827-1

DEVELOPMENT APPLICATION TO CHANGE USE FROM SHED TO DWELLING AT NO. 470
MARSH ROAD BOBS FARM

REPORT OF: ANTHONY RANDALL – ACTING MANAGER, DEVELOPMENT AND BUILDING

RECOMMENDATION IS THAT COUNCIL:

- 1) Defer determination of Development Application 16-2008-827-1 to request applicant to submit additional plans for a separate replacement dwelling to facilitate and reinforce the Council resolution dated 24 February 2009.
- 2) Require submission of additional plans for a separate replacement dwelling within six (6) months.
- 3) Delegate the determination of Development Application 16-2008-827-1 to the General Manager, subject to the receipt of plans for a separate replacement dwelling within six (6) months.
- 4) Should additional plans for a separate replacement dwelling not be received by Council within six (6) months, delegate the refusal of Development Application 16-2008-827-1 to the General Manager

BACKGROUND

The purpose of this report is to present a development application to Council for consideration in regard to a proposed permanent conversion of an existing shed to a dwelling.

Council is in receipt of a development application for a change of use, to permanently convert an existing machinery shed to a dwelling. The shed has been the subject of a recent compliance investigation that was reported to Council. In this regard, on the 24 February 2009, Council resolved to:

'issue orders allowing occupation of the machinery shed for five years until a separate dwelling has been constructed. Milestones would be required to show continued progress and that the wastewater management system be upgraded within six (6) months.'

It is reinforced that the application currently before Council for consideration is seeking to permanently convert the shed to a dwelling, rather than to construct a separate replacement dwelling.

The proposal to permanently convert the shed to a dwelling is considered to be contrary to the public interest. The development is not considered to be in keeping with the design characteristics of dwellings within the existing area, and would be inconsistent with public expectations of orderly development. Most significantly, the proposal has the potential to create a precedent for other land owners to seek approval to live in sheds, and future applications may be in more visually prominent locations. Conversion of sheds to dwellings is sub-standard in terms of built form and should be discouraged to protect the future character of the rural areas in Port Stephens.

It is noted that the surrounding area contains similar sheds. However the key point of difference is that these other sheds are being used in a rural capacity, usually in conjunction with a 'standard' dwelling. It is likely that the subject site is justifiably suitable have a single dwelling development, provided that issues including bushfire and flooding are addressed in the design. It is considered that the subject site has a dwelling entitlement, as the size of the property is greater than 4000m² as required by the Local Environmental Plan 2000, and the allotment was not created for a purpose other than a dwelling. However it is the built form of the shed to be converted to a dwelling that is considered to be inappropriate because of the bulky appearance. In terms of considering the appropriate form of development in the rural area, a site context analysis of the surrounding area has been undertaken. The surrounding properties are predominantly characterised as single storey dwellings of 'standard' appearance, with some double storey dwellings.

A 'standard' dwelling is numerically characterised as having a wall to ceiling height of 2.7 metres, and for double storey dwellings, the levels are usually broken by articulation and eaves. Roof pitches are generally 22 degrees, with maximum roof ridgelines of less than 10 metres. Generally the materials used for a 'standard' appearance dwelling are weatherboard or brick, with tile or corrugated iron pitched roofing. There are also some new 'project' homes style residences being constructed in the area. Many of the dwellings are well set back from the street and shielded by vegetation.

In contrast, this proposal involves unbroken roof ridgelines of 18.4 metres and blank walls far in excess of Council's Development Control Plan design requirements, and accordingly gives an excessively bulky appearance with no articulation or visual relief. The double storey structure does not have eaves, nor any articulation between the two levels to relief the mass of the walls. The single colour of the metal sheeted structure further exacerbates this bulky appearance, as does the shallow roof pitch of around 10 degrees. The proposed dwelling is not considered to incorporate a design with high quality materials and detailing, nor does it reflect the predominant design of the surrounding area.

It is considered that cosmetic design features would not extend so far as to give this structure the appearance of a 'standard' dwelling, however additions including awnings and pergolas may alleviate the impacts to some extent. These kinds of structures attached to the shed would create an unusual appearance that is inconsistent with the surrounding dwellings in terms of the erected built form outcome in rural localities. Whilst the appearance to the street is an issue, it is noted

that the proposal has a large street setback. However, the structure will be highly visible to adjoining properties, particularly those using the shared right-of-way to the east of the subject site.

In addition to the visual appearance issues, the development fails to satisfy relevant planning considerations and establishes an unacceptable level of impact on the amenity for future occupants due to the habitable floor space not being directly accessible to the private open space area. This issue is a result of the building being required to amend the existing structure so that all habitable rooms are above the flood planning level, i.e. they would need to be relocated to the second storey which does not have a balcony or the like proposed, to provide access to private open space from living areas.

The application as proposed has a habitable room, being a 'bar and games room' currently proposed on the lower level. This room is considered to be unacceptable as the floor level proposed, 1.8m AHD, is below the minimum flood planning level which is 2.5m AHD. The 1% flood level at this location is 1.88m AHD, and therefore the proposal would be 80mm below this level without the further provision of a freeboard, nor the provision of the 0.91 metre increase adopted by Council to cater for sea level rise. Accordingly, this room would need to be relocated, and this creates the open space issue referred to above.

It is noted that some of the issues discussed in this report could be addressed by requesting the applicant to make amendments to the proposal or by providing additional information. However, it was considered that requesting additional information would incur additional costs without the reasonable likelihood that the application would be supported in the current form, based on the Council's resolution of 24 February 2009 to restrict occupancy of the shed to five years, with construction of a separate replacement dwelling. In this regard, it is considered more reasonable to request additional plans for a replacement dwelling, rather than to require the applicant to incur further costs in relation to designing the shed conversion.

Further, in terms of the wastewater issues on the site, should additional plans for a replacement dwelling be submitted, Council would not be likely to require an upgrade to the existing wastewater system on the site in the five year period extension period provided by the Council resolution dated 24 February 2009. However, should permanent approval be given to occupy the shed, then the applicant would be required to upgrade this system in the immediate future.

In general, should owners wish to establish temporary occupation of machinery sheds and like during periods of construction for their permanent dwellings, then these owners should be encouraged to establish this as part of their development application for the permanent dwelling. Should this approach be taken, issues including residential amenity, the Building Code of Australia, flooding, bushfire and wastewater disposal can be considered in the shed design to ensure that the temporary structures are safe and habitable for the temporary period of occupation.

However, approval of a permanent shed/dwelling conversion has the potential to create a precedent in the Port Stephens Local Government Area, wherein applicants are not encouraged to lodge a staged, well conceived staging plan for the construction of a dwelling. It is recommended that the permanent approval of the shed/dwelling conversion not be supported by Council, as providing consent in the configuration proposed would create a precedent which has the potential to be used in future development applications as reason for consent noting fairness, consistency and equity in the application of Council's planning provisions. Accordingly, Council may in the future be in a position of dealing with additional compliance matters and the associated liabilities.

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

Given the time that has elapsed since this DA was lodged and the lack of adequate information and plans to fully satisfy this application, refusal would normally have been issued under delegation by this time. Given Council's Resolution of February 2009 however the recommendation to seek additional plans within the next six (6) months is put forward.

Refer to Confidential Information Paper 'Development Application to Change Use from Shed to Dwelling at No.470 Marsh Road Bobs Farm.

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.*
- 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

If Council approve the permanent conversion of the shed to a dwelling rather than to encourage the construction of a replacement dwelling, then the development would be contrary to the public interest and expectations of an orderly and predictable built environment.

Council should actively discourage the unauthorised occupation of sheds as dwellings, or additional owners may inhabit structures that are not built to a safe and appropriate standard.

Council has the responsibility to lead, educate, and regulate the community to achieve a fair, transparent and consistent approach to land use planning in the Local Government Area, as well as a duty of care to ensure the safety risks and environmental risks are responsibly and reasonably investigated and actioned in order to fulfil the requirements of the law to protect the community.

ECONOMIC IMPLICATIONS

It is not considered that the development application is likely to incur any economic implications to Council should any dwelling approved on this property be approved and constructed to the relevant standards. It is noted that constructing a replacement dwelling would incur costs to the applicant.

ENVIRONMENTAL IMPLICATIONS

The development, if approved by Council, will set a precedent in the Port Stephens Local Government Area (LGA). This precedent may result in a decay of the accepted rural character and environment of the locality, i.e. the existing character is predominantly single storey weatherboard or brick dwellings with pitched roofs. As dwellings are replaced over time, Council should encourage sympathetic buildings that do not detract from the desired or established environment.

CONSULTATION

The application was exhibited in accordance with Council policy and no submissions were received.

OPTIONS

Council can:

- 1) Adopt the recommendation to defer the determination until additional plans for a permanent replacement dwelling are submitted by the applicant.
- 2) Approve the development application to permanently convert the shed to a dwelling, subject to conditions
- 3) Indicate in principle direction to refuse the development application to permanently convert the shed to a dwelling, based on the current plans and information submitted and request the Group manager, Sustainable Planning to bring forward draft reasons for refusal.
- 4) Reject or amend the Recommendations in other ways.

ATTACHMENTS

- 1) Locality Plan
- 2) Site Plan
- 3) Assessment

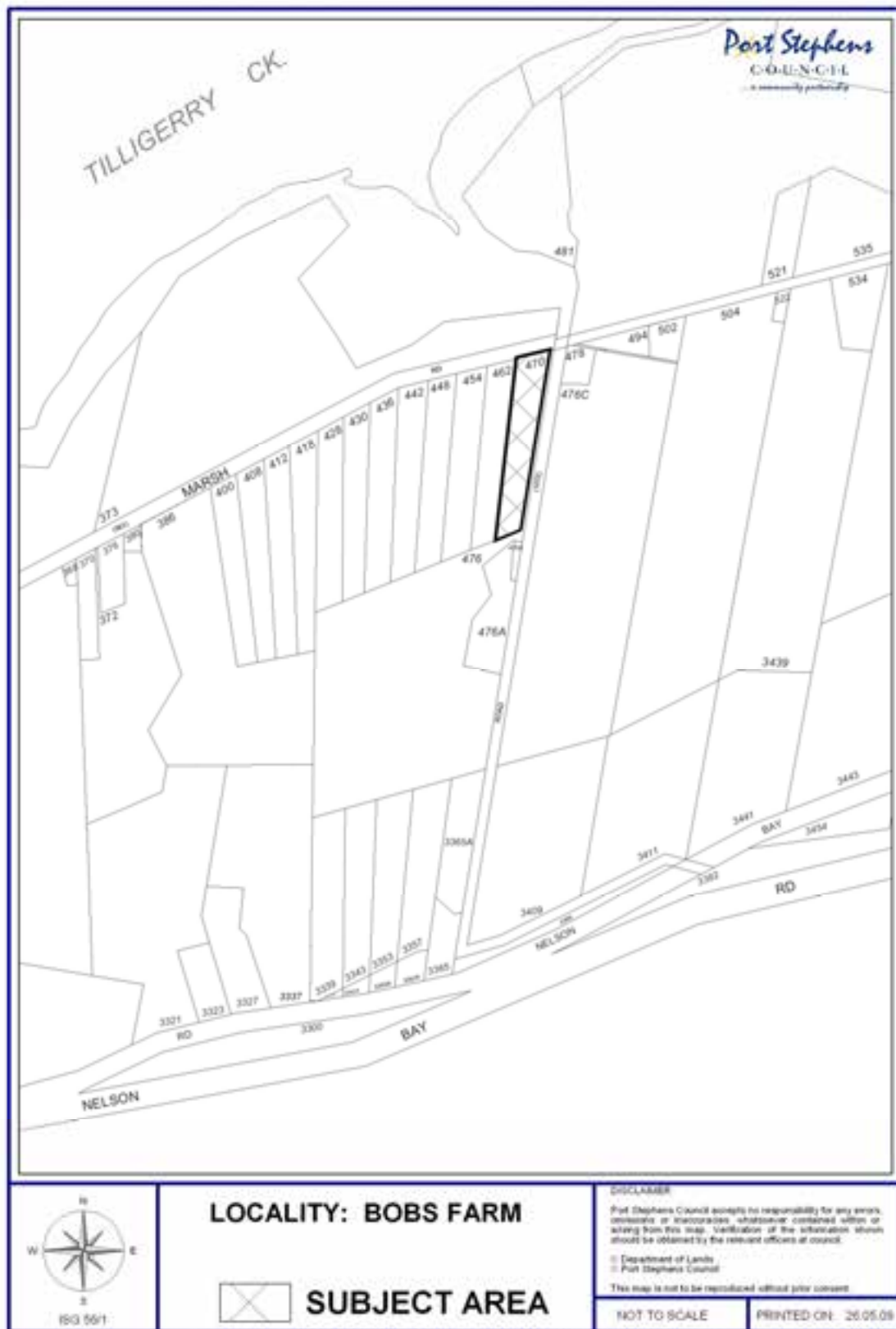
COUNCILLORS ROOM

Nil.

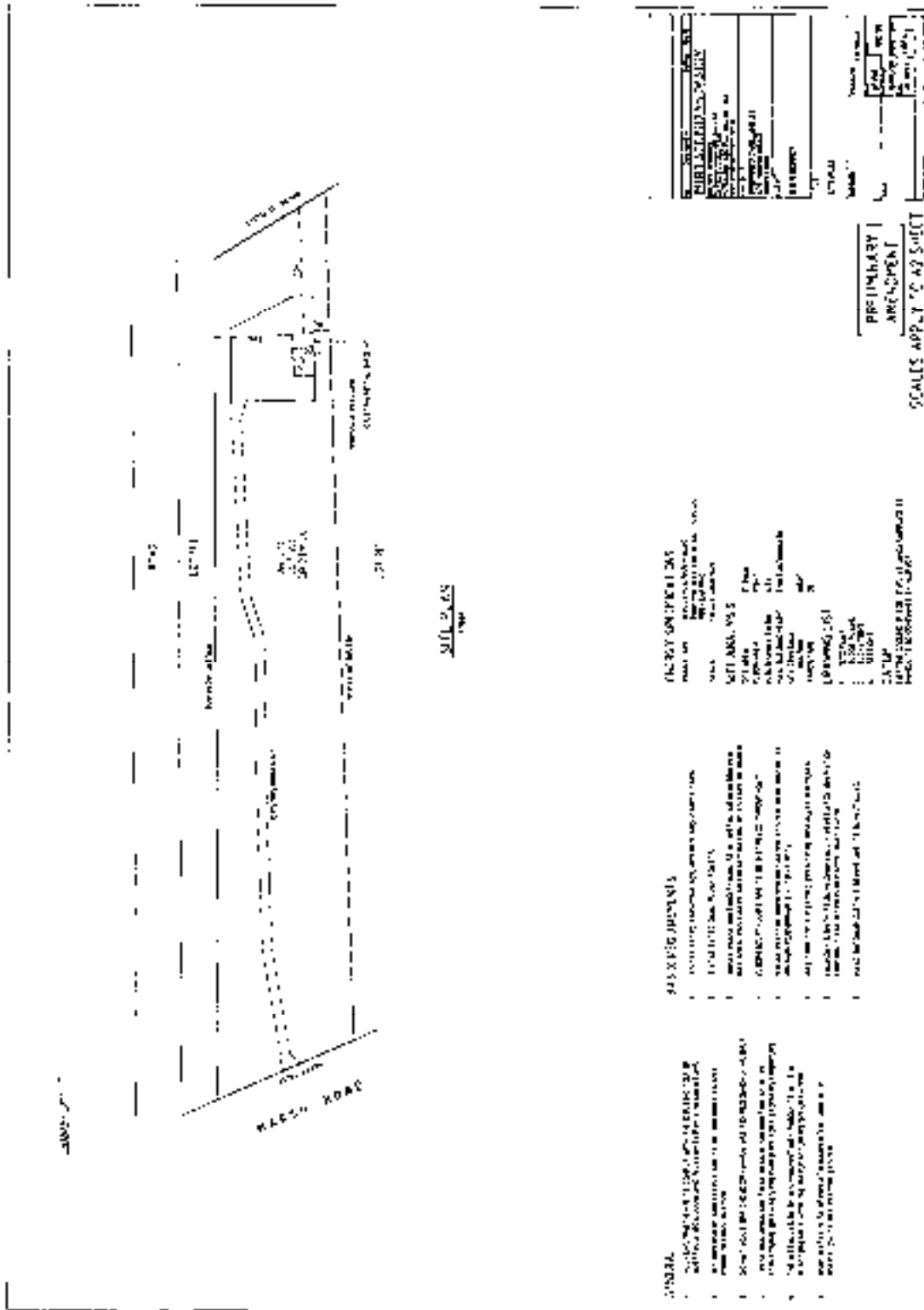
TABLED DOCUMENTS

Nil.

ATTACHMENT 1
LOCALITY PLAN



ATTACHMENT 2
SITE PLAN



SITE PLAN

NO.	DESCRIPTION	AREA (sqm)	REMARKS
1	Proposed Subdivision	12.11	
2	Proposed Access	10.00	
3	Proposed Building Footprint	10.00	
4	Proposed Driveway	10.00	
5	Proposed Road	12.12	
6	Proposed Area	12.11	
7	Proposed Area	12.12	
8	Proposed Area	12.11	
9	Proposed Area	12.12	
10	Proposed Area	12.11	
11	Proposed Area	12.12	
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46	Proposed Area	12.11	
47	Proposed Area	12.12	
48	Proposed Area	12.11	
49	Proposed Area	12.12	
50	Proposed Area	12.11	

**ATTACHMENT 3
ASSESSMENT**

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

THE PROPOSAL

The proposal is for a change of use, from a shed to a dwelling. The shed was approved in 2004 for general rural purposes and was not considered at this time as to appropriateness for habitable purposes.

The proposal would involve three additional windows and awnings, internal modifications including extension of mezzanine level to include kitchen and living area.

The shed has been the subject of a compliance investigation and Council have resolved to allow the continued occupation of the shed as a dwelling for a period of five years subject to the satisfaction of certain criteria, namely the construction of a separate replacement dwelling.

THE APPLICATION

Owner	MR S K & MRS R J BONNEY
Applicant	MR S K BONNEY
Detail Submitted	Site Plan, Floor Plans, Elevations, Sections, Survey Plan, Statement of Environmental Effects, BASIX Certificate and Bushfire Report

THE LAND

Property Description	Lot 162 DP 239144
Address	470 Marsh Road Bobs Farm
Area	1.97 hectares
Dimensions	Approximately 60 metres by 365 metres
Characteristics	The site is generally flat with some patches of vegetation.

THE ASSESSMENT

1. Planning Provisions

LEP 2000 – Zoning	1 (a) (Rural Agriculture “A” Zone)
Relevant Clauses	11 Rural zonings 14 Dwelling-houses and dual occupancy housing in rural zones 37 Objectives for development on flood prone land

38 Development on flood prone land
47 Services

Development Control Plan 2007

B2 - Environmental and Construction Management
B6 - Single and Dual Occupancy Dwellings

State Environmental Planning Policies (SEPP)

SEPP No 14—Coastal Wetlands
SEPP No 71—Coastal Protection
SEPP (Building Sustainability Index: BASIX) 2004
SEPP (Rural Lands) 2008

Hunter Regional Environmental Plan 1989

Discussion

Local Environmental Plan 2000

11 Rural zonings

The subject site is zoned 1 (a)—Rural Agriculture “A” Zone and dwellings are permissible in this zone.

However, the current proposal, being the conversion of an existing shed into a dwelling in this locality, is not considered to be consistent with the objectives of this zone, namely:

(a) regulating the development of rural land for purposes other than agriculture by ensuring that development is compatible with rural land uses and does not adversely affect the environment or the amenity of the locality, and

(e) reducing the incidence of loss of life and damage to property and the environment in localities subject to flooding and to enable uses and developments consistent with floodplain management practices.

It is considered that the proposed appearance of this dwelling has the potential to have a detrimental impact to the amenity of the locality, and that the habitable floor levels proposed are below the flood planning level of 2.5m AHD poses an unacceptable risk of damage to property.

It is noted that it is likely that the subject site is justifiably suitable to have a separate single dwelling development. However it is the form of dwelling proposed that is considered to be inappropriate. In terms of considering the appropriate form of development in the rural area, a site context analysis of the surrounding area has been undertaken. The surrounding properties are predominantly characterised as single storey dwellings of 'standard' appearance, with some double storey structures.

Generally the materials used for the dwellings is weatherboard or brick, with tile or corrugated iron pitched roofing. There are also some new 'project' homes style residences coming into the area. Many of the dwellings are well set back from the street and shielded by vegetation.

However, in contrast, it is considered that the current proposal will have a negative overall visual impact to the streetscape and adjoining properties. The proposed building is not considered to be in keeping with the design characteristics of dwellings with the existing area, and would constitute development that is inconsistent with public expectations of orderly development in the rural area.

This proposal involves unbroken roof ridgelines of 18.4 metres and blank walls far in excess of Council's Development Control Plan design requirements, and accordingly gives an excessively bulky appearance with no articulation or visual relief. The double storey structure does not have eaves, nor any articulation between the two levels to relief the mass of the walls. The single colour of the metal sheeted structure further exacerbates this bulky appearance, as does the shallow roof pitch of around 10 degrees. The proposed dwelling is not considered to incorporate a design with high quality materials and detailing, nor does it reflect the predominant design of the surrounding area.

14 Dwelling-houses and dual occupancy housing in rural zones

The proposal is considered to satisfy the requirements of this clause, as the subject allotment has an area of at least 4,000 square metres.

37 Objectives for development on flood prone land

One of the objectives for development on flood prone land is to minimise risk to human life and damage to property caused by flooding and inundation through controlling development.

Given that the proposed dwelling has habitable floor levels below the flood planning level of 2.5m AHD, it is considered that the design poses an unacceptable risk of damage to property. However, it is noted that the proponent could amend the proposal to satisfy the flood planning level, by internally reconfiguring all habitable floor space to the upper level. However, direct access to private open space at ground level is not achievable in this design.

The current application as proposed has a habitable room, being a 'bar and games room' currently proposed on the lower level. This room is considered to be unacceptable as its floor level proposed, 1.8m AHD, is below the minimum flood planning level which is 2.5m AHD. The 1% flood level at this location is 1.88m AHD, and therefore the proposal would be 80mm below this level without the provision of a freeboard, nor the provision of the 0.91 metre increase adopted by Council to cater for future sea level rise. Accordingly, this room would need to be relocated, and this creates an open space issue which is discussed later in the assessment.

38 Development on flood prone land

Before granting consent to development on flood prone land, Council must consider, amongst other matters, the following:

- (c) whether the risk of flooding or inundation affecting the proposed development could reasonably be mitigated and whether conditions should be imposed on any consent to further the objectives of this plan,
- (d) the social impact of flooding on occupants, including the ability of emergency services to access, rescue and support residents of flood prone areas,
- (e) the provisions of any floodplain management plan or development control plan adopted by the Council.

The proposal as lodged does not satisfy Council's policy in this area, i.e. that all habitable floor levels are required to be at a minimum level of 2.5m AHD.

As discussed above, it is noted that this floor level could be achieved should a redesign of the proposal occur, however based on the application as lodged, the application should be refused on flooding grounds.

47 Services

The subject site is not connected to reticulated sewer. In this regard the applicant has lodged an application to operate an on-site waste water treatment system. It is acknowledged that the proposed design would comply with Council's requirements. However, it is noted that the existing currently being used, i.e. the system previously approved for the shed, would not satisfy the standard requirements. Conditions of consent can address this issue.

Development Control Plan 2007

The dwelling proposed is considered to be contrary to the provisions of Port Stephens Development Control Plan 2007 (DCP 2007), specifically in relation to building design elements and visual appearance. This DCP requirement underpins the intent and objectives of Port Stephens Council Local Environmental Plan 2000 for dwellings in the 1 (a)—Rural Agriculture "A" zone which states:

(a) regulating the development of rural land for purposes other than agriculture by ensuring that development is compatible with rural land uses and does not adversely affect the environment or the amenity of the locality, and

The adoption of the Port Stephens DCP 2007 provides clear direction for future development in the local government area. This change was motivated by the growing concern that previous DCP's provided no clear guidance for Council or development assessment staff in relation to desired design requirements for single dwellings. This issue is significant public interest, that being the orderly and predictable form of development occurring within rural areas.

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It is noted that one of the outcomes of the recent Futures Project was that 'The scenic qualities of Port Stephens, particularly in the rural areas, are important and need to be preserved'.

To assist in providing a strategic approach to land use management and property development, the inclusion of additional controls in relation to external appearance is reflected in the principles which were adopted within the DCP 2007 to provide guidance for developers and land owners. These principles, as well as the relevant controls as discussed below.

Summary of numerical compliance with DCP standards

ATTRIBUTE	PROPOSED	REQUIRED	COMPLIES
Front setback	More than 200 metres	12 metres	YES
Height	5.9 metres	9 metres	YES
Side setbacks	More than 7 metres	2 metres for second storey	YES
Unbroken roof ridgelines	18.4 metres	Maximum 10m in length	NO
Blank walls	7.5 metres	Maximum 5m in length	NO
Carparking	At least 1 space	1 space	YES
Private Open Space	Living areas would be required to be relocated to upper levels.	Directly accessible from living area	NO

B2 - Environmental and Construction Management

B2.12 Waste Water

The subject site is not connected to reticulated sewer. In this regard the applicant has lodged an application to operate an on-site waste water treatment system. It is acknowledged that the proposed design would comply with Council's requirements. However, it is noted that the existing currently being used, i.e. the system previously approved for the shed, would not satisfy the standard requirements. For the dwelling to be occupied permanently, the existing non-compliant system would be required to be decommissioned and replaced.

The proposed replacement system meets the requirements of the On-site Sewage Management Strategy. Treated effluent from the treatment system will be discharged to a raised and vegetated irrigation area. The location within the Tilligerry Creek catchment prescribes that appropriate disposal, environmental protection and minimisation of public health impacts overrides re-use options.

B6 - Single and Dual Occupancy Dwellings

Numerical standards have been addressed in the table above. The principles and merit based criteria are discussed below.

B6.3 Streetscape & Front Setback

It is noted that on a rural property, streetscape issues are considered differently to that of residential properties, given the lower density of development and provision of larger front setbacks. This application proposes a particularly large front setback, however, the building will be some what visible to the street and accordingly the streetscape principles are required to be considered.

In this regard the proposal is considered to be inconsistent with the DCP principles in relation to streetscape. Specifically:

B6.P1 – Development should be of scale and appearance that reinforces the existing or the desired future character of the area.

B6.P2 – Development should be sympathetic to the existing context...

Whilst it is noted that rural sheds are not inconsistent with the surrounding, it is considered that the conversions required to upgrade this structure to a dwelling standard would result in a structure that would be unsympathetic to the streetscape. This is due to bulk and scale issues and the building design elements, which are discussed in detail below.

B6.5 Bulk and Scale

It is considered that the proposal is inconsistent with the following principles of the DCP:

P6.C20 – the bulk and scale of a dwelling should be sympathetic to the local street context.

B6.P21 – the bulk, scale and location of a new dwelling should minimise the impact on the amenity of adjacent dwellings and land

As discussed above, it is considered that the conversions required to upgrade this structure to a dwelling standard would result in a structure that would be unsympathetic to the surrounding area. The proposal provides minimal, if any architectural relief or articulation to reduce the bulk and scale of the structure. Additional discussion in this regard is detailed below in B6.9 Building Design Elements.

B6.9 Building Design Elements

It is not considered that the conversion of the shed into a dwelling will be able to achieve the following principles of the DCP:

B6.P31 Development should reflect street character through use of local design elements, materials and forms.

B6.P33 Building design should balance horizontal and vertical proportions, windows positions and openings on all building facades.

B6.P34 Façade design should use high quality materials and detailing.

Further the proposal does not comply with the following controls:

B6.C55 Unbroken roof ridgelines must not exceed 10m in length and blank walls without a window must not exceed 5m in length.

B6.C57 The selection of colours and materials must be used to highlight the shape of building masses and detail elements. Single colour buildings are not acceptable.

In general, it is considered that the proposal will have a detrimental impact to the visual landscape, both to the streetscape and to adjoining houses. The dwelling is not considered to incorporate a design with high quality materials and detailing, or reflect the design of the surrounding areas.

The proposal involves unbroken roof ridgelines and blank walls far in excess of Council's design requirements, and accordingly will give an excessively bulky appearance. The single colour of the metal sheeted structure further exacerbates the bulky appearance.

B6.10 Energy Efficiency

It is noted that an engineering certification has been provided in relation to BASIX requirements.

B6.11 Private Open Space

Whilst it is noted that the subject site provides sufficient land for private open space, the design of the shed conversion to dwelling is not conducive to the future amenity of the occupants.

Specifically, as all habitable rooms will be required to be located on the mezzanine level, as subsequently the proposal will not comply with the following control:

B6.C64 The principle private open space area must be directly accessible from the living area of the dwelling.

It is considered that the current design does not provide the minimum amenity requirements as specified by the DCP.

B6.12 Privacy and Amenity

Given the setback distances proposed, it is considered unlikely that the proposal would create any significant privacy impacts.

B6.14 Vehicular Access & Parking

The proposal complies with the carparking requirements.

B6.15 Stormwater & Greywater

Stormwater management is achievable for the proposal through conditions of consent.

B6.17 Site Facilities & Services

The subject site has suitable areas for the provision of facilities, e.g. clothes drying area and garbage storage.

State Environmental Planning Policies

SEPP No 14—Coastal Wetlands

Land adjacent to the site is identified as containing SEPP 14 wetlands. However given that these areas are separated from the site by a road, it is considered that the proposal is unlikely to have any significant impacts to this area.

SEPP No 71—Coastal Protection

An assessment of the proposal pursuant to the 'matters for consideration' contained in this policy, the proposal is considered to be inappropriate. Specifically, the proposal is not considered to be suitable given its type, location and design and its relationship with the surrounding area.

SEPP (Building Sustainability Index: BASIX) 2004

It is noted that an engineering certification has been provided in relation to BASIX requirements. The existing shed will require modifications including insulation and window awnings. It is noted that the erection of awnings would have benefits to the appearance of the structure.

SEPP (Rural Lands) 2008

This policy aims to facilitate the orderly and economic use and development of rural lands for rural and related purposes, and to identify the Rural Planning Principles and the Rural Subdivision Principles so as to assist in the proper management, development and protection of rural lands for the purpose of promoting the social, economic and environmental welfare of the State,

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It is not considered that the current proposal is consistent with the following rural planning principles contained in this policy:

(f) the provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities

This policy prescribes that the following matters are required to be considered in determining development applications for rural dwellings:

Matters for consideration	Comment
(a) the existing uses and approved uses of land in the vicinity of the development,	It is noted that the surrounding area contains similar sheds. However the key point of difference is that these other sheds are being used in a rural capacity. The proposal will involve the conversion of a shed structure into a dwelling style construction. It is considered that this will create an unusual appearance that is inconsistent with the surrounding lands and uses.
(b) whether or not the development is likely to have a significant impact on land uses that, in the opinion of the consent authority, are likely to be preferred and the predominant land uses in the vicinity of the development,	The conversion of sheds to dwellings is considered to be generally inconsistent with the preferred and the predominant land uses in the vicinity of the development, as detailed in the context analysis contained in this report.
(c) whether or not the development is likely to be incompatible with a use referred to in paragraph (a) or (b),	It is noted that the dwelling use is not inconsistent with the surrounding area, however that the built form of the dwelling proposed is inconsistent with the built form established in the locality.
(d) if the land is not situated within a rural residential zone, whether or not the development is likely to be incompatible with a use on land within an adjoining rural residential zone,	It is not considered that the area is a rural residential area.
(e) any measures proposed by the applicant to avoid or minimise any incompatibility referred to in paragraph (c) or (d).	It is not considered that design features could be incorporated into the shed/dwelling design to achieve consistency with the surrounding area in terms of character and design. It is noted that window awnings, pergola and cladding materials will provide cosmetic relief to the bulk and scale of the shed, but will not contribute to the otherwise inconsistent appearance of the shed structure with rural dwellings, in relation to wall heights, ridge lengths, articulation or roof pitch.

Building and Construction Matters

As the proposal involves the conversion of a shed to dwelling, Building Code of Australia issues are relevant to the assessment, i.e. whether the Class 10 structure can be reasonably converted to be Class 1A structure.

The matters to be considered include:

- Critical structural details, being the size and spacing of floor joists
- Certification from an engineer that structure has or can be modified to be suitable for the new intended use as a class 1a structure in accordance with AS1170 – i.e. required to shown that the class 10(a) structure meets class 1(a)
 - Issues relating to the class of the building include:
 - Wall/roof sarking
 - Wet areas waterproofed
 - Wall to ceiling height of 2.4 metres
 - Light and ventilation
- Certification from an engineer that the structure has been modified to be suitable for Class 1(a) and is structurally capable of standing all loads imposed thereon, eg mezzanine level
- Certification from an engineer that the footings are capable of additional point loads for existing and proposed works
- Certification from an engineer that structure is designed and built in accordance with NSW Government Floodplain Management Manual (2001)
- Certification from a qualified person that the electrical components comply with NSW Government Floodplain Management Manual and that all electrical connections are above the flood planning level
- Certification from a plumber that the plumbing work complies with AS3500 and is installed above flood level
- Termite treatment certificate

Council has received written certification from an engineering consultancy stating that their review of the existing building confirmed that the design and construction of the structural elements satisfy the requirements of AS 1170 (Loading Code) and the existing structure is suitable for use as a Class 1A building. They have also confirmed that the structure and footings are also suitable for the change of use from a shed to a dwelling and the building is capable of withstanding the forces and impacts of a 1% design flood.

Bushfire

The subject site is identified as bushfire prone, and accordingly an assessment pursuant to Section 79BA of the Environmental Planning and Assessment Act 1979 has been undertaken. It is considered that the proposal could comply with the requirements of Planning for Bushfire Protection 2006 provided that it was built to level 1 construction, a static water source was provided, as well as asset protection zones from 10-16 metres.

2. Likely Impact of the Development

This development application has the potential to create a cumulative impact in the Port Stephens Local Government Area, in that it could potentially create a precedent.

3. Suitability of the Site

It is noted that it is likely that the subject site is justifiably suitable have a single dwelling development. However it is the built form of the dwelling proposed that is considered to be inappropriate.

4. Submissions

The proposal was notified in accordance with Council policy and no submissions were received by Council.

5. Public Interest

The proposal is contrary to the public interest as the development fails to satisfy relevant planning considerations and establishes an unacceptable level of impact on amenity due to lack of appropriate private open space area and by not providing a floor level above the minimum flood planning level. Further it is considered that the proposal will have a negative overall visual impact to the streetscape and adjoining properties.

The proposed building is not considered to be in keeping with the design characteristics of dwellings with the existing area, and would constitute development that is inconsistent with public expectations of orderly development.

