

Minutes 13 July 2010



Minutes of Ordinary meeting of the Port Stephens Council held in the Council Chambers, Raymond Terrace on 13 July 2010, commencing at 7.24 pm.

PRESENT: Councillors B. MacKenzie (Mayor); R. Westbury (Deputy Mayor); G. Dingle; S. Dover, C. De Lyall, G. Francis; P. Kafer; K. Jordan; 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.

196	Councillor Peter Kafer Councillor Geoff Dingle	It was resolved that the apology from Cr John Nell be received and noted.
197	Councillor Ken Jordan Councillor Steve Tucker	It was resolved that the Minutes of the Ordinary meeting of Port Stephens Council held on 29 June 2010 and the Recording of Proceedings of 6 July 2010 be confirmed.
		Cr Ken Jordan declared a non-pecuniary conflict of interest in the Rescission Motion Item 1 with the nature of the interest being a friendship. Cr Caroline De Lyall declared a non-pecuniary conflict of interest in Item 3, with the nature of the interest being personal.

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MOTIONS TO CLOSE

ITEM NO. 1

FILE NO: T06-2010
PSC2010-03194

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 Ordinary Council agenda namely **Internal Audit Tender T06-2010**.
- 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 **Internal Audit Tender T06-2010**.
- 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.

ORDINARY COUNCIL MEETING - 13 JULY 2010

198	Councillor Shirley O'Brien Councillor Ken Jordan	It was resolved that the recommendation be adopted.
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ITEM NO. 2

FILE NO: PSC2009-09498

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)(b) 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 2 on the Ordinary agenda namely *Debt Recovery for Unpaid Rates*.
 - 2) That the reasons for closing the meeting to the public to consider this item is that the discussion will include information concerning the personal hardship associated with a ratepayer.
 - 3) That the report of the closed part of the meeting is to remain confidential and that Council makes public its decision.
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ORDINARY COUNCIL MEETING - 13 JULY 2010

199	Councillor Shirley O'Brien Councillor Ken Jordan	It was resolved that the recommendation be adopted.
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**COUNCIL
COMMITTEE
RECOMMENDATIONS**

ITEM NO. 1

FILE NO: 16-2009-257-1

DEVELOPMENT APPLICATION 16-2009-257-1 FOR A 229 SITE CARAVAN PARK, MANAGERS RESIDENCE, COMMUNITY HALL, & RECREATION FACILITIES AT 19 & 20 ROAD 580 OFF PORT STEPHENS DRIVE, ANNA BAY

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Refuse DA 16-2009-257-1 for a 229 Site Caravan Park, Managers Residence, Community Hall and Recreation Facilities at 19 & 20 Road 580 Off Port Stephens Drive, Anna Bay for the following reason:

The site is not considered suitable for 229 caravan sites providing long term accommodation, because:

- The development is inconsistent with the objectives of the 1(a) Rural Agriculture Zone.
- The site is not considered suitable for the proposed development following assessment of the matters for consideration in Clause 10 of State Environmental Planning Policy 21 Caravan Parks.
- The development is not consistent with the Lower Hunter Regional Strategy.
- The Roads and Traffic Authority (RTA) will not issue concurrence for access to Nelson Bay Road. **(Attachment 4 – RTA letter 23 June 2010)**

COUNCIL COMMITTEE MEETING – 13 JULY 2010

RECOMMENDATION:

	<p>Councillor Sally Dover Councillor Shirley O'Brien</p>	<p>That Council:</p> <ol style="list-style-type: none"> 1. Approve DA 16-2009-257-1 for a 229 Site Caravan Park, Managers Residence, Community Hall and Recreation Facilities at 19 & 20 Road 580 Off Port Stephens Drive, Anna Bay, in principle and; 2. That staff provide draft conditions of consent for consideration by Council.
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In accordance with the Section 375A, Local Government Act 1993, a division is required for this item.

MINUTES FOR ORDINARY MEETING – 13 JULY 2010

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

Those against the Motion: Crs Peter Kafer, Glenys Francis, Caroline De Lyall, Geoff Dingle and Frank Ward.

ORDINARY COUNCIL MEETING - 13 JULY 2010

	<p>Councillor Geoff Dingle Councillor Peter Kafer</p>	<p>That Council:-</p> <p>1) Refuse DA 16-2009-257-1 for a 229 Site Caravan Park, Managers Residence, Community Hall and Recreation Facilities at 19 & 20 Road 580 Off Port Stephens Drive, Anna Bay for the following reason:</p> <p>The site is not considered suitable for 229 caravan sites providing long term accommodation, because:</p> <ul style="list-style-type: none">▪ The development is inconsistent with the objectives of the 1(a) Rural Agriculture Zone.▪ The site is not considered suitable for the proposed development following assessment of the matters for consideration in Clause 10 of State Environmental Planning Policy 21 Caravan Parks.▪ The development is not consistent with the Lower Hunter Regional Strategy.▪ The Roads and Traffic Authority (RTA) will not issue concurrence for access to Nelson Bay Road. (Attachment 4 – RTA letter 23 June 2010).
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In accordance with the Section 375A, Local Government Act 1993, a division is required for this item.

Those for the Motion: Crs Peter Kafer, Glenys Francis, Caroline De Lyall, Geoff Dingle and Frank Ward.

Those against the Motion: Crs Ken Jordan, Steve Tucker, Shirley O'Brien, Bob Westbury, Sally Dover and Bruce MacKenzie.

The Motion on being put was lost.

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

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

Those against the Motion: Crs Peter Kafer, Glenys Francis, Caroline De Lyall, Geoff Dingle and Frank Ward.

The Motion on being put was carried.

BACKGROUND

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

The proposal is for 229 long term caravan sites, construction of a manager's residence, community hall and recreation facilities. Manufactured homes are to be installed on each caravan site.

The development is recommended for refusal because the location is considered unsuitable for 100% long term accommodation after assessing the proposal against the 1(a) zone objectives, SEPP 21 Caravan Parks and the Lower Hunter Regional Strategy. Further, RTA concurrence is required under SEPP infrastructure. The RTA advised Council in its letter of 23 June 2010 that concurrence would not be issued for development if access is from Nelson Bay Road.

Caravan parks are permissible in the 1(a) Rural Agriculture zone under LEP 2000 and SEPP 21 Caravan Parks, but most forms of development that provide long term accommodation are prohibited on the site.

Manufactured homes estates are strictly limited to sites within or adjoining urban zoned land under SEPP 36. Further, seniors living developments (SEPP Housing for Seniors), residential subdivision and urban housing are all prohibited on the site.

The principal concern is that future residents will be disadvantaged by limited access to essential services and facilities. The applicant has sought to address this issue by proposing to provide some recreational facilities on-site and a private bus to provide access to local centres.

No information has been provided on the availability or cost to residents for these services. It should also be noted that continued provision of these services cannot be conditioned or guaranteed. Any loss or reduction of services would result in long term residents having unreasonably low levels of access to essential services and facilities. The risk of this would likely be reduced if the development was in closer proximity to existing urban areas.

The staff recommendation is consistent with the determination of a recent court case (*Wygiren v Kiama Council*, 2008), which refused a caravan park providing 100% long term accommodation on the basis that it was isolated residential development. It was also considered that such developments should be part of the strategic planning process in order to avoid the long term impacts associated with isolated residential development.

Councillors should be aware that any favourable determination of the application should be deferred until necessary approvals from the RTA, DECCW and NSW Office of Water are obtained.

These referrals remain outstanding due to the need for additional information and amended plans. These were identified in Council's letters dated 1/7/09 and 11/12/09, but staff considered it unreasonable and costly (for the applicant) to require this information when it would not resolve the site suitability issue.

Councillors should also be aware that similar developments such as Bayway Village (Fern Bay), Banksia Grove (Williamstown) and Village Retreat (Anna Bay) were approved under previous planning legislation. It should be noted that planning staff did not support high percentages of long term accommodation in these instances. More recently, Council approved DA 16-2004-1587-1 for a 58 site caravan park providing long term accommodation at Gordon Pl, Anna Bay. However, this does not give cause to approve the proposed development due to distinct differences in size, location and access to public transport.

Councillors should also note that this matter was deferred for inspection at its meeting on 29 June 2010. A Councillor inspection was held on 3 June 2010.

FINANCIAL/RESOURCE IMPLICATIONS

The development is unlikely to have any direct financial or resource implications for Council.

LEGAL AND POLICY IMPLICATIONS

The development is inconsistent with Council's Local Environmental Plan 2000, State Environmental Planning Policy 21 Caravan Parks and the Lower Hunter Regional Strategy (2006).

Approval of this application would set an undesirable precedent under current environmental planning legislation.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The development is not consistent with the principles of sustainable urban growth identified in the Lower Hunter Regional Strategy.

CONSULTATION

The application was exhibited in accordance with Council policy and seven (7) submissions were received. These are discussed in the Attachments.

Integrated development (DECCW and NSW Office of Water) and concurrence (RTA) referrals are required prior to favourable determination. These referrals remain outstanding and require additional information from the applicant.

In the event that Council decides to support the proposal from a site suitability perspective, Council does not have the power to resolve to approve the development without the integrated and concurrence approvals.

OPTIONS

- 1) Adopt the recommendation and refuse the development application.
- 2) Reject the recommendation and defer the application pending submission of required information for completion of the Section 79C assessment, resolution of stormwater and environmental issues and obtaining the necessary approvals from the RTA, DECCW and NSW Office of Water.
- 3) Delegate the matter to the Sustainable Planning Manager to determine the application under delegated authority once the necessary approvals are obtained and the stormwater and environmental issues resolved.

ATTACHMENTS

- 1) Locality Plan
- 2) Site Plan
- 3) Assessment
- 4) RTA Letter – 23 June 2010
- 5) Supplementary Information provided to Councillors at Site Inspection on 3 July 2010

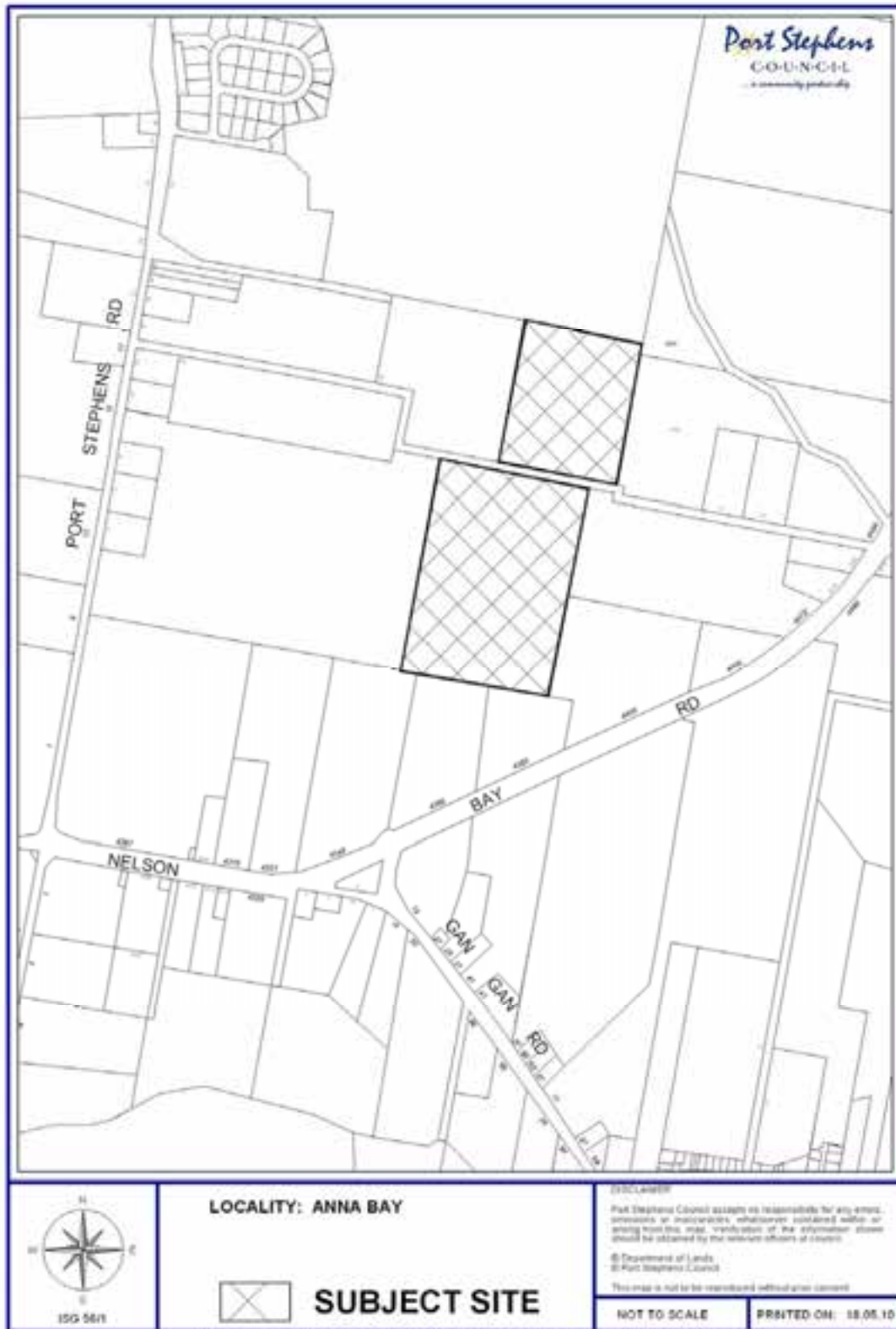
COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ATTACHMENT 1
LOCALITY PLAN



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 229 long term caravan sites, construction of a manager's residence, community hall and recreation facilities. Manufactured homes are to be installed on each caravan site.

THE APPLICATION

Owner	Bodiam Properties Pty Ltd
Applicant	Mr P Malloch

THE LAND

Property Description	Lots 2 & 4 DP 398888
Address	19 & 20 Road 580 Off Port Stephens Dr, Anna Bay
Area	30.3 hectares

THE ASSESSMENT

1. Planning Provisions

LEP 2000 – Zoning	1(a) Rural Agriculture
Relevant Clauses	Clause 11 Rural Zonings Clause 12 Subdivision in rural zones Clause 37 Development on flood prone land Clause 44 Appearance of land and buildings Clause 47 Services Clause 51A Development on land identified on Acid Sulphate Soil Maps
Development Control Plan	Section B2 Environment & Construction Section B3 Parking & Traffic
State Environmental Planning Policies	SEPP 21 Caravan Parks SEPP Infrastructure 2007
Lower Hunter Regional Strategy (2006)	

Port Stephens Local Environmental Plan 2000

Clause 11 Rural Zonings

- Permissibility

The proposal is primarily for the creation of 229 long term caravan sites and erection of manufactured homes on each of the sites. LEP 2000 defines a “camp or caravan site” as:

“a site used for the purpose of:

- (a) placing moveable dwellings within the meaning of the Local Government Act 1993 for permanent accommodation, or for the accommodation of tourists, or*
- (b) the erection, assembly or placement of cabins for the temporary accommodation of tourists.”*

The proposal is consistent with the definition of “camp or caravan sites” in LEP 2000, as Manufactured homes are considered to be “moveable dwellings” under the Local Government Act.

The site is zoned 1(a) Rural Agriculture and camp or caravan sites are permissible with development consent. The proposed manager’s residence, community hall and recreation facilities are considered permissible as they are ancillary to the caravan park.

The erection of manufactured homes on caravan sites does not require consent under the provisions of SEPP 21 and the Local Government Regulations.

- Zone Objectives

The proposed development is not considered to be consistent with the general zone objective or objective (c), and is therefore recommended for refusal.

Consideration of the relevant zone objectives (general, (a), (c), (d) and (e)) are listed below:

The general objective of the 1(a) zone is to:

“maintain the rural character of the area and to promote the efficient and sustainable utilisation of rural land and resources”.

The area surrounding the site contains a variety of rural activities and is considered typical of 1(a) zoned land in the locality. Although the development is unlikely to be visible from Nelson Bay Rd or Port Stephens Dr, the caravan park will introduce a significant suburban element which is contrary to the existing character, particularly when viewed from adjoining properties.

The proposal will also set a precedent for provision of long term accommodation in the 1(a) zone, which is likely to contribute to the loss of rural land in the locality and further erosion of its rural character.

(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

The size and density of the caravan park is likely to impact the existing amenity, but should be reasonably compatible with the existing rural activities (predominantly grazing and single dwelling development) on nearby properties. However, it should be noted that there are a wide variety of land uses permissible in the 1(a) zone, the viability of which on any adjoining properties may be reduced as a result of the amenity impact from the development.

(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

The provision of 229 (100%) long term accommodation sites in the area is considered to be a fragmented and isolated development of rural land, as it is not located close to existing centres (Anna Bay, Salamander Bay and Nelson Bay) nor identified as an urban growth area in any strategic planning document.

An additional 480 residents will impose greater demand on existing infrastructure and services such as medical facilities, educational facilities, child care facilities, sporting facilities, libraries etc, in Anna Bay, Salamander Bay and Nelson Bay.

The cost to the community will be from maintenance of infrastructure and services to an isolated development, and a reduction in availability of local services and facilities, as it is unreasonable to expect that the necessary public funding will respond in time to meet the additional demand imposed by the development, particularly since it is not part of any strategic planning process.

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

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

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

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

(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

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

Potential impacts to the environment have not yet been determined. The applicant will need to submit additional information relating to traffic, stormwater and environmental issues (as indicated in Council's letter on 11 December 2009) prior to determining the extent of impacts from the development.

(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.

The proposal is consistent with the requirements of Clause 37 Development on Flood Prone Land in LEP 2000. Further, the application was reviewed by Council's Strategic Engineer, who had no objections subject to conditions regarding compensation for loss of flood storage and construction requirements.

Clause 12 Subdivision within rural zones

The proposal includes subdivision of the caravan sites for lease purposes, which is permissible under SEPP 21 and the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005.

The development, however, proposes subdivision far exceeding what is normally permissible under Clause 12(b) and is not consistent with the intent of LEP 2000.

Clause 37 Development on flood prone land

The site is mapped as being flood prone. The development is consistent with the requirements of Clause 37, and will not unreasonably increase the incidence or severity of flood on site or adjoining properties or the risk to life and property.

Clause 44 Appearance of land and buildings

The proposal is unlikely to be visible from Nelson Bay Rd or any significant waterway or land zoned as public reserve or open space.

Clause 47 Services

The applicant proposes to connect the development to Hunter Water Corporation water and sewer services. A letter from HWC has been submitted with their indicative requirements.

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

The site is mapped as Class 3 Acid Sulphate Soils. The applicant has submitted an acid sulphate management plan which provides recommendations for managing potential acid sulphate soils disturbed during works.

State Environmental Planning Policy 21 Caravan Parks

SEPP 21 is applicable to the development for 229 caravan sites and associated facilities.

Clause 6 – Definitions

SEPP 21 defines “caravan parks” as:

“land (including a camping ground) on which caravans (or caravans and other moveable dwellings) are, or are to be, installed or placed.”

The proposal is not consistent with this definition. Although the definition allows for the installation of an undefined percentage of moveable dwellings, there are no caravans proposed to be installed or placed on the site as part of the development.

However, *Wygiren v Kiama* (2008, NSWLEC 56, File No. 11026 of 2007) found that the caravan park definition in SEPP 21 only ensures that references to caravan parks in LEPs include those specified in the SEPP. Nothing prevents a definition in a Local Environmental Plan being more inclusive than the definition in the SEPP.

The remaining clauses in SEPP 21 are still considered applicable to the proposal.

Clause 8 Development consent required for caravan parks

Clause 8(2) requires Council to determine whether any sites are suitable for long term accommodation, as defined in the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005.

The site is not considered suitable for a caravan park providing 100% long term accommodation due to its location.

The site is 1.2km from Anna Bay (3km by road), 3.5km from Salamander Bay and 7.5km from Nelson Bay. Further, the site is not within any urban growth areas identified in the Lower Hunter Regional Strategy (2006), Community Settlement and Infrastructure Strategy and Anna Bay Strategy.

The development is similar in nature to manufactured home estates and seniors living developments, both of which are prohibited unless within or adjoining existing urban areas.

A recent court case (*Wygiren v Kiama Council* 2008, NSWLEC 1233, File No. 11026 of 2007) noted that SEPP 36 Manufactured Home Estates and SEPP (Housing for Seniors or People with a Disability) 2004 provided a “sensible contemporary approach” and reflect the Department of Planning’s policy to locating developments for long term accommodation.

The application was referred to Council’s Strategic and Community Planning Sections, who both objected to the development based on the location.

Clause 10 Matters to be considered by Councils

(a) Whether the site is particularly suitable for a caravan park providing long term accommodation

The site is not considered to be particularly suitable for long term accommodation.

Residential development or subdivision is not permissible in the 1(a) zone. The site is not within any future urban growth area identified in the Lower Hunter Regional Strategy (2006), Community Settlement and Infrastructure Strategy and Anna Bay Strategy.

Similar style developments are prohibited under both SEPP 36 and SEPP Housing for Seniors, as these types of developments are restricted to land within or adjoining urban zoned areas.

It is considered that long term accommodation should be located in close proximity to existing urban areas, as it minimises costs associated with maintaining infrastructure and reduces the risk of future residents being unreasonably isolated from services and facilities.

The site also has value as rural land, and is identified in the applicant's flora and fauna report as having significant environmental value, despite the site being previously sand mined.

(b) Whether there is adequate provision of tourist accommodation in the locality and whether any tourist accommodation will be displaced by the proposed long term accommodation

The Tomaree peninsula contains a large quantity and variety of tourist accommodation. The proposed 229 long term caravan sites are unlikely to have any impact on the availability or viability of tourist accommodation on the Tomaree Peninsula.

(c) Whether there is adequate low cost housing in the locality

There is no information available on the amount of low cost housing on the Tomaree Peninsula, but Council's Community Planning Section and State Environmental Planning Policy Affordable Rental Housing acknowledge the need for expansion of existing low cost housing stock.

The proposal will provide a significant increase in the quantity and variety of housing stock in the locality.

However, the applicant has not provided any information regarding the likely cost of sites in the development, so it cannot be determined to what extent the development can be considered low cost housing (in comparison to existing housing available on the Tomaree Peninsula).

(d) Whether necessary community facilities and services are available within the park or locality and whether they are accessible to occupants

A key concern with the development is its isolated location and distance to essential services and facilities provided in Anna Bay, Nelson Bay and Salamander Bay.

The proposal will include a community/recreation hall containing a medical room, hairdresser, small library, computer room, theatre, games and craft room, gymnasium and swimming pool.

Long term residents will require a wide range of services and facilities (medical, educational, sporting, commercial and shopping facilities etc) that will not be available within the development.

To address this issue, the applicant proposes to run a bus service from the development to local centres. No information has been provided on the frequency or cost of the bus service.

It should be acknowledged that Council cannot condition or require the continued provision of the bus service or proposed facilities. Given the sites location, any resident unable to access these services (either as a result of reduced provision, cost, access issues, location) would be unreasonably impacted and would not have equitable access to essential services.

SEPP 36 and SEPP Seniors Housing require similar style development to be located within or adjacent to existing urban areas, primarily so that future long term residents have equitable access to essential services and facilities. This is supported by the Lower Hunter Regional Strategy, Council's strategic planning policies and LEP 2000, which require residential development to be located close to existing urban areas.

(e) Guidelines issued by the Director

The proposal is not known to be contrary to any guidelines.

(f) Provisions of the Local Government (Caravan Parks and Camping Grounds) Transitional Regulation 1993

An assessment of the relevant requirements in the Local Government regulations has been undertaken by Council's Environmental Services. The proposal was considered consistent with the requirements of the regulations, subject to recommended conditions.

State Environmental Planning Policy 36 Manufactured Home Estates

The proposed development, which involves erection of 229 manufactured homes, fits the definition of a "manufactured home estate", which means:

"land on which manufactured homes are, or are to be, erected."

Schedule 2 prohibits manufactured homes in Port Stephens unless it is on land that is either zoned residential or identified for urban growth within a Regional Strategy.

Manufactured home estates are prohibited on the site, as it is zoned 1(a) Rural Agriculture and is not within any urban growth area identified in the Lower Hunter Regional Strategy.

The applicant however, contends that the development is a caravan park and thus permissible under LEP 2000 and SEPP 21.

State Environmental Planning Policy (Infrastructure) 2007

The development will have capacity for more than 200 cars and is captured by Schedule 3 Traffic generating development to be referred to the RTA.

Concurrence from the RTA has not been obtained at this stage. Referral to the RTA is pending submission of amended traffic information requested on 1/7/09 and 11 December 2009.

Lower Hunter Regional Strategy

Although the proposal is not for a rezoning, it is appropriate to consider the Strategy in this instance as the development will constitute a significant urban expansion for the locality. The Strategy provides a mechanism, via the Urban Development Program, to properly consider and designate appropriate areas for urban expansion on a regional basis.

The site is mapped as an area known for rural land and environmental assets (p32) and is not within existing or proposed urban areas (p13). Further the Strategy states an intention of limiting further dwelling entitlements in rural areas (p37).

The Strategy states that land use proposals outside the designated growth areas should only be considered where consistent with the Sustainability Criteria in Appendix 1. The proposal is inconsistent with criteria 1, 2, 6 and 8. Consideration of the proposal against the relevant criteria is listed below:

1. Infrastructure Provision

The proposal includes provision of some services and facilities within the caravan park. No detail has been provided on operation of these services. Further, continued operation of these services cannot be guaranteed or conditioned. Any loss or reduction in services will have a significant impact on residents in the caravan park. There is also a wide range of essential services and facilities that will not be provided on-site.

The location of the site increases the potential for residents to be isolated from essential services and facilities, which is less likely to be the case if the development were to be located within or adjacent to existing urban areas (as required by SEPP 36 and SEPP Housing for Seniors).

2. Access

Residents of the development would have a reduced level of access to essential services and facilities provided in local centres, and would be reliant on cars or the proposed private bus service for access.

No information has been provided on frequency or cost of the bus service. Any resident unable to access the private bus service or car for transport would result in unreasonable isolation that would not be the case if the development was within or adjoining existing urban areas.

3. Housing Diversity

It is considered that additional low cost housing stock is required on the Tomaree Peninsula, and that the proposal will increase the housing diversity currently available. However, no information has been provided to determine whether the development will actually provide a low cost housing option in comparison to housing already available in Nelson Bay, Anna Bay and Salamander Bay.

6. Natural Resources

The site is not considered to be high quality agricultural land. Although the proposal will result in the loss of some rural land, it is not likely to significantly reduce the amount available in the locality. However, this proposal will create a precedent in the 1(a) zone, which may result in continued and unsustainable loss of rural land in the area.

7. Environmental Protection

Additional information, particularly with regard to water quality (ground water) and flora and fauna, is required to determine whether the development will unreasonably impact the environment. This information, identified by Council on 11 December 2009, will need to be provided prior to these issues being resolved.

8. Quality and Equity in Services

Residents of the caravan park will not have the same level of access to essential services and facilities available to those residents located in existing urban areas. Residents in existing urban areas are likely to be impacted by the reduction in services and facilities as a result of the additional demand generated by residents of the caravan park. These impacts are likely to be exacerbated due to the caravan park not being part of Council strategic planning strategies.

Development Control Plan 2007

Section B2 Environment & Construction Management

- Section B2.4 Acid Sulphate Soils

The development has addressed the requirements of Clause 51A in LEP 2000. The applicant has submitted an Acid Sulphate management plan.

- Section B2.5 Landfill

The proposal includes some cut and fill, particularly around the southern end of the development, where lower areas are to be filled. The applicant has proposed to use soil excavated on site for earthworks, which would meet the VENM requirements.

- Section B2.9 Mosquito Control

The applicant has submitted a vector management strategy in accordance with DCP 2007.

Section B3 Parking & Traffic

Caravan parks are required to provide 1 space per site and 1 space per 10 sites for visitor parking. The proposal includes parking for each site and 33 additional spaces, which complies with the requirement of Council's DCP.

Section 94 Contributions

It is recommended that Section 94 contributions be required as per Council policy.

The applicant has applied for a reduction in Section 94 contributions, arguing that the services and facilities provided within the caravan park will reduce demand on local services and facilities.

Following discussions with Council's Strategic and Community Planning Sections, it is considered that services and facilities provided on site will be of limited size and variety and will not significantly reduce the demand on services and facilities in Anna Bay, Salamander Bay and Nelson Bay.

The applicant's request to reduce the requirement for Section 94 contributions is not supported.

2. Likely Impact of the Development

Flora & Fauna

The site has been previously disturbed by sand mining, but still contains remnant vegetation in wetland areas, particularly in the southern part of the site. The entire site is mapped as containing Swamp Sclerophyll Forest and Swamp Oak Floodplain Forest.

It should be noted that the proposed development site has been cleared without approval. Following Council's investigation of this matter, the applicant, in consultation with Council's Environmental Services, is in the process of preparing a Property Vegetation Plan.

The applicant submitted a flora and fauna report which determined that there would be a "moderate" impact on threatened local flora and fauna species. As such, the application needs approval from the Department of Environment, Climate Change and Water under the Threatened Species Act.

Referral of this application to DECCW pending amended plans requested on 11 December 2009, addressing issues of encroachments on wildlife corridors and limiting cleared areas to the minimum amount required for the Asset Protection Zones required by the NSW RFS.

Context, Setting & Public Domain

The development will introduce a significant urban element, due to its size and density, which will not be consistent with the existing rural character of the area.

The most likely impact from the development is likely to be increased traffic along road 580 and additional demand for services and facilities in Anna Bay, Salamander Bay and Nelson Bay.

The viability of existing activities on adjoining properties, predominantly rural dwellings and grazing, is unlikely to be reduced due to the proposed setbacks, landscaping and wildlife corridors.

The development will not be visible from public areas and will not impact the public domain.

Water Management

Council's Development Engineer and NSW Office of Water requested additional information regarding stormwater and groundwater management, respectively.

This information is required prior to determining what impact the development will have on water management around the site.

Access, Transport & Traffic

- Traffic

The proposal will require construction of Road 580 from the site to Nelson Bay Rd, and a Type C intersection at the Nelson Bay Rd intersection.

The applicant has submitted a Traffic Impact Statement, which estimates an additional 69 trips during peak hours (8am to 9am and 4pm to 5pm) and states that

a Type C intersection is “theoretically unacceptable”, but will only impact the intersection for a relatively short period of time.

Council’s Traffic Engineer has requested additional traffic information, in particular design details for the Type C intersection and clarification on internal traffic flow. The application also needs to be referred to the RTA under SEPP Infrastructure following receipt of this information.

- Transport

The site is not within reasonable walking distance (considered to be 400m in SEPP Housing for Seniors) of any public transport stops or stations.

The applicant proposed to run a private bus service for residents of the development. No information has been provided about the cost or frequency of this service. Any reduction or loss of this service would seriously disadvantage residents, due to the sites location.

3. Suitability of the Site

As previously discussed, the development provides 229 sites for long term accommodation, which is not considered suitable for the site given its isolation from existing urban areas.

Environmental Constraints

The site is mapped as being prone to bushfire and flooding, and containing endangered ecological communities (see previous flora and fauna comments).

- Bushfire

The application was referred to the NSW Rural Fire Service, who issued a Bushfire Safety Authority on 11 December 2009, subject to recommended conditions.

- Flooding

The application was referred to Council’s Strategic Engineer. No objection was raised subject to conditions regarding provision of additional flood storage and management of earthworks.

4. Submissions

The proposal was advertised and notified in accordance with Council policy. Seven (7) submissions were received. The concerns raised are listed below, along with the relevant assessment comments:

- Nature of development, and whether it should be considered as a “caravan park”
- Need for additional information
- Impact regarding additional traffic and what speed limits will be imposed
- Impact of development on existing drainage system
- Impact on amenity/safety of adjoining properties

- Development unsuitable for the area due to large number of existing caravan parks
- Access to development has not been done with consultation with neighbours


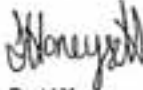
As discussed in this assessment, the proposal is considered permissible on the site as a caravan park under LEP 2000. However, further information is necessary prior to resolving the concerns raised in the public submissions.

5. Public Interest

The development is not considered in the public interest. Although the development will provide additional low cost housing on the Tomaree Peninsula and associated social and economic benefits, it is not considered to be sustainable urban growth, due to its isolation.

Isolated residential development has the potential to generate a variety of detrimental impacts, such as disadvantaging future residents as a result of limited access to services and facilities, imposing an unplanned demand on infrastructure, services and facilities and a loss/fragmentation of rural land.

ATTACHMENT 4 – RTA LETTER 23 JUNE 2010

<p>362 564 2 10/941 SH</p>	
<p>General Manager Port Stephens Council DX 21406 RAYMOND TERRACE</p> <p>PORT STEPHENS COUNCIL 24 JUN 2010 File No. 07-2236 Atten by J Gleeson Permit</p>	
<p>Attention: Joe Gleeson</p> <p>NELSON BAY ROAD (MR 108) - PROPOSED CARAVAN PARK, LOT 2 AND 4 DP 398888, PORT STEPHENS DRIVE, ANNA BAY</p>	
<p>Dear Mr Gleeson</p> <p>Attached is a copy of the RTA's letter to Mr Davoy dated 23 June 2010, regarding the subject for your information.</p> <p>Please contact me on 4924 0240 if you have any queries.</p> <p>Yours sincerely</p>	
<p> David Young Manager, Land Use Development Hunter Operations and Engineering Services</p>	
<p>23 June 2010</p>	
<p>Roads and Traffic Authority ABN 49 480 35 253</p> <hr/> <p>59 Derby Street Newcastle NSW 2300 Locked Bag 30 Newcastle NSW 2300 DX 7813 www.rta.nsw.gov.au 13 17 82</p>	

ATTACHMENT 5 - SUPPLEMENTARY INFORMATION SITE INSPECTION 3 JULY 2010

Supplementary Information



To: All Councillors & Executive Team

Re: Supplementary information for Site Inspection

File No: 16-2009-257-1

Item No: 3 from Ordinary Council Meeting on 8 June 2010

Report title: DA for 229 site caravan park, managers residence, community hall, recreation facilities at No. 19 & 20 Road 580 (Off Port Stephens Dr), Anna Bay

PURPOSE

Provide information to assist Councillors during their site inspection for the above DA.

BACKGROUND

A report was put before Council at the Committee meeting on 8 June 2010, which recommended refusal of the DA on the basis that the proposal for 229 long term caravan sites is not considered suitable for the site and is inconsistent with the aims, objectives and requirements of SEPP 21 Caravan Parks, Lower Hunter Regional Strategy and LEP 2000.

ISSUES

Staff would like to inform the Councillors of the following items prior to any resolution:

- Matters needing resolution prior to any development consent being issued

Approvals are required from RTA, NSW Office of Water and possibly DECCW prior to any consent being issued. The application was referred to these departments, but they have identified the need for additional information and amended plans prior to their respective approvals being given.

Further, the RTA has advised that concurrence will not be issued for the development if it relies on direct access to and from Nelson Bay Rd. No consideration has been given to the availability or suitability of alternative access at this stage. It should be noted that the RTA has only permitted left in, left out access for dwellings in the immediate vicinity of the site.

The applicant has been advised of the above, but it was considered unreasonable to require this information prior to resolving the key issue of site suitability due to the associated costs.

- Distance from the site to Anna Bay

The issue of the distance between the site and Anna Bay was raised during the Council meeting. The attached map shows the travel distance (via the existing road network) between the site and Anna Bay. The travel distance between the site and Anna Bay via Nelson Bay Road for the left in, left out option is approximately 8.4km

As outlined in the report, due to the location of the site, any resident having limited access to a car or frequent transport system will be unreasonably isolated from necessary services and facilities.