**ATTACHMENT 2
CHRONOLOGY**

- 22/8/2007 – Council became aware of that the shed may be occupied as an unauthorised dwelling
- 29/8/2007 – Council officers spoke with occupier who advised that the shed was being used as an unauthorised dwelling. Occupier advised of Council's intention to issue a notice of entry to inspect the site and gather information on the site
- 5/9/07 – Council officers undertook site inspection
- 25/9/07 – Council officers posted a letter to occupier requesting further information on the property and the use of the shed
- 11/10/07 – Owner/occupier responded to Council's request advising that one third of the shed was being used as an unauthorised dwelling
- 24/10/07 – Council officers posted a letter to owner/occupier stating that it was Council's intention to request that the occupants cease the unauthorised occupation of the machinery shed as a dwelling due to safety, amenity and environmental concerns
- 12/11/07 – Council officers had discussions with owner/occupier. Owner/occupier discussed possibility of lodging a development application
- 7/12/07 – Council officers sought legal advice in regard to risks associated with unauthorised occupation of shed
- 14/2/08 - On the basis of legal advice, a letter was posted to the owner/occupier requesting information, nominating a timeframe for compliance by 14/3/08
- 20/3/08 – Meeting held between owner/occupier, Councillor Francis and Council staff in relation to matter. Owner/occupier advised that he was prepared to lodge an application to change the shed to a dwelling. The owner/occupier was asked if he considered building another dwelling on the property. He said he would be prepared to do that but would require approximately 5 years before he could commence construction. The owner/occupier was requested to advise Council by 28/3/08 of when he intended to lodge a DA
- 28/3/08 – Council officers received a call from Port Stephens Engineers who advised that they are consultants for the owner/occupier
- 29/4/08 – Council officers posted a letter to the owner/occupier restating Council officer's position and matters discussed at the meeting on 20/3/08
- 29/7/08 – Council officer contacted the owner/occupier and advised that as Council had not been given confirmation of his intentions that further action was being initiated to require the habitation of the shed to cease. The owner/occupier advised that information was being prepared, and that personal issues had delayed the progress
- 22/9/08 – Council officers contacted the owner/occupier to advise that a notice would be posted today advising that an order is intended to be issued to require the use of the shed as a dwelling to cease due to the risk to the inhabitants. The owner/occupier expressed significant distress at this advice and advised that a development application would be lodged within days, and Council officers deferred the action for further consideration

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- 30/09/08 – After further consideration the Manager Sustainable Planning advised that due to significant risk, the intention to issue an order to cease occupational within three months was to progress.
- 21/10/08 - The owner/ occupier lodged an application with Council to change the use of the shed to a dwelling
- 5/1/09 – Council officers posted an intention to issue an order to the owner/occupier, advising that the 3 month extension had lapsed Council required the occupation of the shed to cease prior to March 1 2009
- 13/1/09 – Letter requesting additional information to assess development application sent to owner/occupier
- 10/2/09 – Some of the information requested for the development application received
- 11/2/09 - Council officers posted the order to the owner/occupier requiring that they cease the occupation of the shed as a dwelling within 1 month from the date of the notice.
- 19/2/09 – Further information requested for the development application received by Council
- 24/2/09 Council considered a report by Council staff during the February Ordinary Meeting where they were to note that staff had requested the owner/occupier to cease the occupation of the shed as a dwelling by May 11 2009
- Council made a resolution to allow the owner/occupier to remain in the shed for a period of 5 years to enable the construction of a separate dwelling. The resolution also required that the waste water treatment system was to be upgraded within 6 months
- 3/3/09 – Following the resolution Council officers reviewed the shed with regard to safety issues in relation to the construction of the shed. Council officers sought additional legal advice in relation to these issues.
- 10/3/09 – Council officers wrote to the owner/occupier requesting an undertaking within 7 days to provide certification by duly qualified persons that the structure was safe for occupation including areas of plumbing (wastewater) and electrical.
- 16/3/09 – Council officers were advised that the owner/occupier had contacted the Mayor and that the Mayor had said that the requirement to provide the undertaking was not required
- 19/3/09 - The Mayor and Manager Environmental Services undertook a site inspection in relation to the wastewater system. The result of the inspection was that there was no urgent need to upgrade the waste water treatment system
- 20/3/09 – Council officers contacted the owner/occupier to request that Council staff be allowed to inspect the inside of the shed and the works undertaken to construct the mezzanine, electrical and plumbing. During this conversation, the owner/occupier advised that his engineers were working on some information and it should be provided to Council shortly.
- The owner/occupier later advised that he would not allow access to the shed for Council staff to undertake an inspection.
- 9/5/09 – Port Stephens Engineers provided advice on certification required in response to a letter delivered on 10/3/09

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- 19/6/09 – All outstanding information requested in relation to development application received
- 14/7/09 – Council officers reported the development application for Change of Use from Shed to Dwelling to the Council. Council resolved that the matter be deferred to allow a site inspection
- 21/7/09 – Councillor site inspection held.
- 28/7/09 - Council resolved 'that the matter be deferred to allow for a meeting between the applicant and Council's Sustainable Planning Group.'
- 18/8/09 – Meeting held with the Mayor Cr MacKenzie, Acting Manager Development Building and Senior Development Planner in attendance on behalf of Council, and a representative from applicant's consultant firm Port Stephens Design. Port Stephens Design proposed design measures to allow the structure to have a more 'standard' dwelling appearance.
- 3/11/09 - Amended plans in this respect were submitted to Council. These plans demonstrate a carport along the eastern elevation and an awning along the northern frontage facing Marsh Road.

ITEM NO. 4

FILE NO: 16-2009-105-1

DEVELOPMENT APPLICATION FOR FOUR (4) LOT SUBDIVISION AT NO. 364 SIX MILE ROAD, EAGLETON

**REPORT OF: KEN SOLMAN – ACTING MANAGER, DEVELOPMENT & BUILDING
GROUP: SUSTAINABLE PLANNING**

RECOMMENDATION IS THAT COUNCIL:

Consider the draft conditions of consent (Attachment 1), prepared in accordance with Council Resolution on 9 February 2010 (Minute 4).

**COMMITTEE MEETING – 09 MARCH 2010
RECOMMENDATION:**

	<p>Councillor Bruce MacKenzie Councillor Shirley O'Brien</p>	<p>That Council approve the development application, 16/2009/105/1, subject to conditions as listed in Attachment 1. In this instance, reasons for approval will need to be drafted by Councillors including supporting justification as a basis for defence in any potential legal proceedings.</p>
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In accordance with Section 375A, Local Government Act 1993, a division is required for this item.

Those for the Motion: Crs Glenys Francis, Ken Jordan, Bruce MacKenzie, Steve Tucker, Shirley O'Brien, Bob Westbury, Sally Dover and Daniel Maher.

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

ORDINARY MEETING – 09 MARCH 2010

<p>064</p>	<p>Councillor Daniel Maher Councillor Ken Jordan</p>	<p>It was resolved that the Council Committee recommendation be adopted.</p>
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In accordance with Section 375A, Local Government Act 1993, a division is required for this item.

Those for the Motion: Crs Glenys Francis, Ken Jordan, Daniel Maher, Steve Tucker, Shirley O'Brien, Bob Westbury, Sally Dover and Bruce MacKenzie.

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

BACKGROUND

The purpose of this report is provide draft Conditions of Consent for consideration by Council for a development application for a four lot Torrens title subdivision, pursuant to Clause 12 (1)(a)(v) of the Port Stephens Local Environmental Plan 2000 (LEP), as the property is divided by public roads in three locations.

On the 9 February 2010 Council considered the proposal for determination. At this meeting Council resolved:

'That Council note its support for the development and that the Sustainable Planning Group Manager be requested to draft Conditions of Consent for consideration by Council.'

In this regard, draft conditions are shown in Attachment 1.

For Council's reference, the report dated 9 February 2010, including the staff assessment of the proposal pursuant to Section 79C of the Environmental Planning and Assessment Act 1979 is shown in Attachment 2.

FINANCIAL/RESOURCE IMPLICATIONS

Reference is made to Attachment 2 - Council Report dated 9 February 2010.

LEGAL, POLICY AND RISK IMPLICATIONS

Reference is made to Attachment 2 - Council Report dated 9 February 2010.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Reference is made to Attachment 2 - Council Report dated 9 February 2010.

CONSULTATION

Reference is made to Attachment 2 - Council Report dated 9 February 2010.

OPTIONS

- 1) Refuse the development application, 16/2009/105/1, for the reasons as listed in the recommendation at item 1 of the Council committee meeting of 9/02/2010.
- 2) Reject or amend the Recommendation.
- 3) Council approve the development application, 16/2009/105/1, subject to conditions as listed in Attachment 1. In this instance, reasons for approval will need to be drafted by Councillors including supporting justification as a basis for defence in any potential legal proceedings.

ATTACHMENTS

- 1) Draft Conditions of Consent
- 2) Council Report dated 9 February 2010

COUNCILLORS ROOM

- 1) Plans and elevations/site plan.
- 2) Council Policy - Areas Affected by Flooding and/or Inundation
- 3) S733(4) Local Government Act 1993 Exemption from liability – flood liable land and land in coastal zone

TABLED DOCUMENTS

Nil.

ATTACHMENT 1

DRAFT CONDITIONS OF CONSENT

1. The development is to be carried out in accordance with the approved plans and documentation submitted with the application set out in Schedule 3, except as modified by the conditions of this development consent or as noted in red by Council on the approved plans.
2. Failure to comply with the conditions of consent constitutes a breach and on the spot fines may be issued under the Environmental Planning & Assessment Act 1979 and or the Protection of the Environment Operations Act 1997.
3. This consent does not authorise any clearing of native vegetation.
4. This consent does not authorise the placement of any landfill on the site.
5. A Subdivision Certificate must be obtained from Council within five (5) years of the date of this consent, otherwise this approval will lapse. The applicant must submit completed Subdivision Certificate Application Form (& applicable fee), 6 copies of the Survey Plan, two copies of any 88B Instrument and a check list demonstrating compliance with the conditions of consent.
6. Where a condition of development consent requires the preparation of an instrument under Section 88B of the Conveyancing Act, two (2) copies of the instrument shall be provided to the Principal Certifying Authority prior to endorsement of the Subdivision Certificate.
7. Certification from a registered Surveyor shall be submitted to Council prior to the issues of the Subdivision Certificate, stating that no services (including stormwater) or public utility presently connected to the existing building shall straddle any new boundary. Alternatively, an easement shall be created to cover the services, utilities or structures.
8. Any future use of the proposed allotments is restricted by the 'high hazard' flooding constraint, as defined by the Floodplain Development Manual (2005), present on the subject site. The title of the relevant property shall be endorsed under Section 88B of the Conveyancing Act to give effect to this condition. In this regard Council shall be nominated as the sole authority permitted to alter/remove the endorsement.
9. Any future development to which Section 94 contributions apply shall incur the Section 94 contributions. The title of the relevant property shall be endorsed under Section 88B of the Conveyancing Act to give effect to this condition. In this regard Council shall be nominated as the sole authority permitted to alter/remove the endorsement.
10. The development has been granted an approval from the NSW Rural Fire Service dated 1 July 2008 under their relevant legislation. Where conditions are imposed by the authority the development shall comply with the general terms of approval.
11. At the commencement of subdivision works the property around each existing dwelling shall be managed as an inner protection area (IPA) as outlined within Section 4.1.3 and appendix 5 of Planning for Bush Fire Protection 2006 and the NSW Rural Fire Service's document 'Standards for asset protection zones.' The

MINUTES FOR ORDINARY MEETING – 9 MARCH 2010

intent of measures is to provide sufficient space and maintain reduced fuel loads so as to ensure radiant heat levels of buildings are below critical limits and to prevent direct flame contact with a building.

**ATTACHMENT 2
COUNCIL REPORT DATED 9 FEBRUARY 2010**

ITEM NO.

FILE NO: 16-2009-105-1

DEVELOPMENT APPLICATION FOR FOUR (4) LOT SUBDIVISION AT NO. 364 SIX MILE ROAD, EAGLETON

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

RECOMMENDATION IS THAT COUNCIL:

Refuse Development Application 16-2009-105-1 for the reasons listed below.

- 1) The proposal has not demonstrated a future use or that the proposed allotments are capable of sustaining a permissible use in the future.
- 2) The development is inconsistent with Clause 37 and Clause 38 of the Port Stephens Council Local Environmental Plan 2000. It is not considered that the future allotments will be suitable for intensification of land use, due to extent and nature of flooding, impact on occupants, property and impact on adjoining properties. Proposed lots 1, 2 and 3 would be severely affected by flooding depths of 4.2 metres and due to isolation in severe floods accessibility for emergency services would be severely limited.
- 3) Approval of any intensification of land use as a result of the subdivision in high risk flood areas places further demand on already limited SES resources by way of domestic property protection, evacuation and/or resupply.
- 4) The development is considered to be an inappropriate land use under the Floodplain Development Manual, 2005.
- 5) The development is not consistent with the provisions and objectives of Zone No 1 (a) (Rural Agriculture "A" Zone) of the Port Stephens Local Environmental Plan 2000. The proposal will fragment agricultural lands and will not protect the agricultural potential of the land. It is not considered that the future allotments will be suitable for intensification of land use, due to extent and nature of flooding.
- 6) Insufficient information was submitted with the application to enable a comprehensive assessment of the use of the proposed allotments under Section 79C of the Environmental Planning and Assessment Act, 1979.
- 7) Insufficient information has been provided to assess the proposal in accordance with Clause 47 of the Port Stephens Local Environmental Plan 2000, in terms of demonstrating that the site has the capability for

MINUTES FOR ORDINARY MEETING – 9 MARCH 2010

- adequate facilities for water provision and wastewater treatment for any intensification of land use permissible as a result of the subdivision.
- 8) Insufficient information has been provided to demonstrate that adequate access can be achieved for all proposed allotments, and in particular proposed Lot 3 has no physical constructed access currently available.
 - 9) The development is inconsistent with the principles of State Environmental Planning Policy (Rural Lands) 2008, as the development is not considered to be located in an appropriate location due to extent and nature of flooding.
 - 10) It is not possible to implement an evacuation plan for proposed Lots 1-3, that would provide permanent, fail safe, maintenance free measures to ensure the timely, orderly and safe evacuation of any future development on the land, including animal based agricultural activities.
 - 11) The development is contrary to the public interests and expectations, of an orderly and predictable built environment.
 - 12) The development is inconsistent with the provisions of the Hunter Regional Environmental Plan 1989. It is not considered that the future allotments will be suitable for intensification of land use, due to extent and nature of flooding.
 - 13) Approval of this application would have an undesirable cumulative effect, having the potential to increase the community's susceptibility to flooding, in terms of social, economic and environmental consequences.

PLEASE NOTE:

This report was deferred at the Ordinary Council meeting held on 8 December for further information on the legal status of the roads relevant to the application and relating to the incidence of flooding history of the site. This information has been provided as an Information Paper which has been put to this meeting for consideration. See Page 263 – Confidential Information Paper

BACKGROUND

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

This development application was lodged on 24 February 2009, and proposes a four lot Torrens title subdivision, pursuant to Clause 12 (1)(a)(v) of the Port Stephens Local Environmental Plan 2000 (LEP), as the property is divided by public roads in three locations. One of these roads is Newline Road, and two of these roads are currently unformed.

Proposed lots 1 and 2 have frontage and direct access to Newline Road, similarly proposed lot 4 has frontage and access to Six Mile Road. Proposed lot 3 has frontage to two unformed public roads, one along the western boundary and one

MINUTES FOR ORDINARY MEETING – 9 MARCH 2010

along the eastern boundary. The applicant amended the proposal during the assessment to delete a proposed right of way for Lot 3, and is now proposing to rely on the unformed road for access.

The subject site is zoned 1(a) – Rural Agriculture, which is described in LEP. The subdivision of the allotment, by road severance is permissible with consent, as specified by Clause 12 of the LEP.

This proposed development is located in a high flood risk area (High Hazard) as identified by the Lower Hunter Valley Floodplain Risk Management Study (2001), where the 1% Annual Exceedence Probability (AEP) flood level is recorded at 5.5 metres AHD. Even in moderate floods, for example, the 20% AEP (i.e. 1 in 5 year event) the property will be inundated by floodwater. The Flood Planning Level is 5.2 metres AHD. Proposed lots 1, 2 and 3 are substantially flat at a level of approximately RL 1.0, and therefore would be severely affected by flooding of up to 4.2 metres.

In this regard, while consent is not being sought for any post subdivision uses as part of this application, Council officers consider that the likely post subdivision uses are relevant as a matter of public interest under Section 79C of the Environmental Planning and Assessment Act 1979. This is to ensure that the lots could be developed for a range of permissible uses, and that the fragmentation of agricultural land is not occurring without adequate justification.

The applicant has not provided an anticipated use for the resultant allotments, despite numerous requests from Council officers. The applicant has stated, in part:

'As with all subdivisions the future intended use of lots to be created is unknown at this time and the future use of the lots cannot be restricted by the issue of consent to the subdivision. The purpose of the subdivision is to make the lots available for future disposition and sale and their future uses is unknown and more importantly could include any and all of the uses permissible within the zone, subject to the further consent of Council.....'

'...If future applications for inappropriate land uses are received by Council let Council deal with them at the time they are lodged. Trying to consider all possible end uses for the land at this time is tantamount to Council considering the likelihood of meteorite strikes on the land....'

'.... The owner has advised that they will not entertain any further discussion in this matter and will be lobbying Councillors to have the matter brought before Council as soon as possible....'

Council officers have significant concerns with this approach. As stated above, any permissible use in the Rural 1(a) zone could be proposed in a forthcoming development application. In this regard, Council officers consider it necessary to assess all land uses permissible by the LEP, to assess whether these lots being created, would legitimately have any future uses once subdivided noting the flooding issue and other site constraints.

The assessment of these uses has been performed in accordance with Floodplain Development Manual 2005 (FDM). The FDM also provides the framework from which Council has determined the hazard characterisation of land, which is 'high hazard'. High Hazard is defined by situations where there is possible danger to personal safety; evacuation by trucks difficult; able-bodied adults would have difficulty in wading to safety and potential for significant structural damage to buildings.

The assessment revealed that the majority of future potential uses are likely to be unacceptable, and that any appropriate uses, for example agriculture, would be less viable as a result of the subdivision.

It is also noted that Clause 12 (2) of LEP 2000 states:

Subdivision of land for a purpose specified in subclause (1) (a) does not have the effect of precluding development of the land for any purpose for which it might have been developed immediately prior to the subdivision (except in so far as the land has been taken for a road as referred to in subclause (1) (a)).

In this regard, Council would be prevented from conditioning the allotments to have no dwelling entitlements. The three additional allotments would therefore have a dwelling entitlement given that they are larger than 4000m². Accordingly, approval of this application has the potential to create three additional high hazard flood prone allotments, upon which future owner's may seek dwellings or the like.

The applicant states that the subdivision by road severance may also allow for the sale of those lands to adjoining land owners. It is noted that this same outcome could be facilitated by proposing a boundary adjustment in accordance with Clause 12 (1)(a)(ii) of the LEP. A boundary adjustment would be the more desirable option as it would not have the affect of creating additional dwelling potential on flood prone land.

On 26 August 2008 Council refused an identical development application DA 16-2008-388-1 at the property under delegated authority due to the high hazard flooding constraint on the site. The application was relodged with Council without any significant amendments.

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

- Flooding
- Suitability of the site
- Insufficient information submitted to enable an adequate assessment
- Inconsistent with provisions of environmental planning instruments

An assessment of these issues is provided within the attachments.

It is recommended that this application be refused.

The subject site is considered to be highly constrained with regard to flooding, given the proximity to the Williams River and the likelihood of the river flooding on a regular basis. The grounds for refusal are on the basis of the social and economic impacts of flooding on future occupants of any land use proposed in the future, including the

ability of emergency services to access, rescue and support residents in flood prone areas and the precedent set by approving subdivisions in a flood prone area. Further, the rural parcel will become fragmented and accordingly, less agriculturally viable.

FINANCIAL/RESOURCE IMPLICATIONS

Nil

LEGAL AND POLICY IMPLICATIONS

Council may become legally liable in cases of property damage and/or loss of life where approval has been given to intensify development in flood prone areas whilst being specifically aware of the risks.

The Councillors attention is specifically drawn to Sections 733(1) and 733(4) of the Local Government Act 1993 relating to exemption from liability with respect to flood prone land and the basis of "good faith" defence established in legal case law.

The development application is inconsistent with Council's Areas Affected by Flooding and/or Inundation Policy originally adopted on 27 January 1998 and most recently amended by Council on 16 December 2008. The objectives of this policy include:

OBJECTIVES

- To manage the development of land subject to or affected by the likelihood of flooding and/or tidal inundation defined as flood prone 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 Williamtown Salt Ash Flood Study and any further flooding information available to Council at the time.
- To ensure that decision 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.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Approval of this subdivision has the potential to increase the community's susceptibility to the effects of flooding and the associated consequences, by creating additional dwelling entitlements or opportunities to intensify land use. The effects of flooding may be distinguished between social, economic and environmental implications

The social implications directly attributable to flood inundation include but are not limited to risks to public safety, potential loss of human life, community disruption, direct and indirect damages caused by floodwaters, (property damage, loss of goods and personal

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possessions), emotional, mental and physical health costs, provision of food and accommodation for evacuees, loss of wages and opportunity cost to the public caused by the closure or limited operation of public facilities.

In terms of economic impacts, the subdivision of this land has the potential to result in three additional land owners with an expectation that the land can be developed. As detailed in this assessment, Council officers would not recommend approval of a dwelling or other intensification of the land due to the flooding constraint. This may incur financial hardship to these future owners. Refusal of this application may have an immediate economic impact upon the property owner but, in the long term, reduces private and public economic losses attributed to flooding.

Environmental impacts are likely to be created by the impacts of unsuitable development on flood prone land contributing to environmental pollution through erosion, waterborne debris, residual debris, structural failure of dwellings, fences, outbuildings and other domestic/rural infrastructure, and possible effluent pollution (from onsite sewage treatment systems).

There are no flora and fauna issues associated with this application.

CONSULTATION

As the proposed subdivision is less than 5 allotments, the proposal was not required to be notified, as prescribed in the Port Stephens Development Control Plan 2007.

The current development application has been assessed on its merits with due regard to background information contained in the report from Council's Flooding Engineer.

OPTIONS

- 1) Adopt the recommendation.
- 2) Amend the Recommendation.
- 3) Reject the recommendation and approve the development application. In this instance, reasons for approval will need to be drafted by Councillors including supporting justification as a basis for defence in any potential legal proceedings.

ATTACHMENTS

- 1) Locality Plan
- 2) Flood Extent Mapping – 20% AEP (i.e. the 1 in 5 year flood event)
- 3) Assessment
- 4) Reasons for Refusal

COUNCILLORS ROOM

- 1) Plans and elevations/site plan.
- 2) Council Policy - Areas Affected by Flooding and/or Inundation
- 3) S733(4) Local Government Act 1993 Exemption from liability – flood liable land and land in coastal zone

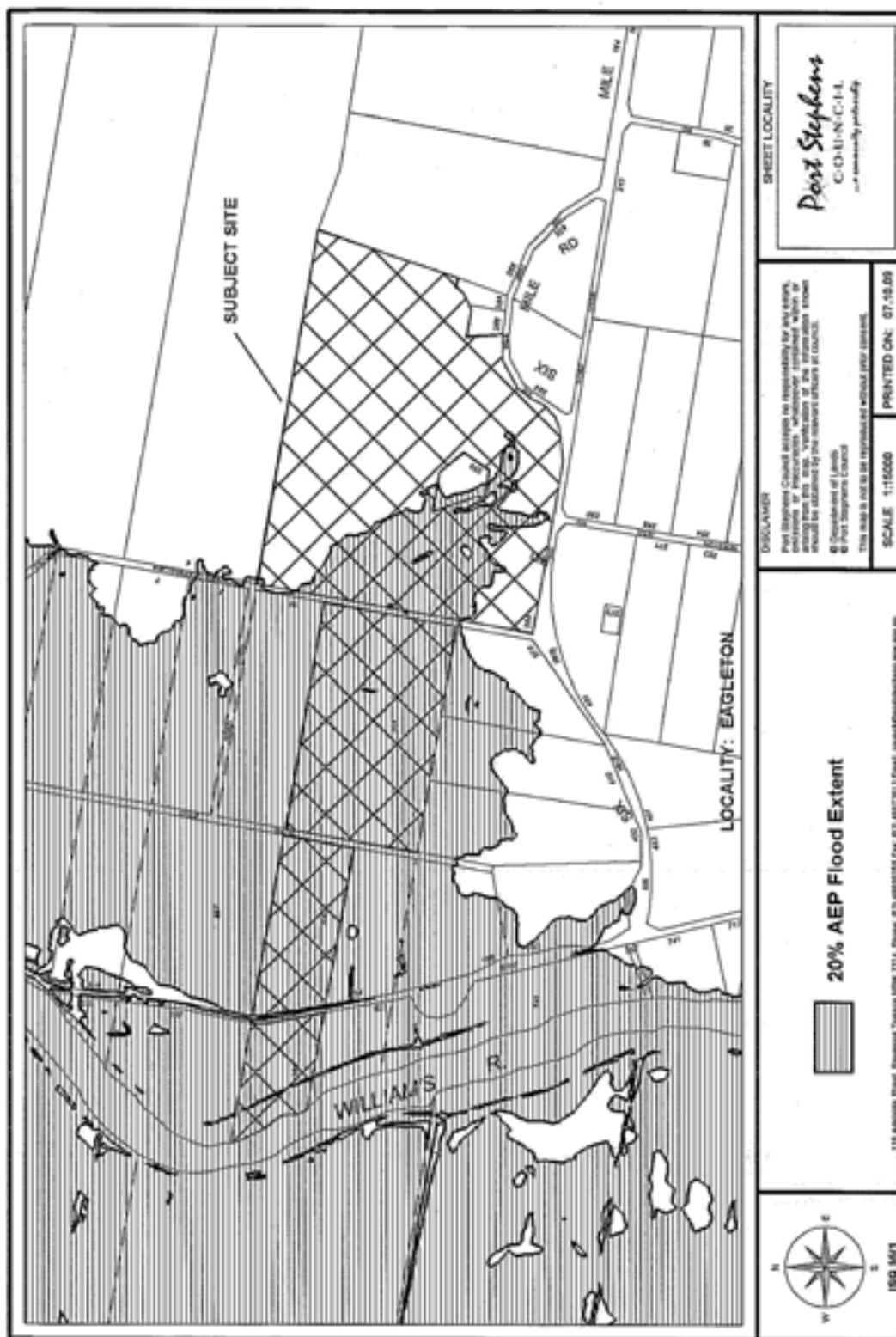
TABLED DOCUMENTS

Nil.

ATTACHMENT 1
LOCALITY PLAN



ATTACHMENT 2
 FLOOD EXTENT MAPPING – 20% AEP (I.E. THE 1 IN 5 YEAR FLOOD EVENT)



**ATTACHMENT 3
ASSESSMENT**

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

THE PROPOSAL

The proposal is a four lot torrens title subdivision, proposed pursuant to Clause 12 (1)(a)(v) of the LEP, as the property is divided by public roads in three locations. One of these roads is Newline Road, and two of these roads are unformed.

The proposed lot sizes are:

- Lot 1 – 6.59 hectare
- Lot 2 – 10.66 hectares
- Lot 3 – 26.15 hectares
- Lot 4 – 75.02 hectares

Proposed lots 1 and 2 have frontage and direct access to Newline Road, similarly proposed lot 4 has frontage and access to Six Mile Road. Proposed lot 3 has frontage to two unconstructed dedicated public roads, one along the western boundary and one along the eastern boundary. The applicant amended the proposal during the assessment to delete a proposed right of way for Lot 3, and is now proposing to rely on the unformed road for access.

THE APPLICATION

Owner	N.L. & H.G. HAMMOND
Applicant	Paul Le Mottee Project Management Pty Limited
Detail Submitted	Plan of proposed subdivision and Statement of Environmental Effects (including two addendums)

THE LAND

Property Description	Lot 11 DP 833856
Address	364 Six Mile Road EAGLETON
Area	118.53 hectares
Dimensions	Length of allotment including roads is approximately 2.79 kms. The width of the allotment varies from 240 metres to 585 metres.
Characteristics	The site has varying grades from small hills to flood plain flats. There is an existing dwelling on the highest area of the allotment (i.e. on proposed lot 4).

THE ASSESSMENT

1. Planning Provisions

LEP 2000 – Zoning
Relevant Clauses

Rural 1(a) RURAL AGRICULTURAL “A”
10 Zone objectives and development
control table
11 Rural zonings
12 Subdivision within rural zones generally
37 Objectives for development on flood
prone land
38 Development on flood prone land
39 Development near the Williams River
47 Services

Development Control Plan

Port Stephens Development Control Plan
2007

Regional Environmental Planning Policies

Williams River Catchment Regional
Environmental Plan 1997
Hunter Regional Environmental Plan 1989
(now superseded but applicable at date
of lodgement)

State Environmental Planning Policies

State Environmental Planning Policy (Rural
Lands) 2008

Discussion

NSW Floodplain Development Manual 2005 (FDM)

Glossary of terms:

Annual Exceedance Probability (AEP) - When floods do sporadically occur they vary greatly in likelihood of occurrence, as measured by AEP. The AEP of a particular flood discharge at a particular point in a particular catchment is the probability that the discharge will be equalled or exceeded in any one year. Typically, AEP is quoted in terms of percentages, for example, a flood with a 10% AEP has a 10% or one-in-ten chance of occurring in any year.

The 1% AEP flood – this term is a statistical event occurring on average once every 100 years, ie, there is a 1% chance of a flood of this size or greater occurring in any given year.

Flood Planning Level (FPL) - Flood levels selected for planning purposes which should be based on an understanding of the full range of flood behaviour and the associated flood risk, including the social, economic and ecological consequences associated with floods of different severities. Different FPL's may be appropriate for

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different categories of land-use and for different flood plans. Accordingly, the advice provided in this report with respect to FPL are only applicable to dwellings.

AHD = Australian Height Datum – refers to metres above mean sea level (or mean tide).

Assessment:

The FDM, prepared by the Department of Infrastructure, Planning and Natural Resources provides the framework from which decisions are made with respect to development affected by flooding. The FDM notes that case-by-case decision making cannot account for the cumulative impacts on flood behaviour and risks, caused by individual developments or works. This form of ad hoc assessment contravenes the principles of the manual.

Under the provisions of the FDM, Council is responsible for managing development on flood prone land. In this regard, Council has adopted specific provisions in the LEP relating to development on flood prone land. Council has also completed a Williams River Flood Study (prepared by BMT WBM Pty Ltd in 2009), which was prepared in accordance with the FDM.

This proposed development is located in a high flood risk area (High Hazard) as identified by the Lower Hunter Valley Floodplain Risk Management Study (2001), where the 1% AEP flood level is recorded at 5.2 metres AHD. Even in moderate floods, for example, the 20% AEP (i.e. 1 in 5 year event) the property will be inundated by floodwater.

All proposed lots are affected by flooding. Proposed lots 1, 2 and 3 are substantially flat at a level of approximately RL 1.0 and severely affected by flooding. The south western half of proposed lot 4 is also affected by flooding. A substantial creek also runs through all properties. Flooding could not be reasonably mitigated for development on the proposed lots 1, 2 and 3. The occupants of proposed lots 1, 2 and 3 would be severely affected by flooding depths of 4.2 metres and isolation in severe floods and emergency services would be severely limited.

In addition, climate change trends towards higher ocean levels and an increase in storm severity with more intense rainfall are likely to increase the prevalence and severity of flooding and associated damage.

Development placed above RL 5.2 m AHD on lot 4 would mitigate flooding and it is noted that a dwelling already exists on this allotment.

It is noted that the applicant has not provided the future land use for the allotments proposed to be created, and has stated that as the LEP allows subdivision by road severance, that consideration of future end uses should be dealt with at such time as development applications are lodged for any future uses. Council officers have significant concerns with this approach, as this subdivision has the potential to create three additional dwelling entitlements on high hazard flood prone land. This developer's insistence that this issue does not have to be addressed therefore has a

significant potential of creating a situation where three new owners will propose dwellings that Council will have to assess. The outcome of these applications would be for planning staff to recommend refusal, which may incur financial hardship to these future owners.

It is also noted that any permissible use in the Rural 1(a) zone could be proposed in a forthcoming development application. In this regard, Council officers considered it necessary to assess all land uses permissible by the LEP, to assess whether these lots being created for no nominated future use, would legitimately have any future uses once subdivided. This assessment is detailed below in the assessment of the LEP.

It is not possible to condition this application to mitigate the effects of flooding on proposed lots 1-3 and therefore the proposed development is likely to increase the community's susceptibility to flooding. There is no permanent, fail safe evacuation plan in place to ensure a timely, orderly and safe evacuation of occupants. In an emergency, evacuation of occupants would only be possible by boat or helicopter, which may place rescuers/operators at risk. Whilst any future uses of this land could prepare an evacuation plan, the SES has advised that private evacuation plans are usually ineffective thereby placing additional demand upon limited SES resources.

On the basis of the above assessment, Council's Flooding Engineer has recommended that the subdivision not be approved due to the severe affectation of flooding.

Local Environmental Plan 2000 (LEP)

Clause 10 Zone objectives and development control table

This clause of the LEP requires Council to consider the likelihood that development would result in increased stormwater run-off, erosion or sedimentation or other significant pollution within the Williams River catchment, or have a significant adverse effect on water quality in the Williams River.

It is noted that the subdivision in itself does not create any physical works.

It is considered that the subdivision has the potential to create additional dwellings entitlements which would require non-reticulated waste water treatment systems, which has the potential to affect the water quality of the Williams River. Many other permissible uses have the potential to create water quality issues, as detailed in Table 1 below.

Clause 11 – Rural Zonings

The objectives of the Rural Agriculture "A" Zone seek to maintain the rural character of the area and to promote the efficient and sustainable utilisation of rural land and resources. The specific objectives are addressed below:

- (a) regulating the development of rural land for purposes other than agriculture by ensuring that development is compatible with rural land uses*

and does not adversely affect the environment or the amenity of the locality, and

It is noted that the subdivision is not in itself incompatible with surrounding rural land uses.

(b) ensuring development will not have a detrimental effect on established agricultural operations or rural activities in the locality, and

It is noted that the subdivision is not in itself incompatible with surrounding rural land uses, however the subdivision will result in fragmentation of rural land, which has the potential to significantly reduce the agricultural potential of the existing holding.

(c) preventing the fragmentation of grazing or prime agricultural lands, protecting the agricultural potential of rural land not identified for alternative land use, and minimising the cost to the community of:

- (i) fragmented and isolated development of rural land, and*
- (ii) providing, extending and maintaining public amenities and services, and*

Applicant's response to this objective:

'...the subdivision in accordance with clause 12 (1)(a)(v) is clearly in recognition that the land is already fragmented by the existence of the public roads and the LEP specifically provides for this subdivision and as such it will not result in further fragmentation of grazing or prime agricultural lands, it will not alter the agricultural potential of rural land not identified for alternative land use, and will not result in any additional cost to the community of isolated development or rural land and the providing, extending and maintaining public amenities and services in that the subdivision will not create the demand for an increase in services and amenities beyond the capacity of Council to provide such services through its S94 Plan and contributions applicable under than plan.'

Council officer assessment:

Whilst the subject site is technically severed by public roads in three locations, only one of these roads is constructed. It is noted that the other two roads would be unlikely to be constructed in the foreseeable future. In this regard, the allotment is able to function as a rural property without significant physical barriers. This is significant as it allows the flood prone land to be contiguous to non-flood prone land, so that in times of flood animals using the site can find refuge above the flood planning level.

The subdivision creates the potential that the property can be sold to four separate owners, accordingly in excess of 40 hectares of flood prone rural land would be without flood refuge, thereby reducing the agricultural potential for the land.

Further, should these allotments be sold to separate users, there is a real potential that these future users would seek to use these properties in a rural residential context, thereby further limiting and fragmenting the rural land.

(d) protecting or conserving (or both protecting and conserving):

(i) soil stability by controlling development in accordance with land capability, and

(ii) trees and other vegetation in environmentally sensitive localities where the conservation of the vegetation is likely to reduce land degradation or biodiversity, and

(iii) water resources, water quality and wetland areas, and their catchments and buffer areas, and

(iv) land affected by acid sulphate soils by controlling development of that land likely to affect drainage or lower the water table or cause soil disturbance, and

(v) valuable deposits of minerals and extractive materials by restricting development that would compromise the efficient extraction of those deposits, and

It is noted that the subdivision in itself would not create any physical works.

It is considered that the subdivision has the potential to create additional dwellings entitlements which would require non-reticulated waste water treatment systems. This has the potential to affect the water quality of the Williams River. Many other permissible uses have the potential to create water quality issues, as detailed in Table 1 below.

(e) reducing the incidence of loss of life and damage to property and the environment in localities subject to flooding and to enable uses and developments consistent with floodplain management practices.

Applicant's response to this objective:

'The subdivision will not result in development likely to reduce the incidence of loss of life and damage to property and the environment in localities subject to flooding and will not prevent future uses and development consistent with floodplain management practices.'

Council officer assessment:

As previously discussed in this assessment, Council officers consider that the likely post subdivision uses are relevant as a matter of public interest. As the subdivision, for example, has the potential to create three additional dwelling entitlements on high hazard flood prone land, it is considered that this subdivision may have the potential to increase the incidence of loss of life and damage to property

Discussion of uses permissible in the Rural Agriculture "A" Zone

It is noted that the applicant has not provided the future land use for the proposed allotments, and has stated that as the LEP allows subdivision by road severance, that consideration of future end uses should be dealt with at such time as development applications are lodged for any future uses. As previously stated in this report, Council officers have significant concerns with this approach.

It is noted that the applicant has advised:

'The purpose of the subdivision is to make the lots available for future disposition and sale and their future uses is unknown and more importantly could include any and all of the uses permissible within the zone, subject to the further consent of Council.'

It is therefore considered that any permissible use in the Rural 1(a) zone could be proposed in a forthcoming development application. In this regard, Council officers considered it necessary to assess all land uses permissible by the LEP, to assess whether these lots being created for no future use, would legitimately have any future uses once subdivided.