- Criticism for calling the development a caravan park.

The issue of the developments description was raised during the Council meeting. The applicant has proposed the development as a caravan park, and Council staff have assessed the DA on this basis.

Caravan parks are permissible under LEP 2000 and SEPP 21, but it is noted that the proposal, which will provide 229 long term sites, is similar in nature to a Manufactured Home Estates, Seniors Living Developments and residential subdivisions, which are all prohibited on the site.

Distance between site and Anna Bay



- Proposed access (3.4km)
- Left in, left out via Nelson Bay Rd (8.4km)
- Via Port Stephens Divr (4.3km)



146 Adelaide Street, Newcastle, New South Wales, Australia Phone: (08) 49812244 Fax: (08) 49812672 Email: enquiries@portstephenscouncil.nsw.gov.au

Port Stephens
COUNCIL
a community partnership

DISCLAIMER
Port Stephens Council accepts no responsibility for any errors, omissions or inaccuracies in this map. The location of the subject site should be obtained from an appropriately qualified person(s).
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SCALE: 1:25000 PRINTED ON: 02/07/10



ITEM NO. 2

FILE NO: 16-2010-54-1

DEVELOPMENT APPLICATION FOR A BOUNDARY ADJUSTMENT AND TWO DUAL OCCUPANCIES AT 644 & 650 MARSH ROAD, BOBS FARM

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Approve DA 16-2010-54-1 for a boundary adjustment and two dual occupancies at 644 & 650 Marsh Road, Bobs Farm subject to conditions contained in **Attachment 4**.

COUNCIL COMMITTEE MEETING – 13 JULY 2010

RECOMMENDATION:

	<p>Councillor Bruce MacKenzie Councillor Shirley O'Brien</p>	<p>That Council approve DA 16-2010-54-1 for a boundary adjustment and two dual occupancies at 644 & 650 Marsh Road, Bobs Farm subject to conditions contained in Attachment 4, excluding Conditions 5 and 6.</p>
--	---	--

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

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

Those against the Motion: Crs Peter Kafer, Glenys Francis, Caroline De Lyall, Geoff Dingle and Frank Ward.

The Motion on being put was carried.

ORDINARY COUNCIL MEETING - 13 JULY 2010

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

Those for the Motion: Crs Glenys Francis, Ken Jordan, Steve Tucker, Shirley O'Brien, Bob Westbury, Frank Ward and Bruce MacKenzie.

Those against the Motion: Crs Peter Kafer, Caroline De Lyall and Geoff Dingle.

BACKGROUND

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

This application is for a boundary adjustment between Lot 21 DP 601402 and Lot 51 519644. Consent is also sought to retain Dwelling C on Lot 21, which is unlawfully on the site as it was supposed to be demolished as part of a previous dual occupancy approval on the site (DA 7-1989-4182-1).

The site contains 3 existing approved dwellings, Dwellings A and B on Lot 21 and Dwelling D on Lot 51. By retaining Dwelling C, both proposed Lots 1 and 2 will contain dual occupancies,

The key issues with this proposal (and over which the applicant has raised concern) are flooding, Section 94 contributions and bushfire protection.

Section 94 for an additional dwelling is considered applicable in this instance, as the total number of approved dwellings on the site is being increased. No contributions were obtained as part of DA 7-1989-4182-1, as Dwelling C was supposed to be demolished.

Bushfire conditions have been imposed by the NSW Rural Fire Service. These conditions require the existing dwellings to have ember protection and to maintain specific areas as Inner Protection Areas. Where these measures are already in place, the applicant only needs to provide confirmation (ie from surveyor while preparing final subdivision plan) that the NSW RFS conditions have been satisfied prior to obtaining a Subdivision Certificate.

With regard to flooding, this application seeks approval to retain Dwelling C at its existing level (1.24m AHD), which is contrary to Council's flood policy. It is considered that Dwelling C should be raised to comply with the flood planning level (which in this instance is 3.0m AHD inclusive of sea level rise policy), as per any new dwelling in this location.

The applicant submitted a Flood Risk Assessment, which suggested raising the level of Dwelling C as a method to reduce the risk of damage from flooding. However, it concluded that the likely flood risk to Dwelling C did not justify the cost of raising the floor level, estimated to be \$20,000.

It is considered that the cost associated with raising Dwelling C to the flood planning level does not justify approving a dwelling that is 1.76m below the flood planning level. It is recommended that a condition be imposed requiring Dwelling C to be raised to the flood planning level.

This matter was deferred for consideration by Councillors at its meeting on 29 June 2010 to enable an inspection to take place. A Councillor inspection was held on 3 July 2010.

FINANCIAL/RESOURCE IMPLICATIONS

The development is unlikely to have any direct financial or resource implications for Council.

LEGAL AND POLICY IMPLICATIONS

Approving the retention of Dwelling C at the existing level may potentially put Council at risk if there is loss of life or damage to property as a result of flooding.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Although retention of the dwelling is unlikely to have any significant impacts, approval of dwellings under the flood planning level is inconsistent with the principals of ecologically sustainable development.

CONSULTATION

The application did not require advertising or notification under Council policy. No public submissions have been received.

The application is integrated development under the Rural Fires Act and was referred to the NSW Rural Fire Service, who provided general terms of approval. The application was also referred to Council's Strategic Engineer, who advised that Dwelling C should be required to meet the flood planning level, which is 3m AHD.

OPTIONS

- 1) Adopt the recommendation and approve the application subject to recommended conditions.
- 2) Amend the recommendation and approve the application subject to amended conditions.
- 3) Reject the recommendation and refuse the application.

ATTACHMENTS

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

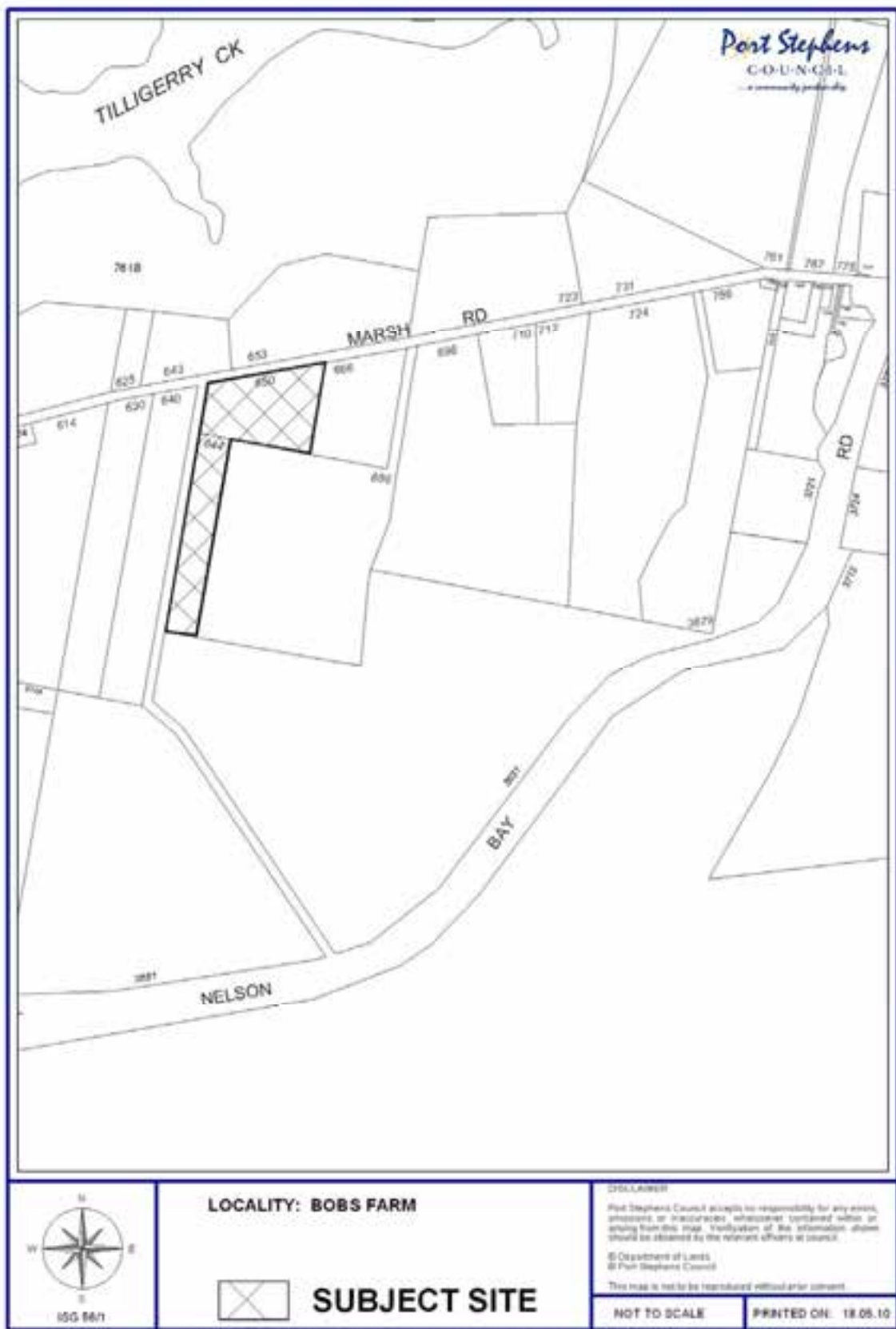
COUNCILLORS ROOM

Nil.

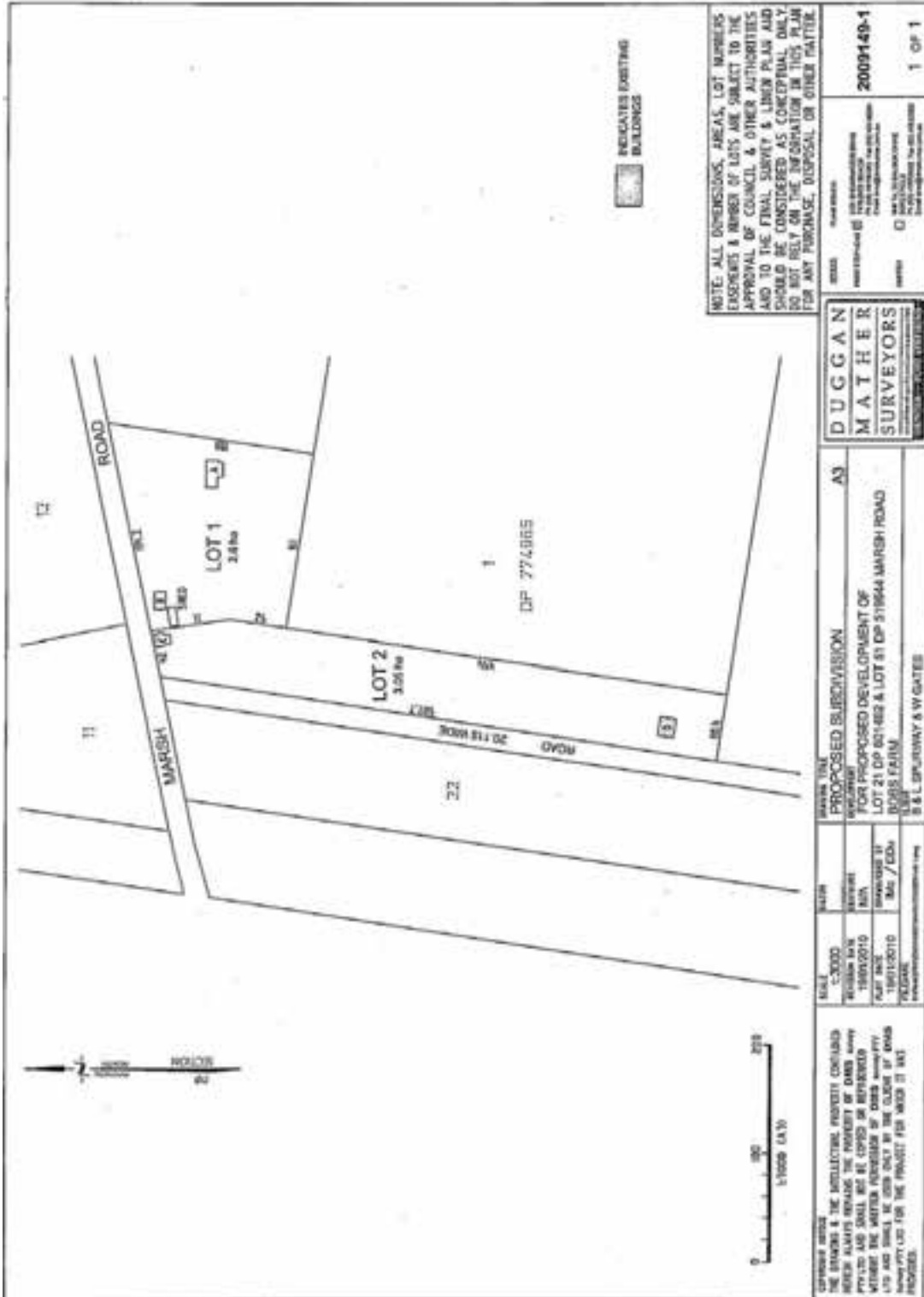
TABLED DOCUMENTS

Nil.

ATTACHMENT 1
LOCALITY PLAN



ATTACHMENT 2
SITE PLAN



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

Consent is sought for a boundary adjustment between Lot 21 DP 601402 and Lot 51 519644.

Lot 51 contains an approved dwelling. Lot 21 contains an approved dual occupancy and a dwelling (shown as Dwelling C on the plans) which was supposed to be demolished as part of DA 7-1989-4182-1.

This application also seeks approval to retain Dwelling C, which will result in dual occupancies on both proposed Lots 1 and 2.

THE APPLICATION

Owner & Applicant Mr B F Spurway

THE LAND

Property Description Lot 51 DP 5196644 and Lot 21 DP 601402
Address 644 and 650 Marsh Rd, Bobs Farm
Area 5.67 hectares

THE ASSESSMENT

1. Planning Provisions

LEP 2000 – Zoning 1(a) Rural Agriculture
Relevant Clauses Clause 11 Rural Zonings
Clause 12 Subdivision in rural zones
Clause 14 Dual Occupancies in rural zones
Clause 37 Flood prone land

Development Control Plan 2007 Section B2 Environment & Construction Management

Port Stephens Section 94 Contributions Plan

LEP 2000

Clause 11- Rural Zonings

Dual occupancies are permissible in the 1(a) zone. The proposal is consistent with the zone objectives, subject to recommended conditions.

Clause 12 – Subdivision in Rural Zones

The proposed boundary adjustment is considered permissible, as it will not create any additional lots and only involves the change of allotment boundaries.

Clause 14 – Dual Occupancies in Rural Zones

The proposed dual occupancies will not require any additional clearing, increase the number of accesses to Marsh Rd and have existing infrastructure and services. The development is considered consistent with the requirements of Clause 14(4).

Clause 37 – Development on flood prone land

The retention of the 3 approved dwellings (Dwellings A, B & D) is considered acceptable as it will not increase the frequency, severity or risk from flooding on or around the site.

The application also seeks approval to retain Dwelling C, which was required to be demolished as part of DA 7-1989-4182-1. Approval of any additional dwellings under the flood planning level increases the risk of damage to property and increases demand on emergency services, who may be required to evacuate residents.

The applicant submitted a Flood Risk Assessment, which suggested that raising the level of the dwelling was a possible way to reduce the risk from flooding. The cost of doing this was estimated to be \$20,000, which is significantly less than the cost of constructing a new dwelling. The report advised that the flood risk did not justify the cost of raising the dwelling. Further, it should be noted that the age of Dwelling C may present problems with raising its floor level.

However, following consultation with Council's Strategic Engineer, it is considered reasonable to require Dwelling C to be raised to the flood planning level, as would be the case for any new dwelling in that location.

It is recommended that a condition be imposed requiring submission of details on how the dwelling is to be raised prior to the issue of a Construction Certificate.

Development Control Plan 2007

Section B3 – Environment & Construction Management

The development is consistent with the requirements of the DCP. Each dwelling has an existing on-site sewerage management system that will not be impacted by the boundary adjustment, and the development does not trigger specific requirements for acid sulphate soils or aircraft noise.

Section 94 Contributions

The development will increase the number of approved dwellings on Lots 21 and 51. Under Council policy, Section 94 contributions are payable for an additional dwelling.

It should be noted that contributions were not paid as part of DA 7-1989-4182-1, which approved a dual occupancy on Lot 21, because a condition was imposed requiring Dwelling C to be demolished.

2. Likely Impact of the Development

Environment

The proposed boundary adjustment and retention of Dwelling C will not require significant tree removal and is unlikely to have any environmental impacts.

Adjoining properties/existing development

The development is unlikely to have any impact on the amenity or privacy of adjoining properties.

Access/Traffic

The retention of Dwelling C is unlikely to have any significant impact on traffic safety along Marsh Rd.

Services

Hunter Water services are not available to the site. Each dwelling will rely on tank water and on site sewerage management systems which currently exist on site.

3. Suitability of the Site

The development is considered suitable for the site, which is mapped as being bushfire and flood prone.

Bushfire

Because the proposal involves a boundary adjustment, it is integrated development under the Rural Fires Act and required referral to the NSW Rural Fire Service. They provided their general terms of approval, subject to conditions requiring dwellings to be protected against ember attack and for the areas around the dwellings to be maintained as Inner Protection Area.

Flooding

Council policy requires new dwellings in this location to be above the flood planning level of 3m AHD (inclusive of Councils sea level rise policy).

The application seeks approval to retain Dwelling C, which was supposed to be demolished as part of DA 7-1989-4182-1. It is considered appropriate under Council policy to require Dwelling C to be raised above the flood planning level. Any approval of dwellings under the flood planning level is likely to increase demands on emergency services during times of flooding.

It is considered that the proposal will not impact the frequency, severity or risk of flooding on adjoining properties, subject to recommended conditions.

4. Submissions

The development was not advertised or notified in accordance with Council policy. No public submissions were received.

5. Public Interest

The development will not impact any matters of public interest.

**ATTACHMENT 4
CONDITIONS**

1. A Construction Certificate is required prior to commencement of works approved by this application. The person having the benefit of this consent must appoint a principal certifying authority. If Council is not appointed as the Principal Certifying Authority then Council must be notified of who has been appointed. Note: at least two (2) days' notice must be given to Council of intentions to start works approved by this application.
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 excavated and/or filled areas of the site are to be stabilised and drained to prevent scouring and the finished ground around the perimeter of the building is to be graded to prevent ponding of water and ensure the free flow of water away from the building.
5. Dwelling C (as shown on the approved plans) shall be raised so that all habitable floor areas are above the flood planning level (3.0m AHD) prior to the issue of an Occupation Certificate and Subdivision Certificate. Details shall be submitted to and approved by Council prior to the issue of a Construction Certificate.
6. A monetary contribution is to be paid to Council, pursuant to section 80A(1) of the Environmental Planning and Assessment Act, 1979 and Section 94 of the Environmental Planning and Assessment Act, 1979 towards the provision of the following public facilities:-

	Per Lot	Total
Civic Administration	(\$384)	(\$384)
Public Open Space, Parks and Reserves	(\$2083)	(\$2083)
Sports and Leisure Facilities (\$4908)	(\$4908)	
Cultural and Community Facilities	(\$2468)	(\$2468)
Roadworks	(\$191)	(\$191)
Fire & Emergency Services	(\$1395)	(\$1395)

Note:

- a) The above contributions have been determined in accordance with Port Stephens Section 94 Contribution Plan. A copy of the Contributions Plan may be inspected at Council's Customer Service Counter, 116 Adelaide Street, Raymond Terrace.
- b) Contributions are to be paid prior to the **issue of a construction certificate**.
- c) The amount of contribution payable under this condition has been calculated

on the basis of costs as at the date of original consent. In accordance with the provisions of the Contributions Plan, this amount shall be INDEXED at the time of actual payment in accordance with movement in the Consumer Price Index as published by the Australian Bureau of Statistics. In this respect the attached fee schedule is valid for twelve months from the date of original consent.

7. The development has been granted an approval from the NSW Rural Fire Service dated 12 April 2010 under their relevant legislation. Where conditions are imposed by the authority and included in this consent, the development shall comply with the general terms of approval.
8. At the issue of subdivision certificate and in perpetuity, the land surrounding the existing dwellings shown as Dwellings A, B and C on the proposed subdivision plan prepared by Duggan Mather Surveyors dated 19/1/2010 and numbered 2009149-1 on proposed Lots 1 and 2 to a distance of 20m, shall be maintained as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bushfire Protection 2006' and the NSW Rural Fire Services document 'Standards for asset protection zones'.
9. At the issue of Subdivision Certificate and in perpetuity, the land surrounding the existing dwelling shown as Dwelling D on the proposed Lot 2 on proposed subdivision plan prepared by Duggan Mather Surveyors dated 19/1/2010 and numbered 2009149-1 shall be maintained as an inner protection area (IPA) as follows:
 - North for a distance of 35m as an IPA;
 - East for a distance of 20m as an IPA;
 - South for a distance of 25m as an IPA;
 - West for distance of 20m as an IPA as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bushfire Protection 2006' and the NSW Rural Fire Services document 'Standards for asset protection zones'.
10. Water, electricity and gas are to comply with section 4.1.3 of 'Planning for Bushfire Protection 2006'.
11. Property access roads shall comply with section 4.1.3 (2) of "Planning for Bushfire Protection 2006'.
12. Existing dwellings on proposed Lots 1 and 2 are required to be upgraded to improve ember protection. This is to be achieved by enclosing all openings (excluding roof tile spaces) or covering openings with a non-corrosive metal screen. Where applicable, this includes any sub floor areas, openable windows, doors vents, weepholes and eaves.
13. Roofing on the existing dwelling shown as Dwelling D on the proposed Lot 2 on proposed subdivision plan prepared by Duggan Mather Surveyors dated 19/1/2010 and numbered 2009149-1 shall be gutterless or guttering and valleys

are to be screened to prevent the build up of flammable material. Any materials used shall have a Flammability Index of no greater than 5 when tested in accordance with Australian Standard AS1530.2 – 1993 'Methods for Fire Tests on Building Materials, Components and Structures – Test for Flammability of Materials'.

14. A Subdivision Certificate must be obtained from Council within five (5) years of the date of this consent, otherwise this approval will lapse. Alternatively, where works are associated with the subdivision, such works must be commenced prior to the expiry of the five (5) year period otherwise this consent 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.
 15. A bushfire report certifying compliance with the Bushfire Safety Authority conditions imposed by the Rural Fire Service shall be submitted to Council **prior to the issue of the Subdivision Certificate**.
 16. 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.
 17. All building work must be carried out in accordance with the provisions of the *Building Code of Australia*.
 18. 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.
 19. 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.
20. 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.

21. 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.
22. 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.
23. 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.**
24. 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.

25. 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.
26. 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.
27. **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.
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**.

ITEM NO. 3

FILE NO: 16-2010-102-1

DEVELOPMENT APPLICATION FOR SINGLE STOREY DWELLING AT NO. 2258 NELSON BAY ROAD, WILLIAMTOWN

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Refuse Development Application 16-2010-102-1 for the construction of a single storey brick veneer dwelling at LOT: 7, DP 224476, 2258 Nelson Bay Road, Williamtown for the reasons contained below.

The development represents an unacceptable level of exposure to aircraft noise and does not meet the acceptability criteria under the Australian Standard AS2021-2000 or DCP2007.

COUNCIL COMMITTEE MEETING – 13 JULY 2010

RECOMMENDATION:

	<p>Councillor Bruce MacKenzie Councillor Steve Tucker</p>	<p>That Council:-</p> <ol style="list-style-type: none"> 1. Approve Development Application 16-2010-102-1 for the construction of a single storey brick veneer dwelling at LOT: 7, DP 224476, 2258 Nelson Bay Road, Williamtown, in principle and; 2. That staff provide draft conditions of consent for consideration by Council at the Council Committee meeting of 27 July 2010.
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In accordance with the Section 375A, Local Government Act 1993, a division is required for this item.

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

Those against the Motion: Crs Glenys Francis, Geoff Dingle and Frank Ward.

Caroline De Lyall abstained from voting.

ORDINARY COUNCIL MEETING - 13 JULY 2010

Cr Glenys Francis left the meeting at 8.02pm prior to voting on the matter.

202	Councillor Ken Jordan Councillor Steve Tucker	It was resolved that the recommendation be adopted.
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In accordance with the Section 375A, Local Government Act 1993, a division is required for this item.

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

Those against the Motion: Crs Peter Kafer, Caroline De Lyall, Geoff Dingle and Frank Ward.

Cr Glenys Francis returned to the meeting at 8.15pm following voting on the matter.

BACKGROUND

The purpose of this report is to present a development application to Council for determination at the request of the Mayor. The proposed development consists of a single storey dwelling which is to be located in an area which is significantly affected by noise pollution from the nearby RAAF Base Williamtown. The area is identified as being located within the 25-30 contour of the Australian Noise Exposure Forecast (ANEF) 2025.

Consent is sought for the construction of a single storey brick veneer dwelling with a Colorbond roof at LOT: 7, DP 224476, 2258 Nelson Bay Road, Williamtown. The site is identified as being aircraft noise affected and is mapped within the 25-30 contour of the Australian Noise Exposure Forecast (ANEF) 2025. Section B2.13 (Aircraft Noise) of Port Stephens Development Control Plan (DCP) 2007 and Australian Standard 2021-2000-Acoustics-Aircraft Noise Intrusion-Building Siting and Construction, specify that development within these contours unacceptable.

Australian Standard 2021-2000 does however, make provision for the planning authority (Council) to determine any development that may be necessary within an existing built-up area (an area zoned residential) designated as unacceptable providing that such development can achieve the aircraft noise reduction (ANR) in accordance with this standard. In order to achieve this requirement, the applicant/owner has provided an acceptable acoustic report prepared by Reverb Acoustics dated April 2010 (Report No. 10-1476-R1). This report concludes that the proposed dwelling can comply "providing the recommendations and procedures outlined in this report are followed, internal noise levels will be consistent with the interior noise design levels of AS2021-2000".

Council concedes that the property is not zoned residential (it is zoned 1(a) RURAL AGRICULTURE "A"), however, although it is identified as Prime Agricultural Land, that does not preclude the construction of a residential dwelling. Adjacent properties and the area generally, consist of residential type dwellings.

The property owner, Mr Moxey, presently resides on the adjacent property located at 2234 Nelson Bay Road, Williamtown and has resided in this location for many years.

Council must assess this application under Section 79C of the Environmental Planning and Assessment Act 1979. Accordingly, Australian Noise Exposure Forecast 2025 and the associated impacts and effects upon the health and amenity of property owners must be considered.

The subject site is also burdened by being identified as flood prone land and is subject to a flood planning level of 3.0m AHD. 3.0m AHD is an increase of 500mm over the previous flood planning level due to a sea level rise increase in this vicinity.

This matter was deferred for consideration by Councillors at its meeting on 29 June 2010 to enable an inspection to take place. A Councillor inspection was held on 3 July 2010.

FINANCIAL/RESOURCE IMPLICATIONS

Nil.

LEGAL AND POLICY IMPLICATIONS

Approval is sought for Council to approve a dwelling within the 25-30 contours of Australian Noise Exposure Forecast 2025. This is inconsistent with Section B2.13 of Port Stephens Development Control Plan 2007 which addresses aircraft noise and considers residential development within these contours as unacceptable.

Consent of this application may represent a precedent which has the potential to be referred to in future development applications as a reason for consent noting fairness, consistency and equity in the application of Council's planning provisions.

In March 2010, Council sought legal advice from its lawyers, Harris Wheeler, regarding the matter of aircraft noise and Council's role as a consent authority. The advice received was:

Council's role as consent authority is quite narrow – it is to consider and determine applications as provided for in the EP&A Act. This applies to Council, whether that role is exercised by the Elected Council or by a Council employee under delegation. Subsection 79C(1) of the EP&A Act sets out the matters that Council is required to consider when determining a development application. Those matters include but are not limited to DCP2007 and *"the suitability of the site for the development"*. Council should exercise great caution when it takes into account matters that are not prescribed by 79C(1) of the EP&A Act. Consideration of irrelevant matters may invalidate any consent issued by Council.

1. The relevance of ANEF 2012 and ANEF 2025 to Council's consideration of a DA

1.1 ANEF maps, such as ANEF 2012 and ANEF 2025, are an essential part of the operation of AS2021-2000. AS2021-2000 can be summarised as follows:

1.1.1 The purpose of AS2021-2000 is expressed as follows:

This Standard is concerned with land use planning and building treatments in the vicinity of an airport. The objective is to provide guidance to regional and local authorities, organisations, communities and others associated with urban and regional planning and building development on the siting and construction of new buildings against aircraft noise intrusion and on the acoustical adequacy of existing buildings in areas near aerodromes.

1.1.2 AS2021-2000 provides guidance on land use planning to local authorities, such as Council, by providing a mechanism for predicting aircraft noise exposure to occupants of certain types of buildings on land in the vicinity of airports.

1.1.3 AS2021-2000 predicts aircraft noise exposure using ANEF maps which are described as follows:

This is a contour map showing the forecast of noise exposure levels that will exist in a future year. It may be for a particular year, generally about 10 years from the date of issue, or, in some busier civil airports, it may represent the airport operating at "ultimate capacity". It is based on a firm forecast of aircraft movement numbers and operating times, aircraft types, destinations, flight paths and a given use of runways at the airdrome.

1.1.4 ANEF maps are created using a complex formula. It is sufficient, for the purposes of this advice, to state that the ANEF formula takes into account survey evidence of the reaction of Australian communities to certain types and frequency of aircraft movements at different times of the day and night, and does so in a manner that is consistent with overseas practice.

The formula forecasts noise exposure in ANEF units, with higher unit numbers having increased projected aircraft noise exposure. The ANEF units are collated into ANEF zones or contours.

1.1.5 Clauses 2.32 and 2.3.3 of AS2021-2000 in conjunction with Table 2.1 determine the acceptability of types of buildings on certain sites by reference to the ANEF contours for the relevant development site.

1.1.6 Clause 2.3.3 and table 2.1 of AS2021-2000 determine that the subject site is unsuitable for the following reasons:

1.1.6.1 The development proposed in the development application is a "House" for the purposes of Table 2.1 of the Standard.

1.1.6.2 ANEF 2025 was developed in accordance with AS2021-2000, to predict aircraft noise exposure in locations about RAAF Base Williamstown and the Salt Ash Weapons Range up to 2025. It specifically accounts for the introduction of the Joint Strike

Fighter. The site, the subject of this DA has an ANEF of between 25 and 30 under ANEF 2025

- 1.1.6.3 ANEF 2025 was prepared in accordance with AS2021-2000, to predict aircraft noise exposure in locations surrounding RAAF Base Williamtown and the Salt Ash Weapons Range up to the year 2025. It specifically accounts for the proposed introduction of the Joint Strike Fighter towards the year 2017-2018. The site, subject of this DA is affected by an ANEF.

The subject site is "unacceptable" for the dwelling proposed by the DA, when the criteria in Table 2.1 of AS2021-2000 are applied. That is, AS2021-2000 considers the construction of new residential type dwellings within these contours as unacceptable.

It is considered that fringe areas of development such as applicable surrounding the subject site do not constitute a trigger of Note 4 of Table 2.1 of AS2021-2000 and as such is deemed as an unacceptable site for the proposed development.

This is further reinforced by clause B2.13 of DCP2007 that considers those areas defined as 'built-up' areas in the Australian Standard to be zoned residential. As this site is zoned rural agriculture the provisions of Note 4 in the Australian Standard (AS2021-2000) Table 2.1 or Note 1 of B2.C72 of DCP2007 do not apply.

- 1.1.7 Part B2.13 of Port Stephens Development Control Plan 2007 effectively adopts AS2021-2000 as it relates to the promulgated ANEF map. ANEF 2025 is the promulgated map that should be legally used as the reference template for all assessments referring to AS2021-2000 or DCP2007. The superseded ANEF2012 map must be considered pursuant to Section 79C (1)(a)(iii) of the EP&A Act due to the impacts of that map and the planes in use, remaining present until the introduction of the JSF aircraft.
- 1.1.8 Council is also required to consider the suitability of the development site for the development proposed by the DA (Section 79C (1)(d) of the EP&A Act). Aircraft noise is one element of determining the suitability of the development site for the proposed dwelling. AS2021-2000 is the appropriate method of assessing the suitability of the subject land for the proposed dwelling for the following reasons:
- 1.1.9 AS2021-2000 has been described by the NSW Court of Appeal as "*a valuable tool for planning land use about airports*".
- 1.1.10 AS2021-2000 has been applied in numerous merit appeals in the Land and Environment Court.

- 1.1.11 Directions were issued by the then Minister for Planning pursuant to s.117 of the EP&A Act that referred to ANEF contours and specifically included the following restraint on the content of local environmental plans:

Draft Local Environmental Plans that rezone land:

- (a) for residential purposes or to increase residential densities in areas where the ANEF is between 20 and 25, or*
- (b) for hotels, motels, offices or public buildings where the ANEF is between 25 and 30, or*
- (c) for commercial or industrial purposes where the ANEF is above 30, shall include a provision to ensure that development meets AS2021 regarding interior noise levels.*

- 1.1.12 AS2021-2000 is the only comprehensive and widely accepted means of predicting aircraft noise exposure and site suitability. It is consistent with measures adopted in other jurisdictions.

2. Potential legal consequences of granting consent to the DA

- 2.1 For the following reasons, Council may expose itself to potential liability for damages to occupants or owners of the subject site if the Elected Council determines the DA by way of approval:

- 2.1.1 Council owes a duty of care to the applicants and to subsequent owners/occupants of the development land, to exercise its functions as the consent authority with reasonable care, and may be liable for damages if it fails to exercise that care.

One aspect of that duty of care is to properly assess the suitability of the development site for the development proposed by the DA (s.79C(1)(d) of the EP&A Act).

AS2021-2000 and ANEF2025 provide a well established and scientific based means of assessing the suitability of the development site for the development proposed by the DA. AS2021-2000 has been applied by, or referred to with approval of, various Courts; been referenced in various local environmental plans; and referenced in directions issued by the Minister for Planning pursuant to s.117 of the EP&A Act.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The social implications directly attributable to the impacts of aircraft noise and increased land-use conflicts include reduced residential amenity and the potential restriction of the military operations of RAAF Base Williamtown and domestic/international operations of 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 and within the operational flight corridors of RAAF Base Williamtown and Newcastle Airport. Cost may be significant on a local and national scale.

Aircraft noise has the potential to adversely impact upon residential amenity. To permit the erection of dwellings in areas identified as “*unacceptable*” on ANEF maps may unreasonably restrict the lawful ongoing military operations of RAAF Base Williamstown and domestic/international flights into and out of Newcastle Airport.

The site is also subject to being intermittently flooded due to the low lying nature of the block. While a building area can be filled to promote flood free land under most circumstances the fact of the site having to be filled to an assumed depth of 1-1.5m should be considered in the context of site suitability.

CONSULTATION

Only certain types of development are required to be advertised or notified. The application was not required to be exhibited as there was no trigger of Clause A1.9 DCP2007 (Advertising and Notification) due to the type of development under consideration.

OPTIONS

Council has three options to consider regarding this application:

- 1) Refuse the application as recommended.
- 2) Conditionally approve the application.
- 3) Defer a decision until such time as Council has considered and adopted a revised planning framework which addresses aircraft noise impacts.

ATTACHMENTS

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

COUNCILLORS ROOM

Development plans and elevations.

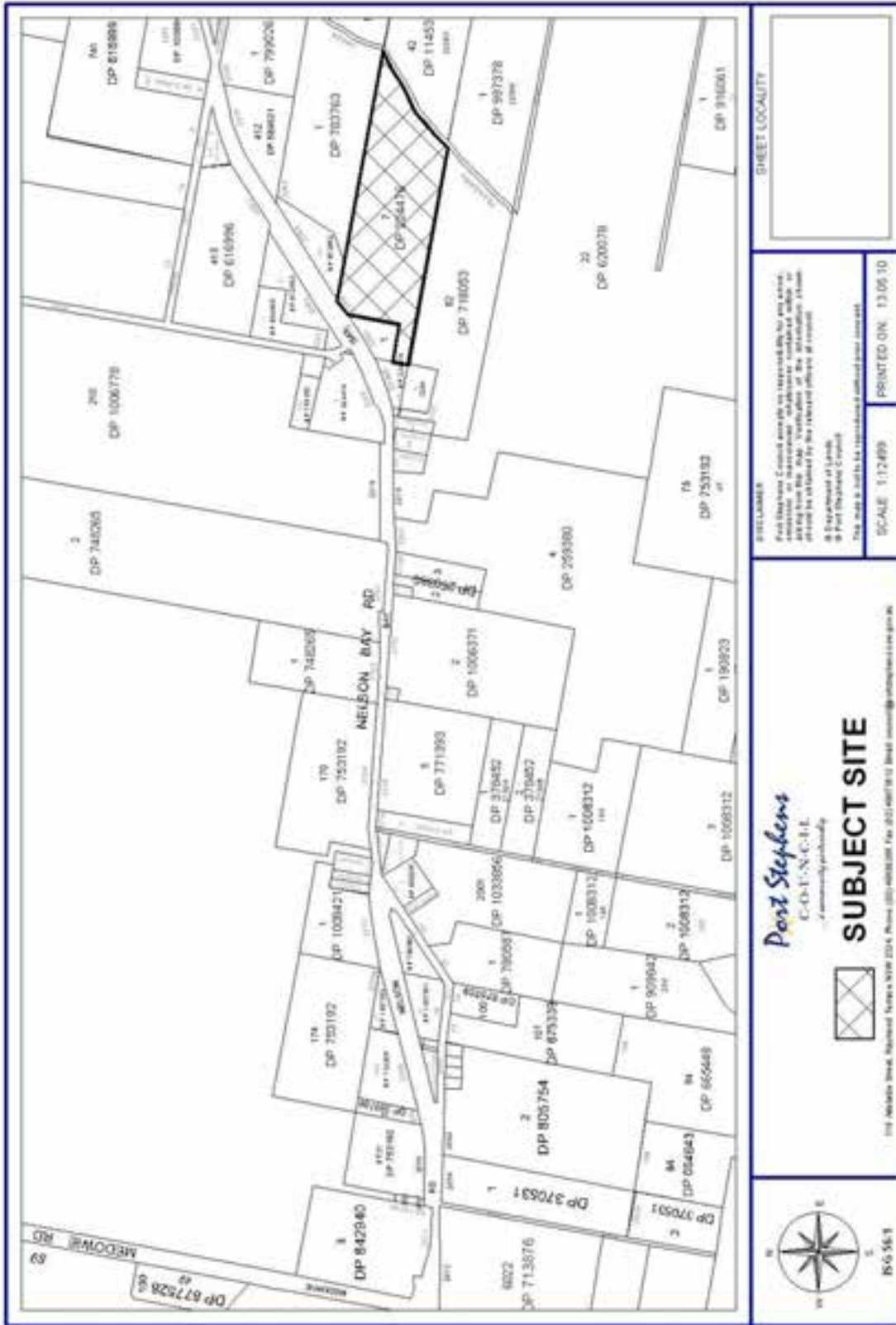
Statement of Environmental Effects.

Aircraft Noise Impact Statement prepared by Reverb Acoustics dated April 2010 (Report No. 10-1476-R1).

TABLED DOCUMENTS

Nil.

ATTACHMENT 2
SITE PLAN



SHEET LOCALITY

DISCLAIMER
Port Stephens Council accepts no responsibility for any errors, omissions or inaccuracies, whatsoever contained within or arising from this map. Verification of the information shown should be obtained by the interested parties if required.
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Port Stephens
COUNCIL
A community partnership

SUBJECT SITE

101 Adelaide Street, Nelson Bay NSW 2264. Phone: (08) 4928 2000 Fax: (08) 4928 2001 Email: info@portstephens.nsw.gov.au



**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 to erect a single storey brick and tile dwelling upon an earthen mound.

THE APPLICATION

Owner	Mr N W Moxey
Applicant	Newcastle Quality Constructions (McDonald Jones Homes)
Detail Submitted	Development Plans Statement of Environmental Effects Acoustic Report

THE LAND

Property Description Address Area	Lot 7, DP 224476 2258 Nelson Bay Road, Williamtown 11.50 Hectares
Dimensions	North Boundary 640 metres (Approx) South Boundary 560 metres (Approx) East Boundary 300 metres (Approx) West Boundary irregular in shape
Characteristics	The allotment is generally flat and floodprone. It is proposed to erect the dwelling upon an existing mound in order to achieve a suitable flood free finished habitable floor level of three (3) metres AHD. The property is identified as being within the 25-30 ANEF 2025 contours.

THE ASSESSMENT

1. Planning Provisions

LEP 2000 – Zoning	1(a) Rural Agriculture “A”
Development Control Plan	Port Stephens Development Control Plan 2007 – B2.13 Aircraft Noise

MINUTES FOR ORDINARY MEETING – 13 JULY 2010

ATTRIBUTE	PROPOSED	REQUIRED	COMPLIES
LEP Requirements			
Floor to Space Ratio	378m ²	N/A	Yes
Height	6.220m	9m	Yes
DCP Requirements			
Number of Storeys	1	Generally maximum of 2	Yes
Building Line Setback	85m	18m	Yes
Side Setback	60m to North Boundary	900mm	Yes
	80m to nearest adjacent property boundary	900mm	Yes
	120m to South Boundary	900mm	Yes
Rear Setback	400m	900mm	Yes
Resident Parking	2	2	Yes
BASIX	New dwelling valued at \$269,605	Yes	Yes
Privacy	N/A	N/A	Yes

1. Discussion

The proposed dwelling is permissible on this allotment and generally complies with Port Stephens Development Control Plan 2007 (DCP) with the exception of Section B2.13 Aircraft Noise.

Council's DCP advises that ANEF contour charts must be considered in conjunction with Australian Standard 2021-2000 – Acoustics – Aircraft Noise Intrusion – Building Siting and Construction.

ANEF contour charts provide a broad-scale planning tool for identifying areas affected by aircraft noise and the degree to which areas are affected. Depending on the degree of impact, development may be acceptable, conditionally acceptable or unacceptable.

This property was not identified on the ANEF 2012 contour chart as being affected by aircraft noise, however, on the recently adopted ANEF 2025 contour chart, it falls within the 25-30 ANEF contour. Australian Standard 2021-2000 identifies the proposed construction of dwelling houses within these contours as unacceptable.

An acoustic report, prepared by an acoustic engineer, has been submitted by the applicant. The report demonstrates that Australian Standard 2021-2000 has been considered in the design of the building and identifies those measures which must be incorporated into the construction to provide a reasonable level of noise attenuation.

An appropriate driveway plan for submission to the RTA for concurrence in accordance with Cl.42 of LEP2000.

The applicant has not provided sufficient information to date in this regard. <-This is a note only.

The site is subject to a Flood Planning Level (FPL) of 3.0m AHD, this incorporates a 500mm increase due to sea level rise (SLR). This requires an anticipated 1-1.5m of fill for the building pad.

2. Likely Impact of the Development

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

3. Suitability of the Site

The proposed dwelling site is unsuitable in regard to its location within the 25-30 contours of ANEF 2025. Other aspects of the development are considered acceptable.

Intermittent flooding of the site is anticipated from time to time however the increase of the building pad to the FPL will safeguard occupants for anticipated flooding events up to the 1% AEP.

4. Submissions

The application was not required to advertised/notified under Port Stephens Development Control Plan 2007.

5. Public Interest

This proposal, if approved, will have major ramifications on how Council is perceived to assess development applications which are contrary to the principles and controls of its DCP. Section B2.13 of Port Stephens Development Control Plan 2007 and Australian Standard 2021-2000 consider the construction of dwellings within the 25-30 contour to be unacceptable. Approval of this application will set a precedent within the Port Stephens Local Government Area and compromise the effectiveness of the DCP.

ITEM NO. 4

FILE NO: PSC2006-0806

HUMAN ADVERTISEMENTS WITHIN THE ROAD RESERVE

REPORT OF: PAUL MINETT - ACTING MANAGER, ENVIRONMENTAL SERVICES
GROUP: SUSTAINABLE PLANNING

RECOMMENDATION IS THAT COUNCIL:

- 1) Not endorse the practice of advertising within road reserves or on other public land by businesses that use staff to display advertisements to passing motorists.
- 2) Advise businesses that engage in this type of advertising that enforcement action will be considered to prohibit the practice if public safety risks are evident.

COUNCIL COMMITTEE MEETING – 13 JULY 2010

RECOMMENDATION:

	<p>Councillor Glenys Francis Councillor Peter Kafer</p>	<p>That Council:-</p> <ol style="list-style-type: none"> 1. Defer the matter to allow Councillors to receive a copy of the information provided at public access. 2. Councillors be provided with details with respect to the possibility of establishing standards for advertising within road reserves such as development applications or other standards.
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ORDINARY COUNCIL MEETING - 13 JULY 2010

<p>203</p>	<p>Councillor Glenys Francis Councillor Peter Kafer</p>	<p>It was resolved that the Council Committee recommendation be adopted.</p>
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BACKGROUND

The purpose of this report is to seek Council's direction regarding businesses that engage in "wobble board" advertisement. This form of advertising usually involves young employees being engaged to stand in prominent roadside locations to display advertising placards and gain the attention of passing motorists. It is an advertising strategy that is most commonly used by fast food businesses and is from time to time the subject of complaint to Council.

Recently, Council Rangers warned a fast food retailer in Raymond Terrace that the practice of wobble boarding was dangerous in that it distracted motorist's attention and did not comply with Council's planning legislation as advertising is an activity which requires development consent. The Ranger's action in this matter was prompted by a complaint from the public.

The retailer has had discussions with Council officers and the Mayor regarding this matter and has indicated a desire to continue the practice.

FINANCIAL/RESOURCE IMPLICATIONS

Businesses who desire to carry out this type of advertising advise that it is an inexpensive and effective method of drawing attention to their business. The activity involves employment of young staff who would not be employed if Council prohibited the practice and chose enforcement.

This form of advertising is not widespread and enforcement does not involve a significant resource commitment by Council.

LEGAL, POLICY AND RISK IMPLICATIONS

The practice of "wobble boarding" would be defined as "advertising" under Councils LEP.

Advertising is an activity which requires development consent.

Council does not permit advertising within its road reserves or on public reserves so development consent for this activity could not be given consent.

There is some risk implications associated with this activity as it is carried out on Council property and its initial purpose is to attract the attention of motorists. There is a risk that Council would accept a degree of liability eg in the event of a car accident in the vicinity of a wobble boarder where a motorist claims distraction, if Council was aware of the activity and condoned it either implicitly or through non action.

Council Rangers take regular action to remove encroachments from road reserves and public land, including advertisements on vehicles and trailers for the same reasons as above.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

It can be argued that this activity is of minor importance or priority in terms of compliance but has significant benefits in terms of employment of young people and supporting local business.

Council must however recognise the risks associated with the activity and Council's potential liability in the event of an incident and any inaction on Council's part. From this perspective, ignoring a potential risk needs to be seriously considered.

CONSULTATION

- Mayor
- Co-ordinator Environmental Health and Regulation
- Franchisee and employees of a fast food establishment engaged in wobble board advertisement.
- The following Hunter Councils have also been contacted regarding their approach to this issue –
 - Newcastle – Consider the practice to be unauthorised development and have requested businesses engaged in the activity to cease. They have no specific policy on the issue.
 - Lake Macquarie – Consider the practice to be unsafe and constitutes Development without consent. Have requested the practice to cease in the past when carried out on public land but don't act when it occurs on private property. They have no specific policy on the issue.
 - Maitland – Do not consider it an issue as they have never noticed the practice nor received complaints. They advise however that they would consider wobble boarding to be Development without consent and would act if the individual activity represented a safety risk. They have no specific policy on the issue.

OPTIONS

- 1) Adopt the recommendations
- 2) Choose not to adopt the recommendations

ATTACHMENTS

Nil.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ITEM NO. 5

FILE NO: PSC2010-00403

MAKING OF RATES AND CHARGES 2010/2011

REPORT OF: DAMIEN JENKINS – MANAGER, FINANCIAL SERVICES

GROUP: COMMERCIAL SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Make rates and charges for 2010/2011 in accordance with **ATTACHMENT 1** (2.6% increase to the ordinary rate).
-

COUNCIL COMMITTEE MEETING – 13 JULY 2010

RECOMMENDATION:

	<p>Councillor Bruce MacKenzie Councillor Glenys Francis</p>	<p>That the recommendation be adopted.</p>
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ORDINARY COUNCIL MEETING - 13 JULY 2010

<p>204</p>	<p>Councillor Bruce MacKenzie Councillor Ken Jordan</p>	<p>It was resolved that the Council Committee recommendation be adopted.</p>
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BACKGROUND

The purpose of this report is to make rates and charges for 2010/2011. Council is required to make its rates and charges by resolution and issue rate notices before 1 August each year. The rates and charges included in the recommendation are those included in the Annual Operational Plan 2010/2011 adjusted for the latest supplementary valuations received from the NSW Valuer General.

FINANCIAL/RESOURCE IMPLICATIONS

The Minister for Local Government has announced a general rate variation of 2.6% for New South Wales Councils for 2010/2011.

Council is required to post rate notices before 1 August 2010 so that they are properly served in time for the first rate instalment due date of 31 August 2010. If Council does not make rates and charges and serve notices before 1 August 2010 then the due date for the first rate instalment is extended until 30 November 2010 which would adversely impact on Council's cash flow and investment income. It would also

impact on all ratepayers who would have both instalments 1 and 2 due on the same date.

LEGAL, POLICY AND RISK IMPLICATIONS

Council must obtain Ministerial approval to exceed the general ratepegging increase of 2.6%

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Rate income is necessary for Council to deliver the services outlined in the Annual Operational Plan 2010-2011, to meet the financial objectives outlined in the Long Term Financial Plan and to fund the Infrastructure Renewal Program at a level that ensures Council's assets don't deteriorate at an unacceptable rate.

CONSULTATION

The appropriate co-ordination and corporate consultation has taken place. The rating and charging proposals were placed on public exhibition in the Annual Operational Plan 2010-2011.

OPTIONS

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

ATTACHMENTS

- 1) Rates and charges under a 2.6% ratepegging increase

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ATTACHMENT 1

2.6% Ratepegging Increase

- 1) Make ordinary rates in accordance with the following schedule for 2010/2011 using 2007 land values.

Rate Type	Rate Name	Land Category Rate Applies to	Ad Valorem Rate cents in \$	Base Amount \$	% of Yield from Base Amount
Ordinary	Residential	Residential	0.2572	306.00	35%
Ordinary	Farmland	Farmland	0.2572	306.00	21%
Ordinary	Business	Business	0.5909	1,220.00	33%
Ordinary	Mining	Mining	0.5909	nil	

- 2) Levy on behalf of Hunter-Central Rivers Catchment Management Authority a catchment contribution at the rate determined by the Authority for 2010/2011 on all rateable land with a land value of \$300 or more in the defined benefit area. The defined benefit area for the catchment contribution is shown on the Hunter Central Rivers Catchment Contribution Area Map.
- 3) Fix the interest rate to apply to overdue rates and charges in 2010/2011 at 9% p.a.
- 4) Make the following annual Domestic Waste Management Charges and Waste Management Charges for 2010/2011. All rateable assessments that are undeveloped (ie have no buildings erected upon them) will be levied either a Domestic Waste Management Charge or a Waste Management Charge. All developed rateable assessments (ie have a building/s erected upon them) will be levied either a Domestic Waste Management Service Charge or a Waste Management Service Charge in addition to the Domestic Waste Management Charge/Waste Management Charge

MINUTES FOR ORDINARY MEETING – 13 JULY 2010

Charge Type	Charge Code	Charge Name	Land Category Charge Applies to	Amount of Charge
Domestic Waste Management (section 496 Local Government Act, 1993)	6-63	Domestic Waste Management Charge	All rateable land categorised as Residential except land that is levied a S.496 Domestic Waste Management Service Charge (7-73).	\$73.00 per assessment
Waste Management Charge (section 501 Local Government Act, 1993)	6-64	Waste Management Charge	All rateable land categorised as Mining or Business. All rateable land categorised as Farmland except land that is levied a S.501 Additional Farm Waste Management Charge (6-65). All rateable land categorised as Residential except land that is levied a S.496 Domestic Waste Management Charge (6-63). All non-rateable land that uses the Domestic Waste Management Service.	\$73.00 per assessment
Waste Management Charge (section 501 Local Government Act, 1993)	6-65	Additional Farm Waste Management Charge	All rateable land categorised as Farmland where more than one assessment is held in the same ownership and those assessments are operated as a single farming entity, then the Waste Management Charge (6-64) is to be levied on the first assessment and this Additional Farm Waste Management Charge (6-65) is to be levied on the second and subsequent assessments.	\$1.00 per assessment
Domestic Waste Management (section 496 Local Government Act, 1993)	7-73	Domestic Waste Management Service Charge	All developed rateable land categorised as Residential or Farmland, whether occupied or unoccupied. All non-rateable land that uses the Domestic Waste Management Service	\$287.00 per dual 240 litre bin service

MINUTES FOR ORDINARY MEETING – 13 JULY 2010

Charge Type	Charge Code	Charge Name	Land Category Charge Applies to	Amount of Charge
Waste Management Charge (section 501 Local Government Act, 1993)	7-74	Waste Management Service Charge	All developed rateable land categorised as Mining or Business, whether occupied or unoccupied.	\$287.00 per dual 240 litre bin service
Waste Management Charge (section 501 Local Government Act, 1993)	3-74	Waste Service Charge – Additional Red Bin	All rateable land categorised as Farmland, Residential, Mining or Business where the ratepayer requests provision of the additional service. All non-rateable land where provision of the additional service is requested.	\$190.00 per additional waste (red lid) bin
Waste Management Charge (section 501 Local Government Act, 1993)	4-74	Waste Service Charge – Additional Yellow Bin	All rateable land categorised as Farmland, Residential, Mining or Business where the ratepayer requests provision of the additional service. All non-rateable land where provision of the additional service is requested.	\$97.00 per additional recycling (yellow lid) bin

ITEM NO. 6

FILE NO: PSC2009-02408V2

PROPOSED OFFSETS FOR COMMERCIAL DEVELOPMENT AT 155 SALAMANDER WAY SALAMANDER BAY

REPORT OF: CARMEL FOSTER – MANAGER, COMMERCIAL PROPERTY
 GROUP: COMMERCIAL SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Upon receipt of DA approval for the subdivision of 155 Salamander Way, Salamander Bay categorise 17 hectares of Part Lot 21 in Deposited Plan 1044009 as “natural area”.
- 2) Adopt the Draft Plan of Management over Part Lot 21 in Deposited Plan 1044009.

COUNCIL COMMITTEE MEETING – 13 JULY 2010

RECOMMENDATION:

	<p>Councillor Bruce MacKenzie Councillor Bob Westbury</p>	<p>That Council:-</p> <ol style="list-style-type: none"> 1. Upon receipt of DA approval for the subdivision of 155 Salamander Way, Salamander Bay categorise 17 hectares of Part Lot 21 in Deposited Plan 1044009 as “natural area”. 2. Endorse the Draft Plan of Management over Part Lot 21 in Deposited Plan 1044009 to enable public consultation to commence.
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ORDINARY COUNCIL MEETING - 13 JULY 2010

205	<p>Councillor Bruce MacKenzie Councillor Ken Jordan</p>	<p>It was resolved that the Council Committee recommendation be adopted.</p>
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BACKGROUND

As a part of the DA application submitted to Port Stephens Council in October 2009 for the proposed subdivision of 155 Salamander Way, Salamander Bay a Flora and Fauna report was prepared by environmental consultant engaged by Council’s Property Section.

In the environmental report the consultant states that the proposed development and subsequent civil works would not have a significant impact on species located on 155 Salamander Way, Salamander Bay however as a supplementary ameliorative measure, to ensure mitigation of any impacts on the site and to avoid the need for an Species Impact Statement (twelve month process) offsets of similar land was considered.

The site identified to provide offsets is 100 Salamander Way [Lot 21 in Deposited Plan 1044009 located to the south of 155 Salamander Way. **ATTACHMENT 1**

After an initial assessment of the DA, Port Stephens Development and Building Section on the 11th December 2009 requested additional information to be provided including further information on the offset land.

A section of the report's response to the Flora and Fauna Issues raised by Port Stephens Council's Development and Building Section states:

“The land designated for off-set is on Lot 100 Salamander Way and contains a substantial area of high quality bushland of the same community in better condition than that on the site. The proposal that the off-set area be four times the EEC to be removed from the development site was based on the publication by Gibbons et al (2009), which is considered to be a current and rigorous body of work. The actual land to be offered as an off-set was not identified at the time of production of the report but consultation with the proponent has identified approximately 17 ha of land as shown in the map appended (Figure 3). While this area is more than the 12 ha suggested as an appropriate off-set it consists of about 12 ha of the Swamp Forest offset and 5 ha of another EEC (Freshwater Wetland), which in this locality is often associated with the Swamp Forest. It is suggested that the areas of Freshwater wetland be banked as an off-set against future development likely to affect such an EEC. This off-set proposal is seen as a voluntary action but it is recognised that there will have to be a binding caveat on the land for its preservation in perpetuity and that it will need to be managed under the terms of a site specific Environmental Management Plan.”

As stated supra, an additional 5 hectares of freshwater swamp is included in the area identified for offsets (see figure 1). The freshwater swamp is located throughout the proposed offset area, therefore to excise the freshwater swamp from the remaining offset land would create irregular shaped pockets within the proposed offset area and will not provide the most favourable outcome from a land management perspective. As stated in the report the 5 hectares can be banked and then used for future Council developments that will require offsets. A Draft Plan of Management has been prepared over the 17ha of land.

Harris Wheeler Solicitors has advised that the land can be utilised for environmental offsets however it is creating the offset in perpetuity to satisfy the relevant planning authority (JRPP) that the site will be protected that needs to be considered.

The following method has been identified as the most appropriate method to protect the site.

1. Council can, by a resolution of the Elected Council, afford the site additional protections under s.36C of the Local Government Act by declaring the offset site to have known features that warrant protection or special management,

or that the site is a wildlife corridor. That then requires any PoM be more stringent and requires the site to be categorised as a “natural area”. Such categorisation brings with it certain protections, set out in [2].

2. Categorising the offset site as “natural area” brings restrictions on development and use, with only certain things (such as walkways, kiosks, toilets etc) permitted and restrictions on the kinds of leases and licenses that are able to be granted.
3. S.36C(3) requires that a PoM for an area of land subject of a s.36C(1) resolution (of the Elected Council) must identify objectives, performance targets and other matters that are designed to protect the area, take into account the existence of the features of the site identified by the Councils’ resolution (which in this case would include a wildlife corridor), and incorporate the core objectives prescribed under section 36 in respect of community land categorised as a natural area. From the date of the resolution Council is required to include these things in a PoM, which is the plan that enables Council to manage and use the site.
4. PoM’s are only made after public consultation (s.37) and are documents that must be publically available (s.43) so there is public oversight.
5. PoM’s can only be varied or revoked by way of a further PoM made under the Act (s.42), so Council could not amend or revoke the 36C – compliant PoM without giving public notice of its intention to do so.
6. To sell the offset site it would need to be reclassified, and that can only be achieved via an amendment to the LEP which has not only an oversight by Department of Planning but public consultation.

FINANCIAL/RESOURCE IMPLICATIONS

The Plan of Management will require an initial one off payment of \$1,300 for signage and an annual payment of \$7,500 for the maintenance of the Asset Protection Zones. All other maintenance required for the site are within Council’s current maintenance programs.

LEGAL, POLICY AND RISK IMPLICATIONS

The Management Plan will provide a strategic framework, containing guidance and direction for the future management of the site and satisfies the legislative requirements as outlined in the Local Government Act 1993.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The Plan of Management will require the ongoing management of approximately 17 hectares of land to preserve the ecological amenity of the site. The aim of the Plan of Management is to address key issues threatening the ecological values of the designated land, such that the integrity of the ecosystem is maintained.

CONSULTATION

General Manager
Group Manager, Commercial Services
Harris Wheeler
Environmental Consultant

OPTIONS

Accept the Recommendation
Amend the Recommendation
Reject the Recommendation

ATTACHMENTS

- 1) Plan of Proposed Offset Area

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

- 1) Draft Plan of Management over Part Lot 21 Deposited Plan 1044009.

ATTACHMENT 1



ITEM NO. 7

FILE NO: PSC2005-2561 & 2570

IMPROVEMENTS TO TILLIGERRY FIRE STATION FACILITIES

REPORT OF: PETER MURRAY - OPERATIONS MANAGER, FACILITIES & SERVICES

GROUP: FACILITIES & SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Acknowledge the sustained efforts of the volunteers of both Lemon Tree Passage and Tanilba Bay NSW Rural Fire Brigades and the contribution they make to the community of Port Stephens.
- 2) Supply all necessary approvals, materials and specialist trades to assist the members of Lemon Tree Passage Brigade to complete improvements to permit the garaging of a Category 1 Urban Pumper at this location. All reasonable costs to improve this facility shall be funded from Section 94 Developer Contributions.
- 3) Place on public exhibition for a period of two (2) months the option to establish a new four bay Tanilba Brigade facility, including landscaping improvements at RAF Park, Tanilba Bay.
- 4) Consider all issues identified from the public consultation period in a subsequent report to finally determine the location of the improved Tanilba Bay Brigade station facility.

COUNCIL COMMITTEE MEETING – 13 JULY 2010

RECOMMENDATION:

	Councillor Steve Tucker Councillor Shirley O'Brien	That the recommendation be adopted.
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ORDINARY COUNCIL MEETING - 13 JULY 2010

206	Councillor Steve Tucker Councillor Shirley O'Brien	It was resolved that the Council Committee recommendation be adopted.
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The Motion on being put was carried.

AMENDMENT:

	<p>Councillor Geoff Dingle Councillor Peter Kafer</p>	<p>That Council:-</p> <ol style="list-style-type: none"> 1. Acknowledge the sustained efforts of the volunteers of both Lemon Tree Passage and Tanilba Bay NSW Rural Fire Brigades and the contribution they make to the community of Port Stephens. 2. Supply all necessary approvals, materials and specialist trades to assist the members of Lemon Tree Passage Brigade to complete improvements to permit the garaging of a Category 1 Urban Pumper at this location. All reasonable costs to improve this facility shall be funded from Section 94 Developer Contributions. 3. Extend both existing Tanilba Bay and Lemon Tree Passage Stations at there current locations.
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The amendment on being put was lost.

BACKGROUND

The purpose of this report is to adopt a comprehensive approach to achieve the provision of improved fire station facilities on the Tilligerry Peninsula.

The Tilligerry Peninsula is currently serviced by the Brigades of Salt Ash, Tanilba Bay and Lemon Tree Passage with secondary response from other available NSW Rural Fire Brigades of the Lower Hunter Zone and if necessary, other "out of area" resources including those from interstate.

An extensive program of facility improvements have been completed over the last 7 years. This program has resulted in the existing stations of Salt Ash and Anna Bay being replaced and by working collaboratively with the volunteers, the stations of Medowie, Duns Creek, Wallalong, Soldiers Point and Seaham have also been significantly improved.

The current facilities of Lemon Tree Passage and Tanilba Bay are unsatisfactory, with both facilities unable to house the modern larger fire tankers unless the buildings are modified and extended. This size restriction has now resulted in the Brigades of Lemon Tree Passage and Tanilba Bay having the oldest tankers in the Port Stephens fleet. This will eventually result in these tankers having to be replaced by lower "Category" tankers that have smaller water carrying capacity than is desirable unless improvements are completed. These facilities are also operating "at

capacity" with limited training and meeting facilities that effectively discourages the recruitment of additional Brigade volunteers.

Extensive investigation of 25 possible sites, consultation with the NSW Rural Fire Service and recently with the Brigades' steering committee members themselves identified possible solutions and the criteria by which these options should be objectively assessed. (ATTACHMENT 1 & ATTACHMENT 2)

The option of amalgamating the Brigades into one combined "Tilligerry Brigade" was canvassed early with the Brigades but this proposal was found to neither have the support of the majority of Brigade members nor deliver significant operational cost savings as first anticipated. The limited cost saving available are the result of the existing buildings being low value, largely maintained by the Brigade volunteers themselves, consuming limited utilities and the locations having low annual Council rates. Consequently the options to improve fire station facilities on the Tilligerry Peninsula were assessed on the basis that the two Brigades continue to co-exist.

Using the agreed assessment criteria, the feasible options in order of preference were identified as:

- Option 1: Construct a new Tanilba Bay facility at RAF Park & extend the existing Lemon Tree Passage station.
- Option 2: Construct a new Tanilba Bay Facility on the existing site & extend the existing Lemon Tree Passage station.
- Option 3: Extend both existing Tanilba Bay and Lemon Tree Passage Stations at there current locations.

All feasible options identified that immediate work is required on the existing station at Lemon Tree Passage to enable the tasking of a modern Category 1 Urban fire appliance to the Tilligerry Peninsula. An appliance of this specification provides improved capability over the traditional bushfire appliances when suppressing structure fires.

With regard to Tanilba Bay Brigade, the preferred option to build a new station at RAF Park is primarily to provide better access, visibility and time response than that offered by the current site. However these improvements must be balanced against the loss of open recreational space and residential amenity to residents that adjoin RAF Park and importantly, the need to identify a means of funding this project fully. For this reason, this report recommends that further comment be canvassed through a public consultation process prior to Council considering all aspects of each option and adopting the final preferred solution.

However the construction of a new fire station on RAF Park is feasible as the subject site is zoned 6(a) General Recreation under the Port Stephens Local Environmental Plan 2000 and such use is permissible with consent under this zoning. Whilst the Tilligerry area has significantly greater than the minimum standard open space available, it is acknowledged that the partial loss of passive recreation space at RAF Park needs to be mitigated by improvements to the area, such as further plantings of native trees, shrubs and grasses. These landscaping improvements could be undertaken as part of the building works, if this proposal is subsequently adopted.

FINANCIAL/RESOURCE IMPLICATIONS

If the RAF Park option was to be adopted, the estimated cost of improved fire station facilities on the Tilligerry Peninsula would be approximately \$640,000. It is anticipated that the project would be staged:

Stage 1: Immediately improve the existing Lemon Tree Passage NSW Rural Fire Station at Lemon Tree Passage. The Brigade have offered to provide labour and draw on their business networks and other expertise that reside in their membership to complete this work conditional on Council organising and supplying all necessary designs, approvals, safe work processes, materials and specialist trades. The estimated cost to Council of this contribution is approximately \$10,000. Since this improvement adds fully to existing capacity, the entire works can be funded legitimately from the "Section 94" developer contributions reserve for Emergency Services improvements.

Stage 2: Construction of a new facility, including car park and landscaping improvements to RAF Park for an estimated cost of approximately \$600,000. Since this project would only partially extend the existing fire station "capacity" at Tanilba Bay, only a proportion of the new work could be funded from Section 94 reserves with the greater part having to be funded from general revenue or some other sources. The option of funding the new station through the NSW government Rural Fire Fighting Fund is also a possibility.

Stage 3: Decommission and demolish existing fire station facilities at Tanilba Bay and surrender the control of land back to the NSW Government as the owner of the land. Estimated cost \$30,000.

However available funding options for Stages 2 & 3 will be subject of a future report to Council once the proposed consultation process for the RAF Park option is completed. It is proposed that this report will present all aspects for consideration in determining the best overall location of the improved Tanilba Bay station facilities.

LEGAL, POLICY AND RISK IMPLICATIONS

Under the Rural Fires Act 1997, Council has the responsibility to provide facilities for our volunteers to carry out their fire suppression duties safely and effectively.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The further loss of approximately 20% of the current recreational area of RAF Park and some loss of residential amenity to those adjoining residents is inherent in the preferred option.

However, improvements to Lemon Tree Passage station along with the replacement of Tanilba Bay station with an improved facility that has capacity to service future population growth and other demands, provides a positive economic sustainability advantage.

CONSULTATION

NSW RFS, Zone Manager - Lower Hunter
NSW RFS Captain – Tanilba Bay Brigade
NSW RFS Captain – Lemon Tree Passage Brigade
Facility Improvement Steering Committees of Lemon Tree Passage and Tanilba Bay Rural Fire Brigades
NSW RFS Group Captain – East
Council's "Bushland & Vegetation Team Leader"
Tanilba Bay Parks, Reserves & Halls Committee

OPTIONS

The only feasible options available are:

- 1) Demolish existing and build a new facility on RAF Park, Tanilba Bay and extend the existing Lemon Tree Passage Facility in McCann Park.
- 2) Demolish existing and build a new facility on the existing fire station site at Tanilba Bay and extend the existing Lemon Tree passage Facility in McCann Park.
- 3) Demolish existing and build a new facility on the existing fire station site at McCann Park, Lemon Tree Passage.
- 4) Extend the existing Tanilba Bay station.
- 5) Extend the existing Lemon Tree Passage station.
- 6) Combinations of the above options to provide a comprehensive solution to fire fighting facility needs on the Tilligerry Peninsula.
- 7) Do nothing.

ATTACHMENTS

- 1) Assessment Criteria.
- 2) Summary of Options.
- 3) Proposed Community Consultation.
- 4) Community consultation Communiqué.

COUNCILLORS ROOM

Map of Options for new Tilligerry Fire Station Facility – map shows the location of all 25 locations considered and includes notes on zonings, classifications and other restrictions.

TABLED DOCUMENTS

Nil.

ATTACHMENT 1

FACILITY IMPROVEMENT CRITERIA

To ensure consistency in the assessment of each of the available options, the following criteria were established:

Critical

1. Permissible under current environmental, planning and land classifications.
2. Endorsed by Brigade Members
3. Option has Potential for Councillor Support
4. Affordable – Both initial capital cost and ongoing.

Important

1. Speed of Implementation/Commissioning
2. Residential & Community Amenity – Impact on non-Brigade member stakeholders. ie surrounding residents and effected community groups.
3. Safe Clearance Provided Around Garaged Vehicles – Unobstructed and sufficient clearance around perimeter of vehicles to allow easy & safe movement, ingress/egress and servicing.
4. Meeting/Training & Office Facilities

Desirable

1. Proximity – minimise the travel distance incurred by existing volunteers not under “lights and sirens”. Minimise turn out times.
2. Road Access – Minimise turn out times and consider road safety implications
3. Visible – Assists with the recruitment of new members and the control of vandalism.

ATTACHMENT 2

SUMMARY OF FEASIBLE OPTIONS TO IMPROVE FIRE STATION FACILITIES ON THE TILLIGERRY PENINSULA

Option 1: New Tanilba Bay Facility at RAF Park & Improve Existing Lemon Tree Passage Station.