It is considered that should any of these uses be clearly unacceptable, then this is a reason to refuse the application. Upon completion of this assessment, it became apparent that the majority of permissible uses were inappropriate, or that any potential appropriate uses, such as agriculture, are likely to be made less viable as a result of the subdivision.

The assessment of these uses has been performed in accordance with FDM, and the classification of the land as a 'high hazard', which is defined by situations where there is possible danger to personal safety; evacuation by trucks difficult; able-bodied adults would have difficulty in wading to safety; potential for significant structural damage to buildings.

The significance of the hazard is also a function of the type of development and occupant mobility. The following factors can affect the assessment of hazard:

- the existence of special evacuation needs;
- level of occupant awareness;
- isolated residential development;
- hazardous industries or hazardous storage establishments; and
- potential for damage and danger to personal safety

TABLE 1: Assessment of potential future uses on the proposed allotments

NOTE:

* The above table addresses all land uses identified in the LEP. It is noted that additional uses may exist that are considered to be innominate uses or uses that are exempt development.

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** Similar development types have been grouped for the purposes of this assessment.

*** The below assessment relates only to the subject site. It is noted that the above uses may be appropriate on other flood prone land, depending on the specific nature of each site. For example, in relation to the 5(g) zone in Raymond Terrace, certain development may be considered differently taking into account factors including historical land use settlements, proximity to services, evacuation opportunities, level of isolation and the extent and nature of the flooding.

Development allowed with or without development consent	Issues with respect to flooding constraint, or other site specific issues	Likelihood of being appropriate on resulting allotments.
agriculture	<p>The applicant has stated that in their opinion, due to the soil types present, that there are significant issues or limitations for agriculture on the existing holding due to flood hazard, permanently high water tables, seasonal water logging, foundation hazard, ground water pollution hazard, localised tidal inundation, highly plastic potential acid sulphate soils of low fertility and localised shallow soils.</p> <p>Regular flooding enhances agricultural productivity by increasing soil moisture, recharging groundwater and depositing fertile silt across the floodplain. However, flooding can also interfere with production, communication and agricultural practices, destroying high value crops.</p> <p>It is however noted that the subdivision of the land would create further issues, in that it would fragment fully flood prone allotments from the higher land that exists to the east of the site on proposed lot 4. Therefore, should animal based agriculture be proposed, proposed lots 1-3 would not have any flood refuge area for animals. Accordingly, the risk of animal deaths is likely to be significant. It is further noted that any proposed land fill to create a flood refuge has the potential to alter flood movements at the detriment of adjoining or downstream properties, and may create a significant visual impact.</p> <p>In terms of crop based agriculture on proposed lots 1-3, the three allotments have a risk of loss of plantings</p>	SIGNIFICANTLY REDUCED POTENTIAL AFTER SUBDIVISION

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	<p>and property due to flooding.</p> <p>In terms of buildings or structures ancillary to this use, it is likely that they would sustain structural damage from the forces and impact debris associated with high hazard floodwaters.</p>	
<p>flood mitigation works</p> <p>Clearing</p> <p>Dam</p> <p>Earthworks</p> <p>telecommunications facility</p>	<p>It is not considered that there is a nexus between subdivision and these uses.</p>	<p>N/A</p>
<p>abattoir</p>	<p>It is considered that the waste and pollution issues surrounding this form of land use, would create a significant downstream environmental risk in times of flooding. It is further considered that the proximity to existing dwellings may be an issue for this use.</p> <p>Isolation and evacuation issues for staff in times of flooding may also create a risk to human life.</p> <p>In terms of buildings or structures ancillary to this use, it is likely that they would sustain structural damage from the forces and impact debris associated with floodwaters.</p>	<p>UNLIKELY APPROPRIATE USE</p>
<p>advertisement</p>	<p>As per Clause 15, no stand alone advertisements are permitted on rural land.</p>	<p>MEDIUM (Only with another approved use)</p>
<p>Airport</p> <p>Race Track</p>	<p>The resultant allotments after the subdivision are likely to be too small/short for such a use. Further the location of the creek further reduces the potential for this use.</p> <p>It is considered that issues including damage to property and evacuation of users during times of flooding are concerns. Fuel or chemicals stored in conjunction with</p>	<p>UNLIKELY APPROPRIATE USE</p>

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	<p>this use, may create a significant downstream environmental risk in times of flooding.</p> <p>It is further noted that any proposed land fill to accommodate such a use has the potential to alter flood movements at the detriment of adjoining or downstream properties, and may create a significant visual impact.</p>	
<p>animal establishment</p>	<p>The subdivision, which would result in the fragmentation of the existing rural holdings, would result in three allotments (i.e. proposed lots 1-3) that do not have any flood refuge area for animals. Accordingly, the risk of animal deaths is likely to be significant.</p> <p>It is further noted that any proposed land fill to create a flood refuge has the potential to alter flood movements at the detriment of adjoining or downstream properties, and may create a significant visual impact.</p> <p>In terms of buildings or structures ancillary to this use, it is likely that they would sustain structural damage from the forces and impact debris associated with floodwaters.</p>	<p>UNLIKELY APPROPRIATE USE</p>
<p>aquaculture</p>	<p>The Aquaculture Permit Application Guidelines prepared by the Department of Primary Industries has broad criteria for native freshwater fish/crayfish farms. These criteria include that such farms must be constructed above the 1/100 year flood level. Accordingly, it is not considered that proposed lots 1-3 could accommodate such uses.</p>	<p>UNLIKELY APPROPRIATE USE</p>
<p>bed and breakfast establishment</p> <p>home-based child care or family day care home</p>	<p>Uses would have to be in conjunction with a dwelling, which due to the flooding constraint, it would be inappropriate to propose such a use on proposed lots 1-3. The Floodplain Development Manual notes that due to the likely low level of occupant awareness of flooding issues and likely specific evacuation needs, this use is not desirable uses on flood prone land.</p> <p>It is noted that on lot 4 an existing dwelling exists above the flood planning level. These uses are a possibility for this existing dwelling.</p>	<p>UNLIKELY APPROPRIATE USE</p>

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<p>Camp/ caravan site club community facility educational establishment health consulting rooms Hospitals hotel Institutions Place of Public Worship tourist facility</p>	<p>Due to flooding constraint, it would be inappropriate to propose such a use on proposed lots 1-3 and for the majority of proposed Lot 4.</p> <p>The Floodplain Development Manual notes that due to the likely specific evacuation needs of this form of use, and likely low level of occupant awareness of flooding issues it is not desirable on flood prone land.</p> <p>It is further noted that any proposed land fill to accommodate such a use has the potential to alter flood movements at the detriment of adjoining or downstream properties, and may create a significant visual impact.</p> <p>In terms of buildings or structures ancillary to this use, it is likely that they would sustain structural damage from the forces and impact debris associated with floodwaters. Further, caravan structures can easily wash away during time of flooding and cause risk to life and property down stream.</p>	<p>UNLIKELY APPROPRIATE USE</p>
<p>child care centre</p>	<p>Due to flooding constraint, it would be inappropriate to propose such a use on proposed lots 1-3 and for the majority of proposed Lot 4. The Floodplain Development Manual notes that due to the likely specific evacuation needs of this form of use, it is not desirable on flood prone land.</p>	<p>UNLIKELY APPROPRIATE USE</p>
<p>dwelling-house dual occupancy housing</p>	<p>Due to flooding constraint, it would be inappropriate to propose such a use on proposed lots 1-3 and for the majority of proposed Lot 4.</p> <p>It is noted that on lot 4 an existing dwelling exists above the flood level.</p>	<p>UNLIKELY APPROPRIATE USE</p>
<p>exhibition home</p>	<p>It is noted that exhibition homes are by industry practice converted to dwellings at a point in time. Due to flooding constraint, it would be inappropriate to propose a dwelling on proposed lots 1-3 and for the majority of proposed Lot 4.</p> <p>It is further noted that due to the isolation from any recent residential subdivisions, that this use would not be</p>	<p>UNLIKELY APPROPRIATE USE</p>

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	appropriate in the location.	
extractive industry mine	<p>The subdivision, which would result in the fragmentation of the existing rural holdings, is likely to result in allotments not large enough to sustain an extractive industry.</p> <p>Further it is noted that potential pollution issues from erosion, fuel and chemical storage, waste water ponds created in conjunction with this use, may create a significant downstream environmental risk in times of flooding.</p>	UNLIKELY APPROPRIATE USE
forestry	<p>The subdivision, which would result in the fragmentation of the existing rural holdings, is likely to result in allotments not large enough to sustain such an activity.</p> <p>It is further noted that the risk of flooding creates a significant risk of loss of plantings and property.</p>	UNLIKELY APPROPRIATE USE
helicopter landing site heliport	<p>It is considered that the potential issues surrounding this form of land use, for example storage of fuels and chemicals have the potential to create a significant downstream environmental risk in times of flooding. It is further considered that the proximity to existing dwellings would be a likely issue for this use in terms of noise impacts.</p>	UNLIKELY APPROPRIATE USE
home employment home occupation	<p>Uses would have to be in conjunction with a dwelling, which due to flooding constraint, it would be inappropriate to propose such a use on proposed lots 1-3 and for the majority of proposed Lot 4.</p>	UNLIKELY APPROPRIATE USE
intensive agricultural pursuit intensive animal husbandry	<p>Regular flooding enhances agricultural productivity by increasing soil moisture, recharging groundwater and depositing fertile silt across the floodplain. However, flooding can also interfere with production, communication and agricultural practices, destroying high value crops.</p> <p>The applicant has stated that in their opinion, due to the soil types present, that there are significant issues or limitations for agriculture due to flood hazard, permanently high water tables, seasonal water logging, foundation hazard, ground water pollution hazard, localised tidal inundation, highly plastic potential acid sulphate soils of low fertility and localised shallow soils.</p>	SIGNIFICANTLY REDUCED POTENTIAL AFTER SUBDIVISION

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	<p>It is however noted that the subdivision of the land would create further issues, in that it would fragment fully flood prone allotments from the higher land that exists to the east of the site. Therefore, should animal based agriculture be proposed, these three allotments would not have any flood refuge area for animals. Accordingly, the risk of animal deaths is likely to be significant. It is further noted that any proposed land fill to create a flood refuge has the potential to alter flood movements at the detriment of adjoining or downstream properties, and may create a significant visual impact.</p> <p>In terms of crop based agriculture on the flood prone lots, there is a significant risk of loss of plantings and property due to flooding.</p> <p>The Environmental Management Guidelines for the Dairy Industry authored by the Department of Primary Industries in 2008 advises that due to environmental risks to surface and subsurface waters, that sheds and waste or ponding areas should not be sited in areas subject to flooding at 1-in-25-year or more frequent levels, unless adequate safeguards can be incorporated. Such safeguards include systems that are above the flood line or protected from floodwater. Similar standards exist in the Environmental Impact Statement Guidelines for Cattle Feedlots (1996) prepared by the Department of Urban Affairs and Planning and the NSW Meat Chicken Farming Guidelines prepared by DPI in 2004.</p> <p>Lots 1-3 could not comply with these industry standards.</p> <p>In terms of buildings or structures ancillary to this use, it is likely that they would sustain structural damage from the forces and impact debris associated with floodwaters.</p>	
intensive agriculture	Does not apply to the Williams River Catchment.	N/A
Marina tourist boats	Not applicable, as subdivision relates only to land, not adjoining waterway.	N/A
mineral sand mine	Given the soil type of the site, it is not considered likely that such a use would be proposed. Further, the subdivision, which would result in the fragmentation of the existing rural holdings, is likely to result in allotments	UNLIKELY APPROPRIATE USE

MINUTES FOR ORDINARY MEETING – 9 MARCH 2010

	not large enough to sustain a mining activity.	
recreation area recreation facility	<p>Due to flooding constraint, it would be inappropriate to propose such a use on proposed lots 1-3 and for the majority of proposed Lot 4. The Floodplain Development Manual notes that due to the likely specific evacuation needs of this form of use, and likely low level of occupant awareness of flooding issues it is not desirable on flood prone land.</p> <p>It is further noted that any proposed land fill to accommodate such a use has the potential to alter flood movements at the detriment of adjoining or downstream properties, and may create a significant visual impact.</p> <p>It is noted that uses such as sportfields may be appropriate uses on some flood prone land areas, however, given the location of the creek, as well as isolation issues, it is considered unlikely that this site is appropriate.</p>	UNLIKELY APPROPRIATE USE
restaurant	<p>Pursuant to clause 14A of LEP 2000, a restaurant would only be permissible with a tourist facility. Due to the flooding constraint, as discussed below, a tourist facility would not be an appropriate use.</p> <p>The Floodplain Development Manual notes that due to the likely specific evacuation needs of this form of use, and likely low level of occupant awareness of flooding issues it is not desirable on flood prone land.</p>	UNLIKELY APPROPRIATE USE
retail plant nursery Market	<p>Due to flooding constraint, it would be inappropriate to propose such a use on proposed lots 1-3 and for the majority of proposed Lot 4.</p> <p>It is considered that the risk of flooding creates a significant risk of loss or damage to property, and due to the nature of the uses, there are potentially evacuation issues for workers or customers.</p>	UNLIKELY APPROPRIATE USE
roadside stall	Roadside stalls are only permissible if they sell only primary products produced on the property on which the building or place is situated. As detailed in this table, the ability for the fragmented allotments to sustain an primary production activity would be significantly reduced by the subdivision. Accordingly such a use would be unlikely.	UNLIKELY APPROPRIATE USE

MINUTES FOR ORDINARY MEETING – 9 MARCH 2010

	<p>It is also noted that damage to property, including debris washing downstream, could result from this form of use.</p>	
rural industry	<p>Due to flooding constraint, it would be inappropriate to propose such a use on proposed lots 1-3 and for the majority of proposed Lot 4.</p> <p>It is considered that the potential pollution issues surrounding this form of land use, for example waste products and fuels/chemicals stored on the site have the potential to create a significant downstream environmental risk in times of flooding.</p> <p>It is further noted that the risk of flooding creates a significant risk of loss or damage to property. In terms of buildings or structures ancillary to this use, it is likely that they would sustain structural damage from the forces and impact debris associated with floodwaters.</p>	<p>UNLIKELY APPROPRIATE USE</p>
utility installation utility undertaking	<p>Not applicable to private development, as these works can only be undertaken by a public authority.</p>	<p>N/A</p>
veterinary hospital	<p>Due to flooding constraint, it would be inappropriate to propose such a use on proposed lots 1-3 and for the majority of proposed Lot 4.</p> <p>The Floodplain Development Manual notes that due to the likely specific evacuation needs of this form of use, and likely low level of occupant awareness of flooding issues it is not desirable on flood prone land.</p> <p>Accordingly, the risk of animal deaths is likely to be significant.</p> <p>In terms of buildings or structures ancillary to this use, it is likely that they would sustain structural damage from the forces and impact debris associated with floodwaters.</p>	<p>UNLIKELY APPROPRIATE USE</p>

Clause 12 Subdivision within rural zones generally

The proposed subdivision is proposed in accordance with Clause 12 (1)(a)(v), which states that

- (1) A person must not subdivide land within any rural zone except:
 - (a) for any of the following purposes:
 - (v) the creation of allotments corresponding to the parts into which a single allotment is divided by a public road

It is also noted that Clause 12 (2) states:

Subdivision of land for a purpose specified in subclause (1) (a) does not have the effect of precluding development of the land for any purpose for which it might have been developed immediately prior to the subdivision (except in so far as the land has been taken for a road as referred to in subclause (1) (a)).

In this regard, Council would be prevented from conditioning the allotments to have no dwelling entitlements. Accordingly, approval of this application has the potential to create three additional high hazard flood prone allotments, upon which future owner's may seek dwellings or the like.

It is noted that the applicant states that the subdivision by road severance may also allow for the sale of those lands to adjoining land owners. It is noted that this same outcome could be facilitated by proposing a boundary adjustment in accordance with Clause 12 (1)(a)(ii) of the LEP. A boundary adjustment would be the more desirable option as it would not have the affect of creating additional dwelling potential on flood prone land.

Clause 37 Objectives for development on flood prone land and Clause 38 Development on flood prone land

The subject site is identified as flood prone land, and accordingly consideration of these clauses is required. These clauses prescribe that before granting consent to development on flood prone land the consent authority must consider certain matters. A more detailed assessment addressing the considerations has been previously provided in this report as part of the assessment of the FDM, however below is a summary of the assessment:

Consideration	Response
(a) the extent and nature of the flooding or inundation hazard affecting the land,	All proposed lots are affected by flooding. The flood planning level is 5.2 metres AHD. Proposed lots 1, 2 and 3 are substantially flat at a level of approximately RL 1.0 and severely affected by flooding. The south western half of proposed lot 4 is also affected by flooding, with a depth of water of up to 4.2

metres above natural ground level. A substantial creek also runs through all properties.

(b) whether or not the proposed development would increase the risk or severity of flooding or inundation affecting other land or buildings, works or other land uses in the vicinity,

Whilst the subdivision itself does not propose any physical works, it is noted that any proposed land fill to accommodate future land uses on the land has the potential to alter flood movements at the detriment of adjoining or downstream properties.

(c) whether the risk of flooding or inundation affecting the proposed development could reasonably be mitigated and whether conditions should be imposed on any consent to further the objectives of this plan,

Flooding could not be reasonably mitigated for development on the proposed lots 1, 2 and 3. Development placed above RL 5.2 m AHD on lot 4 would mitigate flooding.

(d) the social impact of flooding on occupants, including the ability of emergency services to access, rescue and support residents of flood prone areas,

The occupants of proposed lots 1, 2 and 3 would be severely affected by flooding depths of 4.2 metres and isolation in severe floods and emergency services would be severely limited.

(e) the provisions of any floodplain management plan or development control plan adopted by the Council.

Council has not adopted any floodplain management plan or development control plan for this area.

On the basis of the assessment, Council's Flooding Engineer has recommended that the subdivision not be approved due to the severe affectation of flooding.

Clause 39 Development near the Williams River

This clause specifies that development must not result in a significantly increased risk of (a) soil erosion or other environmental degradation, loss of vegetation or habitat, disturbance of sodic or dispersive soils, or degradation of water quality or the quality of groundwater supplies.

The subdivision in itself does not directly create the impacts referred to above.

Many land uses permissible in the Rural 1(a) zone, if undertaken on proposed Lots 1-3, have the potential to have significant environmental impacts to the river system in time of flooding.

Clause 47 Services

It is noted that any future land uses on the subject site may have constraints in terms of servicing. Due to the isolation, the site would not be serviced by reticulated water and sewer. It is further noted that the flood prone nature of the land would likely result in environmental issues with any on-site waste water system, further that substantial costs to install systems on this type of site would be extremely costly.

Hunter Regional Environmental Plan 1989

Division 1 Rural land – Clause 24 Objectives

The objectives of this plan in relation to planning strategies concerning rural land are:

- (a) to protect prime crop and pasture land from alienation, fragmentation, degradation and sterilisation,*
- (b) to provide for changing agricultural practices, and*
- (c) to allow for the development of small rural holdings and multiple occupancy on land capable of such developments in appropriate locations.*

As detailed above in the assessment of the Local Environmental Plan 2000 and Table 1, the proposal is likely to fragment, and potentially hinder the agricultural use of proposed lots 1-3.

Should future purchasers of the land proposed to use the land for rural residential purposes, Council officers would recommend refusal due to the high hazard flood risk.

Division 3 Environmental hazards - 52 Objectives

The relevant objectives of this plan have been considered, including:

- (b) control developments on flood liable lands and encourage flood plain management practices which ensure maximum personal safety and appropriate land uses,*

As discussed previously in this assessment, the subdivision is not considered to be proposed in an appropriate location given the flooding constraint on the subject site.

Clause 53 Policies for plan preparation and control of development

In determining applications for consent to development for urban, tourist or rural residential purposes, Councils should consider the likelihood of environmental issues including flooding, coastal erosion or storm damage and cumulative catchment-wide impacts, together with the means of controlling and managing such impacts.

Applicant's comment:

...it is advised that as the subdivision is not for the purpose of urban, tourist or rural residential purposes the provisions of this clause do not apply.

Council officer's comments:

It is noted that the applicant's advice with respect to this clause is contrary to the advice provided elsewhere, where the applicant advises that dwelling houses, or other permissible uses that includes tourist facilities, are future potential end uses for the proposed allotments.

In terms of urban, tourist and rural residential uses, the site is not considered to be an appropriate location given the flooding constraint on the subject site.

State Environmental Planning Policy (Rural Lands) 2008

Clause 8 Rural Subdivision Principles

The Rural Subdivision Principles are addressed as follows:

Consideration	Response
<i>(a) the minimisation of rural land fragmentation,</i>	As discussed previously, in the assessment of the proposal pursuant to the LEP, and in table 1, it is considered that the proposal has a significant impact on rural land in terms of fragmentation.
<i>(b) the minimisation of rural land use conflicts, particularly between residential land uses and other rural land uses,</i>	It is noted that the subdivision is not in itself incompatible with surrounding rural land uses.
<i>(c) the consideration of the nature of existing agricultural holdings and the existing and planned future supply of rural residential land when considering lot sizes for rural lands,</i>	It is not considered that the location is an appropriate location to plan future supply of rural residential land due to the flooding constraint.
<i>(d) the consideration of the natural and physical constraints and opportunities of land,</i>	As discussed previously, in the assessment of the proposal pursuant to the LEP, and in table 1, it is considered that the subdivision will limit future opportunities for the land, particularly with respect to agricultural use of proposed lots 1-3, with respect to the flooding constraint.
<i>(e) ensuring that planning for dwelling</i>	It is not considered that the location is an

opportunities takes account of those constraints.

appropriate location to create additional dwelling opportunities due to the flooding constraint.

Clause 10 Matters to be considered in determining development applications for rural subdivisions or rural dwellings

This clause requires Council to take into account the following matters when considering subdivision of land proposed to be used for the purposes of a dwelling. Whilst it is noted that the application does not include a dwelling at this stage, the subdivision creates an additional three dwelling entitlements on lots 1-3 as they will be greater than 4000m² in area, and accordingly an assessment of this clause is detailed below.

Consideration	Response
<i>(a) the existing uses and approved uses of land in the vicinity of the development,</i>	It is noted that the subdivision is not in itself incompatible with surrounding rural land uses.
<i>(b) whether or not the development is likely to have a significant impact on land uses that, in the opinion of the consent authority, are likely to be preferred and the predominant land uses in the vicinity of the development,</i>	It is noted that the subdivision is not in itself incompatible with surrounding rural land uses.
<i>(c) whether or not the development is likely to be incompatible with a use referred to in paragraph (a) or (b),</i>	It is noted that the subdivision is not in itself incompatible with surrounding rural land uses.
<i>(d) if the land is not situated within a rural residential zone, whether or not the development is likely to be incompatible with a use on land within an adjoining rural residential zone,</i>	The land is not situated within a rural residential zone.
<i>(e) any measures proposed by the applicant to avoid or minimise any incompatibility referred to in paragraph (c) or (d).</i>	Not applicable.

Development Control Plan 2007

Chapter B1 – Subdivisions and Streets

Insufficient information has been provided to assess the proposal in terms of the vehicular accesses proposed for the resultant allotments.

Chapter B2 – Environment and Construction Management

Insufficient information has been provided to assess the suitability of the proposal in relation to Section B2.12 Waste Water, in terms of demonstrating that the site capability for water provision and wastewater treatment could be provided for any intensification of land use permissible as a result of the subdivision.

2. Likely Impact of the Development

As discussed previously in this assessment, it is considered that the subdivision, which could facilitate intensification of high hazard flood prone land, including at least three additional dwelling entitlements, is likely to increase the community's susceptibility to the effects of flooding in terms of social, economic and environmental consequences.

This impact also include that in a moderate flood, the access roads will be inundated by floodwaters, rendering any future occupants of the lots isolated and reliant upon the SES for property protection, evacuation and/or supplies.

Any development that may result in intensification of flood prone land is undesirable as it increases the number of people and amount of personal property susceptible to flooding, and places an excessive demand on already limited SES resources due to the ineffectiveness of private evacuation plans.

3. Suitability of the Site

Proposed allotments 1-3 are not likely to be suitable for any intensification of land use, as demonstrated in Table 1, including future dwellings. The subject land is considered unsuitable for the majority of land use permissible in the 1(a) zone, with the exception of some agricultural purposes, taking into account the level of flood risk and likely social, economic and environmental consequences. Future occupants or land uses on proposed lots 1, 2 and 3 would be severely affected by flooding depths of 4.2 metres and isolation in severe floods and emergency services would be severely limited.

It is considered that the subdivision would result in the land being less viable for agriculture due to fragmentation.

The subject site is identified bushfire prone. The proposal is considered to be satisfactory with respect to this constraint.

4. Submissions

No public submissions have been received in relation to the proposal. The application did not require public exhibition pursuant to Council's exhibition policy in DCP2007.

5. Public Interest

The public interest is relevant as it is considered likely that the subdivision will give rise to future development applications for permissible uses of the subdivided lots, which in terms of potential future flooding impacts and the fragmentation of rural lands, would be largely unlikely to be supported due to the site constraints.

The proposal would create an additional three allotments on land that is entirely flood prone. This has the potential to create an expectation that a dwelling or the like could be sought on these newly created allotments.

The assessment revealed that the majority of future potential uses are likely to be unacceptable, and that any appropriate uses, for example agriculture, would be less viable as a result of the subdivision. The subdivision creates the potential that the property can be sold to four separate owners, accordingly in excess of 40 hectares of flood prone rural land would be without flood refuge, thereby reducing the agricultural potential for the land.

This proposal is contrary to the public interest in that it has the potential to further exacerbate the impact of flooding and private and public losses in this locality, the potential to increase demand upon emergency services and an unnecessary and unreasonable demand on limited SES resources.

**ATTACHMENT 4
REASONS FOR REFUSAL**

- 1) The proposal has not demonstrated a future use or that the proposed allotments are capable of sustaining a permissible use in the future.
- 2) The development is inconsistent with Clause 37 and Clause 38 of the Port Stephens Council Local Environmental Plan 2000. It is not considered that the future allotments will be suitable for intensification of land use, due to extent and nature of flooding, impact on occupants, property and impact on adjoining properties. Proposed lots 1, 2 and 3 would be severely affected by flooding depths of 4.2 metres and due to isolation in severe floods accessibility for emergency services would be severely limited.
- 3) Approval of any intensification of land use as a result of the subdivision in high risk flood areas places further demand on already limited SES resources by way of domestic property protection, evacuation and/or resupply.
- 4) The development is considered to be an inappropriate land use under the Floodplain Development Manual, 2005.
- 5) The development is not consistent with the provisions and objectives of Zone No 1 (a) (Rural Agriculture "A" Zone) of the Port Stephens Local Environmental Plan 2000. The proposal will fragment agricultural lands and will not protect the agricultural potential of the land. It is not considered that the future allotments will be suitable for intensification of land use, due to extent and nature of flooding.
- 6) Insufficient information was submitted with the application to enable a comprehensive assessment of the use of the proposed allotments under Section 79C of the Environmental Planning and Assessment Act, 1979.
- 7) Insufficient information has been provided to assess the proposal in accordance with Clause 47 of the Port Stephens Local Environmental Plan 2000, in terms of demonstrating that the site has the capability for adequate facilities for water provision and wastewater treatment for any intensification of land use permissible as a result of the subdivision.
- 8) Insufficient information has been provided to demonstrate that adequate access can be achieved for all proposed allotments, and in particular proposed Lot 3 has no physical constructed access currently available.
- 9) The development is inconsistent with the principles of State Environmental Planning Policy (Rural Lands) 2008, as the development is not considered to be located in an appropriate location due to extent and nature of flooding.
- 10) It is not possible to implement an evacuation plan for proposed Lots 1-3, that would provide permanent, fail safe, maintenance free measures to ensure the timely, orderly and safe evacuation of any future development on the land, including animal based agricultural activities.

MINUTES FOR ORDINARY MEETING – 9 MARCH 2010

- 11) The development is contrary to the public interests and expectations, of an orderly and predictable built environment.
- 12) The development is inconsistent with the provisions of the Hunter Regional Environmental Plan 1989. It is not considered that the future allotments will be suitable for intensification of land use, due to extent and nature of flooding.
- 13) Approval of this application would have an undesirable cumulative effect, having the potential to increase the community's susceptibility to flooding, in terms of social, economic and environmental consequences.

ITEM NO. 5

FILE NO: PSC2010-00134

JOINT REGIONAL PLANNING PANELS – COUNCIL REPRESENTATION

REPORT OF: DAVID BROYD – GROUP MANAGER, SUSTAINABLE PLANNING
GROUP: SUSTAINABLE PLANNING

RECOMMENDATION IS THAT COUNCIL:

- 1) Consider this matter;
- 2) Appoint two (2) alternate Councillors to represent Council at Joint Regional Planning Panel meetings in the event that the Mayor and/or Deputy Mayor are not available.

COMMITTEE MEETING – 09 MARCH 2010

RECOMMENDATION:

	Councillor Bruce MacKenzie Councillor Bob Westbury	That Council retain the Mayor and Deputy Mayor as Council nominations with the understanding that the Mayor and Deputy Mayor will be apologies and not participate in any Panel decision making on Council Development Applications.
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ORDINARY MEETING – 09 MARCH 2010

065	Councillor Glenys Francis Councillor Daniel Maher	It was resolved that the Council Committee recommendation be adopted.
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BACKGROUND

Joint Regional Planning Panels commenced operation in NSW on 1 July 2009. The State Government's declared purposes for establishing the Panels were:

depoliticising decision making on major Development Applications and improving the efficiency of processes for assessment and determination of applications.

At its meeting of 28 July 2009, Council resolved that the Mayor and Deputy Mayor be the two Council nominees for the Panel responsible for determining applications in Port Stephens. The State Government has three representatives on the Panel, and

the State Government members are Garry Fielding (Chair), Jason Perica and Kara Krason, with the alternative members being John Colbin and Bob McCotter.

Full explanation of the background to the Joint Regional Planning Panels is contained in the report considered by Council on 28 July 2009 (see Attachment).

FINANCIAL/RESOURCE IMPLICATIONS

The State Government funds the involvement of the Panel members and the supporting administrative responsibilities through the Panel Secretariat. Should Council follow the option of engaging two qualified independent experts, then this could result in a cost to Council of \$4,000 to \$5,000 say, depending upon the time needed for briefings, site inspections, report considerations and actual Panel meetings – and of course being dependent upon the rate per hour/day sought by the independent experts.

LEGAL, POLICY AND RISK IMPLICATIONS

Council is required by State legislation to forward certain categories of Development Applications to the Panel for determination.

A Code of Conduct and a Statement of Operational Guidelines were issued by the State Government. The Code of Conduct was not specific on the role of Councillors for the determination of Development Applications submitted by the Council they represent. This needs to be remedied for operation of Panels throughout the State. To ensure that the objectives of independence and avoidance of conflict of interest – real or perceived – the Department of Planning is requesting that Council nominate two external, independent representatives as alternatives to the Mayor and Deputy Mayor when Council Development Applications are being determined by the Panel.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Essentially the sustainability implications are met by the full and transparent assessment and determination processes involved with such development applications – be it by Council or by a Joint Regional Planning Panel.

CONSULTATION

The Joint Regional Planning Panel requested a briefing from the Group Manager, Sustainable Planning and Acting Manager, Development & Building for Council's Development Application for subdivision at the Salamander Shopping Centre. Both the Mayor and Deputy Mayor apologised for not being able to attend the briefing. The issue of conflict of interest was raised at the briefing and as a consequence the Department of Planning has requested that Council nominate two alternative external and independent representatives.

OPTIONS

Council has the following options:

- 1) Retain the Mayor and Deputy Mayor as the Council nominations for the Hunter/Central Coast Joint Regional Planning Panel – with the need to declare any conflicts of interest – and this would certainly apply when a significant Council development application is before the Panel such as the subdivision of Salamander Shopping Centre;
- 2) Issue an Expression of Interest for two qualified independent experts to represent Council at Joint Regional Planning Panel meetings which are making decisions about Council Development Applications;
- 3) Directly appoint two qualified independent experts to represent Council at Joint Regional Planning Panel meetings which are making decisions about Council Development Applications, or
- 4) Retain the Mayor and Deputy Mayor as Council nominations with the understanding that the Mayor and Deputy Mayor will be apologies and not participate in any Panel decision making on Council Development Applications.

ATTACHMENTS

- 1) Report to Council 28 July 2009 and subsequent Resolution

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

**ATTACHMENT 1
REPORT TO COUNCIL 28 JULY 2009**

ITEM NO.

FILE NO: PSC2009-01064

JOINT REGIONAL PLANNING PANELS – COUNCIL NOMINATIONS

report of: DAVID BROYD – GROUP MANAGER, SUSTAINABLE PLANNING

RECOMMENDATION IS THAT COUNCIL:

- 1) Nominate two (2) Councillors for the Joint Regional Planning Panel that will determine Development Applications in the relevant categories prescribed for their determination.

- 2) Through the General Manager, write to the NSW Minister for Planning, the Hon. Kristina Keneally:
 - a) seeking her commitment to consider, based upon the first six (6) months operation of the Panel, delegating determinations back to this Council on the evaluation of a Council submission that addresses a number of criteria such as:
 - i) timeframes for assessment and meeting certain milestones in the development assessment and reporting processes;
 - ii) the working relationship developed between Council's Group Manager, Sustainable Planning and the Chair of the Joint Regional Planning Panel and that this is working effectively and productively to achieve efficient assessment times and quality outcomes to the relevant Development Applications, and
 - iii) data that demonstrates that historically this Council has, and is, dealing efficiently with such Development Applications.

 - b) advising her that Council considers it highly inappropriate that Council will have to manage and fund any appeals to the Land and Environment Court resulting from decisions of the Panel.

ORDINARY COUNCIL – 28TH July 2009

242	Councillor Ken Jordan Councillor Sally Dover	It was resolved that the recommendation be adopted with Cr Bruce MacKenzie and Cr Bob Westbury as Council's nominees for the Joint Regional Planning Panel.
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MINUTES FOR ORDINARY MEETING – 9 MARCH 2010

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

Those for the Motion: Cr Peter Kafer, Glenys Francis, Ken Jordan, Daniel Maher, Shirley O'Brien, Bob Westbury, Sally Dover and Bruce MacKenzie.

Those against the Motion: Councillors Geoff Dingle, John Nell and Frank Ward.

AMENDMENT

	Councillor Frank Ward Councillor John Nell	That Council seek Expression of Interest from the community to represent Council on the Joint Regional Planning Panel.
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In accordance with the Local Government Act 1993, a division is required for this item.

Those for the Motion: Cr Peter Kafer, Glenys Francis, Ken Jordan, Daniel Maher, Shirley O'Brien, Bob Westbury, Sally Dover and Bruce MacKenzie.

Those against the Motion: Councillors Geoff Dingle, John Nell and Frank Ward.

The amendment on being put was lost.

BACKGROUND

The purpose of this report is to advise Council of the State Government's introduction of Joint Regional Planning Panels and to recommend how Council responds to the request from the Minister for Planning for two Council nominations to be members of the Panel for the Hunter and Central Coast Region.

Joint Regional Planning Panels were legislated in June 2008 as part of the Environmental Planning & Assessment (Amendment) Act 2008.

The State Government's declared intents for introducing the Panels were based on depoliticising the determination of regional development applications and to provide more efficiency in the related assessment and decision making systems.

This follows previous consultation in a Discussion Paper and Draft Exposure Bill to which Council resolved inter alia that "Council endorses the draft submission in response to the NSW Government's Discussion Paper "Improving the NSW Planning System" and forward this to the NSW Premier, NSW Minister for Planning, the Director General of the Department of Planning, the NSW Opposition leader, the Shadow Minister for Planning and the President of the Local Government Association and the Local Government Shires Association expressing strong opposition to the

establishment of Joint Regional Planning Panels to determine Development Applications of a value in excess of \$50M."

The debate is obviously now closed about the general issue of removal of local democracy, Council's determination powers and the related loss of local accountability. The NSW Minister for Planning has written to Council (5 May 2009), requesting Council's advice of nominations to be on the relevant Panel.

This initial letter was supplemented by provision of a draft Code of Conduct (Attachment 1) and draft Operational Guidelines (Attachment 2) on 9 June 2009.

Composition

Joint Regional Planning Panels (JRPPs) comprise three (3) State members and two (2) nominations from each local Council comprising a Region. All representatives are appointed for a three year term. There is a Panel established for the Hunter plus Gosford and Wyong Council areas, for which the three State representatives may be common, with the two Councillor nominees sitting on the Panel to deal with a Development Application lodged in their Local Government Area. A State representative must be the Chair and the Deputy Chair.

Classes of Development to be Determined by JRPPs

The classes of Development Application to be dealt with by JRPPs are as follows:

- a) designated development
- b) development that has a capital investment value of more than \$10 million
- c) subdivisions over 250 lots
- d) certain coastal development and coastal subdivisions that were previously Part 3A projects
- e) the following development if it has a capital investment value of more than \$5 million:
 - (i) public and private infrastructure
 - (ii) Crown development
 - (iii) eco-tourism development
 - (iv) where Council is the proponent or has a conflict of interest

A limited number of applications in Port Stephens (probably less than ten (10) per annum are anticipated to go to the Panel – but they will be very significant, and of high profile, to the local community.

Timing of Introduction

The Panels formally commenced on 1 July 2009. However, this report has not been submitted until the Ordinary Council Meeting of 28 July 2009 because:

MINUTES FOR ORDINARY MEETING – 9 MARCH 2010

- a) There were no Operational Guidelines or Code of Conduct made available by the NSW Department until 9 June 2009 and these documents have been subject of extensive discussion since;
- b) The position of the Local Government Shires Association (LGSA) advising that no Councils should submit their applications until various issues about Panels' operation and the Code of Conduct are resolved. (The latest letter from the LGSA maintains opposition to panels – Attachment 3)
- c) The position of the Hunter Councils Board (Mayors of the constituent Councils in the Hunter) being that no Council in the Hunter region should nominate until a deputation has taken place to the Minister. Following that deputation and a meeting of the General Managers of Hunter Councils on 2 July, the intent is now for each Council in the Hunter to nominate. The Press Release from Hunter Councils is Attachment 4.

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

The Minister for Planning announced in May 2009, following the NSW State Budget, that \$2.4M will be allocated annually to fund State representatives on the Regional Panels. Council will have to fund transport etc. of its nominees as needed. A Panel Secretariat has been established in the NSW Department of Planning to provide the administrative support to the Panel.

The Panel essentially becomes the Council for determining the relevant classes of development with Council professional staff still responsible for the assessment advice and reporting. The Group Manager, Sustainable Planning and other management and/or professional staff will be present at the Panel meetings to provide relevant advice.

The Panel can “reasonably direct” the General Manager of any Council to undertake tasks associated with the Panel's role. General Managers can be penalised if those directions are not fulfilled.

LEGAL AND POLICY IMPLICATIONS

If Councils do not make nominations, three State members of the Regional panel will still be the determining body for those relevant classes of applications. Panel determinations are appellable to the Land & Environment Court in the same way as Council determinations, however a major implication is that Council will lead the defence of such appeals to the Land & Environment Court but:

- a) clearly will not defend an appeal on a Council application;
- b) should not have to fund the engagement of a planning consultant when the determination of the Panel is different from that recommended by the Group Manager, Sustainable Planning/Acting Manager, Development & Building.

The draft Code of Conduct makes for an inherent tension for Councillors in terms of being elected representatives of the community and being independent when sitting on one of these Panels and determining relevant applications. The Group Manager, Sustainable Planning and Acting Manager, Development and Building cannot be considered as Council representatives on the Panel because they cannot be responsible for assessment advice and recommendations and then have determination responsibilities as members of the Panel.

One of Council's nominations must have "expertise" in one or more of the following: planning, architecture, heritage, the environment, urban design, land economics, traffic and transport, law, engineering or tourism. The Department of Planning has adjusted its interpretation of this legal provision such that "extensive practical experience in a relevant field" would satisfy the provision.

Given this adjusted interpretation and the validity of Council having two Councillors as elected community representatives on the Panel, the recommendation is for two Councillors to be nominated.

Panels are asserted to be needed to depoliticise the planning system and inject more efficiency. Hence, delegations by Panels to Council Directors of Planning/equivalents are essential to determine:

DAs before reference to Panels when the applications are clearly inadequate to respond to all matters for consideration and hence warranted refusal before full assessment and reporting to a Panel, and or DAs that are fully supportable on a professional and political basis and can be determined under delegation in terms of approval without consuming more time by reporting to Panels.

The opportunity for Council as a political body to resolve its position on DAs to be determined by Panels is essential. Whether Councillors who are members of a Panel can participate in that Council meeting still needs clarification. The resulting Council Resolution would in effect be a submission to the Panel which should be given substantial weight and would need to be recorded and submitted to a Panel by an Executive Officer Governance – not the Group Manager-Sustainable Planning or his delegate. It would be unreasonable to expect Council in all cases to meet and resolve a submission within two weeks, after close of notification as is indicated in paragraph 3.8 of the draft Operational Procedures.

Explicit recording of voting at Panel meetings is essential as of course are any declarations of political donations. Endorsement of the minutes for purposes of Council issuing the determination should not wait until the next meeting of the Panel but be the responsibility of

the Chairperson of the Panel within the shortest time possible after the meeting at which a determination is made.

SUSTAINABILITY IMPLICATIONS

In effect, the JRPPs assume the equivalent legal and policy obligations and responsibilities as a Council in determining the relevant applications. Therefore, it must be assumed that the same applies to the evaluation of the social, economic and environmental implications of DAs that Panels determine.

In terms of governance, Panel meetings are open to the public and the reports that the Panel considers will be made public in the same way as reports submitted to Council. Hence, the level of accountability of the Panel should be very similar to that of a Council in the assessment and determination processes.

CONSULTATION

Joint Regional Planning Panels have been subject to extensive political and professional debate across the State.

In writing this report, significant consultation has involved:

- a) the NSW Local Government Planning Directors Group (of which the Group Manager, Sustainable Planning is Chair);
- b) Hunter Councils;
- c) the Local Government Shires Association;
- d) the Executive Team, and
- d) the Executive Officer – Governance

OPTIONS

- 1) To appoint two Councillors as nominees for a three (3) year term, but does need to consider one of the Council nominees having the “relevant expertise” as explained above;
- 2) To resolve to make no nominations on the basis that the formation of these Panels is not acceptable to Council given that they undermine local democracy, remove Council’s determination powers for the relevant classes of development and remove local accountability for such high profile applications;
- 3) Appoint one Councillor and a lawyer such as Martin Ball of Harris Wheeler; and
- 4) Consider another option such as one Councillor and an alternative external representative such as a local planning consultant who can demonstrate no conflict of interest in undertaking the role.

ATTACHMENTS

- 1) Code of Conduct
- 2) Operational Guidelines
- 3) Letter from LGSA
- 4) Press Release – Hunter Councils
- 5) Comments on Code of Conduct by Executive Officer – Governance

COUNCILLORS ROOM

Nil

TABLED DOCUMENTS

Nil

ATTACHMENT 1
CODE OF CONDUCT



Joint Regional Planning Panels
Code of Conduct

JOINT REGIONAL PLANNING PANELS



JOINT REGIONAL PLANNING PANELS

Code of Conduct

Introduction

This Code of Conduct (Code) applies to all members of Joint Regional Planning Panels (JRPPs), including:

- State appointed members
- council nominees
- alternates acting for JRPP members.

The Code outlines the standards of conduct expected of JRPP members. It is the personal responsibility of each JRPP member to comply with this Code.

The Code will be kept under review and will be subject to changes that may be required to reflect the experience of the implementation and operation of the JRPPs.

Purpose of the Code

This Code sets out the minimum requirements of behaviour for JRPP members in carrying out their functions. The Code has been developed to assist JRPP members:

- a) understand the standards of conduct that are expected of you
- b) enable you to act honestly, ethically and responsibly
- c) enable you to exercise a reasonable degree of care and diligence; and
- d) act in a way that enhances public confidence in the integrity of role of the JRPPs in the planning system.

Application of the Model Code of Conduct for Local Councils in NSW (Model Code)

Councils are required under the *Local Government Act 1993* to adopt a Code of Conduct. Such Codes must incorporate the provisions of the 'Model Code' prescribed under the *Local Government (General) Regulation 2005*.

The Council's adopted Code applies to, amongst others, councillors, the General Manager and Council staff. The Model Code does not apply to JRPP members. However parts of the Model Code have been used to assist in the development of this Code, along with other relevant Codes of Conduct applying to members of State Boards and other statutory bodies.

It is recognised that councillors and council staff may undertake functions as a member of a JRPP separate to their ordinary functions as a councillor or member of council staff. When exercising functions as a JRPP member councillors and council staff must ensure that they comply with this Code.

Council staff responsible for dealing with development matters under the *Environmental Planning and Assessment Act 1979* (EP&A Act), preparing assessment reports and/or otherwise assisting a JRPP in the exercise of its functions are not subject to this Code.

Other obligations

JRPP members are subject to the *Independent Commission Against Corruption Act 1988* and the *Ombudsman Act 1974*.

Code of Conduct

1. Key principles

Integrity

- 1.1 You must not place yourself under any financial or other obligation to any individual or organisation that might be reasonably thought to influence you in the exercise of your functions as a JRPP member.

Leadership

- 1.2 You have a duty to promote and support the key principles of this Code by demonstrating leadership and maintaining and strengthening the public's trust and confidence in JRPPs and their role in the planning system.

Selflessness

- 1.3 You have a duty to make decisions in the public interest. You must not make a decision or take action that causes or results in you obtaining:
- a financial benefit (including avoiding a financial loss)
 - other benefits for yourself, your family, friends or business interests.

Impartiality

- 1.4 You should make decisions on merit and in accordance with your statutory obligations when carrying out your functions as a JRPP member.

Accountability

- 1.5 You are accountable to the public for your decisions and actions and should consider issues on their merits, taking into account the views of others.

Openness

- 1.6 You have a duty to be open as possible about your decisions and actions.

Honesty

- 1.7 You have a duty to act honestly and in good faith for the proper purpose.

Respect

- 1.8 You must treat others with respect at all times.

2. General conduct obligations

General conduct

- 2.1 You must not conduct yourself in carrying out your functions as a JRPP member in a manner that is likely to bring the JRPP into disrepute. Specifically, you must not act in a way that:
- a) contravenes the EP&A Act¹
 - b) is improper or unethical
 - c) is an abuse of power
 - d) causes, comprises or involves intimidation, harassment or verbal abuse
 - e) causes, comprises or involves discrimination, disadvantage or adverse treatment.

¹ A reference to the *Environmental Planning and Assessment Act 1979* (EP&A Act) includes a reference to the *Environmental Planning and Assessment Regulation 2000*.

-
- 2.2 You must act lawfully, honestly and exercise a reasonable degree of care and diligence in carrying out your functions as a JRPP member, having regard to the statutory obligations under the EP&A Act.

Fairness and equity

- 2.3 You must consider issues consistently, promptly, conscientiously and fairly.
- 2.4 You must take all relevant facts known to you, or that you should be reasonably aware of, into consideration and have regard to the particular merits of each case. You must not take irrelevant matters or circumstances into consideration when making decisions.

Making decisions and taking actions

- 2.5 You must ensure that decisions and actions are reasonable, fair and for the proper purpose and that parties involved in the development process are dealt with fairly.
- 2.6 You must ensure that no action, statement or communication between yourself and others (such as applicants, objectors and councillors) conveys any suggestion of willingness to provide improper concessions or preferential treatment.
- 2.7 You should attend all meetings of the JRPP as far as is possible, and allow the necessary time to prepare for meetings.

3. Conflicts of interests

General

- 3.1 A conflict of interests exists where a reasonable and informed person would perceive that you could be influenced by a private interest when carrying out your functions as a JRPP member.
- 3.2 You must avoid or appropriately manage any conflicts of interests. The onus is on you to identify a conflict of interests and take appropriate action.
- 3.3 Any conflicts of interests must be managed to up-hold the probity of JRPP decision making. When considering whether or not you have a conflict of interests you should consider how others would view your situation.
- 3.4 Private interests can be of two types: pecuniary or non-pecuniary.

Disclosure of pecuniary interests

- 3.5 A pecuniary interest is an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person².
- 3.6 A person does not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision of that person might make³.

² The term 'pecuniary interests' adopted by this Code is based on the definition of that term in s.442(1) of the *Local Government Act 1993*.

³ See s.442(2) *Local Government Act 1993* or if it is an interest referred to in s.448(a), (b), (e) or (g) of the *Local Government Act 1993*.

- 3.7 A member has a pecuniary interest in a matter if the pecuniary interest is the interest of the member, the member's spouse or de facto partner or a relative⁴ of the member, or a partner or employer of the member, or a company or other body of which the member, or a nominee, partner or employer of the member, is a member.
- 3.8 The obligation on JRPP members with respect to pecuniary interests are set out in clause 12 of Schedule 4 of the EP&A Act (attached at **Appendix A**). All JRPP members must comply with the requirements set out in this provision. In particular:
- (a) If a member has a pecuniary interest in a matter being considered or about to be considered at a meeting of a JRPP and the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter the member must, as soon as possible after the relevant facts have come to the member's attention disclose the nature of the interest at a meeting of the regional panel.
- (b) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the regional panel otherwise determines:
- be present during any deliberation of the panel with respect to the matter, or
 - take part in any decision of the panel with respect to the matter.

Disclosure of non pecuniary interests

- 3.9 A non pecuniary interest is a private or personal interest that a person has that may, for example, be based on a family or personal relationship, membership of an association, society or trade union or involvement or interest in an activity which may include an interest of a financial nature⁵.
- 3.10 You should consider possible non pecuniary interests that may arise while carrying out your duties as a JRPP member. Where possible, the source of potential conflict should be removed.
- 3.11 However, where this is not possible, if a member has a non pecuniary interest in a matter and the interest appears to raise a conflict with the proper performance of the member's duties, the member must follow the procedures set out in clause 12 of Schedule 4 of the EP&A Act in the same manner as if the interest was a pecuniary interest.

Political Donations

- 3.12 JRPP members should be aware that political contributions or donations may give rise to a pecuniary or non-pecuniary interest. It is the responsibility of JRPP members to determine in each instance whether such an interest arises and whether the provisions of this Code and clause 12 of Schedule 4 of the EP&A Act applies.
- 3.13 Where a JRPP member makes a disclosure under cl.12(1)(b) of Schedule 4 to the EP&A Act with respect to an interest which arises because of a political donation,

⁴ The term 'relative' adopted by this Code is the definition of that term under s 3 of the *Local Government Act 1993*.

⁵ The term 'non-pecuniary interest' as adopted by this Code is based on the meaning of that term under the *Local Government Model Code of Conduct*.

the regional panel is required to take this into consideration in determining under cl.12(6) whether it is appropriate for the member to be present during any deliberations or take part in any decision with respect to the matter.

Other business or employment

3.14 You must ensure that any outside employment or business you engage in will not:

- a) conflict with your functions as a JRPP member
- b) involve using confidential information or resources obtained through your role as a JRPP member
- c) discredit or disadvantage the JRPP.

Personal dealings with council

3.15 You may have reason to have private dealings with a council that is within the JRPP region where you are a JRPP member (for example as a ratepayer). You must not expect or request preferential treatment in relation to any matter in which you have a private interest because of your role as a JRPP member. You must avoid any action that could lead members of the public to believe that you are seeking preferential treatment.

4. Personal benefit

Gifts and benefits

4.1 You must not:

- a) seek or accept a bribe or other improper inducement
- b) seek gifts or benefits of any kind
- c) accept any gift or benefit that may create a sense of obligation on your part or may be perceived to be intended or likely to influence you in carrying out your public duty
- d) accept any gift or benefit of more than token value
- e) accept an offer of money, regardless of the amount.

4.2 Generally speaking token gifts and benefits include:

- a) free or subsidised meals, beverages or refreshments provided in conjunction with:
 - i. the discussion of matters before the JRPP
 - ii. conferences
 - iii. social functions organised by groups.
- b) invitations to and attendance at local social, cultural and sporting events.
- c) gifts of single bottles or reasonably priced alcohol at end of year functions and public occasions.
- d) ties, scarves, coasters, tie pins, diaries, chocolates or flowers.

4.3 Gifts and tokens that have more than a token value include, but are not limited to, tickets to major sporting events, corporate hospitality at a corporate facility at major sporting events, discounted products for personal use, the frequent use of facilities such as gyms, use of holiday homes, free or discounted travel.

4.4 As a general rule, any gift from an applicant, objector or associate of an applicant or objector in relation to a matter to be determined by a JRPP would fall into a category referred to in paragraph 4.1(c) and therefore should not be accepted.

4.5 The Panel Secretariat is to maintain a Register of Gifts for each JRPP to ensure the receipt and disposal of gifts is conducted in an open and transparent manner. When offered a gift or benefit JRPP members must inform the Panel Secretariat of the following information for the purposes of making a recording on the Register of Gifts:

- the person who made the offer and the date on which the offer was made
- whether or not you accepted the gift/benefit
- whether the gift or benefit was allocated to another person or body, and
- the value of the gift or benefit.

You should also advise the JRPP Chair of any such notification to the Panel Secretariat.

5. Relationship between JRPP members, council and council staff

Obligations of JRPP members

5.1 Section 23N of the EP&A Act provides that a JRPP is entitled to:

- a) to have access to, and to make copies of and take extracts from records of a council relevant to the exercise of the JRPPs' functions, and
- b) to the use of staff and facilities of a relevant council in order to exercise the JRPP's functions.

All such requests for assistance will be made by the JRPP Chair to General Manager (or such other staff member as be nominated by the General Manager).

5.2 You have a responsibility to promote and support an effective and co-operative working relationship with the council, general manager and council staff and contractors.

Inappropriate interactions

5.3 You must not engage in inappropriate interactions when exercising your functions as a JRPP member.

5.4 In relation to council staff⁶ you must not:

- a) approach, make requests of, make enquiries or issue instructions to council staff other than through official channels and in accordance with this Code
- b) be overbearing or threatening to council staff
- c) make personal attacks on council staff in a public forum
- d) direct or pressure council staff in the performance of their work or recommendations they make
- e) influence or attempt to influence staff in the preparation of assessment reports or other information to be submitted to the JRPP.

5.5 The 'Procedures for the Operation of Joint Regional Planning Panels' recognises that there may be circumstances where it is appropriate for JRPP members to attend meetings/briefings with applicants, objectors or other third parties with an interest in proposed development. However, you:

⁶ A reference in this clause to council 'staff' includes a reference to council contractors or consultants.

- a) must not hold private meetings, briefings or discussions in respect of the matter in the absence of other JRPP members or without council staff being in attendance; and
- b) must not attend site visits unless they have been formally arranged by council staff and you are accompanied by other JRPP members and/or council staff.

Where such meetings, briefings or site visits occur:

- (a) you should not express any preliminary views in relation to the JRPP's ultimate determination of the matter; and
- (b) a written record of the discussions should be made.

Council staff - avoiding the potential for a conflict of duties

- 5.6 As a general rule it is not appropriate for council staff to be members of a JRPP, as it would be difficult for them to appropriately manage the conflicts of duties between being a council staff member and fulfilling the obligations of a JRPP member.
- 5.7 Council employees (including general managers and other senior staff) who are nominated to sit as a member of the JRPP should carefully consider what measures must be put in place to ensure they will be able to comply with the requirements of this Code.[†]
- 5.8 A conflict of duties may arise for Council employees (including general managers and other senior staff) who are nominated to sit as a member of the JRPP. A conflict of duties is a conflict between competing and incompatible public duties. For example, a conflict of duties arises where public officials hold more than one official position which requires them to address competing objectives or interests. Conflicts of duties should be avoided in most circumstances. Therefore Council employees who are nominated to sit on a JRPP must ensure that appropriate measures are in place to ensure potential conflicts are appropriately managed.
- 5.9 Council employees who are nominated to sit as JRPP members must also seek to avoid situations in which their interests as a Council employee might reasonably be perceived by members of the community to conflict with the impartial fulfilment of their functions as a JRPP member either because:
 - a) they have been directly or indirectly involved in the preparation of the assessment report for the JRPP, or
 - b) they adopt a view, without providing independent reasoning, that is perceived to be consistent with the view of the elected council in its submission to the JRPP.

6. Relationship between JRPP members and others

- 6.1 You must adhere to the Key Principles and General Conduct Obligations contained in this Code when dealing with others, including council staff, councillors, Department of Planning staff and the Panel Secretariat.

7. Protecting and using information

- 7.1 Information must be handled in accordance with section 148 of the EP&A Act.
- 7.2 In addition to the obligations under section 148 of the EP&A Act you must:

[†] In particular Part 5 of the Code.

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- a) protect confidential information
 - b) only release confidential information if you have authority to do so
 - c) only use confidential information for the purpose it is intended to be used
 - d) not use confidential information gained through your position as a JRPP member for the purpose of securing a private benefit for yourself or for any other person
 - e) not use confidential information with the intention to cause harm or detriment to the JRPP or any other person or body
 - f) not disclose any information discussed during a confidential session of a JRPP.

7.3 When dealing with personal information you must comply with the *Privacy and Personal Information Protection Act 1998*.

8. Use of public resources

8.1 You may be provided with equipment and other resources to perform JRPP functions. All such resources are to be used only for JRPP purposes and in accordance with any guidelines or rules about the use of those resources.

9. Public Comment/Media

9.1 The JRPP Chair is responsible for speaking to the media on behalf of the JRPP, to allow its decisions to be properly represented and communicated. The Chair can authorise another JRPP member to speak to the media on behalf of the JRPP at any time. Other non-authorised members can speak to the media about JRPP matters however, in doing so, this does not represent the views of the JRPP.

10. Reporting breaches

10.1 JRPP members are required to report suspected breaches of the Code to the JRPP Chair. If the suspected breach is by the JRPP Chair, you should report the suspected breach to the member of the Planning Assessment Commission (PAC) nominated for this purpose. If the JRPP Chair suspects a breach of the Code s/he should report the suspected breach to the nominated PAC member.

10.2 The JRPP Chair or nominated PAC member, as the case may be, may take such steps as s/he thinks appropriate to investigate and take action in respect of the alleged breach.

10.3 A person who is alleged to have breached the Code must be given:

- a) the full particulars of the alleged breach⁸;
- b) an opportunity to respond to the allegations; and
- c) the right to have a legal or other representative present during any meetings/discussions in respect of the matter.

10.4 Serious breaches of the Code may be referred to the Minister in respect of State Members or the relevant council with respect to council nominees. Proven breaches of the Code may warrant removal from office (see item 12 below)

11. Reporting possible corrupt conduct

⁸ These particulars should not include the details of the person who made the allegation

11.1 The *Protected Disclosures Act 1994* provides protection to public officials who voluntarily report suspected corrupt conduct. JRPP members can make reports concerning suspected corrupt conduct⁹ to the JRPP Chair¹⁰. The JRPP Chair is under a duty to report to the Independent Commission Against Corruption any matter that they suspect on reasonable grounds concerns or may concern corrupt conduct¹¹.

11.2 JRPP members can also report directly to the following investigative bodies.

Disclosures concerning:

- Corrupt conduct should be made to the Independent Commission Against Corruption¹²
- Maladministration¹³ should be made to the NSW Ombudsman
- Serious and substantial waste of public money should be made to the NSW Auditor General.

12. Removal from office

12.1 The Minister may remove State members from office at any time and without notice.

12.2 The relevant council may remove its nominee/s from office at any time and without notice. If so, the Council must notify the Panel Secretariat.

12.3 The Minister may remove any member if the Independent Commission Against Corruption recommends that consideration be given to the removal of the member because of corrupt conduct by the Member.

13. Complaint handling

13.1 Complaints against JRPP members are to be handled in accordance with the JRPP Complaints Handling Policy.

⁹ Corrupt conduct has the meaning given to that term under the *Independent Commission Against Corruption Act 1988* (ICAC Act)

¹⁰ or nominated PAC member if the suspected conduct is by the JRPP Chair or the Chair is reporting suspected corrupt conduct.

¹¹ Section 11, ICAC Act.

¹² Section 10 of the ICAC Act allows any person to make a complaint to the Independent Commission Against Corruption about a matter that concerns or may concern corrupt conduct.

¹³ Maladministration is defined in s 11(2) of the *Protected Disclosures Act 1994*

Appendix A

Extract from Schedule 4 of the *Environmental Planning and Assessment Act 1979*

12 Disclosure of pecuniary interests

(1) If:

- (a) a member has a pecuniary interest in a matter being considered or about to be considered at a meeting of the regional panel, and
- (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter, the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the regional panel.

(2) A member has a pecuniary interest in a matter if the pecuniary interest is the interest of:

- (a) the member, or
- (b) the member's spouse or de facto partner or a relative of the member, or a partner or employer of the member, or
- (c) a company or other body of which the member, or a nominee, partner or employer of the member, is a member.

(3) However, a member is not taken to have a pecuniary interest in a matter as referred to in subclause (2) (b) or (c):

- (a) if the member is unaware of the relevant pecuniary interest of the spouse, de facto partner, relative, partner, employer or company or other body, or
- (b) just because the member is a member of, or is employed by, a council or a statutory body or is employed by the Crown, or
- (c) just because the member is a member of, or a delegate of a council to, a company or other body that has a pecuniary interest in the matter, so long as the member has no beneficial interest in any shares of the company or body.

(4) A disclosure by a member at a meeting of the regional panel that the member, or a spouse, de facto partner, relative, partner or employer of the member:

- (a) is a member, or is in the employment, of a specified company or other body, or
- (b) is a partner, or is in the employment, of a specified person, or
- (c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

(5) Particulars of any disclosure made under this clause must be recorded by the regional panel in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the regional panel.

(6) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the regional panel otherwise determines:

- (a) be present during any deliberation of the panel with respect to the matter, or
- (b) take part in any decision of the panel with respect to the matter.

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- (7) For the purposes of the making of a determination by the regional panel under subclause (6), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:
- (a) be present during any deliberation of the panel for the purpose of making the determination, or
 - (b) take part in the making by the panel of the determination.
- (8) A contravention of this clause does not invalidate any decision of the regional panel.

ATTACHMENT 2
OPERATIONAL GUIDELINES



Procedures for the Operation of
Joint Regional Planning Panels

JOINT REGIONAL PLANNING PANELS



JOINT REGIONAL PLANNING PANELS

Code of Conduct

Introduction

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- State appointed members
- council nominees
- alternates acting for JRPP members.

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The Code will be kept under review and will be subject to changes that may be required to reflect the experience of the implementation and operation of the JRPPs.

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- a) understand the standards of conduct that are expected of you
- b) enable you to act honestly, ethically and responsibly
- c) enable you to exercise a reasonable degree of care and diligence; and
- d) act in a way that enhances public confidence in the integrity of role of the JRPPs in the planning system.

Application of the Model Code of Conduct for Local Councils in NSW (Model Code)

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It is recognised that councillors and council staff may undertake functions as a member of a JRPP separate to their ordinary functions as a councillor or member of council staff. When exercising functions as a JRPP member councillors and council staff must ensure that they comply with this Code.

Council staff responsible for dealing with development matters under the *Environmental Planning and Assessment Act 1979* (EP&A Act), preparing assessment reports and/or otherwise assisting a JRPP in the exercise of its functions are not subject to this Code.

Other obligations

JRPP members are subject to the *Independent Commission Against Corruption Act 1988* and the *Ombudsman Act 1974*.

Code of Conduct

1. Key principles

Integrity

- 1.1 You must not place yourself under any financial or other obligation to any individual or organisation that might be reasonably thought to influence you in the exercise of your functions as a JRPP member.

Leadership

- 1.2 You have a duty to promote and support the key principles of this Code by demonstrating leadership and maintaining and strengthening the public's trust and confidence in JRPPs and their role in the planning system.

Selflessness

- 1.3 You have a duty to make decisions in the public interest. You must not make a decision or take action that causes or results in you obtaining:
- a financial benefit (including avoiding a financial loss)
 - other benefits for yourself, your family, friends or business interests.

Impartiality

- 1.4 You should make decisions on merit and in accordance with your statutory obligations when carrying out your functions as a JRPP member.

Accountability

- 1.5 You are accountable to the public for your decisions and actions and should consider issues on their merits, taking into account the views of others.

Openness

- 1.6 You have a duty to be open as possible about your decisions and actions.

Honesty

- 1.7 You have a duty to act honestly and in good faith for the proper purpose.

Respect

- 1.8 You must treat others with respect at all times.

2. General conduct obligations

General conduct

- 2.1 You must not conduct yourself in carrying out your functions as a JRPP member in a manner that is likely to bring the JRPP into disrepute. Specifically, you must not act in a way that:
- a) contravenes the EP&A Act¹
 - b) is improper or unethical
 - c) is an abuse of power
 - d) causes, comprises or involves intimidation, harassment or verbal abuse
 - e) causes, comprises or involves discrimination, disadvantage or adverse treatment.

¹ A reference to the *Environmental Planning and Assessment Act 1979* (EP&A Act) includes a reference to the *Environmental Planning and Assessment Regulation 2000*.

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- 2.2 You must act lawfully, honestly and exercise a reasonable degree of care and diligence in carrying out your functions as a JRPP member, having regard to the statutory obligations under the EP&A Act.

Fairness and equity

- 2.3 You must consider issues consistently, promptly, conscientiously and fairly.
- 2.4 You must take all relevant facts known to you, or that you should be reasonably aware of, into consideration and have regard to the particular merits of each case. You must not take irrelevant matters or circumstances into consideration when making decisions.

Making decisions and taking actions

- 2.5 You must ensure that decisions and actions are reasonable, fair and for the proper purpose and that parties involved in the development process are dealt with fairly.
- 2.6 You must ensure that no action, statement or communication between yourself and others (such as applicants, objectors and councillors) conveys any suggestion of willingness to provide improper concessions or preferential treatment.
- 2.7 You should attend all meetings of the JRPP as far as is possible, and allow the necessary time to prepare for meetings.

3. Conflicts of interests

General

- 3.1 A conflict of interests exists where a reasonable and informed person would perceive that you could be influenced by a private interest when carrying out your functions as a JRPP member.
- 3.2 You must avoid or appropriately manage any conflicts of interests. The onus is on you to identify a conflict of interests and take appropriate action.
- 3.3 Any conflicts of interests must be managed to up-hold the probity of JRPP decision making. When considering whether or not you have a conflict of interests you should consider how others would view your situation.
- 3.4 Private interests can be of two types: pecuniary or non-pecuniary.

Disclosure of pecuniary interests

- 3.5 A pecuniary interest is an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person².
- 3.6 A person does not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision of that person might make³.

² The term 'pecuniary interests' adopted by this Code is based on the definition of that term in s.442(1) of the *Local Government Act 1993*.

³ See s.442(2) *Local Government Act 1993* or if it is an interest referred to in s.448(a), (b), (e) or (g) of the *Local Government Act 1993*.

- 3.7 A member has a pecuniary interest in a matter if the pecuniary interest is the interest of the member, the member's spouse or de facto partner or a relative⁴ of the member, or a partner or employer of the member, or a company or other body of which the member, or a nominee, partner or employer of the member, is a member.
- 3.8 The obligation on JRPP members with respect to pecuniary interests are set out in clause 12 of Schedule 4 of the EP&A Act (attached at **Appendix A**). All JRPP members must comply with the requirements set out in this provision. In particular:
- (a) If a member has a pecuniary interest in a matter being considered or about to be considered at a meeting of a JRPP and the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter the member must, as soon as possible after the relevant facts have come to the member's attention disclose the nature of the interest at a meeting of the regional panel.
- (b) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the regional panel otherwise determines:
- be present during any deliberation of the panel with respect to the matter, or
 - take part in any decision of the panel with respect to the matter.

Disclosure of non pecuniary interests

- 3.9 A non pecuniary interest is a private or personal interest that a person has that may, for example, be based on a family or personal relationship, membership of an association, society or trade union or involvement or interest in an activity which may include an interest of a financial nature⁵.
- 3.10 You should consider possible non pecuniary interests that may arise while carrying out your duties as a JRPP member. Where possible, the source of potential conflict should be removed.
- 3.11 However, where this is not possible, if a member has a non pecuniary interest in a matter and the interest appears to raise a conflict with the proper performance of the member's duties, the member must follow the procedures set out in clause 12 of Schedule 4 of the EP&A Act in the same manner as if the interest was a pecuniary interest.

Political Donations

- 3.12 JRPP members should be aware that political contributions or donations may give rise to a pecuniary or non-pecuniary interest. It is the responsibility of JRPP members to determine in each instance whether such an interest arises and whether the provisions of this Code and clause 12 of Schedule 4 of the EP&A Act applies.
- 3.13 Where a JRPP member makes a disclosure under cl.12(1)(b) of Schedule 4 to the EP&A Act with respect to an interest which arises because of a political donation,

⁴ The term 'relative' adopted by this Code is the definition of that term under s 3 of the *Local Government Act 1993*.

⁵ The term 'non-pecuniary interest' as adopted by this Code is based on the meaning of that term under the *Local Government Model Code of Conduct*.

the regional panel is required to take this into consideration in determining under cl.12(6) whether it is appropriate for the member to be present during any deliberations or take part in any decision with respect to the matter.

Other business or employment

3.14 You must ensure that any outside employment or business you engage in will not:

- a) conflict with your functions as a JRPP member
- b) involve using confidential information or resources obtained through your role as a JRPP member
- c) discredit or disadvantage the JRPP.

Personal dealings with council

3.15 You may have reason to have private dealings with a council that is within the JRPP region where you are a JRPP member (for example as a ratepayer). You must not expect or request preferential treatment in relation to any matter in which you have a private interest because of your role as a JRPP member. You must avoid any action that could lead members of the public to believe that you are seeking preferential treatment.

4. Personal benefit

Gifts and benefits

4.1 You must not:

- a) seek or accept a bribe or other improper inducement
- b) seek gifts or benefits of any kind
- c) accept any gift or benefit that may create a sense of obligation on your part or may be perceived to be intended or likely to influence you in carrying out your public duty
- d) accept any gift or benefit of more than token value
- e) accept an offer of money, regardless of the amount.

4.2 Generally speaking token gifts and benefits include:

- a) free or subsidised meals, beverages or refreshments provided in conjunction with:
 - i. the discussion of matters before the JRPP
 - ii. conferences
 - iii. social functions organised by groups.
- b) invitations to and attendance at local social, cultural and sporting events.
- c) gifts of single bottles or reasonably priced alcohol at end of year functions and public occasions.
- d) ties, scarves, coasters, tie pins, diaries, chocolates or flowers.

4.3 Gifts and tokens that have more than a token value include, but are not limited to, tickets to major sporting events, corporate hospitality at a corporate facility at major sporting events, discounted products for personal use, the frequent use of facilities such as gyms, use of holiday homes, free or discounted travel.

4.4 As a general rule, any gift from an applicant, objector or associate of an applicant or objector in relation to a matter to be determined by a JRPP would fall into a category referred to in paragraph 4.1(c) and therefore should not be accepted.

4.5 The Panel Secretariat is to maintain a Register of Gifts for each JRPP to ensure the receipt and disposal of gifts is conducted in an open and transparent manner. When offered a gift or benefit JRPP members must inform the Panel Secretariat of the following information for the purposes of making a recording on the Register of Gifts:

- the person who made the offer and the date on which the offer was made
- whether or not you accepted the gift/benefit
- whether the gift or benefit was allocated to another person or body, and
- the value of the gift or benefit.

You should also advise the JRPP Chair of any such notification to the Panel Secretariat.

5. Relationship between JRPP members, council and council staff

Obligations of JRPP members

5.1 Section 23N of the EP&A Act provides that a JRPP is entitled to:

- a) to have access to, and to make copies of and take extracts from records of a council relevant to the exercise of the JRPPs' functions, and
- b) to the use of staff and facilities of a relevant council in order to exercise the JRPP's functions.

All such requests for assistance will be made by the JRPP Chair to General Manager (or such other staff member as be nominated by the General Manager).

5.2 You have a responsibility to promote and support an effective and co-operative working relationship with the council, general manager and council staff and contractors.

Inappropriate interactions

5.3 You must not engage in inappropriate interactions when exercising your functions as a JRPP member.

5.4 In relation to council staff⁶ you must not:

- a) approach, make requests of, make enquiries or issue instructions to council staff other than through official channels and in accordance with this Code
- b) be overbearing or threatening to council staff
- c) make personal attacks on council staff in a public forum
- d) direct or pressure council staff in the performance of their work or recommendations they make
- e) influence or attempt to influence staff in the preparation of assessment reports or other information to be submitted to the JRPP.

5.5 The 'Procedures for the Operation of Joint Regional Planning Panels' recognises that there may be circumstances where it is appropriate for JRPP members to attend meetings/briefings with applicants, objectors or other third parties with an interest in proposed development. However, you:

⁶ A reference in this clause to council 'staff' includes a reference to council contractors or consultants.

- a) must not hold private meetings, briefings or discussions in respect of the matter in the absence of other JRPP members or without council staff being in attendance; and
- b) must not attend site visits unless they have been formally arranged by council staff and you are accompanied by other JRPP members and/or council staff.