- Construct a new station on Lot 2 DP 1048126 adjacent to the existing ambulance station at Tanilba Bay and improve landscaping of park.
- Improve the existing facility at Lemon Tree Passage to permit the tasking of a Category 1 Urban appliance to this station to improve structure fire suppression capability.
- Demolish the decommissioned station at Tanilba Bay and surrender the existing site to the State Government since land use limitations prevent further alternative uses for this building.

Advantages:	Disadvantages:
<ol style="list-style-type: none"> 1. Permissible under current environmental, planning and land classifications. 2. Endorsed by Brigade Steering Committee Members as the preferred solution. 3. Has Potential for Councillor Support 4. Extension to LTP fire station can be fully funded from Section 94. 5. Implementation/Commissioning of a new station at RAF Park is assisted by land being immediately available and level, with minimal preparation and all services available. 6. Improvements can commence immediately on Lemon Tree Passage station. 7. Provides Safe Clearance within garage area. 8. Provides Meeting/Training & Office Facilities of a high standard. 9. Proximity to existing volunteers satisfactory. 10. Road Access satisfactory 11. Visible 	<ol style="list-style-type: none"> 1. Residential & Community Amenity – This option does potentially adversely impact the adjoining residents of Success Street and President Wilson Walk and those community groups active in RAF Park. Consequently proposal will require a community consultation process to occur to establish impact and possible mitigating remedies. 2. As only a proportion of the new Tanilba Bay station could be funded by Section 94 the financial viability is conditional on other matching funding sources being found or alternatively the whole project being funded through the NSW Rural Fire Fighting fund.

Comments: The RAF Park location has been subject to much attention since 1996 when it was first proposed as the location for the new ambulance station to service the Tilligerry Peninsula. The original proposal in 1998 to rezone and reclassify this lot to allow the creation of residential lots in addition to that created for the ambulance station was abandoned in 1999. The costs of constructing a new station only attracts partial funding from Section 94 resulting in the remaining amount having to be funded from other sources such as general revenue.

ATTACHMENT 2

Option 2: Construct new Tanilba Bay Facility on existing site & Improve Existing Lemon Tree Passage Station.

- Consolidate Lots 1 & 2 DP 1065330, demolish existing station and build a new facility at Tanilba Bay.
- Improve the existing facility at Lemon Tree Passage to permit the tasking of a Category 1 Urban appliance to improve structure fire suppression capability.

Advantages:	Disadvantages:
<ol style="list-style-type: none"> 1. Permissible under current environmental, planning and land classifications. 2. Endorsed by Brigade Steering Committee Members as the “runner up” solution. 3. Option has Potential for Councillor Support 4. Extension to LTP fire station is fully funded from Section 94 developer contributions. 5. Improvements can commence immediately on Lemon Tree Passage station. 6. Provides Safe Clearance within garage area. 7. Provides Meeting/Training & Office Facilities of a high standard. 8. Proximity to existing volunteers satisfactory. 	<ol style="list-style-type: none"> 1. Road access continues to be compromised due to location off arterial road. 2. Whilst the construction of a new station at the existing Tanilba Bay site is assisted by land being level and serviced, the commissioning will be delayed by the consolidated of the two lots and the demolition of the existing building. 3. As only a proportion of the new Tanilba Bay station could be funded by Section 94 the financial viability is conditional on other matching funding sources being found or alternatively the whole project being funded through the NSW Rural Fire Fighting fund.
<p>Comments: Whilst the proposal makes full use of crown land that has significant restrictions to other uses - dedicated exclusively for “fire fighting purposes”, it does not offer the best long term solution in terms of access. In addition, the costs of constructing a new station only attracts partial funding from Section 94 resulting in the remaining amount having to be funded from other sources such as general revenue.</p>	

ATTACHMENT 2

Option 3: Extend Both Existing Tanilba Bay And Lemon Tree Passage Station Facilities

- Consolidate Lots 1 & 2 DP 1065330, extend the existing Tanilba Bay station by constructing an adjacent 4 bay shed and renovate existing shed to provide the Brigades' required training, meeting and office facilities.
- Improve the existing facility at lemon tree passage to permit the tasking of a category 1 urban appliance to improve structure fire suppression capability.

Advantages:	Disadvantages:
<ol style="list-style-type: none"> 1) Permissible under current environmental, planning and land classifications. 2) Endorsed by Brigade Steering Committee Members as the "3rd" solution. 3) Option has Potential for Councillor Support 4) All works fully funded by Section 94 developer contributions. 5) Improvements can commence immediately. 6) Provides Safe Clearance within garage area. 7) Provides needed meeting/training & office facilities for Tanilba Bay Brigade. 8) Proximity to existing volunteers satisfactory. 	<ol style="list-style-type: none"> 1) Road access continues to be compromised due to location off arterial road. 2) Completed facility at Tanilba Bay is compromised by being two separate buildings.
<p>Comments: Whilst this option is the most easily achieved due to the ready availability of funding and by using existing lands, it does not offer the best long term solution in terms of accessibility for Tanilba Bay brigade.</p>	

ATTACHMENT 2

Option 4: New Lemon Tree Passage Facility on McCann Park and Improve Existing Tanilba Bay Station.

- Demolish the existing Lemon Tree Passage station at McCann Park and construct new station at this same location.
- Consolidate Lots 1 & 2 DP 1065330 at Tanilba Bay and construct a new shed to house the fire tankers adjacent the existing facility.
- Renovate the existing Tanilba Bay building to provide meeting, training and office facilities.

Advantages:	Disadvantages:
<ol style="list-style-type: none"> 1. Permissible under current environmental, planning and land classifications. 2. Option has Potential for Councillor Support 3. Provides Safe Clearance within garage area. 4. Provides Meeting/Training & Office Facilities of a high standard. 5. Proximity to existing volunteers satisfactory. 6. Visible 	<ol style="list-style-type: none"> 2. Road Access compromised to existing Tanilba Bay location. 3. Residential & Community Amenity – This option does potentially adversely impact the adjoining residents of the Tanilba Bay station as housing development continues in the immediate area. 4. The construction and commissioning of a new facility at Lemon Tree Passage will be delayed by the demolition of the existing building. 5. Only approximately 26% of the new station costs could be funded by Section 94 resulting in the remainder having to be funded by revenue. Alternatively the project could possibly be funded through the NSW Rural Fire Fighting fund. 6. The renovation of the existing Tanilba Bay station building is a satisfactory medium term solution to addressing the limited office and meeting facilities. 7. McCann Park is located away from the future population centre of Tilligerry Peninsula.

Comments: Whilst this option makes use of existing lands, it does not offer the best long term solution in terms of access for Tanilba Bay Brigade. In addition, the costs of constructing a new station only attracts partial funding from Section 94 resulting in the remaining amount having to be funded from other sources such as general revenue. It has been confirmed that this proposal would not affect the habitat of the migrating bird ("Curlew – bush stone") nesting at the rear of McCann park.

ATTACHMENT 2

Option 5: Construct New Facility on Crown Land at the Corner of Oyster Farm Road and Lemon Tree Passage Road, Lemon Tree Passage.

Construct a new station on Lot 395 DP 1093606 and demolish either one or both of the stations of Tanilba Bay and Lemon Tree Passage.

Advantages:	Disadvantages:
	1) Not permissible due to location being part of an identified Koala corridor, posing significant environmental protection impediments.
Comments: Possibility of refusal or at least significant delays would be anticipated in gaining consent to use this crown land from the state government.	

Option 6: Construct New Facility on Crown Land at Decommissioned Waste Transfer Station Site, Lemon Tree Passage.

Construct a new station on the decommissioned waste management site and demolish either one or both stations of Tanilba Bay and Lemon Tree Passage.

Advantages:	Disadvantages:
1) Vacant site.	1) Not currently permissible due to land specifically classified for waste management purposes preventing other uses. 2) Location is also part of an identified Koala corridor, posing possible significant environmental protection impediments.
Comments: The State Land Management agency classification for this land prevents this land from being used for anything but waste management purposes at this time. However, Council is negotiating with the Land and Property Management Authority (LPMA) to formalise access to the site by registration of a new road plan. Once this plan is gazetted, which is expected within a few months now, Council can then enter into further negotiations with the LPMA to introduce a change in the use of this site to allow a much broader public use of the land, which could include it being used for the purposes of a Fire station.	

ATTACHMENT 2

Option 7: Construct New Facility on Crown Land at the end of President Wilson Walk, Tanilba Bay near RAF Park.

- Construct new station on Lot 2 DP 1093606 and demolish the decommissioned station of Tanilba Bay.
- Improve the existing facility at Lemon Tree Passage to permit the tasking of a Category 1 Urban appliance to improve structure fire suppression capability.
- Demolish the decommissioned station of Tanilba Bay and surrender the existing site to the State Government.

Advantages:	Disadvantages:
	1) Not permissible due to unavailability of site
Comments: State government have advised that any request to dedicate land would be refused.	

ATTACHMENT 3

Proposed Community Consultation

Prior to initiating community consultation, it is proposed that the attached programme would be first workshopped with Councils' Community Engagement Panel as required by adopted Council Policy. However it is anticipated that community consultation for this project would be similar to that completed with previous fire station projects and would likely consist of:

1. Distribution of a detailed communiqué to those residents within a 0.5km radius of the proposed location that consisting of:
 - Cover Letter inviting interested parties to submit written comments within the community consultation period of one (1) month.
 - Plan showing location of proposed fire station facility.
 - Drawing of the proposed fire station structure.
 - "Frequently Asked Questions" style information brochure detailing the likely topics of interest for residents.
2. Advertisements in the Examiner advising of the proposal and the availability of detailed communiqué (See ATTACHMENT 4) that can be requested by telephoning Council or alternatively, accessed on Councils' website.
3. Media release detailing the need for improved fire station facilities and the consultation process underway.
4. Arrange site discussions with those stakeholder committees and volunteer groups of the Tilligerry Peninsula that have invested effort into the RAF Park.
5. Acknowledge all written comments received.
6. At the completion of the consultation period, a report will be presented to Council detailing the concerns raised by the community, including discussion of the amendments that could be implemented to mitigate these concerns where this is practical. This report will also include a recommendation on whether to proceed or not with the proposal.

ATTACHMENT 3

*Telephone Inquiries:
Mr Peter Murray
Facilities & Services*

Residents
In the Vicinity of RAF Park
Tanilba Bay.

Re: Proposed New NSW Rural Fire Station for Tanilba Bay.

Dear Resident

You may be aware that the existing facility used by Tanilba Bay Brigade of the NSW Rural Fire Service is inadequate for current needs. The Brigade consists of volunteers who perform an essential service to the local community as the primary fire brigade for bush fires, building fires as well as motor vehicle accidents. They are also called on regularly to assist other rural brigades and agencies such as State Emergency Service, NSW Fire Brigade and NSW Ambulance.

The current RFS fire station located in Pershing Place, Tanilba Bay is now too small to safely house modern fire tankers and Council is investigating all practical options to provide "state of the art" facilities on the Tilligerry Peninsula.

Currently the preferred option involves the construction of a new 4 bay fire station on land adjoining the Tanilba Bay Ambulance Station in President Wilson Walk in addition to completing some improvements to the existing Lemon Tree Passage Brigade facility located on McCann Park at Lemon Tree Passage.

However before any decision is made to proceed with the proposal to build a new station on RAF Park, I am seeking comment from any interested party on the proposal. I have enclosed further details of the proposal if you are interested in a "Frequently Asked Questions" style format attached. If you wish to discuss the proposal further, please feel free to contact me on 49 800 275. Any comments you wish to have formally considered, please e-mail to Peter.Murray@portstephens.nsw.com.au or alternatively write to me at this postal address:

General Manager
Port Stephens Council
PO Box 42
RAYMOND TERRACE 2324.

It would be appreciated if you would forward all comments by **Monday 13 September 2010**. All correspondence will be acknowledged.

Yours faithfully

Peter Murray
Operations Manager
Encl.

ATTACHMENT 4

Proposed New NSW Rural Fire Station for Tanilba Bay.

To inform residents of the proposal to consider construction of a modern 4 bay fire station next to the existing ambulance station on RAF Park and to provide factual information on the likely impact of this development on adjoining residents and park users. The following information is presented in a "frequently asked question" format:

"Where do you want to build it?"

On the lot known as Lot 2 of DP 1048126, Lemon Tree Passage Road, Tanilba Bay that currently contains a NSW Ambulance facility and open space. The location is known locally as RAF Park. It is proposed that the new station would be built on the southern side of the ambulance station in the open area so that no or very few trees would be affected. The attached site plan shows the position of the fire station relative to surrounding buildings and streets.

"Why is Council involved with Rural Fire Service?"

Under State legislation Council is required to provide suitable facilities for the various volunteer Rural Fire Service Brigades to operate from.

"What does the Tanilba Bay Brigade do for the residents of the Tilligerry Peninsula?"

The Brigade provide the primary fire fighting response for building and bush fires in the peninsula area and provide support to the Brigades of other locations when required.

Importantly the Brigade also provide fire protection to victims of serious motor vehicle incidents and the attending Police, Ambulance and other road crash rescue workers while the victims are being freed from the vehicle wreckage.

"How often does the Tanilba Brigade response to calls for assistance?"

In the 4 years since 1 January 2006 the Brigade has responded to a total of 335 calls for assistance consisting of: 81 calls in 2006, 122 calls in 2007, 73 calls in 2008 and 59 calls in 2009.

ATTACHMENT 4

“Why does this Brigade require improved facilities?”

The current building, located in Pershing Place is inadequate in size and functionality. The inadequate size prevents the allocation of modern but larger fire tankers that are now common. Consequently this space restriction has led to the tankers stationed on the Tilligery Peninsula being the oldest in the district.

Further, to attract and retain volunteers, it is a reasonable expectation that modern conveniences such as toilets and showers and a comfortable facility for Brigade meetings and training will be provided.

“Why is this location in RAF Park so good for a fire station?”

The site is ideal for the following reasons:

- o Being adjacent to Lemon Tree Passage Road, the Brigade can respond quickly to all incidents.
- o Conveniently accessible and visible site assists with the ongoing recruitment of fire fighters that is necessary for an organisation that relies on volunteers.
- o Site is Council owned and the zoning permits the construction of a fire station.
- o Available immediately.
- o Site is sufficiently large enough to allow landscaping and off street parking.

The attached drawings show the proposed building and how it would be situated on the site.

“Won’t the building cause extra noise disruption to surrounding residents?”

Not necessarily for the following reasons:

- o The station is “unmanned” or unoccupied except for when the Brigade is called out or is completing equipment maintenance or training. Consequently, the period that the station would be occupied is in the order of only a few hours every week.
- o The building would be insulated.
- o The building is located away from property boundaries so that an arboreal (large shrubs) screen could be installed.
- o The majority of the Brigades’ members are local residents themselves and are aware of the advantages of maintaining a good relationship with adjoining property owners.

“The construction of the station next to the ambulance station at Tanilba Bay would result in a loss of open space?”

The construction of the fire station on RAF Park, if it was to occur would result in approximately 20% reduction of open space at this location. The remaining area would still allow the remaining open space area in Tanilba Bay to exceed the minimum permissible open space standards required by Councils' Subdivision Code.

“Won't it be dangerous having fire engines racing up and down Success Street and President Wilson Walk?”

Whilst the Tanilba Bay Brigade is an active unit when compared to other Rural Fire Service Brigades, it on average responds to 1.6 jobs per week, with the majority of cases resulting in only one fire tanker being deployed.

The drivers of fire tankers are no different to other drivers where they are required to drive safely at all times and comply with speed limits. So “no”, the relocation of the Brigade will not necessarily impinge on the safety of local residents and motorists.

“How about the impact of the increased traffic?”

The relocation of the Brigade to RAF Park would increase the traffic on Success Street and President Wilson Walk. However the increase in traffic would be equivalent to that generated by approximately 3 to 7 additional houses in that area.

This assertion is based on the Brigade responding to an average of 1.6 jobs per week, 4 volunteer vehicles attending the station and one fire tanker attending the incident and weekly training and station administration generating another 10 vehicle movements resulting in approximately 26 vehicle movements per week. Traffic studies indicate that one dwelling generates between 4 and 12 vehicles per day movements per residency (Schofield, Mulholland and Morris 1984).

The additional traffic on these roads because of the relocation of the Brigade to RAF Park would have a negligible effect on the existing traffic conditions.

“Will the building be an “eyesore”?”

The structure is imposing and consequently efforts have been made to break the bulky appearance of the structure. The building will incorporate a pergola at the entry to the building and the planting of screening trees/scrubs would occur to assist in breaking up the visual bulk of the building.

ATTACHMENT 4

“What is the timeframe?”

If Council determines to proceed with this proposal after considering all comments submitted during the public consultation period, it is expected that the development approval process could be completed by late 2010 and funding permitting, contracts let and construction commence in 2011.

“What happens if the fire station doesn’t go ahead on the RAF Park site?”

Council, the NSW Rural Fire Service, the volunteers and the community will need to either accept the limitations of the location of the existing station at Tanilba Bay and proceed with either enlarging the existing facility or alternatively, identify and purchasing land specifically for the new station elsewhere on the Peninsula. The alternative of purchasing suitable land elsewhere or more likely, the reclassification of an existing Crown Land parcel would delay the project some years.

“Isn’t it easier just to extend the existing Tanilba Bay Fire?”

That is true but the purpose of this project is to provide a modern facility that will serve the Tilligerry Peninsula for the next 50 years. Unfortunately, the limitations with the access to the existing Tanilba Bay fire station site along with the existing building itself prevents this option being the best long term practical solution available.

“What alternative sites have been investigated before RAF Park was selected as the preferred location?”

Investigations completed the following possible locations for the new Tilligerry Fire Station:

- **Existing Tanilba Bay Station site** – As discussed above.
- **Crown Land at the southern end of President Wilson Walk** – Dismissed as not practical as advice from the State land management agency that this land would not be available.
- **Crown Land at the corner of Lemon Tree Passage Road and Oyster Farm Road** – Again dismissed as not practical as advice from the State land management agency that this land would not be available, as well as issues with the need to extensively clear Koala feed trees in a well documented known Koala migration path.
- **Crown Land known as Lemon Tree Passage Waste Depot** – The State land management agency classification of this land prevents this land from being used for anything but waste management purposes.
- **McCann Park, Lemon Tree Passage** – Whilst viable, it is located remote from the future anticipated area of growth on the Tilligerry Peninsula.

ATTACHMENT 4

“So what do you want me to do?”

Nothing, if you are comfortable with this proposal. The purpose of this letter was simply to provide factual information on the fire station proposal. However, if you have comments or concerns that you wish to have formally considered, please e-mail to Peter.Murray@portstephens.nsw.com.au or alternatively write to me at this address:

General Manager
Port Stephens Council
PO Box 42
RAYMOND TERRACE 2324.

It would be appreciated if you would forward all comments by **Monday 13 September 2010**.

“Who do I ask if I have any more questions?”

You can call me, Peter Murray on 49 800 275 OR e-mailed your enquiry to:
peter.murray@portstephens.nsw.gov.au

ITEM NO. 8

FILE NO: 1190-001

REQUEST FOR FINANCIAL ASSISTANCE

REPORT OF: TONY WICKHAM – EXECUTIVE OFFICER

GROUP: GENERAL MANAGER’S OFFICE

RECOMMENDATION IS THAT COUNCIL:

- 1) Approves provision of financial assistance under Section 356 of the Local Government Act from the respective Mayor and Ward Funds to the following:-
 - a) Raymond Terrace Sports Council Loan – Raymond Terrace Sports Council Loan – West Ward Funds - \$5,000.00.
 - b) Dementia Garden Fundraiser – Port Stephens Community Care – Donation – Mayoral Funds - \$300.00.
 - c) Tilligerry RSL Sports Club – Donation for Fundraising event for Cancer Council - Mayoral Funds - \$300.00.

COUNCIL COMMITTEE MEETING – 13 JULY 2010

RECOMMENDATION:

	<p>Councillor Steve Tucker Councillor Peter Kafer</p>	<p>That the recommendation be adopted.</p>
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ORDINARY COUNCIL MEETING - 13 JULY 2010

207	<p>Councillor Ken Jordan Councillor Bruce MacKenzie</p>	<p>It was resolved that the recommendation be adopted.</p>
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BACKGROUND

The purpose of this report is to determine and, where required, authorise payment of financial assistance to recipients judged by Councillors as deserving of public funding. The new Financial Assistance Policy adopted by Council 19 May 2009, to commence from 1 July 2009, gives Councillors a wide discretion to either grant or to refuse any requests.

The new Financial Assistance Policy provides the community and Councillors with a number of options when seeking financial assistance from Council. Those options being:

MINUTES FOR ORDINARY MEETING – 13 JULY 2010

1. Mayoral Funds
2. Rapid Response
3. Community Financial Assistance Grants – (bi-annually)
4. Community Capacity Building

Council is unable to grant approval of financial assistance to individuals unless it is performed in accordance with the Local Government Act. This would mean that the financial assistance would need to be included in the Management Plan or Council would need to advertise for 28 days of its intent to grant approval. Council can make donations to community groups.

The requests for financial assistance are shown below is provide through Mayoral Funds, Rapid Response or Community Capacity Building:-

MAYORAL FUNDS

DEMENTIA GARDEN FUNDRAISER	DONATION TO PORT STEPHENS COMMUNITY CARE	\$300.00
TILLIGERRY RSL SPORTS CLUB	DONATION FOR FUNDRAISING FOR CANCER COUNCIL	\$300.00

WEST WARD – Councillors Francis, Kafer, Jordan

RAYMOND TERRACE SPORTS COUNCIL	RAYMOND TERRACE SPORTS COUNCIL LOAN	\$5,000.00
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FINANCIAL/RESOURCE IMPLICATIONS

Council Ward, Minor Works and Mayoral Funds are the funding source for all financial assistance.

LEGAL AND POLICY IMPLICATIONS

To qualify for assistance under Section 356(1) of the Local Government Act, 1993, the purpose must assist the Council in the exercise of its functions. Functions under the Act include the provision of community, culture, health, sport and recreation services and facilities.

The policy interpretation required is whether the Council believes that:

- a) applicants are carrying out a function which it, the Council, would otherwise undertake;
- b) the funding will directly benefit the community of Port Stephens;
- c) applicants do not act for private gain.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

Nil.

CONSULTATION

Mayor

Councillors

Port Stephens Community

OPTIONS

- 1) Adopt the recommendation.
- 2) Vary the dollar amount before granting each or any request.
- 3) Decline to fund all the requests.

ATTACHMENTS

Nil.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ITEM NO. 9

FILE NO: PSC2009-09420

GOVERNMENT INFORMATION (PUBLIC ACCESS) ACT 2009

REPORT OF: TONY WICKHAM – EXECUTIVE OFFICER

GROUP: GENERAL MANAGER’S OFFICE

RECOMMENDATION IS THAT COUNCIL:

- 1) Revoke the previous “Accessing Information” policy adopted on the 28th March 2006, Min No. 462, shown at **ATTACHMENT 2**.
 - 2) Adopt the new “Accessing Information Policy” shown at **ATTACHMENT 3**.
-

COUNCIL COMMITTEE MEETING – 13 JULY 2010

RECOMMENDATION:

	<p>Councillor Peter Kafer Councillor Steve Tucker</p>	<p>That the recommendation be adopted.</p>
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ORDINARY COUNCIL MEETING - 13 JULY 2010

<p>208</p>	<p>Councillor Ken Jordan Councillor Bruce MacKenzie</p>	<p>It was resolved that the recommendation be adopted.</p>
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BACKGROUND

The purpose of this report is to inform Council of the introduction of the *Government Information (Public Access) Act 2009* (GIPA). The GIPA Act commenced on 1 July 2010, which will see the *Freedom of Information Act 1989* and Section 12 of the *Local Government Act 1993* repealed. The NSW Government has established an Office of the Information Commissioner to manage the new legislation.

Under the GIPA Act, there are four ways to access Council information. The four ways are mandatory release, proactive release, informal and formal applications. GIPA defines various items of information held by Council as “open access information” and is therefore required to produce the information on its website free of charge unless to do so would impose unreasonable additional costs to Council. The current version and the most recent previous versions of some documents are required to be shown.

A list of the documents Council is required to provide free of charge is shown at **ATTACHMENT 1**. The majority of the documents listed under Section 1 and 2 of the

attachment are available from the website. The information under Section 3 relates to development applications.

At this stage a number of the items of information under Section 3 have copyright protection. It is proposed at this stage not to release this information on the website, rather make it available for inspection at Council with the exception of residential floor plans. The GIPA Act provides an exemption for release if to do so would breach copyright.

With regard to Section 4, it is proposed to make the information available upon request due to the additional costs to Council to maintain this information on the website. History would suggest that there is minimal public interest in these items.

As a result of the introduction of the GIPA Act, a new "Accessing Information" policy has been developed, shown at **ATTACHMENT 3** which is supported by guidelines approved by the General Manager. These guidelines shown at **ATTACHMENT 4** are subject to change at the discretion of the General Manager. Council is also required to develop a "Publication Guide", a draft is shown at **ATTACHMENT 5**. The General Manager has approved this draft as the Principal Officer. The Office of the Information Commissioner now has the draft Publication Guide for approval.

FINANCIAL/RESOURCE IMPLICATIONS

The introduction of the GIPA Act has resulted in a cost to Council in staff time which is covered in the existing budget. There will be further resource implications as the implementation of the legislation progresses and community interest requires Council to increase the resources needed to maintain the website.

LEGAL, POLICY AND RISK IMPLICATIONS

Council is required to ensure compliance with the GIPA Act 2009.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The GIPA Act provides a greater level of ease, openness and transparency for the community when seeking public information.

CONSULTATION

Executive Team
Senior Management Team
General Manager
Councillors
Key Council staff

OPTIONS

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

ATTACHMENTS

- 1) Extract from the GIPA Act – Schedule 1 of Schedule 5.
- 2) Current Accessing Information Policy.
- 3) New Accessing Information Policy.
- 4) Supporting Guidelines for the Policy.
- 5) Publication Guide.

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ATTACHMENT 1

Government Information (Public Access) Act 2009 No 52

Schedule 5 Government Information (Public Access) Regulation 2009

to retrieve archived records and make the information available in accordance with this clause in response to a request for access as soon as reasonably practicable after the request is made.

- (3) This clause extends to open access information of a local authority that is open access information listed in section 18 of the Act (and is not limited to information listed in Schedule 1).

**Schedule 1 Additional open access information—
local authorities**

(Clause 3)

1 Information about local authority

- (1) Information contained in the current version and the most recent previous version of the following records is prescribed as open access information:
- (a) the model code prescribed under section 440 (1) of the LGA and the code of conduct adopted under section 440 (3) of the LGA,
 - (b) code of meeting practice,
 - (c) annual report,
 - (d) annual financial reports,
 - (e) auditor's report,
 - (f) management plan,
 - (g) EEO management plan,
 - (h) policy concerning the payment of expenses incurred by, and the provision of facilities to, councillors,
 - (i) annual reports of bodies exercising functions delegated by the local authority,
 - (j) any codes referred to in the LGA.
- (2) Information contained in the following records (whenever created) is prescribed as open access information:
- (a) returns of the interests of councillors, designated persons and delegates,
 - (b) agendas and business papers for any meeting of the local authority or any committee of the local authority (but not including business papers for matters considered when part of a meeting is closed to the public),
 - (c) minutes of any meeting of the local authority or any committee of the local authority, but restricted (in the case of any part of a

meeting that is closed to the public) to the resolutions and recommendations of the meeting,

- (d) Departmental representative reports presented at a meeting of the local authority in accordance with section 433 of the LGA.
- (3) Information contained in the current version of the following records is prescribed as open access information:
- (a) land register,
 - (b) register of investments,
 - (c) register of delegations,
 - (d) register of graffiti removal work kept in accordance with section 13 of the *Graffiti Control Act 2008*,
 - (e) register of current declarations of disclosures of political donations kept in accordance with section 328A of the LGA,
 - (f) the register of voting on planning matters kept in accordance with section 375A of the LGA.

2 Plans and policies

Information contained in the current version and the most recent previous version of the following records is prescribed as open access information:

- (a) local policies adopted by the local authority concerning approvals and orders,
- (b) plans of management for community land,
- (c) environmental planning instruments, development control plans and contributions plans made under the *Environmental Planning and Assessment Act 1979* applying to land within the local authority's area.

3 Information about development applications

- (1) Information contained in the following records (whenever created) is prescribed as open access information:
- (a) development applications (within the meaning of the *Environmental Planning and Assessment Act 1979*) and any associated documents received in relation to a proposed development including the following:
 - (i) home warranty insurance documents,
 - (ii) construction certificates,
 - (iii) occupation certificates,
 - (iv) structural certification documents,

Government Information (Public Access) Act 2009 No 52

Schedule 5 Government Information (Public Access) Regulation 2009

-
- (v) town planner reports,
 - (vi) submissions received on development applications,
 - (vii) heritage consultant reports,
 - (viii) tree inspection consultant reports,
 - (ix) acoustics consultant reports,
 - (x) land contamination consultant reports,
- (b) records of decisions on development applications (including decisions made on appeal),
 - (c) a record that describes the general nature of the documents that the local authority decides are excluded from the operation of this clause by subclause (2).
- (2) This clause does not apply to so much of the information referred to in subclause (1) (a) as consists of:
- (a) the plans and specifications for any residential parts of a proposed building, other than plans that merely show its height and its external configuration in relation to the site on which it is proposed to be erected, or
 - (b) commercial information, if the information would be likely to prejudice the commercial position of the person who supplied it or to reveal a trade secret.
- (3) A local authority must keep the record referred to in subclause (1) (c).

4 Approvals, orders and other documents

Information contained in the following records (whenever created) is prescribed as open access information:

- (a) applications for approvals under Part 1 of Chapter 7 of the LGA and any associated documents received in relation to such an application,
- (b) applications for approvals under any other Act and any associated documents received in relation to such an application,
- (c) records of approvals granted or refused, any variation from local policies with reasons for the variation, and decisions made on appeals concerning approvals,
- (d) orders given under Part 2 of Chapter 7 of the LGA, and any reasons given under section 136 of the LGA,
- (e) orders given under the authority of any other Act,
- (f) records of building certificates under the *Environmental Planning and Assessment Act 1979*,

Government Information (Public Access) Act 2009 No 52
Government Information (Public Access) Regulation 2009

Schedule 5

-
- (g) plans of land proposed to be compulsorily acquired by the local authority,
 - (h) compulsory acquisition notices,
 - (i) leases and licences for use of public land classified as community land.

[Agreement in principle speech made in Legislative Assembly on 17 June 2009
Second reading speech made in Legislative Council on 24 June 2009]

BY AUTHORITY

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ATTACHMENT 2



Adopted: 16/09/97
Minute No: 1282
Amended: 19/10/2004
Minute No: 375
Amended: 28/03/2008
Minute No: 462

FILE NO: A2004-0194

TITLE: ACCESSING INFORMATION

RESPONSIBLE OFFICER: GOVERNANCE COORDINATOR

BACKGROUND

To date Council has received requests for information in writing under Section of the Local Government Act 1993, Privacy & Personal Protection Act 1998, Freedom of Information Act 1989 and the Health Records & Information Privacy Act 2002. Council has endeavoured to provide information to members of the public, councillors and other agencies where possible in accordance with the relevant legislation.

OBJECTIVE

- To guide staff in determining requests for information;
- To ensure that all members of the public receive consistent access to information on request;
- To clarify the documentation or information available to the general public without the need for a Freedom of Information Application.
- To comply with the requirements of the Freedom of Information Act, 1989

NOTE:

Council's Statement of Affairs is available at the front counter and lists the range of documents that are available for inspection by the general public to view without a Freedom of Information Application. The following policy specifies other documents that may be viewed by the public.

Fees and charges may be applicable to obtain copies of certain documents.

Council staff will endeavour to give members of the public immediate access to documents however, should a building or development application file be requested the Council reserves the right to provide it in a reasonable time.

PRINCIPLE

Council has a responsibility as a public sector agency/local authority to provide reasonable and fair access to Council documents.

POLICY STATEMENT

1) Building and Development Applications

The following items may be inspected by the public free of charge. Copies may be provided subject to copying fees specified in Council's Fees & Charges:-

- Building/Development application computerised register
- Building/Development application
- Building/Development determination
- Site plans and elevations
- Submissions (Objections lodged with Council will not be considered as confidential. Objectors will be informed on notices to adjoining owners that confidentiality will not be available.)
- Supporting documentation provided by applicant
- Associated documents issued or created by Council, for example Letters to applicant and development assessment sheets Note: see exemptions below first.

[Sections 12, 113(5) & 117 of the Local Government Act as amended]

Exemptions

The following are not to be given out in respect of building and development application files.

- floor plans and specifications contained in building and development applications for any residential parts of a proposed building. Note: approval of the copyright owner must be obtained before allowing a plan to be copied. This does not apply to plans showing height and external configurations [The Copyright Act 1968]
- commercial information which would be likely to prejudice the commercial position of the person who supplied it, or reveal a trade secret.
- Documents that contain advice concerning litigation or advice that would otherwise be privileged from production in legal proceedings.

Check with your Section Manager or Council's Governance Coordinator if unsure.
Section 12(6) of the Local Government Act

OTHER DOCUMENTS

Development Control Plans, Draft Local Environmental Plans are available for inspection free of charge or a copy can be obtained for a fee. [Environmental Planning & Assessment Act]

The register of business papers and minutes, any matter that has been considered before an open meeting of Council including minutes, reports, attachments and any tabled item are available to the public free of charge. [See Council's Code of Meeting Practice & Section 10E(6) of the LG Act]

A copy of a Building Certificates may be supplied with the owners consent. [Section 174 of the Local Government Act]

GENERAL EXEMPTIONS

10. The following documents are not available for public inspection:-

- Residential roll of electors [S302(1) Local Government Act]
- The resumes of candidates for election [S308 Local Government Act]
- Complainant's name and address or other personal details (see B below).

PROCEDURE

- 11a) Before allowing a member of the public to view a building or development application file staff should check the file for any privileged information such as legal advice, confidential reports or commercial information. The Section Managers in Sustainable Planning or Council's Executive Manager – Corporate Management and Governance Coordinator can assist staff to identify exempt documents.
- b) If access is denied to any document then written reasons must be given to the applicant and the reasons made publicly available.
- c) A review of any restriction must be made every 3 months after it is imposed. If council finds that there are no grounds for restriction, or if access to the information is obtained under the FOI Act, then council must remove the restriction.
- d) A Councillor or member of the public dissatisfied with the decision on access to documents has the right to seek access through the FOI Act.

FREEDOM OF INFORMATION

Access to all other documents or Council files can be provided under the Freedom of Information Act subject to all other avenues to provide information having been exhausted, such as Section 12 of the Local Government Act. You can apply to obtain or view any documents that Council holds but has not made public. However, some documents may require consultation with a third party or will remain exempt under the Freedom of Information Act.

Any person seeking details or the substance of a complaint against them may make an application under the Freedom of Information Act, 1989. The application will then be assessed under the Freedom of Information Act.

All complaints will be taken in confidence and as a general rule Council will not release the complainants name and address. Whether the identity of the complainant will be released or not will depend on an assessment using the following criteria.

If the complaint was:-
was clearly made in good faith; AND
discloses a contravention or possible contravention of the law, for the purpose of enabling or assisting the council to enforce or administer the law; OR [CI4(1)(a) & (b) of Schedule 1]
it is clear that the life or physical safety of the complainant could reasonably be expected to be endangered. [Clause 4(1)(c) of Schedule 1]

[Source: Freedom of Information Act, 1989 & Ombudsman Guidelines No. 7]

RELATED POLICIES

Nil

SUSTAINABILITY IMPLICATIONS

SOCIAL IMPLICATIONS

Nil

ECONOMIC IMPLICATIONS

Nil

ENVIRONMENTAL IMPLICATIONS

Nil

RELEVANT LEGISLATIVE PROVISIONS

Local Government Act 1993
Privacy & personal information Act 1998
Freedom of Information Act 1989
Health Records & Information Privacy Act 2002

IMPLEMENTATION RESPONSIBILITY

Corporate Management

REVIEW DATE

Two years after adoption.

ATTACHMENT 3



POLICY

Adopted:
Minute No:
Amended:
Minute No:

FILE NO: PSC2009-09420

TITLE: ACCESS TO INFORMATION POLICY

REPORT OF EXECUTIVE OFFICER

BACKGROUND

Since 1989 access to Council records has been governed by the *Freedom of Information Act 1989* and current and previous Local Government Acts. This legislation provided the community access to Council records.

From 1 July 2010, the new *Government Information (Public Access) Act 2009*, (GIPA) will commence providing four mechanisms to access Council information – mandatory disclosure, proactive disclosure, information release and formal access.

Section 12 of the *Local Government Act 1993* and the *Freedom of Information Act 1989* will cease on 30 June 2010.

OBJECTIVE

The objective of this policy is to describe Council's principles regarding public access to information and to facilitate the processing of requests for such access. This policy is to be read in conjunction with the Access to Information Guidelines.

PRINCIPLES

- 1) Port Stephens Council is committed to the following principles regarding public access to documents and information:
 - Open and transparent government
 - Consideration of the overriding public interest in relation to access requests
 - Proactive disclosure and dissemination of information
 - Respect for the privacy of individuals

POLICY STATEMENT

Port Stephens Council publishes specific open access information on our website, free of charge unless to do so would impose unreasonable additional costs to Council. Council will facilitate public access through this and other appropriate mediums. Also Council publishes for inspection documents listed under Schedule 5 of the Government Information (Public Access) Act held by it, unless there is an overriding public interest not to do so. Council will keep a record of all open access information that is not published because of an overriding public interest against disclosure.

Council also makes as much other information as possible publicly available in an appropriate manner, including on the internet. Such information is also available free of charge or at the lowest reasonable cost.

The 'Access to Information Guidelines' document associated with this policy identifies the documents and types of information that are available for public access and any restrictions that may apply.

Some documents may require a formal access application in accordance with the Government Information (Public Access) Act. Council will assess all requests for access to documents and information in a timely manner and in accordance with the 'Access to Information Guidelines' and relevant legislation.

Depending upon the nature of the request and the form of access requested charges may be applied in accordance with Council's Schedule of Fees and Charges and relevant legislation.

Council will assess requests for access to information with reference to:

- Government Information (Public Access) Act 2009
- Privacy and Personal Information Protection Act 1998
- Health Records and Information Privacy Act 2002
- State Records Act 1998
- Local Government Act 1993
- Environmental Planning and Assessment (EPA) Act 1979
- Companion Animals Act 1998

and any other relevant legislation and guidelines as applicable.

Broad requests for access to a large number of unspecified documents which, if processed, would divert substantial Council resources from dealing with other requests, or from performing other Council functions may be refused on the grounds that such a diversion of resources is contrary to the public interest. Council will endeavour to assist in defining the request to a more manageable one.

Council also endeavours to release other information in response to an informal request, subject to any reasonable conditions Council may impose having regard to the circumstances of the case.

Where information is released to an applicant under a formal access application and Council considers that it will be of interest to other members of the public, Council will provide details of the information in a disclosure log for inspection by the public.

The General Manager has authority to approve Guidelines for Information Access, which is to be available to members of the public.

RELATED POLICIES

Nil

SUSTAINABILITY IMPLICATIONS

SOCIAL IMPLICATIONS

The new GIPA legislation provides greater access to Council records through accessible on Council's website where possible, and where this does not create an unreasonable additional cost to Council to publish these documents on the website.

ECONOMIC IMPLICATIONS

Nil

ENVIRONMENTAL IMPLICATIONS

Nil

RELEVANT LEGISLATIVE PROVISIONS

Government Information (Public Access) Act 2009
Copyright Act 1968
Privacy & Personal Information Protection Act 1998
Local Government Act 1993
Health Records & Information Privacy Act 2002

IMPLEMENTATION RESPONSIBILITY

Executive Officer

REVIEW DATE

July 2011

ATTACHMENT 4

Access To Information Guidelines for Local Government

1. Accessing Information

Port Stephens Council is subject to NSW legislation that requires it to be open and accountable in the exercise of its functions, and to handle personal and health information in a fair and reasonable manner. Council will seek to ensure that legitimate requests for access to information are handled promptly and that members of the public are able to access information, subject to the public interest. In doing so Council recognises that it must take into account the privacy of others, legal and commercially sensitive information.

These guidelines set out the documents and types of information that are available to members of the public as a matter of routine, and those that will not generally be available for inspection and copying. Where practicable, Council will deal with requests to inspect documents in accordance with the Government Information (Public Access) Act (GIPAA) free of charge but a reasonable photocopying fee may be payable under the Act and for access to versions of documents that are neither current nor immediately preceding versions of the document and are not reasonably accessible. All charges are detailed in Council's Schedule of Fees and Charges.

There is a right of access under the GIPAA to certain documents held by Council unless there is an overriding public interest not to do so. Any applications under GIPAA will be processed in accordance with the Act's requirements and a determination made to release the documents or refuse access on the basis of the relevant considerations under that Act. Charges for formal applications are in accordance with the GIPAA Fees and Charges and include a \$30 application fee. In some circumstances processing charges may also be applied.

Council also may provide access to information under other legislation. Under the NSW Privacy and Personal Information Protection Act (PPIPA) 1998 and the NSW Health Records and Information Privacy Act (HRIPA) 2002, an individual also has a right to access and amend records held by Council which contain their personal details, matters related to their business affairs and any records containing information about their health. Where information about an individual is held in documents, files or systems that include information about other persons, any request should be made under the GIPAA. The Act provides for consultation with other affected parties prior to disclosure of information concerning their personal or business affairs. Under the State Records Act 1998 Council is required to give an access direction (whether the records are open or closed) for all their records that

are at least thirty (30) years old in what is described as the "open access period". Under the NSW Environmental Planning and Assessment (EPA) Act 1979 and Regulations 2000 there is a right to access Development Application registers and documents held by Council subject to restrictions set out in s.268(3).

2. Information Available

Council publishes open access, or mandatory release, information on its website unless there is an overriding public interest against disclosure or do so would impose an unreasonable additional cost on Council. In respect of the latter the Council will make the information freely available in another format eg. hard copy at the Council Administration Office. The open access information is:

- Council's policy documents;
- a publication guide with information about the council's structure and functions, and listing the type of information that is publicly available;
- a disclosure log of formal access applications where in council's opinion the information released may be of interest to other members of the public;
- a register of contracts worth more than \$150,000 that councils have with private sector bodies;
- a record of open access information that council does not make publicly available on the basis of an overriding public interest against disclosure.

In addition schedule 5 of the GIPA Act requires that certain documents held by council, are to be made publicly available for inspection, free of charge. The public is entitled to inspect these documents either on Council's website (unless there is an unreasonable additional cost to Council to publish these documents on the website) or at the offices of the Council during ordinary office hours or at any other place as determined by the Council. Any current and previous documents of this type may be inspected by the public free of charge. Copies can be supplied for reasonable copying charges.

These documents are:

1. Information about Council
 - The model code of conduct prescribed under section 440(1) of the Local Government Act
 - Council's adopted Code of Conduct
 - Code of Meeting Practice
 - Annual Report
 - Annual Financial Reports
 - Auditor's Report
 - Management Plan
 - EEO Management Plan
 - Policy concerning the Payment of Expenses and Provision of Facilities to the Mayor and Councillors

- Annual Reports of Bodies Exercising Functions Delegated by Council (e.g. Section 355/377 Committees)
 - Any Codes referred to in the Local Government Act
 - Returns of the Interests of Councillors, Designated Persons and Delegates
 - Agendas, Business Papers and Minutes of Council/Committee meetings (except meetings that are closed to the public)
 - Division of Local Government, NSW Department of Premier and Cabinet Representative Reports presented at a meeting of Council
 - Land Register
 - Register of Investments
 - Register of Delegations
 - Register of Graffiti removal works
 - Register of current Declarations of Disclosures of Political donations
 - Register of Voting on Planning Matters
2. Plans and Policies
- Local Policies adopted by Council concerning approvals and orders
 - Plans of Management for Community Land
 - Environmental Planning Instruments, Development Control Plans and Contribution Plans
3. Information about Development Applications
- Development Applications and any associated documents received in relation to a proposed development, eg:
- Home Warranty Insurance documents
 - Construction Certificates
 - Occupation Certificates
 - Structural Certification Documents
 - Town Planner Reports
 - Submissions received on Development Applications
 - Heritage Consultant Reports
 - Tree Inspections Consultant Reports
 - Acoustic Consultant Reports
 - Land Contamination Consultant Reports
 - Records of decisions on Development Applications including decisions on appeals
 - Records describing the general nature of documents that Council decides to exclude from public view after application of public interest test considerations
4. Approvals, Orders and Other Documents
- Applications for approvals under part 7 of the LGA
 - Applications for approvals under any other Act and any associated documents received

- Records of approvals granted or refused, any variation from Council Policies with reasons for the variation, and decisions made on appeals concerning approvals
- Orders given under Part 2 of Chapter 7 of the LGA, and any reasons given under section 136 of the LGA
- Orders given under the Authority of any other Act
- Records of Building Certificates under the Environmental Planning and Assessment Act 1979
- Plans of land proposed to be compulsorily acquired by Council
- Compulsory Acquisition Notices
- Leases and Licenses for use of Public Land classified as Community Land

Copies of documents provided are given for information purposes only and are provided by Council to meet its requirements under relevant legislation. Copyright laws still apply to each document. The copyright-owner's consent is required for documents where copyright applies such as documents on development applications. This information would generally be available for inspection however may not be able to be copied.

In addition, from time to time Council will make as much other information as possible publicly available in an appropriate manner, including on their website. The information will be available free of charge or at the lowest reasonable cost. Such other information includes frequently requested information or information of public interest that has been released as a result of other requests.

Council will endeavour to release other information in response to an informal request, subject to any reasonable conditions as Council thinks fit to impose. However, notwithstanding the lodgement of an informal application, Council may require a formal access application to be submitted where the information sought:

- is of a sensitive nature that requires careful weighing of the considerations in favour of and against disclosure, or
- contains personal or confidential information about a third party that requires consultation, or
- would involve an unreasonable amount of time and resources to produce.

3. Exemptions To Access

Council may refuse a request for information if there is an overriding public interest against disclosure or if searching for the requested information would require unreasonable and substantial diversion of the Council's resources.

Council will always explain to the applicant its reasons for applying an exemption. Council will not classify information as exempt unless there are clear reasons for doing so. Where documents contain exempt information, any remaining information contained within the requested document will be available under the Act.

In determining whether there is an overriding public interest against the disclosure of the information, Council will fully consider the Public Interest Test.

The GIPA Act provides an exhaustive list of public interest considerations against disclosure. These are the **only** considerations against disclosure that Council will consider in applying the public interest test.

Considerations are grouped under the following headings:

- responsible and effective government
- law enforcement and security
- individual rights, judicial processes and natural justice
- business interests of agencies and other persons
- environment, culture, economy and general matters
- secrecy provisions (in legislation other than those listed in Schedule 1)
- exempt documents under interstate Freedom of Information legislation.

In applying the public interest test, Council will **not** take into account:

- that disclosure might cause embarrassment to, or loss of confidence in, the Council;
- that any information disclosed might be misinterpreted or misunderstood by any person.

Council will consider any submissions made by an applicant in relation to public interest considerations, as well as any factors personal to the applicant.

Under GIPAA there are 12 categories of information (eight of which appear to affect local government) for which there is a conclusive presumption of an overriding public interest against disclosure. These eight are:

1. Information subject to an overriding secrecy law (26 specifically named Acts)
2. Information subject to the direction or order of a court or other body with the power to receive evidence on oath
3. Information subject to legal professional privilege
4. 'Excluded information' (judicial and prosecutorial information, information about complaints handling and investigative functions, competitive and market sensitive information and information in relation to specific functions of the Public Trustee)
5. Documents affecting law enforcement and public safety
6. Specific information relating to transport safety
7. Specific reports concerning the care and protection of children

8. Specific information relating to Aboriginal and environmental heritage.

Generally under GIPAA, Council must not publish and must refuse requests to disclose information in the above categories. Formal applications for 'excluded information' are invalid under the Act.

In dealing with informal applications Council will apply a similar decision making framework.

4. Accessing Information and Making an Application

The public may obtain access to information as follows:

- by searching the Council's website to see if it is already available
- by contacting Council and requesting the information. Council will advise whether the information requested:
 - is *open access*, or *mandatory release* information that is readily available and where and how to get the information.
 - should be made available as part of a *proactive release* of information.
 - can be disclosed through an *informal release*, for example where no third party personal information is involved.
 - requires a *formal access application*, for example because consultation with a third party is required.

To make an informal request for access to information under GIPA Act council may require the completion of an 'Informal Access to Information Request' form. No fee is required on application.

To make a formal request for access to information under GIPA Act, the 'Formal Access to Information' Request Form should be completed. The Formal Application fee is \$30.00 and processing charges may be applicable (there is no GST in relation to these charges). An acknowledgement of such application will be provided by Council within five working days.

If a fee for photocopies of documents provided under the GIPA Act is payable, it will be listed in Council's adopted Fees and Charges and is GST inclusive.

5. Time Limits

In respect of formal applications, Council will notify applicants of the decision on an application within 20 working days, unless the applicant agrees to extend the time. Council may also extend the time by up to 15 working days where consultation with a third party is required or if Council needs to retrieve records from archives.

If access is deferred by Council, then Council will notify the applicant and include the reason for deferral and the date on which the applicant will be given access. A decision to defer access is reviewable (see Rights of Review and Appeal). If Council does not decide the applicant's access application within the above timeframes, it is deemed 'refused'. Council will refund the application fee and the applicant may seek internal or external review (see Rights of Review and Appeal) of this refusal. This will not apply if an extension of time has been arranged or payment of an advance deposit is pending.

5. Rights of Review and Appeal

Where a member of the public is refused access under a formal application under GIPA Act, staff will provide details of the reasons for refusal to the member of the public in writing. An applicant who has been refused access by Council to information requested under a formal request for access to information under the GIPA Act has three options of review available.

1. Applicants can apply to Council for an **internal review**. This is review by someone more senior than the original decision maker and there is a \$40 fee. Applicants have 20 working days from receiving notice of a decision to ask for an internal review.
2. If an applicant is not satisfied with the internal review, or does not want one, they can ask for a **review by the Information Commissioner**. Applicants have eight weeks from being notified of a decision to ask for this review.
3. If an applicant is not satisfied with the decision of the Information Commissioner or the internal reviewer or if they do not want to take these options they can **apply to the Administrative Decisions Tribunal (ADT)**. If the applicant has already had a review by the Information Commissioner they have four weeks from notification of the decision to make this application. If they haven't had a review by the Information Commissioner they have eight weeks from notification of the decision to make this application.

It is noted that there are no rights of review in respect of informal applications, but the applicant may make a formal application at any time.

ATTACHMENT 5



PUBLICATION GUIDE

ADOPTION DATE:



1. Structure and Functions of Council

1.1 Description

Port Stephens Council has twelve (12) Councillors elected in 2008 at the general Local Government Election.

The Port Stephens Local Government Area (LGA) is located at the boundary of the Mid North and Central Coasts of New South Wales, and covers an area of 858.9 square kilometres. It is approximately 55 kilometres from east to west and 30 kilometres from north to south. Port Stephens extends north to Karuah, west to Duns Creek, east to Shoal Bay and southeast to Fern Bay and Hexham. The area contains prime agricultural land, valuable natural ecosystems and a high level of species diversity. The LGA has a substantial estuary system with a surface area of over 100 square kilometres, making it approximately three times the size of Sydney Harbour. The waterway lies at the junction of the Myall River Lakes System, Karuah River and the Pacific Ocean. The western half of the area is geographically dominated by the confluence of the Paterson and Williams Rivers with the Hunter River. The eastern portion of the LGA contains the Stockton Bight dune system, which extends for 32 kilometres, the largest unvegetated dune system in NSW.

1.2 Basis of Constitution

Port Stephens Council is constituted under the Local Government Act 1993.

1.3 Organisational Structure and Resources

Port Stephens Council is divided into (3) Ward, West, Central and East.

Council is governed by the body of Councillors who are elected by the residents and ratepayers of the area. The role of the Councillors, as members of the body corporate are:

- to direct and control the affairs of the Council in accordance with the Local Government Act and other applicable legislation;
- to participate in the optimum allocation of the Council's resources for the benefit of the area;
- to play a key role in the creation and review of the Council's policies, objectives and criteria relating to the exercise of the Council's regulatory functions;
- to review the performance of the Council and its delivery of services, management plans and revenue policies of the Council;
- The role of a Councillor is, as an elected person:
- to represent the interests of the residents and ratepayers;
- to provide leadership and guidance to the community;
- to facilitate communication between the community and the Council.

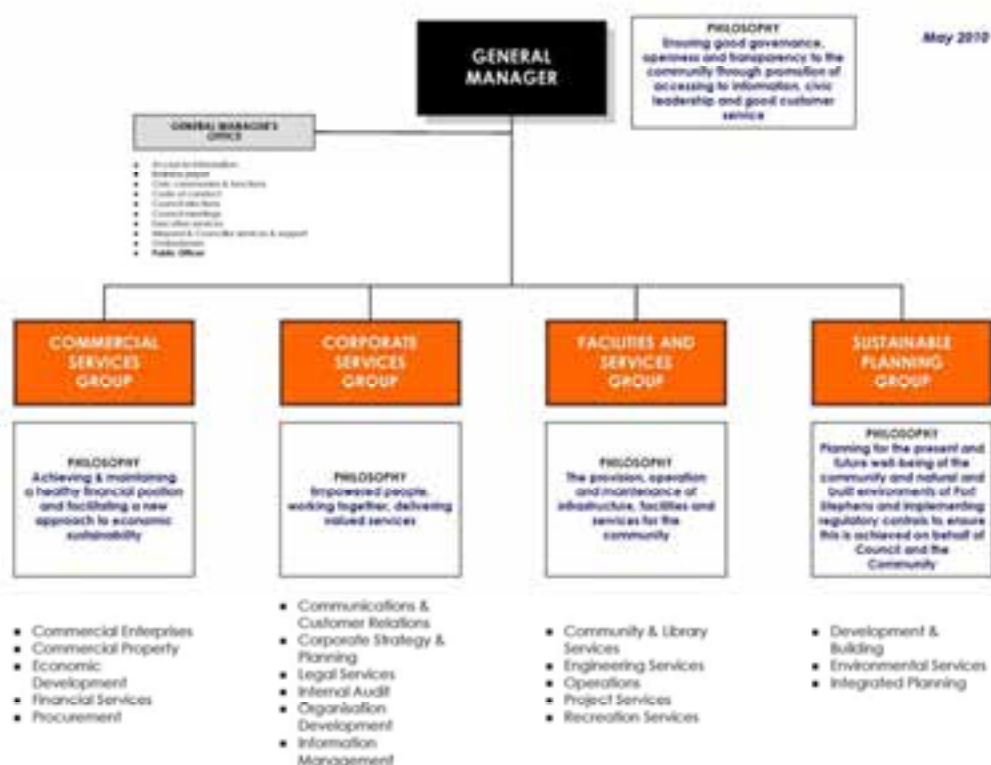
As from September 2012, the Mayor is popularly elected for a four (4) year term and the Councillors numbers will reduce to 9 (each Ward represented by 3 Councillors).

The Mayor chairs the meetings of the Council, carries out the civic and ceremonial functions of the office, exercises, in cases of necessity, the decision making functions of the body politic, between its meetings and performs any other functions that the Council determines.

The Principal Officer of the Council is the General Manager. The General Manager is responsible for the efficient operation of the Council's organisation and for ensuring the implementation of Council decisions. The General Manager is also responsible for the day to day management of the Council, the exercise of any functions delegated by the Council, the appointment, direction and where necessary, the dismissal of staff, as well as the implementation of Council's Equal Employment Opportunity Management Plan.

To assist the General Manager in the exercise of these functions, there are four (4) Groups of Council. These Groups are Commercial Services, Corporate Services, Facilities & Services and Sustainable Planning, with a Group Manager responsible for each area.

The following is Council's organisational structure.



1.4 Functions of Port Stephens Council

Under the Local Government Act, 1993, Council's functions can be grouped into the following categories:

A COUNCIL EXERCISES FUNCTIONS UNDER THE LOCAL GOVERNMENT ACT 1993

SERVICE FUNCTIONS	REGULATORY FUNCTIONS	ANCILLARY FUNCTIONS	REVENUE FUNCTIONS	ADMIN FUNCTIONS	ENFORCEMENT FUNCTIONS
Including: * Provision of community health, recreation, education & information services * Environmental protection * Waste removal & disposal * Land & property, industry & tourism development & assistance * Civil Infrastructure Planning * Civil Infrastructure Maintenance & Construction	Including: * Approvals * Orders * Building Certificates	Including: * Resumption of land. * Powers of entry and inspection	Including: * Rates * Charges * Fees * Borrowings * Investments	Including: * Employment of staff * Management plans * Financial reporting * Annual reports	Including: * Proceedings for breaches of the Local Government Act & Regulations and other Acts & Regulations. * Prosecution of offences * Recovery of rates and charges.

As well as the Local Government Act, Council has powers under a number of other Acts including:

- Children and Young Persons (Care and Protection) Act 1998
- Community Land Development Act 1989
- Community Land Management Act 1989
- Companion Animals Act 1998

- Contaminated Land Management Act 1997
- Crown Lands Act 1989
- Environmental Planning & Assessment Act 1979
- Food Act 2003
- Government Information (Public Access) Act 2009
- Heritage Act 1977
- Impounding Act 1993
- Independent Commission Against Corruption Act 1988
- Land Acquisition (Just Terms Compensation) Act 1991
- Library Act 1939
- Local Government Act 1993
- Noxious Weeds Act 1993
- Occupational Health & Safety Act 2000
- Ombudsman Act 1974
- Privacy and Personal Information Protection Act 1998
- Protected Disclosures Act 1994
- Protection of the Environment Operations Act 1997
- Public Health Act 1991
- Road Transport (General) Act 2005
- Road Transport (Safety and Traffic Management) Act 1999
- Roads Act 1993
- Rural Fire Act 1997
- State Records Act 1998
- Strata Schemes (Freehold Development) Act 1973
- Strata Schemes (Leasehold Development) Act 1986
- Swimming Pools Act 1992
- Threatened Species Conservation Act 1995
- Waste Avoidance and Resource Recovery Act 2001
- Workers Compensation Act 1987

2. How Council Functions Affect Members of the Public

As a service organisation, the majority of the activities of the Port Stephens Council have an impact on the public. The following is an outline of how the broad functions of Council affect the public.

Service functions affect the public as Council provides services and facilities to the public. These include provision of human services such as child care services and libraries, halls and community centres, recreation facilities, infrastructure and waste management.

Regulatory functions place restrictions on developments and buildings to ensure that they meet certain requirements affecting the amenity of the community and not endanger the lives and safety of any person. Members of the public must be aware of, and comply with, such regulations.

Ancillary functions affect only some members of the public. These functions include, for example, the resumption of land or the power for Council to enter onto a person's land. In these circumstances, only the owner of the property would be affected.

Revenue functions affect the public directly in that revenue from rates and other charges paid by the public is used to fund services and facilities provided to the community.

Administrative functions do not necessarily affect the public directly but have an indirect impact on the community through the efficiency and effectiveness of the service provided.

Enforcement functions only affect those members of the public who are in breach of certain legislation. This includes matters such as the non payment of rates and charges, unregistered dogs and parking offences.

Community planning and development functions affect areas such as cultural development, social planning and community profile and involves:

- Advocating and planning for the needs of our community. This includes initiating partnerships; participating on regional, State or Commonwealth working parties; and preparation and implementation of the Community Strategic Plan.
- Providing support to community and sporting organisations through provision of grants, training and information.
- Facilitating opportunities for people to participate in the life of the community through the conduct of a range of community events such as NAIDOC Week, Youth Week, Children's Week, as well as promoting events of others.

3. How the Public can Participate in Council's Policy Development and the Exercising of Functions

There are two broad ways in which the public may participate in the policy development and, indeed, the general activities of the Council. These are through representation and personal participation.

3.1 Representation

Local Government in Australia is based on the principle of representative democracy. This means that the people elect representatives to their local Council to make decisions on their behalf. In New South Wales, local government elections are held every four years. The next elections are to be held in September 2012, this will include the election of a popularly elected Mayor.

At each election, voters elect nine Councillors for a four year. All residents of the area who are on the electoral roll are eligible to vote. Property owners who live outside of the area and rate paying lessees can also vote, but must register their intention to vote on the non residential roll. Voting is compulsory.

Residents are able to raise issues with, and make representations to, the elected Councillors. The Councillors, if they agree with the issue or representation, may pursue the matter on the resident's behalf thus allowing members of the public to influence the development of policy.

3.2 Personal Participation

There are also avenues for members of the public to personally participate in the policy development and the functions of the Council. Several Council Committees comprise or include members of the public. Some of these special committees or bodies are:

Aboriginal Strategic Committee
Anna Bay, Birubi Pt Reserves, Hall & Tidy Towns Committee
Boat Harbour Parks and Reserves Committee
Bobs Farm Public Hall Committee
Corlette Headland Committee
Corlette Reserves & Hall 355(b) Committee
Fern Bay Public Hall, Reserves and Tidy Towns Committee
Fingal Bay Parks & Reserves Committee
Hinton School of Arts Committee
Karuah Tidy Towns, Parks Reserves & Wetlands Committee
Mallabula Community Centre Committee
Mallabula Parks and Reserves Committee
Mambo Wanda Wetlands, Reserves & Landcare Committee
Medowie Community Centre Committee
Medowie Sports Council
Medowie Tidy Towns & Cycleway Committee
Nelson Bay Senior Citizens Hall Committee
Nelson Bay West Parkcare Committee
Ngioka Centre Committee
Port Stephens Access Committee
Port Stephens Adult Choir Committee
Port Stephens Australia Day Celebrations Coordinating Committee
Port Stephens Sister Cities Committee
Port Stephens Community Band Committee
Port Stephens Heritage Advisory Committee
Port Stephens Native Flora Garden Committee
Port Stephens Sports Council
Port Stephens Telecentre Advisory Committee
Raymond Terrace Parks, Reserves & Tidy Towns Committee
Raymond Terrace Senior Citizens Hall Management Committee
Raymond Terrace Sports Council
Rural West Sports Council
Salamander Ecology Group
Salt Ash Community Hall, Reserves and Tennis Courts Committee
Salt Ash Sports Ground Committee
Seaham Park Committee
Seaham School of Arts and Community Hall Committee

MINUTES FOR ORDINARY MEETING – 13 JULY 2010

Shoal Bay Beach Preservation Committee
Soldiers Point-Salamander Bay Parks, Reserves and Hall Committee
Soldiers Point-Salamander Bay Tidy Towns and Landcare Committee
Tanilba Bay Parks, Reserves & Hall Committee
Tanilba Bay Senior Citizens Hall Management Committee
Taylors Beach Reserves, Tidy Towns & Landcare Committee
Tilligerry Aquatic Centre Advisory Committee
Tilligerry Community Centre Committee
Tilligerry Sports Council
Tomaree Education Complex Multi Purpose Centre Committee
Tomaree Sports Council
West Tilligerry Tidy Towns and Landcare Committee
West Ward Cemeteries Committee
Williamstown Public Hall Committee

Members of the public are also able to attend Council meetings (second and fourth Tuesday of the month) and Council Committee Council meetings (second and fourth Tuesday of the month) held at the Administration Building, 116 Adelaide Street, Raymond Terrace.

4. Documents - Open Access Information

4.1 Documents Held by Council

Council holds documents (hard copy and/or electronic form) that relate to a number of different issues concerning the Port Stephens area. These documents are grouped into four categories:

1. Electronic Documents
2. "Physical Files"
3. Policy Documents
4. General Documents

Documents included in Clause 4.4 of this Publication Guide may be made available to the public on request unless there is an overriding public interest not to do so.

Some documents may require a formal access application in accordance with the Government Information (Public Access) Act.

4.2 Electronic and "Physical"

Council implemented an Electronic Document Management System (TRIM) in 2004, from this date most documents were stored within this system. Hard copy, physical files were dispensed with, except for development/building/construction applications.

Accordingly, TRIM captures information against the following indices:

1. Customer
2. Property
3. Application
4. Street/Road
5. Request Type
6. Subject
7. Meetings

Prior to 2004, the main types of "physical" files held by Council includes general subject files, development and building files, property files as well as street and park files.

The foregoing are not available on Council's website however this information may be made available either by informal release or via an access application in accordance with Sections 7-9 of the GIPA Act, unless there is an overriding public interest against disclosure of the information as outlined in Section 14 of the GIPA Act. Members of the public who require an informal release or an access application can do so by contacting Council on 49800255.

4.3 Policy Documents

Council has a register of policy documents which is maintained by Council's Right to Information Officer and is available on Council's website.

4.4 General Documents

The following list of general documents held by Council has been divided into four sections as outlined by Schedule 5 of the Government Information (Public Access) Act:-

1. Information about Council;
2. Plans and Policies;
3. Information about Development Applications;
4. Approvals, Orders and other Documents.

Schedule 5 of the Government Information (Public Access) Act requires that these documents held by Council, are to be made publicly available for inspection, free of charge. The public is entitled to inspect these documents either on Council's website (unless there is an unreasonable additional cost to Council to publish these documents on the website) or at the offices of the Council during ordinary office hours or at any other place as determined by the Council. Any current and previous documents of this type may be inspected by the public free of charge. Copies can be supplied for reasonable copying charges.

These documents are:

5. Information about Council

- The model code prescribed under section 440 (1) of the LGA
- Councils adopted Code of Conduct
- Code of Meeting Practice
- Annual Report
- Annual Financial Reports
- Auditor's Report
- Management Plan
- EEO Management Plan
- Policy concerning the Payment of Expenses Incurred by, and the Provision of Facilities to, Councillors
- Annual Reports of Bodies Exercising Functions Delegated by Council
- Any Codes referred to in the LGA
- Returns of the Interests of Councillors, Designated Persons and Delegates
- Agendas and Business Papers for any meeting of Council or any Committee of Council
- Minutes of any meeting of Council or any Committee of Council
- Departmental Representative Reports presented at a meeting of Council
- Land Register
- Register of Investments
- Register of Delegations
- Register of Graffiti removal works
- Register of current Declarations of Disclosures of Political donations
- Register of Voting on Planning Matters

6. Plans and Policies

- Local Policies adopted by Council concerning approvals and orders
- Plans of Management for Community Land
- Environmental Planning Instruments, Development Control Plans and Contribution Plans

7. Information about Development Applications

Development Applications and any associated documents received in relations to a proposed development:

- Home Warranty Insurance documents
- Construction Certificates
- Occupation Certificates
- Structural Certification Documents
- Town Planner Reports
- Submissions received on Development Applications
- Heritage Consultant Reports
- Tree Inspections Consultant Reports
- Acoustic Consultant Reports
- Land Contamination Consultant Reports

- Records of decisions on Development Applications including decisions on appeals
- Records describing general nature of documents that Council decides to exclude from public view including internal specifications and configurations, and commercially sensitive information

8. Approvals, Orders and Other Documents

- Applications for approvals under part 7 of the LGA
- Applications for approvals under any other Act and any associated documents received
- Records of approvals granted or refused, any variation from Council Policies with reasons for the variation, and decisions made on appeals concerning approvals
- Orders given under Part 2 of Chapter 7 of the LGA, and any reasons given under section 136 of the LGA
- Orders given under the Authority of any other Act
- Records of Building Certificates under the Environmental Planning and Assessment Act 1979
- Plans of land proposed to be compulsorily acquired by Council
- Compulsory Acquisition Notices
- Leases and Licenses for use of Public Land classified as Community Land

Council's website is:

www.portstephens.nsw.gov.au

5. How Members of the Public may Access and Amend Council Documents Concerning their Personal Affairs

As mentioned previously, Council has a vast range of documents that can be accessed in varying ways. Most documents can be inspected at and obtained from Council's Administration office between the hours of 8.30 am and 5.00 pm, Monday to Friday (except public holidays). For further enquiries about any document, a Customer Services Officer should be contacted. If you experience any difficulty in obtaining documents or information, you should contact the Public Officer.

5.1 Public Officer - Right of Information Officer

It should be noted that the Executive Officer has been appointed as the Public Officer. Amongst other duties, the Public Officer may deal with requests from the public concerning the Council's affairs and has the responsibility of assisting people to gain access to public documents of the Council. The Public Officer is also Council's Right to Information Officer and, as such, is responsible for determining applications for access to documents or for the amendment of records. If you have any difficulty in obtaining access to Council documents, you may wish to refer your enquiry to the Public Officer. Also, if you would like to amend a document of Council which you feel is incorrect it is necessary for you to make written application to the Public Officer in the first instance. Enquiries should be addressed as follows:

General Manager
Port Stephens Council
PO Box 42 (116 Adelaide St)
RAYMOND TERRACE NSW 2324

Email: council@portstephens.nsw.gov.au

ITEM NO. 10

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 13 July 2010.

No:	Report Title	Page:
1	JOINT REGIONAL PLANNING PANEL (JRPP) DA 16-2009-811-1 EIGHT LOT COMMERCIAL SUBDIVISION – TORRENS TITLE LOT 284 DP 806310, 155 SALAMANDER BAY	

COUNCIL COMMITTEE MEETING – 13 JULY 2010

RECOMMENDATION:

	Councillor Bruce MacKenzie Councillor Shirley O'Brien	That Council support the application with the exception of the 88B Instrument requirement and excluding the parkland on Lot 3.
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In accordance with the Section 375A, Local Government Act 1993, a division is required for this item.

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

Those against the Motion: Nil.

MINUTES FOR ORDINARY MEETING – 13 JULY 2010**COUNCIL COMMITTEE MEETING – 13 JULY 2010****RECOMMENDATION:**

	Councillor Bruce MacKenzie Councillor Shirley O'Brien	That Council support the application with the exception of the 88B Instrument requirement and excluding the parkland on Lot 3.
--	--	--

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

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

Those against the Motion: Nil.

ORDINARY COUNCIL MEETING - 13 JULY 2010

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

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

Those against the Motion: Crs Peter Kafer, Caroline De Lyall and Geoff Dingle.

COUNCIL COMMITTEE INFORMATION PAPERS



INFORMATION ITEM NO. 1

JOINT REGIONAL PLANNING PANEL (JRPP) DA 16-2009-811-1 EIGHT LOT COMMERCIAL SUBDIVISION – TORRENS TITLE LOT 284 DP 806310, 155 SALAMANDER WAY, SALAMANDER BAY

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

FILE: PSC2010-00134

BACKGROUND

The purpose of this report is present to Council a copy of the assessment report and consent conditions provided to the Joint Regional Planning Panel for determination in relation the subdivision of 155 Salamander Way, Salamander Bay – DA16-2009-811-1

The development application proposes an eight (8) lot commercial subdivision of the subject site to create seven (7) commercial allotments with the eighth allotment being set aside for environmental and stormwater purposes. The subdivision will also incorporate the construction of an internal ring road network.