Where such meetings, briefings or site visits occur:

- (a) you should not express any preliminary views in relation to the JRPP's ultimate determination of the matter; and
- (b) a written record of the discussions should be made.

Council staff - avoiding the potential for a conflict of duties

- 5.6 As a general rule it is not appropriate for council staff to be members of a JRPP, as it would be difficult for them to appropriately manage the conflicts of duties between being a council staff member and fulfilling the obligations of a JRPP member.
- 5.7 Council employees (including general managers and other senior staff) who are nominated to sit as a member of the JRPP should carefully consider what measures must be put in place to ensure they will be able to comply with the requirements of this Code.[†]
- 5.8 A conflict of duties may arise for Council employees (including general managers and other senior staff) who are nominated to sit as a member of the JRPP. A conflict of duties is a conflict between competing and incompatible public duties. For example, a conflict of duties arises where public officials hold more than one official position which requires them to address competing objectives or interests. Conflicts of duties should be avoided in most circumstances. Therefore Council employees who are nominated to sit on a JRPP must ensure that appropriate measures are in place to ensure potential conflicts are appropriately managed.
- 5.9 Council employees who are nominated to sit as JRPP members must also seek to avoid situations in which their interests as a Council employee might reasonably be perceived by members of the community to conflict with the impartial fulfilment of their functions as a JRPP member either because:
 - a) they have been directly or indirectly involved in the preparation of the assessment report for the JRPP, or
 - b) they adopt a view, without providing independent reasoning, that is perceived to be consistent with the view of the elected council in its submission to the JRPP.

6. Relationship between JRPP members and others

- 6.1 You must adhere to the Key Principles and General Conduct Obligations contained in this Code when dealing with others, including council staff, councillors, Department of Planning staff and the Panel Secretariat.

7. Protecting and using information

- 7.1 Information must be handled in accordance with section 148 of the EP&A Act.
- 7.2 In addition to the obligations under section 148 of the EP&A Act you must:

[†] In particular Part 5 of the Code.

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- a) protect confidential information
 - b) only release confidential information if you have authority to do so
 - c) only use confidential information for the purpose it is intended to be used
 - d) not use confidential information gained through your position as a JRPP member for the purpose of securing a private benefit for yourself or for any other person
 - e) not use confidential information with the intention to cause harm or detriment to the JRPP or any other person or body
 - f) not disclose any information discussed during a confidential session of a JRPP.

7.3 When dealing with personal information you must comply with the *Privacy and Personal Information Protection Act 1998*.

8. Use of public resources

8.1 You may be provided with equipment and other resources to perform JRPP functions. All such resources are to be used only for JRPP purposes and in accordance with any guidelines or rules about the use of those resources.

9. Public Comment/Media

9.1 The JRPP Chair is responsible for speaking to the media on behalf of the JRPP, to allow its decisions to be properly represented and communicated. The Chair can authorise another JRPP member to speak to the media on behalf of the JRPP at any time. Other non-authorised members can speak to the media about JRPP matters however, in doing so, this does not represent the views of the JRPP.

10. Reporting breaches

10.1 JRPP members are required to report suspected breaches of the Code to the JRPP Chair. If the suspected breach is by the JRPP Chair, you should report the suspected breach to the member of the Planning Assessment Commission (PAC) nominated for this purpose. If the JRPP Chair suspects a breach of the Code s/he should report the suspected breach to the nominated PAC member.

10.2 The JRPP Chair or nominated PAC member, as the case may be, may take such steps as s/he thinks appropriate to investigate and take action in respect of the alleged breach.

10.3 A person who is alleged to have breached the Code must be given:

- a) the full particulars of the alleged breach⁸;
- b) an opportunity to respond to the allegations; and
- c) the right to have a legal or other representative present during any meetings/discussions in respect of the matter.

10.4 Serious breaches of the Code may be referred to the Minister in respect of State Members or the relevant council with respect to council nominees. Proven breaches of the Code may warrant removal from office (see item 12 below)

11. Reporting possible corrupt conduct

⁸ These particulars should not include the details of the person who made the allegation

11.1 The *Protected Disclosures Act 1994* provides protection to public officials who voluntarily report suspected corrupt conduct. JRPP members can make reports concerning suspected corrupt conduct⁹ to the JRPP Chair¹⁰. The JRPP Chair is under a duty to report to the Independent Commission Against Corruption any matter that they suspect on reasonable grounds concerns or may concern corrupt conduct¹¹.

11.2 JRPP members can also report directly to the following investigative bodies.

Disclosures concerning:

- Corrupt conduct should be made to the Independent Commission Against Corruption¹²
- Maladministration¹³ should be made to the NSW Ombudsman
- Serious and substantial waste of public money should be made to the NSW Auditor General.

12. Removal from office

12.1 The Minister may remove State members from office at any time and without notice.

12.2 The relevant council may remove its nominee/s from office at any time and without notice. If so, the Council must notify the Panel Secretariat.

12.3 The Minister may remove any member if the Independent Commission Against Corruption recommends that consideration be given to the removal of the member because of corrupt conduct by the Member.

13. Complaint handling

13.1 Complaints against JRPP members are to be handled in accordance with the JRPP Complaints Handling Policy.

⁹ Corrupt conduct has the meaning given to that term under the *Independent Commission Against Corruption Act 1988* (ICAC Act)

¹⁰ or nominated PAC member if the suspected conduct is by the JRPP Chair or the Chair is reporting suspected corrupt conduct.

¹¹ Section 11, ICAC Act.

¹² Section 10 of the ICAC Act allows any person to make a complaint to the Independent Commission Against Corruption about a matter that concerns or may concern corrupt conduct.

¹³ Maladministration is defined in s 11(2) of the *Protected Disclosures Act 1994*

Appendix A

Extract from Schedule 4 of the *Environmental Planning and Assessment Act 1979*

12 Disclosure of pecuniary interests

(1) If:

- (a) a member has a pecuniary interest in a matter being considered or about to be considered at a meeting of the regional panel, and
- (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter, the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the regional panel.

(2) A member has a pecuniary interest in a matter if the pecuniary interest is the interest of:

- (a) the member, or
- (b) the member's spouse or de facto partner or a relative of the member, or a partner or employer of the member, or
- (c) a company or other body of which the member, or a nominee, partner or employer of the member, is a member.

(3) However, a member is not taken to have a pecuniary interest in a matter as referred to in subclause (2) (b) or (c):

- (a) if the member is unaware of the relevant pecuniary interest of the spouse, de facto partner, relative, partner, employer or company or other body, or
- (b) just because the member is a member of, or is employed by, a council or a statutory body or is employed by the Crown, or
- (c) just because the member is a member of, or a delegate of a council to, a company or other body that has a pecuniary interest in the matter, so long as the member has no beneficial interest in any shares of the company or body.

(4) A disclosure by a member at a meeting of the regional panel that the member, or a spouse, de facto partner, relative, partner or employer of the member:

- (a) is a member, or is in the employment, of a specified company or other body, or
- (b) is a partner, or is in the employment, of a specified person, or
- (c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

(5) Particulars of any disclosure made under this clause must be recorded by the regional panel in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the regional panel.

(6) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the regional panel otherwise determines:

- (a) be present during any deliberation of the panel with respect to the matter, or
- (b) take part in any decision of the panel with respect to the matter.

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- (7) For the purposes of the making of a determination by the regional panel under subclause (6), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:
- (a) be present during any deliberation of the panel for the purpose of making the determination, or
 - (b) take part in the making by the panel of the determination.
- (8) A contravention of this clause does not invalidate any decision of the regional panel.

4.7 Submission of Assessment Report to Panel Secretariat

The completed assessment report and recommendation, signed by the officer responsible for the report, is to be forwarded electronically to the Panel Secretariat immediately upon completion.

The assessment report is not required to be endorsed or presented to the Council before being forwarded to the Panel Secretariat.

The following items are to be forwarded in a digital format to the Secretariat:

- Assessment Report, any attachments and the Recommendations (including conditions);
- Development Application and Statement of Environmental Effects or Environmental Impact Statement along with any plans, drawings or other material submitted with the application if it has not previously been submitted to the Panel Secretariat;
- Copies of each submission (or a summary of submissions) received in respect of the application along with a table containing the names and addresses (preferably email addresses) of every person or body who made a submission. In the case of petitions, only the name and address of the head petitioner, if that person can be identified. A hard copy as well as a digital copy should be submitted.

Note: Copies of submissions are requested in order to enable the Regional Panel to consider the submissions for the purposes of s. 79C of the EP&A Act and to enable the Panel Secretariat to notify persons who made submissions of the time, date and venue of the Panel meeting at which the relevant application will be considered.

5. The Determination Process

5.1 Setting of meeting date and agenda

A regular schedule of proposed meeting dates will be determined in advance by the Panel Secretariat in consultation with the Chairperson. The schedule is likely to be on a 2 or 3 week cycle depending on the particular region and the likely volume of applications. If there are no items for a scheduled meeting date, the meeting will not take place.

Special meetings of a Regional Panel may be organised at the discretion of the Chairperson subject to the notice requirements discussed later.

The agenda for each meeting is approved by the Chairperson of the Regional Panel, who may consult with the General Managers (or their nominee) of the councils with items for the Regional Panel as necessary.

Preliminary agendas should be forecast as far ahead as possible, being mindful that issues may emerge during public notification that will alter the originally estimated date for completion of the assessment report. In these circumstances, the council is to notify the Panel Secretariat of the revised date for completion of the assessment report and the brief reasons for the delay.

5.2 Meeting venue

The meeting venue is determined by the Chairperson in consultation with the Regional Director of the Department of Planning, and the General Managers (or their delegates) of the councils with items for the particular Regional Panel Meeting having regard to:

- The location of the matters to be considered at the Regional Panel meeting;
- The number of persons who have expressed an interest in the different matters to be considered at the Regional Panel meeting;
- The accessibility of the proposed venue for those persons.

It is anticipated that meetings will be held at the offices of a council or at a community meeting room of the council. The aims are to:

- Maximise accessibility to people who have expressed an interest in the matters to be considered at the meeting;
- Rotate meetings between different local government areas;
- Facilitate the open exchange of information between the Panel members and other parties.

In metropolitan areas, items from a number of different local government areas might be considered in the one meeting provided the venue is reasonably accessible.

In regional areas, where there are likely to be fewer applications to consider but over a wider area, the Chairperson may need to convene meetings in a number of locations to ensure they are accessible to the greatest number of people with an interest in the application being considered.

5.3 Notice of meeting

Notice of a Regional Panel Meeting is to be given by the Panel Secretariat seven (7) days before the meeting. The notice is to be provided to the Regional Panel members, the General Managers (or their nominee) of the Councils in that region, every person who made a submission in respect of an item to be considered at the meeting and the applicants for those items. The notice is also to be included on the web-site of the councils with items to be considered at the meeting. The notice is to include details of:

- The time and date of the meeting;
- The venue for the meeting; and
- The development applications; and
- The Assessment Report and recommendations; and
- Other matters to be considered at the meeting

5.4 Distribution of meeting agenda

The meeting agenda, accompanying reports and attachments including any representations made by councils are to be distributed electronically to members of the Regional Panel by the Panel Secretariat no less than seven (7) working days prior to the meeting.

5.5 Site visits

Formal visits by the Regional Panel to the site of a development application being considered may be arranged prior to the meeting at the discretion of the Chairperson. The Chairperson may also invite the responsible council assessment officer and the proponent as well as any relevant community member or representative who has requested to make a presentation. Entry on to any private land in these circumstances may only take place with the express permission of the owner of the land.

Informal visits to the locality of a matter before a Regional Panel may also be undertaken by Regional Panel members at their own discretion and in order to assist their understanding of the matter before the Panel. In such circumstances, however:

- Panel members should not enter onto any land, even if invited by the landowner or a neighbouring property owner or any other person;
- Panel members should not discuss the merits or otherwise of an application with any person, including the applicant, any person representing the applicant, or any person who made a submission in respect of the application;
- Panel members should advise the Chairperson of such visits; and
- Panel members are reminded of their obligations under section 5.5 of the Code of Conduct with respect to meetings and briefings.

5.6 Quorum for a Regional Panel Meeting

A quorum for a meeting of a Regional Panel is a majority of its members (including the Chairperson).

5.7 The Regional Panel Meeting

Regional Panel meetings are to be conducted in public, unless otherwise directed by the Minister, or unless the Chairperson is of the opinion there are justifiable reasons to conduct any part of the meeting in closed session.

Justifiable reasons to conduct any part of the meeting in closed session may include the Regional Panel's consideration of:

1. Commercial information of a confidential nature that would, if disclosed:
 - a) prejudice the commercial position of the person who supplied it; or
 - b) reveal a trade secret; or
2. Advice concerning litigation, or Regional Panel advice that would otherwise be privileged from production in legal proceedings or for other purposes on the ground of legal professional privilege;
3. Information concerning the nature and location of a place or an item of Aboriginal significance on community land;
4. A potential conflict of interest of a member; or
5. To transact business outside of a formal meeting as provided in section 5.9 of these procedures.

Before the Chairperson decides to conduct any part of a Regional Panel meeting in closed session, the Chairperson may allow members of the public to make representations as to whether that part of the meeting should be closed.

Where a Chairperson decides to close any part of a Regional Panel meeting, the reasons for closing that part of the meeting must be recorded in the minutes of the meeting.

5.8 Presentations at Regional Panel Meeting

The Chairperson will determine the order of presentations to the panel. The panel members may ask questions of those making presentations. The amount of time afforded to persons being heard will be at the discretion of the Chairperson.

(a) Presentation by the applicant

Prior to considering an item, the applicant will be given the opportunity to outline the proposal and, with the approval of the Chairperson, respond where appropriate to any issues raised during public notification or the assessment of the application.

(b) Presentation by persons or bodies who made submissions

Persons (or persons on behalf of bodies) who made a submission on a matter before the Regional Panel may request to address the Panel. Requests can be made to the Panel Secretariat prior to the meeting.

Where a large group of people have common issues, the Chairperson may ask that a spokesperson be appointed to speak on behalf of the group. The Chairperson will seek, where practicable, to ensure that all groups or individuals who request to address the Panel are heard.

(c) Presentation by person responsible for assessment

A person responsible for the assessment report and recommendations is to be present at the Regional Panel meeting during consideration of that item. Other technical experts from the council as appropriate may also be present having regard to the nature of the matter before the Regional Panel (e.g. traffic engineers and the like).

The panel may request assistance from that person or persons clarifying issues regarding the assessment or matters raised earlier by the applicant or persons who made submissions.

Note: A person responsible for the assessment report can be either the person who prepared the assessment report, or a person in a supervisory position who accepts responsibility for the report and its recommendations.

(d) Presentation by a panel appointed expert

For the purpose of determining a development application, or an application to modify a development consent, a Regional Panel may obtain independent assessment reports, advice and assistance as the panel thinks fit, particularly in relation to complex technical matters. This would be in addition to any assessment report or other information provided by the relevant council in assessing the application. Depending on the circumstances, the expert may submit a report with recommendations directly to Regional Panel. In addition, the expert may be invited to present the outcomes of the investigation at the public meeting.

5.9 Transaction of business outside formal meetings

A Regional Panel can transact any of its business, if it thinks fit, at a meeting at which members participate by electronic means including telephone and closed circuit television. The occurrence of such meetings is likely to be limited to extraordinary circumstances, and is likely to be in order to conclude business transacted substantially in a public meeting.

Clause 268I of the EP&A Reg provides that:

1. A planning body (which includes a Regional Panel) may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the planning body for the matter for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the planning body.
2. The planning body may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
3. For the purposes of:
 - (a) the approval of a resolution under subclause (1), or
 - (b) a meeting held in accordance with subclause (2),The chairperson and each member of the planning body have the same voting rights as they have at an ordinary meeting of the planning body.

4. A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the planning body.
5. Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

5.10 Obligation to consult council – if adverse financial impacts

A Regional Panel must not make a decision that will have, or that might reasonably be expected to have a significantly adverse financial impact on a council until after it has consulted with the council. These costs may be associated with the need for additional infrastructure or services.

The consultation may be in writing, with the council given a specified time to respond in writing. Where a meeting with the General Manager (or nominee) is to be held to discuss the matter, all panel members should be present and minutes kept of the meeting and its outcomes.

5.11 Making the determination

Where a decision cannot be made by consensus, the decision of the Regional Panel is to be made by majority vote. The presiding member will have a second or casting vote if required because of an equality of votes.

A decision may be deferred for any reason including the obtaining of additional information or advice. In these circumstances, the decision may be made at a subsequent meeting, including a meeting conducted by the circulation of papers or by electronic means in accordance with clause 268i of the *Environmental Planning and Assessment Regulation 2000*.

The Regional Panel may engage experts to obtain independent advice and assistance as the panel thinks fit, to ensure adequate and appropriate information is available for consideration in making a determination.

Where the determination is not consistent with the recommendations by the relevant council officers, the Regional Panel will be required to provide reasons.

Section 82A reviews are not available in respect of determinations by Regional Panels.

5.12 Recording of minutes

The Chairperson is responsible for ensuring that full and accurate minutes are kept of the proceedings of each meeting of a Regional Panel.

The unconfirmed minutes must be endorsed by the Chairperson and made publicly available within five (5) days of the Regional Panel meeting. A copy of the unconfirmed minutes must also be provided to the relevant councils which participated in the Regional Panel Meeting, once they have been endorsed by the Chairperson. Panel members may submit any proposed corrections of the unconfirmed minutes to the Panel Secretariat for distribution to the Panel members prior to the meeting at which the minutes are to be confirmed.

The minutes of a meeting must be submitted for confirmation at the next ordinary meeting of the Regional Panel. When the minutes have been confirmed at a subsequent meeting of the Regional Panel, the Chairperson of that meeting must sign them.

The minutes must record:

- (a) The opening and closing times of the meeting
- (b) The names of state members (or their alternates) present at the meeting
- (c) The names of the council members (or their alternates) in respect of each item
- (d) Any disclosure of interest made by a member and the reason for that disclosure of interest and whether the member making the disclosure participated in the discussion or determination of the matter
- (e) The names of each person heard by the Regional Panel in respect of an item and a summary of key issues raised
- (f) The decision of the Regional Panel for each item. Where the determination is not consistent with the recommendations by the relevant council officers, the following must be provided:
 - (i) Reasons for the decision, and
 - (ii) Any conditions of consent or changes to the recommended conditions of approval.
- (g) The names of: each member who voted for; and of each member who voted against.

Minutes are recorded by an officer of the Panel Secretariat. The Panel Secretariat is responsible for keeping records of the Regional Panels.

6. Post Meeting Procedures

6.1 Issuing the notice of determination

The notice of determination is issued by the council that received the development application following the decision of the Regional Panel and in accordance with the EP&A Act and Regulation and the council's normal procedures.

6.2 Monitoring of and compliance with conditions of approval

The council as the consent authority will continue to be responsible for the monitoring of, and enforcing compliance with, any conditions of the development consent.

6.3 Appeals against determination where Council is applicant

Appeals against the determination of a Regional Panel are to be defended by the council that received the development application as though the determination were made by the council.

However, the EP&A Regulations provide that where a council is the applicant and makes an appeal or otherwise commences Land and Environment Court proceedings concerning a Regional Panel determination in respect of the Council's application, the Regional Panel will be the relevant respondent in such proceedings.

ATTACHMENT 3
LETTER FROM LGSA

Local Government
Association of NSW



Shires Association of NSW

Our ref: R04/0065 Our: 17/09

16 July 2009

Attn: Mayors and General Manager

Joint Regional Planning Panels

As councils would be aware, Joint Regional Planning Panels commenced on 1 July 2009 in five regions of the State. The Panel for the western region is due to commence soon.

The Associations continue to oppose the Panels. With a majority of State appointed members (including the Chair) and only two council executives, the Panels will undermine local decision making and local accountability. We are also concerned that they add another layer of bureaucracy and complexity to the decision making process and are likely to increase the cost and time taken to finalise development applications.

We recently met with the Minister for Planning to discuss the planning reform agenda, including Joint Regional Planning Panels, and requested that the Minister agree to:

- a formal evaluation of the performance and planning outcomes of the Panels after the first six months of operation; and
- a commitment from the Minister that the ongoing costs of the Panels (administrative costs and expenses of state members) will be funded by the State Government beyond the 2009/10 financial year.

The Minister indicated that the Department would undertake an evaluation of the panels' operation after the first six months and that there would be no transfer of the costs of the panels to Local Government while she remained as Planning Minister. The Associations will be making representations to the Premier and Treasurer to ensure that the cost of Panels are fully provided for in future State budgets.

The Associations appreciate the support shown by councils that have delayed making their nominations to the Panels until the operational guidelines and code of conduct were made available to councils and issues relating to conflicts of interest were resolved. The Department made a number of amendments to the code and guidelines in response to the Associations' representations, although we still have some concerns about aspects of the code. Being mindful of these concerns, we recommend that council's need to make their own decisions based on local circumstances.

The Associations will continue the Panels over the course of the next few months and are happy to hear from councils about any issues relating to the Panels and their operation.

Yours sincerely

Gina McCaffery
President
Local Government Association of NSW

Brian Miller
President
Shires Association of NSW

170 East Street, Level 20, NSW 1500
A 24 hour panel of 24/7/365 (000)
Tel: 02 9549 6000 Fax: 02 9549 6111
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ABN 11 423 873 227

ATTACHMENT 4
PRESS RELEASE – HUNTER COUNCILS

59 Bonville Avenue,
PO Box 137,
THORNTON NSW 2322
Ph: (02) 4978 4040
Fax: (02) 4966 0588
www.huntercouncils.com.au



Media Release

BOARD CALLS A HALT TO PLANNING PANEL NOMINATIONS

For release 22 May 2009:

The Board of Hunter Councils comprises the Mayors of all eleven local government areas in the Hunter Region.

At its meeting of 21 May 2009 the Board discussed the operation of the Joint Regional Planning Panels to be introduced by the State Government from 1 July 2009 and, more specifically, the required nomination of Council representatives to those Panels by 5 June 2009.

The Joint Regional Planning Panels as devised by the NSW Department of Planning will comprise three State Government-appointed members, including the Chairperson, and two representatives appointed by the local government area where the development is located. The Panels will stand in the place of a council in the determination of all commercial, residential, mixed use, retail and tourism developments valued between \$10 million and \$100 million, 'ecotourism' projects and public and community infrastructure projects valued over \$5 million, certain coastal developments currently considered under Part 3A, designated development and development over \$5 million where the council is the proponent.

According to Cr Julie Lyford, the Chair of Hunter Councils, local government in the Hunter is committed to a more efficient and effective planning system. She said, "Councillors and council staff in the Hunter Region are supportive of refinements to legislation and practice that will make the planning system in New South Wales more transparent, defensible and apolitical. At our meeting the Mayors were unanimous in the view, however, that as currently proposed the Joint Regional Planning Panels will act against planning reform because the Department of Planning has failed to consider how the Panels will actually function and how issues, for example, of conflict of interest and communication will be addressed."

She added, "Local government in the Hunter is not prepared at this stage to recommend that Councils nominate representatives to the Planning Panels because no real guidance or Code is offered as to how these representatives will manage on the one hand their 'independent from Council' role on the Panels with, on the other, their day to day activities as Council planning and development staff or as Councillors. The two roles are potentially diametrically opposed, and we cannot see – especially in the absence of any real guidelines on real life

MINUTES FOR ORDINARY MEETING – 9 MARCH 2010

operations – how possibly fatal compromise to the development assessment process can be avoided.”

As a result of the above the Board of Hunter Councils has resolved the following:

1. To support the submissions to the Department of Planning made by the NSW Local Government and Shires Associations and the Local Government Planners Directors Group in regard to the Joint Regional Planning Panels
2. To urgently seek extensions to the 5 June deadline for Panel nominations and the start date for Panel operation, and
3. To advise member Councils of Hunter Councils not to nominate representatives on the Planning Panels until such time as guidelines and codes of conduct are created.

The latter resolution is an unprecedented move for local government in the Hunter, and reflects the gravity of the situation potentially confronting the planning system in our region. The Board will also as a matter of urgency be sending a delegation to Sydney to meet with the Department of Planning and / or Planning Minister Kristina Keneally to seek deferral of the deadlines and to secure a fundamental reassessment of how the Panels will operate and be resourced.

Ends

For further information please contact:

Cr Julie Lyford, Chair, Hunter Councils on (02) 6558 1995 or mobile 0427 278 860

or

Roger Stephan, CEO Hunter Councils, on (02) 4978 4043 or mobile 0433 633 564

ATTACHMENT 5
COMMENTS ON CODE OF CONDUCT BY EXECUTIVE OFFICER - GOVERNANCE

1. **General Conduct**

2.1 (a) – Will the Panel be considering matters that may relate to other Acts and /or Regulations? The Code only states under this clause members of the Panel can only contravene the EP&A Act. I would suggest this should be inclusion of all Acts and Regulations as per the LG Code of Conduct.

Would this clause also need to include LEP's and DCP's?

2. Page 1, 3rd paragraph under the heading "Application of the Model Code of Conduct for Local Councils in NSW (Model Code)".

This paragraph states that whilst a councillor or staff is exercising the functions as a Panel member then the JRPP Code applies. I believe that this may give rise to conflict between this Code and the LG Code of Conduct.

3. **Conflicts of Interest**

3.2 – The words "appropriately manage" and "take appropriate action" are used. What is the definition of these two terms? This may give rise to confusion for some panel members given a conflict of interest exists where a reasonable and informed person would perceive a conflict. One person definition of "appropriate" will always be different to another. Needs to have a more defined language.

4. **Obligations of JRPP members**

5.1 (a) – There is no reference to the provisions of copyright in this clause.

5.1 (b) – Has consideration been given to the implications on Council resources?

5. **Inappropriate Interactions**

5.5/5.6 – There is no reference to Inappropriate Interactions with Councillors however there is of Council staff.

6. **Council staff - avoiding the potential for a conflict of interest**

5.8 – I have major concerns with respect to Council staff being involved as panel members as this may give rise to a conflict of interest in their Council role through the development assessment process.

7. Reporting Breaches

9.3 – this clause provides the procedure to be followed once an allegation has been made and the information that must be given to the person to whom is alleged to have breached the Code. 9.3 (a) requires that the full particulars of the alleged breach be provided. I assume this would include the name of the person/s who reported the breach. If this is the case has consideration be given to the provisions of the Protected Disclosures Act (PDA) as if the informant is a Public Servant (Local or State Government) then they can claim protected under the PDA. The Ombudsman and ICAC advice is that Councils should apply the provisions of the PDA whether requested to do so or not. There are serious implications for Council under the PDA. There is no reference in this Code of the PDA.

8. 9.4 – This Code states that while a member of the panel this Code would apply, but Clause 9.4 does not deal with breaches of this Code other than report it back to Council. I question the ability for Council to then proceed with a breach of another Code under the Council Code of Conduct

ITEM NO. 6

FILE NO: PSC 2009-04981

WALLAWA ROAD NELSON BAY – FUNDING OF TRAFFIC CALMING TRIAL**REPORT OF: TREVOR ALLEN – MANAGER INFRASTRUCTURE PLANNING**
GROUP: SUSTAINABLE PLANNING**RECOMMENDATION IS THAT COUNCIL:**

- 1) Endorse the funding of implementation of the three (3) month traffic calming trial in Wallawa Road Nelson Bay – to be carried out this financial year.

COMMITTEE MEETING – 09 MARCH 2010
RECOMMENDATION:

	Councillor John Nell Councillor Sally Dover	That the recommendation be adopted.
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ORDINARY MEETING – 09 MARCH 2010

066	Councillor John Nell Councillor Geoff Dingle	It was resolved that the recommendation be adopted.
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BACKGROUND

The purpose of this report is to inform Councillors of the funding obtained to allow the implementation of the 3 month trial of speed cushions in Wallawa Road, Nelson Bay. At the Council Committee meeting held on 9 February 2010, it was resolved that the matter be deferred to allow the investigation of funding the proposal in 2009-2010. This was then adopted at the Ordinary Council meeting on the same date (Minute 011).

FINANCIAL/RESOURCE IMPLICATIONS

Following discussions with Council's Engineering Services Manager, and recognising the Councillors' wish to prioritise the Wallawa Road project, the Works Program for 2009/2010 will now be adjusted to enable the installation of speed cushions in Wallawa Road in the current financial year. This has been made possible by the reallocation of cost savings and surplus materials from completed projects.

LEGAL, POLICY AND RISK IMPLICATIONS

The installation of traffic control devices on a public road is controlled by provisions of the Roads Act 1993 and requires a 28 day period of public exhibition prior to a final decision being made by the relevant roads authority. The community survey which has been conducted in Wallawa Road meets this requirement and Council could resolve to install a traffic calming scheme in Wallawa Road on the basis of the community feedback received.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The installation of traffic calming will benefit Wallawa Road residents by reducing the speed and volume of traffic using the street and by improving their amenity and safety.

CONSULTATION

A community survey was carried out in the Wallawa Road area to gauge the feeling of residents towards the safety of Wallawa Road and toward different traffic calming options. 84% of respondents favoured some form of traffic calming, with 42% favouring speed cushions.

OPTIONS

- 1) Adopt the recommendation to accept the proposed funding measures to allow installation of speed cushions in 2009-2010.
- 2) Reject the recommendation and resolve to take no action for a 12 month period and then review the situation.

ATTACHMENTS

Nil.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ITEM NO. 7

FILE NO: A2004-0511

LOCAL TRAFFIC COMMITTEE MEETING – 2ND FEBRUARY 2010

REPORT OF: TREVOR ALLEN – MANAGER, INTEGRATED PLANNING
GROUP: SUSTAINABLE PLANNING

RECOMMENDATION IS THAT COUNCIL:

Adopt the recommendations contained in the minutes of the local Traffic Committee meeting held on 2nd February 2010.

COMMITTEE MEETING – 09 MARCH 2010
RECOMMENDATION:

	Councillor Sally Dover Councillor Bruce MacKenzie	That the recommendation be adopted.
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ORDINARY MEETING – 09 MARCH 2010

067	Councillor Peter Kafer Councillor Ken Jordan	It was resolved that the 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.

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 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.

LEGAL, POLICY AND RISK 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, the Department of Transport, 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.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

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

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, 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 2nd February 2010.

OPTIONS

- 1) Adopt all or part of the recommendations.
- 2) Reject all or part of the recommendations.
- 3) Council may choose to adopt a course of action for a particular item other than that recommended by the Traffic Committee. In which case Council must first notify both the RTA and NSW Police representatives in writing. The RTA or Police may then lodge an appeal to the Regional Traffic Committee.

ATTACHMENTS

- 1) Minutes of Local Traffic Committee Meeting held on Tuesday 2nd February 2010 at 9:30am

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

**ATTACHMENT 1
LOCAL TRAFFIC COMMITTEE MEETING
HELD ON TUESDAY 2ND FEBRUARY, 2010
AT 9:30AM**

Present:

Mr Craig Baumann MP – Member for Port Stephens, Cr Frank Ward, Mr David Vant – Roads and Traffic Authority, Mr Joe Gleeson (Chairperson), Ms Michelle Page, Mr Graham Orr - Port Stephens Council

Apologies:

Senior Constable Simon Chappell – NSW Police, Mr Brian Mosely – Hunter Valley Buses, Cr Peter Kafer, Mr Mark Newling – Port Stephens Coaches

A. BUSINESS ARISING FROM PREVIOUS MEETING

B. LISTED MATTERS

C. INFORMAL MATTERS

D. GENERAL BUSINESS

**PORT STEPHENS
LOCAL TRAFFIC COMMITTEE AGENDA**

**INDEX OF LISTED MATTERS
TUESDAY 2nd February, 2010**

A. BUSINESS ARISING FROM PREVIOUS MEETING

**604_06/09 COOK PARADE LEMON TREE PASSAGE - COMPLAINTS RECEIVED
REGARDING VEHICLES SPEEDING**

**44_12/09 MARKET STREET FINGAL BAY – REQUEST FOR SHORT-TERM PARKING
RESTRICTIONS AT THE NEWSAGENCY**

B. LISTED MATTERS

**01_02/10 NEWLINE ROAD RAYMOND TERRACE – APPLICATION FOR BICYCLE
RACING BY THE HUNTER DISTRICT CYCLING CLUB**

**02_02/10 MUSTONS ROAD KARUAH – REQUEST FOR FORMALISATION OF
EXISTING 40 KM/H SPEED ZONE IN KARUAH ABORIGINAL
COMMUNITY**

C. INFORMAL MATTERS

D. GENERAL BUSINESS

A. Business arising from previous meetings

Item: 604_06/09

COOK PARADE LEMON TREE PASSAGE - COMPLAINTS RECEIVED REGARDING VEHICLES SPEEDING

Requested by: A resident
File: PSC2005-4020/021
Background:

The NSW Police raised item at Traffic Committee in June 2009 following representations from a resident of Cook Parade. The resident had taken details of the vehicles involved in alleged dangerous driving and had contacted Police but was disappointed with the lack of follow-up action.

Council subsequently installed traffic classifiers in Cook Parade to determine the speed and volume of traffic. Data indicates moderate speeds and low volumes of traffic using the street.

The resident claimed that the survey did not give a true indication of the traffic problems because it was taken during the winter months. The Committee recommended installing traffic classifiers during summer to again collect the traffic data. This second survey has been undertaken and assessed and is submitted to the Committee for consideration.

Comment:

Traffic data now spans the peak holiday season in January 2010. The data still shows moderate volumes of traffic with an average of approximately 300 vehicles per day and an 85th percentile speed of 57km/h. This compares favourably with other local streets of similar design. However, some excessively high speeds were recorded and a report will be forwarded to Police to assist in enforcement.

A summary of the speed statistics collected during the latest survey is attached (**Annexure A**).

Legislation, Standards, Guidelines and Delegation:

Nil

Recommendation to the Committee:

For discussion

Discussion:

The Committee observed that the traffic data did not differ markedly between the mid-year and the holiday period. The speeds observed during the most recent survey were more indicative of isolated speeding incidents that could be effectively targeted for enforcement using the data collected. This data will be supplied to Police. The Committee did not support installation of speed humps in Cook Parade.

PORT STEPHENS TRAFFIC COMMITTEE
 Tuesday 2 February 2010

ITEM NO.604_06/09
 Street: Cook Parade

ANNEXURE A
 Page 1 of 1

Speed Statistics

Site: Cook Parade Lemon Tree Passage
 Description: Mid block as per mid year location
 Filter time: Monday, 11 January 2010 => Friday, 29 January 2010

Vehicles = 5483
 Posted speed limit = 50 km/h, Exceeding = 1157 (21.10%), Mean Exceeding = 61.18 km/h
 Maximum = 137.8 km/h, Minimum = 10.2 km/h, Mean = 46.9 km/h
 85% Speed = 57.2 km/h, 95% Speed = 63.4 km/h, Median = 47.2 km/h

Speed Bins

Speed	Bin	Below	Above
0 - 40	1291 23.5%	1291 23.5%	4192 76.5%
40 - 50	3035 55.4%	4326 78.9%	1157 21.1%
50 - 60	628 11.5%	4954 90.4%	529 9.6%
60 - 70	452 8.2%	5406 98.6%	77 1.4%
70 - 80	62 1.1%	5468 99.7%	15 0.3%
80 - 90	8 0.1%	5476 99.9%	7 0.1%
90 - 100	3 0.1%	5479 99.9%	4 0.1%
100 - 160	4 0.1%	5483 100.0%	0 0.0%
160 - 170	0 0.0%	5483 100.0%	0 0.0%
170 - 180	0 0.0%	5483 100.0%	0 0.0%
180 - 190	0 0.0%	5483 100.0%	0 0.0%
190 - 200	0 0.0%	5483 100.0%	0 0.0%

Speed limit fields (Partial days)

Limit	Below	Above
0 50 (PSL)	4326 78.9%	1157 21.1%

Item: 44_12/09

MARKET STREET FINGAL BAY - REQUEST FOR SHORT-TERM PARKING RESTRICTIONS AT THE NEWSAGENCY

Requested by: Cr Ward
File: PSC2005-4019/247
Background:

Cr Ward requested installation of a 15 minute parking bay in front of the service station and paper shop at Fingal Bay. A large number of seniors from the Village and other local retirees need a quick stop to get their papers and a 15 minute parking space there would provide more convenient access for them.

The Committee considered this matter in December 2009 and requested further investigation as to whether a mail zone was also required.

Comment:

There is currently a bus stop on Market Street prior to the Boulder Bay Road intersection, as well as a street posting box.

Australia Post was consulted on the need for a mail zone for the street posting box and they advised that the street posting box is cleared 4 times each day and that parking is required for mail delivery vehicles as close as possible to the box.

Legislation, Standards, Guidelines and Delegation:

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

RTA signs database – R5-15, R5-26

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

Recommendation to the Committee:

Install a 6m mail zone as well as 2 spaces of 15 minute parking on the eastern side of the existing bus stop and replace missing posts and signs, as shown in **(Annexure A)**.

Discussion:

Part of the request, to install parking in Boulder Bay Road in the existing 'No Stopping' between the driveways of No.5, was not supported by the Traffic Inspection Committee due to safety reasons. The other part of the request was to install one-way travel direction in the laneway between Boulder Bay Road and Market Street. The Inspection Committee did not support this as the laneway is wide enough to allow 2-way travel. Making it one-way would lead to enforcement issues with people ignoring the travel direction. The operators of the newsagency had expressed concern that the post box may need to be moved. However the post box will remain where it is and a mail zone is to be established on the end of the bus zone with 15 minute parking next to it. This would address all concerns and allow for the requested short-term parking.

Support for the proposal:

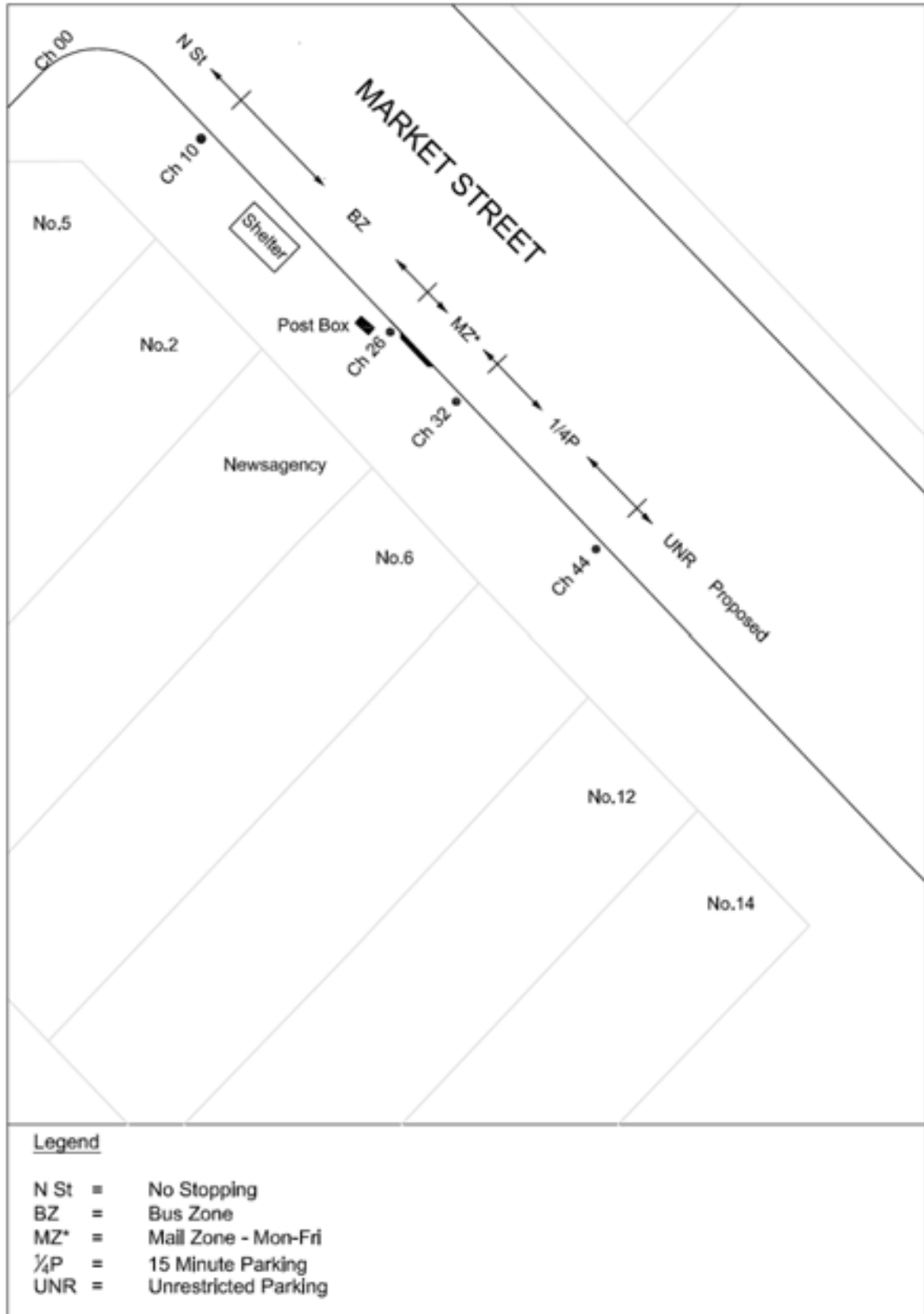
1	Unanimous	✓
2	Majority	
3	Split Vote	
4	Minority Support	
5	Unanimous decline	

MINUTES FOR ORDINARY MEETING – 9 MARCH 2010

PORT STEPHENS TRAFFIC COMMITTEE
 Tuesday 2 February 2010

ITEM NO. 44_12/09
 Street: Market Street

ANNEXURE A
 Page 1 of 1



B. Listed Matters

Item: 01_02/10

NEWLINE ROAD RAYMOND TERRACE – APPLICATION FOR BICYCLE RACING BY THE HUNTER DISTRICT CYCLING CLUB

Requested by: Hunter District Cycling Club

File: PSC2005-4023/225

Background:

The Club requested permission to use Newline Road for organised monthly cycling events. The Club proposes to hold road cycling races on the 4th Saturday afternoon of each month between April and October plus one special event being a masters cup race on the June long weekend.

Riders would meet at the sports oval at the southern end of Newline Road before heading to the start/finish line 200m north of Beaton Avenue. The proposed course then runs to the Knitting Circle Memorial at the northern end of Newline Road. There are proposed to be turnarounds at either end of the course with the southern end turnaround being located north of Beaton Avenue.

The Club has supplied a traffic management plan (TMP) that includes traffic control plan with identified signage for the race course.

Comment:

The Inspection Committee noted that the Newline Road Waste Facility is located within the extent of the proposed cycle course. This facility generates significant volumes of traffic, including heavy vehicles however it is not open on Saturdays. The Committee also noted that the TMP requires temporary speed zone reductions with traffic controllers at the turnaround points. The RTA has advised Council that the use of temporary speed zones would only be supported for a major event.

Recommendation to the Committee:

For discussion

Discussion:

The Traffic Committee noted that all members present supported the concept of cycling events being held in the Port Stephens LGA, however there are significant safety concerns associated with the current proposal that need to be addressed. The RTA will not support the temporary reduced speed zones, as requested except for a major event, such as a State title event or similar. The temporary reduced speed zones are required to allow cyclists to be able to safely turnaround at the end of each lap of the course. The locations nominated for the turnarounds at both ends of the course are situated on barrier lines.

The Committee called on Council's Traffic Engineer to liaise with the applicant to find an acceptable solution.

Support for the recommendation:

1	Unanimous	✓
2	Majority	
3	Split Vote	
4	Minority Support	
5	Unanimous decline	

INTEGRATED PLANNING MANAGERS' COMMENT:

Councils' Traffic Engineer is confident that an acceptable outcome can be negotiated with the Hunter District Cycling Club that addresses the issues raised by the Committee.

Item: 02_02/10

MUSTONS ROAD KARUAH – REQUEST FOR FORMALISATION OF EXISTING 40 KM/H SPEED ZONE IN KARUAH ABORIGINAL COMMUNITY

Requested by: Port Stephens Council

File: PSC2005-4025/015

Background:

Council recently took part in a road safety infrastructure assessment for identified aboriginal communities in NSW. As part of the assessment of the Karuah aboriginal community it was identified that there are '40' speed limit signs incorporated into the existing aboriginal community sign. It was requested that the '40' speed zone be formalised and properly signposted in line with current RTA guidelines.

Comment:

The Traffic Inspection Committee noted that there are existing speed humps along Muston's Road consistent with a 40 km/h local traffic area. Signage should be brought up to an acceptable standard and be formalised via the Traffic Committee process.

Legislation, Standards, Guidelines and Delegation:

ARR Part 3 – Rule 22 – Speeding in a speed-limited area

RTA signs database – R4-240, R4-241

RTA Speed zoning guidelines

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

Recommendation to the Committee:

Approve the installation of entry and exit signs to identify the '40 Local Traffic Area' at the Karuah Aboriginal Community, as shown in **(Annexure A)**

Discussion:

N/A

Support for the recommendation:

1	Unanimous	✓
2	Majority	
3	Split Vote	
4	Minority Support	
5	Unanimous decline	

MINUTES FOR ORDINARY MEETING – 9 MARCH 2010

PORT STEPHENS TRAFFIC COMMITTEE
Tuesday 2 February 2010

ITEM NO. 02_02/10
Street: Mustons Road

ANNEXURE A
Page 1 of 1



ITEM NO. 8

FILE NO: PSC2009-07030

WATER SENSITIVE URBAN DESIGN POLICY

REPORT OF: BRUCE PETERSEN – ENVIRONMENTAL SERVICES MANAGER

GROUP: SUSTAINABLE PLANNING GROUP

RECOMMENDATION IS THAT COUNCIL:

- 1) To place the Draft Water Sensitive Urban Design Policy on public exhibition for a period 28 days.

COMMITTEE MEETING – 09 MARCH 2010**RECOMMENDATION:**

	Councillor Steve Tucker Councillor Bruce MacKenzie	That the recommendation be adopted.
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ORDINARY MEETING – 09 MARCH 2010

068	Councillor Daniel Maher Councillor Ken Jordan	It was resolved that the recommendation be adopted.
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BACKGROUND

The purpose of this report is to gain endorsement of a Draft Water Sensitive Urban Design Policy so that it can be placed on public exhibition.

Water Sensitive Urban Design (WSUD) is an approach to urban planning and design that integrates land and water planning and management into urban design. It relates to all parts of the urban water cycle and is included in town planning, engineering design, asset management, urban landscaping and urban water management. The most obvious effect of urbanisation on the urban water cycle is an increase in stormwater flow events and the consequent impact on flooding, waterway health and public safety (Engineers Australia 2006).

The overriding objective of the Policy is to protect downstream waterways from pollution and localised flooding, help conserve water and create a cost effective means of managing urban water runoff.

Where feasible, under this Policy, Council will encourage community involvement and appreciation of WSUD structures. For example some WSUD structures may serve multiple purposes as parkland, landscaping and water retention facilities where appropriate and safe to do so.

It is critical that the cost to the community of implementing WSUD facilities is affordable in terms of construction and maintenance. History has shown that many WSUD facilities can be attractive (and initially effective) however they can be extremely difficult and costly to maintain. Therefore the WSUD Policy must ensure that WSUD requirements are affordable and low maintenance.

The Policy to be effective will need to be supported by appropriate technical guidelines which will relate to urban developments and urban stormwater design. Water Sensitive Urban Design principles will also need to be incorporated into the DCP.

Council staff are currently working with Hunter Council's to develop a regional approach to Water Sensitive Urban Design to ensure more consistency between Councils and reduce duplication of effort. Rather than thirteen individual Councils developing their own WSUD guidelines, it is proposed that regional guidelines be developed. It is also proposed that regional training in the application of WSUD be developed in cooperation with Hunter Councils.

FINANCIAL/RESOURCE IMPLICATIONS

It is not envisaged that the implementation of this Policy will consume significant resources. A regional approach in particular will assist to reduce the cost of implementing WSUD principles in engineering and stormwater design, development controls and planning schemes.

LEGAL, POLICY AND RISK IMPLICATIONS

WSUD is strongly encouraged at a State and National level as it is widely recognised as an appropriate means to reduce the adverse impact of urban water on localised flooding and downstream water quality. It is also considered that WSUD can help reduce a Councils liability associated with localised flooding.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

WSUD is a sustainable approach to urban water cycle management as it takes into account the economic, social and environmental impacts of urban water management.

CONSULTATION

Council staff have consulted with Hunter Councils, Wyong, Gosford, Lake Macquarie, Newcastle, Great Lakes, Taree, Melbourne and Brisbane Councils when developing the draft WSUD Policy.

WSUD was also discussed with Councillors at a two way conversation in February 2010.

OPTIONS

- 1) Place the draft Water Sensitive Urban Design Policy on public exhibition for 28 days.
- 2) Place a modified Draft Water Sensitive Urban Design Policy on public exhibition for 30 days.
- 3) Do not place the Draft Water Sensitive Urban Design Policy on public exhibition.

ATTACHMENTS

- 1) Draft Water Sensitive Urban Design Policy.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ATTACHMENT 1



DRAFT POLICY

Adopted:
Minute No:
Amended:
Minute No:

FILE NO: PSC2009-07030

TITLE: WATER SENSITIVE URBAN DESIGN

REPORT OF: BRUCE PETERSEN

BACKGROUND

Water Sensitive Urban Design (WSUD) is an approach to urban planning and design that integrates land and water planning and management into urban design. It relates to all parts of the urban water cycle and is included in town planning, engineering design, asset management, urban landscaping and urban water management.

The most obvious effect of urbanisation on the urban water cycle is an increase in stormwater flow events and the consequent impact on flooding, waterway health and public safety (Engineers Australia 2006).

The purpose of the Policy is to establish a Water Sensitive Urban Design framework that aims to:

- Remove waterborne pollutants to protect downstream waterways;
- Minimise adverse impacts on the natural water cycle;
- Reduce nuisance flooding and adverse drainage impacts.
- Reduce the demand on potable water supplies;
- Achieve a balance between the cost and benefits of water sensitive urban design.

It is critical that the cost to the community of implementing WSUD facilities is affordable in terms of construction and maintenance. History has shown that many WSUD facilities can be attractive (and initially effective) however they can be extremely difficult and costly to maintain. Therefore this Policy will ensure that WSUD requirements are affordable and low maintenance.

WSUD does not replace BASIX, which is a planning scheme introduced by the NSW State Government to encourage water and energy efficiency in new developments.

WSUD however compliments BASIX by building onto the water conservation component of BASIX.

PURPOSE

The Purpose of this Policy is to assist Council to establish a framework in which Water Sensitive Urban Design practices can be implemented both by Council and the Community.

DEFINITIONS

Water Sensitive Urban Design –

Water Sensitive Urban Design (WSUD) is an approach to urban planning and design that integrates land and water planning and management into urban design. Water Sensitive Urban Design is based on the premise that urban development and redevelopment must address the sustainability of water (Engineers Australia, 2006).

BASIX –

BASIX is a NSW Government planning initiative that aims to ensure homes are built to be more energy and water efficient.

Nuisance Flooding –

Flooding which causes public inconvenience but little or no property damage.

Ecologically Sustainable Development –

Development which aims to meet the needs of this generation while conserving our ecosystems for the benefit of future generations.

OBJECTIVES

- To help remove pollutants from discharges to protect the stormwater system and receiving waters.
- To minimise adverse impacts on the natural water cycle.
- To help protect biodiversity and ecosystems of local waterways.
- To help reduce nuisance flooding and adverse drainage impacts.
- To minimise adverse impacts on the natural water cycle.
- To help reduce total water demand and promote more efficient use of water.
- To achieve a balance between the costs and benefits of water sensitive urban design.
- To ensure that Water Sensitive Urban Design requirements are affordable and low maintenance.

- Where feasible encourage community involvement and appreciation of WSUD structures.

PRINCIPLES

- 1) This Policy applies to:
 - The initiation of a process of education and creation of awareness within the community in relation to the reasons for the importance of WSUD.
 - Infrastructure planning, urban, industrial and commercial development, stormwater design, landscaping, redevelopments or any activities that interfere or interact with the urban water cycle.
 - Urban Planning, Development Control Plans, Urban Catchment Management and any other matters that impact on the urban water cycle.
 - Cooperation with other agencies responsible for enforcing or implementing Water Sensitive Urban Design initiatives.
 - A process of ensuring that when WSUD is proposed, its feasibility, flexibility, reliability, cost, maintenance requirements and appropriateness are considered.

POLICY STATEMENT

Education, Awareness and Cooperation

- Council will provide information to the community about Water Sensitive Urban Design.
- Council will develop non prescriptive WSUD Guidelines to support the implementation of this Policy.
- Council will work in cooperation with Hunter Council's and other regional Council's to encourage a regional approach to Water Sensitive Urban Design.
- Where resources allow, training programs will be initiated for the development and building industry and other businesses in Port Stephens to help them understand their role in Water Sensitive Urban Design.

Planning

- Council's WSUD Policy will inform the Local Environment Plan and Development Control Plans.
- Estuary and Coastal management plans, and Catchment Management Plans will incorporate Water Sensitive Urban Design principles.

Infrastructure Management

1. Water Sensitive Urban Design principles will be incorporated into, infrastructure/ asset management, drainage plans and restoration and maintenance plans where appropriate for public and private assets.

Environmental Protection

- Water Sensitive Urban Design principles will assist Council and the community to protect water cycles and ecosystems receiving the discharge from urban developments.

Guidelines

- Council will progressively develop guidelines to support the Water Sensitive Urban Design Policy. These guidelines will assist builders and developers, town planners, architects, urban designers, landscape architects, civil engineers, environmental engineers and environmental managers to successfully develop and implement WSUD.

RELATED POLICIES & PLANS

- Urban Stormwater & Rural Water Quality Management Plan
- Estuary management Plan
- Local Environment Plan

SUSTAINABILITY IMPLICATIONS

SOCIAL IMPLICATIONS

Water Sensitive Urban Design facilities can serve as valuable community assets in terms of minimising localised flooding and pollution, and can also provide attractive landscaping.

Council will encourage community involvement and appreciation of Water Sensitive Urban Design structures. For example some Water Sensitive Urban Design structures may serve multiple purposes as parkland, landscaping and water retention facilities where appropriate and safe to do so.

ECONOMIC IMPLICATIONS

This Policy will not result in any negative economic impacts on the community. The Policy requires that Water Sensitive Urban Design facilities be affordable and low maintenance.

Without an appropriate Water Sensitive Urban Design Policy many stormwater systems can have adverse economic impacts on the local community due in part to flooding.

ENVIRONMENTAL IMPLICATIONS

The Policy will help to minimise the adverse impact of urban stormwater on local waterways and aquatic ecosystems including sensitive wetlands and estuarine waters.

RELEVANT LEGISLATIVE PROVISIONS

Environmental Planning & Assessment Act
Protection of the Environment Operations Act
Local Government Act

IMPLEMENTATION RESPONSIBILITY

Council staff that deal with Water Sensitive Urban Design issues including Planners, Engineers and Development and Building staff.

REVIEW DATE

Three years from adoption.

ITEM NO. 9

FILE NO: PSC2009-00647

ADOPTION OF PARKING ENFORCEMENT POLICY**REPORT OF: BRUCE PETERSEN – MANAGER, ENVIRONMENTAL SERVICES**
GROUP: SUSTAINABLE PLANNING

RECOMMENDATION IS THAT COUNCIL:

- 1) Adopt the Draft Parking Enforcement Policy and Guidelines.
-

COMMITTEE MEETING – 09 MARCH 2010
RECOMMENDATION:

	Councillor Glenys Francis Councillor Bob Westbury	That the recommendation be adopted.
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ORDINARY MEETING – 09 MARCH 2010

069	Councillor Bob Westbury Councillor Shirley O'Brien	It was resolved that the recommendation be adopted.
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BACKGROUND

The purpose of this report is to seek adoption of the Draft Policy and Guidelines for Parking Enforcement.

The purpose of the Parking Enforcement Policy and Guidelines is to provide standard procedures to be followed by staff in parking enforcement, to establish good practice and to enable the public to become aware of Council's parking enforcement policy and procedures.

The Draft Policy and Guidelines (Attachment 1) were prepared after consultation with Councillors, key staff and thorough analysis of other Councils' policies. Council resolved to place the draft on public exhibition and the exhibition period has concluded. One submission was received.

The submission and its assessment is provided in Attachment 2. No changes to the draft Policy and Guidelines are proposed as a result of the submission.

FINANCIAL/RESOURCE IMPLICATIONS

The adoption of the Parking Enforcement policy and Guidelines is not expected to have significant financial or resource implications for Council. Council officers are already engaged in the parking enforcement function, having regard to a duty of care to enforce the Australian Road Rules for safety and also to ensure fair and equitable turnover of parking spaces to support commerce.

Whilst it is not expected that the adoption of the Parking Enforcement Policy and Guidelines would have significant financial impacts, it must be recognised that changes in focus, priorities and resourcing of this function can have budget implications.

LEGAL, POLICY AND RISK IMPLICATIONS

The draft Policy and Guidelines have been prepared having regard to the applicable legislation relevant to parking enforcement and do not propose any requirements that are more onerous than the legislation. They also refer to issues such as duty of care and officer discretion which should be considered when determining enforcement policies.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The community benefits from safe and fair parking enforcement with the most important objective being the preservation of safety of pedestrians and drivers.

Council's parking enforcement function can have economic impacts for Council and the general public and business. Business benefits from enforcement which stimulates turnover of parking spaces and access to CBDs. It is therefore important that Council apply parking legislation consistently and fairly.

CONSULTATION

A Parking Policy Consultative Group consisting of Councillors Westbury, Francis and Tucker was formed to consider this matter. The Group provided valuable input to the drafting of the Policy.

Councillors also had an opportunity to provide input during a two way conversation on 7 April 2009.

Parking enforcement policies of Newcastle Council, City of Melbourne and ACT Government were also analysed when developing this draft Policy.

The Draft Policy and Guidelines were placed on public exhibition in accordance with the requirements of the Local Government Act and one submission was received. This submission was assessed and considered prior to the Draft Policy and Guideline being referred to Council for adoption.

OPTIONS

- 1) Adopt draft Policy and Guidelines
- 2) Request redraft of Policy and Guidelines in certain terms
- 3) Reject Policy and Guidelines and not have such a Policy and Guidelines operational

ATTACHMENTS

- 1) Draft Parking Enforcement Policy
- 2) Submission by Nelson Bay and District Business Chamber

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ATTACHMENT 1
DRAFT PARKING ENFORCEMENT POLICY



POLICY

Adopted:
Minute No:
Amended:
Minute No:

FILE NO: PSC2009-00647

TITLE: PARKING ENFORCEMENT POLICY AND GUIDELINE

REPORT OF MANAGER ENVIRONMENTAL SERVICES

BACKGROUND

Council has resolved to prepare a policy to guide parking enforcement in port Stephens. The draft policy and guideline was prepared after consultation with Councillors, key staff and through analysis of the policies of other Councils.

OBJECTIVE

The purpose of the policy is to provide Council with a tool to guide Parking Enforcement. The Parking Enforcement Policy and Guideline provides standard procedures to be followed by staff in parking enforcement, establishes good practice and enables the public to become aware of Council's parking enforcement policy and procedures.

PRINCIPLES

- 1) Council is the primary responsible regulatory authority for parking enforcement.
- 2) Council has a duty of care to reasonably enforce available legislation in order to maintain pedestrian and driver safety, promote commerce through turnover of parking spaces and to enable fair and equitable access to parking for special groups of motorists.
- 3) Council's enforcement policies cannot modify or exceed or fall short of legislative expectation but can set the culture and priorities of the Organisation in regard to the enforcement function having regard to local issues and resourcing available.
- 4) The policy and Guideline has been prepared to guide the enforcement function having regard to existing legislation.

POLICY STATEMENT

See attached policy document

RELATED POLICIES

Compliance Policy

SUSTAINABILITY IMPLICATIONS

SOCIAL IMPLICATIONS

The community benefits from safe and fair parking enforcement with the most important objective of Council being the preservation of safety of pedestrians and drivers.

ECONOMIC IMPLICATIONS

Councils parking enforcement function can have economic impacts for Council and the general public and business. Business benefits from enforcement which stimulates turnover of parking spaces and access to CBDs. It is therefore important that Council apply parking legislation consistently and fairly

The adoption of the Parking Enforcement policy and Guideline is not expected to have financial implications for Council.

An annual budget projection is made for fine income consistent with resource allocations to the function. Other Council revenue that is related to parking enforcement is revenue from paid parking in Nelson Bay.

Whilst it is not expected that the adoption of a Parking enforcement policy and Guideline would have significant financial impacts, it must be recognised that changes in focus, priorities and resourcing of this function can have budget implications.

ENVIRONMENTAL IMPLICATIONS

Nil recognised Environmental implications

RELEVANT LEGISLATIVE PROVISIONS

Australian Road Rules
Local Government Act

IMPLEMENTATION RESPONSIBILITY

Co-ordinator Environmental Health and Regulation
Rangers Team

REVIEW DATE

3 years from adoption



PARKING ENFORCEMENT

GUIDELINE

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Part 1 - Objectives

Vision

We value safe parking practices and the provision of equitable and fair access to parking facilities for all Port Stephens residents and visitors.

1.1 *The purpose of the Guideline*

The purpose of this guideline is to:

- Provide standard procedures to be followed by all Officers.
- Provide guidelines so that all Officers can carry out their duties to the same standard and avoid using different interpretations.
- Act as an ongoing reference document for Officers, Managers and Council so that all stakeholders apply a consistent approach to parking enforcement.
- Aid new Officers during their initial training period.

To enable the public to become aware of Council's parking enforcement procedures and policies.

1.2 *What is the Purpose of Parking Surveillance?*

The purpose of parking surveillance is to:

- Monitor and promote road and pedestrian safety
- Ensure the equitable use of kerbside parking spaces.
- Ensure parking turnover to assist commerce and trade or access to areas of high demand.
- Ensure compliance with the Australian Road Rules 1999 and associated Regulations.

- To improve vehicular and pedestrian access for residents, workers shoppers and visitors to the LGA.
- Provide Civic information
- Investigate and act on complaints
- Represent Port Stephens Council in a professional and courteous manner.

1.3 *Link to Council Policies*

This guideline has been developed under Port Stephens Council's Parking Policy xxx. Reference should also be made to Council's Compliance Policy

Part 2 –Officers Responsibilities

2.1 Officer's obligation

Officer's obligations are that:

- Officers conduct activities with the highest standards of ethics and integrity
- Officers ensure policies and procedures are followed and internal controls are adhered to.
- Officers take responsibility for their own decisions, performance and achievements.
- Officers support an equitable working environment by treating colleagues and customers fairly and with dignity and respect.
- Officers work within the team to achieve team goals.
- Officers embrace new ideas, technology, systems and processes.
- Officers recognise the efforts, contributions and achievements of others within the Team.
- Officers respect the diversity of individuals and value their contribution to Port Stephens Council.
- Officers must be consistent.
- Officers should be courteous and polite.
- When new signs are installed a minimum period of 1 day is to be given as a grace period unless otherwise informed by the Coordinator Environmental Health and Regulation. If an officer is unsure or notices any new installation they are to contact the Facilities and Services Group for verification of when the signs were installed.
- All signs that are missing, damaged or obscured by foliage are to be reported to the Facilities and Services Group.

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- Port Stephens Council is a Smoke Free workplace. There is to be no smoking in any Council building or vehicle. An Officer should not smoke while actively engaged in Council functions.

2.2 Officers' Checklist

It is the Officers' responsibility to ensure they have all equipment necessary to carry out their daily duties.

All necessary PPE equipment including Hat and Vest

- Pinforce handheld and printer
- Mobile Phone
- Digital Camera
- Notebook
- Complaint List
- Pen
- Chalk
- Offence booklet
- Business Cards
- Uniform clean and tidy
- Equipment clean and working
- Test Token

It is the Officers responsibility to ensure that their uniform is clean and tidy, that all their equipment is charged and operational and that they are carrying enough Parking Penalty Notices.

2.3 Uniform and Issued Equipment

First impressions have the greatest impact and are lasting impressions

The Officers uniform is intended to present a smart efficient appearance.

Officers should be conscious that the image projected by one Officer will influence the overall picture of how Officers are regarded or viewed in general.

Port Stephens Council issues each Officer with an allotment of uniforms sufficient to allow for frequent changing.

Uniforms are to be maintained in a neat, clean and presentable condition.

Hats or caps are to be worn at all times when an officer is in the field.

- Shoes/boots – As issued by Council
- Safety Vests are to be worn at all times when working within a road related area. This is a Workcover and Council requirement.
- Only long sleeve shirts are to be worn without a jumper or jacket in accordance with Council's Sunsafe Policy.

2.3a Official Notebooks

Storage and maintenance of notebooks is the officer's responsibility. Daily entries are to be made e.g. day, date, work activities. These notebooks are to be used to record incidents, conversations or other unusual events that may take place during a shift. These entries may or may not be used in any proceedings at a later date. All entries must be made neatly and concisely. Commencing with page 1, all entries should be in order of date and time. A line should be ruled under each entry and a one line space left before commencing the next entry. When an error occurs put a line through and the wording inserted in such a manner as to leave the original legible. Note book storage is the Officers responsibility.

Notebooks are to be used as a supplement to the Pinforce hand held device. All notes that are relevant to a Parking Penalty Notice are to be recorded on the Pinforce handheld device.

2.3b Mobile Phones

Mobile Phones are the property of Port Stephens Council. They are to be used for work related matters in accordance with Council's Code of Conduct and any Management Directive issued in relation to the use of mobile phones.

It is the responsibility of the Parking Officer to have their issued mobile phone fully charged at the commencement of their shift.

Note: Mobile phones are not to be on loud speaker or hands free by an officer while on the street.

2.3c Camera

Each officer has been provided with a digital camera. Cameras are to be used in accordance with the Code of Conduct.

2.4 ISSUING A PARKING PENALTY NOTICE

2.4a Relevant Acts

1) Local Government Act 1993

Parking can be enforced on land that is owned by the Local Authority, entrusted or controlled by the Local Authority, or where Council has entered into an agreement with private property owners to enforce parking restrictions applicable to free carparks.

Council owns time limited free carparking areas in Raymond Terrace and Nelson Bay.

Council has also entered into agreements to patrol time limited carparks at Raymond Terrace Marketplace, Salamander Shopping Centre and the D'Albora Marina private carparks.

2) Roads Act and Australian Road Rules

The Australian Road Rules (ARR) are safety related and were adopted in NSW in December 1999. These rules govern Parking on road and road related areas so as to make the rules that relate to travel between the States and Territories consistent nationally. Council Officers are authorised to enforce the Australian Road Rules within all road related areas within Port Stephens. The following legislation is also applicable to Councils parking surveillance activities.

- Road Transport (Safety and Traffic Management)
- Road Rules Regulation 1999
- Road Transport (General) Act 1999

2.4b What an Officer should consider before issuing a Parking Penalty Notice

An Officer should consider the following before issuing a Parking Penalty Notice:

- Be in full view of the public and in full uniform when issuing a Parking Penalty Notice. An exemption to this is where an Officer witnesses an offence that represents a significant risk to the health and safety of the public whether the officer is on duty or not. Evidence relating to such an offence may be collected whether or not the officer is within view of the public or irrespective as to whether the officer is in official uniform or on duty.
- Form an opinion based on facts; if in doubt don't issue.
- Identify the offence.
- Examine the signage, markings, ticket machine or chalk mark.
- Consult with Supervisor if necessary.

Part 3 - Specific Parking Offences

3.1 *Procedures to be followed for Specific Parking Offences*

3.1a *Ticket Parking Offences*

During patrols of the Nelson Bay foreshore area all machines within the patrolled area are to be checked for the following:

- Correct time;
- Any lights flashing, or Out Of Order Display;
- Any visible damage to the machine.
- Or any other Indiscretion.

Where faults are detected they are to be reported to the appointed contractor immediately for repair.

Officer discretion is to be used in determining whether patrols of the area should continue having regard to the number of machines out of order and the fair and reasonable capability of drivers to access alternative machines within a short distance of the faulty machine.

3.1a.i **Park without Current ticket or Expired Ticket**

Officers must:

- Check the closest machine to any offending vehicle for proper operation as in 7a above, prior to issuing an infringement notice
- Check vehicles for tickets that have expired or vehicles that do not have tickets. Checking is to involve a complete view of all possible display surfaces including the front dash, carseats, and rear dash.
- If no ticket is displayed or time has expired - **a Parking Penalty Notice is to be issued.** Officers should give a reasonable grace period before issuing an infringement notice taking into account that the driver may be temporarily absent from the vehicle for reasons such as obtaining change for ticket machines.
- If a ticket is upside down (face down) and the ticket is unable to be read, Issue a Parking Penalty Notice and make a note describing the position of the ticket. Take a photo when possible.

- If two tickets are on the dashboard and were purchased within a short period of time, total the two tickets to arrive at a correct time of expiry.
- Photographs are to be taken, if possible, of the registration plate along with sufficient photographs to demonstrate that a ticket has expired or is not reasonably displayed.
- If officers are approached by drivers after an infringement notice has been commenced or completed and provided with reasons as to why the infringement should not be issued, the officer must listen to these reasons and use discretion as to whether the infringement notice is to be cancelled.

3.1b Permissive Parking (time limited)

A driver may park a vehicle for the period indicated on a permissive parking sign.

A number immediately to the left of the letter **P** indicates that a driver must not park on the length of road, or in the area continuously for longer than the number of hours or minutes shown.

A number together with the word minute, immediately to the right of the letter **P** indicates that a driver must not park on the length of road, or in the area continuously for longer than the number of minutes or hours shown.

If a vehicle is parked for longer than the time indicated (with the addition of the grace period)-**a Parking Penalty Notice is to be issued.**

3.1b.i Exceeding Time

Vehicles suspected of being parked in a ticket or time limited parking area should be issued with a parking penalty notice if it is determined that they have exceeded time.

Various methods can be used to mark vehicles to establish that time has been exceeded. These include -

- Electronic marks or valve stemming. (not available at present time)
- Chalk mark across the tyre tread in a location which can be verified by the Officer.
- If doubt exists as to whether or not the vehicle has moved no penalty notice is to be issued.

3.1b.ii Exclusions

Vehicles found committing a ticket or exceed time offence are to be checked for the following permits:

- Mobility Parking Scheme - Check expired date
- Special event authority that may be issued from time to time.
- Any other note or message left by the driver to indicate that the vehicle is incapacitated or providing any other sustainable reason why the vehicle has not complied with parking requirements.

3c No Stopping

The enforcement of No Stopping Zones is important as these zones are invariably placed in locations to preserve pedestrian and driver lines of sight with the objective of preserving safety.

If a vehicle stops in an area clearly sign posted as No stopping - **a penalty notice is to be issued.**

3d No Parking

In accordance with the Australian Road Rules, the driver of a vehicle parked in a No Parking zone must be within 3 metres of the vehicle and must not exceed a stay of 2 minutes.

If an officer observes that a vehicle is unattended in accordance with the above Rule or stays in location longer than 2 minutes with the driver in attendance- **a penalty notice is to be issued.**

3e Loading Zone

The enforcement of Loading Zones is important to ensure that commercial vehicles can access central business districts for the loading and unloading of goods and passengers. When these areas are used illegally, dangerous parking practices can occur.

The New South Wales Road Rules (Road Transport - Safety and Traffic Management) indicate that in a Loading Zone the following rules apply:

- Sedans are not permitted unless they are setting down/picking up passengers
- Station Wagons or a motor bike that has 3 wheels and is constructed principally for the conveyance of goods are permitted to park for a period of up to 15 minutes

- If the vehicle is constructed principally for the conveyance of goods other than a station wagon or a 3 wheel bike you may park for a period of up to 30 minutes

If a sedan vehicle is unattended in a loading zone, - **a parking penalty notice is to be issued.**

If a sedan is attended, the Officer should advise the driver to move off the loading zone immediately. If the driver does not comply then a Parking Penalty Notice is to be issued for Stop in Loading Zone. Vehicles must not be simply waived on, but driver spoken to.

For vehicles that are permitted to park in a Loading Zone (Road Transport - Safety and Traffic Management) they are to be "chalked" or "observed" for the nominated periods (time limit plus Grace period) and issued with a Parking Penalty Notice if they exceed this time.

3f Taxi Zone

If a vehicle other than a taxi is unattended, it is to be issued with a parking penalty notice. If a person is approaching the vehicle and the officer has not commenced the parking penalty notice, the Officer should advise the driver that they are not permitted to park in a taxi zone. If the parking penalty notice has been commenced, the penalty notice is to be issued.

If the vehicle is attended, verify with the driver that the vehicle is not disabled. If the vehicle is drivable request the driver to move on immediately. If the driver refuses issue a Parking Penalty Notice for Stop in Taxi Zone.

3g Bus Zone

If a vehicle other than a bus stops in a bus zone, a parking penalty notice is to be issued.