The submitted Statement of Environmental Effects (SoEE) states that negotiations are underway for end users of the proposed allotments,

- Lot 1 – Aldi
- Lot 2 - Unknown
- Lot 3 – Childcare Centre and Library (both existing)
- Lot 4 – Medical Centre
- Lot 5 - Unknown
- Lot 6 – Big W
- Lot 7 – Future Development

The proposed lot sizes as follows:

Proposed Lot No	Lot Size	Purpose
1	6280m ²	Development Lot
2	5941m ²	Development Lot
3	1.75ha	Development Lot
4	5001m ²	Development Lot
5	2736m ²	Development Lot
Reserve	2207m ²	Reserve
6	1.97ha	Development Lot
7	3.05ha	Development Lot
Total	8.99ha	

MINUTES FOR ORDINARY MEETING – 13 JULY 2010

Each of the proposed allotments will have individual road frontages to a proposed internal link road with connections to Salamander Way and Bagnall Beach Road.

The proposed development is of a scale that triggered the provisions of Part 3 of State Environmental Planning Policy (Major Projects) and the application is required to be referred to the Joint Regional Planning Panel for determination.

ATTACHMENTS

- 1) Development Assessment Report DA16-2009-811-1 for JRPP determination

ATTACHMENT 1

JRPP No.:	
DA No.:	16-2009-811-1
Proposed Development:	Eight (8) Lot Commercial Subdivision – Torrens Title
Applicant:	RPS Harper Somers O’Sullivan Pty Ltd
Report By:	Leonard Allen (Port Stephens Council)

Assessment Report and Recommendation

Précis

The development application proposes an eight (8) lot commercial subdivision of the subject site to create seven (7) commercial allotments with the eighth allotment being set aside for environmental and stormwater purposes. The subdivision will also incorporate the construction of an internal ring road network.

The submitted Statement of Environmental Effects (SoEE) states that negotiations are underway for end users of the proposed allotments,

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- Lot 7 – Future Development

The proposed lot sizes as follows,

Proposed Lot No.	Lot Size	Purpose
1	6280m ²	Development Lot
2	5941m ²	Development Lot
3	1.75ha	Development Lot
4	5001m ²	Development Lot
5	2736m ²	Development Lot
Reserve	2207m ²	Reserve
6	1.97ha	Development Lot
7	3.05ha	Development Lot
Total	8.99ha	

Each of the proposed allotments will have individual road frontages to a proposed internal link road with connections to Salamander Way and Bagnall Beach Road.

The development has been found to have a Capital Investment Value of \$5.5million.

The development will require the excavation of the rear of the site, with the soil removed to be used to fill the western edge of the development. The SoEE states that the site regrading will aid in the development of the Stormwater System for the subdivision.

In terms of ecological impact, it is proposed in the application to supply an offset site nearby across Salamander Way to compensate for the loss of 3 hectares of Swamp Forest classified as an Endangered Ecological Community. The planting of 300 Koala feed trees has also been proposed to compensate for the loss of 6 trees during construction.

Location

The development site, known as Lot 284 DP 806310 (155 Salamander Way), is zoned 3(a) – Business General under the provisions of the Port Stephens Local Environmental Plan 2000 and is located adjacent to an existing commercial area.

The site is located adjacent to and surrounding the existing commercial internalised shopping centre and is accessible to both Bagnall Beach Road and Salamander Way. Internal vehicular access is also available via Town Centre Circuit which provides the existing access to the existing development on the adjacent allotment.

The development site is centrally located to service the Tomaree Peninsula with commercial services and is the last remaining vacant Commercial zoned land on the peninsula. The draft report "Port Stephens Commercial and Industrial Lands Study" prepared by SGS Economics and Planning identifies the site as a Stand Alone Shopping Centre.

The development site has an area of some 11.05 hectares and is currently vacant with the exception of the existing library and childcare centre located in the western portion of the site. These facilities are grouped together and each have separate car parking provided. The proposal seeks to retain these buildings and uses and site them on proposed Lot 3. Access to this site is proposed to be retained via Town Centre Circuit.

The majority of the commercial land at Salamander Bay is occupied by the Salamander Shopping Centre and other ancillary commercial operations. The area serves as a shopping precinct for the Tomaree Peninsula.

The commercial area is significantly different from the other existing commercial zoned land within the Tomaree Peninsula in that at no other point on the peninsula is there a concentration of shopping services. This is due to the function of the Salamander commercial area as the dominant shopping precinct. This is reflected in the site being identified as a Stand Alone Shopping Centre in the draft report "Port Stephens Commercial and Industrial Lands Study" prepared by SGS Economics and Planning. Nelson Bay and Shoal Bay commercial areas serve as distinct town centres with a mix of commercial and residential development. The Salamander Bay commercial area comprises a mix of anchor retail companies which provides a different function and service to the Nelson Bay and Shoal Bay commercial.



Figure 1 – Location, Lot 264 DP 806310

Surrounding development

To the north of the subject site is an existing residential area zoned 2(a) – residential.

To the east, the site is bound by Bagnalls Beach Road across which is a further area of 2(a) zoned residential land.

To the south is Salamander Way beyond which is residential dwellings on land zoned 7 (f3) – Environmental Protection.

To the west the site is bound by the Mambo Wetland which is zoned 7(a) – Environmental Protection.

The subject site is U shaped and wraps around an existing 3(a) commercial area which is currently developed. Figure 1 shows the site in relation to the existing surrounding uses.



Figure 2– Site Zoning

The Assessment

This report provides an assessment of the material presented in the application against all relevant State and local planning legislation and policy.

Section 79C: Potential Matters for Consideration

79C(1)(a)(i) the provisions of any Environment Planning Instrument (EPI)

Environmental Planning and Assessment Act, 1979

Clause 91 of the Environmental Planning and Assessment Act, 1979 specifies what development is considered to be integrated as if requires consent under another act. In the case of the proposed subdivision, it is considered that the provisions of Section 90 of the National Parks and Wildlife Act, 1974,

The application was referred to the NPWS on 19 December 2009 and General Terms of Approval were issued on 4th December 2009 and are incorporated into the draft conditions of approval.

State Environmental Planning Policy 14 – Coastal Wetlands

SEPP 14 applies to land subject to the provisions of Clause 4:

- (1) Subject to subclause (2), this policy applies to the land outlined by the outer edge of the heavy black line on the map.
- (2) This policy does not apply to land dedicated or reserved under the National Parks and Wildlife Act 1974 as an Aboriginal area, historic site, national park, nature reserve, state game reserve or state recreation area.

SEPP 14 wetlands are identified on adjacent sites, however no wetlands are present on the subject site, so SEPP 14 is not applicable to this development.

State Environmental Planning Policy 44 – Koala Habitat Protection

The subject site contains koala feed trees and habitat and therefore falls under the provisions of SEPP44. A specific plan of management, the Port Stephens Comprehensive Koala Plan of Management (CKPoM) applies to the site and an assessment against the guidelines is discussed in this report under the heading 79C (1)(b) the likely impacts of the development.

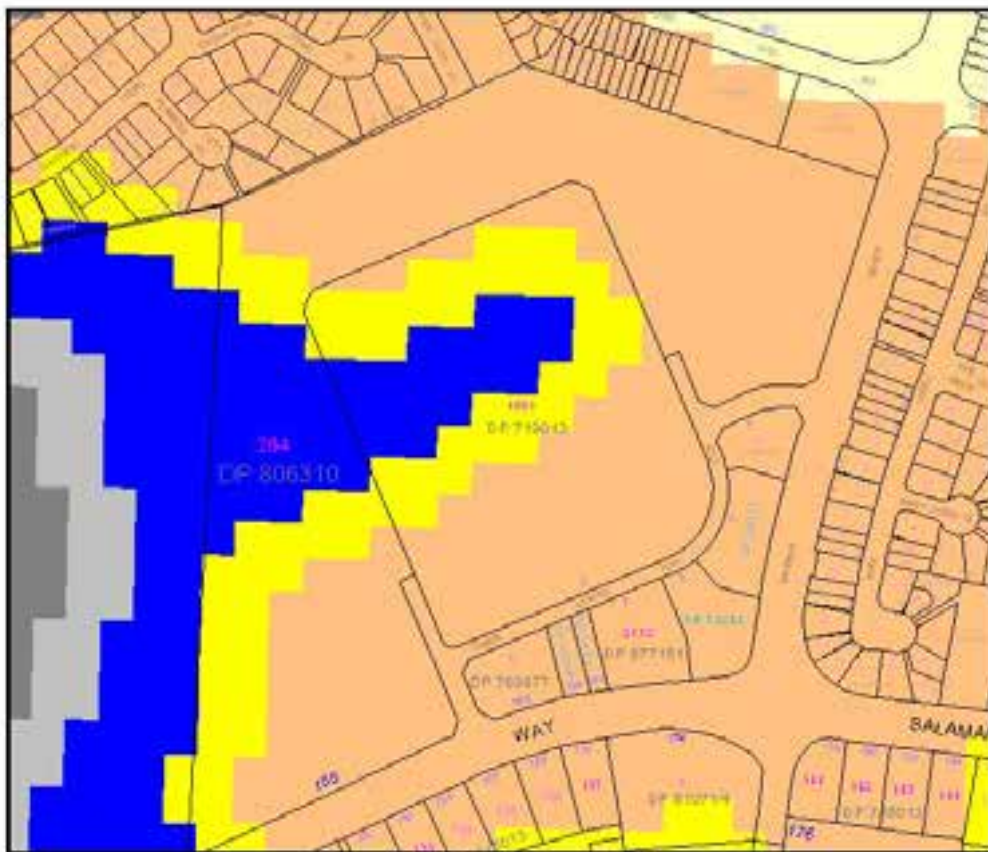


Figure 3 – Core Koala Habitat

State Environmental Planning Policy 62 - Aquaculture

Part 3A of SEPP62 is considered to be of relevance to this application being the provisions for consideration of effects of proposed development on oyster aquaculture. Part 3A of SEPP 62 states:

Part 3A Consideration of effects of proposed development on oyster aquaculture

15A Application of Part

This Part applies to all development and all land.

15B Consultation with Director-General of Primary Industries

(1) Before determining a development application for any development, a consent authority:

- (a) must consider whether, because of its nature and location, the development may have an adverse effect on oyster aquaculture development or a priority oyster aquaculture area, and*
- (b) if it suspects that the development may have that effect, must give notice of the application to the Director-General of the Department of Primary Industries.*

(2) In determining a development application for any development, a consent authority must consider any comments received from the Director-General of the Department of Primary Industries pursuant to subclause (1), including, in particular, such comments as identify:

- (a) any adverse effect that the development may have on, or ways in which the development may impede or be incompatible with, any oyster aquaculture development or priority oyster aquaculture area, and*
- (b) any measures to avoid or minimise any such adverse effect, impediment or incompatibility.*

Note. *Development may be incompatible with or impede oyster aquaculture if, for example, the development will limit access to oyster leases or have an impact on water quality and, consequently, on the health of oysters and of consumers of those oysters.*

(3) This clause does not require a consent authority to consider any comments received more than 21 days after notice was given as referred to in subclause (1) (b).

15C Development consent may be refused if development adversely affects oyster aquaculture

A consent authority may refuse to grant consent to development:

- (a) if it is satisfied that the development will have an adverse effect on, or impede or be incompatible with:*
 - (i) any oyster aquaculture development that is being carried out (whether or not within a priority oyster aquaculture area), or*
 - (ii) any oyster aquaculture development that may in the future be carried out within a priority oyster aquaculture area, or*
- (b) if it is not satisfied that appropriate measures will be taken to avoid or minimise any such adverse effect, impediment or incompatibility.*

15D NSW Oyster Industry Strategy to be considered

In exercising their functions under this Part, a consent authority and the Director-General of the Department of Primary Industries must each take into consideration the NSW Oyster Industry Sustainable Aquaculture Strategy.

The development proposes to detain water on site, and while the Statement of Environmental Effects (page 64) states that no water will be discharged into the adjoining wetlands, the submitted stormwater plans and discussion of stormwater in the Statement of Environmental Effects (page 61) indicate overflow will drain toward the wetlands. Through the use of detention and infiltration in swales it is considered that the development will not result in an increase of water into the wetland or a dilution of the salt water environment through the introduction of fresh water.

The nearest priority oyster aquaculture area is approximately 1.5 kilometres away as identified on the maps prepared by the NSW Department of Primary Industries "Oyster Industry Sustainable Aquaculture Strategy" dated August 2006 and the development is not considered to contribute any adverse impacts. As such no referral has been deemed necessary to the NSW Department of Primary Industries.

State Environmental Planning Policy 71 – Coastal Protection

The development site is subject to the provisions of State Environmental Planning Policy 71. Clause 7 and 8 are applicable to the application.

Clause 7 requires that Clause 8 is considered in the assessment of an application.

Clause 8 specifies the matters for consideration.

8 Matters for consideration

The matters for consideration are the following:

(a) the aims of this Policy set out in clause 2.

Comment: The development is considered to be consistent with the aims of the policy.

(b) existing public access to and along the coastal foreshore for pedestrians or persons with a disability should be retained and, where possible, public access to and along the coastal foreshore for pedestrians or persons with a disability should be improved.

Comment: The development will not have any impacts upon existing public access to the coastal foreshore.

(c) opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability.

Comment: The development will not create any impediments to future opportunities for access to the coastal foreshore.

(d) the suitability of development given its type, location and design and its relationship with the surrounding area.

Comment: The development is considered to be suitable for the location and its constraints.

(e) any detrimental impact that development may have on the amenity of the coastal foreshore, including any significant overshadowing of the coastal foreshore and any significant loss of views from a public place to the coastal foreshore.

Comment: The development will not impact upon the amenity of the foreshore.

(f) the scenic qualities of the New South Wales coast, and means to protect and improve these qualities.

Comment: The development is considered to have no impact on the scenic quality of the foreshore area.

(g) measures to conserve animals (within the meaning of the Threatened Species Conservation Act 1995) and plants (within the meaning of that Act), and their habitats.

Comment: The development site does contain areas of Preferred Koala habitat, however the design of the proposal is considered to adequately mitigate against any impacts. An assessment of the impacts on flora and fauna is elsewhere in this report.

(h) measures to conserve fish (within the meaning of Part 7A of the Fisheries Management Act 1994) and marine vegetation (within the meaning of that Part), and their habitats

Comment: The development will have no impacts upon fish or their habitat.

(i) existing wildlife corridors and the impact of development on these corridors.

Comment: The existing Koala corridor has been considered in the assessment of this proposal. Further detail is contained in the environmental assessment.

(j) the likely impact of coastal processes and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards.

Comment: The development is considered to be unlikely to impact upon the coastal process.

(k) measures to reduce the potential for conflict between land-based and water-based coastal activities.

Comment: The development will not result in conflict between land and water based activities.

(l) measures to protect the cultural places, values, customs, beliefs and traditional knowledge of Aboriginals.

Comment: There is no known cultural places on the site.

(m) likely impacts of development on the water quality of coastal waterbodies.

Comment: The development is not considered to result in adverse impacts to coastal waterbodies.

(n) the conservation and preservation of items of heritage, archaeological or historic significance.

Comment: The development will not impact on items of heritage, archaeological or historic significance.

(o) only in cases in which a council prepares a draft local environmental plan that applies to land to which this Policy applies, the means to encourage compact towns and cities.

Comment: The application is not the subject of a draft LEP.

(p) only in cases in which a development application in relation to proposed development is determined:
(i) the cumulative impacts of the proposed development on the environment and
(ii) measures to ensure that water and energy usage by the proposed development is efficient.

Comment: It is considered that the development will not result in any adverse cumulative impacts on the general locality. The development has been designed to retain vegetation and habitat where practical.

State Environmental Planning Policy (Major Projects)

Part 3 Regional Development of SEPP (Major Projects) states:

13B General development to which Part applies

(2) This Part also applies to development that has a capital investment value of more than \$5 million if:

- (a) a council for the area in which the development is to be carried out is the applicant for development consent, or
- (b) the council is the owner of any land on which the proposed development is to be carried out, or
- (c) the development is to be carried out by the council, or
- (d) the council is a party to any agreement or arrangement relating to the development (other than any agreement or arrangement entered into under the Act or for the purposes of the payment of contributions by a person other than the council).

The development was determined to have a Capital Investment Value of \$5.5million and as such it is considered that Part 3 Regional Development of SEPP (Major Projects) applies and the Joint Regional Planning Panel is the consent authority under the provisions of Clause 13F(1)(a)

State Environmental Planning Policy (Infrastructure)

SEPP (Infrastructure) outlines matters to be considered in the assessment of certain development applications. The following clauses are considered to be relevant to the assessment of this proposal.

Clause 101 – Development with frontage to Classified Road.

Clause 101 states:

- (1) The objectives of this clause are:

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(a) to ensure that new development does not compromise the effective and ongoing operation and function of classified roads, and

(b) to prevent or reduce the potential impact of traffic noise and vehicle emission on development adjacent to classified roads.

(2) The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that:

(a) where practicable, vehicular access to the land is provided by a road other than the classified road, and

(b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of:

- (i) the design of the vehicular access to the land, or
- (ii) the emission of smoke or dust from the development, or
- (iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and

(c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.

Neither Salamander Way, nor Bagnalls Beach Road are classified as a "State Classified Road", the nearest being Nelson Bay Road which is over 1km from the subject site along Salamander Way. It is considered that the development will not trigger Clause 101.

Clause 104 – Traffic Generating Development.

Schedule 3 of SEPP (Infrastructure) contains triggers for which certain applications are to be referred to the RTA.

For subdivisions the following triggers apply;

- 200 allotments for connection to any road,
- 50 allotments with access from classified road.

As the subdivision has less than 50 allotments proposed, it is considered that no referral to the RTA under clause 104 is required for this development proposal.

Port Stephens Local Environmental Plan 2000 (PSLEP)

The subject site is zoned 3(a) – Business General "A" zone under the provisions of the Port Stephens Local Environmental Plan 2000. The following clauses are considered to be applicable to the development as proposed.

Clause 21 – Business Zonings

Clause 21 contains the 3(a) Business General zone objectives and description.

(1) Description of the zone

The Business General "A" Zone covers both the major commercial centres of Port Stephens and the smaller neighborhood shopping centres. It is characterised by a mix of commercial uses and some associated tourist accommodation and residential uses. Small, low impact industrial activities that involve retailing or direct service to the public may be appropriate in this zone.

(2) Objectives of the zone

The objectives of the Business General "A" Zone are:

- (a) to provide for a range of commercial and retail activities, and uses associated with, ancillary to, or supportive of, retail and service facilities, including tourist development and industries compatible with a commercial area, and
- (b) to ensure that neighborhood shopping and community facilities retain a scale and character consistent with the amenity of the locality, and
- (c) to maintain and enhance the character and amenity of major commercial centres, to promote good urban design and retain heritage values where appropriate, and
- (d) to provide commercial areas that are safe and accessible for pedestrians, and which encourage public transport patronage and bicycle use and minimise the reliance on private motor vehicles, and
- (e) to provide for waterfront-associated commercial development whilst protecting and enhancing the visual and service amenity of the foreshores.

The proposed subdivision is considered to be consistent with the zone objectives and description. The proposal will result in the creation of allotments suitable for a wide variety of commercial uses while providing pedestrian linkages through the site and into the surrounding residential areas.

The subdivision is consistent with the existing adjoining development, however will result in an improvement to the vehicular access and pedestrian movement through the site.

The underlying structure plan of the proposed subdivision is a key determining factor in achieving good urban design outcomes. Particularly the design and location of lot boundaries, vehicular access ways, car parks and pedestrian pathways.

Without careful consideration at the subdivision stage in setting an appropriate underlying structure plan, development of such a subdivision could result in a poor quality urban design outcome. In this case stand alone, disconnected and disjointed buildings surrounding by car park are one such scenario.

The internalised centre that exists on site presently provides such an urban design outcome, with a large building entirely surrounded by car parking, with virtually no passive surveillance, display opportunities or externalised people spaces existing, other than in a small area on the western side of the centre.

Important urban design outcomes that should be resolved at the subdivision stage is clearly defined and constructed pedestrian pathways that provide separation between cars and people traversing the centre; integrated with landscaping features that link the eastern end of proposed Lots 1, 3, 4, and 5 with the western terminus of the pedestrian mall proposed along the northern end of the existing centre.

Ideally pedestrian paths should be grade separated from the existing car park surface so that they dominate the activities occurring in the carpark, and allow pedestrians to move freely through the site without conflicting with vehicles parking and exiting the centre.

Challenges such as this are usually best managed from a planning perspective by a detailed masterplan or site specific Development Control Plan. The applicant has not provided either of these planning strategies to guide the ultimate design outcome.

The approach proposed relies entirely on a test of merits of Development Applications lodged for uses of the proposed lots (after they are constructed and registered) against Council's generic commercial development controls which are designed to deal with outcomes proposed in a traditional commercial context of shops fronting streets.

As mentioned a key feature of the proposed subdivision is the built form relationship between proposed Lot 6 and the existing internalised centre at its northern end; through the provision of an external potential future pedestrian pathway linking into the internalised centre from Lot 6.

The development on Lot 6 would otherwise be isolated and disjointed from the remainder of the centre, and would present as a 'stand alone' development alongside an existing fully internalised centre. Such an outcome would result in a poor urban design outcome, as shoppers would have to walk around the outside of buildings and through car parks to access all parts of the centre.

The centre at Lake Haven in Wyong Local Government Area is an example of such an urban outcome whereby car parks are the linkages between the internalised centre from the external shops sitting in the car park. In that centre pedestrians must navigate their way along pedestrian paths that are not well defined in the car park, and are subservient to it.

To achieve a quality outcome in circumstances where a development site has a pre-existing internalised centre surrounded by car park, the dominant feature in linking the existing internalised centre with the proposed developments on lots external to the centre; should be distinctly defined pedestrian pathways, linking and activating the building edges and lot boundaries of the proposed subdivision with the internalised centre; in order to create a shopping experience that is pleasant, safe and clearly defined.

The design and location of the future built form outcome on proposed Lot 6 will be crucial to the quality of the urban design outcome. This part of the proposal presents an opportunity to provide a "main street" outcome in the form of a "pedestrian mall" linking the internalised centre with the future developments on proposed Lot 1 to 6.

Activating streetscapes through display windows with covered awnings to shelter the pathways, along with some externalised specialty shops, and a pedestrian "mall" like connection should link the proposed reserve (proposed lot 5) and the community development precinct to the west on proposed Lots 3, 4 and 5, with the development on proposed Lot 6 providing a built outcome linkage to the northern end of the internalised centre, where a new connection could be opened.

This space needs to be carefully designed to avoid it becoming a space that could be otherwise attractive to anti-social behaviour such as graffiti, litter, and other risky behaviour. Narrow poorly lit, lane ways with limited or no passive surveillance, or passive ownership by adjoining users is the type of design outcome that should be avoided.

The proposed Lot 6 shows a BIG W store located directly and adjacent but separated by a pedestrian area between approximately 5 and 18 metres wide, punctuated with several specialty shops opposite the northern end of the existing centre.

Due to the strategic importance of this outcome to provide a pedestrian street to link to the existing centre, and in the absence of planning controls such as a site specific DCP or Masterplan submitted with the application, it is considered necessary (to ensure the good urban design outcomes are reached) that conditions be imposed requiring "restrictions as to user" under 888 of the Conveyancing Act be placed on the title of the lots to clearly define the specific areas to be set-aside for connecting pathways, with the remainder of the proposed lots left to be built upon with shops and car parks.

The Council will be the sole authority permitted to alter, modify or remove the restriction, and will be able to consent to site design changes proposed within individual Development Applications, that otherwise provide alternative acceptable urban design outcomes that may not strictly comply with the 888 instrument. This provides Council as the consent authority for development applications for built outcomes on the lots with a clear platform to maintain the important pedestrian links that are key to the integration of the existing internalised centre with development on the lots proposed surrounding the exterior of the existing car park of the internalised centre. It also identifies for the developers of the lots the need to design outcomes that provide for the pedestrian links. The restriction on title can be varied to suit the developers design objectives whilst still providing suitable pedestrian linkages in perpetuity.

Clause 22 – Subdivision in Business Zones

Clause 22 states;

22 Subdivision in business zones

- (1) A person shall not subdivide land in a business zone except with the consent of the consent authority.
- (2) The consent authority may grant consent for a subdivision of land within a business zone only if each allotment to be created by the proposed subdivision will be of a size, and will have a ratio of depth to frontage, that the consent authority considers appropriate:
 - (a) having regard to the purpose for which the allotment is intended to be used, or
 - (b) to facilitate future commercial development of the land.

End users have been identified for many of the proposed allotments. It is considered that each allotment is suitable in terms of size, frontage and depth to cater for the proposed uses and a variety of other commercial uses. Each end use of these sites will be subject to individual development applications that will need to address issues including, Urban Design and Street Activation and Safer by Design Principles through the built design.

Clause 44 – Appearance of Land and Buildings

Clause 44 states;

44 Appearance of land and buildings

- (1) The consent authority may consent to the development of land within view of any waterway or adjacent to any main or arterial road, public reserve or land zoned as open space, only if it takes into consideration the probable aesthetic appearance of the proposed building or work or that land when used for the proposed purpose and viewed from that waterway, main or arterial road, public reserve or land zoned as open space.
- (2) The consent authority may consent to development of land on or near any ridge line visible from a public road only if it is satisfied that the development would not be likely to detract substantially from the visual amenity of the locality.
- (3) In determining whether to grant a consent referred to in subclause (1) or (2), the consent authority shall consider the following:
 - (a) the height and location of any building that will result from carrying out the development,
 - (b) the reflectivity of materials to be used in carrying out the development.

- (c) the likely effect of carrying out the development on the stability of the land,
- (d) any bushfire hazard,
- (e) whether carrying out the development is essential to the viability of the land concerned,
- (f) the likely extent and effect of carrying out the development on vegetation on the land concerned.

The proposed subdivision is consistent with the existing height and bulk and scale of adjoining commercial precinct and Salamander Town Centre. The subdivision will not result in any adverse impact in terms of visual appearance, although the siting of buildings, pathways, façade location, car parking and access locations will need to be carefully considered to ensure the subdivision achieves a well integrated commercial centre.

The future built form will need to be assessed at individual development application stages for its visual impact to ensure that the subdivision does not create any adverse visual impacts.

Clause 47 – Services

This clause requires that a consent authority shall not grant consent unless there is provision for water supply facilities and removal and disposal of sewerage and drainage on the land.

The subject site has access to reticulated water and sewer.

Clause 51A – Development on land identified on Acid Sulfate Soils Planning Maps

This clause applies to land identified on the Acid Sulfate Soils Planning Map. The development site is identified as Category 3 and as such clause 51A is applicable.

Category 3 requires that a person must not, without development consent, carry out works beyond 1m of the natural ground surface. Filling of the site to accommodate the development will reduce the likelihood of Acid Sulfate Soils being disturbed. Conditions of consent have been included to require the provision of an Acid Sulfate Soils Management Plan prior to the issue of a Construction Certificate for the proposal.

79C(1)(a)(ii) the provisions of any draft EPI

Not applicable.

79C(1)(a)(iii) the provisions of any Development Control Plan (DCP)

Port Stephens Development Control 2007.

Chapter B1 – Subdivision and Streets

Chapter B1 applies to all development permissible under the Port Stephens Local environmental Plan 2000 that involves the subdivision of land or the creation of streets for residential, commercial, industrial and tourist developments.

The eight (8) lot Torrens title subdivision is considered to be consistent with the controls of Chapter B1 – Subdivision and Streets of DCP2007.

Provision has been made in the conditions of consent to allow for the creation of a public park in accordance with Section B1.7 – Parks and Open Space and B4.12 – Public Domain Improvements. It is considered that the commercial subdivision creating the Salamander Town Centre should provide for passive open space. Proposed Lot 3, containing the child care centre and public Library is considered to be suitable for the provision of this public open space (refer principle B1P18), connected to the integrated pedestrian network in accordance with Principle B1.P15.

Chapter B2 – Environmental and Construction Management

Chapter B2 applies to all development permissible under the Port Stephens Local environmental Plan 2000.

B2.3 – Water Quality Management

The submitted Stormwater Design has incorporated water quality management and resulted in no increase in discharge into the adjoining wetlands. Stormwater is discussed elsewhere in this report.

B2.4 – Acid Sulfate

This clause applies to land identified on the Acid Sulfate Soils Planning Map. The development site is identified as Category 3 Acid Sulfate Soils.

Category 3 requires that a person must not, without development consent, carry out works beyond 1m of the natural ground surface. Filling of the site to accommodate the development will reduce the likelihood of Acid Sulfate Soils being disturbed. Cutting is proposed in the northern portion of the site, which may result in the unearthing of Acid Sulfate Soils. Conditions of consent have been included to require the provision of an Acid Sulfate Soils Management Plan prior to the issue of a Construction Certificate for the proposal.

B2.5 – Landfill

The use of virgin excavated natural material is proposed for filling the site. It is envisaged that the majority of the required fill will be sourced on site via significant excavation.

B2.6 – Contaminated Land

The site is not known to be contaminated.

B2.7 – Vegetation Protection

Retention and protection of vegetation on site has been considered in the assessment of the Port Stephens Comprehensive Koala Plan of Management.

B2.8 – Koala Management

Retention and protection of vegetation and Koala habitat on site has been considered in the assessment of the Port Stephens Comprehensive Koala Plan of Management.

B2.9 – Mosquito Control

A construction management plan, incorporating mosquito management, has been conditioned so as to be provided prior to issue of the construction certificate.

B2.10 – Weed Control

A construction management plan, incorporating weed control, has been conditioned so as to be provided prior to issue of the construction certificate.

B2.11 – Tree Management

A construction management plan, incorporating vegetation management, has been conditioned so as to be provided prior to issue of the construction certificate.

B2.12 – Waste Water

The proposed subdivision will be connected to reticulated water and sewer

B2.13 – Aircraft Noise

The development site is not identified as being constrained by the ANEF2025 Aircraft Noise maps.

B2.14 – Erosion and Sediment Control

A construction management plan, incorporating erosion and sediment control, has been conditioned so as to be provided prior to issue of the construction certificate.

B2.15 – Construction Waste

A construction management plan, incorporating construction waste management, has been conditioned so as to be provided prior to issue of the construction certificate.

B2.16 – Works in the Public Domain

Conditions have been included giving effect to this section of the DCP.

B2.17 – Support for Neighbouring Buildings

The development does not propose any works that will undermine any adjoining structures.

Chapter B3 – Traffic and Parking

Chapter B3 applies to all development permissible under the Port Stephens Local environmental Plan 2000. Vehicular access parking and circulation are considered to be crucial in the good design of villages, neighbourhoods and town centres. The development is considered to be consistent with the requirements of this chapter of the DCP.

Chapter B4 – Commercial and Mixed Use Development

Chapter B4 applies to all development permissible under the Port Stephens Local environmental Plan 2000 that involves the subdivision of land or the creation of streets for residential, commercial, industrial and tourist developments.

It is considered that the proposed allotments are capable of sustaining development that is compliant with the provisions of this section of the DCP. All future development for end users however will need to demonstrate compliance with this section of the DCP.

79C(1)(a)(iia) any planning agreement that has been entered into or any draft planning agreement that the developer has offered to enter into

Not applicable.

79C(1)(a)(iv) any matters prescribed by the regulations

The Regulation 2000 provides:

92 What additional matters must a consent authority take into consideration in determining a development application?

(cf clause 66 of EP&A Regulation 1994)

(1) For the purposes of section 79C (1) (a) (iv) of the Act, the following matters are prescribed as matters to be taken into consideration by a consent authority in determining a development application:

- (a) in the case of a development application for the carrying out of development:
 - (i) in a local government area referred to in the Table to this clause, and
 - (ii) on land to which the Government Coastal Policy applies, the provisions of that Policy,
- (b) in the case of a development application for the demolition of a building, the provisions of AS 2601,

(2) in this clause:

AS 2601 means the document entitled Australian Standard AS 2601—1991: The Demolition of Structures, published by Standards Australia, and as in force at 1 July 1993.

Government Coastal Policy means the publication entitled NSW Coastal Policy 1997: A Sustainable Future for the New South Wales Coast, as published by the Government (and including any maps accompanying that publication and any amendments to those maps that are publicly notified), a copy of which may be inspected during ordinary office hours:

- (a) at any of the offices of the Department, or
- (b) at the offices of any of the councils of the local government areas listed in the Table to this clause.

The coastal policy has been considered in the assessment of the application and the development is not considered to be contrary to the policy.

79C(1)(b) the likely impacts of the development

The following matters were considered and, where applicable, have been addressed

Urban Design Issues

Consideration has been given to the Urban Design merits of the proposal. While it is acknowledged much of the final urban appearance and activation of the street will be dependant upon the individual applications upon the proposed allotments, the underlying structure planning of the subdivision has been considered in the context of the subdivision design.

Of relevance to this consideration of Urban Design is the draft document "Town Centre Urban Design Guidelines". While not adopted by Council for the locality, it does provide an insight into good urban design outcomes for the centre. The applicant has considered the content of the report and concluded:

The draft document illustrates a preferred development scenario of multistoray mixed use development with home businesses on the ground floor and also commercial space with office development above. The development of commercial land for residential mixed use is not considered the best use of the site and it is considered that the Deicke Richards strategic planning concept does not meet the requirements of the Tomaree community with regards to commercial development. The layout of the proposed subdivision follows a similar road network design as the draft Salamander Bay Town Centre Urban Design Guidelines but accourts for the intended commercial uses of the site.

Elements of the draft document "Town Centre Urban Design Guidelines" were unable to be acted upon due to the expansion of the shopping centre in the period since the guidelines initial drafting. The proposal advocates some elements of the report though, specifically the provision of a pedestrian area along northern end, the interface work to activate the site frontages and linkages of proposed lot 6, and a loop road, albeit in a different configuration.

The proposed road network deviates from that of the report, however the applicant has justified this citing traffic management of large vehicles within the site. Some elements of the Urban Design Report have been retained in the proposal, specifically the proposed access points to be created off Salamander Way and Bagnalls Beach Road.

The external ring road also has allowed for the terracing of the site with the road situated at an RL approximately 2m lower than that of the adjoining dwellings and the finished level of proposed lot 6 being lower again. This will serve to mitigate against any noise or visual impacts of the development on the surrounding residential area.

The application has proposed some building envelopes for the proposed allotments. Without the benefit of buildings on these allotments it can not be determined if these building enveloped adequately address the issue of Urban Design, Built Form Outcomes, Street Activation or the provisions of Chapter 84 of DCP2007. The application has been conditioned so as to not give effect to these indicative building envelopes, requiring all future applications for end users to individually justify the merits of the individual applications.

The application was supported by a Pedestrian Linkage Plan (prepared by terras landscape architects, dated 7 June 2010, , ref: 8386.5 Rev: C). Due to the strategic importance of this outcome to provide a pedestrian street to link to the existing centre, and in the absence of planning controls such as a site specific DCP or Masterplan submitted with the application, it is considered necessary (to ensure the good urban design outcomes are reached) that conditions be imposed requiring "restrictions as to user" under 888 of the Conveyancing Act be placed on the title of the lots to clearly define the specific areas to be set-aside for connecting pathways, with the remainder of the proposed lots left to be built upon with shops and car parks.

The Council will be the sole authority permitted to alter, modify or remove the restriction, and will be able to consent to site design changes proposed within individual Development Applications, that otherwise provide alternative acceptable urban design outcomes that may not strictly comply with the 888 instrument. This provides Council as the consent authority for development applications for built outcomes on the lots with a clear platform to maintain the important pedestrian links that are key to the integration of the existing internalised centre with development on the lots proposed surrounding the exterior of the existing car park of the internalised centre. It also identifies for the developers of the lots the need to design outcomes that provide for the pedestrian links, and the restriction on title can be lifted once the pedestrian links are provided.

Comprehensive Koala Plan of Management (CKPoM)

The CKPoM lists a number of criteria that should be addressed with a development application where koala habitat is identified. The general aims and objectives of these performance criteria are listed below;

ii) To ensure that the koala population in the Port Stephens LGA is sustainable over the longterm.

The planting of 300 koala feed trees plus the additional offset land being conserved in perpetuity will contribute to the sustainability of the local koala population and adequately mitigate against any impacts of the proposal.

iii) To protect koala habitat areas from any development which would compromise habitat quality or integrity.

The koala habitat on the site will be altered by the proposed development although the abovementioned mitigation measures have been incorporated to mitigate against the potential to compromise habitat quality and integrity.

iiii) To ensure that any development within or adjacent to koala habitat areas occurs in an environmentally sensitive manner.

The proposed development will incorporate environmentally sensitive landscaping and koala feed trees on the sites western edge to mitigate the loss of 6 koala feed trees through the replanting of 300 koala feed trees. The proposal will also rectify an existing drainage problem of untreated stormwater flows and ensure that all stormwater from the site is appropriately treated before entering the adjacent wetland area. This will effectively result in an increase in water quality in the wetland.

lv) To ensure that acceptable levels of investigation are undertaken, considered and accepted prior to any development in or adjacent to koala habitat areas.

The applicant has explored various potential outcomes for the subdivision in order to mitigate against any impacts to Koala's. The final design represents what the applicant considers to be the best outcome in terms of vegetation removal and traffic movement.

vi) To encourage koala habitat rehabilitation and restoration.

It is considered that the planting of 300 koala feed trees on site plus the additional offset land being proposed for the conservation in perpetuity is consistent with the rehabilitation and restoration of koala habitat.

vii) Maintain interconnection between areas of Preferred and Supplementary Koala Habitat and minimise threats to safe koala movements between such areas.

The proposal includes the removal of some koala habitat, but it will not result in the complete isolation of koala's between areas to the north and south of the site. The koala corridor will still provide connection between areas to the north and south with the narrowest point in the corridor approximately 50m wide.

viii) To ensure that development does not further fragment habitat areas either through then removal of habitat or habitat links or through the imposition of significant threats to koalas.

The koala habitat on the site represents the eastern extremity of the vegetation. The development does include removal of the eastern part of the vegetation but this will not result in fragmenting of the vegetation as the remaining vegetation will remain contiguous.

vii) To provide guidelines and standards to minimise impacts on koalas during and after development, including any monitoring requirements.

During the development of the proposal, the construction environmental management plan will include measures to advise workers to be aware that koalas may use the area and provide appropriate mechanism to ensure the safety and well being of koalas should they be encountered. The clearing of vegetation on the site is to be undertaken in accordance with a vegetation clearing plan to minimise any impact on fauna including koalas. The inclusion of the 300 koala feed trees will assist to provide an ongoing refuge for koalas after the development of the proposal.

k) To provide readily understandable advice to proponents preparing development applications and for Council officers involved in the assessment of those applications.

Council has provided readily understandable advice throughout the preparation and assessment of this proposal.

The CKPoM also states that Council may waive the provisions of a), b) and c) of these criteria only for the purposes of establishing a building envelope and associated works, and only if the proponent can demonstrate:

1. That the building envelope and associated works including fire fuel reduction zones cannot be located in such a way that would avoid the removal of native vegetation within Preferred or Supplementary Koala Habitat, Habitat Buffers, or Habitat Linking Areas, or removal of preferred koala food trees;

In the design of the subdivision the applicant has examined various scenarios to determine the most appropriate development outcome for the site. A number of potential road network options were explored and ruled out due to the need for truck transport routes with adequate turning allowances and pavement widths, plus the need to improve traffic circulation through and around the site. The following information outlines the factors considered by the applicant in the design of the subdivision layout and the importance of the proposed ring road for the site. The following design rationale was provided by the applicant.

"The design includes a 20m wide road reserve that connects the east part of the site with the west as a ring road. This layout is essential to ameliorate the current traffic congestion associated with traffic entering, moving through and leaving the Salamander Shopping Centre via Salamander Way and Bagnall Beach Road. The proposed ring road provides a significantly wider pavement width than any of the existing roads through the site. This will not only serve as a preferred traffic distribution option that will relieve the current entry/exit locations but also provide a suitable transport route for delivery trucks that currently service Salamander Shopping Centre. At present, trucks servicing the Woolworths and K-Mart loading docks have to undertake a complex series of turns to enter these facilities. The ring road will provide an option to mitigate this problem where trucks can travel around the development area and simply enter the K-Mart dock via a single reverse motion and can leave in a forward direction. The ring road also provides a second entry via proposed road 1 for trucks entering the Woolworths loading dock. At present, trucks have to use the 8m pavement road with a 90° turn to enter the car park and the loading dock. This requires the trucks to cross over the opposite direction of traffic lanes and at busy times results in congestion. The provision of the ring road and proposed road 1 provides a significant improvement in truck access as well as traffic circulation. Without the ring road, the traffic circulation through the site would be restricted and truck circulation would be impaired. Alternate options where the ring road was altered to an internal road with multiple turns to accommodate existing vegetated areas resulted in restrictions to the truck circulation and a poor traffic circulation outcome.

The ring road option also provides a number of additional benefits for the design that if not included would impact on the development and potentially adjacent neighbouring properties. The ring road serves as an Asset Protection Zone between the vegetation in the west and the commercial development providing emergency access for fire fighting trucks in accordance with the Rural Fire Service Planning for Bushfire Guidelines. The road reserve at the northern end of the property also provides a 17m buffer between the neighbouring residences and future development. Without the ring road, future development could build right to the property boundary adjacent to these residences. The change in road level along the northern boundary will also provide acoustic benefits for the neighbouring residences, as the road will be at a lower level with a retaining wall screening road noise to the residences. The road reserve along the ring road also provides drainage benefits as underground infiltration tanks are provided in this area to assist with the stormwater requirements of the site. The stormwater from the Salamander Shopping Centre western car park currently drains untreated water directly into the vegetated land identified as Lot 5 on the Concept Plan. With the provision of a drainage reserve to the north of this location, the stormwater will now be treated and incorporated into the stormwater system for the subdivision. This provides a significant improvement in the water quality and quantity leaving the site and rectifies an existing poor stormwater outcome. Retaining vegetation on site and developing around it would result in poor traffic circulation outcomes, poor bushfire design outcomes and restrict the potential to ameliorate the existing stormwater issues on the site. The alternate designs also split development allotments and result in uneconomic and poor design outcomes. Therefore, it is considered that the design cannot be undertaken in a way that would retain native vegetation as the operational aspects of the proposal would be greatly compromised."

2. That the location of the building envelope and associated works minimises the need to remove vegetation as per 1 above;

The matters listed in response to Criteria 1 outline why the works are required in the proposed configuration. In addition to the above information, the position of proposed road 1 has been located to minimise the loss of koala feed trees that currently exist adjacent to the existing Library car park. The road has been positioned adjacent to the existing trees to retain them in the road reserve.

3. That, in the case of subdivisions, they are designed in such a way as to retain and enhance koala habitat on the site and are consistent with the objectives of this appendix and

The matters outlined in response to Criteria 1 outline the justification to the design of the subdivision. The proposal is considered to be consistent with the overall objectives of the performance criteria as listed and responded to above.

4. That koala survey methods (as per the Guidelines for Koala Habitat Assessment in Appendix 6) have been used to determine the most appropriate location for the building envelope and associated works (so as to minimise the impact on koala habitat and any koala populations that might occur on the site).

The koala survey methods have been used to determine the appropriate design of the proposal. The proposal justification is outlined in the response to Criteria 1 above.

The Performance Criteria includes the following:

Proposed development (other than agricultural activities) must:
 a) Minimise the removal or degradation of native vegetation within Preferred Koala Habitat or Habitat Buffers;

The applicant has requested that a Waiver apply.

b) Maximise retention and minimise degradation of native vegetation within Supplementary Koala Habitat and Habitat Linking Areas;

The applicant has requested that a Waiver apply.

c) Minimise the removal of any individuals of preferred koala food trees, where ever they occur on a development site. In the Port Stephens LGA these tree species are Swamp Mahogany (Eucalyptus robusta), Paramatta Red Gum (Eucalyptus paramattensis), and Forest Red Gum (Eucalyptus tereticornis), and hybrids of any of these species. An additional list of tree species that may be important to koalas based on anecdotal evidence is included in Appendix 8;

The applicant has requested that a Waiver apply.

d) Make provision, where appropriate, for restoration or rehabilitation of areas identified as Koala Habitat including Habitat Buffers and Habitat Linking Areas over Mainly Cleared Land, in instances where Council approves the removal of koala habitat (in accordance with dot points 1-4 of the above waive clause), and where circumstances permit, this is to include measures which result in a "net gain" of koala habitat on the site and/or adjacent land;

The proposed offset land provided as amelioration for the clearing of the site for the proposed subdivision is consistent with the habitat conservation measures listed in the CKPoM:

Tomaree Peninsula KMU

Habitat Conservation: Incentives-based measures Regarding the application of incentives-based conservation measures in the Tomaree Peninsula KMU the following, in particular, should be investigated:

- Land between Anna Bay/Boat Harbour and Salamander Bay/Taylor's Beach that contains

Preferred Koala Habitat in particular, and/or

- Supplementary Koala Habitat, Habitat Buffers or Habitat Linking Areas;

- and which landholders are willing to either rezone to Environmental Protection (or put in place a Voluntary Conservation Zone, should one be established) or set aside under a Voluntary Conservation Agreement

Habitat Restoration

Areas in the Tomaree Peninsula KMU that should be investigated for habitat restoration projects include:

- Land between Anna Bay/Boat Harbour and Salamander Bay/Taylor's Beach that is identified as Habitat Buffer or Habitat Linking Area over Mainly Cleared Land. Given that there are large contiguous patches of Preferred Koala Habitat in this area, it should be of the highest priority for koala habitat restoration projects on the Tomaree Peninsula;

The planting of 300 koala trees on site plus the proposed conservation in perpetuity of the offset site, which is located within the large contiguous patch of preferred Koala habitat, is consistent with this key action of the CKPoM and performance criteria d).

e) Make provision for long term management and protection of koala habitat including both existing and restored habitat.

Existing koala feed trees will be maintained on site adjacent to the existing Library and around the proposed drainage reserve. A Plan of Management is to be prepared for the proposed offset land offered to ameliorate the impact of the proposed development. The Plan of Management is to make provision for the long term management of the site, including the protection of koala habitat.

f) Not compromise the potential for safe movement of koalas across the site. This should include maximising tree retention generally and minimising the likelihood that the proposal would result in the creation of barriers to koala movement, such as would be imposed by certain types of fencing. The preferred option for minimising restrictions to safe koala movement is that there be no fencing (of a sort that would preclude koalas) associated with dog free developments within or adjacent to Preferred or Supplementary Koala Habitat, Habitat Buffers or Habitat Linking Areas. Suitable fencing for such areas could include:

- i) fences where the bottom of the fence is a minimum of 200 mm above ground level that would allow koalas to move underneath;*
- ii) fences that facilitate easy climbing by koalas; for example, sturdy chain mesh fences, or solid style fences with timber posts on both sides at regular intervals of approximately 20m; or*
- iii) open post and rail or post and wire (definitely not barbed wire on the bottomstrand). However, where the keeping of domestic dogs has been permitted within or adjacent to Preferred or Supplementary Koala Habitat, Habitat Buffers or Habitat Linking Areas, fencing of a type that would be required to contain dogs (and which may also preclude koalas) should be restricted to the designated building envelope. Fences which are intended to preclude koalas should be located away from any trees which now or in the future could allow koalas to cross the fence.*

The movement of koalas through the site will not be restricted by fencing at the subdivision development stage. Although, as the site is a commercial shopping centre, the movement of koalas through the site will not be encouraged. Future developments will not have restrictions as to fencing type enforced.

g) Be restricted to identified envelopes which contain all buildings and infrastructure and fire fuel reduction zone. Generally there will be no clearing on the site outside these envelopes. In the case of applications for subdivision, such envelopes should be registered as a restriction on the title, pursuant to the Conveyancing Act 1919; and

The application has been supported by a Concept Plan showing indicative building envelopes. While the building envelopes are not to be required by future development, it is considered that the size of the footprints and built areas will not change.

h) Include measures to effectively minimise the threat posed to koalas by dogs, motor vehicles and swimming pools by adopting the following minimum standards.

- i) The development must include measures that effectively abate the threat posed to koalas by dogs through prohibitions or restrictions on dog ownership. Restrictions on title may be appropriate.*
- ii) The development must include measures that effectively minimise the threat posed to koalas from traffic by restricting motor vehicle speeds, where appropriate, to 40 kph or less.*
- iii) The development must reduce the risk of koala mortality by drowning in backyard swimming pools. Appropriate measures could include: trailing a length of stout rope (minimum diameter of 50mm), which is secured to a stable poolside fixture, in the swimming pool at all times; designing the pool in such a way that*

koalas can readily escape; or enclosing the pool with a fence that precludes koalas. This last option should include locating the fence away from any trees which koalas could use to cross the fence.

The application is for the subdivision of land for the purposes of Commercial Development, as such the movement of koalas through the site will not add be threatened by dogs or swimming pools. However, as the site is a commercial shopping centre, the movement of koalas through the site will not be encouraged to avoid conflict with motor vehicles.

It is considered that the applicant has adequately addressed the waiver provision requirements for criteria a) through c). Assessment of the remaining criteria has concluded that the performance criteria have been adequately met.

Stormwater Issues

The stormwater and water quality control system's have been assessed by Council's Drainage Engineer. It is considered that the stormwater system proposed is adequate subject to conditions of consent requiring the provision of details prior to the issue of a Construction Certificate.

79C(1)(c) the suitability of the site for development Does the proposal fit the locality?

The proposal is suited to the locality, subject to appropriate conditions.

Are the site attributes conducive to development?

The site attributes are conducive to development.

79C(1)(d) any submissions made in accordance with this Act or the Regulations?

Public submissions:

A total of 21 submissions were received from the public. These are summarised in the table below:

The proposal was notified until the 18th November 2009 with a total of twenty-one (21) submissions were received, all objecting to the proposal. A summary of the major issues raised is included below.

- Impacts of 20m Road Reserve adjoining the Mambo wetland.
 - Removal of stand of Melaleuca that provides a buffer between the commercial area.
- Impacts of proposed road along the sites northern boundary
 - Removal of vegetation and significant earthworks.
- Impacts of Stormwater Discharge into Wetlands
 - Concern around stormwater and pollutants entering wetland.

- Increased Runoff into the wetland.
- Loss of Koala Habitat
 - Lots 4 and 5 contain mature and juvenile Swamp Mahogany. Requests that these lots be removed from the subdivision due to their importance to the Koala population.
 - The proposed road way will sever a Koala Corridor.
- Impacts to adjoining residential dwellings in Endeavour Place and Plimsoll Close.
 - Loss of natural area at rear of allotments and the buffer it provides to the commercial area.
 - Impacts of proposal on Flora and Fauna.
 - Noise, privacy and Odour concerns due to the proximity of the proposed road way to the rear of the existing residential allotments and the houses sited on them.
 - Concerns the proposal will devalue the existing residential properties.
 - Concerns raised about excavation along rear boundary of residential properties.
 - Impacts of noise and dust during construction.
 - Concerns that the internal "ring road" will become a race track.
 - Concerns the road way will increase vandalism of property.
- Impacts of Development on the Salamander Child Care Centre
 - Lack of consultation
 - Impacts of the road to the south of the Child Care Centre in terms of loss of car parking, proximity to the building, unsafe carpark access point, increase of emissions into building.
 - Concern about construction impacts
 - Concern that the development will result in a loss of clients.
 - Impacts of the development on the amenity and environment in the locality.
- Concerns around lack of master plan.

79C(1)(e) the public interest

There are a significant number of objections to the proposal from the community (21).

Many of these objections are based on concerns relating to the location of the rear ring road and the loss of vegetation acting as a buffer between the commercial and residential activities.

Assessment of the application has concluded that the lower relative level of the road compared to the adjoining dwellings, the proposed vegetation and the low finished ground level of the commercial allotment will result in minor impacts to the adjoining properties.

The commercial subdivision will provide the community with employment opportunities, increased access to commercial premises and improved pedestrian linkages from the adjoining residential areas into and around the commercial town centre.

Conclusion:

Based on the above assessment it is concluded that the subdivision of commercially zoned land at 155 Salamander Way will result in minimal impact on the environment and adjoining properties, and is consistent with the zone objectives.

Recommendation:

It is recommended that the application be approved subject to the attached conditions of consent contained within Appendix A.

Leonard Allen
SENIOR DEVELOPMENT PLANNER

I have reviewed the above planning assessment report and concur with the recommendation.

Ken Solman
ACTING MANAGER DEVELOPMENT AND BUILDING

APPENDIX A – CONDITIONS

1. The development is to be carried out in accordance with the approved plans and documentation submitted with the application set out in Schedule 3, except as modified by the conditions of this development consent or as noted in red by Council on the approved plans.
2. Failure to comply with the conditions of consent constitutes a breach and on the spot fines may be issued under the Environmental Planning & Assessment Act 1979 and or the Protection of the Environment Operations Act 1997.
3. 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.
4. 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.
5. The development has been granted an approval from the Department of Environment, Climate Change and Water dated 4th December 2009 (copy attached in schedule 4) under their relevant legislation. Where conditions are imposed by the authority the development shall comply with the general terms of approval.
6. 300 replacement trees to replace the trees removed from the site shall be planted prior to the issue of the occupation certificate. Trees to be replaced in accordance with Section 2.3 – Proposed Development (Retain Koala Habitat Trees) of the Statement of Environmental Effects (prepared by RPS Harper Somers O'Sullivan /dated October 2009). Replacement trees are to be maintained to maturity through use of mulch and watering to achieve their natural height. Details confirming the plantings shall be provided to Council **prior to issue of Subdivision Certificate**.
7. The burning of green waste is not permitted. All useable trees and shrubs should be milled for use in construction materials, furniture, fencing or similar products. Other tree waste should be wood chipped for erosion control or site rehabilitation. Roots and stumps may be disposed of at Council approved refuse sites.
8. A fauna ecologist shall be employed to supervise the removal of all trees and to advise the site manager and tree clearing staff of any habitat potential and precautions necessary during tree felling. The following strategies need to be employed to mitigate the effect of this clearing on native fauna that occur on the site:
 - o Prior to removal of habitat trees licensed wildlife carers or consultants shall relocate any fauna species.

- Clearing of hollow-bearing and nesting trees should be restricted to Autumn or Winter months so as to avoid dislocation of wildlife during breeding seasons.
 - Remove and modify hollows and nests from felled trees and re-establish these on the site or as near as possible to the site to provide compensatory habitat. This could include mounting of hollows & nests on trees or poles, or on other buildings or structures.
 - Where original hollows cannot be retained, artificial nesting boxes must be provided to provide compensatory habitat.
 - In circumstances where native fauna is detected during the removal of habitat trees, clearing should cease until a licensed wildlife carer or consultant relocates the fauna species.
 - Should a threatened species be positively identified, all clearing works shall cease until a plan of management for the possible relocation of the species has been approved by council in consultation with the Department of Environment & Conservation.
 - Where in spite of precautions, wildlife is injured, the fauna ecologist is to take the necessary action to treat the animal, which may include veterinary treatment or transfer of the animal to a volunteer wildlife carer group such as the Native Animal Trust Fund or Hunter Koala Preservation Society.
9. A Subdivision Certificate must be obtained from Council within five (5) years of the date of this consent, otherwise this approval will lapse. Alternatively, where works are associated with the subdivision, such works must be commenced prior to the expiry of the five (5) year period otherwise this consent will lapse. The applicant must submit completed Subdivision Certificate Application Form (& applicable fee), 6 copies of the Survey Plan, two copies of any 888 Instrument and a check list demonstrating compliance with the conditions of consent.
10. 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 Council prior to endorsement of the Subdivision Certificate.
11. All lots in the proposed subdivision shall be serviced by the Hunter Water Corporation with water and sewerage facilities.
12. A Compliance Certificate under Section 50 of the Hunter Water Corporation Act, 1991 shall be submitted to Council prior to endorsement of the final survey plan. Applications for Section 50 Certificates are to be made direct to the Hunter Water Corporation.
13. The submission of documentary evidence from Energy Australia that satisfactory arrangements have been made for:
- (i) The provision of easements in favour of Energy Australia over private land for existing and proposed power lines and, where the development requires, the relocation of power lines or other assets of Energy Australia;
 - and**
 - (ii) The provision of a grid based underground electricity supply to each of the resultant lots in the subdivision;

Prior to endorsement of the Subdivision Certificate:

14. Prior to endorsement of the Subdivision Certificate written evidence must be submitted from the Hunter Water Corporation, Telstra Australia and Energy Australia that satisfactory arrangements have been made for the provision of their respective services to all lots in the proposed subdivision.
15. New stormwater inlets within the subdivision shall display signage "Clean Drains = Clean Waterways".
16. The proposed subdivision road names shall be submitted and approved by Council **prior to the issue of any Subdivision Certificate.**
17. All erosion and sediment control measures/works and other pollution control and rehabilitation measures undertaken on the site shall conform to the specifications and standards contained in the current version of:
 - Erosion and Sediment Control Regional Policy and Code of Practice
 - Managing Urban Stormwater – Soils and Construction produced by Landcom 2004.

An erosion and sediment control plan shall be submitted for approval with the engineering plans.

18. Each lot within the subdivision is to have a separate electricity service. The service must be installed wholly within the respective lot boundaries unless it is covered by a suitable easement.

Any 'cross property' electrical wiring between lots within the subdivision must be removed or disconnected and made safe in accordance with the relevant electrical standards.

19. 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.
20. Only Virgin Excavated Natural Material (VENM) in accordance with the Environmental Protection Agency NSW statutory definition shall be used for the approved land filling activities. The use of any material other than VENM may require an EPA licence for use as a landfill. The use of any material other than VENM for land filling purposes, without prior approval of council is prohibited. Council will insist on the removal of any prohibited material.
21. 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 to an authorised site.
22. The following measures shall be implemented to minimise soil erosion:
 - a) All available topsoil shall be stockpiled and re-used at the completion of the

earthworks.

b) The area of disturbance shall be kept to a minimum.

c) All stockpiles shall be spread and compacted within 4 weeks of placement on site.

d) The fill shall be progressively rehabilitated and stabilised with any partially completed filling areas being rehabilitated and stabilised if left untouched for more than 3 months.

3) All disturbed areas shall be stabilised within 14 days of completion of the filling operations with topsoil being spread evenly and lightly rolled prior to grass cover by either turfing or seeding.

23. Landscaping shall be carried out in accordance **with the details submitted** (plan dated 7 June 2010, prepared by terras landscape architects, ref: 8386.5 Rev: C). The landscaping must be completed prior to issue of Occupation Certificate.
24. Traffic signals shall be constructed at the intersection of Town Centre Circuit and Bagnall Beach Road prior to the development of lots 2, 3, 5, 7.
25. Provision shall be made in proposed lot 7 to cater for any road widening required for the construction of traffic signals and associated road works at the intersection of Town Centre Circuit and Bagnall Beach Road.
26. On-road parking shall be restricted where required by provision of 'Restricted Parking Area' signage. A detail plan shall be submitted to Council for Traffic Committee approval at least 3 months prior to implementation.
27. The developer shall be responsible for the provision of any additional regulatory signage and any adjustments required to existing regulatory signage, as a consequence of the development. All works to be carried out at no cost to Council and in accordance with Council requirements. Such signage modifications shall be referred to Port Stephens Local Traffic Committee for approval prior to issue of the construction certificate (allow at least 3 months).
28. Stormwater Infiltration Devices (SPEL GPT's) shall be installed at the inlet to the infiltration system.
29. Stormwater drainage design including a contour plan, catchment plans, drainage calculations. Infiltration calculations for up to 100 year ARI flows shall be submitted to Council for approval, indicating the proposed pipeline layout, overland flow paths, infiltration basin details and stormwater quality and quantity control measures in accordance with "Auspec" and Councils DCP 2007.
30. Steady state infiltration must be obtained from a number of field testing and minimum result with an appropriate factor of safety shall be used for infiltration calculations.
31. The capacity of the existing downstream basin (storage and outlet) must be investigated for its adequacy and full details shall be provided to Council.
32. Stormwater detention/infiltration basins, stormwater treatment devices, overland flow paths shall be endorsed by a positive covenant and a registered surveyor is to certify that all stormwater systems are covered with an easement.

33. Easements in favour of PSC over drainage system through private properties are to be provided.
34. Stormwater discharge from adjoining properties shall be conveyed through the development and capacity of the pipe system shall be catered for.
35. Design discharges for up to 100 year ARI storm events, from the proposed development site should be limited to the predevelopment conditions.
36. Detention and infiltration basin batters are to be designed and constructed with side batter no steeper than 1V:4H. Areas where batter slopes steeper than 1V:4H shall be fenced (pool fence).
37. Infiltration system must be located above predicted maximum groundwater level.
38. All Stormwater Detention Basins water levels must be restricted below the level of road and private properties.
39. Maintenance access to all Stormwater Detention Basins and the embankments are to be provided.
40. Signage explaining the purpose of the basins, depth indicators and hazards associated with basin shall be provided.
41. All the infiltration pipe system must have pits with weir arrangement to capture, retain and infiltrate stormwater. All pollutants (silt, gross pollutants etc) must be collected prior to entering the infiltration system.
42. No fencing shall be permitted on any allotment boundary that prevents pedestrian movement between allotments. The title of these properties shall be endorsed under Section 888 of the Conveyancing Act 1919 to give effect to this condition. Council shall be nominated as the prescribed authority permitted to release, vary or modify the instrument.
43. This consent does not grant approval for the building envelopes contained within the concept plan (prepared by RPS Harper Somers O'Sullivan, Ref:25856). The siting of buildings on the approved allotments shall be the subject of future development applications that suitable satisfy the requirements of Section B4 of Development Control Plan 2007.
44. The Plan of Management for the offset land should be provided to Council for approval prior to issue of the Subdivision Certificate. The developer shall also be responsible for the plans implementation.

CONDITIONS RELATING TO ISSUE OF CONSTRUCTION CERTIFICATE

45. A Mosquito/Vector Management Plan shall be submitted and approved by Council **prior to the issue of the construction certificate**. The Mosquito/Vector Management Plan shall include but not be limited to control methods such as;
 - a. ensuring that grounds maintenance, maintenance of common area gardens and maintenance of riparian zones are carried out to a high standard;

- b. utilizing where possible mosquito repellent plant species within the landscaping plan;
 - c. removing as far as practicable any potential *A. qegypti* breeding sites near human habitation;
 - d. reducing daytime shelter for *C. annulirostris* around buildings and areas of human activity by limiting, as far as practicable the presence of vegetation in such places;
 - e. providing appropriate screening to outdoor living areas and on all buildings;
 - f. encouraging the use of small area deterrents and personal repellents;
 - g. using populations of native larvivorous fish to consume larvae within permanent water bodies; and
 - h. maintaining the depths of permanent water bodies through the removal of sedimentation, as required.
 - i. Pond design so as to discourage mosquito breeding.
46. The subject land may contain Potential Acid Sulfate Soils. An Acid Sulfate Soils Management Plan prepared by a qualified consulting engineer in accordance with the Acid Sulfate Soils Manual shall be provided to Council **prior to issue of Construction Certificate or Subdivision Certificate.**
- The plan should address the following:-
- a) Whether acid sulfate soils are actually located on the site;
 - b) The extent to which any acid sulfate soils are to be disturbed and the means to be employed to mitigate any harm these soils may cause to proposed structures and/or the environment.
47. Pursuant to section 80A(1) of the Environmental Planning and Assessment Act 1979, and the Port Stephens Section 94A Development Contributions Plan, a contribution of 1% of the cost of the development, as determined in accordance with clause 25J of the Environmental Planning and Assessment Regulation 2000, shall be paid to Council
- The amount to be paid is to be determined in accordance with the provisions of the Port Stephens Section 94A Development Contributions Plan. The contribution is to be paid **prior to issue of the Subdivision Certificate.**
- A Quantity Surveyor's Detailed Cost Report (**form attached**) setting out an estimate of the proposed cost of carrying out development in accordance with Schedule 2 of the Port Stephens Section 94A Development Contributions Plan must be approved by Council prior to issue of a Construction Certificate.
48. Provisions shall be made for the widening of minor road 2 to facilitate the construction of a cul-de-sac head or turning facility at the end of Minor Road 2. Details are to be approved by Council **prior to issue of a Construction Certificate.**

49. Performance criteria of the Stormwater treatment devices (SPEL GPT's) shall be provided to Council **prior to issue of a Construction Certificate.**
50. Reach PB-P6 of the stormwater system is to be constructed with Ribloc pipes to increase the system infiltration. Details to be provided to Council **prior to issue of a Construction Certificate.**
51. The inlet pit 8 must be constructed as flush on ground. Details to be provided to Council **prior to issue of a Construction Certificate.**
52. Batter slopes for road embankments shall be constructed at a slope of 1:3 (V:H). Details to be provided to Council **prior to issue of a Construction Certificate.**
53. A Construction Management Plan shall be submitted to Council for approval prior to issue of Construction Certificate. The Construction Management Plan shall include but not be limited to details of the management of:
 - i. Vegetation
 - ii. Weeds
 - iii. Erosion and Sediment Control
 - iv. Acid Sulfate Soils
 - v. Mosquito's
54. The pedestrian linkages indicated on the pedestrian connections plan (dated 7 June 2010, prepared by terras landscape architects, ref: 8386.5 Rev: C) shall be incorporated into easements for pedestrian access. The titles of these properties shall be endorsed under Section 888 of the Conveyancing Act 1919 to give effect to this condition. Council shall be nominated as the prescribed authority permitted to release, vary or modify the instrument.
55. A large Public Recreation Park dedicated to passive recreation shall be provided on proposed Lot 3. This space shall be classified as community land for the purposes of public passive recreation and be linked to the integrated pedestrian network. The park shall be designed in accordance with Section 81 of port Stephens Development Control Plan 2007. Details of the park shall be provided to Council prior to issue of Construction Certificate.
56. Works associated with the approved plans and specifications located within the existing Road Reserve shall not commence until:
 - i) a Roads Act Approval has been issued, and
 - ii) all conditions of the Roads Act Approval have been complied with to Council's satisfaction.

GENERAL ADVICES

- a) Access to an adjoining property for construction & maintenance work requires the owner(s) consent. It is the responsibility of the owner/applicant to ensure that no part of the structure encroaches onto the adjoining property. The adjoining property owner can take legal action to have an encroachment removed.

- b) Consent for the removal of any trees should be obtained from Council under the provisions of the Tree Preservation Order applying to the land. **A copy of this Tree Preservation Order is attached.**
- c) This approval relates to **Development Consent** only and does not infer any approval to commence excavations or building works upon the land. **A Construction Certificate should be obtained prior to works commencing.**
- d) Should any aboriginal site or relic be disturbed or uncovered during the construction of this development, all work shall cease and the **National Parks and Wildlife Service** shall be consulted. Any person who knowingly disturbs an aboriginal site or relic is liable to prosecution under the **National Parks and Wildlife Act 1974.**
- e) The developer is responsible for full costs associated with any alteration, relocation or enlargement to public utilities whether caused directly or indirectly by this proposal. Such utilities include water, sewerage, drainage, power, communication, footways, kerb and gutter.
- f) The Commonwealth Disability Discrimination Act makes it an offence to discriminate against people on the grounds of disability, in the provision of access to premises, accommodation, or services. This applies particularly to new buildings or significant building alterations. It is the owner/applicants responsibility to ensure compliance with the requirements of this Act. Further information can be obtained from Council or the Human Rights and Equal Opportunity Commission on 008 021 199.

SCHEDULE 3 – APPROVED PLANS AND DOCUMENTATION

Statement of Environmental Effects prepared by RPS Harper Somers O'Sullivan /dated October 2009

Stamped plans

- Subdivision Plan, prepared by RPS Harper Somers O'Sullivan, Ref:25856
- Pedestrian Linkage Plan prepared by terras landscape architects, dated 7 June 2010, , ref: 8386.5 Rev: C
- Concept Plan prepared by RPS Harper Somers O'Sullivan, Ref:25856
- Engineering Plans prepared by Barker Harle, Ref: 90262
 - Sheet C1, Rev E, Dated 17/03/2010
 - Sheet C2, Rev D, Dated, 01/03/2010
 - Sheet C3, Rev D, Dated 01/03/2010
 - Sheet C4, Rev D, Dated 01/03/2010
 - Sheet C5, Rev D, Dated 01/03/2010
 - Sheet C6, Rev A, Dated 01/03/2010
 - Sheet C7, Rev B, Dated 17/03/2010
 - Sheet XS1, Rev D, Dated 01/03/2010
 - Sheet XS2, Rev D, Dated 01/03/2010
 - Sheet XS3, Rev D, Dated 01/03/2010
 - Sheet XS4, Rev D, Dated 01/03/2010
 - Sheet C8, Rev A, Dated 24/03/2010
 - Sheet PSW1, Rev C, Dated 24/03/2010
 - Sheet PSW2, Rev B, Dated 26/03/2010
 - Sheet PSW3, Rev A, Dated 25/03/2010

RESCISSION MOTIONS

Cr Ken Jordan declared a non-pecuniary conflict of interest and left the meeting at 8.39pm.

RECISSION MOTION

ITEM NO. 1

FILE NO: PSC2008-2238

VPA FOR PROPOSED REZONING OF LAND AT PEPPERTREE ROAD, MEDOWIE

COUNCILLORS: DINGLE, WARD, KAFER

That Council rescind its decision of 29 June 2010 on Item 12, Min.191 of the Ordinary Council Report, namely VPA for Proposed Rezoning of Land at Peppertree Road, Medowie.

ORDINARY COUNCIL MEETING - 13 JULY 2010

Cr Bruce MacKenzie objected to the Rescission Motion.

	Councillor Geoff Dingle Councillor Frank Ward	That Council rescind its decision of 29 June 2010 on Item 12, Min.191 of the Ordinary Council Report, namely VPA for Proposed Rezoning of Land at Peppertree Road, Medowie.
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In accordance with the Section 375A, Local Government Act 1993, a division is required for this item.

Those for the Motion: Crs Peter Kafer, Glenys Francis, Caroline De Lyall, Geoff Dingle and Frank Ward.

Those against the Motion: Crs Steve Tucker, Shirley O'Brien, Bob Westbury, Sally Dover and Bruce MacKenzie.

The Rescission Motion on being put was lost.

The Mayor exercised his casting vote.

MINUTES FOR ORDINARY MEETING – 13 JULY 2010

COUNCIL COMMITTEE MEETING – 29 JUNE 2010

RECOMMENDATION:

	Councillor Bruce MacKenzie Councillor Shirley O'Brien	That the recommendation be adopted.
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In accordance with Section 375A of the Local Government Act 1993, a division is required for this item.

Those for the motion: Crs Bruce MacKenzie, Sally Dover, Steve Tucker, Glenys Francis, Bob Westbury and Shirley O'Brien.

Those against the motion: Crs Frank Ward, Caroline De Lyall, Peter Kafer and Geoff Dingle.

ORDINARY COUNCIL MEETING – 29 JUNE 2010

	Councillor Geoff Dingle Councillor Frank Ward	That the developer be required to complete traffic and drainage studies prior to the rezoning being submitted to the Department of Planning.
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In accordance with the Section 375A, Local Government Act 1993, a division is required for this item.