If a vehicle is stopped within 20 metres on the approach and 10 metres on the departure side of a Bus Stop a Parking Penalty Notice is to be issued.

A vehicle, other than a bus cannot set down or pick up passengers in a bus zone. If a vehicle is observed using a bus zone in this manner, a Parking Penalty Notice is to be issued.

Buses must only use bus zones for the setting down and picking up of passengers. Where a bus is observed to be unattended (parked) in a bus zone it is to be issued with a penalty notice. If the bus is attended, the driver is to be requested to move out of the bus zone immediately. If the driver does not do this then a penalty notice is to be issued.

3h Disobey Clearway sign

If a vehicle stops on a Clearway a Parking Penalty Notice is to be issued.

3i Work Zone

Works Zones are created to allow for the delivery of materials to construction or building sites or to allow access for vehicles which are related to the building activity. The Australian Road Rules do not specify which class of vehicle is permitted to use Work Zones and therefore enforcement is difficult as the Officer needs to determine whether or not the vehicle is related to the activities on the adjacent site. Therefore Work Zones are enforced based largely upon complaint or if an Officer witnesses the parking offence. In these cases a Parking Penalty Notice is to be issued to the offending vehicles.

3j Mail Zone

Mail Zones are designed so that only Australia Post vehicles may stop no other vehicles are permitted at any time. If a vehicle other than an Australia Post Vehicle is stopped or parked a Parking Penalty Notice is to be issued.

3k Truck Zone

Any vehicle under 4.5 tonne is not permitted to stop in a Truck Zone, however a driver is permitted to drop off or pick up passengers. If a vehicle is unattended a Parking Penalty Notice is to be issued.

3l Parking across driveway access to/from land

If a vehicle is parked across a driveway and is unattended, the Officer is to allow 2 minutes and if the vehicle remains unattended a Parking Penalty Notice is to be issued.

3m Pedestrian Crossing/Children Crossing

Vehicles are not permitted to stop on or near a Pedestrian Crossing /Children Crossing under any circumstances; a Parking Penalty Notice is to be issued. There is zero tolerance for this offence in school zones.

3n Obstruct Traffic

A vehicle parked in a manner as to obstruct traffic is to be issued with a Parking Penalty Notice, unless the vehicle is disabled or has been involved in a collision.

3o Park on path Strip in a built up area

If a vehicle is parked across a formed footpath a penalty notice is to be issued.

If a vehicle is parked or partly parked on a strip or road reserve (without a formed footpath) in a manner that is, or is likely to obstruct the movement of pedestrians or the line of sight of pedestrians or drivers, the Parking Officer is to issue a Parking Warning Notice on the first occasion.

If the vehicle is observed to be parked on path or strip on subsequent occasions, a penalty notice may be issued.

For the purpose of this section, it is considered that sufficient space for movement of pedestrians can be achieved where a clear unobstructed and accessible path of travel of a minimum width of 1m is available along the road reserve. Notwithstanding this, the issuing officer must also consider whether line of sight has been compromised due to the position of the parked vehicle.

3p Park on Median Strip

If a vehicle is parked or partly parked on a median strip, the Parking Officer is to issue a Parking Penalty Notice.

3q Park across marking of space or too close to front/back of vehicle

When vehicle/s are parked in this manner, before issuing a penalty notice it has to be determined beyond reasonable doubt which vehicle was parked first. This can be determined by the officer witnessing the parking event. In this case the Officer would advise the driver of the parking regulations and request that the driver corrects their position. If the driver corrects his/her position, no further action is to be taken. If the driver leaves the vehicle and ignores your caution a Parking Penalty Notice is to be issued.

3r Stop on/near intersection

The regulation states that a vehicle should not be parked within 10 Metres of an intersection with the exception of areas indicated by a sign. Vehicles parked within 10 metres of an intersection (No Traffic Lights) are to be issued with a Parking Penalty Notice as such parking creates a safety hazard to pedestrians and other motorists.

A vehicle must not stop or Park within 20 meter's of the nearest point of an intersecting road at an intersection with traffic lights with the exception of area indicated by sign.

Vehicles parked within 20 meter's of an intersection (Traffic Lights) are to be issued with a Parking Penalty Notice

3s Double Park

A driver must not stop on a road:

- If the road is a two-way road between the centre of the road and another vehicle that is parked at the side of the road. If this is witnessed by an Officer then a Penalty Notice is to be issued.
- If the road is a one-way road-between the far side of the road and another vehicle that is parked at the side of road. If this is witnessed by an officer then a Parking Penalty Notice is to issued.

A vehicle can be considered to be double parked whether or not it is attended

Eg double parking to drop off or pick up a passenger is an offence.

3f Parking in marked bays

A driver must not park on a length of road, or in an area, to which a park in bays only sign applies; except within a parking bay.

If a vehicle is parked outside a marked bay and unattended a Parking Penalty Notice is to be issued for the offence of "Not park wholly within parking bay".

3u Position of vehicle in relation to kerb

Vehicles must be parked in accordance with directions provided on signage applicable to each parking space. Eg, rear to kerb, nose to kerb. These requirements are imposed having regard to safe parking manoeuvring and traffic safety and must be complied with whether or not all surrounding parking spaces are occupied. A vehicle parked not in accordance with signage requirements may cause a dangerous traffic hazard when entering or leaving its parking spot.

Where a vehicle is unattended and has been identified as not complying with signage directing the parking position, a penalty notice is to be issued. When the driver is present, a direction shall be given for the driver to safely reposition the vehicle to comply with signage.

Officers must ensure that reasonable visibility of signage describing vehicle position is available from the parking space.

3v Not Park in the Direction of Travel

Vehicles (including trailers, boats, caravans) must be parked in the direction of travel in accordance with Australian Road Rule 208.

Vehicles that are parked against the flow of traffic (and subsequently on the wrong side of the road in most instances) have been parked in a manner that has required crossing onto the wrong side of the roadway and departure from the parking place in all likelihood will require the same dangerous driving practice.

Vehicles parked in the wrong direction are also dangerous at night time because the reflective devices on most vehicles are prevalent on the rear and not the front and visibility of these vehicles by other drivers is compromised during periods of low visibility eg night time, rain, dawn, dusk.

The practice of parking in the wrong direction is one which is usually done for convenience and has become informally accepted due to lack of enforcement in the past.

Where a registered vehicle is noticed to have parked not in the direction of travel and is unattended, a penalty notice may be issued.

Where the driver is present, a direction shall be given for the vehicle to be repositioned so that it is parked correctly. If the driver does not comply with this direction immediately, then a penalty notice may be issued.

3.2 Mobility Parking Scheme Authority (Disabled parking)

Mobility Parking spaces are in various locations in Port Stephens.

When carrying out parking surveillance, the following action should be taken in relation to clearly signposted disabled parking areas:

- A Parking Penalty Notice should be issued to a vehicle not displaying a valid Mobility Permit in a designated Mobility Zone.
- Mobility Permit Holders who have parked over the time allowed by the Mobility Parking Scheme concession will receive a Parking Penalty Notice for exceeding time.
- Where parking is limited to more than 30 minutes the vehicle can park for an unlimited time.
- Where parking limit is 30 minutes the vehicle can park for 2 hours.
- Where the parking is limited to less than 30 minutes the vehicle can park to a maximum of 30 minutes.

- Where the Mobility Parking Symbol is displayed and a time limit on the same parking control sign a driver must not exceed the time stipulated.
- A 7 day grace period will be given for an Expired Mobility Parking Scheme Authority.

Officers must carry out an extensive check of the vehicle prior to issuing any penalty notice. This should include checks of the dash (front and rear) seats and floor of the vehicle to determine whether a mobility parking permit is present within the vehicle and that may have been dislodged from the required display location.

Part 4 - General Procedures

4.1 Procedure for chalking tyres

Chalk marking of tyres is a fundamental process in policing parking controls in relation to time limits.

When marking tyres, the Officer must ensure the mark is placed across the tread of the tyre and not on the edge of the tread or side wall.

A Parking Officer must mark the tyres with the time the vehicle is initially observed correctly by using chalk.



If the mark is placed on the edge of the tyre, the mark may remain even if the vehicle is moved, because the edge of the tread may not come in contact with the road surface.

It is inappropriate to rely on any mark made on the face of a tyre for evidence that a vehicle has parked for longer than the permitted time..

The officer must ensure that the mark is in the same place and condition when it was marked. Take a photo of the chalk mark when possible. If there is any concern don not infringe.

4.2 Valve Stemming.

Using the location of valve stems to determine if a vehicle has moved or not is the most effective method of detecting vehicles that overstay the signposted time limits. Recording valve stems should be done in lieu of using chalk marks whenever possible.

Valve stemming is not available at present to Port Stephens officers but will be introduced in the future.

4.3 Road Related Area

Is any of the following:-

- an area that divides a road
- a footpath or nature strip adjacent to a road
- an area that is not a road and that is open to the public and designated for use by cyclists or animals
- an area that is not a road and that is open to or used by the public for driving, riding or parking vehicles.

4.4 Patrolling at Schools Zones

When patrolling at a school the primary purpose is to ensure child safety. Children are vulnerable because they are small, harder to see and behave unpredictably. Parking and traffic conditions around schools are designed to preserve lines of sight and the safe set down and pick up of children.

A Zero tolerance policy applies to all parking offences detected within school zones.

In June 2006, the then Minister for Local Government issued a circular to all Councils advocating a zero tolerance policy in school zones.

Council will undertake to provide all schools with educational material to disperse to parents and other carers in relation to the use of school zones. Council will endeavour to disperse this information to schools, as a reminder, at the beginning of each school term.



- If a vehicle parks in an illegal manner, a parking penalty notice is to be issued.
- Where an Officer cannot issue the parking penalty notice on the spot, the details of the offence and the vehicle are to be noted in order that the parking penalty notice can be posted to the registered owner of the vehicle.
- An Officer must be in full view of the public when patrolling schools. It is appropriate for the officer to remain within a legally parked vehicle for the purposes of surveillance of school zones.
- Photographs may be taken of vehicles for enforcement purposes in school zones. Care should be taken to ensure that wherever possible, persons are not readily identifiable if they appear in photographs. (see section "Taking and storage of photographs")

4.5 *Infringing Trailers and Caravans.*

Caravans and Trailers are considered to be vehicles, and are treated as such in accordance with the Australian Road Rules.

Parking Penalty Notices Issued to Trailers or Caravans are to be posted.

4.6 *Reporting damaged or Missing Sign*

Where Officers notice that parking signage is damaged, missing, out of date or requires improvement, the matter is to be referred immediately to the Facilities and Services Group.

Enforcement of parking requirements is to be suspended immediately if it is considered by the Officer that enforcement is not fair and reasonable due to inadequate signage.

4.7 *Taking and Storage of Photographs*

Photographs are an important evidentiary tool in parking enforcement.

Officers must consider which photographs are necessary in supporting any parking offence and where possible take appropriate photographs for each offence

When issuing a Parking Penalty Notice, photographs showing the following must always be considered:

- A photo of the registration plate in order to ensure that there is no dispute over the attendance of the vehicle.
- A photo of the vehicle's location.
- A photo of the vehicle showing its proximity to relevant signage and road markings.
- A photo of any chalk marks should also be taken for permissible time limited offences.
- Care should be taken to ensure that wherever possible, persons are not readily identifiable if they appear in photographs.

Generally, all photographs taken in relation to parking enforcement are to be taken with the PINFORCE handheld device.

Photographs of the following offences may be taken using the Council issued digital cameras as they require a quicker response time-

- Offences in school zones

- Offences relating to no stopping zones

Photographs may not be taken from vehicles.

4.7a Storage of Photographs

Photographs may be taken with either the PINFORCE handheld device or the officer's digital camera.

All Officers are responsible for ensuring that date and time stamps on devices are correct at the beginning of each shift.

Photographs taken with the PINFORCE handheld devices are attached automatically to the infringement and uploaded to the PINFORCE database when the handheld is synchronised. These photographs are not to be otherwise downloaded or stored on any other database or personal computer.

Photographs taken on digital cameras shall be transferred to handheld devices and attached to applicable infringement records prior to handheld devices being synchronised. Once successfully transferred, photographs are to be deleted from digital cameras and any personal computer drive.

The PINFORCE database is only accessible by Officers having security classification.

Part 5 – Occupational Health and Safety

5.1 Occupational Health and Safety

Confrontation at Work

Council's objective is to ensure, so far as is reasonable and practicable, that all employees are safe and without risk to health whilst at work. Council takes all reasonable steps to minimise the likelihood of conflict and confrontation and any trauma that results from this

Parking Surveillance is considered a high risk area where confrontation and conflict with the public is common. Officers must be aware of this risk and have regard to the following survival rules –

5.1a Survival Rules

In most instances, violence at work happens without provoking the offender. Officers can mitigate the risk of serious confrontation by practicing the following:

Controlling your own reaction

Stay calm, pause and think about your reaction.

Be aware of your body language

Don't act defensively. Don't raise your voice. Act in accordance with the Code of Conduct at all times

Being aware of the other person's body language

Pay attention to their body language, facial expressions, physical appearance. Anticipate any aggressive or physical action towards you and plan evasion action /escape route.

Pay attention to verbal signs of aggression

Actively listen, take threats seriously, listen for tone & volume of voice and do not enter a person's personal space. Be careful not to aggravate the situation through your own words.

Use assertive communication techniques

Request the behaviour to stop. Be direct, concise, and confident.

Walk Away

To prevent confrontation between customers and Parking Officers, it is imperative that Parking Officers recognise the importance of **walking away** from the confrontation. Council supports its Officers when they walk away from potentially dangerous situations.

5.1b Identifying the Offender

If an Officer lays a complaint to the Police about an incident, the police will require a detailed re-construction of the events and description of the offender, you will be asked to identify the offender.

When identifying the Offender, any small detail may be of help to the police. Things to watch for are:

Physical Appearance:

- Height
- Age
- Build
- Colouring
- Hair
- Tattoos, scars, prominent or unusual features
- Clothing

Behaviour:

- Speech - accents, language used, actions
- Body Language –Behaviour

Other Aspects:

- Vehicle Description
- Direction of travel when left the area

5.1c Post Conflict Resolution

Post conflict resolution will include the following:

- Injured and/or traumatised officers should be reassured and medical attention sought if needed.
- For all confrontations verbal or physical, an incident report form must be completed by the Officer and provided to the Co-ordinator Environmental Health and Regulation and the Occupational Health and safety Officer.
- Council offers an Employee Assistance Program (EAP) which is an independent and completely confidential service, offering free professional guidance and counselling.

Things to remember when carrying out parking patrols:

- Be aware of your position as a provider of Customer Services.
- If a customer becomes verbally abusive or aggressive, Officers must avoid engaging in a verbal argument with the customer. Acting in accordance with the Code of Conduct Policy at all times.
- If a member of the public asks for an Officer's name, the officer must provide it.

Part 6- Officer Discretion

6.1 Discretion of Officers

Rangers have been advised to use their discretion in applying the Australian Road Rules having regard to the following risk concepts:

- The impact of the parking offence on safety of pedestrians and motorists.
- Local conditions such as width of roadways i.e. what are the practical matters that need to be taken into consideration?
- The volume of traffic flow and estimated risk involved.

6.2 Fettering Discretion

Whilst Council officers are offered some discretion in enforcement matters there are some interesting legal opinions relating to the matter. The Pedestrian Council of Australia believes that Councillors and Management need to tread carefully if considering directing or "fettering" officer discretion. The following is a legal opinion from Mallesons Legal (obtained by Sydney City Council but used by the Pedestrian Council)

"Any discretion must be exercised lawfully. It must not be exercised (or not exercised) for any improper or irrelevant reason or the exercise (or non exercise) is unlawful conduct and indeed may be even corrupt conduct depending on the circumstances.

As a consequence, it is our opinion that while the statute confers a power (rather than imposes a duty), an authorised officer, if satisfied that the offence has been committed, would only be able to exercise discretion not to issue the penalty notice in very limited circumstances. To do otherwise runs the real risk of having acted unlawfully (because of a miscarriage of the exercise of discretion).

The Authorised officer should also appreciate that a failure to issue a penalty notice, in circumstances where the offence appears to have been committed, may not only run the risk of improperly exercising discretion but may also expose the Council and the officer to claims for damages if harm is caused by the breach.

Accordingly while we are satisfied that there is a power to issue warnings rather than penalty notices, it is our view that this power is very limited."

In summary:

- Legal opinions express the view that officers have limited discretion in issuing infringements when offences are detected.
- Not issuing infringements, particularly for safety related offences can increase Councils liability and risk in the event of an event occurring eg an accident or fatality in the area.
- Councillors and Managers must consider legal/risk ramifications of directing authorised officers to enforce or not to enforce various offences.
- Fettering of discretion is referred to in Councils Compliance Policy.

Part 7 - Adjudication

7.1 Adjudication of Representations

Council has entered into a PREMIUM servicing agreement with the State debt Recovery Office (SDRO) for the processing and adjudication of all infringements.

A copy of the SDRO's service agreement with Council (November 2007) can be found on file PSC2007-4136..

Generally the SDRO accepts and processes all representations in accordance with their review guidelines. The SDRO review guidelines can be found at www.sdronsw.gov.au. There is a link to this site on Council's website.

Under the Premium Servicing agreement, Council has the right to consider direct representations and advise the SDRO of decisions made. Council's decision is final notwithstanding whether the decision has had regard to the SDRO guidelines.

Where direct representations are made in relation to Parking Enforcement matters, the following procedure applies-

- The representation will be considered by the Co-ordinator Environmental Health and Regulation.
- Details of the offence will be obtained by the Co-ordinator from the PINFORCE database and the issuing officer.
- The Co-ordinator may consult other staff to determine the representation.
- The Co-ordinator advises SDRO by email of the decision.
- The Co-ordinator advises the defendant of the decision.
- The Co-ordinator advises the issuing officer of the decision.

Where Parking infringements are Court elected, the matter is dealt with by the Police Prosecutor to conclusion under Council's Premium agreement with SDRO. Council officers co-operate with the Police prosecutor as requested to provide evidence for Court elected matters.

Part 8 - Review

8.1 Review of Guideline

This guideline will be reviewed within 3 years of adoption of the Parking Policy or as required by legislative change.

ATTACHMENT 2
SUBMISSION BY NELSON BAY AND DISTRICT BUSINESS CHAMBER

The following submission was emailed to Council.
The text in bold contains an assessment of each point contained in the submission.
It was not considered that the points contained in the submission necessitated any amendment to the Draft Policy and Guideline.

From: Nelson Bay & District Business Chamber
[mailto:president@baybusinesschamber.com.au]
Sent: Wednesday, 21 October 2009 12:10 PM
To: SwitchPC
Subject: Feedback to draft parking proposal

The Nelson Bay & District Chamber has considered the proposal and would like to lodge the following comments.

Page 8 -Officers Obligations 3rd point from bottom new signs minimum 1 day grace period – how does this work for Tastes at the Bay when they put the cost up on the day? Should notice of changes be published in Newspaper to notify residents and visitors?

Assessment – This question relates to a special event. The section referred to relates to new permanent signs relating to parking conditions where it is recommended a one day Grace period be provided prior to enforcement. No reason to change this. Specific question in relation to Tastes on the Bay to be discussed with the Business Chamber.

Page 11 Agreements to Patrol Salamander, Raymond Terrace and d 'Albora Marinas Carparks – Public notification signage should be installed as it is common for individuals to overstay in “private” carparks thinking there is no penalty.

Assessment – Parking restrictions are clearly signposted in all of these carparks. There is no time limited parking at Salamander shopping centre. With Rangers only enforcing other signposted offences eg disabled parking spaces, loading and bus zones. Dalbora and Raymond Terrace Marketplace time restrictions are clearly signposted.

Page 12-First set of bullets add new point any grafitti

Assessment – It is considered that the bullet point “Or any other Indiscretion” covers the issue of grafitti

Page 14-How do we apply for special event authority for events and what are the implications

Assessment – This is a question and not a suggestion re amendment of the policy. Question to be discussed separately with the Business Chamber.

Page 16-There doesn't seem to be any allowance for the bus drivers to visit the public conveniences given that they have driven long distances they should be able to park to go...

Assessment – This Section reflects the requirements of the Australian Road Rules in relation to the use of bus Zones. However the issue of tour bus drivers being permitted to stop and use facilities has been addressed in Victoria parade through allowing, by signage, buses to park for 15 minutes in the bus zone. It is not considered that this section requires to be amended to address this issue further.

Page 21-Disagree with valve stemming – it is rather inaccurate and leaves room for error

Assessment – Council doesn't have the technology at present to do valve stemming but may in the future. Valve stemming has in fact been shown to be more accurate and not open to tampering than chalking and is accepted by the Courts. This point is an opinion only – not based in fact and no need to change the contents of the policy.

Kind Regards
Robyn Bradbury
President
Nelson Bay & District Business Chamber

ITEM NO. 10

FILE NO: PSC2006-0552

REPORT ON REPAIRS COSTS TO 20 KING STREET RAYMOND TERRACE

REPORT OF: CARMEL FOSTER – COMMERCIAL PROPERTY MANAGER
GROUP: COMMERCIAL SERVICES GROUP

RECOMMENDATION IS THAT COUNCIL:

- 1) Allocate the funds relating to the cost of immediate repairs provided herein in order to make the existing heritage structure on site waterproof and vermin proof as well as ensuring the Structural Integrity and to protect it from further deterioration over the shorter to medium term. This action should be regarded as Stage I of the project with the Commercial Property Section to undertake Stage II which is outlined under "Sustainability Implications".

COMMITTEE MEETING – 09 MARCH 2010

RECOMMENDATION:

	Councillor Glenys Francis Councillor John Nell	That Council conduct a site inspection with an appropriate Heritage/Architecture specialist in attendance and that a 2 way conversation be held
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ORDINARY MEETING – 09 MARCH 2010

070	Councillor Ken Jordan Councillor Bob Westbury	It was resolved that the recommendation be adopted.
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BACKGROUND

The purpose of this report is provide quantification of costs related to waterproofing and securing from vermin the Heritage structure located at 20 King Street Raymond Terrace over the shorter term.

The property was the subject of an earlier options paper presented to Council in March 2006 which outlined some options for the future of the property and its existing structure. The property was acquired by Council in October 2003 at a cost of \$271,000.

The property is listed as an item of State Significance within the provisions of the Port Stephens LEP.

The statement of significance as listed on the Register of the National Estate notes;
“Historically important building [which] has association with prominent business people and citizens and strong links with early wharf activities in the locality. Visually dominant and part of a group incorporating Marten’s Store and the two fig trees”.

The Australian Heritage Database states;
“It strongly evokes the original port function of the town and demonstrates how the Colonial town plan was overtaken by the practicalities of commerce centring on the river.”

In recent months, Commercial Property has engaged the services of a structural engineer and Geotechnical consultants to determine the engineering specification requirements associated with underpinning the structure and we have further quantified the costs of underpinning and additional structural works to make good/protect the structure over the shorter term.

FINANCIAL/RESOURCE IMPLICATIONS

Budgetary Considerations

In the current financial climate and having regard to Council’s budget deficit position, it may be difficult to allocate funding however it is necessary to do so in order to protect the structure from almost certain structural demise in the future.

Project Specific Financial Considerations

Building trades have quoted \$90,000 to make good structural joists, roof flashing and gutters as required in addition to repairing the floor sections. Included in the specific costings from Building Trades is provision for excavation of the existing Levy bank and removal and replacement of the existing retaining wall to provide the underpinning contractor required access. Provision has also been made for the design of a spoon drain to redirect rain water away from the building’s footings after repair.

The underpinning contractor has quoted an additional \$65,000 (Ex GST) for the underpinning and has made note of provisional amounts for extras if required. Accordingly, it is considered prudent to incorporate a contingency to be added to the quoted figures while we have also made provision for further Consultant Engineering services for the project.

Therefore the projected costs of the work as described in Stage I can be summarised as follows;

Quotation – Building Trades	\$ 90,000
Quotation – Helical Piers Newcastle	\$ 65,000
Sub Total	\$155,000
Provision for Contingency (8.0%)	\$ 12,400

Provision for Consultant structural

MINUTES FOR ORDINARY MEETING – 9 MARCH 2010

engineering services	say	\$ <u>3,000</u>
Total		\$170,400

LEGAL, POLICY AND RISK IMPLICATIONS

There are no legal implications envisaged. The recommendation will prevent the risk of the structure becoming most likely deemed as being unsafe and the works will be in accordance with the provisions of the LEP in striving to preserve Local Heritage items.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Stage II of this project is for Commercial Property to further determine the way forward and specifically explore options to undertake an adaptive re-use project on the site, perhaps as a function centre and with some other Commercial content. A function centre seems most achievable taking into account the proximity of the Heritage listed "Marriage Trees" on the Land.

CONSULTATION

Structural Engineers – Peter Turner and Associates
Geotechnical Consultants – Barker Harle
Helical Piers Newcastle – Underpinning Specialists
Project Services/Building trades

OPTIONS

Refer recommendation above.

ATTACHMENTS

Nil.

COUNCILLORS ROOM

- 1) Structural Engineers Report
- 2) Geotechnical Consultants report

TABLED DOCUMENTS

Nil.

ITEM NO. 11

FILE NO: PSC2009-02795

PROPOSED ROAD CLOSURE – LANEWAY BETWEEN ACHILLES STREET & SHOAL BAY ROAD, NELSON BAY

REPORT OF: CARMEL FOSTER – COMMERCIAL PROPERTY MANAGER
GROUP: COMMERCIAL SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Consent to the closure and sale of the laneway between lots 58 & 59 DP224365 and lots 31 & 32 DP213730.
- 2) Makes application under Section 34 Roads Act 1993 to the Land & Property Management Authority (LPMA) for the closure to be processed.
- 3) Obtains a valuation from a registered valuer of the proposed closure area and that valuation be utilised in establishing the purchase price.
- 4) Prepares a land Transfer on finalisation of the closure and payment of all costs including the purchase price by the applicant.
- 5) Requires the applicant to lodge a subdivision application with Council for the road closed lot as required by Land and Property Information NSW.
- 6) Requires the applicant to prepare a plan for the subject area to be consolidated with the adjoining lots and the proposed surrounding development, if the application is successful.
- 7) Allocate proceeds from the sale to road improvements in the vicinity.
- 8) Grants authority to affix the Council Seal and signatures to the road closure subdivision plan prior to lodging it at the office of Land and Property Information.
- 9) Grants authority to affix the Council Seal and Signatures to the future Transfer, if the matter is successfully concluded.

COMMITTEE MEETING – 09 MARCH 2010**RECOMMENDATION:**

	Councillor Bruce MacKenzie Councillor Shirley O'Brien	That the recommendation be adopted.
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ORDINARY MEETING – 09 MARCH 2010

071	Councillor Bob Westbury Councillor Steve Tucker	It was resolved that the recommendation be adopted.
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BACKGROUND

The purpose of this report is to recommend consent to the closure of the laneway between Achilles Street & Shoal Bay Road, Nelson Bay and sale to the adjoining owner.

The applicant has a proposed large development over all of the lots adjoining the lane. The closure and sale of this lane will permit development to take place but provision must be made to maintain an access for public use between Achilles Street and Shoal Bay Road. Council's Facilities & Services Group has requested such an access to be maintained within the new development.

The lane currently serves no other purpose since the applicant has purchased all of the adjoining properties. See ATTACHMENTS 1 & 2 for plan showing the area of the land.

FINANCIAL/RESOURCE IMPLICATIONS

The applicant must meet all costs associated with the closure process. If these costs are not met at different stages through the process the next stage is not commenced, until such payment is made. Closure of the road will result in no Council future funds having to be spent on the maintenance of it.

LEGAL, POLICY AND RISK IMPLICATIONS

All actions relating to road closure and purchases are controlled by the Roads Act 1993 with the application being made under Section 34. The Land & Property Management Authority is responsible for the process once Council consents to the closure. That Authority makes the final decision and gazettes the closure. The Conveyancing Act controls the actual sale process once the new Certificate of Title has been issued. Council's Road Closure Policy details the actions to be followed.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

A very small implication as public access by foot is to be catered for. The large proposed development will generate considerable benefit to the community.

CONSULTATION

Applicant; Land & Property Management Authority; Service Authorities; adjoining owners; Council's Facilities & Services staff; Development consultants; Surveyor and Principal Property Advisor.

OPTIONS

- 1) Accept recommendation
- 2) Refuse consent

ATTACHMENTS

- 1) Plan showing proposed closure
- 2) Locality plan

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ATTACHMENT 1

I.



ATTACHMENT 2

2.



Port Stephens
COUNCIL
a community partnership

115 Adelaide Street, Raymond Terrace NSW 2264 Phone: (02) 49222555 Fax: (02) 49222552 Email: info@portstephens.nsw.gov.au

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SHEET LOCALITY

ITEM NO. 12

FILE NO: PSC2008-4128

PROPOSED ROAD CLOSURE – ORANGE GROVE ROAD, DUNS CREEK**REPORT OF: CARMEL FOSTER – COMMERCIAL PROPERTY MANAGER****GROUP: COMMERCIAL SERVICES****RECOMMENDATION IS THAT COUNCIL:**

- 1) Consents to the closure of Orange Grove Road at Duns Creek as approved by Land & Property Management Authority (LPMA)
- 2) Obtains a valuation from a registered Valuer for sale of the closed road and that valuation be set as the purchase price.
- 3) On payment for the closed road to Council authority is granted to place Council's Seal and Signatures on the Transfer document.
- 4) On closure requires a plan to be registered consolidating the closed road with the adjoining property.

COMMITTEE MEETING – 09 MARCH 2010**RECOMMENDATION:**

	Councillor Bruce MacKenzie Councillor Steve Tucker	That the recommendation be adopted.
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ORDINARY MEETING – 09 MARCH 2010

072	Councillor Bruce MacKenzie Councillor Ken Jordan	It was resolved that the recommendation be adopted.
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BACKGROUND

The purpose of this report is to recommend consent to the closure of Orange Grove Road, Duns Creek and sale to the adjoining owner.

This road has been maintained by Council and the applicants land being Lot 14 D.P.788888 totally surrounds it and they are the only possible users of the land. It can serve no other purpose and appears to be a private access for the property. LPMA have agreed to the closure and a survey plan has been prepared for registration. See ATTACHMENTS 1 & 2 for details.

FINANCIAL/RESOURCE IMPLICATIONS

The applicant must meet all costs associated with the closure process. If these costs are not met at different stages through the process the next stage is not commenced, until such payment is made. Closure of the road will result in no Council future funds having to be spent on the maintenance of it.

LEGAL, POLICY AND RISK IMPLICATIONS

All actions relating to road closure and purchases are controlled by the Roads Act 1993 with the application being made under Section 34. The Land & Property Management Authority is responsible for the process once Council consents to the closure. That Authority makes the final decision and gazettes the closure. The Conveyancing Act controls the sale process once the new Certificate of Title has been issued. Council's Road Closure Policy details the actions to be followed.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Nil

CONSULTATION

Applicant; Land & Property Management Authority; Service Authorities; adjoining owners; Council's Facilities & Services staff; Surveyor and Principal Property Advisor.

OPTIONS

- 1) Accept recommendation
- 2) Refuse consent

ATTACHMENTS

- 1) Plan showing proposed closure
- 2) Locality plan

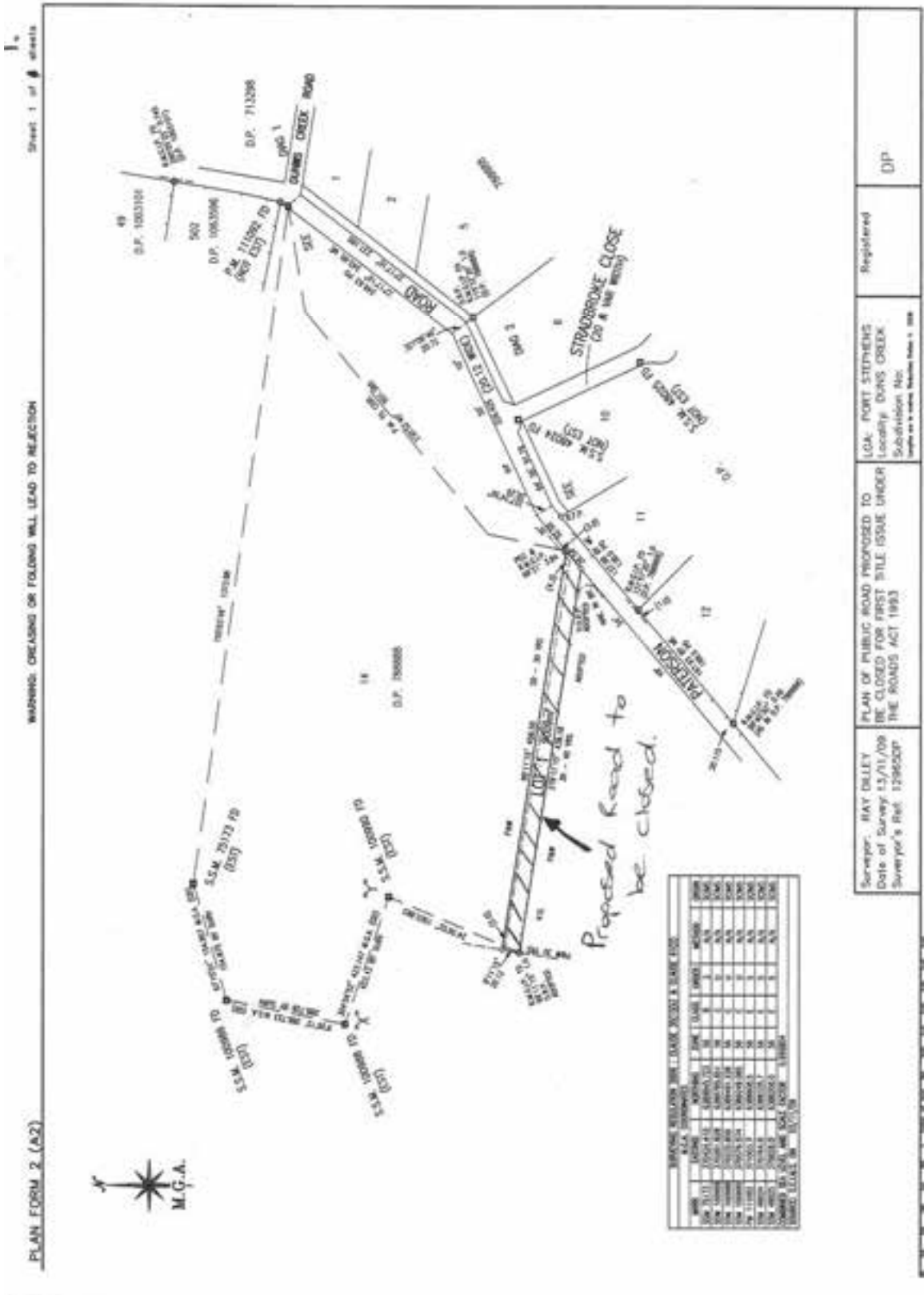
COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

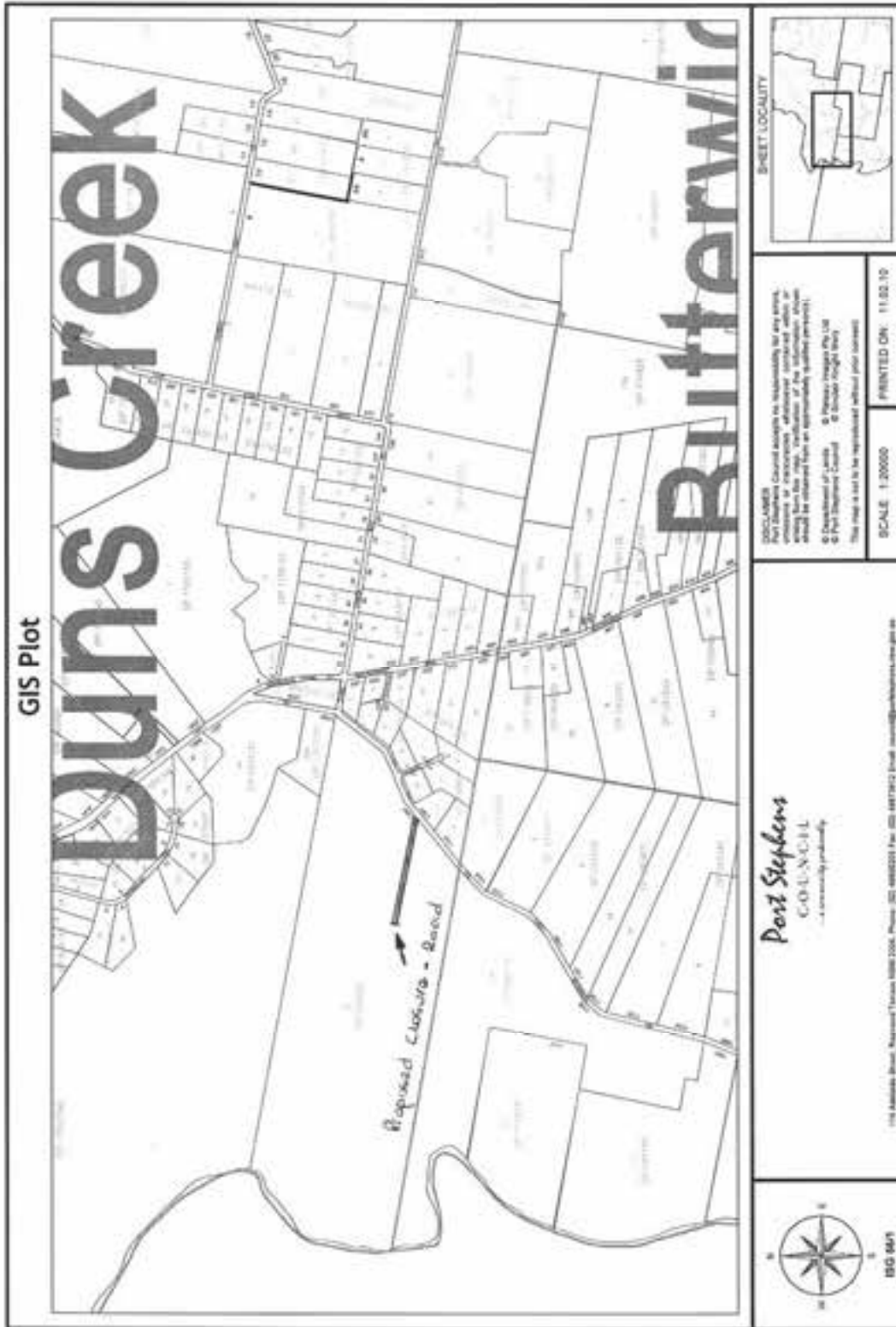
Nil.