Those for the Motion: Crs Peter Kafer, Glenys Francis, Caroline De Lyall, Geoff Dingle and Frank Ward.

Those against the Motion: Crs Steve Tucker, Shirley O'Brien, Bob Westbury, Sally Dover and Bruce MacKenzie.

The motion on being put was lost.

The Mayor exercised his casting vote.

MOTION

191	Councillor Bruce MacKenzie Councillor Steve Tucker	That the recommendation be adopted.
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In accordance with the Section 375A, Local Government Act 1993, a division is required for this item.

MINUTES FOR ORDINARY MEETING – 13 JULY 2010

Those for the Motion: Crs Steve Tucker, Shirley O'Brien, Bob Westbury, Sally Dover and Bruce MacKenzie.

Those against the Motion: Crs Peter Kafer, Glenys Francis, Caroline De Lyall, Geoff Dingle and Frank Ward.

The Motion on being put was carried.

The Mayor exercised his casting vote.

ITEM NO. 12

FILE NO: psc2008-2238

**VPA FOR PROPOSED REZONING OF LAND AT PEPPERTREE ROAD,
MEDOWIE**

REPORT OF: PETER GESLING – GENERAL MANAGER
GROUP: GENERAL MANAGERS OFFICE

RECOMMENDATION IS THAT COUNCIL:

- 1) Accept the Draft Voluntary Planning Agreement for the proposed re-zoning at Peppertree road (**Attachment 2**).
- 2) Endorse the draft Port Stephens Local Environmental Plan 2000 Amendment No. 32 to be submitted to the NSW Department of Planning.

BACKGROUND

The purpose of this report is to seek councils consideration to progress the re-zoning request as delegated authority could not be exercised.

Council considered a report to rezone land at its meeting on 24 November 2009. (**Attachment 1**) It was resolved that:-

That Council

Endorse the Infrastructure Agreement as contained in Attachment 1 (letter from Group Manager, Sustainable Planning to Buildev Pty Ltd) and require the General Manager to put into place a legal mechanism to bind any successive owners; and

Endorse the draft Port Stephens Local Environmental Plan 2000 Amendment No. 32 to be submitted to the NSW Department of Planning.

A number of alternatives were considered to identify a “legal mechanism to bind any successive owner”. An agreement was reached with Buildev on 30 March 2010 that achieves binding outcomes on the traffic and drainage studies but does not completely deliver that some assurances for dedication of land for road widening

The agreement on dedication of land which has now been exhibited (**Attachment 2**) is contained in Clause 6(h-c) as follows:

Dedication of Land for Road Widening Purposes

The developer acknowledges that the dedication of the road widening land for the purpose of widening Peppertree Road is integral to the rezoning of the subject land and the development.

The development application will include a provision for the dedication of the road widening land for the purpose of widening Peppertree Road in its statement of environmental effects.

Should development consent be granted in respect of the development application the developer consents to and will not challenge the imposition of a condition requiring the dedication of the road widening land at no cost to Council for the purpose of widening Peppertree Road.

The developer will ensure that the development application is lodged with Council on or before 14 May 2010.

If the development of the subject land is undertaken by a third party the developer will ensure that that third party adheres to the provisions of this agreement in relation to the dedication of the road widening the land.

As items j) and l) are future commitments, they are only binding on the signatories to the VPA. Three (3) alternatives are possible to Council.

Council to resolve to accept the existing Draft VPA and accept the risk of it not being enforceable on a future owner.

Seek an amendment to Draft VPA and re-exhibit it to;

i) include the current land owner of the affected lot.

OR

ii) request a bond from the proponent to the value of the land to be dedicated.

Two (2) submissions were received to the exhibition of the draft VPA. These are provided separately (**Attachment 3**). These support that the matter should be further considered by Council.

FINANCIAL/RESOURCE IMPLICATIONS

The current form of the Draft VPA could result in the Council having to fund the land purchase by acquisition if the land is transferred and that owner successfully challenges a DA condition for the proposed development or if a new DA is submitted over the land.

LEGAL, POLICY AND RISK IMPLICATIONS

Legal advise confirms a risk to Council proceeding with the current Draft VPA. No process is without risk and the level of risk is considered low.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The proposed VPA seeks to address Councils concerns for land being recommended for re-zoning. These proposals are aimed at managing suitability issues by completing capacity studies and seeking to identifying land required for road access.

Progressing the application is in the community interest for both economic and social sustainability due to increased competition and great commercial amenity in Medowie.

CONSULTATION

Sustainable Planning Group Manager
Integrated Planning Manager
Harris Wheeler Lawyers
Buildev Development Pty Ltd

OPTIONS

Accept recommendation
Negotiate a variation to VPA.

ATTACHMENTS

- 1) Council Report of 24 November 2009
- 2) Voluntary Planning Agreement
- 3) Submissions

COUNCILLORS ROOM

Nil.

TABLED DOCUMENTS

Nil.

ATTACHMENT 1

COUNCIL COMMITTEE – 24 NOVEMBER 2009

ITEM NO. 2

FILE NO: PSC2008-2238

PROPOSED AMENDMENT TO LOCAL ENVIRONMENTAL PLAN 2000 (NO. 32): COMMERCIAL DEVELOPMENT, CORNER FERODALE & PEPPERTREE ROADS, MEDOWIE – INFRASTRUCTURE AGREEMENT

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

RECOMMENDATION IS THAT COUNCIL:

- 1) Endorse the Infrastructure Agreement as contained in Attachment 1 (letter from Group Manager, Sustainable Planning to Buildev Pty Ltd) and
- 2) Endorse the draft Port Stephens Local Environmental Plan 2000 Amendment No. 32 to be submitted to the NSW Department of Planning requesting that the Plan be made by the NSW Minister for Planning.

COUNCIL COMMITTEE MEETING – 24 NOVEMBER 2009

RECOMMENDATION:

	Councillor Daniel Maher Councillor Steve Tucker	That Council: <ol style="list-style-type: none">1) Endorse the Infrastructure Agreement as contained in Attachment 1 (letter from Group Manager, Sustainable Planning to Buildev Pty Ltd) and require the General Manager to put into place a legal mechanism to bind any successive owners; and2) Endorse the draft Port Stephens Local Environmental Plan 2000 Amendment No. 32 to be submitted to the NSW Department of Planning requesting that the Plan be made by the NSW Minister for Planning.
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In accordance with the Local Government Act 1993, a division is required for this item.

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

Those against the Motion: Cr Frank Ward.

COUNCIL COMMITTEE – 24 NOVEMBER 2009

MATTER ARISING:

	Councillor Glenys Francis Councillor Peter Kafer	That Council be provided with a briefing from the consultants on the Medowie Flood Study.
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BACKGROUND

The purpose of this report is to recommend Council's endorsement of the Infrastructure Agreement reached between the Group Manager, Sustainable Planning and the Directors of Buildev Pty Ltd in relation to the draft LEP amendment No. 32 and thereby enable that draft LEP amendment to be recommended to the NSW Department of Planning and NSW Minister of Planning for approval and gazettal.

This report compliments Item 1 – report to the Council Committee of 10 November 2009 which was deferred by Council to enable an Infrastructure Agreement to be reported upon prior to the submission of the Draft Local Environmental Plan to the NSW Department of Planning.

Following the initial recommendation for the draft Local Environmental Plan to not proceed, management representatives from Buildev Pty Ltd met with the Group Manager, Sustainable Planning and Coordinator, Infrastructure Planning on Monday 9 November 2009 with the resulting negotiation of an agreement on infrastructure provision associated with the draft LEP amendment. The key issues here were:

1. Fulfilment of the adopted Medowie Strategy in terms of commitment to infrastructure planning, funding and provision in relation to applications for rezoning;
2. This draft Local Environmental Plan being facilitated for endorsement prior to the completion of a comprehensive Infrastructure Plan and Flood Management Study and Plan by Council;
3. Ensuring equitable contributions from developments in the short term prior to the Infrastructure Plan and Flood Plain Management Study and Plan being completed relative to the anticipated contributions from all future developments in accordance with the Medowie Strategy and
4. Getting clear and legally sound bases for the Infrastructure Plan and differentiating between liability for infrastructure planning and commitment at draft LEP and development application stages.

COUNCIL COMMITTEE – 24 NOVEMBER 2009

It is submitted that the Agreement that is contained in the letter from the Group Manager, Sustainable Planning which is Attachment 1 to this report responds appropriately to the above key issues.

FINANCIAL/RESOURCE IMPLICATIONS

The Infrastructure Agreement has been negotiated to fulfil the infrastructure planning requirements contained in the Medowie Strategy and in terms of seeking to achieve relatively equitable approach for this short-term development relative to the longer term developments and contributions in accordance with the Medowie Strategy.

LEGAL, POLICY AND RISK IMPLICATIONS

The Infrastructure Agreement has been negotiated on a legally sound basis to implement the Medowie Strategy, based upon Section 94A contributions and seeking to ensure clear differentiation between the draft Local Environmental Plan stage and the development application stage.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The sustainability implications of rezoning the land have been addressed in the Medowie Strategy. Proceeding with the rezoning to enable the development of a Woolworths supermarket may have positive social and economic effects. Sustainability of infrastructure and related funding remains a key issue for this proposal.

CONSULTATION

Meeting with Buildev Pty Ltd.

OPTIONS

1. Council can adopt the recommendation and endorse the Infrastructure Agreement and thereby enable the submission of the draft Local Environmental Plan Amendment No. 32 to the NSW Department of Planning and NSW Minister For Planning;
2. Seek renegotiation of certain elements of the Infrastructure Agreement before endorsing the draft Local Environmental Plan to be submitted to the State Department of Planning or
3. Not accept the recommended Infrastructure Agreement and not proceed with the draft Local Environmental Plan No. 32.

ATTACHMENTS

COUNCIL COMMITTEE – 24 NOVEMBER 2009

- 1) Letter from Group Manager Sustainable Planning to the Directors of Buildev Pty Ltd proposing the finally negotiated Infrastructure Agreement
- 2) Letter from Buildev Pty Ltd confirming the Company's endorsement of the Infrastructure Agreement proposed on Council's behalf by the Group Manager, Sustainable Planning.

COUNCILLORS ROOM

Nil

TABLED DOCUMENTS

Nil

ATTACHMENT 1
GROUP MANAGER SUSTAINABLE PLANNING LETTER

TO BE PROVIDED UNDER SEPARATE COVER

ATTACHMENT 2
BUILDEV LETTER

TO BE PROVIDED UNDER SEPARATE COVER

Cr Maher requested Cr Dingle to withdraw and apologise for the comments that asserted staff had subverted the process by creating a smokescreen to provide support for the Boundary Road site.

Cr Dingle agreed and apologised, then reworded his comments.

ATTACHMENT 2

BUILDEV DEVELOPMENT (NSW) PTY LIMITED
ABN 31 115 089 122
("THE DEVELOPER")

AND

PORT STEPHENS COUNCIL
("THE COUNCIL")

REZONING REQUEST
MEDOWIE

VOLUNTARY PLANNING AGREEMENT

Harris Wheeler Lawyers
3rd Floor, Hunter Mail Chambers
175 Scott Street
NEWCASTLE NSW 2300
DX 7814 NEWCASTLE
PH: 02 4907 6300
FAX: 02 4907 6333

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VOLUNTARY PLANNING AGREEMENT

BETWEEN: BUILDEV DEVELOPMENT (NSW) PTY LIMITED, ABN 31 155 089 122 of Suite 1,
Level 3, Honeysuckle House, Sparke Helmore Building, Honeysuckle Drive,
Newcastle NSW 2300 ("the developer")

AND: PORT STEPHENS COUNCIL of 116 Adelaide Street, Raymond Terrace, NSW
("the Council")

BACKGROUND

- A. The subject land is situated in the Port Stephens Local Government Area and is subject to the LEP 2000.
- B. The developer has made a rezoning request to the Council for the subsequent purpose of making the development application.
- C. The subject land is within the area covered by the Strategy adopted by Council on 24 March 2009.
- D. The Strategy requires the preparation of an infrastructure plan to identify the hard critical infrastructure (including drainage and roads) which will be required to support the rezoning under the Strategy.
- E. The infrastructure plan has not yet been developed. A flooding and drainage study for Medowie has yet to be completed.
- F. The developer wishes to progress the rezoning and development of the subject land prior to the finalisation of the Strategy and has offered as part of its contribution to the wider infrastructure needs of the area and for other public purposes to:
 - (a) pay \$20,000.00 towards the cost of a strategic traffic study to be undertaken by consultants engaged by Council for the area around the subject land
 - (b) provide \$36,960.00 towards the cost of the drainage report
 - (c) dedicate part of lot 11 in DP 19101 being the land contained in Volume 5466 Folio 6 for the purpose of widening Peppertree Road.
- G. The parties have agreed to enter into a voluntary planning agreement to document this agreement.

OPERATIVE PROVISIONS

THE PARTIES AGREE:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this agreement:

"Act" means the *Environmental Planning and Assessment Act 1979*.

"business day" means any day excluding Saturdays, Sundays and public holidays.

"development" means the construction of a Woolworths Supermarket or any other proposal to develop the subject land.

"development application" means a development application in respect of the development.

"drainage report" means an assessment and report to be undertaken by consultants engaged by Council identifying the local sub-catchment within which the subject land is located and the drainage and water quality works required for future development in that catchment as outlined in the Strategy.

"explanatory note" has the same meaning as it has in clause 25E of the Regulation.

"GST" has the same meaning as in the GST Law.

"GST Law" has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other act or regulation relating to the imposition or administration of the GST.

"LEP 2000" means the Port Stephens Local Environmental Plan 2000.

"local sub-catchment" means the area in which the subject land is located as identified in the plan which forms annexure "B" to this agreement.

"Regulation" means the *Environmental Planning and Assessment Regulation 2000*.

"rezoning request" means the request to rezone the subject land from 2(a) residential to 3(a) business general by way of amendment no 32 to the LEP 2000.

"road widening land" means that part of lot 11 in DP 19101 being the land contained in Volume 5466 Folio 6 which is required for the widening of Peppertree Road as identified in the plan which forms annexure "C" to this agreement being an area tapering from zero to 5 meters in width over 74.27 meters in length before running parallel with the existing boundary at 5 meters in width.

"strategic traffic study" means a traffic study of current and future intersection capacities based on the footprint in the Strategy, together with a recommendation for required upgrades.

"Strategy" means the Medowie Strategy.

"subject land" means lot 7 in DP 19101 being the land contained in certificate of title folio identifier 7/19101; lot 8 in DP 19101 being the land contained in certificate of title folio identifier 8/19101; lots 9 and 10 being the land contained in certificate of title volume 7087 folio 171; and lot 11 in DP 19101 being the land contained in certificate of title volume 5466 folio 6 as shown in annexure "A" to this agreement.

"tax invoice" has the meaning given to it in GST Law.

"traffic consultant" means the traffic engineer appointed by Council to carry out the strategic traffic study.

1.2 Interpretation

In this agreement, unless the context indicates a contrary intention:

- (a) If the day on which any act, matter or thing is to be done under this agreement is not a business day, the act, matter or thing must be done on the next business day.
- (b) A reference in this agreement to dollars or \$ means Australian dollars and all amounts payable under this agreement are payable in Australian dollars.
- (c) A reference to any law, legislation or provision of legislation includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- (d) Clause headings and the table of contents are inserted for convenience only and do not affect the interpretation of this agreement.
- (e) A reference to a corporation includes its successors and permitted assigns.
- (f) A reference to a statutory corporation includes its successors and permitted assigns.

2 PLANNING AGREEMENT

This agreement constitutes a planning agreement within the meaning of section 93F of the Act and is governed by Subdivision 2 of Division 6 of Part 4 of the Act.

3 APPLICATION OF SECTIONS 94, 94A AND 94EF OF THE ACT TO THE DEVELOPMENT

- 3.1 This agreement does not exclude the application of sections 94, 94A and 94EF of the Act to the development.
- 3.2 The benefits under this agreement are a contribution to the broader infrastructure needs of the area consequent on the rezoning of the subject land and are not to be taken into consideration in determining a development contribution under sections 94, 94A or 94EF.

4 REZONING CONTRIBUTIONS

The developer will make the following contributions to the wider infrastructure needs of the area in which the subject land is located and for other public purposes.

Strategic Traffic Study

- (a) The developer will pay \$20,000.00 towards the cost of the strategic traffic study.

Local Drainage

- (b) The developer will pay \$36,960.00 towards the cost of the drainage report.

Dedication of Land for Road Widening Purposes

- (c) The developer will at its cost dedicate to Council the road widening land.

5 ACKNOWLEDGEMENTS

- 5.1 The parties acknowledge that the provision of the drainage report, strategic traffic study and the dedication of the road widening land relate only to the broader infrastructure needs of the area and do not relate to the specific impacts of the development which will be assessed and appropriate conditions imposed at the development application stage.
- 5.2 The specific impacts of the development may, inter alia, require further works based upon a merit assessment of the development.

6 TIMING AND METHOD OF PAYMENTS

Strategic Traffic Study

- (a) The developer will pay to Council an amount of \$20,000.00 at the time of signing this agreement, this amount to be held in trust by Council to pay for the strategic traffic study.

- (b) Should the rezoning request not be approved or not proceed for any reason Council will refund this amount to the developer.
- (c) Following gazettal of the rezoning Council will engage the traffic consultant to carry out the strategic traffic study and is authorised to use the funds held in trust to pay for the cost of the study.
- (d) If the cost of the strategic traffic study exceeds \$20,000.00, any amount over \$20,000.00 will be paid for by Council.
- (e) If the cost of the strategic traffic study is less than \$20,000.00, any surplus funds will be used for infrastructure planning or works in the area covered by the Strategy.
- (f) Council will use its best endeavours to complete the strategic traffic study as soon as practicable after gazettal of the rezoning.

Local Drainage

- (g) The developer will pay to Council an amount of \$36,960.00 at the time of signing this agreement, this amount to be used by Council to contribute to the cost of the drainage report.

Dedication of Land for Road Widening Purposes

- (h) The developer acknowledges that the dedication of the road widening land for the purpose of widening Peppertree Road is integral to the rezoning of the subject land and the development.
- (i) The development application will include a provision for the dedication of the road widening land for the purpose of widening Peppertree Road in its statement of environmental effects.
- (j) Should development consent be granted in respect of the development application the developer consents to and will not challenge the imposition of a condition requiring the dedication of the road widening land at no cost to Council for the purpose of widening Peppertree Road.
- (k) The developer will ensure that the development application is lodged with Council on or before 14 May 2010.
- (l) If the development of the subject land is undertaken by a third party the developer will ensure that that third party adheres to the provisions of this agreement in relation to the dedication of the road widening land.

7 COUNCIL NOT BOUND BY STUDIES

Council will take into account the contents of the strategic traffic study and drainage report but is not bound to accept any facts or recommendations contained in them or to take any specific action in relation to them.

8 COUNCIL ENDORSEMENT OF REZONING REQUEST

Following the execution of this agreement by both parties and provided that the developer has fully complied with its obligations under sub-clauses 6(a), 6(g) and 6(k) Council will endorse the rezoning request and request that the proposed amendment no 32 to the LEP 2000 be made by the NSW Minister for Planning.

9 REVIEW OF THIS AGREEMENT

This agreement may be reviewed or modified by agreement providing any variation must be in writing and be expressed to be supplemental to this agreement and must be executed by the parties.

10 DISPUTE RESOLUTION

10.1 A party may not commence any court proceedings relating to a dispute of any matter under this agreement ("a dispute") unless it complies with this clause 10.

10.2 Written Notice of Dispute

A party claiming that a dispute has arisen under or in relation to this agreement must give notice to the other party specifying the nature of the dispute.

10.3 Attempt to Resolve

On receipt of notice under clause 10.2, the parties must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation or other techniques agreed by them.

10.4 Mediation

If the parties do not agree within 7 days of receipt of notice under clause 10.2 (or any further period agreed in writing by them) as to:

- (a) the dispute resolution technique and procedures to be adopted;
- (b) the timetable for all steps in those procedures; and
- (c) the selection and compensation of the independent person required for such technique,

the parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales (or any replacement). The parties must request the President of the Law Society of New South Wales or the President's nominee to select the mediator and determine the mediator's remuneration.

10.5 Court Proceedings

If the dispute is not resolved within 42 days after notice is given under clause 10.2, then any party which has complied with the provisions of this clause 10 may in writing terminate any dispute resolution process undertaken pursuant to this clause 10 and may then commence court proceedings in relation to the dispute.

10.6 Not Use Information

The parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this clause 10 is to attempt to settle the dispute. No party may use any information or documents obtained through any dispute resolution process undertaken pursuant to this clause 10 for any purpose other than in an attempt to settle the dispute.

10.7 No Prejudice

This clause 10 does not prejudice the right of a party to institute court proceedings for urgent injunctive or declaratory relief in relation to any matter arising out of or relating to this agreement.

11 ACKNOWLEDGEMENT OF COMPLIANCE

The parties acknowledge that this agreement together with the explanatory note were publicly exhibited as required by section 93G of the Act for a minimum of 28 days before this agreement was entered into.

12 NOTICES

12.1 Giving Notice

Any notice, consent, information, application or request that must or may be given or made to a party under this agreement is only given or made if it is clearly readable, in writing and is sent in one of the following ways:

- (a) Delivered or posted to that party at its address as set out below.
- (b) Faxed to that party at its fax number set out below.
- (c) Emailed to that party at its email address set out below.

THE DEVELOPER

Attention: David Sharpe
Address: Suite 1, Level 3, Honeysuckle House, Sparke Heimore Building, Honeysuckle Drive, Newcastle NSW 2300
Fax Number: (02) 4926 2766
Phone Number: (02)4929 3299
Email:

THE COUNCIL

Attention: The General Manager
Address: 116 Adelaide Street, Raymond Terrace, NSW
Fax Number: (02)
Email:

12.2 Change of address

If a party gives the other party ten (10) business days' notice of a change of its address, email or fax number, any notice, consent, information, application or request is only given or made by that other party if it is delivered, posted or faxed to the latest address, email or fax number.

13 COSTS

13.1 Each party will bear its own costs of negotiating, preparing and executing this agreement.

13.2 Any costs of stamping and registering this agreement will be borne by the developer.

14 ENTIRE AGREEMENT

This agreement contains everything to which the parties have agreed in relation to the matters it deals with. No party can rely on an earlier document, or anything said or done by another party, or by a director, officer, agent or employee of that party, before this agreement was executed, except as permitted by law.

15 FURTHER ACTS

Each party must promptly execute all documents and do all things that another party from time to time reasonably requests to effect, perfect or complete this agreement and all transactions incidental to it.

16 GOVERNING LAW AND JURISDICTION

This agreement is governed by the law of New South Wales. The parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The Parties will not object to the exercise of jurisdiction by those courts on any basis.

17 REPRESENTATIONS AND WARRANTIES

The Parties represent and warrant that they have the power to enter into this agreement and comply with their obligations under the agreement and that entry into this agreement will not result in the breach of any law.

18 SEVERABILITY

If a clause or part of a clause of this agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this agreement, but the rest of this agreement is not affected.

19 WAIVER

The fact that a party fails to do, or delays in doing, something the party is entitled to do under this agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another party. A waiver by a party is only effective if it is in writing. A written waiver by a party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

20 GST

- (a) If the Council reasonably decides that it is liable to pay GST on any development contribution made by the developer, the developer will, within 90 days of a receipt of a tax invoice, pay the amount of that tax invoice to the relevant Council.
- (b) Any tax invoice must comply with the GST Law.

EXECUTED as an agreement on the _____ day of _____ 2010.

The Common Seal of
BUILDEV DEVELOPMENT (NSW)
PTY LIMITED
ACN 81 115 089 122
was affixed in the presence of:)
)
)
) Director
)
) Print Name

.....
Secretary/Director

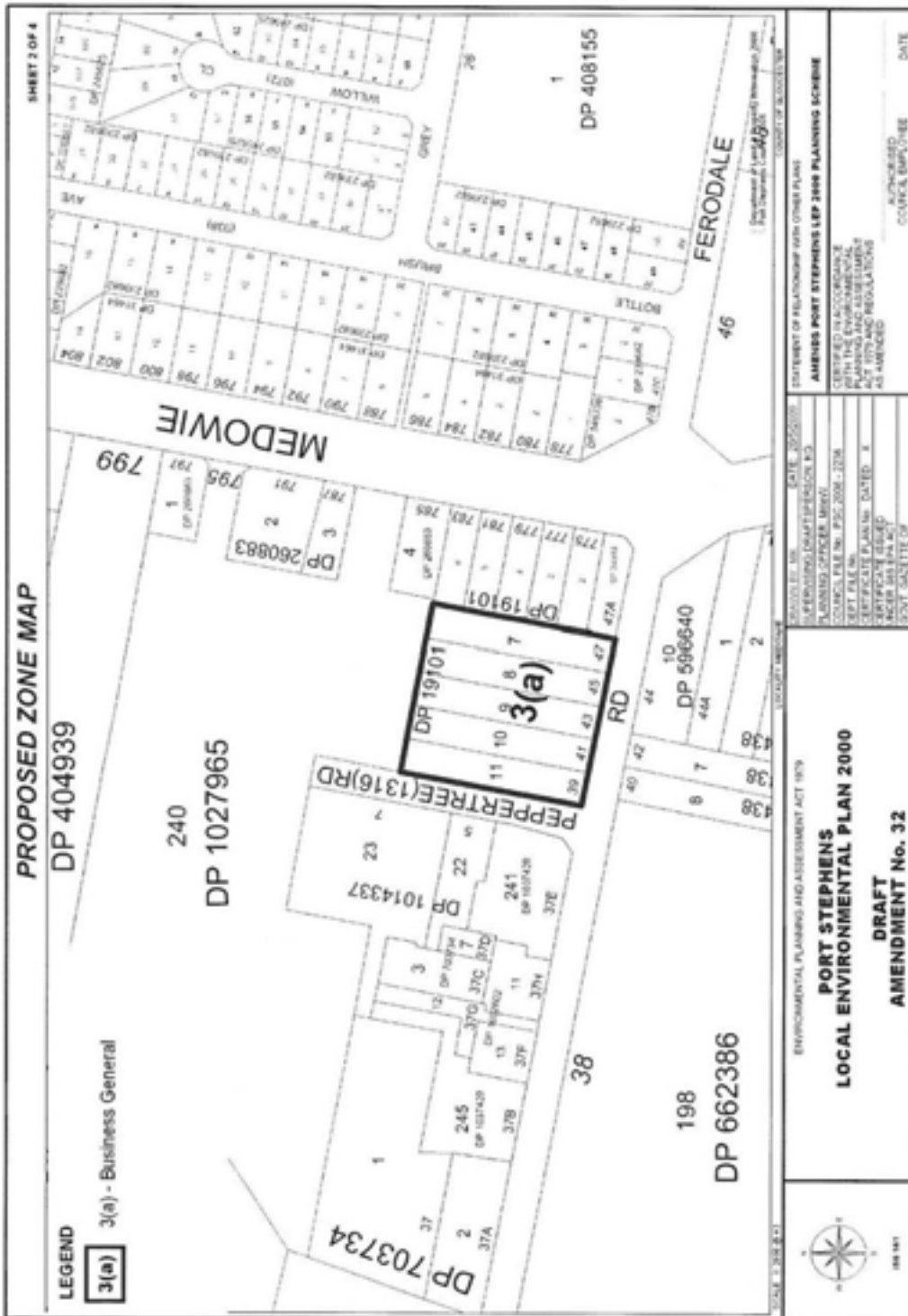
.....
Print name

Executed for and on behalf of
PORT STEPHENS COUNCIL
Under delegated authority:)
)
)
) General Manager
)
) Print Name

.....
Witness

.....
Print name

ANNEXURE A



ANNEXURE B

Plan of the Local Sub-catchment
(Catchment defined by hatched area)



ATTACHMENT 3

STAFF COMMENTS SHALL BE PROVIDED VIA A SUPPLEMENTARY MEMO TO FOLLOW.

43 Kirrang Dr
Medowie NSW 2318
7th June 2010

General Manager
Port Stephens Council
PO Box 42
RAYMOND TERRACE NSW 2324

File No: PSC2008-2238

Noted
David B
Travis A

**SUBMISSION ON PROPOSED VOLUNTARY PLANNING AGREEMENT
BETWEEN BULDEV DEVELOPMENT & PORT STEPHENS COUNCIL REZONING
OF LOTS 7, 8, 9 & 10 OF DP19101**

Dear Sir

I wish to submit the following comments in relation to the voluntary planning agreement between Buldev Development (NSW) Pty Ltd and Port Stephens Council in relation to an amendment to Port Stephens LEP 2000 to amend zoning the zoning of lots 7, 8, 9 and 10 of DP 19101 known as 39 to 47 Ferodale Rd Medowie.

While I have no objection to the proposed rezoning from the current 2(a) residential to 3 (a) business I make the following comments about the voluntary agreement content and its intent.

While the developer wishes to progress his application for rezoning in advance of an infrastructure plan the following issues must be taken into account before progressing to the next stage of this rezoning application:

Drainage and flooding:

PSC has just spent considerable funds and effort through its flood drainage panel to prepare a flood drainage model with the assistance of WMA Water and financial assistance from DECCW and Hunter Water. This project has now reached a critical point with the release of the calibration and data report on the 23rd April 2010 and the consultant is looking to test this model by inserting data in the form of volumes and flow rates for various development sites in Medowie to assess what impact they will have on the flood zones in Medowie.

I note that the recent installation of a car park at the Medowie community centre required that considerable drainage works had to be carried out to provide for large in ground storage tanks and infiltration trenches installed to manage storm water flow from both the community centre and the car parks hard surfaces in storm and rain events to:

- a) Slowly release water into the lower catchment via Campvale drain and the swamp
- b) Provide opportunity for reuse of captured water resources for use in watering parkland and to be used for Council operational works etc.

It is essential that the developer complete a flood drainage study in advance of their application for rezoning being progressed to allow the flow rates and volumes be plugged into the Medowie

Flood Drainage model for assessment of how the developer might deal with storm water from the property. It is a fact that any supermarket development will have considerable roof and hard surface areas with very little open space and therefore limited opportunity for infiltration. The comment in the background notes item E, page 3, states that the flood drainage study has yet to be completed, this is not entirely correct as the calibration model is complete and ready for testing. The developer should put forward his own drainage study in advance of the rezoning application and this result should be plugged into the Calibration model for assessment of local flooding impacts.

Traffic /Pedestrian Movement and Road Works

The amount of land being offered to allow for the widening of Peppertree Rd is entirely inadequate and will therefore potentially not support the recommendations from the Medowie Strategy that Peppertree Rd is to become Medowie's "Main St" and this street will have curb side parking and street fronting shopping as its feature. It is noted that Peppertree Rd already services the Bi Lo shopping centre which has approval for a 50% increase in size and therefore traffic flow which includes extra deliveries. This, combined with traffic feeding a second supermarket, makes Peppertree an enormously busy and congested traffic and pedestrian thoroughfare. A traffic plan would have been completed for the Bi Lo DA expansion so it is essential that the traffic study is completed in advance of the rezoning application to assess what actual road width treatment and intersection treatment at the corner of Peppertree and Ferodale is required.

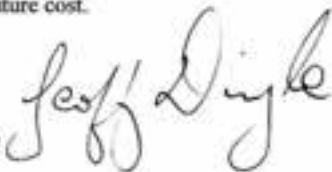
Land Allocation.

The strip of land to be provided by the Developer shows a tapering along Peppertree towards the intersection of Ferodale and Peppertree and the concern is that this will not allow for a suitable intersection treatment as this will potentially require a roundabout to handle the volume of traffic mirroring the treatment of Main Rd and Ferodale Rd's. I note that the Bi Lo approval requires entry of traffic to a car park at the front of the existing shops in Ferodale this further complicates traffic movement in this area necessitating a traffic study in advance of rezoning not after the event. The intersection of Peppertree and Ferodale Rd's has already reached strangle point and the construction of the recreation park on the bottom of the Medowie Community Centre adds to the movement of pedestrians between the Medowie Community Centre, future shopping centres and the bulk of the residential property to the north of Medowie. The tapered strip of land allocated fronting Peppertree directs the proposed shopping centre frontage to Ferodale Rd which is counter to the Medowie strategy calling for shop frontage facing Peppertree, if this is not achieved Medowie' shopping centre will become divided and have poor dangerous pedestrian links between shopping centre elements.

It is essential that we have a plan in advance of this rezoning application being forwarded. The Developer should carry out their own traffic study and flood drainage report at their expense and this report should be part of the application for rezoning. By suggesting that money is allocated if rezoning is achieved allows the Developer to hedge their bets without taking any financial risk, the small amounts of money allocated potentially mean that Council could end up wearing a substantive part of the future cost.

Yours Faithfully

Councillor Geoff Dingle

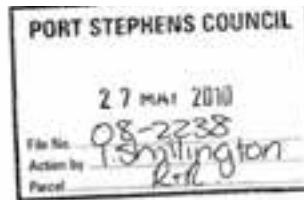


MINUTES FOR ORDINARY MEETING – 13 JULY 2010

25/05/2010

General Manager
Port Stephens Council
PO Box 42
Raymond Terrace 2324

PSC 2008-2238



Dear Sir,

With reference to the above file regarding the rezoning of the 30-47 Ferrodale Road we would make the following submission.

We do not know which legal identity gave the Council advice but it would seem that the wording, the Voluntary Planning Agreement with regard to the developer would hold no legal standing whatsoever in the future. The word voluntary would need to be changed to mandatory to hold any binding meaning in future dealings with the developer or any future owner if the land holdings are on-sold.

Yours Faithfully,

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.

Cr Ken Jordan returned to meeting at 9.00pm.

ORDINARY COUNCIL MEETING - 13 JULY 2010

210	Councillor Peter Kafer Councillor Steve Tucker	It was resolved that Council move into Confidential Session.
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CONFIDENTIAL

ITEM NO. 1

FILE NO: T06-2010
PSC2010-03194

INTERNAL AUDIT TENDER T06-2010

REPORT OF: WAYNE WALLIS - GROUP MANAGER, CORPORATE SERVICES
GROUP: CORPORATE SERVICES GROUP

ORDINARY COUNCIL MEETING - 13 JULY 2010

211	Councillor Glenys Francis Councillor Peter Kafer	It was resolved that Council:- <ol style="list-style-type: none">1. Accept the tender submitted by Lawler Partners (Newcastle) for the provision of Internal Audit Services (T06-2010) as set out within their tendered submission.2. The initial term will be three (3) years plus a two (2) year extension based on performance and contract provisions.3. Delegate responsibility to General Manager to review contract performance in line with contract provisions and execute an extension or cessation of contract at year three (3).
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CONFIDENTIAL

ITEM NO. 2

FILE NO: PSC2009-09498

DEBT RECOVERY FOR UNPAID RATES

REPORT OF: DAMIEN JENKINS – FINANCIAL SERVICES MANAGER

GROUP: COMMERCIAL SERVICES

ORDINARY COUNCIL MEETING - 13 JULY 2010

214	Councillor Ken Jordan Councillor Steve Tucker	It was resolved that Council review the Debt Recovery and Hardship Policy and Councillors be provided with a 2 way conversation on the revised policy.
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There being no further business the meeting closed at 9.03pm.

I certify that pages 1 to 200 of the Open Ordinary Minutes of Council 13 July 2010 and the pages 201 to 213 of the Confidential Ordinary Minutes of Council 13 July 2010 were confirmed by Council at its meeting held on 27 July 2010.

.....
Cr Bruce MacKenzie
MAYOR