ATTACHMENT 1



ATTACHMENT 2

2.



General Manager declared a non-pecuniary conflict of interest and left the meeting at 8.37pm.

ITEM NO. 13

FILE NO: A2004-0028

NEWCASTLE AIRPORT LIMITED CORPORATE STRUCTURE

REPORT OF: JEFF SMITH – GROUP MANAGER COMMERCIAL SERVICES
GROUP: COMMERCIAL SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Endorse the continuation of the existing Newcastle Airport Ltd corporate structure.
- 2) Authorise the Mayor, General Manager, and Newcastle Airport Ltd CEO and Chairman to initiate dialogue with the Department of Defence for the purpose of negotiating an extension to the existing lease or a new lease with a longer term.
- 3) Endorse the continued ownership of Newcastle Airport Ltd by Local Government and investigate appropriate amendments to the Newcastle Airport Limited Trust Deed to facilitate additional Local Government investment.
- 4) Advise the Newcastle Airport Ltd Board that the primary function of Newcastle Airport Ltd remains as an economic driver for the region and that a moderate growth rate should be targeted.
- 5) Endorse the allocation of resources to investigate opportunities to avoid significant restructuring costs associated with the transition to alternative corporate structures.
- 6) Endorse an amendment to the Newcastle Airport Limited Trust Deed to facilitate remuneration of all Newcastle Airport Limited directors.

COMMITTEE MEETING – 09 MARCH 2010
RECOMMENDATION:

	<p>Councillor John Nell Councillor Bruce MacKenzie</p>	<p>It was resolved that Council</p> <ol style="list-style-type: none">2. Endorse the continuation of the existing Newcastle Airport Ltd corporate structure.3. Authorise the Mayor, General Manager, and Newcastle Airport Ltd CEO and Chairman to initiate dialogue with the Department of Defence for the purpose of negotiating an extension to the existing lease or a new lease with a longer term.
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MINUTES FOR ORDINARY MEETING – 9 MARCH 2010

		<p>4. Endorse the continued ownership of Newcastle Airport Ltd by Local Government and investigate appropriate amendments to the Newcastle Airport Limited Trust Deed to facilitate additional Local Government investment.</p> <p>5. Advise the Newcastle Airport Ltd Board that the primary function of Newcastle Airport Ltd remains as an economic driver for the region and that a moderate growth rate should be targeted.</p> <p>6. Endorse the allocation of resources to investigate opportunities to avoid significant restructuring costs associated with the transition to alternative corporate structures.</p>
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ORDINARY MEETING – 09 MARCH 2010

073	Councillor Bob Westbury Councillor John Nell	It was resolved that the Council Committee recommendation be adopted.
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BACKGROUND

The purpose of this report is to inform Council of the outcomes of the strategic review of Newcastle Airport Limited's (NAL's) corporate structure that has been undertaken over the last two years and propose a number of resolutions to guide NAL's strategic direction and growth over the coming years.

Newcastle Airport was originally opened as Williamtown Civilian Airport in 1947 after a charter flight landed at the RAAF Base, Williamtown. It wasn't until 20 February 1948 that scheduled commercial operations commenced at the Airport.

The Commonwealth Government continued to run the Airport until 1990 when Newcastle City Council and Port Stephens Council accepted an invitation by the Government to jointly operate the civil area at RAAF Base, Williamtown.

The two councils accepted full responsibility for operating, maintaining and development of what was to become Newcastle Airport. As a consequence, Newcastle Airport Limited, a not-for-profit company, limited by guarantee, was formed on 25 May 1993 by the two councils and a 30-year lease was signed for 23 hectares including the site of the terminal and land for commercial development. The lease was modified in 2005 to a 40-year lease (terminating March 2045) and to include an additional five hectares of land.

For many years the passenger terminal was little more than a 'tin shed'. This was remedied with the opening of new terminal facilities in March 1975. In 1994 and 2000 Newcastle Airport underwent further major upgrades which included the doubling of the terminal floor area, total refurbishment of the interior and exterior of the building and the provision of office suites for airlines.

Impulse Airlines began operating B717 jet services from Williamstown in 2000. In November 2003 Virgin Blue introduced B737 aircraft on daily services to Melbourne and in May 2004 introduced daily services to Brisbane. In May 2004 Jetstar also commenced services on the Newcastle-Melbourne and Newcastle-Brisbane routes using the B717 aircraft.

Newcastle Airport underwent another major upgrade in 2005 which doubled the terminal floor area, introduced a retail precinct, doubled the departures and arrivals areas, provided additional office suites and upgraded the car parking and road systems.

Today, Newcastle Airport is serviced by all the major domestic airlines that provide services to the major destinations along the east-coast of Australia. The Airport is significantly contributing to the domestic and international growth of business and tourism to the surrounding region.

Since the introduction of jet services into Newcastle Airport, the number of passengers using the Airport has increased from 214,000 in 2003 to 1,135,000 in the 2009 calendar year.

The Airport operates as a joint venture between the two councils, and all profits from the operation of the Airport, and its facilities, are re-invested back into the operations and future growth of the Airport.

At its meeting of 11 September 2007, Council resolved to lend NAL \$12m taking NAL's outstanding debt to Council to \$17.1m. At this time, NAL was in the midst of exponential growth with predictions of approximately \$75m of capital works to be undertaken by 2011. Under the current NAL corporate structure, NAL is restricted from borrowing external funds directly and all borrowings must come through its two shareholders, Port Stephens Council (PSC) and Newcastle City Council (NCC). Given these circumstances, PSC resolved to cap borrowings at \$17.1m and called for a review of NAL's corporate structure to determine whether an alternate model would be more appropriate to facilitate NAL's growth.

Since that resolution was adopted a joint Council sub-committee has been established to coordinate a comprehensive review of NAL's corporate structure including consideration of taxation and legal implications of various structure options.

The recommendation of this report is to endorse the continuation of the existing NAL corporate structure. The main reasons for this recommendation are outlined below.

The significant change in global economic conditions

These conditions have resulted in passenger numbers for 2009 plateauing in line with 2008 numbers. The plateauing of passenger numbers in 2009 is a very good result considering the economic climate. Many airports, both within Australia and internationally, saw reductions in passenger numbers compared with previous years.

Newcastle Airport's current capacity is 2 million passengers, however this is based on a number of assumptions, most notably optimal scheduling of arrival and departure times. It is highly likely that the airport will require expansion before reaching the 2 million passenger mark.

Outcomes of the Aspirion Demand Study

NAL engaged the services of Aspirion to undertake a Demand Study to project future passenger growth. The Aspirion Demand Study identified a number of strategies for building demand. These include:

Short Term

- ❖ Address potential shortfall on existing markets of Melbourne, Brisbane and Gold Coast
- ❖ Pursue new domestic opportunities to Perth, Adelaide, Hobart and Darwin
- ❖ Create international awareness via hubs of Perth and Darwin
- ❖ Consider stimulation to increase viability of services to Cairns, Mackay and Sunshine Coast

Medium Term

- ❖ Implement international services to NZ and Fiji
- ❖ Promote NTL to the Asian international charter market as new gateway to NSW
- ❖ Build on previous international demand via Perth and Darwin to pursue direct services to Bali and SE Asia

Long Term

- ❖ Build on charter demand for China and Japan
- ❖ Pursue long haul international routes trans Pacific

The Aspirion passenger number predictions to 2014, based on the above strategies were as follows:

Best Case (100%) 2,125,000

Likely Case (66%) 1,793,500

Worst Case (33%) 1,471,750

Both of these developments, the global economic conditions and the Aspirion Demand Study, have created a likely scenario where Newcastle Airport's current capacity may not be exceeded until 2014. This can be compared to forecasts in 2006 and 2007 of significant capital expenditure being incurred in 2010 to accommodate future demand. This delay has two implications. Firstly, given that Newcastle Airport profits are reinvested back into the Airport to fund future growth, this delay provides several additional years of annual profits to assist in funding future infrastructure expansion. Secondly, this delay provides several additional years of repayments on existing borrowings before additional borrowings are required, reducing the amount of outstanding debt owed to the Councils.

Potential Stamp Duty Obligations

Another significant issue associated with changing Newcastle Airport's corporate structure is that advice received to date suggests Stamp Duty of approximately \$5m may be incurred. One of the recommendations of this report is that Council endorse the allocation of resources to investigate opportunities to avoid incurring stamp duty associated with the transition to alternative corporate structures.

40 Year Lease

The current 40 year lease presents numerous issues for a long term critical infrastructure asset such as Newcastle Airport. Additionally, a future change of NAL corporate structure could provide the flexibility, at Council's discretion, to introduce additional equity into the airport at some point in the future. The current 40 year lease, which has 37 years remaining, has a negative impact on the "market value" of Newcastle Airport from an investment perspective. A 99 year lease would not only address the existing issues associated with the shorter tenure, but would optimise the "market value" of Council's asset. Therefore, one of the recommendations of this report is to authorise the initiation of negotiations with the Department of Defence to extend the existing lease or enter into a new lease with a longer term.

One of the issues considered at length by the Joint Council Sub Committee was the issue of the introduction of future outside equity to the Airport. The main advantages of introducing outside equity is that it shares the investment risk and reduces the burden on Council to fund future growth, however, a number of issues were also identified including:

- ❖ The risk of incompatible objectives amongst equity partners
- ❖ The dilution of Council ownership
- ❖ Potential tax implications
- ❖ Current lease with Department of Defence requires majority Council ownership

The final position of the Joint Council Sub Committee was that at least in the short to medium term, they did not support the introduction of private equity however do wish to explore options for facilitating investment from neighbouring Councils. This investment may not necessarily involve an equity stake in the Airport but may for example allow NAL to borrow funds from Councils other than Newcastle and Port Stephens. This position of the joint sub committee is reflected in the recommendation to endorse the continued ownership of Newcastle Airport Ltd by Local Government and investigate appropriate amendments to the Newcastle Airport Limited Trust Deed to facilitate additional Local Government investment.

Another issue that the Joint Council Sub Committee considered was the need to articulate to the NAL Board, the owners' agreed position on the strategic purpose of Newcastle Airport and the owners' agreed position on the appropriate risk appetite of the Airport in relation to future growth. The Joint Council Sub Committee determined that the recommendation they would take back to the respective Council owners was that the primary function of Newcastle Airport is as an economic driver for the region and that a moderate growth rate should be targeted.

Directors Fees have been paid to the Directors of the Newcastle Airport Board for the last couple of years. When fees were introduced the Board proposed that fees apply to all Directors in recognition of the 'role and responsibilities of a Director as distinct from their employer'. The current company constitution precludes the General Managers of Newcastle City Council and Port Stephens Council from receiving Directors Fees. The current and future contract of the General Manager excludes consideration of the NAL director role. The Board's position is that the constitution should be updated to reflect their decision. Consideration of this item had been delayed until now to enable all amendments to be considered by the Councils together.

FINANCIAL/RESOURCE IMPLICATIONS

The continuation of the existing Newcastle Airport Ltd corporate structure results in minimal financial implications for Port Stephens Council. The profits from the airport will continue to be reinvested for future growth. Port Stephens may be requested to provide future loan funding for terminal expansion or other major infrastructure projects however these matters would be the subject of future Council reports if and when it is necessary.

LEGAL, POLICY AND RISK IMPLICATIONS

The continuation of the existing corporate structure retains the existing level of risk to Council as joint owner of Newcastle Airport. Any future proposal for changes to the ownership structure would be the subject of future Council reports which would identify any adjustments, positive or negative, to Council's risk profile associated with the adoption of those ownership structure changes.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The most recent economic impact assessment of Newcastle Airport estimates that it supports 2,234 jobs and that the airport precinct contributes an annual total of \$595 million in gross output to the economy.

CONSULTATION

Newcastle Airport Board and Management, Newcastle Airport Joint Council Sub Committee, Ernst & Young, PricewaterhouseCoopers

OPTIONS

Accept the recommendations
Reject the recommendations
Amend the recommendations

ATTACHMENTS

Nil.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

MINUTES FOR ORDINARY MEETING – 9 MARCH 2010

General Manager returned to the meeting at 8.37pm.

ITEM NO. 14

INFORMATION PAPERS

REPORT OF: TONY WICKHAM – EXECUTIVE OFFICER
GROUP: GENERAL MANAGERS OFFICE

RECOMMENDATION IS THAT COUNCIL:

Receives and notes the Information Papers listed below being presented to Council on 09 March, 2010.

No:	Report Title	Page:
1	NEW YEAR'S EVE 2009 ON TOMAREE PENINSULA	262
2	CASH AND INVESTMENTS HELD AT 31 JANUARY 2010-02-25	263

COMMITTEE MEETING – 09 MARCH 2010
RECOMMENDATION:

	Councillor Ken Jordan Councillor John Nell	That the recommendation be adopted.
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ORDINARY MEETING – 09 MARCH 2010

074	Councillor Ken Jordan Councillor Daniel Maher	It was resolved that the recommendation be adopted.
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COUNCIL COMMITTEE INFORMATION PAPERS



INFORMATION ITEM NO. 1

NEW YEAR'S EVE 2009 ON TOMAREE PENINSULA

REPORT OF: TREVOR ALLEN – MANAGER, INTEGRATED PLANNING
GROUP: SUSTAINABLE PLANNING

FILE: PSC2009-00671

BACKGROUND

The purpose of this report is to inform Council about New Years Eve 2009 celebrations at Tomaree.

At the New Year's Eve debrief held on 9th February 2010, the Police reported that despite there being 32 arrests on the night, the strategies put in place were successful and resulted in a better behaved and more easily managed crowd than last year. Most of the charges laid on the night were alcohol-related and persons involved were predominantly local residents. Wet weather on the night may have helped reduce the numbers.

The Police and Council have received positive feedback from residents, visitors and business owners.

After Council's decision in June 2009 not to hold a managed event for New Year's Eve in Tomaree, several stakeholder meetings were held to discuss strategies for managing the crowds of youth who usually gather there at this time.

The local Police arranged for extra staff to start early on New Year's Eve morning. Actions by Council to assist them included placing :

- Barriers around Crown Land on corner of Shoal Bay Road and Trafalgar Street;
- Barriers supplied to close off Bill Strong Oval car park;
- Editorials and advertisements in various newspapers indicating that New Year's Eve at Nelson Bay would be family-focused with no youth event;
- Extra Portaloos along Nelson Bay Foreshore;
- Extra rubbish skips;
- Lighting towers arranged along Shoal Bay Foreshore and Little Beach;
- Upgrading of Parking Rules signs;

Costs to Council to undertake the above totalled \$15,600

Members of *Tomaree Liquor Accord* also agreed that sales of take away liquor should end at 9.00pm on New Year's Eve. Only one licensee didn't agree to follow this, but did agree to limit sales of take way liquor in the drive-thru bottle shop to patrons in vehicles.

A similar process is proposed for this year, and an allocation has been made in Council's draft budget for 2010/11 to support Council's management of New Year's Eve.

INFORMATION ITEM NO. 2

CASH AND INVESTMENTS HELD AT 31 JANUARY 2010

REPORT OF: DAMIEN JENKINS – FINANCIAL SERVICES MANAGER
GROUP: COMMERCIAL SERVICES

FILE: PSC2006-6531

BACKGROUND

The purpose of this report is to present Council's schedule of Cash and Investments Held at 31 January 2010.

ATTACHMENTS

- 1) Cash and Investments Held at 31 January 2010.
- 2) Monthly Cash and Investments Balance February 2009 – January 2010
- 3) Monthly Australian Term Deposit Index February 2009 – January 2010

ATTACHMENT 1

CASH & INVESTMENTS HELD AS AT 31 JANUARY 2010

INVESTED WITH	INV. TYPE	CURRENT RATING	MATURITY DATE	AMOUNT INVESTED	% of Total Portfolio	Current Int Rate	Market Value	Market Value	Market Value	Current Mark to Market
							November	December	January	Exposure
GRANGE SECURITIES										
MAGNOLIA FINANCE LTD 2005-14 "FLINDERS AA"	Floating Rate CDO	NR	20-Mar-12	1,000,000.00	4.15%	5.02%	\$780,440.00	\$788,770.00	\$788,770.00	-\$211,230.00
NEXUS BONDS LTD "TOPAZ AA-	Floating Rate CDO		23-Jun-15	412,500.00	1.71%	0.00%	\$231,412.50	\$231,412.50	\$231,412.50	-\$181,087.50
HERALD LTD "QUARTZ AA"	Floating Rate CDO	CCC-	20-Dec-10	450,000.00	1.87%	5.52%	\$336,240.00	\$373,770.00	\$373,770.00	-\$76,230.00
STARTS CAYMAN LTD "BLUE GUM AA-	Floating Rate CDO	NR	22-Jun-13	1,000,000.00	4.15%	5.49%	\$0.00	\$0.00	\$0.00	-\$1,000,000.00
HELIUM CAPITAL LTD "ESPERANCE AA+ "	Floating Rate CDO	NR	20-Mar-13	1,000,000.00	4.15%	0.00%	\$0.00	\$0.00	\$0.00	-\$1,000,000.00
HOME BUILDING SOCIETY DEUTSCHE BANK CAPITAL GUARANTEED YIELD CURVE NOTE	Floating Rate Sub Debt Yield Curve Note		25-Jul-11 18-Oct-11	500,000.00 500,000.00	2.07% 2.07%	5.43% 6.68%	\$441,355.00 \$495,050.00	\$444,105.00 \$508,600.00	\$444,105.00 \$508,600.00	-\$55,895.00 \$8,600.00
GRANGE SECURITIES "KAKADU AA"	Floating Rate CDO	CCC	20-Mar-14	1,000,000.00	4.15%	5.07%	\$252,100.00	\$319,300.00	\$319,300.00	-\$680,700.00
GRANGE SECURITIES "COOLANGATTA AA" *	Floating Rate CDO	NR	20-Sep-14	1,000,000.00	4.15%	0.00%	\$0.00	\$0.00	\$0.00	-\$1,000,000.00
TOTAL GRANGE SECURITIES				\$6,862,500.00	28.45%		\$2,536,597.50	\$2,665,957.50	\$2,665,957.50	(\$4,196,542.50)
ABN AMRO MORGANS										
GLOBAL PROTECTED PROPERTY NOTES VII	Property Linked Note		17-Sep-11	\$1,000,000.00	4.15%	0.00%	\$870,100.00	\$882,800.00	\$894,900.00	-\$105,100.00
TOTAL ABN AMRO MORGANS				\$1,000,000.00	4.15%		\$870,100.00	\$882,800.00	\$894,900.00	(\$105,100.00)
ANZ INVESTMENTS										
ECHO FUNDING PTY LTD SERIES 16 "3 PILLARS AA-	Floating Rate CDO	CCC-	6-Apr-10	\$500,000.00	2.07%	5.38%	\$396,350.00	\$424,500.00	\$424,500.00	-\$75,500.00
PRELUDE EUROPE CDO LTD "CREDIT SAIL AAA"	Floating Rate CDO	B	30-Dec-11	\$1,000,000.00	4.15%	0.00%	\$664,900.00	\$712,900.00	\$712,900.00	-\$287,100.00
ANZ ZERO COUPON BOND	Zero Coupon Bond	AA	1-Jun-17	\$1,017,876.98	4.22%	0.00%	\$595,590.35	\$581,553.83	\$581,553.83	-\$436,323.15
TOTAL ANZ INVESTMENTS				\$2,517,876.98	10.44%		\$1,656,840.35	\$1,718,953.83	\$1,718,953.83	(\$798,923.15)
RIM SECURITIES										
GENERATOR INCOME NOTE AAA (2011)	Floating Rate CDO		29-Jul-13	\$2,000,000.00	8.29%	0.00%	\$990,000.00	\$1,060,000.00	\$1,300,000.00	-\$700,000.00
ELDERS RURAL BANK (2011)	Floating Rate Sub Debt		8-Oct-11	\$1,000,000.00	4.15%	4.81%	\$929,524.00	\$936,434.00	\$930,765.00	-\$69,235.00
TOTAL RIM SECURITIES				\$3,000,000.00	12.44%		\$1,919,524.00	\$1,996,434.00	\$2,230,765.00	(\$769,235.00)
WESTPAC INVESTMENT BANK										
HOME BUILDING SOCIETY (2010)	Floating Rate Sub Debt		27-Apr-10	\$500,000.00	2.07%	5.50%	\$478,330.00	\$483,190.00	\$487,510.00	-\$12,490.00
MACKAY PERMANENT BUILDING SOCIETY	Floating Rate Sub Debt		20-Nov-11	\$500,000.00	2.07%	5.12%	\$478,345.00	\$479,210.00	\$480,075.00	-\$19,925.00
TOTAL WESTPAC INV. BANK				\$1,000,000.00	4.15%		\$956,675.00	\$962,400.00	\$967,585.00	(\$32,415.00)
CURVE SECURITIES										
MYSTATE FINANCIAL CREDIT UNION	Term Deposit					0.00%	\$1,000,000.00			\$0.00
TOTAL CURVE SECURITIES				\$0.00	0.00%		\$1,000,000.00	\$0.00	\$0.00	\$0.00

ATTACHMENT 1

LONGREACH CAPITAL MARKETS										
LONGREACH SERIES 16 PROPERTY LINKED NOTE	Property Linked Note	A+	7-Mar-12	\$500,000.00	2.07%	0.00%	\$432,000.00	\$433,950.00	\$437,300.00	-\$62,700.00
LONGREACH SERIES 19 GLOBAL PROPERTY LINKED NOTE	Property Linked Note	A+	7-Sep-12	\$500,000.00	2.07%	0.00%	\$375,975.00	\$413,500.00	\$420,850.00	-\$79,150.00
TOTAL LONGREACH CAPITAL				\$1,000,000.00	4.15%		\$807,975.00	\$847,450.00	\$858,150.00	(\$141,850.00)
COMMONWEALTH BANK										
EQUITY LINKED DEPOSIT	Equity Linked Note		20-Sep-11	\$500,000.00	2.07%	3.00%	\$481,750.00	\$481,750.00	\$482,450.00	-\$17,550.00
EQUITY LINKED DEPOSIT GI100	Equity Linked Note		03-Aug-10	\$500,000.00	2.07%	3.00%	\$501,400.00	\$501,400.00	\$501,350.00	\$1,350.00
EQUITY LINKED DEPOSIT ELN SERIES 2	Equity Linked Note		05-Nov-12	\$500,000.00	2.07%	3.00%	\$466,550.00	\$466,550.00	\$468,600.00	-\$31,400.00
BENDIGO BANK SUBORDINATED DEBT	Floating Rate Sub Debt		09-Nov-12	\$500,000.00	2.07%	5.20%	\$476,780.00	\$476,780.00	\$480,735.00	-\$19,265.00
BANK OF QUEENSLAND	Term Deposit		12-Aug-10	\$1,000,000.00	4.15%	4.80%	\$1,000,000.00	\$1,000,000.00	\$1,000,000.00	\$0.00
BANK OF QUEENSLAND BOND	Bond		16-Mar-12	\$1,000,000.00	4.15%	5.35%	\$1,000,000.00	\$1,000,000.00	\$1,000,000.00	\$0.00
TOTAL COMMONWEALTH BANK				\$4,000,000.00	16.58%		\$3,926,480.00	\$3,926,480.00	\$3,933,135.00	(\$66,865.00)
FIG SECURITIES										
CREDIT SUISSE PRINCIPAL PROTECTED NOTE AQUADUCT AA-	Principal Protected Note		21-Jun-10	\$1,000,000.00	4.15%	0.00%	\$965,500.00	\$968,700.00	\$971,700.00	-\$28,300.00
TELSTRA LINKED DEPOSIT NOTE	Principal Protected Note		30-Nov-14	\$500,000.00	2.07%	5.03%	\$429,000.00	\$455,750.00	\$470,100.00	-\$29,900.00
TOTAL FIG SECURITIES				\$1,500,000.00	6.22%		\$1,394,500.00	\$1,424,450.00	\$1,441,800.00	(\$58,200.00)
ALLIED IRISH BANKS										
AIB TERM DEPOSIT							\$1,000,000.00	\$1,000,000.00		\$0.00
TOTAL ALLIED IRISH BANK				\$0.00	0.00%		\$1,000,000.00	\$1,000,000.00	\$0.00	\$0.00
MAITLAND MUTUAL										
MAITLAND MUTUAL SUB DEBT	Floating Rate Sub Debt		30-Jun-13	500,000.00	2.07%	5.78%	\$500,000.00	\$500,000.00	\$500,000.00	\$0.00
MAITLAND MUTUAL TERM DEPOSIT	Term Deposit		23-Feb-10	574,519.99	2.38%	4.92%	568,076.60	574,519.99	574,519.99	\$0.00
MAITLAND MUTUAL SUB DEBT	Floating Rate Sub Debt		31-Dec-14	500,000.00	2.07%	5.78%	\$500,000.00	\$500,000.00	\$500,000.00	\$0.00
TOTAL M'LAND MUTUAL				\$1,574,519.99	6.53%		\$1,568,076.60	\$1,574,519.99	\$1,574,519.99	\$0.00
TOTAL INVESTMENTS				\$22,454,896.97	93.08%		\$17,636,768.45	\$16,999,445.32	\$16,285,766.32	(\$6,169,130.65)
AVERAGE RATE OF RETURN ON INVESTMENTS										2.91%
CASH AT BANK				\$1,670,475.57	6.92%		\$3,691,443.06	\$1,277,251.32	\$1,670,475.57	\$0.00
AVERAGE RATE OF RETURN ON INVESTMENTS + CASH										2.96%
TOTAL CASH & INVESTMENTS				\$24,125,372.54	100.00%		\$21,328,211.51	\$18,276,696.64	\$17,956,241.89	(\$6,169,130.65)
BBSW FOR PREVIOUS 3 MONTHS										4.13%

* Lehman Brothers is the swap counterparty to these transactions and as such the deals are in the process of being unwound. No valuation information is available.

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.

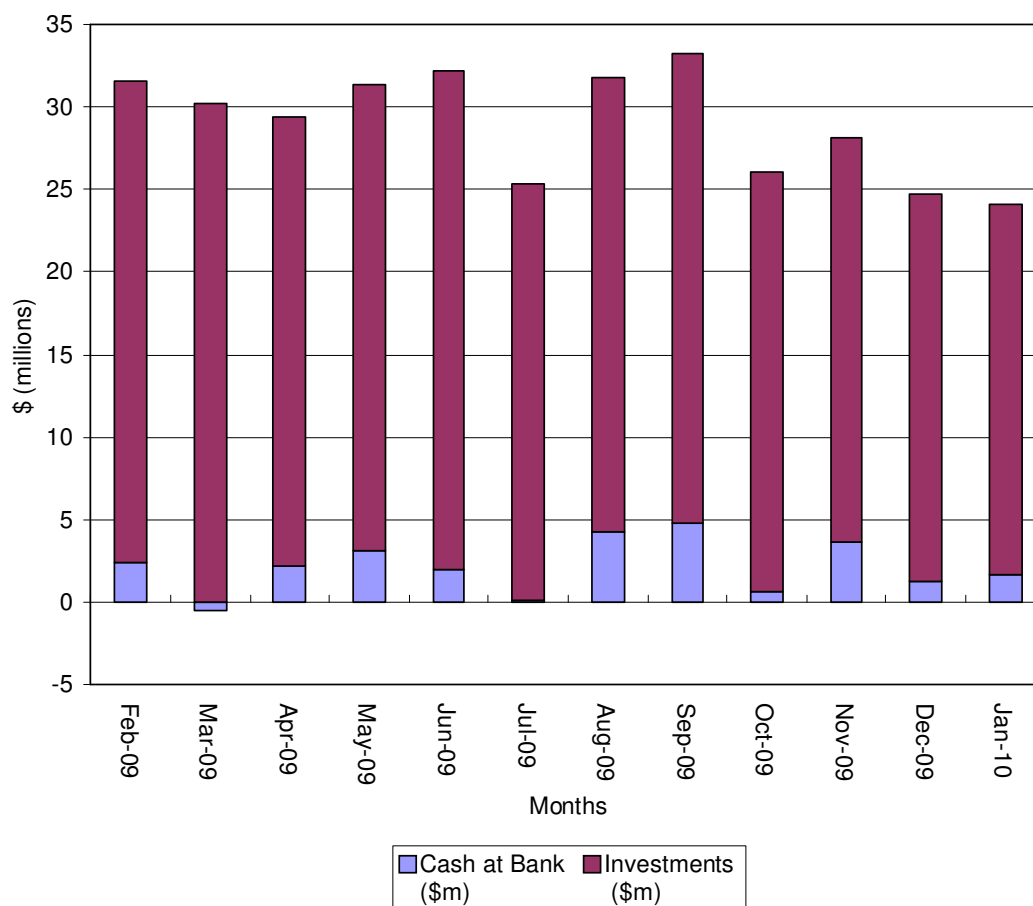
P GESLING

ATTACHMENT 2

Cash and Investments Held

Date	Cash at Bank (\$m)	Investments (\$m)	Total Funds (\$m)
Feb-09	2.364	29.187	31.551
Mar-09	0.531	30.187	29.656
Apr-09	2.234	27.187	29.421
May-09	3.160	28.193	31.353
Jun-09	1.947	30.193	32.140
Jul-09	0.127	25.193	25.320
Aug-09	4.298	27.448	31.747
Sep-09	4.801	28.448	33.250
Oct-09	0.579	25.448	26.028
Nov-09	3.691	24.448	28.140
Dec-09	1.277	23.448	24.726
Jan-10	1.670	22.455	24.125

Cash and Invested Funds for the Period ended 31/1/2010

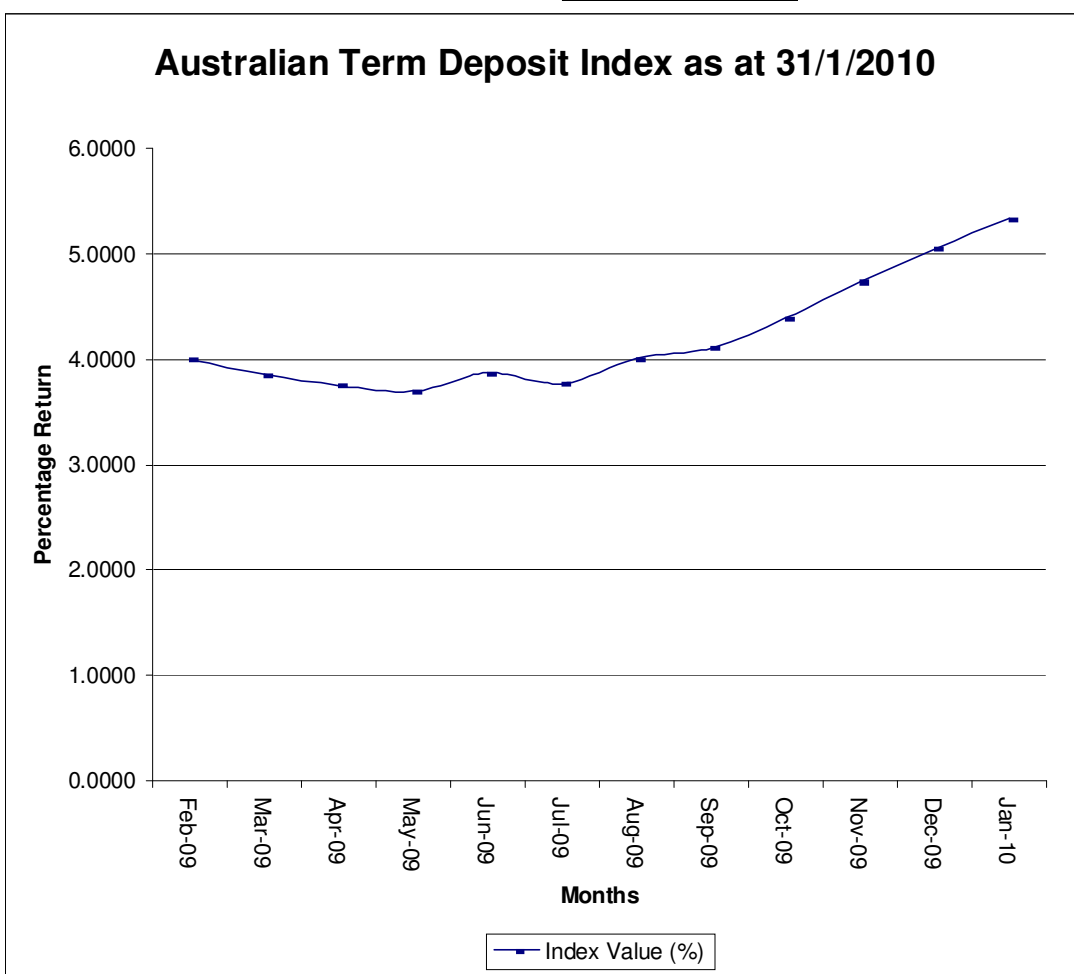


ATTACHMENT 2

Australian Term Deposit Accumulation Index

Date	Index Value (%)
Feb-09	4.0024
Mar-09	3.8542
Apr-09	3.7513
May-09	3.6960
Jun-09	3.8699
Jul-09	3.7701
Aug-09	4.0082
Sep-09	4.1080
Oct-09	4.3946
Nov-09	4.7356
Dec-09	5.0488
Jan-10	5.3373

Australian Term Deposit Index as at 31/1/2010



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.

075	Councillor John Nell Councillor Peter Kafer	It was resolved that Council move into Confidential session.
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ITEM NO. 1

FILE NO: T01-2010

**TENDER FOR THE SUPPLY OF ONE (1) 22.5 TONNE SINGLE CAB TRUCK/
CHASSIS (T01/2010)**

REPORT OF: DAMIEN JENKINS – FINANCIAL SERVICES MANAGER
GROUP: COMMERCIAL SERVICES

ORDINARY MEETING – 09 MARCH 2010

076	Councillor John Nell Councillor Peter Kafer	It was resolved that Council accept the tender submitted by Gilbert & Roach for the supply of one (1) FVY 1400 Automatic Long Single Cab Truck Chassis at the tendered price of \$154,350.91 (exc. GST).
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077	Councillor John Nell Councillor Peter Kafer	It was resolved that Council move out of Confidential session.
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There being no further business the meeting closed at 8.38pm.

I certify that pages 1 to 269 of the Open Ordinary Minutes of Council 9 March 2010 and the pages 270 to 272 of the Confidential Ordinary Minutes of Council 9 March 2010 were confirmed by Council at its meeting held on 23 March 2010.

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Cr Bruce MacKenzie
MAYOR